



FAIRHAVEN PLANNING BOARD

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FAIRHAVEN,
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Fairhaven Planning Board
Minutes
Tuesday May 4, 2021– 6:30pm
Town Hall, 40 Center Street,
Fairhaven MA 02719

1. GENERAL BUSINESS

- a) Chair's Welcome and Media Notification
- b) **Quorum/Attendance: Present:** Chairperson, John Farrell, Wayne Hayward, Jessica Fidalgo, Geoff Haworth, Jeff Lucas and David Braga, Cathy Melanson (7:22p.m.)

Absent: Rene Fleurent

Mr. Foley, Director of Planning and Economic Development was also in attendance as was Building Commissioner, Chris Carmichael and Town Attorney Tom Crotty.

- c) **Minutes:** April 27 draft to be reviewed: Jeff Lucas made a motion to accept the April 27, 2021 draft minutes and was seconded by David Braga. The motion passed unanimously via roll call vote.
- d) Planning Board Bills: None

2. PUBLIC HEARINGS:

- a) Public Hearings:
 - i. **GB 2021 Short Term Rentals & CIP:** Continued Public Hearing on a *General Bylaw Amendment* to regulate Short-Term Rentals (STR) and whether or not to impose a Community Impact Fee

Mr. Foley reviewed the changes. The major changes were that the restriction to owner occupied was removed; the cap of maximum rentals per year was raised to 180 days (up from 90 days). The cap on the number of units town-wide was moved to the intensity of use regulations, Schedule F to allow up to 64 units until December 2022 and 120 thereafter, which Mr. Foley indicated is 1% of units in town and 120 units is approximately 2%.

Mr. Foley reviewed the registration and general rules that everyone seemed to agree upon.

Mr. Farrell asked the language to be changed from Town Manager to Town Administrator.

Mr. Farrell asked for a couple of housecleaning issues - 190-11 (e): MGL Chapter 160 should be under state law MGL 64. Mr. Foley will review and put in the correct Mass General Law.

Attorney Crotty cautioned the board to be careful on wording when enabling the Town to enact the Short Term Rental bylaw. He stated that a general bylaw is fine, but when you add a zoning matter that requires two-thirds vote from Town Meeting. He asked them to try and eliminate the reference to zoning and instead incorporate a simple majority vote for passing of the general bylaw.

Mr. Hayward asked if they still needed a two-thirds voting for a zoning amendment during the State of Emergency. Attorney Crotty said yes, they need two-thirds vote at Town Meeting for a zoning amendment. There were some exceptions made for the State of Emergency but not in this case.

Mr. Hayward stated as long as the zoning bylaw is in place for STR they do not necessarily have to cross reference the general bylaw.

Mr. Lucas had some specific questions. He asked on 190-12, where it read "failure of a person", he questioned to whether it should be "operator" instead of person. Mr. Hayward noted that "person" is defined in this bylaw on the first page and includes the various possibilities that Mr. Lucas is considering.

Mr. Lucas asked about 190-14b, "may also be given by inspectors"; and asked if they want to reference "the inspections service department" to keep consistent. (Board of Health, Fire, Building).

Attorney Crotty stated the Town doesn't have an Inspectional Services Department as it stands currently. We don't want to claim we have inspectional services when we don't have one. He recommended, for this bylaw, they should say "Building Commissioner" as they will be the lead on this; who would then refer it out to the Board of Health, and/or Fire Department when applicable.

Mr. Farrell and other board members agreed to use the term "Building Commissioner".

Mr. Carmichael stated there is a close relationship with the Board of Health and Fire Department so he doesn't see it as an issue.

Mr. Lucas suggested the wording of, "may be initiated by the Building Department".

Mr. Hayward suggested that Inspectional Services be removed from the definition altogether.

Mr. Foley will update all chapters to strike "Inspectional Service Department" and replace with "Building Commissioner" per the consensus of the planning board.

