



FAIRHAVEN PLANNING BOARD

Town Hall • 40 Center Street • Fairhaven, MA 02719
Telephone (508) 979-4082 • FAX (508) 979-4087

Fairhaven Planning Board *Minutes*
Tuesday May 11, 2021– 7:15pm
Town Hall, 40 Center Street,
Fairhaven MA 02719

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FAIRHAVEN,
MASS.

1. GENERAL BUSINESS

- a) Chair's Welcome and Media Notification
- b) **Quorum/Attendance: Present:** Chairperson, John Farrell, Wayne Hayward, Geoff Hawthorth, David Braga, Cathy Melanson, Jeffrey Lucas were present via Zoom and Rene Fleurent was in Town Hall.

Absent: Jessica Fidalgo

Mr. Foley, the Town Planner, attended the Meeting in the Banquet Room at Town Hall.

- c) **Minutes:** May 4, 2021 draft to be reviewed: Mr. Hayward advised he did not receive the minutes; however Mr. Foley advised that the email was sent on Friday, May 7, 2021 with the minutes attached.

Mr. Farrell asked Mr. Foley to send a ticket to IT advising that Mr. Hayward is not receiving some emails to his fairhaven-ma.gov email.

John Farrell made a motion to accept the minutes as presented and was seconded by Jeffrey Lucas. Rene Fleurent, Wayne Hayward, and David Braga abstained. The motion passed 3-0-3 in favor.

- 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)*

Mr. Foley reviewed the continued public hearing for the General Bylaw Amendment to regulate Short-Term Rentals (STR). He noted this the third public hearing and that the owner-occupied primary dwelling clause was removed as well as the limits on number of registrations per owner; and the limit of number of days per year was also removed. Mr. Foley explained the cap on the total number of STR allowed in Town would be 64 active units until December 31, 2022, and thereafter not more than 120 STR's shall be allowed at any one time.

He reviewed the registration process that owners would be required to complete a Fairhaven STR application with the building department and a yearly fee of \$200. They would also be required to show proof they are registered with the State.

Mr. Lucas had a few comments regarding proof of insurance for STR's asking if that is a state mandate or will be included in the application process. Mr. Foley said right now the state mandates that when they register with them.

Mr. Lucas asked for the \$200 fee to be written so that if needs to be updated it doesn't have to go back to Town Meeting to increase.

Mr. Hayward asked who would be able to modify the Chapter 190 general bylaw anyway. He said originally it was written that the Town Administrator would be able to increase the fee. Mr. Hayward stated that current Planning Board fees are updated by the Planning Department.

Mr. Braga referred to a bylaw that building department permit fees are increased by the Selectboard.

Mr. Lucas asked about two-year inspections by Building Commissioner vs. every year. Mr. Farrell stated he had a conversation with the building inspector and he said he would like every two years for the inspections. It was noted that in the current draft the registrations are annual but inspection is every two years.

Mr. Lucas had a couple minor housekeeping items. Referring to number 5 and 6 (G), and (J) it reads Fairhaven Building Commissioner or inspector, he asked Mr. Foley to review the text so that it's uniform and consistent.

Mr. Hayward asked for a point of order as he wasn't sure they were are all looking at the same bylaw. He said in his copy there is no "J". Mr. Lucas referred to page 5, (J). Everyone was comfortable that they were reviewing the same document. Mr. Lucas asked about the definition of "inspectional departments", which Mr. Foley stated was defined and means all the departments as advised.

Mr. Farrell asked for that to be removed, per Attorney Crotty.

Mr. Haworth asked if the final approved draft was seen by Attorney Crotty. Mr. Foley stated he would speak to him again and review the last of edits as being made tonight.

Mr. Fleurent stated, in his opinion he would like to see the owner-occupied kept in the new bylaw.

Mr. Farrell asked if Mr. Fleurent has filed a Mullins, to which Mr. Fleurent stated no.

