



# Town of Fairhaven

## Board of Health

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FAIRHAVEN TOWN CLERK  
ROUD 2023 JAN 20 AM 11:15

January 4th, 2023

PRESENT: Heidi Hacking, Kevin Gallagher, David Flaherty, Angie Lopes Ellison  
Absent: Michael Ristuccia

### 1. Call to Order

- a. Chairman Kevin Gallagher called the meeting to order at 5:00pm. Chairman Gallagher welcomed everyone.

### 2. Pledge of Allegiance

### 3. Welcome and Media Notification

- a. Chairman Gallagher read the media and recording notifications, and welcomed the public to speak on items.

### 4. Minutes of the Meeting:

- a. Chairman Gallagher made the motion to accept the minutes of the meeting of December 7 2022. Ms. Hacking in agreement and motion accepted.

### 5. Health Agent Report

- a. Health Agent Flaherty reports Statewide hospitalizations for COVID: 361 up from 215, ICU Admittances is 105 up from 72. 35 Intubated cases up from 28 Trends seems to be going up and CDC may be in the future strongly urging Masking for the season.
- b. New order of Covid Test Kits are available and the public can pick up a kit at the Board of Health office or Council on Aging.
- c. The Community Health Nurse will be offering homebound vaccinations for Covid & Flu shots for homebound residents, please call 833-983-0485.
- d. Medication disposal bags are available in the Health Office, Library, COA, Recreation Center and the Fire and Police Department.
- e. Go to South Coast Health Care Website for vaccine clinic information at [southcoast.org/covid-19-vaccination](https://southcoast.org/covid-19-vaccination)

- f. Blood Pressure Wellness Clinic held at Council on Aging weekly on Wednesdays Between 1:00 p.m. & 3:00 p.m. Now weekly vs. biweekly. No Perc tests and no Other Title 5 System inspections performed.
- g. Agent Flaherty reports at this time the Board of Health has nearly completed Food Service and Tobacco establishment renewals are in process with good response and Staff in the Board of Health are very busy.
- h. Follow up on chapter two housing inspections with focus on compliance.
- i. Arbovirus update- Hard Frost has taken place and testing season is now over.
- j. Proposed Titles 5 revisions from DEP update. More public testimony provided at Public meetings and zoom in the next coming weeks. Please check out the date on Fairhaven health department website.
- k. Rodent Complaints-No rodent complaints at this time.
- l. Thank you to the wellness committee and Fairhaven select board on making the festivities so welcoming.

**6) Covid number update on Town Website-** Chairman Gallagher reports that the Board of Health received an email from Mr. Douglas Beady a town resident. He explained that Mr. Beady does find the Covid updates on the town website confusing. Mr. Gallagher and Mr. Flaherty discussed updating the town website and making it user friendly. Ms. Hacking agrees on streamlining Covid information and make it as easy as possible.

**7) 40 Nelson Avenue Septic Plan Review-** Agent Flaherty reports this is located at the end of Sconticut Neck Road. Mr. Flaherty and the prior conservation agent witnessed a Perc test. A small lot and existing house are requesting variances. A cesspool was close to the retaining wall on the water. Allowable under Maximum Feasible Compliance by Titles 5 Allow the field to be less than 10ft from the property line. It is currently 4.5 feet. Allow the leech field to be less than 50 feet from top of coastal bank and it will be 30 feet. The over dig to be less than 5 feet wide proposed to 2 feet on all sides. Denitrification system will also be installed. Mr. Flaherty agrees to recommend accepting the plan due to this being an existing home and under maximum feasible compliance, he believe it is all appropriate. If this were a new construction home, he would not agree. Chairman Gallagher made the motion to accept the recommendation of the health agent. All members in agreement and motion was accepted.