Mr. Crotty referenced page two, (I), regarding fees, where it states "may be modified by that Town Administrator at a fee hearing", the TA should not be the one that changes the hearing fee. He stated per the statute that it allows the bylaw to establish fees, if the fees require changing one would have to go back to Town Meeting to be modified, not go to the Town Administrator for that change. He recommended on that sentence to just put a period after the \$200.

Mr. Crotty did apologize for being late to this bylaw and stated he would work with Mr. Foley to work through any minor details.

Mr. Farrell opened up to the owners or any public comment. He advised any minor changes, grammatical errors would be reviewed by Mr. Crotty and Mr. Foley.

Mr. Farrell did receive an email from the owners group on May 3, 2021, approximately thirty owners who wanted to bring up approximately seven points on the bylaw. Mr. Farrell reviewed those points.

Mr. Farrell stated the first point was in reference to 190-10, Keeping of Register. He said the owners group was concerned that they need to give up information to the Building Commissioner, when per law needs to get a subpoena for said personal information of their renters.

Mr. Cudmore reiterated that they do work with the local Police Department and certainly would continue if something happened that information regarding criminal or other activity needed certain personal information. He said that they just didn't want to give over personal information at a whim to the building department of their renters.

Mr. Hayward stated this comes right from chapter 64.

Mr. Farrell stated per the state law they'd have to go through legal channels to review that information. He said that how the bylaw is written, they are stating that 'the information shall be made available upon request to the Fairhaven Building Commissioner.'

Mr. Crotty stated it might not be enforceable. Mr. Farrell asked that that last line be reviewed and perhaps stricken. Mr. Carmichael was in favor of striking that line from the bylaw.

Mr. Farrell reiterated what should be deleted from that line, "and shall be made available upon request to the Fairhaven Inspectional Services (which is the Building Commissioner)."

Mr. Hayward asked who the enforcing agency is to make sure they are keeping a log at all. Mr. Farrell stated those records are probably already being done by the portal and a guestbook in the home.

Mr. Hayward asked if Airbnb keeps log of renters for the owners. Mr. Cudmore stated they do provide the information to a certain degree, but not all information on the short-term rentals. He said privately he does keep an excel spreadsheet of his renters, which he knows some of the owners do the same.

Mr. Hayward asked if the on-line system allowed for public registry. Mr. Farrell asked if the phone number and email is public information.

Mr. Carmichael stated that usually on public information it is just referenced the phone number and contact name, and what they are doing (permit only). Mr. Carmichael stated they would only be requesting email and a phone number.

Mr. Farrell asked for public comment, there was none.

Mr. Farrell stated the second point was the owners felt the 180 day limit was excessive.

Mr. Hayward stated he has found in other town bylaws either 90, 180 or one town had 360 days. Mr. Farrell stated he couldn't come up with a reason if someone asked 'why the 90 or 180 days', and believe it should be stricken. Mr. Hayward agrees.

Mr. Crotty stated the assumption is the lower the number the less profitable and the lower you'll have people investing in STR's. He stated he has read studies that Airbnb is very prevalent to the skyrocketing the cost of housing. He said it is a policy decision that needs to be made and that's what's underlining it.

Mr. Foley stated with ninety days, one could still rent in the winter, from Labor to Memorial Day. A winter rental would not count against your STR days.

Mr. Crotty stated it is pretty customary before Airbnb or other short term rentals that summer rents are high and then local people can get winter rentals at a lower rate.

Mr. Carmichael expressed his concern on how he is going to track the number of the days per rental.

Mr. Foley said they have to register with the state and have to pay for each day of each STR once registered. He said that is something the state should be keeping track of. He reiterated that if there is a limit, just the short-term rentals are calculated; any rental after thirty-one days is not counted.

Mr. Carmichael stated he didn't know how he would track or enforce.

