



**Fairhaven Board of Selectmen
Meeting Minutes
February 22, 2021**

RECEIVED
TOWN CLERK

2021 MAR -9 P 4: 12

FAIRHAVEN,
MASS.

Present: Chairman Daniel Freitas Vice-Chairman Robert Espindola, Selectman Keith Silvia, Interim Town Administrator Wendy Graves and Cable Access Director Derek Frates.

Present via Zoom: Administrative Assistant Vicki Oliveira and Production Coordinator Erick Sa

The meeting was videotaped on Cable Access and Zoom meeting application.

Chairman Freitas opened the meeting at 6:30 pm in the Town Hall Banquet Room and read the following statement:

“This Open Meeting of the Fairhaven Board of Selectmen is being conducted remotely consistent with Governor Baker’s Executive Order of March 12, 2020, due to the current State of Emergency in the Commonwealth due to the outbreak of the “COVID-19 Virus.”

In order to mitigate the transmission of the COVID-19 Virus, we have been advised and directed by the Commonwealth to suspend public gatherings, and as such, the Governor’s Order suspends the requirement of the Open Meeting Law to have all meetings in a publicly accessible physical location. Further, all members of public bodies are allowed and encouraged to participate remotely.

The Order, which you can find posted with agenda materials for this meeting allows public bodies to meet entirely remotely so long as reasonable public access is afforded so that the public can follow along with the deliberations of the meeting.

Ensuring public access does not ensure public participation unless such participation is required by law. This meeting will allow public comment related to the posted agenda items only. For this meeting, Fairhaven Board of Selectmen is convening by telephone conference/video conference via Zoom App as posted on the Town’s Website identifying how the public may join.

Minutes

Mr. Espindola made a motion to approve minutes of January 25, 2021—executive session. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve minutes of February 8, 2021—open session. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve minutes of February 8, 2021 – executive session. Mr. Silvia seconded. Vote was unanimous. (3-0)

Town administrator’s report

Ms. Graves told the Board that the Town Hall received an anonymous donation of an American Flag in memory of Sergeant Sean Gannon.

Ms. Graves told the Board she attended a meeting with Arch Communities regarding Rogers School.

Ms. Graves said she was involved in a meeting with the School Department, Whitney McClees and the Solar Company regarding the Solar at the schools.

Ms. Graves mentioned a meeting with the Harbormaster regarding construction vessels passing through the Hurricane Barrier and will discuss later in the meeting.

Ms. Graves recently attended the ribbon cutting at BASK, Inc and stated it was well attended.

Committee liaison reports

Mr. Espindola wished the Town of Fairhaven “Happy Birthday”

Mr. Espindola said he had a meeting with Entry Point.

Mr. Espindola said at the Bikeway Committee it was discussed that the complete streets project is in the works and encouraged residents to visit the Bikeway webpage for details.

Mr. Espindola said The Marine Resources Committee will hold a meeting for the public to review the waterways rules and regulations.

Mr. Espindola said at a recent Economic Development meeting it was discussed to have a waiver of fees for businesses on water and sewer bills.

Mr. Espindola told the Board that SRPEDD is offering technical assistant hours again this year.

Mr. Silvia said he spoke to Historical Commission Chair Wayne Oliveira and the Academy project is making progress.

Mr. Freitas said he has a meeting of the Bristol County Commission coming soon.

Disclosure by non-elected municipal employee of financial interest

Rogers Reuse Committee member Doug Brady has filed an ethics disclosure because he is a direct abutter to the Rogers School property. Mr. Brady explained that he had previously filed a disclosure back in 2015 but there have been some recent complaints regarding his appointment to the committee. He therefore, he decided to file another disclosure form to update the records. (Attachment A)

Mr. Silvia made a motion to keep Mr. Brady on the Rogers Reuse Committee and the sign the disclosure form. Mr. Espindola seconded. Vote was unanimous. (3-0)

Request to join Conservation Commission

Mr. Freitas said there was a request to join the Conservation Commission. Mr. Espindola made a motion to appoint Jacob Galary to the Conservation Commission. Mr. Silvia seconded. Vote was unanimous. (3-0)

Request to join Commission on Disability

Mr. Freitas said there were two requests to join the Commission on Disability. Mr. Freitas would like to hold Marcus Ferro's appointment to check with Town Counsel because Mr. Ferro is currently a member of the Board of Public Works, and per town by-law may not be able to serve on another committee. The Board will table this until the next meeting.

