

PLANNING BOARD MEETING of September 11, 2012: Town Hall Banquet Room

I. ADMINISTRATIVE BUSINESS

Chairman Wayne Hayward – Opened the meeting at 6:30pm

Quorum/Attendance

Members Present – Chairman, Wayne Hayward, Albert Borges, Francis Budryk, Rene Fleurent Jr., Jeffrey Lucas, Peter Nopper and Gary Staffon.

Members Absent - Joseph Morra

Wayne Hayward advised the Board that he has drafted a letter to send to Mr. Morra, and he intends to sign it and send it to him asking for his resignation. Mr. Hayward encouraged all members to sign it as well.

Gary Staffon made a formal motion for all members to sign the letter and send it for Mr. Morra to resign; and was seconded by Albert Borges. The motion passed by unanimous vote.

Planning Director William Roth was also in attendance.

Acceptance of Minutes August 14 2012

Francis Budryk made a motion to approve the minutes of August 14, 2012, and it was seconded by Rene Fleurent Jr. The motion passed by unanimous vote.

Wayne Hayward told the Board he was very happy with the way the minutes were done. He said it's a nice resource to go back and really be able to get a feel of the conversation that took place.

Planning Board Bills

1. Fairhaven Neighborhood News – Windward Power Systems, Inc. - \$130.00

Gary Staffon made a motion to pay the Fairhaven Neighborhood News bill, and was seconded by Peter Nopper. The motion passed by unanimous vote.

II. CURRENT PLANNING:

Receipt of Plans:

None.

Wayne Hayward asked if there was any update from NSTAR on the property at Doane & Laurel Street?

William Roth stated that he's been back and forth with their engineer for lot configuration and drainage. He wants to tie the drainage issue as a condition of approval and so that's why he's still in negotiations with them.

Wayne Hayward asked if they are developing the plans or are we?

William Roth stated, "Yes, they are."

Jeffrey Lucas asked how many lots?

William Roth said, "Just one." But he believed they had a developer that wants to buy all seven. "It's moving forward," Mr. Roth said.

Approval of Plans:

None

III. PUBLIC HEARING

1. Special Permit – Windward Power Systems, Inc. – 379 Alden Road (con't from 8/14/12)

Rene Fleurent, Jr. advised the Board that he is an Associate Member for the Zoning Board of Appeals and that he was a part of the hearing that took place for the applicant's variance.

Wayne Hayward said he was aware of that.

William Roth explained to the Board that the applicant was waiting for a waiver approval from the Board of Public Works (BPW) on the driveway width and location; and a variance from the Zoning Board of Appeals for building coverage. He advised that both had been completed, and with that Mr. Roth has proposed 14 conditions of approval if Board was so inclined.

John Keegan, Engineer for Windward Power Systems, was present to advise he has the revised plans with the revised landscaping and a detail fencing around the dumpster.

Wayne Hayward asked the date of the plan revision?

Mr. Keegan stated, "August 22, 2012."

William Roth stated that he did see the revisions on a PDF.

Wayne Hayward asked if there were any special conditions from the Zoning Board of Appeals or BPW?

William Roth advised that the BPW asked for a licensed contractor.

Jeffrey Lucas made a motion to accept the plans with all fourteen conditions, and was seconded by Gary Staffon. The motion passed by unanimous vote.

Gary Staffon had one more question to ask Mr. Keegan. He asked if on the special condition, #8A, if the plans outlined the vegetation, to which Mr. Keegan said it did.

2. Text Amendment – **Subdivision Regulations** – Chapter 322-30 – Chip Seal

Wayne Hayward asked Mr. Roth to read the advertisement, which he read.

Wayne Hayward - this hearing is to receive information and public comment on Subdivision Regulations, Ch. 322-30, Chip Seal.

William Roth stated there was a letter in the packet from the Conservation Commission (ConCom) that did have some concerns for its use around wetland area.