Resident and Short-Term Rental owner, Glenn Cudmore stated there are rules in place recommending control. He said it might not be a need of how many days and the state doesn't really know how many days the rental is taking place. He said it would be too hard to figure out, in his opinion.

Mr. Foley stated they are supposed to pay 6% on each of those rentals, so the State should know how many are taking place.

Mr. Cudmore stated he was unsure the 180 days have to be in place.

Planning Board member, David Braga stated he was originally in favor of the lesser number, however after thinking it over and listening to the feedback he believes the policy objectives are still going to be met without a day cap and with it, it may just drive up the rental fees and less tourism for the town. He stated, without it our objectives are still being met. Mr. Farrell agreed.

Mr. Farrell asked if any objection to remove the cap on the number of days per year. Mr. Hayward asked that the whole line be stricken under 190-3-STR Regulations, item B.

Mr. Farrell brought up a third point from the owners who stated they have embraced the three percent fee but were against adding the additional three percent Community Impact Fee as they feel it is overkill. They asked if the Building Department was concerned about additional staffing to this proposed bylaw that the town has already been collecting the 6% fee for a few years and there should be monies in there to assist with that additional staffing.

Mr. Hayward said once the meals and room tax was previously adopted that the Town was already receiving that six percent fee without adopting it. He said he believes they've been getting it all along before the STR law was adopted in 2019. He said the Community Impact fee is altogether a separate article. He also stated that the operators are not paying the three percent fee that is consumer driven tax. "The cost of going on vacation."

Mr. Cudmore stated they worried as a group on the impact that would be for their guests who are renting. He said it's not a hotel rate, but way above that. He said more taxes may eliminate the monies that guests would spend in the town of Fairhaven. He said perhaps later down the road they could review and take it up again, perhaps mandating it in stages.

Mr. Farrell asked Mr. Foley that he put it on review for the following week's meeting. Mr. Hayward asked Mr. Crotty to provide comment on that for next week's meeting as well. Mr. Crotty will follow-

up with Mr. Foley. Mr. Hayward asked that Mr. Crotty be in attendance for the next meeting anyway as he wanted discussion on the Stormwater Advisory Board amendment.

Mr. Farrell referenced point four from the owner's concerns, as they were not in favor of posted signs outside of the property, publicly as they could be the victim of scams, etc.

Mr. Carmichael stated he was fine as long as it was posted inside on the back of the door.

Mr. Hayward stated that maybe they could state the building code for some of these short-term rentals that remove the 'house number' with a phrase that identifies the home (i.e. 'pirate's den'). He said for 911 and other emergencies the house number has to absolutely be on the house.

Mr. Carmichael stated that per the building code the house number has to be seen within 10' of the front door, and it is required by law.

Mr. Cudmore agreed with Mr. Hayward that the number needs to be visible from the street. He stated that some of the owners thought this was in reference to their personal information being posted publicly outside of the home.

Mr. Hayward referenced from the bylaw, 190-7, Posting of Notices, (C), which states: "post the short-term rental registration number on a place card visible from the street in the dwelling's front yard or front door."

Mr. Farrell asked Mr. Foley and Mr. Crotty to clean up the wording, perhaps to remove 'registration number'. Mr. Crotty agreed as he didn't see a problem with not having a registration card on the outside.

Mr. Farrell referenced back to the owners concerns regarding the tax be phased in somehow, as this season is already booked for many of the short-term rentals.

Mr. Hayward said that operators pay monthly to the state and the state pays quarterly to the town.

Mr. Cudmore said that the renters pay through Airbnb and VRBO when they book a short-term rental; and currently most vacationers have already booked and paid that fee. He said as owners they don't pay that fee, it is passed on to the renters. He said the owners are already booked with guaranteed amounts with what people will pay including the taxes at this time.

Mr. Farrell said he understood the challenge and asked if they set the date in future. Ms. Fidalgo asked when the bylaw would take place anyway. Mr. Foley said it would be September at the earliest. Mr. Crotty said by the time it gets through Town Meeting and the Attorney General, it probably wouldn't start until late fall.