Mr. Espindola made a motion to appoint Glenn Gabbord to the Commission on Disability. Mr. Silvia seconded. Vote was unanimous. (3-0)

COLA for non-union personnel

Mr. Silvia left the room at 6:56 pm because his wife is a non-union employee of the town.

Ms. Graves explained that the union employees will be getting a 2% COLA (cost of living adjustment) for FY22 and this is to be consistent for all employees.

Mr. Espindola made a motion to approve the 2% COLA increase for all Non- Union employees. Mr. Freitas seconded. Mr. Silvia abstained. Vote passed. (2-0-1)

Mr. Silvia returned to the meeting at 6:58 pm

Annual Board of Selectmen/Town Administrator Town Report

Mr. Espindola said the accomplishments of the year are impressive and there was a lot of hard work from the staff.

Mr. Espindola made a motion to approve the 2020 annual town report for the Board of Selectmen/Town Administrator. Mr. Silvia seconded. Vote was unanimous. (3-0)

Statement of No Objection

Harbormaster Tim Cox spoke to the Board via Zoom and explained that at a recent meeting, the Army Corps of Engineers has requested a Statement of No Objection to be signed jointly by the Town of Fairhaven and the City of New Bedford. Mr. Espindola told the Board he had a recent conversation with Mayor Mitchel on this subject and the city is looking for the support of the town.

The Board took a recess at 7:08 pm to contact Mayor Mitchell

The Board returned at 7:10 pm

New Bedford counsel Blair Bailey joined the meeting via Zoom and stated that the city has done extensive research on this issue. Greg Dolan, terminal manager at the New Bedford Marine Commerce Terminal for the Massachusetts Clean Energy Center (Mass DCE), explained the scope of the letter to the Board stating that Mass DCE is a co-applicant with the Army Corps of Engineers.

At 7:27 pm Attorney Crotty joined the meeting via Zoom and said the Army Corps of Engineers is asking for approval to access the hurricane barrier from New Bedford and Fairhaven. The city has proposed a joint response to the Army Corps with some provisions in place in the event that there was damage to the storm barrier when the barges pass through. The parts to the hurricane barrier are custom made so it is recommended to have the parts available if something gets damaged. If the gates to the barrier were damaged and cannot be closed there could be flooding to the harbor if there was a storm. (Attachment B)

Resident Karen Villandry is worried about barges coming through the barrier and putting residents at risk if there should be a breach. Atty Baily assured Ms. Villandry that there is plenty of room for on the sides for these vessels to get through.

Mr. Espindola made a motion to authorize the Chairman to sign on behalf of the Board the "Statement of No Objection" from the Town of Fairhaven "Section 408(a) Request number 408-NAE-2019-2017." Mr. Silvia seconded. Vote was unanimous. (3-1)

Entry Point, LLC – Broadband

Consultant Jeff Christensen from Entry Point, LLC discussed the next steps for the Municipal Light Plant and the Broadband Network. Mr. Espindola said the goal is to educate the public prior to Town Meeting so that the residents can understand before voting at town meeting. Mr. Freitas said the wording on this is confusing to residents.

Mr. Christensen said there will be community engagement through an education campaign using webinars, social media and possibly door to door. The goal is to make sure the public has the most accurate information. He said article 9 of the November 12, 2019 Special Town meeting that stated "To see if the Town will vote to transfer from Town of Fairhaven Cable Television Enterprise Fund Retained Earnings a sum of money to pay for funding a municipal broadband network consultant or take any other action relative thereto" and would like to use some of those funds for the education campaign.

The Board discussed community engagement and the potential article for the May town meeting. Ms. Graves will discuss the article with Attorney Crotty to initiate the process of evaluating and establishing a municipal light plant.

