



FAIRHAVEN PLANNING BOARD

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FAIRHAVEN,
MASS.

Fairhaven Planning Board

Minutes

Tuesday, April 13, 2021– 6:30pm
Town Hall, 40 Center Street,
Fairhaven MA 02719

1. GENERAL BUSINESS:

a) Chair's welcome and Media Notification: John Farrell opened the meeting at 6:40p.m. and welcomed everyone. He advised that the meeting is being audio and video recorded live. Mr. Farrell read the notification of opening meeting law guidance per Governor Baker's order due to the Pandemic.

b) Quorum/Attendance: John Farrell, Jeffrey Lucas, Wayne Hayward, David Braga, Cathy Melanson and Jessica Fidalgo

Absent: Rene Fleurent and Geoff Haworth

c) Minutes: March 23, 2021: draft to be reviewed - Cathy Melanson made a motion to accept the minutes from March 23, 2021 and was seconded by Wayne Hayward. The motion passed unanimously via roll call vote, with Jeffrey Lucas and David Braga abstaining as they were not present. (4-0-2)

d) Board of Elections: Chair, Vice Chair, SRPEDD Commissioner, Authorization for Chair to Sign Payroll
Mr. Farrell congratulated the new member, David Braga and congratulated

Cathy Melanson nominated John Farrell as Chairman. The board members approved the nomination for John Farrell, as Chairman.

Cathy Melanson nominated Wayne Hayward as Vice Chairman. The board members approved the nomination for Wayne Hayward as Vice Chairman.

Cathy Melanson nominated Cathy Melanson as clerk. The board members approved the nomination for Cathy Melanson as Clerk.

Jeffrey Lucas nominated Jessica Fidalgo. Wayne Hayward nominated Rene Fleurent.
Mr. Farrell called for the vote for Ms. Fidalgo. Wayne Hayward not in favor; John Farrell in favor; David Braga in favor; Jessica Fidalgo not in favor; Cathy Melanson in favor. Motion is not passed with a 3-3 tie.

John Farrell called for the vote for Rene Fleurent for SPREDD Commissioner.
John Farrell in favor; Wayne Hayward in favor; Jessica Fidalgo in favor; David Braga in favor. Cathy Melanson in favor, and Jeffery Lucas, No. The motion carries 5-1 for Mr. Fleurent as the SPREDD representative commissioner. Mr. Foley advised that SRPEDD meets once a month via zoom.

Cathy Melanson made a motion to have Chairman, John Farrell sign bills and payroll and was seconded by Wayne Hayward. The motion passed unanimously.

e) Planning Board Bills: None.

f) CPTC 40B Training, April 21, 2021: Mr. Farrell asked who would like to attend. Ms. Fidalgo stated she would like to attend. Mr. Foley stated he would forward the link to Ms. Fidalgo. He also said there are quite a few CPTC Trainings available for members. Mr. Foley stated he and Mr. Carmichael will be arranging for trainings available to board members. Ms. Melanson stated she would also like to attend, as well as David Braga and John Farrell.

g) Overlook Realty Trust Covenant Release: Mr. Foley showed the approved plans for Overlook Realty Trust Covenant. Schneider Davignon engineers sent a letter that it has been built to spec, except for the final course of pavement. Mr. Hayward stated he went by and looked at the subdivision and it seemed in order. He said Ms. Lauren Francis was there and they were looking for the covenant release for lots 5 and lots 6. He explained that the topcoat is still due on the road. There would still be one lot left to ensure that the final pavement coat is applied at the appropriate time.

Jeffrey Lucas asked if Mr. Vinnie Furtado is aware of the covenant release and if he would do an assessment on the road prior to the release. Mr. Furtado was on the zoom and advised that the BPW has no issues.

Mr. Lucas asked if the Planning Board allows for post construction inspection done with BPW. Mr. Furtado stated they usually have a post inspection of the road as well. Mr. Hayward explained that they are performing the surety release post on two lots, keeping one under surety.

Wayne Hayward made a motion that we approve the Form E, removal covenant for lots 5 & 6 for Overlook Realty and was seconded by John Farrell. The motion passed unanimously via roll call vote (6-0).

2. PUBLIC HEARINGS:

i. **DS 2021-03 - Masse Beach Street:** Continued Public Hearing on 1-lot Definitive Subdivision. Mr. Farrell opened up the public hearing and introduced the Planning Board to the Public.

Mr. Foley asked if Mr. Lucas has done a Mullins, to which Mr. Lucas said he has not. Mr. Foley explained that to approve Mr. Haworth would have to be on the call and/or Mr. Lucas would've had to file a Mullins with the Town Clerk.

Rick Charon was present on behalf of the applicants, Daniel and Jillian Masse. The Masse's were also in attendance.

Mr. Foley reviewed the project, as the applicant has submitted revised plan showing a 22' wide gravel road running the entire length of the street between Alpine and Newbury Avenue as requested at the first public hearing.

Mr. Charon asked for a continuance for the next two weeks to April 27, 2021.

