



# FAIRHAVEN PLANNING BOARD

Town Hall • 40 Center Street • Fairhaven, MA 02719  
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Fairhaven Planning Board  
*Minutes*  
Tuesday, February 9, 2021– 6:30pm  
Town Hall, 40 Center Street  
Fairhaven MA 02719

RECEIVED  
TOWN CLERK  
2021 FEB 25 P 1:21  
FAIRHAVEN,  
MASS.

## 1. GENERAL BUSINESS

a) Chair's Welcome & Notification - Mr. Farrell opened the meeting at 6:35p.m. and advised the meeting was being done via zoom remotely, due to the Pandemic in Massachusetts. Ms. Melanson confirmed there was a quorum.

b) Quorum/Attendance: **Present:** John Farrell, Jeffrey Lucas, Cathy Melanson, Jay Malaspino, Jessica Fidalgo and Geoff Haworth (attended via zoom at 7:32 p.m.)

**Absent:** Wayne Hayward, Rene Fleurent, Jr.

c) Minutes: January 26, 2021 draft to be reviewed: Mr. Farrell added a few comments, #44, #47 line #52, #151, #214 had a few spelling corrections. Mr. Farrell asked for the forwarded information that Mr. Foley was going to send. Cathy Melanson made a motion to accept the minutes of January 26, 2021 with the spelling corrections and was seconded by Jeffrey Lucas. The motion passed unanimously.

d) Planning Board Bills: \$2,485 to GCG for Lewis Landing Peer Review - Mr. Foley stated there was enough money in the deposit account for this bill. Jeffrey Lucas made a motion to pay GCG in the amount of \$2,485 and was seconded by Ms. Fidalgo. The motion passed unanimously via roll call vote.

e) Correspondence: Wigwam Dock Chapter 91 - Mr. Foley said this was originally brought to him in September. He advised this required a Special Permit through Zoning Board of Appeals, it was granted. He presented the project to the board. This is the property at the end of Wigwam Beach Road and is a 20' long gangway leading to a 70' long pile supported dock plus additional floating docks. Mr. Foley was looking for direction on whether Board was okay with him signing the Chapter 91 sign-off or whether the Board wants a public hearing.

Mr. Lucas asked if the harbormaster has been contacted regarding the dock and if they are in the loop of these projects. Mr. Foley stated he can reach out to Timothy Cox and the Marine Resource Committee and will bring it back to the Planning Board at their next meeting.

Mr. Lucas stated there may be concern about the aquatic life underneath the docks.

Ms. Fidalgo had no further questions. Ms. Melanson had no further questions. Mr. Farrell stated he is inclined to hold a public meeting to get public input.

Mr. Chris Carmichael stated this came in front of him for a sign off. He said he believed it has gone through Conservation Commission. It would still need to come back to the Building Department for a permit at any rate. Mr. Farrell stated with public input from other boards he was okay not to have the public meeting review.

Mr. Lucas stated there was a dock on the inner harbor as well on the Fort Street. He said not sure how the docks got constructed.

Mr. Foley stated there was a process for docks to be built. He said there are sign offs that have taken place in the last few years and they must be permitted through the Building Department. He said that the applicants have taken the right steps to get the docks permitted (Conservation, Planning and then Building Department).

Mr. Hobson said that there was no discussion at the Marine Resource regarding this dock.

f) General Discussion: Union Wharf request by Robert Hobson - Mr. Hobson was present, in the banquet room in Town Hall, as a concerned citizen regarding Union Wharf. He stated that in 2018, Casey Boats got permits to tear down a building and then a permit to put a number of containers on top of each other. He said the containers were right down on the property line and not 5' from property lines as it should had been. He said there were twenty-five to thirty containers with a roof as a "temporary" building and he asked how long the permit is good for. He said a temporary permit should be just that 'temporary' and it doesn't sound like anyone knows what is going on. He said he would like to know what the rules are for temporary permits.

Mr. Farrell stated that there in fact were plans that were submitted in 2018 to demolish a metal building and a proposal to build a 120 x 80 portable shed, and a 60 x 50 building with two floors and they received the necessary permits for those proposals. Mr. Foley concurred there was a new shop metal building that plans show was approved as a 26' high metal building.

