



FAIRHAVEN PLANNING BOARD

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Fairhaven Planning Board *Minutes*
Tuesday, July 13, 2021– 6:30pm

FAIRHAVEN,
MASS.

1. **GENERAL BUSINESS:**

- a) **Chair's Welcome and Media Notification:** Mr. Farrell opened the meeting at 6:32pm and noted that the meeting was taking place via Zoom and was being recorded and televised.
- b) **Quorum/Attendance: Present:** Chairperson, John Farrell, Vice Chairperson, Wayne Hayward, Jeffrey Lucas, Rene Fleurent, Cathy Melanson and David Braga. Jessica Fidalgo arrived late.
- Absent:** Geoff Haworth
- Congratulations was expressed to Ms. Fidalgo and the birth of her child, Alice.
- c) **Minutes June 22, 2021 drafts to be reviewed:** Ms. Melanson made a motion to approve the minutes of June 22, 2021 and was seconded by Jeff Lucas. The motion passed unanimously via roll call vote. (6-0).
- d) **Planning Board Bills:** None.
- e) **Planning Board Appointment to Rogers Re-Use Committee:** Mr. Farrell advised that the Rogers Re-Use Committee requests an appointment from the Planning Board. He said Ms. Melanson has expressed interest in serving on this committee. Mr. Farrell asked if her interest was in representing this board or the Economic Development Committee.

Mr. Hayward asked if Ms. Melanson had an opinion between selling and leasing the building. Ms. Melanson stated she would keep the best interest of the Town in mind when making her decision. She said she would be listening to all sides and choose what would be the best fit in that neighborhood and for the Town.

Mr. Hayward asked a question to Attorney Crotty who was on the Zoom Call. He noted that under Chapter 65, the Planning Board is supposed to be engaged in a sale with any town property, and asked if Attorney Crotty had any idea why the Planning Board has not been asked to engage in the review of Rogers School to this point. Attorney Crotty said he did not know why the Planning Board has not been asked.

Mr. Hayward said the lack of zoning and planning experience that has been shown with this property is overwhelming and stated his frustration that the Planning Board has the authority under Chapter 65 to review this project and has not been asked anything. He said the Rogers Committee have met behind closed doors for eight years with no minutes and no videos. He said he is bothered that the Planning Board has not been asked to express their experienced opinion.

Mr. Fleurent asked what procedures need to take place that the Planning Board gets involved in this process to properly do our due diligence. Mr. Farrell said he thinks that the Select Board needs to expand the Rogers School Re-use Committee. Mr. Fleurent requested that perhaps two members of the Planning Board be asked to be on the board. Mr. Hayward asked who on the Economic Development, has Zoning experience. He asked

if the Rogers School Committee are still an ad-hoc committee. Attorney Crotty stated he believe it is an ad-hoc committee to receive proposals only and advise back to the Select Board.

Mr. Hayward suggested someone should file an open meeting law violation against a committee who doesn't post when they are meeting. Mr. Farrell asked if they would like to push this back a meeting for further discussion. Mr. Hayward said he didn't understand what the Select Board and the Rogers Re-Use Committee was doing as they were not handling it in the correct manner.

Ms. Melanson asked if someone wants to build or reuse the property that they would have to come back to the Planning Board. Mr. Farrell agreed it does but it comes to the Planning Board at the end rather than the beginning of the process. He said his concerns were that the Rogers Re-Use Committee was appearing more as a Steering Committee than an advisory Re-Use Committee.

Mr. Lucas noted one exemption to the Rogers School coming to the Planning Board at all would be if a developer decided to do a 40B, as the Oxford School did. They came before the Planning Board only as a courtesy. Mr. Foley said there may be a grant that could be applied to for assistance with the Rogers School situation. He will put this topic on the next agenda.

2. **PUBLIC HEARINGS:**

a) Public Hearings:

- i. **SP 2021-02 - Crow Island:** Continued Public Hearing on proposal to create a destination for events such as weddings, corporate outings, parties and other special events on Crow Island.