Ms. Masse asked if they could wait until the end of the meeting to see if Mr. Haworth may attend before the end of the meeting. Mr. Charon said he was okay with waiting to see if Mr. Haworth came on.

Mr. Hayward stated if they come back can they advise what surety they will be bringing with them. Ms. Masse stated they would be giving a cash surety to the Town. Mr. Charon said it would be in the form of an escrow account.

Mr. Hayward asked about a new sewer manhole coming from Newbury Avenue and asked if that was a new fire hydrant and sewer line they were putting in.

Mr. Masse stated they understood they were giving a surety for the gravel road way, and it would be approximately \$10,000. Mr. Hayward stated he understood it that they were putting in a new fire hydrant, and the surety was supposed to cover the total cost of the road.

Mr. Hayward said his role was loyalty to protect the town here and he would be looking for a surety.

Mr. Charon stated the difference is these are substantial improvements here. He explained that the Masse's need to get their building permit in order to get their mortgage, and the surety should be covering the roadway not the sewer and water lines.

Conservation agent, Whitney McClees was on the Zoom call and advised the Planning Board that conservation had approved the application the night before.

Cathy Melanson made a motion to table further discussion at this time and was seconded by Jeff Lucas. The motion passed unanimously via roll call vote. (6-0).

Mr. Masse asked what a reasonable surety to the board might be, as they need to review their own capital to put it forth.

ii. **DS 2021-02 - Hermeneau Frederick Ave:** Continued Public Hearing on 1-lot Definitive Subdivision
Mr. Foley advised same issue at this time as there were only four eligible board members here to vote or a Mullins would be needed and/or Mr. Haworth would need to arrive.

Mr. Farrell doesn't think that Mr. Haworth is going to appear tonight as he has not heard from him, which is not typical.

Mr. Foley stated he received a stamped statement from the engineer received per 322-26.b-1 that the design meets the stormwater management regulations.

Mr. Foley stated he delivered the title search folder to town counsel and Attorney Crotty responded that the Planning Board needed to decide whether they want to require a signed title abstract by either Mr. Larsen and/or Attorney Dailey, or they could have Attorney Crotty review the title search, or both. However there would be a cost and they would have to determine who was going to pay for it, the Planning Board or the applicant. If the Planning Board wants the Applicant to pay they should put \$1,500 into a deposit account. It should not cost that much and any remaining funds would be refunded.

Attorney Dick Dailey, counsel or the applicant was present. He stated it was not under the Planning Board's purview to determine if the lots were grandfathered. He stated the board's purview is the road access.

Mr. Farrell asked Attorney Dailey his thoughts on not having enough voting members tonight? Attorney Dailey said he was frustrated. He said he is aware that it's difficult at times with board members, but this was something they had started back in October. And they're still waiting, so they are frustrated.

Mr. Farrell asked Mr. Foley what the shot clock was for this project. Mr. Foley said he stamped it in January, therefore the ninety days ends in May and the 135 days for a decision ends in June but because of the state of emergency with the pandemic, the shot clock has been suspended until 45 days after the state of emergency is lifted. There are no constructive approvals during the state of emergency.

Mr. Farrell asked if they wanted to continue to the next meeting or table it until later on, however he is not confident that Mr. Haworth will appear this evening.

Attorney Daily recommended to his clients to ask for a continuance. Ms. Hermeneau was present and stated she believes they don't have a choice and asked for a two week continuance.

John Farrell made a motion to continue to DS 2021-02 Hermeneau Frederick Avenue per the applicant's request to April 27, 2021 and was seconded by Cathy Melanson. The motion passed unanimously via roll call vote (6-0).

Mr. Foley asked how they wanted to proceed to answer Town Counsel. Mr. Farrell stated he'd rather see Mr. Foley and Attorney Dailey figure that out.

iii. **SP 2021-01 - Bijou Theater Building Apartments:** Proposal to renovate fifteen (15) residential apartments on the second and third floor and three commercial units on the ground floor with new windows, paint and a fire detection system.

Applicant Julio Barbosa was on the zoom call with his attorney, Michael Medeiros.

Mr. Foley reviewed the project. This property is on Benoit Square in North Fairhaven, which was recently changed to Mixed Use at the 2019 Special Town Meeting. He reviewed the project stating that the proposal was to have fifteen apartments, of which eleven are two-story, with three small retail spaces on the ground floor and a theater in the rear.

Mr. Foley reviewed the project history, stating that the building has been vacant for at least ten years, maybe longer. He said it was built ninety-nine years ago with a theater. He stated the Town believes the use was abandoned.

Mr. Foley reviewed the site plan with twenty-four parking spaces, which is enough for the apartments and retail space but does not take into account the use of the theater. He also noted that in the narrative the Applicant states that they do not plan to use the parking as depicted on the plan but just use it as is. The site plan, according to the applicant, is just to show they can fit the required number of parking spots. He explained there is a curb cut in one section on parking lot on Deane Street but that the other curb cut used for the lot is on someone else's property. If they want to use the parking lot as depicted they would need a second curb cut and a permit through the Highway Department.