Mr. Farrell suggested start date of November 15, 2021 for a community impact fee. Mr. Farrell said he believed they have cleared the owners concerns on this document and they have made it clear they are fully booked for the upcoming season.

Mr. Farrell opened up for public comment.

Mr. Cudmore said he appreciated the discussion the Planning Board has allowed. He said there has been a good working relationship between the two. He said that most of the owners that have short-term rentals have Fairhaven roots and are not looking for trouble. He said they agree that they aren't

looking for corporations to buy up 10, 20, or more houses to provide short-term rentals. He said a lot of the short-term rentals are based on reviews they get from renters. If they get bad reviews, they don't get booked.

Mr. Farrell asked if there was any further public comment, there was none.

Mr. Foley asked if the language was to change on 190-3 (B).

Mr. Hayward stated setting a limit on the number is a zoning amendment change and they should lock it down through the Zoning Bylaw, as the zoning document would accompany this bylaw.

Mr. Crotty stated they did not need to reference the zoning bylaw.

Mr. Hayward argued that it does create a new use in the regulation table with a footnote #23 that reads, "subject to STR Bylaw". He read how the bylaw reads. He said there is teeth in the protection not overwhelmed by more units and it defines the STR bylaw.

Mr. Hayward stated if no cap is passed at Town Meeting, they could then pass over the document, but that the Planning Board would have that control.

Mr. Crotty stated he has concerns over how the enforcement mechanism of Chapter 190 would work. He said what the Planning Board is trying to accomplish and the interpretation may be different; the administrative process could lead someone to take it up with the Zoning Board of Appeals board and that is not the intent of the bylaw. He said he believes the Chapter 190 bylaw needs to be simple and straightforward and not connected to zoning.

Mr. Hayward stated the only avenue for an appeal under the ZBA is that of the number 120 units, anything under that Short-term rental is appealable only to the Building Commissioner. He said he wasn't sure how it could be challenged to the ZBA, as they have no oversight.

Mr. Crotty reiterated that he would just like it to read the cleanest way possible and that the only appeal process is through the Building Commissioner. He doesn't want it to be varied or reinterpreted that it can go to the zoning board. It has to be nice, clean and straightforward.

Mr. Hayward stated the definitions table defines short-term regulation and the use regulation schedule is clear. He stated that currently today short-term rentals are a prohibited use in the Town of Fairhaven.

Mr. Foley asked whether Chapter 190-3 language from (C) should go into (B) for a cap number, or in the intensity use schedule regulation, the cap can be written directly into (B). Mr. Crotty agreed and warned that have a zoning bylaw, attached to a General bylaw has the potential of someone complaining they are "grandfathered" under zoning which may trigger a trip to ZBA. Mr. Farrell stated he was okay with continued discussions between Mr. Crotty and Mr. Foley to iron it out.

Mr. Hayward stated he felt it was hard to use the 'grandfathered' excuse for something that is prohibited currently. Discussion ensued on what is prohibited currently and how it affects the zoning bylaw. Mr. Hayward asked that Mr. Crotty review the current use schedule that does not list short-term rentals, he stated this would establish a new bylaw in town, as it's never been allowed previously.

Mr. Farrell asked if they can regulate the use in a specific district.

Mr. Crotty stated no. He used the example that the town's automobile service station is under a general bylaw. He said it's not a problem to list where the STR's are listed, but if there is a definition of a STR and how that's determined, he said that's a different story that could potentially lead to a zoning administrative process, and that's what his concern is.

Mr. Hayward stated there has to be some kind of control, because they certainly don't want the administrative process to lead to the Zoning Board of Appeals.

Mr. Farrell agreed. He said they could put it in the use regulation table and any language to make sure the administrative process does not go to zoning.

Mr. Crotty stated they should not define the cap number in the zoning bylaw referenced under Chapter 190. He stated they may have a general bylaw that allows the registration of Short-term rentals and caps them.

