



# FAIRHAVEN PLANNING BOARD

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

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## Planning Board Minutes Tuesday, February 22, 2022 at 6:30 pm

FAIRHAVEN.  
MASS.

### 1. GENERAL BUSINESS:

- a) **Chair's Welcome and Media Notification:** Chairperson, John Farrell opened the meeting at 6:30p.m. He stated the Zoom platform for meetings has been extended by Governor Baker and asked if the Select Board have had any discussions to this; which Mr. Foley stated he doesn't believe they have.
- b) **Quorum/Attendance: Present:** John Farrell, Chair; Wayne Hayward, Cathy Melanson, Jeffrey Lucas, David Braga, Jessica Fidalgo, and Rene Fleurent.  
  
**Absent:** Geoff Haworth
- c) **Minutes:** February 8, 2022 draft to be reviewed: Cathy Melanson made a motion to approve the minutes of February 8, 2022 and was seconded by Rene Fleurent. The motion passed with a 6-1 (Jeff Lucas abstained as he was absent)
- d) **Planning Board Bills:** Mr. Foley said there was a bill for \$84.00 to Monaghan Printing for Planning Board Envelopes. Jeff Lucas made a motion to pay \$84.00 to Monaghan Printing for Planning Board Envelopes and was seconded by Cathy Melanson. The Motion passed unanimously. A second bill was for hanging file folders in the amount of \$42.20. Jeff Lucas made a motion to pay \$42.20 to W.B. Mason for the file folders and was seconded by Cathy Melanson. The motion passed unanimously.
- e) **Correspondence:** Letter from Crow Island requesting withdrawal. Mr. Foley advised he received a letter from Crow Island requesting withdrawal from their Special Permit application.

### 2. PUBLIC HEARINGS:

- a) Public Hearings:
  - i. **SP 2021-02 - Crow Island:** Request to withdraw from the Special Permit process without prejudice at the Applicants request regarding proposal to create a destination for outings and special events.

Mr. Farrell opened the public hearing.

Mr. Foley stated he did meet with the Applicant, however there are still a few hurdles they had to jump through and at this time would like to withdraw their application without prejudice.

Attorney Markey thanked the board for their time on this project. He said he and his client, were appreciative of all the feedback but that they still have a few major hurdles to jump through and don't see a light at the end of the tunnel. He said they would like to respectfully ask for a withdrawal at this time and may reapply in the future.

Mr. Hayward made a motion to allow the Crow Island Special Permit, SP 2021-02 to be withdrawn without prejudice and was seconded by Cathy Melanson. The motion passed unanimously via roll call vote.

- ii. **SP 2021-04 – Nye Lubricant Expansion:** *To be continued without testimony to March 22, 2022 at the applicants request* for Proposal to construct a 60,000 sf addition to Building 3 at 12-16 Rio Way (Map 19 Lot 242 - 10 acres) off Howland Road.

Mr. Foley has been in touch with the engineer and the Applicant and they have had some issues with the CAD drawings that were done previously to the new engineer. Mr. Foley advised them of the time crunch they were up against with regards to the upcoming election and the quorum for their project. They believe they will have everything in place by the March 22, 2022 meeting and have asked for a continuance until then.

Mr. Hayward made a motion to continue Nye Lubricants Expansion, SP 2021-04 to March 22, 2022 at the applicant's request and was seconded by Cathy Melanson. The motion passed unanimously via roll call vote.

- iii. **Fairhaven Public Shade Tree Bylaw:** Public Hearing for a *General Bylaw Amendment*, proposed by the Planning Board, to create a Fairhaven Public Shade Tree Bylaw.

Mr. Foley said the purpose of having a local tree bylaw is to enhance the rules and regulations of MGL Chapter 87. It will establish local rules for notification and public input required for certain tree work and establish protocols for emergency work and record keeping for trees that have been trimmed, removed or planted. The bylaw may also contain tree planting guidelines, pruning guidelines, a tree replacement policy and a policy for removal of trees when necessary that are drawn from the states model bylaw. Eventually, details for these items should be incorporated into a Fairhaven Tree Manual.