Mr. Foley stated there is a basement in the building and one of the concerns is the use has been abandoned for at least ten years. He said the applicant sees this as an existing use. Mr. Foley also stated that the Town has concern with the configuration of the apartments as they are. Mr. Foley reviewed the apartments, eleven units with no windows on the entry level, which is on the second floor, and only a single on the third floor with those on the east side very high. The apartments are very small and cramped with a staircase in each one taking up a quarter of the space. He said they have concern over air, light, egress and safety as the applicant has discussed renting these apartments to Veterans on assistance. Mr. Foley stated the biggest concern is that this may be a fire trap.

Mr. Foley stated the application was stamped in February 25, 2021. Mr. Foley reviewed the purpose of zoning with regard to the proposal adhering to the following purposes of 198-2. Mr. Foley stated he has assisted Mr. Barbosa in reviewing for a grant that may help rehabilitate the building up to the safety standards the Town wants. Mr. Barbosa is looking at updating the fire detection system; but the Town would like to also see a fire prevention system. Mr. Foley stated new windows have been added as well as the awning in front, which was a hazard, was taken down.

Mr. Foley stated the mixed use is appropriate but the design raises concerns. Comments from the Fire department said they would like to have access to all sides of the building. Other fire department comments: No issue of the modification of the building or use but the fire alarm would need to be updated to current code, NFPA 1 and NFPA 72 and sprinkling of the building will need to fall under the building department. Mr. Foley reviewed the other comments from Departments that the plans were routed to.

The Police Department comments were that they had no issues with the use of the building, but were not sure if the parking lot in the rear was designed to handle all the parking. He wondered what Main Street may look like with the new apartments coming on line across the street and this with the entry on Main Street but the parking in back.

The Public Works Department stated any new driveway aprons, need to apply for a driveway permit. They also stated the storm water runoff is going to need to be directed from entering the street from the new parking lot. The Water Department has had issues with this building before and will need new connections.

The Building Department comments were that the Apartments that were illegally created in the 1970's have outlived the statute on illegal structures but the change of use to residential still remains illegal. The Building Department has concerns of the configuration of the apartments as they are a fire trap. The Building Department also stated they were constructed 99 years ago which raises numerous concerns that were listed in the Building Department letter.

Mr. Foley showed the rear entrance of the theatre and curb cut and pictures of the front of the building. Mr. Farrell asked if there were any underground tanks as he thought he saw an oil tank on plans.

Attorney Medeiros was present on behalf of his client, Julio Barbosa; along with Mr. Barbosa who was not visible on zoom, but was in the office with his attorney. Mr. Medeiros explained the property was purchased by his client in May 2020, and he has tried to make the building habitable again. Mr. Medeiros stated that he was not certain that this particular configuration was done illegally without permits as stated by the Building Commissioner.

Mr. Medeiros stated that there have been three different building inspectors in the last eleven months which they believe has compounded with the difficulty in applying for permits. He said that at one point in time, given the characteristics of the building and the bylaw, he was under the interpretation that a special permit would not be needed.

Attorney Medeiros explained the site plan of the parking area. He explained this particular use, not utilized nor occupied for at least two years, would be seeking a relief through the special permit. He said that the parking area had been used for the last decade for residential use. Per the Town's bylaw, one parking space is available for each bedroom; there are one bedroom units, fifteen units, therefore fifteen parking spaces.

Attorney Medeiros stated when Mr. Foley referred to the Town, he's actually referencing the building department and the inspector. Mr. Medeiros stated that the assessment acknowledges nineteen units decades prior.

Mr. Medeiros stated his client finds himself with certain restrictions and of course economics play into this as well. Some of the issue is whether a full suppression system needs to be put in as that would address the majority of the concerns of the building commissioner. An inspector last year, wanted an analysis to be done, and an engineer did that analysis stating the use is staying the same, capacity of the building staying the same and the building was structurally safe.

They had a discussion with the Fire Marshall regarding the installation and replacement of the fire alarm system with a connection to the local station which would be monitored by a private company was their primary concern. He stated the Fire Marshall did sign off on the current system and that has been installed. Mr. Medeiros stated they have updated the carbon monoxide and installed extensive gas lines and relocated the meters. At this time, his client has no plans to utilize the theatre space.

Attorney Medeiros stated they are currently in a Cease and Desist order and it appears the Building Inspector won't review the application until my client goes through this process with the Planning Board for a Special Permit.

Mr. Medeiros stated this Benoit Square district is where the proposed use is, and it is certainly keeping with the neighborhood and his client wants to help revitalize the neighborhood. He stated Mr. Barbosa is here to work with the Board and the town but is facing some challenges with the Building Department and hopefully we will be able to find some middle ground to make it a safer project.

John Farrell asked, what are we looking for waivers?

Attorney Medeiros stated that his client submitted the application and he then got involved, so he imagines it would be for the parking areas, access and surface. He said given existing, he's not sure they have to request any waivers but he looks to the Board for that information.

Mr. Farrell opened it up the board for comments.