Wayne Hayward told the Board that he watched the ConCom meeting last night and they did address their concerns that if it was not applied properly, for example the chip seal was applied in the rain or on a humid day, there would be bleeding and flushing; which Mr. Hayward agreed. He went on to say that the Planning Board was not the first one to initiate Chip Seal in the Town of Fairhaven. He said it was the Town that put them on warning that they were going to use Chip Seal. Mr. Hayward said that ConCom's

concern of bleeding/flushing was a valid concern; however in their regulations it was clearly written that there would be weather limitations. "I can't see that it would be done incorrectly," Mr. Hayward said. He said that there would be the Town Engineer present. "It's not my first choice," he said. "But it does seem to work." Mr. Hayward said there were three sections that they were changing.

Mr. Hayward then opened it up to the Board for questions and/or concerns.

Gary Staffon said that he thought it would work fine instead of gravel roadway; and that it didn't surprise him that ConCom sent a letter.

Mr. Hayward asked if there was anyone in the audience who wanted to speak on the subject.

Jeffrey Lucas asked what the three sections that were being changed were. He said, 'I see it's E under Section 8, and then Appendix E, and what's the third?'

William Roth said, "the drawing."

Wayne Hayward said, "We're amending Appendix C – Street Design Drawing."

William Roth asked that if it's approved, he would like to reverse the metric units to American standards.

Francis Budryk asked if it was written with specifications, 'what exactly is ConCom upset about?'

Wayne Hayward said the concern was if the chip seal was put down during inclement weather it may run off into a wetland area. He said that it is virgin, clean stone and that oil adheres to the stone; so if it was raining during the process it wouldn't adhere properly, but that is stated right in the regulations that it prohibits doing it in certain weather conditions.

William Roth said, "We don't pave when it rains."

Francis Budryk reiterated, "So we have that written in our regulations."

Wayne Hayward agreed. "Yes. It's all in there, in our regulations."

William Roth said he didn't think that ConCom was actually objecting. He read from their letter that states what happens to chip seal process when bleeding or flushing occurs. "They're just saying what their concern is, if it was not done correctly."

Jeffrey Lucas in reference to ConCom's letter said that he's reading it to say that if Planning Board does a subdivision, they're saying that they reserve the right to approve or not approve.

Wayne Hayward said, "You have streets being chip seal now, I'm not sure if they're aware of that. I don't agree with Chip Seal, in many cases, but it's what the Town wants."

Rene Fleurent, Jr. said that part of his concern was the need to protect the environment and wetlands.

William Roth said, 'that's what ConCom is saying.' He said they can condition a project, and follow their rules and regulations. "They're just covering their bases."

Jeffrey Lucas asked if it was possible to wait to approve a subdivision until they heard from ConCom?

William Roth said that ConCom gets everything routed.

"We need to bring them in the loop," Mr. Lucas said.

William Roth explained his application process to the Board Members. He said that he 'highly encourages' the applicant to submit to ConCom at the same time, and to get ConCom prior to us. "I encourage them to go through the process concurrent with us," he said.

"And that's part of my concern," Rene Fleurent, Jr. said. "How do we get the applicant to go to ConCom before coming to us?"

Wayne Hayward said, 'we ask them to file at the same time. That's what Bill is here for, communication between parties.' Mr. Hayward also said that over time ConCom would become at ease with more applicants.

"It's like having one more tool in the toolbox," Mr. Roth said.

"We don't want that tool that will be depermental to the environment," Mr. Fleurent said.

Wayne Hayward said that ConCom can do an on-site that day.

Jeffrey Lucas asked what the life expectancy of Chip Seal was?

Mr. Hayward responded he wasn't sure, but it was in the report.

From the audience, Gary Lovalette of 4 Fur Street said his street was the first to use Chip Seal almost ten years ago as a surface coat.

Wayne Hayward said that our regulations don't allow for surface coat.

Mr. Lovalette explained that it was treated with a chemical and that's why it breaks down. He said the chemical was toxic and hard for anyone to advise him what was in the chemical.

"I imagine a latex," Wayne Hayward said.

'I would still like to see some provision to have them go to ConCom first,' Rene Fleurent, Jr. said.

"We're not excluding ConCom," Mr. Hayward said.

"But it's a process," Mr. Fleurent said.