Mr. Foley said the applicant wanted to continue to August 10, 2021 but hadn't done that in writing as of yet. He did get that verbally.

Wayne Hayward made a motion to continue to August 10, 2021 per the applicant's request and was seconded by John Farrell. On the question, Mr. Hayward stated the ninety days doesn't start until the public hearing is over. The motion passed unanimously. (6-0).

- ii. **SP 2021-01 – Bijou Theater Building Apartments:** Continued Public Hearing on proposal to renovate residential apartments and commercial mixed-use in former theater building.

Mr. Farrell opened up the public hearing. Mr. Foley said that Mr. Fleurent would need to file a Mullins. He stated Ms. Fidalgo would need to be in attendance for a quorum on this project. Ms. Fidalgo was on the zoom meeting as of 7:19p.m. Mr. Farrell reopened up the public hearing.

Attorney Medeiros was on the call and advised there was a new plan with revisions. He explained the buffer area to the north of the lot with dappled willows on the plan. He said there is a full intent to keep the mature trees on the North and West of the lot.

Mr. Foley reviewed the standard and specific conditions on the plan. He said there are fifteen standard conditions eight requested waivers from the street standards and five specific conditions for this project. He said they should add that if and when the applicant does propose a use for the Theatre space that it would trigger them to come back to the Planning Board for Special Permit Review.

Mr. Fleurent asked why they are not asking for the parking lot to be completed correctly. Why are they keeping it a gravel or dirt parking lot?

Mr. Farrell noted he is ineligible to vote as he missed a meeting. He stated that the applicant has asked for it to remain the same way. Mr. Hayward said he interpreted it that what's there now is dirt and they are proposing gravel, which is an improvement.

Mr. Hayward asked about the ingress/egress to the buildings. He asked if the front of the building is access for the residents. He asked if the 10' door would be used for the residents.

Attorney Medeiros stated the access is from the front of the building and nineteen spaces are available for parking. Mr. Hayward was concerned about the single in/out access on Main Street.

Mr. Lucas said this should be an improvement to what was there and where it was built in the 1900's. He said he too had concern for the residents living there. Mr. Farrell said we do not look within the four walls and don't have that purview to discuss the apartments. Mr. Farrell stated these concerns would be addressed by the building department and tied to an occupancy permit.

Attorney Medeiros stated that the layout of the building has always been that way. He said the apartments on the second and third floor have two separate points of entry on Main Street. He said this issue will be discussed by the Building Department in the future. He said there are some concerns on the gravel parking lot and he understands those. Mr. Hayward asked where the stairwell to the right leads to and was told it was available to the tenants on the second floor.

Mr. Farrell made a motion to approve SP2021-01 Bijou Apartments with the fifteen standard conditions, eight waivers and five specific conditions as noted in the staff report and modified. Mr. Farrell stated number five to be removed and added that if the theatre is to be utilized they would have to come back and to add an emergency access to the back of the building for a right away.

Mr. Foley reviewed the specific conditions with the board and applicant. He asked to clarify that on the Bijou specific conditions if the Board wanted to remove the current #5 condition in the staff report and add replace it with a condition that if the theater is going to be utilized, they would have to be referred back to the Planning Board for special permit review. He suggested possible a #6 regarding requiring the emergency access in the back be connected before a certificate of occupancy be issued.

Attorney Medeiros said if it is the fire escape they are referencing for #6 specific condition than they would be fine with that. Mr. Foley said the fire escape would be for emergency access not for daily ingress.

Mr. Hayward noted there is a rear access or right of way on the north side to Morgan Street as well. Mr. Farrell stated that these are the purview of the Building Commissioner. Mr. Hayward said it is under the purview of the Planning Board to gather information on all egresses.