Mr. Lucas asked what the square footage of apartments minus the staircase is, as it looks really small. 8x10's? 10x15?

Mr. Lucas asked if any of the apartments exist without windows. Mr. Foley stated they all have windows, but 11 or 12 have no window on the first level and minimal windows on the second level, and they are approximately 120 sq feet on each floor. Mr. Lucas agreed there would be egress issues for certain. And he had concerns on the parking both for the apartments as well as the businesses there.

Mr. Hayward stated the interior of the building is in the realm of the Building Commissioner. Mr. Hayward asked about Map 19, Lot 256 and if that was still owned by MIT Properties. Mr. Foley stated he doesn't know who owns it but it's not Mr. Barbosa, at this time.

Mr. Hayward stated says his focus is not so much on the building at it is the parking. He said perhaps he can lease or purchase that lot 256, as it's already paved. He also stated that they'd be looking at tree removal and need a conservative approach with the parking area. They need those green areas on the edge of the parking to absorb the runoff.

Mr. Farrell asked if they have engineer on board. Attorney Medeiros stated they only have an engineer on board for the structure only.

Mr. Hayward stated there was minimal retail space on the front of the building and he didn't think it would impact parking that much. He said he would like to see a more modified approach for the parking lot.

Mr. Farrell advised they need an engineer to assist with review of the parking lot and present to the board properly and successfully. He said this is a non-conforming building and we want this part of town to be successful, as suggested by Mr. Foley, he would recommend possibly seeking out a grant and would be interested to find out if lot 256 can be obtained or leased to the applicant. Mr. Farrell said there has to be proper use of parking.

Board member, David Braga had no questions at this time. Ms. Fidalgo also had no questions at this time. Ms. Melanson agreed with parking and agreed that the area needs a revitalization. However, she is on board that residents also need to be safe in the building.

Mr. Farrell stated he would like to see a build out with plans that identify snow removal, trash, and commercial uses; exactly what your client is imagining, he said.

Attorney Medeiros said they are small retail spaces, perhaps one to two persons at one time in the commercial spaces. Mr. Farrell said he was not inclined to make suggestions on parking and that they really need to engage with an engineer.

Mr. Foley stated they require one parking per 250 sf of the retail space.

Mr. Hayward said the apartments being constructed do not fall under Planning Board, a 40B falls under the Zoning Board. He did say if Mr. Barbosa got lot 256 for parking it would open some parking up in that area. He would like to see a reconfiguration of the parking lot with low development stormwater. He said he did share the concerns of the building department but that doesn't fall under the purview of the Planning Board.

Attorney Medeiros asked for a continuance.

Mr. Lucas shared some last concern on what happens if there is a future build out of the theatre. He said now it appears empty space, but not sure if it'll stay that way.

Mr. Farrell opened it up for public comment, which there was none.

Attorney Medeiros asked for a continuance until May 11, 2021. He also asked that if he needs more time that he be allowed to request another continuance by letter.

Mr. Hayward reminded the board there were six members present. Mr. Foley will remind Geoff Haworth and Rene Fleurent to file Mullins with the town clerk once they've reviewed and watched the public meeting.

John Farrell made a motion to continue to May 11, 2021 at the applicant's request and was seconded by Cathy Melanson. The motion passed unanimously via roll call vote (6-0).

iv. **TE 2021: NFIP:** Public Hearing to update of the Flood Insurance Rate Maps (FIRM) to maintain current with the National Flood Insurance Program (NFIP) requiring amendments to the Zoning Bylaw Chapter 198, Section 28, to replace five (5) existing map panels with five (5) new map panels (25005C0391H, 25005C03296, 25005C0394H, 25005C0411G, 25005C0413G dated July 6, 2021) and add some required language form the NFIP model bylaw.

Mr. Foley explained the language they are requiring this year is a lot more than last and went over the proposed and mandatory new language. He stated there are five maps that need to be updated with mandatory language that needs to be added. He reviewed the definitions of flood zones and reviewed the new panels of the flood insurance maps.

Mr. Foley reviewed an additional flood plain bylaw amendment as requested by the conservation agent and building commissioner. First was changes to the (G), the Nasketucket River Basin District, and there were some changes in (H).

Mr. Hayward asked when speaking of the variances he wasn't sure if the ZBA issues variances along these lines. He asked what the variances NFIP was talking about.

Building Commissioner, Mr. Carmichael, stated any of the building variances that are different from the FEMA standards would need to go to the State BBRS.

Mr. Lucas asked how this effects the rash of piers and docks that are happening around Town.

Mr. Hayward explained per the Zoning By-laws, docks and piers in residential district go to the Board of Appeals and Conservation. In the Commercial, Industrial and Mixed-Use Districts they come to the Planning Board. He said when it's a Chapter 91 license, zoning sign offs and that goes to the Town Planner, Planning Board.

Mr. Foley stated when he gets one of those sign offs he always brings it to the Planning Board.

Mr. Carmichael said he has produced a flow chart for docks/piers. In a residential area, it does go to ZBA and anything else goes to planning board. He said that is Army Corps of Engineers mandated, not zoning.