Mr. Farrell explained that the Planning Board has reviewed this bylaw over quite a number of meetings and with the public's input; and although he appreciated Mr. Fleurent's comments he did advise that Mr. Fleurent has missed too many meetings to now question a consensus of keeping something in the bylaw. Mr. Farrell advised that Mr. Fleurent's words are misplaced at this time. Mr. Fleurent had no further comments.

Mr. Braga noted to remove Town Manager and replace with Town Administrator.

Mr. Hayward stated that registration is required yearly, but inspections will be done every two years. He stated that was one of the reasons why it was capped. Mr. Hayward stated he didn't believe a Mullin's is required for this type of discussion. He referred to owner occupied and number of days is being removed together.

Resident, Mr. Cudmore an STR owner referred to "190-6: STR Registration to be published to the town's website", and stated the owners had concern over their personal information posted on a public website. He also referenced, 190-7, whereas the registration number would have to be outside the dwelling posted.

Mr. Farrell stated he remembered this was discussed at length at a previous meeting and there was discussion that they remove placards from the outside and place inside behind a door. Mr. Hayward stated he was of the opinion that it protected the homeowner.

Mr. Cudmore stated he doesn't want it on the outside of the house. Mr. Hayward stated he thought if someone has a problem with someone at the home they don't have the registration number to contact someone. Mr. Cudmore stated they would call the police if there was an issue. Mr. Farrell stated he didn't agree with this part of the draft STR bylaw. Ms. Melanson said she didn't agree with it being outside and she remembers they agreed to place the registration number behind a door inside.

Mr. Farrell stated the guests know who to contact if there is a problem and he feels this section as written is overstepping if it is requiring a placard identifying the house as an STR.

Mr. Braga stated he understood both points of view.

Mr. Haworth stated he believes a data base with the police department and building commissioner set up from the onset would solve that concern from the beginning. He agreed that it doesn't need to be posted outside, as less noticeable is a better resolution. Mr. Lucas stated he doesn't have a problem with it not being on the outside of the home.

Mr. Cudmore referred to 190-C, which states a phone number is available 24/7. He stated as a STR owner, they want the police departments to call them 24/7 should there be a problem. Mr. Cudmore also stated that per 190-21, regarding room excise and community fees that they had all discussed the 3% fee and feel they shouldn't have to pay more than what the hotels do.

Mr. Hayward explained that 190-21 nearly notifies that there may be a tax involved. Mr. Foley explained the separate votes that will take place on this bylaw.

More discussion ensued on the phone number being accessed in case of emergency or on a 24/7 availability. Mr. Farrell asked if the data base would have that information listed. Mr. Foley stated that the state has two lists. One with all of the information that they keep confidential and a second database with registrations noting the street only that is public.

Mr. Farrell stated it didn't make sense to him to have the contact information as public information. Mr. Cudmore stated the owners would prefer their contact information not being out as public information.

Mr. Braga suggested a change in wording for 190-3 (H), fees to read somewhat like this: "The fee for a STR registration or a renewal of a registration shall be established and revised from time to time by the Board of Selectmen."

Mr. Farrell stated this needs to be discussed with Attorney Crotty on who the governing board should be to increase fees, when necessary.

Mr. Hayward stated he was concerned more about the cap numbers and how that gets changed in this general bylaw. Mr. Foley stated he thought it would need a public hearing before it goes to town meeting, the same process as this bylaw is going through now.

Mr. Hayward stated he was concerned that anyone could just arbitrary up the cap or fees without notice.

Mr. Farrell stated he would like to hear Attorney Crotty's opinion on who that governing board should be or if it should be Town Meeting. Mr. Foley stated he will review the language with Attorney Crotty.

Mr. Farrell made a motion to remove the requirements of exterior signage in any form on these STR's and was seconded by Jeffrey Lucas. (190-7 C removed). On the question, Mr. Hayward stated these places do have other signs on them.

Mr. Farrell amended his motion to remove 190-7 C and was seconded by Jeff Lucas. The motion passed 5-1-1 with Mr. Hayward in opposition and Rene Fleurent abstaining.

Mr. Cudmore referred to 190-11, "Ineligible Units" stating that perhaps this was copied/pasted from Barnstable, but wouldn't apply to Fairhaven.