Building Commissioner, Mr. Carmichael stated when he started in early November, he was aware that they had received a Special Permit from the Planning Board and it had to be signed off by Conservation Commission. He stated the Quonset hut is a portable, not temporary structure. He said he issued the permit with a caveat on the permit that whenever the building is moved, a new plot plan would have to be submitted showing setbacks.

Mr. Farrell stated the Special Permit was issued by the Planning Board in 2018, and there was a forty-five-day appeal that went with it, whereas no one appealed the decision.

Mr. Hobson reiterated his concern that this was a temporary structure and asked for the rules on a temporary structure.

Mr. Farrell stated that temporary equals 180 days; however, this was never proposed as a temporary structure. He stated the applicant proposed this as a portable, so he can move it to meet his needs. He reminded Mr. Hobson this is a 'working waterfront' and the needs may change, so that is the reason behind portable versus the temporary structure.

Mr. Hobson asked if others in that district (A1 Crane, for instance) wanted to put thirty storage containers on their property they could.

Mr. Farrell replied, "No, they would have to come before the Planning Board for a Special Permit."

Mr. Foley stated there seems to be some confusion on containers vs portable structures and he will get more information to decipher between the two. There appear to be more than one project being discussed.

Mr. Hobson and asked if Casey Boats pays taxes on the structure. Mr. Farrell stated that the assessor's do get copies of building permits and they take care of assessing.

Tim Cox came onto the call around 7:11p.m. He stated the storage containers are portable structures to work on the boats, from what he understands. He stated that he believed it looked better now than what was there before.

Mr. Carmichael stated that there are others using the same type of storage containers in that area, including, A1 Crane and Linberg Marine.

Mr. Foley stated that he and Mr. Carmichael were doing a review of "definitions" in the zoning bylaws and that they would be adding the definition of a "storage container" in the new bylaws. He said they are actively looking at cleaning up the bylaws to be more definitive. Mr. Foley also stated they received a grant that is looking at doing an independent feasibility study at Union Wharf including the history and how it's used and how it can be used in the future.

g) Vacancy Announcement: Mr. Farrell advised that Mr. Wayne Hayward has resigned his position. Mr. Farrell stated that Mr. Hayward has sent his resignation into the Town Clerk and he was sad to see him resign. Mr. Farrell noted that Mr. Hayward has been instrumental in creating many Town bylaws and regulations, and feels it is a big loss to the Town. He does, however wish him the very best and thanked him for his service. He stated he has been on the Planning Board since 1984.

Mr. Lucas stated he will miss his expertise and will reach out to him and hopefully he may reconsider returning.

Ms. Fidalgo stated she was a bit sad and was hoping to learn from him.

Ms. Melanson stated she was a little shocked but wished him well.

Mr. Malaspino had the same sentiments.

Mr. Foley stated he will miss him and that he has been a tremendous reference with great knowledge. He said he hopes he can return. He said it has been a long stretch with Wayne and his dad before him on the Planning Board and he hopes he can just take a little break and come on back soon.

Mr. Farrell stated the board would have to make a formal announcement that they are seeking to refill the open seat and asked for letters of interest sent to the Planning Department. They would then schedule a meeting with the Select Board to fill the position for the term. Mr. Farrell asked Mr. Foley to reach out to the Select Board to get them on their schedule for interview of candidates.

Ms. Melanson reluctantly made a motion to receive Mr. Hayward's resignation and seek letters of interest to be sent to the Planning Department and was seconded by Mr. Lucas. The motion passed unanimously via roll call vote.

A brief discussion was had whether Ms. Fidalgo could vote on the Lewis Landing project. Mr. Farrell stated that she could not as she was not a Planning Board member at the time of Lewis Landing starting the process with the Planning Board. Mr. Haworth was having technical difficulties entering the Zoom call and Mr. Farrell stated they would have to hear him to receive his vote.

## 2. PUBLIC HEARING

### a. Receipt of Plans:

### b. Public Hearing:

i. **DS 2021-01 - 46 Sconticut Neck Road (Alves) Definitive Subdivision:** Definitive Subdivision Plan to demolish a house and create an 8-lot subdivision located at 46 Sconticut Neck Road.