Mr. Foley recapped the discussion, reviewing (B), "64 active units or less", and stated in the 198-16, Use Regulation table the note F would say "subject to Chapter 190, Short-term Rental Properties." He then stated the definition would refer back to Chapter 190 versus creating its own definition.

Mr. Foley asked if the short term rental definition can be in both Chapter 190 and 198. Mr. Crotty said he didn't see a problem with that as it simply defines it as a separate chapter, as long as it is clearly identifies what is being discussed.

Mr. Carmichael asked if the definition of short-term rentals could be called "single family home" in a residential area. Mr. Farrell asked why as that would be very restrictive. Mr. Crotty agreed stating that would restrict where they could be in town, and they may not just exist in the RA district.

Mr. Crotty stated under Chapter 190, you don't look at zoning; it is enforceable through the Building Department. He said they need to look at the possibility of potential cases in the future that could lead to the process under zoning, which is not the intention of the STR bylaw. Mr. Crotty stated he thinks he could work this through with Mr. Foley to be assured that it stays in the General Bylaw.

Planning Board member, Geoff Haworth states that as a property maintenance business owner he does see some homes on West Island that are short-term rentals but not registered. He said he doesn't think it's out of control but perhaps four or more that aren't on the registration list of the state and feels that should be something they keep in mind. There may be more out there that are not registered as in his experience. Mr. Hayward suggested they continue this to the next meeting and close the public hearing.

Mr. Farrell made a motion to continue the public hearing on STR to May 11, 2021 and was seconded by Jessica Fidalgo. The motion passed unanimously via roll call vote.

ii. **TE 2021 - Definitions and Use Tables:**

Mr. Farrell opened up the public hearing for Chapter 198-16 and 198-33 Use Regulation and word use.

Mr. Farrell recommended open up for public comment; but he said he and Mr. Carmichael worked on a few changes this afternoon and the Board hasn't had a chance to review it. He said it may be something that has to be continued until the next meeting as well.

Mr. Foley stated that language is either being added or removed.

Mr. Hayward asked if they are going to end up with a definition of motel/hotel or are just removing it altogether. He stated he did see proposed changes to remove motel/hotel and the definition of dwelling unit. He asked if it is the proposal to remove all three.

Mr. Foley reviewed the revised document from that Mr. Farrell and Mr. Carmichael provided. Mr. Hayward stated 'dwelling unit' has a new definition. Mr. Carmichael stated this was the state definition for dwelling unit. He asked to strike 'quarters for a single family'.

They reviewed, 'hotel/motel definition' - existing language stays? Mr. Carmichael stated that he believes it should come out as the State has already identified the definition in the law. Mr. Hayward argued that they have it in the use regulation table so the definition needs to be identified.

Mr. Hayward recommended this should be a continued discussion with Mr. Crotty. Mr. Carmichael reiterated that the state defines it. Mr. Crotty suggested specific uses that are in the schedule for any of these need to be defined and should reference the statutory definition. Mr. Carmichael stated he will get the statutory reference. Mr. Foley said he would replace the existing definition with the State definition from MGL.

Mr. Foley reviewed the change for the definition of "variance" and stated this is word for word of the state law. The Town does not include the language that a variance is only supposed to be granted based on very specific aspects such as the soil conditions, shape or topography of a lot.

Mr. Foley reviewed the removal of non-family accommodations and they would use the state definition for motel/hotel. He said "quarters for a family unit" will be stricken from dwelling unit.

Mr. Carmichael stated these are definitions out of the Mass General Law for residential and institutional definitions.

Mr. Foley added that he would remove "private" from docks/piers per the Harbormaster as it's causing confusion.

Mr. Foley asked if it was okay to define short-term rentals in this definition. He will confirm that with Mr. Crotty.

Mr. Carmichael acknowledged the change in the definition of "temporary structures" as it had previously stated a year, but temporary should be 180 days.