Mr. Espindola said the final report from entry point and the RFP for design build of the fiber network were completed at the last meeting

Mr. Espinidola made a motion to ask the interim Town Administrator Wendy Graves to reach out to Town Counsel and get clarity whether the funds can be used for the purpose of community engagement. Mr. Silvia seconded. Vote was unanimous. (3-0)

Discuss changes to the town administrator screening and interview process

Mr. Espindola said he wanted to speak to the Board regarding this and suggested taking a small recess to read some information that recently came up this afternoon. Mr. Espindola feels this is important and the Board needs to move forward with this item because this information is important for tomorrow's meeting.

Mr. Freitas and Mr. Silvia had not read the new information as of this meeting.

Mr. Freitas made a motion to table this item until the Board has all the information that is needed. Mr. Silvia seconded. Vote passed (2-1)

Mr. Espindola made a motion to postpone tomorrow's interview. There was no second.

FY 21 budgets

Ms. Graves passed out the budget books to the Board and said there would be more discussion at a later meeting.

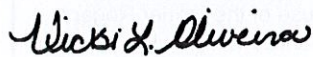
At 7:54 pm Mr. Espindola made a motion to enter into Executive session and not to reconvene to open session- pursuant to MGL Ch. 30a § 21 TO:

1. Review of executive session minutes
2. To conduct contract negotiations with non-union personnel pursuant to M.G.L, CH. 30a, sec. 21 (a) (2) -Anne Carreiro
3. And to table: To conduct contract negotiations with non-union personnel pursuant to M.G.L, Ch. 30a, sec. 21 (a) (2)-Wendy Graves

Mr. Silvia seconded. Vote was unanimous. (3-0)

Roll Call vote: Mr. Espindola in favor, Mr. Silvia in favor, Mr. Freitas in favor

Respectfully submitted,



Vicki L. Oliveira
Administrative Assistant
(Approved 03/8/2021)

Attachments:

- A. Ethics Disclosure- Doug Brady
- B. No Objection- signed letter

**DISCLOSURE BY NON-ELECTED MUNICIPAL EMPLOYEE OF FINANCIAL INTEREST
AND DETERMINATION BY APPOINTING AUTHORITY
AS REQUIRED BY G. L. c. 268A, § 19**

	MUNICIPAL EMPLOYEE INFORMATION
Name:	Douglas Brady
Title or Position:	Rogers – Study / Reuse Committee formerly called the Rogers -Oxford Study Committee
Municipal Agency:	Town of Fairhaven, MA Board of Selectmen
Agency Address:	40 Center Street, Fairhaven, MA 02719
Office Phone:	508-979-4023
Office E-mail:	dfreitas@fairhaven-MA-gov
	My duties require me to participate in a particular matter, and I may not participate because of a financial interest that I am disclosing here. I request a determination from my appointing authority about how I should proceed.
	PARTICULAR MATTER
Particular matter E.g., a judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, or finding.	Please describe the particular matter. Member of the Rogers Reuse- Study Committee formerly known as the Rogers -Oxford Study Committee. The committee will review RFP's for the assistance in the reuse of the former Rogers School to the Select Board of Fairhaven MA. Vote on particular matters that pertain to the reuse of the former Rogers School building. Vote to advise the select board of a particular matter in regards to the former Rogers School Building. Conduct meetings and provide input as needed in regards to matters pertaining to the former Rogers school building to the select board and any residents that may inquire regarding the former Rogers School building. The committee is an advisory committee only to the Select Board of Fairhaven MA and will provide input on submitted RFP's to the select board and provide input as needed to the select board. The committee will be voting as to recommend or not recommend a certain RFP or particular reuse of the former Rogers School Building.
Your required participation in the particular matter: E.g., approval, disapproval, decision, recommendation, rendering advice, investigation, other.	Please describe the task you are required to perform with respect to the particular matter. Along with other members of the Rogers Reuse / Study committee to recommend and give advice to the select board regrading the selection of a RFP and potential reuse of the former Rogers School building. Any matters that may pertain to the former Rogers School building that the select board request an opinion on by the committee and its members
	FINANCIAL INTEREST IN THE PARTICULAR MATTER
Write an X by all that apply.	<input checked="" type="checkbox"/> I have a presumed financial interest in the matter based on where I reside. <input type="checkbox"/> My immediate family member has a financial interest in the matter. <input type="checkbox"/> My business partner has a financial interest in the matter. <input type="checkbox"/> I am an officer, director, trustee, partner or employee of a business organization, and the business organization has a financial interest in the matter. <input type="checkbox"/> I am negotiating or have made an arrangement concerning future employment with a person or organization, and the person or organization has a financial interest in the matter.