John Farrell asked if Ms. McClees from Conservation, or Mr. Furtado from DPW had an additional comment; there were none.

Mr. Foley said they need to recommend it to Town Meeting.

Wayne Hayward made a motion to adopt the flood plain bylaw amendments as discussed and recommend then to Town Meeting. Mr. Farrell second the motion. The motion passed unanimously via roll call vote. (6-0).

Mr. Farrell stated he received a note in the zoom chat from Jillian Masse to move their hearing to the next available date, April 27, 2021.

John Farrell made a motion to move Beach Street, DS 2021-03 per the applicants request to April 27, 2021 and was seconded by Wayne Hayward. The motion passed unanimously via roll call vote. (6-0).

v. **TE 2021 MS4:** Public Hearing to make mandatory additions to Stormwater Management.

Mr. Foley reviewed the mandatory additions to stormwater management. He said they would need to add two things to 198-31.1, raise from 80% total suspended solids (TSS) removal to 90% TSS removal and add a phosphorus requirement.

Melissa Recos (from BETA group), who is working with the DPW was on the zoom call. Mr. Foley explained that she is working to assist DPW with compliance. Ms. Recos reviewed the updates with the board, advising there was a deadline of June 30, 2021. She stated that there are certain requirements for new and redevelopment projects. And any project that disturbs one acre of land maintains certain standards; 80-90% TSS Removal for new development.

DPW Superintendent, Mr. Furtado stated this is about stormwater permits that the town has with the federal government. He said they originally applied in 2003 and it was pretty simple. He said there are many components to it, they've been collecting samples and then would have to take action if it traces high bacterial counts, etc. He said that BETA has been assisting with the work.

No comment from Conservation agent, Ms. McClees at this time.

Mr. Farrell opened it up to the board for questions/comments.

Mr. Hayward stated he felt the language on the Town Meeting warrant was very confusing for Article 37, amendment to the Planning Bylaws (194-Stormwater Management). He also stated Chapter 198 was referenced as well and that language is very confusing. Mr. Hayward stated that there is nothing in Chapter 194 referencing stormwater at all, so that's an error.

Mr. Foley said that was an error in an earlier draft of the warrant that has since been corrected. The title for the article said Chapter 194 but the language was for 198-31.1. We have since fixed that and added the language that is required for 194.

Mr. Hayward asked why they removed 'phosphorus requirement' in the Nasketucket River Basin. Ms. Recos explained in the section of new development, 60% required phosphorus is required not just in the NRB; and he said prior it was 50% in the NRB.

Mr. Hayward stated that the stormwater regulations in Chapter 322, began in 1996 and were only incorporated in Section 198, applying only to a Special Permit; so therefore, this means they need to update Chapter 322 as well. He also added a correction to page 9 of the document in front of them.

No further questions from Planning Board members.

Mr. Furtado stated regarding the confusion that Mr. Hayward mentioned between Chapters 198 and 194, they would like to see two bylaw changes. Section 198 is required by law and then 194 to clean it up a bit (issuing erosion permits). They have discussed creating a "Stormwater Authority", who would be assigned to tasks related to Section 194 to the appropriate group. Mr. Furtado said this is a housecleaning measure, if you will, of the bylaws.

Mr. Furtado stated that Section 198 public hearings go through the Planning Board to recommend and then 194, switches to BPW to the stormwater authority, and that's the language they'd like to change. Mr. Foley stated that BETA group also had some other proposed changes that would lower the threshold for a disturbance permit that perhaps the Board would want to hear.

Mr. Farrell stated it was not on the agenda to discuss this evening and perhaps they could put it forth on the next meeting.

Mr. Hayward asked how they are not able to discuss it, as it is on the warrant before them.

Mr. Hayward made a motion to adopt 37-198 MS4 Mandatory update and was seconded by John Farrell. The motion passed unanimously via roll call vote. (6-0).

Mr. Hayward stated the only discussion on section 194 would be at the town meeting. He asked how they discuss the 'stormwater authority' to who does what.

Mr. Farrell said would like to see it triaged.

Conservation Agent, Ms. McClees explained one of the things related to stormwater authority regulations is it outlines the road map of what the requirements would be, what is triggered under 194 and what board it would go through. She stated they have discussed allowing for the creation to better streamline that for applicants, so we are not duplicating work or overstepping other regulations. She said that is the discussion they have been having so they can better communicate to the applicant's the process.

Mr. Farrell said he wasn't sure there has been a process identified as of yet and asked if they have figured that out yet.

Mr. Furtado stated if they read the bylaw, it directs people incorrectly. He said section 194 says to the DPW and they don't have the authority to issue permits, etc. He said that's what needs to be identified in the section, exactly what the role of the Planning Board, Conservation, and DPW has in all of this has to be clarified. That is the process.

Mr. Farrell referenced their phrase, "Stormwater Authority" and stated he's not sure how it's going to work, but certainly not sure they are ready to discuss it tonight.