Mr. Foley said that Barnstable has a whole section in their bylaws on Problem Properties and that Boston has a Task Force. While there is no state definition for problem properties you know one when you see it. He suggested that we would eventually want to define it.

Mr. Fleurent who is to say what a problem property is. He asked if it was one offense or one complaint, illegal activity or other and would like to see it defined. Mr. Hayward stated he would be amicable to remove the line.

Wayne Hayward made a motion to remove the line 190-11, E and was seconded by John Farrell. On the question, Mr. Lucas asked why they couldn't define it in the definition table.

Mr. Farrell advised Mr. Foley to look into the nuisance law with Chief Myers. Mr. Cudmore stated Fairhaven does not have that bylaw and that civil citation exists for a nuisance complaint.

The motion passed 4-2-1, with Rene Fleurent and Jeff Lucas in opposition, and Mr. Hayward abstaining.

Mr. Foley asked for clarification as to the Boards thoughts in 190-6, the Good Neighbor policy which states that STR Registrations will be published to the Town's website. He said they had discussed the short-term rental locations could be written as 'shall be furnished to the Town departments, Building, Planning, Police.'

Mr. Farrell made a motion to remove 190-6, "Good Neighborhood Information" and also remove 190-5 (C), and was seconded by Mr. Haworth. On the question, Mr. Fleurent asked where the information of the STR's would be made public.

Mr. Farrell stated he believes in privacy, and although they have produced a great bylaw, there will be a database in the Building Department that the Police Department will also have access to. He stated he believes this goes over and above to have that information in 190-6.

Further on the question, Mr. Hayward stated there is no way for the public to know where these are located. He said nowadays he can go on the Town websites and find out more information about people's houses, mortgages and other, but won't be able to find out where people are hosting STR's.

Mr. Farrell called for a vote on the motion. Mr. Hayward and Mr. Fleurent were in opposition, with the rest of the board in favor. The motion passed 4-2-0.

Mr. Haworth stated he had Mr. Hobson on his phone and wanted to speak.

Resident, Robert Hobson stated that he felt that if homes were going to be rented by the day and or the night, that neighbors should be able to get noticed and have a discussion about it.

Mr. Farrell asked if there was any discussion on Mr. Hobson's concern. Mr. Haworth stated he agreed with Mr. Hobson's assessment and would like for the notification to stay within the bylaw. He feels that the neighbors should be notified of short-term rentals in their neighborhood. Mr. Farrell stated he agreed.

Mr. Cudmore stated they agreed neighbors should get notified as they are the watchdogs.

Mr. Farrell asked if they should be continuing. Mr. Foley stated he thinks it should go to a vote; it's either going to go forward or not.

Mr. Farrell called on 'iphone3' but with no response. Mr. Farrell read the chat information that was on the Zoom.

Mr. Haworth asked if they want to wait until Attorney Crotty should weigh in on the changes. Mr. Farrell stated he would like to continue. Mr. Hayward recommends they not close the public hearing as the document that might come back from Attorney Crotty may not be the same as was sent to him originally.

Jeff Lucas made a motion to continue the hearing to their next meeting of May 25, 2021 and was seconded by Mr. Farrell. The motion passed unanimously via roll call vote.

- ii. GB 2021 Community Impact Fee: Cont'd Public Hearing on a General Bylaw Amendment on whether or not to impose up to a 3% Community Impact Fee on Short Term Rentals.

Mr. Foley advised how it works currently with the Town receiving 6% as the Hotel Room Occupancy tax which applies to Short Term Rentals as of July 2019. He stated this is a two-part vote, with a 'up to 3%' Community Impact fee on STR's that are professionally managed and the second vote would be on STR's of two to three family housing in a primary residences.

Mr. Foley stated that there has been some pushback from the STR owners. On the other hand the Building Commissioner stated that he may need extra help and the suggestion would be that perhaps this fee could help pay for any assistance. Mr. Foley noted the fee is pushed right to the renters of the properties. He stated the 6% goes to the State and then the state disburses it back to the Town. The Hotels Room Occupancy tax goes to the General Fund. He said if the Town were to adopt the 3% Community Impact Fee that one-third would have to go to either infrastructure or affordable housing and two-thirds could go to the General Fund.