Attorney Medeiros stated he would like to review condition #2 and said his client is concerned with the wording, "the number of residential units allowed shall be determined by the Building Commissioner with respect to code and safety issues." He said they feel that the Building Commissioner might not be agreeable to the fifteen apartments that already exist. He said he'd rather see that sentence removed.

Mr. Hayward suggested it read, 'not to exceed fifteen apartments' which was amicable to the applicant. Mr. Farrell stated that specific condition number two, would be amended to "*The number of residential units allowed will be no more than fifteen.*"

Mr. Foley stated there was fifteen standard conditions, eight waivers and five specific conditions.

Mr. Farrell amended his motion to approve SP 2021-01 Bijou Apartments with the fifteen conditions, eight waivers and five specific conditions as discussed and amended and was seconded by Cathy Melanson. The motion passed unanimously with Mr. Fleurent abstaining. (6-0-1)

- iii. **SP 2021-03 – Lewis Landing/Huttleston Multi-Unit Condominiums:** Continued Public Hearing on proposal to create twelve (12) 2-bedroom condominiums in four buildings on 2.5-acre on Huttleston Ave (Map 31 Lot 117C).

Mr. Foley reviewed that everyone would be eligible to vote except for Mr. Haworth who is not present this evening. Mr. Farrell opened up the public hearing.

Mr. Foley reported that the revised plan was submitted showing a 20' easement on either side of the culvert to the manhole and through the property. They also moved the sign back 20' from the property line. They also submitted an operations and maintenance plan for stormwater and the maintenance plan for the landscape. Mr. Rheaume stated that what Mr. Foley mentioned was all they had to add to the project.

Mr. Hayward stated we usually receive the condominium documents and usually they are approved by Town Counsel before we approve it. He said it doesn't seem like we have those in hand. Mr. Rheaume stated they were approved by Town Counsel. He said they submitted the documents and Attorney Crotty made comments and they made revisions and it was approved. He said the Town was in possession of them.

Mr. Foley said they did submit condo documents that were reviewed by Town Counsel. He stated he added a potential condition that final condominium documents would be reviewed and approved before Certificate of Occupancy and listed a number of things that they need to contain.

Mr. Hayward asked if the Applicant has begun their negotiations with DOT regarding the curb cut. Mr. Rheaume stated they cannot begin discussions until the project is approved. Mr. Hayward asked if they will begin those discussions prior to getting the Building Permit and Mr. Rheaume said they would.

Mr. Hayward asked about the O&M Plan for the stormwater system. He said he would like to have them change the O&M plan to say "4 houses" as opposed to "5 houses". And Mr. Hayward requested the maintenance plan be more specific regarding the clear view triangle on the property, to perpetually keep it clear. He said his biggest concern is ingress/egress. Mr. Hayward asked if any conditions should address the manhole.

Mr. Rheaume stated he didn't think the manhole had to be addressed; he did say he could add it that it needs to be annually inspected. He said he would be fine with that on the plan.

Mr. Farrell asked about the conditions and waivers. Mr. Foley reviewed the twenty standard conditions and then the seven Lewis Landing specific conditions and four waivers. The applicant stated he agreed with all conditions.

He said they would add in the landscape plan and maintenance plan that of the manhole and in the Stormwater Plan the "four versus five" houses needs to be amended. Mr. Rheaume stated they are also adding to the landscape plan that the clear view triangle needs to be maintained.

Mr. Hayward asked for clarification on the side slope if that can be overridden by DEP. Mr. Rheaume stated that DEP has never stepped in, and they have always done this waiver in their projects. Mr. Foley said it was his

understanding that there is one waiver from the Stormwater Handbook that is not in front of the Planning Board but which will be reviewed by the state.

Mr. Farrell opened it up for public comment.

Mr. Nate Bekemeier was on the zoom call. He thanked the board for their due diligence on this project but as an abutter and neighbor to this project, he stated his objection to the project. He reiterated previous testimony that this is a bad site with poor soils and drainage and that Town Meeting did not understand the site and its deficiencies when it allowed up to 12 units.