Mr. Furtado stated the current version of section 194 has dedicated some authority to the BPW that they don't do that is what he would like to see corrected. Mr. Farrell stated he didn't feel these people are prepared to discuss this tonight.

Ms. Recos stated that 194 currently says that another department (DPW) has been added to that flow chart of reviewing stormwater and they are not currently doing that or qualified to do that. The effort is to change that and advise who is the stormwater authority in the process.

Ms. McClees stated their definition of the Stormwater Authority was in draft mode, but it was, "Stormwater Authority", (SWA) is a group consisting of at least one staff member or their designee from the following departments: Planning & Economic Development, Conservation & Sustainability, Building and Public Works. A quorum of the SWA shall consist of three members."

Mr. Hayward stated he would like to see a conversation happen before a new team is created so that everyone is on the same page, as he doesn't believe Mr. Furtado understands currently what is under the purview of BPW because of what he is reading in Chapter 194.

Mr. Furtado read from Chapter 194, in reference to BPW.

Mr. Hayward stated that he, himself wrote the 194 bylaw with Ms. McClees and Town Counsel. Mr. Hayward asked Mr. Furtado to read further down the page and see that it eventually says it's exempt from the Board of Public Works if it's reviewed by Planning or Conservation.

Mr. Foley wanted to make clear at this point they are just thinking of changing to a 'stormwater authority' to help the flow and process. He said there are other things, but it's down the pipeline right now.

Ms. Recos stated they could have a recommendation in the next few weeks. Mr. Farrell asked to continue this discussion to May 11, 2021.

vi. TA 2021 Short Term Rentals & CIP: Public Hearing on a proposal to establish a General Bylaw Amendment to regulation of Short-Term Rentals (STR) to provide for the orderly and safe operations of short-term rentals within the town and prevent negative impacts and whether to impose a 3% Community Impact Fee.

Mr. Foley explained how Short-Term Rentals (STR) began. He said at the state level it started in 2019 with a law that requires STR to register, have insurance and pay the room occupancy tax. This proposal is to adopt a bylaw the purpose of which is to provide for the orderly operation of short-term rentals within the town to prevent negative impacts on neighborhood character, housing availability and house prices by creating a frame work that is allowed but reasonably regulated. He said there are concerns that people will buy houses to essentially turn them into hotels in residential areas.

Mr. Foley reviewed the suggestions from board members. One main issue was the suggestion that STR shall only be allowed in one or two family or multi-family dwelling units that are a primary residence. Other issues are how many days maximum should an overnight guest be allowed; how many days a year, 60? 90 or maybe less? We have to create an annual process to have these registered with the Town saying we are going to allow then but what's the right amount that we allow, certain times a year,

how many times a year, etc. He stated he felt they want to allow but it needs to be reasonably allowed and regulated; legally and safely without turning our neighborhoods into a transient place where you don't know who your neighbor is.

Mr. Foley stated they received a letter from the South Coast Chamber of Commerce that states they oppose any further regulations to Short term Rentals.

Mr. Foley stated that "technically", per the Town's zoning bylaws, and under the Town's zoning use schedule, they are currently prohibited. He said that they have heard people that don't want it at all, and others that want it, but want to see it regulated.

Mr. Farrell opened it up to the public.

Resident, Abby Cregan, of 35 Smith Street spoke about confusion on what the Town is looking to do with STR. Ms. Cregan owns property that she does rent out as short-term rentals in Fairhaven. She believes she has more protection from bad guests on a platform versus people that do direct booking. If she has bad guests she can cancel their stay. She says she has a short term rental with her guests and if they don't abide by her rules they are gone. She believes STR is more protective with the neighbors, owners and the Town. She stated she requires a 3-night stay and not over 14 days stay. She has never had damage with short-term renters than she has with a long term guest. She stated she believes anyone in town that has registered with the state has done the right thing. The % fee is paid by the guest.

Greg Burns, also a Fairhaven resident who owns a few properties, stated that he is speaking on behalf of 30 short term rentals in Town. He stated he owns local property in Town and most of his short-term rentals happen in the summer, some in the winter. He said that he and fellow short-term owners assembled to address the Planning Board. He said he would ask the board to be lenient on the time he has to speak, as he is speaking for himself and thirty other property owners.

Mr. Burns first identified positive impacts and the benefits to the Town they feel happen with short-term rentals. He said that guests utilize small business owners in town. He said he and the STR owners spoke to 15-20 businesses in Town, who wholeheartedly stated they support short term rentals. He said that STR owners keep their property in good shape, maintained and put money back into their homes to attract the best renters who come in early.

He stated currently they pay a 5.75% tax to the state and a 6% occupancy tax that goes to the Town.

He said many of the STR's are seasonal homes. He explained that many of their guests are not just anyone, but repeat guests who use platforms such as Airbnb and VRBO, who do the screening of the guests and have regulations themselves. He said they are the mom and dad, two children and a dog that want a house with amenities and want to use the beach for a week or two. He said in Fairhaven there are 55 homes registered with the state, and he and the other home owners identified approximately 13 that are probably not even doing short-term rentals at this time.