Wayne Hayward said they are just formalizing what's being done. 'In some sense we're just going backwards,' he said.

'I don't think we can put that in as a revision,' William Roth said. In referring to the applicant, Mr. Roth said if they don't adhere to his professional advice, then shame on the applicant. He also stated that he discusses every project with all applicants; if ConCom is needed he brings in their agent and advises the applicant to go through ConCom as well.

Rene Fleurent, Jr. said that he'd like to see a fail/stop procedure; he said as confident as Mr. Roth is about what he tells the applicant, sometimes the applicant goes to ConCom after the fact.

"Then shame on the applicant," Mr. Roth said.

'I'm just voicing my concerns,' Mr. Fleurent said.

"I don't see where we have the authority to tell them or mandate them on which Board or Committee to go to first," Mr. Roth said.

Gary Staffon made a motion to accept into by-law Chapter 322-30-Chip Seal, to add E in Part 8; a new section Appendix E with modification from American to Metric, and a new section, Appendix C-Street Design Drawing; and it was seconded by Albert Borges. The motion passed unanimously.

Wayne Hayward asked when Chip Seal and the Town of Fairhaven will take effect legally?

William Roth stated when the revised code is recorded at the Registry of Deeds.

IV. LONG RANGE PLANNING:

1. Chapter 316 Procedural Rules: Street Acceptance Procedure Flow Charts

Wayne Hayward asked if there needs to be a hearing to discuss this?

William Roth advised there does not.

Wayne Hayward said they would leave that on under long range planning, as Mr. Roth continues to work on it.

2. Chapter 198-29.5 Wind Energy Facilities: Bylaw Review

Wayne Hayward told the Board members that Mr. Roth was going to look into a wind by-law review, and that this is just a discussion and not a Public Hearing. Mr. Hayward pointed out that he gave everyone a review of information for everyone to look over, and a draft that Mr. Roth had put together, also for everyone's review. Wayne went over the information that he put together to the Board, saying that this was his thoughts, his notes. "We should be looking at review of document," he said. "I've listed a few things I'd like to see addressed." Mr. Hayward read from his chart what he feels the points were that need to be addressed. He said looking at the Draft document that Mr. Roth had put together, it looks like a lot needs to be addressed. Mr. Hayward "highly encourages the Board" to allow he & Mr. Roth to draft the updated draft by-law, so they may present it at the next meeting of October 9th. Mr. Hayward said one of the reasons to allow he and Mr. Roth to meet up to do a review, would be because they can meet during the day.

Gary Staffon asked a quick question to Mr. Roth whether or not there were studies from the Board of Health out yet for noise?

William Roth responded that he is aware that DEP has had sound studies, but he doesn't know where they are with the sound studies.

Reading from the Fairhaven Town Code-Planning Boards 65-3 Powers and Duties, Wayne Hayward read, "It shall at all times have access to all public documents or information in the possession of any town official or department." He then read the three items required to properly address bylaw: 1) Summary nature of turbine complaints received to date; 2) Summary of noise study findings. And 3) Update of legal complaint status as it may relate to new bylaw, if any.

Gary Staffon said, 'On same lines, we are going to want some of that data to work on bylaw.'

Wayne Hayward said he'll be asking for that data as they go along.

Jeffrey Lucas asked, 'On points of being addressed, consideration of ice throw and Infrasound?', he asked how that would stack up; as well as thirdly, the value to look at potential undeveloped land.

"It's got to be addressed, absolutely," Wayne Hayward said.

"I'd like to see open land addressed that is potentially developable," Mr. Lucas said.

Francis Budryk reading from the Fairhaven Town Code – Planning Boards Powers and duties, asked a question to what it means to say, “The duties of such Board shall be such as are stated in (chapter) and further to consider and advise..”

Wayne Hayward said he was just restating what the Fairhaven Town Code is.

Wayne Hayward said he does not see this as being a conflict with the Board of Health, as we move on. He said the earlier we get it (the data) the better. He said, “I would encourage dialogue, Bill.” It’s not meant to be as bad as it sounds, just that we are in need of that information, Mr. Hayward said.