Mr. Hayward stated he believes the 3% is in order.

Mr. Fleurent asked how are these fees are regulated. Mr. Foley stated it is regulated on the state level. Mr. Hayward added it is effortless on the town's part and the state is already doing all that. He stated once they are notified that the Town of Fairhaven has adopted the community impact fee the state takes care of it.

David Braga asked about the term, 'professional management rentals' as he didn't recall seeing something in the bylaw referring to that language. Mr. Hayward stated the classifications were removed and not identified by our bylaw. His understanding is that all STR's would have to pay the community impact fee.

Mr. Cudmore stated that STR owners would push that fee to the renters. He stated since the bylaw requires the \$200 registration fee with the Town annually, that perhaps that could help with cost of any needed assistance. Mr. Cudmore stated that perhaps the impact fee could be put through further down the road.

Mr. Hayward stated that 65% goes into general fund and 35% goes to targeting affordable housing. He stated this is a rapidly growing industry that is having an impact on affordable housing in other communities and he is glad the state has incorporated this into the legislation that is allowing the STR.

Cathy Melanson made a motion to recommend the Community Impact Fee for professional managed but verify the wording and was seconded by David Braga. Mr. Hayward stated the wording comes from the state and cannot be adjusted and Mr. Foley agreed. The motion passed unanimously via roll call vote (7-0).

Cathy Melanson made a motion to recommend the Community Impact Fee for 2-3 family dwelling of which one is a primary residence and was seconded by Mr. Hayward. The motion passed unanimously via roll call vote.

- iii. TE 2021-Definitions and Use Tables: Continued Public Hearing on proposed Text Amendments to make changes to 198-33, Definitions and word use.

Mr. Farrell opened up the TE2021-Definitions and Use Tables continued public hearing.

Mr. Foley reviewed the proposed additions, most of which are intended to help the building inspector with enforcement. Mr. Farrell stated these were the Massachusetts definitions. Mr. Foley reviewed those definitions that were changed.

Mr. Haworth asked for a definition of a 'portable' vs. 'temporary' structure. As this has been brought up on another matter in Town.

Mr. Farrell asked Mr. Foley to review the definition for the "portable structure" with Mr. Carmichael using the example of three portable houses on an empty lot and then used as a STR.

Mr. Lucas asked about 'portable carports' and if that was what Mr. Haworth is referring to. Mr. Haworth stated that he was referring to a portable structure/container and saying they are not technically structures.

Cathy Melanson made a motion to continue TE2021 definitions and use tables to May 25, 2021 and the motion was seconded by Mr. Hayward. On the question, Mr. Lucas wanted to make sure there were no other issues to clarify. Mr. Farrell agreed and asked if there was any public comment, as there was none.

The motion passed unanimously via roll call vote 7-0.

- iv. TE 2021- Use Regulation Tables: Cont'd Public Hearing on whether to make changes to 198-16, the Use Regulation Table relative to proposed new bylaws.

Mr. Foley referred to this discussion as putting STR on the use regulation table with a footnote as listed, note 23: Pursuant to Chapter 190 Short Term Rental Properties." Mr. Foley stated that Attorney Crotty suggested keeping it away from zoning as much as possible and that it did not need to be in the Intensity of Use Schedule, 198-17.

Mr. Hayward made a motion to recommend with the footnote as indicated and was seconded by Ms. Melanson. The motion passed unanimously via roll call vote. (7-0).

- v. TE 2021- On-Site SPEF for export as accessory in B & I: To be withdrawn.

Mr. Farrell opened the discussion on TE 2021-On Site SPEF.

Mr. Foley stated there was not much support on it and it is being withdrawn at this time.

- vi. SP 2021-01 - Bijou Theater Building Apartments: To be continued to May 25.

Mr. Foley stated they asked for a continuance as the parking lot site plan was not ready.