He said they also spoke to the police to find out about nuisance calls. He said in a three year period, five calls out of 1,461 police calls came from West Island (3 violations, 1 argument and 1 child jumping off the causeway bridge).

He said in reference to some of the restrictions that Planning Board have discussed: Owner occupied, he stated they unanimously strongly reject this restriction as it doesn't make sense to them. Some of the owners live elsewhere in Town or out of Town and wouldn't be owner occupied when a guest come in.

He said they would like to have a discussion and work with the Planning Board to put forth some regulations, perhaps a cap of how many legally registered STR can be in Town. (Mr. Burns offered an example, a % (1,2,3%) of how many homes there are in Town, and cap how many legally registered short-term rentals that way.)

Mr. Burns said they are willing to sign up with the town for annual inspections. As far as the 3% "community impact fee", they only see it as an additional burden of tax.

Mr. Burns offered three proposals to the Planning Board for consideration: a cap of legally registered STR in Town, institute annual registrations and inspections in Town. And given the time of the calendar, with Town Meeting in June, he asked that any changed be held until 2022 as many of these short-term rentals are already booked for summer.

Mr. Farrell thanked Mr. Burns for the presentation and said it was nicely presented.

Planning Board member, David Braga stated he would be in support of a 90 days a year cap, as summer months are more than likely when the rentals take place. He said he feels they should take the less restrictive approach at first.

Mr. Farrell stated he liked the approach of a percentage cap in town based on the number of homes as suggested by Mr. Burns.

Mr. Hayward stated that Mr. Burns was very knowledgeable in his presentation and said all the right things, but certainly left some things out as well. Mr. Hayward said that people may believe that politically the Planning Board is looking to prohibit short-term rentals, but in reality as it stands right now, there are no short-term rentals in the Town's Zoning Use Schedule. He said, does it mean we are going to chase you down, No. But what you are doing with short-term rentals is illegal in the Town of Fairhaven.

Mr. Hayward stated he would like to see people adopt this legally for the Town of Fairhaven and provide an avenue to have short-term rentals as part of a by-law and in our general law bylaw. He said he is in favor of having short-term rentals in Fairhaven but to have it done legally.

Building Commission, Chris Carmichael was also on the Zoom call. He said he agreed with some of what Mr. Hayward was stating. He said that short-term rentals do change the use of a single family home (R3), to a R1 use, which is highly regulated. He said with inspections he would be looking at egresses, egress lighting, adequate parking and making sure the building is up to code to provide a safer environment for the rentals. Mr. Carmichael has asked for a few changes in the definitions as well.

Board member, Jessica Fidalgo stated at first she was in support of owner-occupied but listening to everyone she agrees with the limit of registration per short-term rental is a good idea as well as the cap on dwellings town wide. She said by having the latter, it would keep the developers out. She would also be in favor of a cap of how many nights a year, sixty to ninety depending.

Ms. Melanson stated she would agree on the cap of homes and as far as the amount of time, she said they should review that. She said her experience through social media is that people do enjoy coming back to visit the Town of Fairhaven.

Mr. Farrell stated as it is being presented through slides and their discussions, he thinks this is way overreaching. He agrees that a cap is reasonable. He stated he has a three family and has not seen it inspected annually and he doesn't agree with short-term rentals being inspected annually. He agrees there needs to be a pathway to make it legal in Fairhaven; but feels some of what is being proposed they are over thinking.

Mr. Carmichael wrote in the chat that legally five year inspections are required for all multi-family units by the state, and Mr. Foley advised the board of that.

Mr. Hayward stated that he hopes they can do something for this year's town meeting, as he feels they are not prohibiting STR's but helping to provide for them under the bylaw.

Resident and short-term rental owner, Glenn Cudmore stated that the state changed the law in 2019, and as far as he can see there is nothing in Fairhaven's bylaw and/or definitions that it exists in Fairhaven, but the Town has collected the 6% tax and spent that on Town Meeting floor yearly.

Mr. Hayward agreed that short-term rentals is not in the bylaw. He said that the bylaw reads if it is not in their use schedule that it is prohibited. He apologized for using the word "illegal", but states instead he should be using "prohibited"; so in fact short-term rentals in Fairhaven as it stands is prohibited, as it is not in any existing by-law and/or use schedule.

Mr. Cudmore stated with only fifty-five short-term rentals registered in Fairhaven through the state, that only approximately forty-three are active. He said they are not contributing to crime statistics in Fairhaven and he feels some of these restrictions are part of government overreach. He said the short-term rental owners are willing to work with the Board.

Mr. Hayward stated he is trying to take the proactive approach. He said depending on politics in Town it could be pushed one way or another. He said he does not agree with the building commissioner that there would be a need for additional staff to enforce the bylaw. He said for certain it would need to be rolled out slowly, but once the registration/permitting was in place, it should be easily manageable.