Mr. Foley noted there was a person in the Banquet Room who wanted to speak on the bylaw. Mr. Foley reviewed the various sections of the potential Public Shade Tree Bylaw. He noted they have applied for a 50/50 matching grant that would allow the Town to hire a consultant to do a systematic inventory of the public trees and develop a management plan. He said the inventory would help the town by assessing the current state of existing trees in Fairhaven and develop a plan for caring for them in the future as well as identify planting appropriate trees in the correct location where they would have room to grow. The inventory leads to the plan, which leads to better management decisions and care for our trees. Mr. Foley reviewed the sections that would make up the Tree Bylaw.

Mr. Lucas shared his concern with the amount of administrative work that seems to be included within the bylaw. Mr. Foley said he didn't feel that record keeping and notification are standard practices that are required for transparency and accountability. There would be some clerical work that would be needed to be done by the Tree Warden but it is necessary and he volunteered the Planning Department to assist with updating the plan, geo-locating trees and being part of the notification for public hearings.

Mr. Farrell asked if the proposed bylaw has been shared with the tree warden. Mr. Foley said yes and that he has routed it through the different departments. The Tree Warden was on board in general but thought we should start slow and had a few concerns about a few sections. The superintendent of the DPW had sent some comments as well.

Mr. Lucas asked if DPW is putting an article to Town Meeting to take over the Tree Warden; he asked if they would be taking over the record keeping as well. Mr. Foley said this is independent of that effort, but yes, whoever had the job as tree warden would be taking over the administrative work, notification, record keeping and tree hearings as well. They would have to still be in touch with the Planning Department.

Mr. Hayward stated there were a few comments to the end of the bylaw that still needed to be appended to. He identified a stubborn spelling error on page 2. ("P" missing from Parts).

Mr. Farrell opened up the hearing for public comment.

Resident, Sally Johnson, who was in the Banquet Room asked if this bylaw had something to do with what the DPW was putting forth at Town Meeting.

Mr. Foley said that the DPW was putting in a separate article to Town Meeting. He said that the tree bylaw would be completely separate from what the DPW puts forth. Mr. Foley reiterated that the tree bylaw we are talking about is mainly adding notification requirements to make sure any tree hearings or plans by the Utility Company for the trees are duly noticed and to make sure that several interested boards, such as the Planning Board, are included in those notifications and/or hearings.

Ms. Johnson questioned if the Tree Warden should be in charge of 'shrubs and growth'; and she asked for clarification. Mr. Foley advised that the language is per the state law. Ms. Johnson stated she didn't feel that the Tree Warden should be in charge of any shrubs or tree growth.

Mr. Farrell explained Chapter 87, the State Law was where it states what the Tree Warden's purview is. He said they are getting much of the information from the law directly.

Mr. Foley stated he would speak to Mr. Furtado.

Ms. Johnson stated she had glanced over the bylaw and had a few concerns about cutting down a tree and replanting two trees; she thought that was excessive. Ms. Johnson asked if this tree bylaw was to be considered in the future, a year or two down the road. Mr. Foley stated this was to be put forth in front of Town Meeting in May of this year.

Mr. Farrell brought it back to the Board. Mr. Hayward referenced the state law and the purpose of the Tree Bylaw. He said that there is no Tree Bylaw in Fairhaven and the bylaw is most needed in Fairhaven. He said this is a bylaw to protect the trees in Fairhaven; regardless of who the Tree Warden is or what department they work in or for.

Resident, Karen Isherwood had a question about the diameter of a tree that would be able to come down. Mr. Foley stated there was no girth listed in the Tree Bylaw for what constitutes a tree. He said any tree that was in a public way would have to come before a tree hearing. He said they didn't go into depth with the specific diameter.

***Note: MGL 87 §5 states: "Tree wardens and their deputies, but no other person, may, without a hearing, trim, cut down or remove trees, less than one and one half inches in diameter one foot from the ground... if the same shall be deemed to obstruct, endanger, hinder or incommode persons traveling thereon..."***

Ms. Isherwood asked if this bylaw could also be vetted with the Open Space/Recreation Committee.

Mr. Foley said if that committee is in existence before Town Meeting he would be happy to run it by them. He said that in the long run it is better to plant smaller trees which do better and grow stronger. A lot of times people want to plant bigger saplings that have already been growing a few years to theoretically provide more screening or shade sooner, but really you want to plant small and allow them to grow in place.

Rene Fleurent made a motion to continue the Tree Bylaw to the next meeting of March 8, 2022 and was seconded by Wayne Hayward. The motion passed unanimously via roll call vote.