**8) Discuss and possibly vote on how residents can lodge and submit concerns complaints on Wind Turbines-** Chairman Gallagher said he watched the last planning board meeting and was surprised that the portal system was shut down. Chairman Gallagher believes the wind turbines came into town in to 2013-2014. There was a portal established for the town residents to submit concerns or complaints. Chairman Gallagher said multiple concerns were submitted to the town. Then there was a decision to turn that off about 6-7 years ago. Chairman Gallagher states this goes against his beliefs. Chairman Gallagher would like the board to be aware of any issues or concerns with the Wind Turbines. Ms. Hacking requested additional information on how the portal actually worked. Ms. Hacking made the motion to turn on the portal and resume the mechanism in order to submit complaints. Chairman Gallagher seconds that. All members in agreement and motion accepted. Chairman Gallagher is interested in once the complaint is received where does it actually go. Agent Flaherty is not familiar with the portal and will further look into this and return with an update for the next Board of Health meeting.

**8) Education on Proposed Sconticut Neck Subdivision Plan-** Chairman Gallagher reports that this does have a history with prior board members. Gallagher explains this is not a hearing and is a presentation and education only that was requested by the town planner Paul Foley. Gallagher explains at the prior planning meeting they are requesting a comment from the Board of Health. Gallagher explains no comment, statement or letter will be offered tonight. This plan has not been reviewed prior and this is the first time the board members are learning about this subdivision. They are questions on what the actual process is and how involved is the health board. Planner Foley provides a slide show that shows the rules and regulations of rules of subdivision and planning. Foley explains once they receive an application for a special permit it is then routed to other departments for comment and explains the applicant does have to file with Board of health and within 45 days the board of health is supposed to report the planning board if they have any comments about the suitability of the land. This project was originally presented in 2018. In 2019, the board of health was scheduled to meet. The Planning Board had denied this subdivision in 2020 due to proximity to sewage treatment and wind turbines. Proximity to wetlands and wetness of the site. In addition, the amount of fill would impede storm water and run off from its natural flow through site. Foley states that the Board of Health is involved not only with the septic aspect however with the suitability of the land. Foley explains that planning met with the applicant and legal team and requested that revisions were to be made. Once the revisions were made, the applicant would need to resubmit to the planning board for further review. Gallagher questions peer review that was performed. Foley explains that even after third peer review there were still dozens of issues that were present including backing up of water and mosquitos. The applicant is currently preparing a response. Gallagher states "this is fluid" and Foley agrees however they are concerns if this is something they are getting closer to approve or if they are not close enough. Gallagher states knowing there are still so many concerns that this current plan cannot be considered definitive and Foley agrees. The applicant can return with a revised plan Gallagher sates towards the end of the meeting reduce the number of lots planning stated they would answer once they hear back from other departments. BOH DPW Highway water sewer and overall superintendent, assessor, building department conservation denied this project as well under the state wetlands act and local by laws. Gallagher questions

how many department have responded. Foley states highway sewer and water has responded. Waiting to hear from Fire Chief and there were issues with the last peer review. The applicant was not aware of all items that required revision originally. Ms. Hacking is not sure how the Board of Health can respond if the plan will be revised. Gallagher commends Planning Board member David Braga for establishing this request however. Gallagher states they are members of the board because they received a certain amount of votes and are not subject experts. Ms. Hacking questions when the 45-day period begins. Foley replies they are technically not in the 45 day period as of yet. Gallagher questions the current plan here removes one lot but does not address a buffer or size of a buffer. Gallagher states this is a significant issue. Foley states the planning board does not decide or design the plans for the applicant. Hacking questions where the buffer would be. Foley does explain on the plan where this would be. Gallagher questions Foley if Conservation did deny this subdivisions. Foley states yes however due to the application being submitted in 2020, this subdivision could be grandfathered and not have the 50 ft wetlands buffer zone applied. Chairman Gallagher explains this is for informational purposes only. Foley stated he would send a link over to Hacking and Gallagher that contains all original documents. Foley explained that he found a study from 2016 that explains the effects of living next to a sewage facility and he has placed that on the town website. Chairman Gallagher questions how the proposed expansion of the sewage treatment facility effect this plan. Foley does explain on the diagram that he believes it will be a metal building however he does not have the exact parameters from the engineers. He does explain where the wetlands are and it will affect a certain area. Chairman Gallagher questions Foley if there is any state guidance or statutory guidance how close a resident can be to a sewage treatment plant? Foley did call the state and confirms there is no state guidance or information regarding how close you can live next to a sewage treatment. Chairman Gallagher explains there is a lack of guidance regarding the buffer zone. He explain how do you substantiate this number but how do you confirm the 50 ft. will consider the health expectations of the residents? Chairman Gallagher requests further guidance regarding what are the impacts this could have on the resident's health, and safety expectations. Foley explains he will further research and look for additional studies. Chairman Gallagher questions the remand and what were the requests? Foley explained this would be presented to the court in a year or two and the court likes to see that everyone is communicating with each other. Hacking questioned if the current plant has corrected the four issues. Foley explains that there is a two-page remand and would need to be further reviewed by Planning and the Board of Health. Chairman Gallagher questions Karen Isherwood if the sound study was done in that proposed area? Town resident states it has not been done in that area however, it has been done in the area of her home and it exceeded the decibel amount. Chairman Gallagher confirms with Isherwood no valid sound study has been done in that area. Chairman Gallagher agrees that Isherwood has valid point. Chairman Gallagher confirms he received two emails. One from Sue Powers who brought to our attention the DEP regulations regarding the threshold for the decibels. The mitigation plan, which sounds as part of the plan, is to keep an ample amount of foliage of trees. Ann Espindola of John Street with a comprehensive email with links to different documents and studies, which Gallagher states was very helpful. Gallagher also states it was because of her email that brought this to the Board of Health attention. Chairman Gallagher confirms there has been no formal discussion or communication with the Board of Health and the Planning Board. Chairman Gallagher does confirm he has many more questions. He does apologize stating he will not have a definitive answer for the planning board meeting next