William Roth said that as he has said in the past, he has a huge folder with a lot of information already.

Wayne Hayward said all they’re trying to do is to create a new by-law for wind turbines, with as much information as possible.

Jeffrey Lucas said, “it’s a big project.”

“More than a tweak for sure,” Mr. Hayward said.

More discussion ensued as the Board went over the charts, and information that Mr. Hayward provided them.

“This market is changing, and we need to change with it,” Mr. Hayward said.

Jeffrey Lucas made a motion that Wayne Hayward and William Roth can get together to bring a draft bylaw to the next meeting of October 9th; and it was seconded by Francis Budryk. The motion passed unanimously.

Francis Budryk asked, “What will you be drafting?”

Wayne Hayward said, ‘the entire bylaw; we need to clean up our code.’

“So you guys are going to get together, and what should we be doing in the meantime?”, Mr. Budryk asked.

Wayne Hayward said, “Just inform yourself, research, read other bylaws, if you can get a hold of them.”

Mr. Budryk asked if this meeting was open to the public; to which Mr. Hayward said it was.

“Absolutely,” Mr. Hayward said. “It’s not a Public Hearing however, but if someone wants to speak they can. We will be having plenty of Public Hearings as we go on, for sure.”

“We are no where close to the Public Hearing stage,” William Roth said.

3. Louise Barteau – Presentation of Wind Turbines

Wayne Hayward introduced Louise Barteau, who asked to be on the agenda tonight to do a presentation of the wind turbines. Mr. Hayward said that this was not going to be a ‘back and forth’, but she did ask to be on the agenda, and they will allow her to give her presentation.

Before she started, Ms. Barteau wanted to clarify the sound testing. She stated that she goes out with the person who’s been doing the sound testing and they’ve gone out one night, and it was light winds. She explained the process, and said that she didn’t think they would get any sound data prior to the October 9th meeting.

Rene Fleurent Jr. asked who the woman was who was doing the testing, to which Ms. Barteau answered it was Laurel Carlson, out of the Department of Environmental Protection.

Ms. Barteau went on to say that there was a formal study of sound being done by Clean Energy Collaborative and that infrasound is being looked into for the first time. She said there is 'not all noise, there is sound.'

Ms. Barteau explained she wrote something up to speak tonight, and she would be reading from it. She also gave a hand out to each member of some of the research she has done to educate herself on the wind turbines. She introduced herself as just a Town Resident with no affiliation to any group; she has done all her research herself to educate herself, and these were her thoughts and opinions.

Some of the phrases that Ms. Barteau said were, "Local Control is important." "Bewildering amount of information and a lot of point of views." "Science isn't perfect but it's the best we got." "Why are we all speaking out? Because it's the right thing to do to get to the truth." She referenced the "Journal Matrix", not intuitive but science.

At one point, Gary Staffon asked if Ms. Barteau had any information that they could use toward a new bylaw?

Ms. Barteau said she had, but she was just doing the background.

"Oh, I'm thinking ahead," Mr. Staffon said.

Ms. Barteau went on to say she was here to ask the Planning Board to consider all information.

Kurt Devlin was in the audience and asked to speak.

Wayne Hayward said, "I'll recognize you, however this is not a Public Hearing."

Mr. Devlin said he has one page of cliff notes and facts that he would like to share with the Board. He also brought a chart that he would like to discuss.

Wayne Hayward reiterated that this was not a Public Hearing and that he'd rather receive the information so they can add to their meetings regarding the bylaw.

Mr. Devlin said he did not want to just turn over the information, and when they have a Public Hearing he will read it at that time.

William Roth said, "Wouldn't it be better to give us a copy of what you have to include with our information, so when we are looking at the bylaw we can look at it as we build a new bylaw?"

"No," Mr. Devlin responded. "When I have the opportunity to make a public statement, I will."

Wayne Hayward acknowledged Selectmen, Bob Espindola in the audience and asked if he had anything to add.

Selectmen, Bob Espindola said he was present representing himself, not the Selectmen.

Wayne Hayward also acknowledged Board of Health member, Barbra Acksen and asked if she wanted to add anything.