Mr. Farrell opened the DS2021-01 46 Public Hearing for 46 Sconticut Neck Road, Definitive Subdivision public hearing.

Mr. Foley advised that there were six board members, but they couldn't hear Mr. Haworth.

Mr. Farrell stated without Mr. Haworth being audible or be heard they wouldn't have Mr. Haworth's vote. Mr. Foley stated they were still waiting for the peer review, but he was hoping they could begin the review of the project.

Mr. Farrell stated he would prefer not to take testimony and would like to see the applicant ask for a continuation.

Engineer for the project, Arsen Hambardzumian was present.

Mr. Farrell asked because they couldn't hear Mr. Haworth and the peer review wasn't back yet if they'd be willing to ask for a continuance.

Mr. Hambardzumian stated they did do a preliminary meeting with the Planning Board and felt there were very few items they requested, and he felt they have incorporated everything that was asked. He said he felt comfortable moving forward and was texting his client as they speak to confirm.

Applicant, Joshua Alves was present and stated if the board felt it was not appropriate to move forward, he would be okay to postpone; but he agreed with his engineer that they are very close and felt that the formal documentation would come from the peer review. Mr. Alves stated he was confident in moving forward tonight.

Geoff Haworth joined the meeting at 7:32p.m.

Mr. Farrell turned it over to Mr. Foley to open the project. Mr. Foley gave a quick overview of the project as a residential subdivision to construct eight single family homes in a RA District. He said it is near Wood School and Harbor Mist townhouses. He said the existing two family that was built in 1900's will be demolished. He said this subdivision is near the bike path and commercial area. He said the

homes will be single family homes, with 3-5 bedrooms, 2,000 to 4,000 sq feet each. He said they do still have to go back to Conservation Commission for final review. He reviewed the routing of the plans and their comments from different departments. He read from a letter dated January 20, 2021 from Mr. Furtado of the BPW and they recommended a pre-construction meeting with sewer, water, and highway departments. He said that the Building department stated it seems to meet zoning requirements and that they will ensure they meet flood zone, wind zone, energy, building and zoning setback requirements. Mr. Foley stated that the Board of Health voted unanimously that the land is suitable for the proposed subdivision.

Mr. Hambardzumian reviewed the project since the last time they met were only with preliminary plans. He said the Planning Board had at that time asked questions about the easement. Mr. Hambardzumian stated the easement was behind Riccardi's restaurant and wouldn't be utilized in the development. He said they have had a conversation with their neighbor, the owner of the adult daycare center and the trees that are being supported near their property. He said they agreed that he was hoping to be a good neighbor and keep open dialogue with the trees/bushes in that area. Mr. Hambardzumian stated that the third issue was that the land being donated to Conservation wouldn't be landlocked. He showed where there is access to the property that is being donated, through Hacker Street and they have access through their plan as well.

Mr. Hambardzumian stated there was a concern of the lack of fencing around the retention pond. He said they would be providing a 6' fencing around the retention pond.

As an overview, Mr. Hambardzumian stated they have corrected the scale issue with plan number C-5; added a sidewalk and connected it to the existing sidewalk on Scoticut Neck Road. They have a proposed light pole at the end of the cul-de-sac. They are preserving some of the vegetation and relocating some of the trees around the building, and plantings between the two properties as well.

Referring to the planting plan, Mr. Farrell asked about the visibility on the corner of Scoticut Neck Road. Mr. Hambardzumian stated they were removing a few plants on the corner and relocating them.

Mr. Farrell asked if they were asking for any waivers.

Mr. Hambardzumian stated they are asking for one waiver to only have one sidewalk on one side. It is not crucial of the Board does not prefer only one sidewalk.

Mr. Haworth stated he has reviewed this project extensively and ultimately it is an approvable plan that has been submitted. He said it was a well laid out plan.

Mr. Lucas asked if the easement is recorded, which Mr. Hambardzumian stated it was. Mr. Lucas stated he was unsure if they could make a change on that if it ever comes into an issue to be used.

Mr. Hambardzumian stated that they are not proposing anything in the easement and would have to come back to the planning board if a change occurs within the easement in the future.