**iv. Rezone of upper Narragansett Avenue:** Public Hearing for an *amendment to the Zoning Map* at the north end of Narragansett Boulevard to be rezoned from Business (B) to the Single Residence (RA) District

Mr. Foley reviewed this bylaw as a housecleaning item. He explained which lots would be changed from B, business to Single Residences (RA). He gave a brief history of the lots in that area. The neighborhood is clearly residential and is cutoff from the Business and Industrial District by a drainage ditch that runs like a river most of the year. Historic zoning maps show that this neighborhood was rezoned from Residential to Business in 1974.

Mr. Hayward stated this was a long time coming; he said there was no business or commercial that would be identified in that area. He said he is favor of cleaning this area up to the correct zoning area. Mr. Lucas agreed that this is a long time coming.

Mr. Farrell opened it up for Public Comment. There was none.

Mr. Hayward made a motion to recommend to Town Meeting this Zoning Change on Narragansett Avenue and was seconded by Rene Fleurent. The motion passed unanimously via roll call vote.

b) Other Reviews/Discussion:

- i. **PD 2021-01 – Starboard Drive Preliminary Subdivision:** Discussion of a proposed 8-Lot Preliminary Subdivision on Starboard Drive.

Mr. Foley stated this Preliminary Subdivision was stamped in on February 8, 2022. He said this property was changed somewhat last year through the ANR process. He explained lots 9B and 9C were reconfigured to create buildable lots that comply with the minimum zoning requirements. He reviewed the preliminary subdivision proposal by the applicant to construct an 18' wide paved roadway with 12" Cape Cod berms and a paved 80' diameter cul-de-sac at its terminus.

He said they are proposing four houses on existing lots, a total of 10 buildable lots including the 2 created through the ANR last year. Mr. Foley stated he routed to all departments and reported their comments to the Planning Board.

The property contains a water main and hydrant and overhead electric, cable and telephone supported by five (5) utility poles. The five existing dwellings are currently serviced by a common septic system which includes a Bioclere de-nitrification treatment unit. This would continue after the existing homes are torn down and replaced with Flood Zone compliant structures. The three extra lots will be serviced by their own individual onsite septic systems. It has yet to be determined whether that would also require de-nitrification. The Applicant will likely be requesting numerous waivers from the subdivision regulations. He added that the Wetlands need to be delineated to determine if some proposed lots are in fact buildable and that the proposal would potentially benefit with cluster zoning.

It should be noted that the entire subdivision will be in the velocity zone under elevation 10'. That means that during a so-called 100-year storm this entire property will not only be under water but experience additional hazards due to storm-induced velocity wave action. Mr. Foley reviewed the Hazard Mitigation Plan and that Among the Recommended Actions including reviewing and amending Zoning Bylaws and subdivision regulations to reduce risk to identify specific opportunities to incorporate additional measures to reduce the long-term risk to life and property from natural hazard events and promote redevelopment patterns that minimize exposure to known hazards.

Mr. Foley introduced David Davignon, Engineer on record for the applicant.

Mr. Davignon stated the wetland line was delineated by a known professional although it has not been put before the Conservation Commission as of yet. He said they do plan on test holes and flag line being approved before commencing the definitive subdivision approval. He said they are here tonight to receive input and answer questions. He did ask Mr. Foley to resend the correspondence received from the different departments.

Mr. Hayward stated he thought he heard the road would be 24' wide. He said he'd rather see 18' wide sloped. He said he saw approximately 20' of pavement cul-de-sac as one black circle of asphalt, 80' diameter circle on right of way. He commented that it was such a low area if there is something other than asphalt that can be used in this area.

Mr. Hayward asked Mr. Davignon if this was going to be a Private Development with a Homeowners Association (HOA) Mr. Davignon stated it would be Private with a HOA. Mr. Davignon said they were not adverse to less asphalt. Mr. Hayward said he would like to see less impervious surfaces. He said he would like to hear from the Board of Health regarding the septic plans and other departments such as Conservation in regard to impervious surfaces.

Mr. Lucas asked if there would be added regrading to the terrain in the area. He asked if there any Perc tests had been done as of yet. Mr. Davignon said he was not concerned because they had done Perc test on the ANR lots and were fine. He said there would be a common septic on lots 1 & 2 and there were proof of good soils consistent with the ANR sites.