Mr. Carmichael asked Mr. Hayward to stop speaking for him, as he has a voice. He said he currently holds four titles in Town, building commissioner, zoning enforcer, flood plain manager and handicap accessibility manager. He said he has a full plate and yes, he may need to staff part-time inspector to assist with the roll out of annuals for short-term rentals.

Mr. Cudmore stated he was confused on the 'illegalities' of it.

Mr. Farrell stated as of date, it is not in our Use Schedule and Regulation table, and our bylaw reads if not in there, it is not an allowable use. He said he thinks it definitely needs to be added to our use schedule and regulation table. He absolutely agrees that it needs to get in front of Town Meeting. Mr. Farrell stated a zoning by law has to go with this and the use regulation table needs to be updated.

Mr. Farrell addressed the home rule, as a town we can adopt and determine the 'home rule advantage' which means that Town meeting could vote not to have short term rentals.

Mr. Cudmore stated this is a great opportunity for us to work with the Planning Board.

Resident, Theresa Fletcher worked in a restaurant in Fairhaven for over 10 + years and stated that the restaurant businesses are being positively impacted in Fairhaven by guests of short-term rentals. She would encourage the board to let things be as they are.

Resident, Robert Hobson was on the call and states he owns five houses in Fairhaven, that he mostly rents out year round. He said that if an owner wants to rent out their house to someone by the night and or weekly, the neighborhood should be aware of it. He said young families can't afford houses in Fairhaven but people can own these short-term rentals and put anyone they want in them. He said the neighbors should have an opinion and be notified who's staying next door to them. He said there are no rules in Fairhaven and the system is screwed up. Mr. Hobson also complained that the board allowed Mr. Burns to speak for thirty minutes or so and that isn't fair.

For the record, Mr. Farrell stated he allowed Mr. Burns to speak for a length of time because he was representing a community of thirty short-term rental owners.

Mr. Foley reviewed what had been discussed and what he heard, so he could implement changes and it could be reviewed at a future meeting. He said to raise the cap from 60-90 days of renting a year; keep the cap on total # of town; move inspections from yearly to two years or five years.

Mr. Farrell expressed the need for a sub-committee to field out the potential bylaw and asked Mr. Hayward his opinion.

Mr. Hayward said there may be some limitations with a sub-committee, that perhaps would be more confrontational. He said he was hoping to hear public testimony so they could get a better sense of what's doable. He said he would like to offer something up to Town Meeting for discussion and adoption.

Fairhaven resident and realtor, stated that it is his experience that investors are not coming into town to buy short-term rentals. He said in his experience he was able to buy a home on West Island many years ago and supplement his mortgage with a short-term rental. He said most people that buy a short-term rental property are ordinary folks.

Mr. Farrell asked Mr. Foley to track the changes and update the website. Mr. Farrell suggested perhaps another meeting in between for discussion.

Cathy Melanson made a motion to continue STR discussion to April 27, 2021 and was seconded by David Braga. The motion passed unanimously via roll call vote. 5-0-1 (Jeff Lucas was no longer on the call).

In other business, Mr. Hayward stated that Mr. Espindola is pushing Mr. Foley to present a video at Town Meeting. Mr. Farrell said he looks forward to seeing that.

3. CURRENT PLANNING:

- a) Upcoming bylaw review - solar canopies, 198-16 use regulation tables & 198-33 Definitions

Briefly, Mr. Foley reviewed the potential Solar Canopies bylaw. He said it is very short. Currently they can be put up anywhere if they are behind the meter and not using more electricity than is currently being used on the grid. To export power they need at least 10 acres. He said they have received a few applications to put solar canopies in a parking lot, most recent at the Council on Aging. He said the proposed bylaw is to allow solar canopies in the Business and Industrial Districts as an accessory use only and if allowed through the Special Permit process only.

Mr. Foley stated that the 198-16, Use regulation table needs to be updated to add short term rentals. And the 198-33, definitions need to be clear and concise. He said he can discuss this further at the next meeting, but as an example he said they don't have a definition for variance in 198-33 and the section that describes it leaves out the key factors that are contained in the state definition.

b) Town Planner update: Compete streets, Rogers & oxford school; one stop for growth

Mr. Foley gave a quick overview. He said they have submitted their Tier 2 Prioritization Plan for the Complete Streets but have not heard back as of yet.

Mr. Foley stated he has submitted what is called an Expression of Interest for the One Stop of Growth grant program. He explained this was a new umbrella grant program bringing ten grants from three agencies together through one process. The Town describes up to five projects or initiatives for redevelopment opportunities and the One Stop people will review and give the Town feedback on which grants are available and be a part of the planning process. The five areas he chose were the route 6/240 study, Rogers School, Benoit Square, a comprehensive water and stormwater management study and route 6 outside of the study area.

An update of Rogers School was a change in the name of the committee as well as SMEC (Southeastern Massachusetts Education Collaborative) may be looking at expanding in the 1951 addition of the school.

Cathy Melanson made a motion to adjourn and was seconded by Wayne Hayward. The motion passed unanimously via roll call vote at 10:55p.m.

Respectively submitted,

Patricia A. Pacella
Recording Secretary