Mr. Lucas asked about what type of curbing was being proposed. Mr. Hambardzumian stated Cape Cod berm except for the radius coming in and around the cul-de-sac.

Mr. Lucas asked specifically about the chain link fence and if they could request a smaller size link, so that children wouldn't be able to climb it whereas they were so close to the school.

Mr. Hambardzumian stated it was an industrial chain-link fence.

Mr. Malaspino stated he had no concerns at this time and saw no issue with the waiver of sidewalk on one side only. Mr. Malaspino stated he had no other concerns, and it was a well-presented project.

Ms. Fidalgo stated she had no further questions.

Mr. Farrell asked where the proposed fire hydrant was going to be located and Mr. Hambardzumian advised where it was going. Mr. Farrell had no further concerns at this time.

Mr. Farrell opened it up to public comment.

Joanne Smalley, of 17 Harbor Mist Drive was present and asked how much vegetation was between their home and the new subdivision.

With an aerial view, Mr. Hambardzumian stated there was a significant amount between the property lines. He said they are keeping at least 15' setback in that area and keeping all the vegetation.

Mr. Smalley, also of 17 Harbor Mist Drive stated there was a lot of wildlife in the area. He said coyotes, deer that are using that land and asked if any of the members were concerned about the wildlife because obviously, they would have to migrate elsewhere.

Mr. Hambardzumian stated there is a beautiful 22' acre field that is going to be preserved for the wildlife.

Mr. Lucas stated that wildlife is always a concern, but they own the property, and they are donating part of it. He said he was sure there would be other opportunities for the wildlife.

Ms. Smalley asked if they knew what the starting price of a model home would be for 3-5 bedrooms.

Mr. Hambardzumian stated that the houses would be subject to the final owner whether it would be three or up to five bedrooms.

Mr. Alves stated they were proposing 2,000 sq ft home and the pricing depends on the market in 2022 and had a lot of variables so they couldn't really put a price tag on it right at this time. Mr. Alves stated they are trying to engage a family with one to two children to market the homes to.

The Smalley's asked about the on/off time for construction.

Mr. Alves said it would be pending approval. He said they would hope they can start early spring and create the subdivision in the first year with home building in the following spring but as with any construction it is weather dependent.

Melanie Tavares, of 17 Harbor Mist said she shared the same concerns. She stated she purchased her home in the last few months, and now works from home so she would be concerned about hearing the construction at all times of the day.

Mr. Lucas asked if there was a maintenance plan of the service road and pond.

Mr. Hambardzumian stated there was an operation and maintenance plan that was submitted. He said the developer will be handling the road maintenance until it is adopted by the Town. He also stated that the DPW has reviewed the proposed access road.

Mr. Foley stated there were certainly good concerns brought up this evening such as the buffer between the homes at the end and the neighboring subdivision and time of construction and he hopes to have the peer review back from GCG within a week or so.

Mr. Hambardzumian asked for a continuance until the February 23, 2021 meeting.

Jessica Fidalgo made a motion to continue the Special Permit DS 2021-01, 46 Sconticut Neck Road to the next meeting February 23, 2021 and was seconded by John Farrell. Motion passed unanimously via roll call vote.

ii. **SP 2019-13 – Lewis Landing/Huttleston Multi-Unit Rentals**: Continued Public Hearing on proposal to create twelve (12) 2-bedroom rentals in four buildings on 2.5-acre on Huttleston Ave (Map 31, Lot 117C)

Mr. Farrell read this continued public hearing into the record.

Mr. Richard Rheaume was present. He stated that a fifth peer review came back with stormwater review comments and they have made revisions per that review and submitted them back to the Planning Board.

Mr. Foley stated that he received the peer review and the applicant slightly revised per the peer review. He stated the applicant wanted to send it back to GCG for final say but Mr. Foley stated he didn't want to send it back until he heard from the Board directly. They have changed things to not have to seek the waiver increasing stormwater flow and plan to install pipes under the property that will contain that water to a degree. He said the key issue is there are only five people that are eligible to vote tonight, whereas Ms. Fidalgo is not able to vote (she cannot become eligible to vote).

Mr. Foley asked, do we want to send to GCG for final review and does the applicant still want that.