Mr. Lucas asked if new septic systems were required with new builds. Mr. Davignon said at some point of time the cottages will be torn down and then rebuilt; however there were quite a few restrictions in the velocity zone

Mr. Davignon stated all septic would be tied into common septic with no more bedrooms than what is there now, which he believes is two bedrooms. He stated the only new construction would be on lots 2, 7, and 8.

Mr. Davignon stated they would be asking for a waiver for no street lights. Mr. Fleurent stated he would not be in favor of waiving streetlights. Mr. Hayward stated the pole lights are existing and would be easy to add lights to. Mr. Hayward stated that is why he asked the question about the private road or private development, as it is two different ways to look at the lights in his mind. Mr. Foley noted that he received a request for light pollution prevention bylaw today and that he would be in favor of no street lights way down here.

Jeff Lucas about the Stormwater Management Plan and asked if the contour was changing. He asked where the water would be ending up. Mr. Davignon explained where the water goes now on the lots. John Farrell asked if there is an active river running on lot 6; Mr. Davignon said it was a drainage ditch.

Mr. Hayward made a motion to approve the Preliminary Subdivision on Starboard Drive for an 8 Lot Subdivision and was seconded by Rene Fleurent. The motion passed unanimously via roll call vote.

### 3. **CURRENT PLANNING:**

a) Town Planner Update: CDBG Grant; Site Readiness; Union Wharf; Rt. 6/240; Rogers; Bylaws

Mr. Foley gave a few updates on an upcoming public hearing for the Car Wash that is proposed at the site of the old Huttleston Motel. He said the March 8, 2022 hearing date would also be the A&A Car expansion project hearing.

A CDBG Grant was awarded to the Town for Phase 3 of Streetscapes improvements on Hedge Street in the amount of \$686,000. That would be on Hedge Street between Main Street and halfway to Adams Street.

Mr. Foley reviewed the Site Readiness Grant progress and said that test pit reports for the area of 194 Bridge Street show that it is worth investigating further for a location of a possibility for the Police/Fire Station. They are planning on using the remainder of the grant money plus some ARPA funds to conduct a Phase 2 on part of the property. He reviewed the Phase 1 studies that were done at Koopman Lumber, the Little People College, the Drive-in and a plaza.

Mr. Foley reviewed the Rogers Reuse Committee RFP that was issued January 12, 2022. He said he's hoping for at least 4 proposals and has given two tours to prospective proposals.

Mr. Foley reviewed the bylaws for Town Meeting stating the place holders have to be in by Friday, February 25, 2022.

Mr. Lucas asked if a restriction could be put on a private way on the number of years before they can come to the Town for it to turn into a public road.

Mr. Foley stated someone brought forth a petition for a road north of Mill Road to be a public way. He said he has looked into it and it is going to be a big effort to unscramble. The people who submitted the petition failed to follow the procedures and submit a plan and the Select Board has not scheduled a public hearing.

Mr. Farrell would like to file a place holder for a potential bylaw for stated setbacks of existing public facilities, such as Wind Turbines, Sewer Treatment Plants and other such sites. Mr. Foley said the language would have to be submitted to the Select Board by March 14, 2022. Select Board are scheduled to sign the warrant on March 28, 2022 and Town Meeting is scheduled for May 7, 2022.

Mr. Hayward asked Mr. Foley about the rezone for G. Bourne Knowles property; Mr. Foley said he hadn't heard anything as of yet. Mr. Foley reviewed the Fairhaven outdoor recreational facilities review and included other updates he is working on.

4. **OTHER BUSINESS:** Any other business that may properly come before the Board, not reasonably anticipated when posting 48 hours prior to this meeting.
5. **EXECUTIVE SESSION:** Possible discussion regarding Hiller & Timothy litigation.  
Mr. Farrell stated the applicant is working on a new plan and the board does not need to go into Executive Session.

Mr. Foley stated a letter was written and a draft plan explained. He said they will be going over it thoroughly with Town Counsel. He said it may be on the next agenda as well as they are awaiting new information.

6. **Next Meeting:** Tuesday March 8, 2022.

Cathy Melanson made a motion to adjourn and was seconded by David Braga. The motion passed unanimously via roll call vote at 8:45p.m.

Respectively submitted,

Patricia A. Pacella  
Recording Secretary