Financial interest in the matter	Please explain the financial interest and include a dollar amount if you know it. I reside at 97 Pleasant Street, Fairhaven, Ma 02719 which is across the street from the Former Rogers School building. I am considered an abutter to the former Rogers school property.
Employee signature:	
Date:	

DETERMINATION BY APPOINTING OFFICIAL

APPOINTING AUTHORITY INFORMATION	
Name of Appointing Authority:	Board of Selectmen – Town of Fairhaven, MA
Title or Position:	Dan Freitas – Chair of the Board
Agency/Department:	Board of Selectmen
Agency Address:	40 Center Street, Fairhaven, MA 02719
Office Phone:	508-979-4023
Office E-mail	Dfreitas@Fairahven-ma.gov
DETERMINATION	
Determination by appointing authority:	As appointing official, as required by G.L. c. 268A, § 19, I have reviewed the particular matter and the financial interest identified above by a municipal employee. I have determined that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.
Appointing Authority signature:	
Date:	
Comment:	

Attach additional pages if necessary.

The appointing authority shall keep this Disclosure and Determination as a public record.



Daniel Freitas, Chairman
Robert Espindola
Keith Silva

**Town of Fairhaven
Massachusetts
Office of the Selectmen**

40 Center Street
Fairhaven, MA 02719

Tel: (508) 979-4023
Fax: (508) 979-4079

February 23, 2021

Colonel John A. Atilano II
United States Army Corps of Engineers
New England District
696 Virginia Road
Concord, Massachusetts 01742

Re: "Statement of No Objection" Concerning Vineyard Wind's Section 408(a) Request (Number 408-NAE-2019-0017)

Dear Colonel Atilano:

This letter serves as a "Statement of No Objection" by the City of New Bedford and the Town of Fairhaven concerning the Army Corps of Engineer's review of the Vineyard Wind project, which is made pursuant Title 33, United States Code, Section 408 and USACE Engineering Circular 1165-2-220.

The Army Corps has determined that a review under Section 408 is necessary in light of the width of the vessels Vineyard Wind would use to stage its offshore wind project, and how frequently they would pass through the New Bedford Hurricane Barrier's Sector Gates. The City and Town have been apprised of the scope of Vineyard Wind's request to the Army Corps for a determination under Section 408, and do not object to the Army Corps's initiating its evaluation.¹

The Vineyard Wind project will entail the construction of America's first industrial-scale offshore wind farm, and it promises to generate considerable economic activity in our region. The Massachusetts Clean Energy Center has estimated that the project will create upwards of 6,800 job years and as much as \$1.4 billion in induced new economic output, primarily in and around the Port of New Bedford, where the project will be staged. As offshore wind is emerging as a pillar of America's renewable energy portfolio, the Vineyard Wind project is the first of potentially many similar projects to be launched from our docks. Ensuring the success this first project is critical to establishing the Port as the East Coast leader in offshore wind, and to securing the considerable job opportunities for our residents that would come with it.

We sincerely appreciate the Army Corps's efforts to ensure that Vineyard Wind's construction activity would not jeopardize the functionality of the barrier. As you know, the barrier is the largest levee system on the East Coast, and has protected New Bedford and Fairhaven against storm surges since its construction in the 1960's. Rising sea levels have elevated its importance, not only to protect people and property, but to attract investment from businesses concerned about the effects of global warming.

¹ The City and Town note that the Statement of No Objection technically is not to be required here because the Corps has sole responsibility for the portion of the barrier implicated by the Vineyard Project, namely the barrier's Sector Gates. See USACE Engineering Circular 1165-2-220, ¶ 11(a)(2). Nevertheless, we write so that Army Corps may have the benefit of our perspectives on this matter.