Mr. Rheaume asked now there is a resignation from the board, he asked if they would ever get a full board to vote on the project. Mr. Foley stated that everyone will have to be present including Mr. Fleurent.

Mr. Haworth stated he was able to do some research whereas the project was completely represented to all the members to overcome the 'rule of necessity.' Mr. Farrell stated he would like to research the 'rule of necessity'. The other option is to withdraw without prejudice and then resubmit the plan and hear it again with a new Board.

Mr. Rheume stated they are acceptable to the two weeks wait to hear the research. As for now, the question was whether it should go back for a final peer review.

Mr. Foley stated that the actual plan is the same, but the stormwater has changed over time. He would like it to go back for a quick small review.

Mr. Farrell made a motion to send to GCG the final plan for review and was seconded by Cathy Melanson. The motion passed unanimously via roll call vote.

On the question, Ms. Fidalgo asked if the review would come back within 2 weeks. Mr. Foley stated it should as it's an abbreviated review.

Ms. Melanson made a motion to February 23, 2021 if we have the report in and was seconded by Mr. Lucas. On the question, Mr. Farrell asked that the motion not include the caveat. The members took a vote based on the motion that was stated and was denied, with all members saying 'no' per roll call vote.

John Farrell made a motion, per the applicants request to continue Lewis Landing Project to February 23, 2021 and was seconded by Ms. Melanson. The motion passed unanimously via roll call vote.

### **3. CURRENT PLANNING:**

a) Possible New Bylaws for Review: Draft short-term rentals, 198-33 definitions, MS4 mandatory update  
Mr. Foley reviewed the 198-33 definitions, stated he and Mr. Carmichael have met with Mr. Hayward to get draft language changes for the general bylaw. Mr. Carmichael has suggested a few definitions that either need to be added to zoning and then added to short-term rentals that are not identified in other areas. Mr. Foley stated they are also trying to make the definitions consistent across the board, so it's less confusing. Also, the definition of "variance" needs to be updated to include the full language that the State uses.

Mr. Foley reviewed the key issues with developing a Short-Term Rental (STR) bylaw:  
Where in town should STR be allowed to be open?  
How many calendar days per year would each unit be allowed to be rented for?  
Should a STR only be allowed in structures in which one unit is owner-occupied?  
Should there be a cap on the number of STR units allowed in town at one time?  
How to enforce compliance and establishment of penalties for non-compliance?

Mr. Lucas shared his biggest concern was if they were going to be creating a business opportunity in a residential zone, are they directing people to create businesses. He stated he also has concerns specifically about removing guns, medicines, and ammunition from a home that may be rented out. He suggested tiers of licensing based on the number of bedrooms and zoning districts. He also had concerns about renting boats and marinas, which is happening currently. Reading from the STR bylaw, Mr. Lucas said he was confused on 198-3(f): "registration renewal renewed bi-annually", does it refer to every other year or twice a year? He wasn't sure what it meant and needs to be clear.  
Mr. Lucas said he'd rather see it open only to owner-occupied units.

Ms. Fidalgo said she agrees with Mr. Lucas that it should be owner-occupied and have a calendar day limit.



Mr. Haworth also agreed they may be creating little businesses in a residential area. He stated that most people desire privacy in residential areas, so they want to protect the interest of the residents. He said on AIRBNB right now there are at least fifteen places in the Town (mostly on the water or the center) where you can rent. He sees a valid point in doing something because it is happening whether they allow it or not.

Ms. Melanson thinks limit of time needs to be done. She is looking forward to a public hearing.

Mr. Malaspino thinks we need to do a little control over it. He stated he lives near Pope Beach and there are two in his area, he doesn't see it as being negative but thinks there needs to be restrictions on it.

Mr. Farrell asked Mr. Foley, in the Commonwealth how many other communities have adopted a Short-term rental bylaw. Mr. Foley stated there were a few. Arlington is the closest to our size that stands out. He will review how many towns have adopted a Short Term Rental Bylaw before the public hearing occurs.

Mr. Farrell stated he would like to see how other communities approached it.

Mr. Lucas stated he did some research, and the Town of Plymouth has Board of Health regulations for STR. He also stated that the Town of Lexington moved forward with an STR bylaw in September of 2020, he has reviewed a few towns in Massachusetts, and they have had interesting approaches. His concern was more the personal belongings, as he mentioned previously being left in the house for a child to get hurt with.