Ms. Ann Richard shared concerns about the flooding to the neighbors behind the property in regards to the manhole. She asked how the reassurance to homeowners in the area would be better than it is currently.

Mr. Rheume stated they were given vigorous review from peer consultants hired by the Town, to their plan and advised how to resolve the problem with this manhole. He said it has been verified by the Town consultant's that this was going to improve the current problem.

Ms. Richard asked Mr. Rheume if he would be amenable to any changes from the neighbor's perspective. Mr. Rheume stated they found problems in the neighborhood with the water being flooded out and they believe they are making every concession to help that problem. They said they have designed a way to fix the problem and it was agreeable with the Town's consultant. He said the Planning Board is inclined to make things better than they are now and they are doing that.

Mr. Hayward reiterated that Mr. Rheume needs to return to Conservation for approval for the pipe as well as the manhole cover in the wetlands prior to a Certificate of Occupancy. Mr. Rheume stated he is aware they need to go to Conservation and obviously to get one set of plans approved by both the Planning Board and Conservation.

Mr. Farrell ended public comment.

Mr. Hayward stated his opinion that he understands that the abutters don't like this project and perhaps some of the Planning Board members don't either. However he said by law, if the parties are meeting the rules and regulations of the Town of Fairhaven they should approve the application. He said they have brought up every issue they could think of and the engineer has mitigated the problem in one way or another. He said would he like to see the buildings different, yes, and he is not 100% happy about looking at this everyday as he lives down the street; but he is ready to vote on the project.

Mr. Farrell agreed with Mr. Hayward; he said he trusts the process, engineers and the peer review. He said the water is going to be better than it is currently and his concern is the traffic on Route 6, but again the use is better than a retail establishment there that would have its own concerns.

Mr. Foley wanted to clarify the second condition to "add at their expense" should be added. And if the first condition should say if the Town needs to utilize the right of way and enter the property to fix the culvert or manhole it would be at the expense of the applicant who is hereby conditioned to fix and maintain the drainage on the property.

Mr. Farrell said the manhole is clearly the responsibility of the applicant. Mr. Rheume stated that the documents say in the instrument that the Town has the "right" not the obligation for access or repair (per the easement) drains. Mr. Farrell asked Mr. Foley to clean up this condition in regards to what has been discussed.

Mr. Foley will add "at the owner's expense." Mr. Lucas asked to add the word manhole as well; for specifics and to be clear.

Mr. Fleurent stated he had huge reservations about the project and the road, as he grew up in that area. Mr. Hayward stated this stretch of Route 6 has been redesigned since they were kids. The added a horizontal curve similar to a bank on a racetrack so that cars do not fly off on the vertical curve like they used to.

Resident, Christine Albano had concerns about the crosswalk in the area. The Board explained that the new driveway will be further away from the crosswalk than the existing curb cut.

Mr. Farrell made a motion to approve SP2021-03, Lewis Landing with twenty standard conditions, ten specific conditions and four waivers and was seconded by Cathy Melanson. The motion passed, 6-1-0, with Mr. Fleurent in opposition.

b) Other Reviews:

- i. **DS 2019-02 Hiller & Timothy Subdivision:** Remand Agreement Review
Mr. Farrell took this out of order while Attorney Crotty was on the call.

Mr. Foley said Attorney Crotty and the attorney for the applicant signed a remand agreement that would continue the court case from July to December if the Planning Board agreed to review a revised plan. He reviewed the agreement to remand with the board members.

Attorney Crotty explained that this subdivision was denied by the Planning Board and then appealed to Superior Court. He explained that the applicant has gone to DEP for review and the applicant will have to redo the plans. He said one thing this will do is remove the part of the complaint that claims the Town did not act in time. He said most likely a revised plan will be back in front of the Planning Board in the near future. He said there was no new plan in place as of a few weeks ago at a meeting but a new plan is forthcoming. He said the board should consider reviewing the new plan once it is put together and make a decision with that plan.