Mr. Farrell made a motion to close the public hearing and was seconded by Cathy Melanson. The motion passed unanimously. David Braga had to leave the meeting so was not included in vote.

- ii. **TE 2021- On-Site SPEF for export as accessory in B & I:** Continued Public Hearing on proposed Text Amendment to make changes to 198.29.6, Solar Photovoltaic Energy Facilities (SPEF) to allow on-site SPEF in the B and I Districts to export power as accessory uses by Special Permit.

Mr. Foley described the proposed amendment to the SPEF bylaw is intended to promote more solar in already disturbed areas. Right now all we get is "green" projects filling farm fields and, in other towns, cutting down forests. Luckily Fairhaven had the foresight to not allow that. This would allow existing businesses to export solar energy as an accessory in the Business and Industrial Zones by

Special Permit. He had added language that this could not be a primary use in the B & I districts and if the primary use were to close they would have to disconnect from the grid within 30 days. He said municipal would be exempt. This would only be allowed as an accessory use.

Mr. Hayward shared his concerns as he sees no tie to the Town of Fairhaven with this. He stated he was concerned about vacant property using up these facilities and worried about ground mounts and fences in the business district. He said he would like to see principal building or active business providing goods and/or services to be able to utilize if desired, but he didn't just want to see them along Route 6. He said he wasn't sure how Eversource would rule about this either.

Ms. Fidalgo stated there was someone who wanted to speak on a previous topic.

Mr. Lucas agreed that he doesn't want to see it be a general use for just any business. He said roof solar panels are fine but he didn't just want to see ground mounted anywhere in Business and Industrial zones. He stated it's his opinion they are creating another business on top of a business. Mr. Lucas said he feels this bylaw needs a lot of fine tuning.

Attorney Crotty referencing Article 42 stated it's not specific enough as to what the amendments would be and stated it needs more detail. He said he wasn't sure if they could get it done by June 12th.

Mr. Hayward suggested perhaps a five parking space trigger on-site, that would trigger review.

Mr. Foley suggested not allowing ground mounted for Industrial and Business, only roof mounted and canopies. To Mr. Lucas point he suggested perhaps limiting the amount allowed to be produced to no more than 50% over what they consume.

Mr. Farrell stated it may be difficult to control that aspect.

Mr. Foley said currently they are limited to generating no more than what they are using.

Mr. Farrell suggested they need to think it further with a discussion with Mr. Crotty.

Mr. Carmichael suggested a review of 198-D, as the use schedule may already cover it. And he asked how this may affect our green standards community. Mr. Foley said this would be allowing something that is not currently allowed.

Mr. Farrell stated it needs to be a continued discussion with Mr. Foley and Attorney Crotty. He opened it up for public comment, there was none.

Cathy Melanson made a motion to continue the public hearing for TE 2021- On-Site SPEF for export as accessory in B & I and was seconded by Mr. Farrell. The motion passed, 6-1 with Mr. Hayward in opposition.

Mr. Farrell invited resident only named, "Abbie" to speak.

Resident only identified as Ms. Abbie stated she's been following short-term regulations, and back in 2018 she started her short term rental looking for regulations on the Town website but there were none.

Mr. Farrell agreed stating that is why they are working on it now. Ms. Abbie had a bad connection and was not coming across clearly, therefore after a few minutes, Mr. Farrell continued the meeting.

Mr. Farrell made a motion to adjourn and was seconded by Cathy Melanson. On the question, Mr. Foley asked about the discussion on the Community Impact Fee. Mr. Farrell didn't feel it was on the agenda, but Mr. Foley pointed it out where it was for discussion under the Short-Term Rentals.

Mr. Farrell stated he would have to add it to their next meeting.

The meeting was adjourned unanimously via roll call vote. Meeting adjourned at 10:00 p.m.

Respectively,

Patricia A Pacella
Recording Secretary