Mr. Farrell again reviewed with applicants coming before the Planning Board that if they were not prepared they would not be on the agenda.

John Farrell made a motion to continue SP 2021-01, Bijou Theater Building Apartments to May 25, 2021 at the applicant's request and was seconded by Ms. Melanson. The motion carried unanimously, 7-0.

- vii. DS 2021-02 - Hermeneau Frederick Ave: To be continued to May 25.

John Farrell made a motion to continue to May 25, 2021 and was seconded by Ms. Melanson. The motion passed unanimously via roll call vote, 7-0.

b) Other Reviews:

- i. Chapter 194 - Stormwater Management: Continued discussion on amendments proposed by Board of Public Works.

DPW Superintendent, Vinnie Furtado was present. Melissa Recos, Consultant with BETA Group working with DPW was also present.

Mr. Foley stated there were a few changes with some added definitions. Mr. Foley said that the 'reviewing board' would be comprised of either planning or conservation commission and would be identified the Stormwater oversight group (SWO Group) to identify the correct board to review stormwater. Under 194-4, the SWO will replace the Board of Public Works as a mechanism to ensure that something that doesn't come to planning or conservation commission will be identified to be reviewed by one of those boards per the SWO based on the type of project, type of activities proposed, location or other relevant criteria.

Mr. Foley advised there have not been any instances yet but when it does happen the Board of Public Works is replaced with SWO in this document to make sure either Planning or Conservation reviews.

194-9 Stormwater Management Plan. "the plan shall meet the standards defined in bylaw 198-31.1 A."

Ms. Recos reviewed the changes and the process to date. Mr. Furtado gave an overview of his thoughts on the bylaw.

Mr. Hayward advised that he feels the problem is there are two competing boards with two competing standards and doesn't feel this solves that problem. He said the issue will still be present with the changes to the document. He referred to 194-7 "to either the Conservation or Planning Board" and his concern is there are no guidelines or procedures. He stated without parameters there is no continuity on how to send someone to one board or the other. He said he doesn't understand how the SWO will choose which board to go to regarding stormwater regulations. Mr. Hayward stated he didn't believe Melissa or Mr. Furtado knew how the Planning Board works. This is an opportunity for Planning Board to get stripped of its rules and regulations.

Ms. Recos stated they are not taking away from anyone's jurisdiction but clarifying the applicability in 194-4, which has been approved through either Planning Board or Conservation. She said this is an opportunity to catch those projects that might otherwise fall through the cracks.

Mr. Hayward stated that engineers that have come in front of the board in the last few years complaining why they have to go in front of two boards for stormwater. This solidifies what's happening today.

Mr. Farrell asked specific questions to Ms. Recos on how many communities in the Commonwealth she has helped. Ms. Recos responded twelve and most are striving to adopt these bylaws. She stated that one community is similar to Fairhaven, the difference is that they are 'choosing' a board.

Mr. Farrell stated he was unsure this would even get passed at the Attorney General's office.

Ms. Recos stated that most towns are identifying one board for stormwater review.

Ms. Recos stated in her opinion, she would choose a board to review the regulations. She stated she has seen many Towns give a threshold; perhaps less than one acre or more than, would give to one board versus another. They are also discussing lowering the threshold for a disturbance permit. In some Towns they make the permits under a certain amount an administrative review that may or may not require Board review.

Mr. Furtado wanted to explain that Ms. Recos was originally hired to look at the current language of the bylaw (194) that hadn't been updated in a few years. He agreed there shouldn't be competing boards. He also advised that this was nothing to do with stormwater regulations, but to tackle the projects that slip through the cracks.

Mr. Hayward explained that the EPA requires every state to do MS4 permitting, no question. He also stated the need to tighten up our regulations for sure, however in some towns it is being reviewed by Selectmen, Planning, Conservation and they are just looking at the end goal. He explained what has been done in the Town of Fairhaven, when a subdivision goes in, that kicks in our regulations to proceed with stormwater and peer reviewer under 322. Mr. Hayward went on to explain how he feels this document perpetuates the problem.