Mr. Lucas asked if this would start a new process with new timeline. Attorney Crotty said yes it would start anew. He said everyone on the board would be eligible to act on it.

Mr. Hayward stated they should've addressed this in Executive Decision. He stated it took over a year of intense review and many continuations to get to that decision and if they are going to start anew, it would start from zero to review the plans and hear from abutters. He said their decision was not based on a Conservation plan. He said he is opposed to this plan to move backward.

Attorney Crotty stated they are simply cutting to the chase as to what seems to be the inevitable result of expensive litigation.

Mr. Hayward stated if the plan had been accepted by Planning Board and the DEP changed it, they would have had to come back to PB to get amended.

Mr. Lucas asked what the advantage to the applicant was to pursue the court case if the plan could not be built because of DEP. Attorney Crotty said the advantage would be get the new plan to be reviewed by the Planning Board. He said the disadvantage or alternative would be to go through the court and perhaps they would have to put together a new plan anyway.

Mr. Hayward suggested they add a clause that the applicant present a preliminary plan with planning concepts so that way we don't get locked into Conservation for six months and peer review and then we finally see the plan.

Mr. Mathieu, Attorney for the defendant is considering what Mr. Hayward stated. He said it's not far off from what the remand is asking. He said he would like to discuss it with his client and would be okay with continuing this discussion to the next meeting. He said they are still waiting for a final decision from DEP. Mr. Hayward asked Mr. Crotty if he won't be present if he could direct how to change the wording. Mr. Farrell stated he doesn't want discussion on the 27th, but a final document to be voted on. Attorney Crotty asked the preliminary plan be added to the second paragraph and will notify Attorney Mathieu.

John Farrell made a motion to continue discussion to July 27 and was seconded by Cathy Melanson. Motion carries 6-1.

ii. **DS 2021 - 46 Sconticut Neck: Security Bond Release:** Town Counsel report on Bond & HOA.

Mr. Foley stated they didn't have to review tonight. Would come back before them at a future meeting.

iii. **ANR 2021-03 Alden Road:** Form A (ANR) for 3 Lots at 240 Alden Road.

Mr. Foley reported that after further review he felt there are a few discrepancies. He would like to verify some of the information. He looked at the Assessors' Maps and GIS and there seemed to be a discrepancy he did not expect. He noted you can't use Assessors maps for planning or design because they are not that accurate and can be several feet off but to be 100 feet off is disconcerting. He said the applicant is looking to create three buildable lots, plus an easement to access a lot to the south owned by the same person.

Mr. Rheume stated the GIS doesn't matter, it is a stamped plan by an engineer. He said they are endorsing a plan that there is no subdivision being created with a roadway. If anyone tries to impersonate an engineer or surveyor they could be sued.

Mr. Farrell stated they aren't saying that, he is stating that they are asking Mr. Foley to get with the land surveyor to confirm the lines are correct. Mr. Farrell asked for this to be moved to their next meeting.

Mr. Hayward asked if they are creating a new easement with this lot. Mr. Rheume stated the easement is to create access for Map 20, Lot 175 to be far away from the wetlands enough to stay out of the 25' no disturb zone to the wetlands. They got permission from Conservation to put the driveway on the easement.

Mr. Hayward said in essence they are creating an easement for a driveway for lot 175. Mr. Rheume concurred. Mr. Rheume stated that there would be four buildable lots.

Mr. Hayward stated he agreed with the engineer, that he doesn't think we should use the assessor's maps on this one. He said he is fine with continuing or voting on this tonight. Mr. Hayward said that Mr. Foley could look at the deeds versus the assessor's maps. He said if the engineer stamped it then it should be good enough for the Planning Board to accept. Mr. Hayward stated if the applicant was willing to continue then that would be fine, if not that would be fine as well.