Mr. Farrell wasn't sure how they would go about enforcing that piece of it. Mr. Lucas said they would have to sign something to say they are taking full responsibility.

Mr. Carmichael stated for the record he wants to be very clear that with the licensing and enforcing, that he would absolutely need to hire a part-time local inspector to help achieve this STR bylaw. He also stated that he had concerns within the current bylaw that the wording needs to be clarified.

Mr. Farrell asked if Mr. Foley felt they could have this ready for the Town Spring Meeting.

Mr. Foley said he believes they can. He said they need to hold public hearings and they already have good language proposed. He said he agrees that they don't want to turn residential areas into businesses. He added that with the Community Impact Fee they would have a way to pay for the additional oversight necessary.

Mr. Farrell asked if the thought process would be to do an overlay district.

Mr. Carmichael stated they should just stay in the residential district and make the permit annual with a R1 annual inspection.

Mr. Farrell asked if inspections on hotels are done yearly. Mr. Carmichael stated they are. He said it needs to be consistent.

Mr. Lucas stated he appreciates the three gentlemen starting the review of the STR bylaw but feels they need to continue to discuss it before it goes to a public hearing. He says he wants to be sure what kind of by-law they are putting out there before residents come and hammer them with questions.

Mr. Farrell stated he thinks they need to have a working document to work through and discuss ready for their next meeting.

Mr. Foley stated he will refine the draft with the input from tonight and send to the board members to discuss at their next meeting and then they will hold a public meeting in March.

Mr. Farrell suggested he send out what he has, and they'll work on that at the next meeting. Mr. Foley stated he will also send out the definition draft for the next meeting as well. Per Mr. Lucas request, he will clarify the definition in 198.

MS4 update: Mr. Foley has a place holder for the Town Warrant for the two items that need to be changed in Section 198. Mr. Farrell would like the board to see that review.

**b) TOWN PLANNER UPDATES:**

Mr. Foley stated that BASK Recreational is aiming to open mid-February. Mr. Foley said Deputy Fire Chief Joy Nichols and Police Captain Botelho and he will monitor the Bask opening in phases and he will report back to the Planning Board. He said they are doing a 'slow opening' and hoping to do that within a week or two.

Complete Streets Grant has been signed and approved by the Select Board. He has it uploaded to the MassDOT and now waiting for it to be reviewed and hopefully approved.

Bijou: Mr. Foley stated a few concerns occurred with the Bijou project. He said he is trying to help the owner with the option of different grant opportunities that are available. He said that they may qualify as well as the Rogers School project. He is hoping that the Rogers School project scales their proposal back a bit.

Mr. Farrell asked that Mr. Foley put more specifically what his updates will be on the Planning agenda.

Mr. Farrell asked what the next step in the Rogers School process was. Per Mr. Foley, he stated the Select Board is going to set a new date to review. They need to accept as a qualifying bid and negotiate. He said it is supposed to come to the Planning Board for a Special Permit per the historic site reuse bylaw.

**4. LONG RANGE PLANNING:**

a. Town Planner Update: Rt6/240 Study: 40R Overlay.

Mr. Foley gave a review of the Rt. 6/240 study. He explained he is looking at a 40R overlay for the area plaza area south of Bridge Street and potentially in other mixed-use areas in town and possibly the commercial area on Scoticut Neck Road near the Mac Soda Bar

Mr. Foley received a letter from an attorney regarding a grandfathered lot. He spoke to Mr. Carmichael who said he would accept Mr. White's letter as a grandfathered lot. We have a letter from Building

Commissioner before that and a Board member who said they do not think it is grandfathered. Mr. Foley stated he has stamped it in and it will be before the board within the next month or so.

b. OTHER BUSINESS: Any other business that may properly come before the Board, not reasonably anticipated when posting 48 hours prior to this meeting.

Cathy Melanson made a motion to adjourn and was seconded by Mr. Haworth. The motion passed unanimously at 9:25p.m.

Next meeting on Tuesday, February 23, 2021.

Respectively submitted,

Patricia A. Pacella