Mr. Haworth stated he is going to put on his 'chairman of Conservation Commission hat'. He stated he understood where Mr. Hayward is coming from and agrees there has been a lot of back and forth in the past two years. However, he stated that part of Conservation's review is of the regulations to stormwater and stormwater regulations through the Planning Board. He stated that Concom reviews and protects in the buffer zone.

Mr. Farrell stated it has to be a cleaner document. It can't be 'loosey/goosey'.

Mr. Haworth stated it's not 'competing boards' but everyone should try to work together to best serve the residents of Fairhaven. He stated that Conservation already has an administrative review process in place and they advise of erosion control on every single Notice of Intent that goes through them. He was of the opinion that an SWO group may not be needed, and they need to figure out how to proceed with an administrative approval process.

Mr. Farrell agreed it wasn't a turf war. He stated that Conservation is an appointed board and looking forward they don't know who's going to be on the board next. He said everyone would agree that there are problems with electoral breakdown in the past year, and everything written needs to be firm and very specific.

Mr. Haworth agreed that everything needs to be narrowed down, simply stated and figured out how it will work for all included.

Mr. Farrell agreed and stated they are also here for the applicants as well and the process needs to be streamlined. He said it is up to them to make it better.

Mr. Lucas asked if Conservation have adopted Planning Board stormwater regulations they could come up with the same process, it may streamline things and then ask the peer reviewer to come in.

Mr. Farrell stated he was not sure they can.

Mr. Haworth explained they already are required to meet the Planning Board standards. He said they first approve what's in the buffer zone and then wetlands, resource area. He said Conservation's jurisdiction is in the sensitive area only.

Mr. Hayward stated they have authority to enforce DEP standard stormwater regulations but not sure they can do zoning/planning regulations. Mr. Hayward gave examples of Hiller Avenue and then Lewis Landing before ever showing plans to the Planning Board. He said in the past it's always been done simultaneously and that's what should be done. Mr. Hayward stated that the document says one or the other, and that isn't specific enough. Mr. Farrell agreed that the document is not specific enough.

Mr. Haworth stated in the past at Conservation plans got rubber stamped, whereas people weren't doing their job. He said Conservation is doing what they are tasked to do and people are being held accountable.

Mr. Farrell stated he has never watched Conservation Meetings but he understood at one time there was a state consultant on the board and inquired how that took place. Mr. Haworth stated there was a wetland scientist that was on the board as a consultant only through a grant that paid him, as at that time the Conservation agent was only a 10 hour a week position and a lot of things were falling by the wayside. Mr. Haworth stated that large peer reviews are still being done as in the past.

There was continued discussion between Mr. Haworth and Mr. Farrell on what the changes have been on Conservation in the last few years and how they could proceed to work together to move forward. Both agreed that the processes need to be done simultaneously.

Mr. Farrell stated he was happy there was great dialogue around this subject and wanted it to continue. He stated he heard that Mr. Haworth is not in favor of this 194-4, Mr. Hayward was not in favor, and he, himself was not in favor. He asked for other board members to express their opinion.

Mr. Braga didn't have any additional comments, but stated he agreed that it shouldn't be a one board versus the other board. Ms. Melanson stated it needs to be a smoother process and a lot more discussion needs to take place. Mr. Fleurent stated he is still struggling with it and certainly needs more discussion.

Mr. Haworth did state as it stands right now, DPW would review it if not in front of Planning or Conservation. He suggested that himself, Mr. Farrell, Mr. Foley and Ms. McClees have a discussion within the next week.

Mr. Farrell stated that the planner should be appointed to resolve.

- ii. Receipt of Plan - Hathaway Road: From A (ANR) to redraw the lot lines between the four residences at 34-40 Hathaway Street
- iii.

Mr. Foley stated they will be looking at it at the next meeting for review and discussion as they are trying to sell one of the lots and making more sense of the lines.

Cathy Melanson made a motion to adjourn and was seconded by John Farrell. Motion passed unanimously via roll call vote at 10:25p.m.

Respectively,

Patricia Pacella
Recording Secretary