Mr. Rheume stated they would not be inclined to continue if the Planning Board is saying that they don't agree with a stamped civil engineer land surveyed plan to compare to the assessor's maps and or GIS, which we know are notoriously wrong.

Mr. Hayward asked if the plan was stamped by an engineer; to which Mr. Foley said it was stamped by Prime Engineering, Mark McGowan.

Mr. Farrell made a motion to approve ANR 2021-03 for three lots at 240 Alden Road and was seconded by Mr. Hayward. On the question, Mr. Lucas said they may be setting a precedent for building an easement for a driveway on a lot as he doesn't think that is in their language. He believes it would be opening a can of worms. He asked if they are approving that as a legitimate driveway easement.

Mr. Rheaume asked for a point of clarification that the Planning Board is not approving this plan, but they are endorsing that they agree they are not creating a subdivision under the subdivision control law. He said they are endorsing that this does not fall under the subdivision control law.

Via roll call vote, the motion passed unanimously 6-0.

Mr. Hayward stated that easements are a private matter and can be made without the Planning Board.

- iv. **ANR 2021-04 Starboard/SNR**: Form A (ANR) for 2 Lots at Starboard Drive and Sconticut Neck.
Mr. Foley reviewed the plans and what was being done on this ANR. The proposal is to create two buildable lots in place of lot 9b & 9c by taking some land from lot 9a. Lots 9d & 9e would be removed and added to lot 9a.

Mr. Farrell made a motion to approve ANR 2021-04 Starboard/SNR and was seconded by Cathy Melanson. The motion passed unanimously via roll call vote. (6-0).

- v. **Bella Vista**: Chapter 91 Notification
Mr. Foley stated a site visit is scheduled for next Monday with the Building Commissioner and Conservation. He will attend that site visit. He will present the plans to the Planning Board after that meeting.

3. **CURRENT PLANNING:**

- a) **Town Planner Update: Union Wharf Study; SRTA Benches; CDBG Hedge Ph. 3;**
Mr. Foley said they recently had a kick off meeting with the consultants for the Union Wharf Study. Mr. Foley discussed the possibility of SRTA benches at a few locations. It seems like it should be really easy but once you want to add something to a bus stop you have to bring it up to accessibility codes and install an "alighting" area. He will continue to share that as it progresses but it will take longer to get a bench than just putting a bench at a few sites.

Mr. Hayward asked if the #11 SRTA bus route has accessible busses. Mr. Foley thought so but will double check.

Mr. Foley reviewed the different grants that have been received. They just received notice today they received \$332,636 in funding for four projects through the Complete Streets Grant. This is in addition to the \$183,689 they received two weeks ago through the Shared Streets program. So that's about \$516,000 in the last two weeks for six projects on our Prioritization Plan.

Mr. Foley also briefly discussed the North Fairhaven Benoit Square area.

Mr. Hayward asked if Mr. Foley was part of the ARPA Grant Team looking at money coming in from the federal government. Mr. Foley said that a large group of department heads had a second meeting the day before discussing the ARPA grant and how the Town should address it. He asked if he was aware that it can be used as

sewer and water improvements. He said the town received \$841,000 directly from the Federal Government recently. That is half of what they will receive. The other half will come in a year. Bristol County has received over \$3,000,000 for the Town but it has not been announced what that is for and how it can be accessed. There is a meeting at the County next Thursday that will have Town representatives that will see what the news is. He will review updates in the next few meetings.

4. **LONG RANGE PLANNING:**

- a) Town Planner Update: Rt. 6/ 240 Study
- b) **OTHER BUSINESS:** Any other business that may properly come before the Board, not reasonably anticipated when posting 48 hours prior to this meeting.

Cathy Melanson made a motion to adjourn and was seconded by John Farrell. The motion passed unanimously via roll call vote at 9:15p.m.

Respectively,

Patricia A. Pacella
Recording Secretary