Ms. Acksen said that she would hope that the Planning Board would make a robust bylaw, which would prevent things to be put-off.

Francis Budryk asked, 'if a cell phone can operate a wind turbine, isn't that easy for a terrorist to control it and make it spin out of control.'

Wayne Hayward said, 'Reduntcy. It's software that runs it.'

William Roth said, "Wind makes it go faster, it's not like a fan."

Wayne Hayward moved on to the next item on the Agenda.

V. CORRESPONDENCE:

1. Greater New Bedford Association of Realtors (GNBAR) – Sign Bylaw Request

William Roth advised the Board, in their packet was the letter from GNBAR regarding off site advertising of open house signs; and the letter from the Building Inspector that says he's going to enforce the no off site advertising bylaw that includes a fine.

Wayne Hayward said he read the letter, and it states their concerns. "I understand it," he said. He said this wasn't something for the Planning Board to get involved in; it's an enforcement letter and needs to be done in front of the Selectboard. Mr. Hayward said he did speak to the Zoning Enforcement Officer at great length and at this time he's in agreement with him.

William Roth said, "It's complicated."

Gary Staffon said, 'Section 198-22 has always been an issue for me.' He went on to say that one thing realtors can do is use their vehicles with balloons on it as an alternative to advertising.

Wayne Hayward made reference to being in 2012 and he can't believe that if someone is looking for a house they would look at a map or google a property to find it.

Mr. Staffon said that people are natural followers, and they are looking for a drive by; and its natural instincts to follow signs.

Wayne Hayward said, "Can you imagine 240 and Rt. 6 with 75 signs on it?"; he said when he spoke to the Zoning Enforcement Officer, he was dead set against it.

"It's a very hard issue and bylaw to enforce," Gary Staffon said.

Albert Borges said he recently had a house for sale, and his realtor advertised it in the newspaper. "We had three open houses, and they were all advertised in the paper," he said. "What about yard sale signs, people just never take them down."

Wayne Hayward said they're allowed signs on the property; and that we've been doing it for 14 years. He said that if they wanted to pursue anything further they need to take it to the Selectboard.

Gary Staffon asked, "Is he going to work on weekends to enforce the bylaw?"

"I don't know," Wayne Hayward said. "I'm just saying he's our only Zoning Enforcement Officer. It's going to be tough to regulate, we can't really get involved in enforcement issues like that. I, personally, agree with him."

Francis Budryk said that he just can't be selective in his enforcement. "To do it correctly, you can't be selective," he said.

"That's the goal," Wayne Hayward said.

"The Town should regulate and not just select a few," Francis Budryk said. "That's my concern."

Wayne Hayward said, "Until you walk in the man's boots, it's hard." He also said, 'anything in the right of way, anyone can take down.'

Moving on to the second bullet under Correspondence,

2. Permit Extension Act – FAQ Sheet

William Roth said he was just giving this information to the Board for their information.

Wayne Hayward asked, "This wouldn't apply to new applications, correct?"

William Roth responded, "That's how I read it." Mr. Roth said. 'This is just continuing education for your information.'

Francis Budryk asked for special permit examples.

Wayne Hayward explained if a Special Permit was given for two years, this new act permits it for four years.

'Are we talking about plumbing/electrical permits?', Mr. Budryk asked.

Mr. Roth read from the handout that Building Permits were also included with the new law.

Jeffrey Lucas reiterated, "If we approved a subdivision, the permit would extend from two years to four years."

"We can only clear up for the Planning Board," Wayne Hayward said.

VI. OTHER BUSINESS:

William Roth said that the only other thing hanging out there with ConCom and BPW in regards to Welcome Street. "It's going into foreclosure," Mr. Roth said. "Island Associates, and we have a covenant on the lots."

A brief discussion ensued.

Gary Staffon made a motion to adjourn the meeting; it was seconded by Rene Fleurent, Jr. The motion passed unanimously.

Meeting ended at 9:00 p.m. Next Meeting is October 9, 2012.

Respectively submitted,

Patricia A. Pacella