week. He is taken back that they are asked to render comments, the plan is out of date, no comments are to be made on a plan that is not fluid and especially because there is litigation on many levels. Chairman Gallagher states the board will work with the planning board and the health agent in order to address what concessions have been made and what concerns the planning board has made. Concerns about standing water, flicker, the sound, and the attentions seems to be on the turbines however at the same time there is an odor that comes from the current plant, what will happen with the new plant? What purpose does that mature circle of trees have diffusing the odor. Hacking confirms the Board of Health has a lot of work to do. Chairman Gallagher encourages the residents to continue to speak to the Board of Health and that no one should be denied to bring up concerns.

## **9) Public Comment**

a. Town resident Karen Isherwood discusses the timeframe of when turbine and portal went into effect. Isherwood states the turbines were turned on in 2011. Isherwood states the portal was closed after a few years in possibly 2016 and there were many complaints that were submitted. Isherwood states complaints were done in person in the building, which was very inconvenient for the elderly. Isherwood requests if the Board of Health can take into consideration the impacts of the turbines on the neighborhoods health, which would be the flicker. The current by law states that was amended in 2013 on wind energy facilities that would be 4 times the tip height to a structure, which the turbines are 400 feet and it should be 1600 feet and there should be a distance from a resident's home. She reports that her home is within 1300-1400 feet within the buffer zone. The new homes would be within 200 feet close of the wind turbines. Isherwood stated the Board of Health should return to the original complaints and review what the issues were at that time. She feels that they were not being heard. The complaints were never followed up on. She states that they gave up however they are still currently being impacted. The health issues are cumulative and accumulates over years and that she has proof. She requested if the Board of Health could consider the current by law, 1600 ft. distance and to review the current sound study that showed what was not compliant. Gallagher confirms nineteen were in compliance and five that exceeded. She also requested if a new sound study could be done in that proposed area. The aging mechanisms of the turbines are getting louder. The removal of 10 acres of trees the flicker will increase. She states they are considered collateral damage and they can take a hit. She believes the lease for the turbines is for 25 years. She believes once the lease is over it may be acceptable to build on that land. She understands that someone should be able develop their land however She believes under the conditions the residents are currently living under in that area should not be developed at this time. She also thanks the Board of Health for addressing this topic and placing it on the agenda.

b. David Braga of the Planning Board spoke and states he is a member that requested that this subdivision be brought in front of the Board of Health. "On the surface there can be potential health issues". He states the planning board is not subject matter experts on public health issues. He questions if there are health concerns. The Planning Board would then take the feedback received from the health department and use that to give them some insight on how to proceed.