While the City and Town are responsible for the flood control segments of the barrier that run long their shorelines, the Army Corps of course manages the sector gates, which have been the focus of its concern. The Corps has noted that the wide beam vessels to be employed by Vineyard Wind run the risk of allision with the gates, which, if rendered inoperable, may be stuck in the open position pending repairs, possibly exposing low-lying areas to flooding from tidal surge. As we understand it, the Army Corps's is most concerned about the risk to the internal mechanisms that open and close the gates, which a major allision potentially could knock out of commission for an extended period. Even though the vessels of similar beam have called upon the Port for many years – most notably the break-bulk freighters that offload at the State Pier and Maritime Terminal – the Corps has pointed out that the prospect of more passages through the gates by wide beam vessels has raised the risk of allision.

We take this risk seriously, and we believe Vineyard Wind has as well. The company has undertaken a thorough risk assessment, which has included a set of simulated “bridge” runs and an analysis by licensed marine pilots. The analysis identified a set of risk mitigation measures, which Vineyard Wind incorporated into its transit plan. These measures, coupled with the Port's experience with larger vessels, give us confidence that the risk of allision with the sector gates will be remote.

This does not mean, however, that the interested parties shouldn't be doing everything within reason to mitigate the risk of storm surge through the barrier gate. Although the approval process under Section 408 would suggest that this is a one-time exercise, the same risks will attend to future wind projects, and indeed other large vessels that call on the Port.² Together the parties should use this occasion to formulate and implement a comprehensive Vessel Management Plan with a set of protocols and practices that minimize the risk to the barrier and provide for mariner safety in an increasingly busy port, while facilitating the development of the offshore wind and other maritime industries. A thorough plan can and should establish clear expectations for harbor users and government agencies alike, and it would obviate the need for a Section 408 review for every wind project.

The development of the plan should not hold up the Vineyard Wind project, but it should begin in earnest. While the plan should address a variety of safety and commercial concerns relating to the flow of marine traffic, it should also put in place a clear set of measures and policies to lower the risks associated with vessel allisions. At a minimum, it should address the following elements:

- (1) Protocols to lower the absolute risk of allision: In general, lowering the risk that a large vessel could strike the gates would include many, if not all the steps outlined in Vineyard Wind's transit plan. The thorough analysis underlying the transit plan can serve as the basis for a more permanent vessel management plan, and indeed the parties already have suggested as much.
- (2) Protocols to decrease restoration time: In the unlikely event of an allision, the Corps should be prepared to repair the damage as fast as humanly possible and get the gates back on-line. Having operating procedures in place for the longer repair scenarios is a must. It is also imperative that the Corps have on hand spare parts that cannot otherwise be promptly obtained.
- (3) An Assessment of the Adequacy of the Barrier's Physical Attributes: For over a half-century, the barrier has served its purpose of protecting our region from storm surges, including those of two hurricanes. Given the ever-changing port economy, rising sea levels, and more frequent storms, it would be useful to evaluate whether any physical modifications to the barrier would be

² We note for the record that we do not believe Section 408 applies at all to the contemplated activity. The statutory language does not support its application, as the Vineyard Wind does not intend to “occupy” or “alter” the barrier. Moreover, we are unaware of any instance in the fifty-plus years since the barrier was built of the Corps's requiring a 408 permit for a vessel passing through the gates.

necessary or appropriate. These could include the addition of bumpers or other shock absorber features, as well as the possible widening of the barrier opening itself.

We look forward to working with you to develop a comprehensive approach to vessel management that provides for the highest level of marine safety, preserves the functionality of the barrier, and enables the Port to continue growing.

Sincerely,

Jon Mitchell
Mayor of New Bedford

Sincerely,

Daniel Freitas, Chairman

Robert Espindola, Vice Chairman

Keith Silvia, Clerk

cc: Senator Elizabeth Warren
Senator Ed Markey
Congressman William Keating

Governor Charlie Baker
Lieutenant Governor Karyn Polito
Secretary Kathleen Theoharides
Executive Director Steve Pike, MassCEC

State Legislative Delegation from Greater New Bedford
New Bedford City Council
Fairhaven Select Board