c. Gary Lavalette- Mr. Lavalette states that this subdivision will involve removing 9 and 11 acres of trees. Resident will now be 1100 feet from turbines and have no buffer. The back of the house will be right up against those wind turbines. He states that is why Conservation denied this. Concerns of opening wetlands and exposing to sun and possibly dry up the wetlands. No one can give a definitive answer. Mr. Lavalette states that size turbines is considered illegal now and it would never be able to be installed today. He states he was involved in the original sound studies and that they did not test that area. What helps with the buffer is the leaves and not the actual tree. He stated they are in a crossroads of where the house were to be built if something happens there is no way to go back. He stated they do make building material that can help with the flicker. He spoke with the builder who is agreeable to using those materials. He stated some of the property can be developed however, there are wetlands, and it is very close to the sewage plants. He does reports odors and smells. There are so many issues with The Board of Health, Conservation, and planning that this does need to be looked at. He states we need to take a step back and really look at this. Mr. Lavalette also asked Chairman Gallagher to look at the studies that were done in Bourne who presented with the same issue as us and have now been shut down.

d. Mike Thomas 1 Teal Circle- He stated they speak of a 25 ft. setback. He stated the major trees that run along the stonewall and that major growth trees are within 75 ft. – 100ft of the stonewall. He stated 25ft does not protect most of those trees. He stated cutting down those trees would increase the flicker. Chairman Gallagher agrees that there is a lack of guidance on the impact of removing those trees what the actual setback should be. Mr. Thomas states someone should take a look at the land to see where the major amount of those trees are.

e. Chelsea Isherwood- Chelsea explains she can see where they are expanding the sewage treatment facility from her back deck. She can see the north and south turbine. She believes another thing that should be kept in mind, also suggesting possibly speaking with a tree arborist is that the mature trees have a large root ball. Removing the root ball and possibly destroying the tree and further decrease the tree buffer. She states that everyone is aware of how long it takes a tree to mature once it is planted to become a buffer. She reports some of the health impact she suffers from are sleepless nights, loss of balance, migraines. She stated if the town would like to increase their knowledge regarding these issues and buffers; the Town of Hull has further information regarding how Wind turbines were actually taken down.

f. Leah Isherwood- Regarding the turbines and why the portal would have been taken down. There was a lot of push back from others, which she stated she was told to put up or shut up. To deal with it or move and that may be why you have not heard anything regarding this. With the sound study the noise, level does change with the season. There is more flicker when there is less leaves and the location of the sun. The sound study was not done on the loudest nights or during a storm. You can hear them loudly when you are outside in your yard and inside and not really getting away from it, which will then cause headaches. They have been trying to figure things out with their doctors who stated loud noises and flashing lights can cause loss of sleep and headaches. When complaints were submitted, nothing was ever done. There was a suggestion of when they are loud maybe they will be able to turn them off, however that did not take place.

g. Amy DeSalvatore- Member of the Conservation Commission- Stated the subdivision was turned down and the developer was inflexible with focus on adapting the plan to respect the buffer zone to wetlands bylaw. They have the ability to look at the cumulative effect of clear cutting down all the acres of cutting down the oak trees and wetlands. They do have a 25ft no touch zone and no build zone within 50 ft. The lots that are proposed will not comply with the by-law. She has spoken and supports at least one person who has had health effects and the Board of Health would take that seriously. Sounds studies can be done and in the winter would be appropriate. She is unsure of what medial expertise the Board of Health can access in order to make a recommendation. Amy does clarify that even though the applicant applied prior there is no law that would protect them now.

h. Susan Powers- Susan wants to thank the Board of Health for considering this matter. She does believe her house is within 900 or less feet of the turbines. One of the violations was at 12 Little Bay which is directly next door. She states this is a quality of life issue. She has been present at all the meetings and she stated the applicant has already received approval from all of the boards which is not the case and in which she stated there is a process that has not been followed. She does feel the applicant has bullied the boards once it came to the remand portion. She is appreciative of the Board of Health efforts.

**10) Invoices, Correspondence & Other Business**

a. Invoices reviewed and approved.

**11) Next Meeting Date: January 18, 2023 at 5:00pm**

**10) Future Agenda items**

- a. Update on reestablishing ability to report issues or concerns on wind turbines
- b. Update on proposed Sconticut Neck Subdivision plan