



# FAIRHAVEN PLANNING BOARD

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Planning Board Minutes  
Tuesday, January 24, 2023

FAIRHAVEN TOWN CLERK  
ROAD 2023 FEB 23 PM 2:43

## 1. GENERAL BUSINESS:

- a) **Chair's Welcome and Media Notification:** Vice Chairperson, Ms. Melanson opened the meeting at 6:31 pm and advised who was present. She also read the revised Open Meeting Law Statement per the State of Emergency issued by Governor Baker with instructions that public hearings may be conducted remotely via Zoom until March 2023.
- b) **Quorum/Attendance:** Present: Cathy Melanson, Jessica Fidalgo, Kevin Grant, Jeff Lucas, David Braga and Sharon Simmons. Wayne Hayward and Rene Fleurent both were on Zoom.

**Absent:** None

Town Planner, Mr. Foley was also present.

- c) **Minutes:** January 10, 2023: Jeff Lucas made a motion to accept the minutes of January 10, 2023, and was seconded by Jessica Fidalgo. Mr. Lucas asked for an amendment to line 71 to change it to "endorse", with the amendment, Mr. Lucas motioned to accept, and it was seconded by Mr. Grant. The motion passed unanimously. (8-0-0)
- d) **Planning Board Bills:** \$270 – Starboard Drive/GCG. Mr. Lucas made a motion to pay \$270.00 to GCG for Starboard Drive Subdivision which was seconded by Mr. Grant. The motion passed unanimously.
- e.) **Correspondence:** Mr. Foley read a letter from a resident, Mr. William Lucas who wrote the need for a light pollution bylaw.

## 2. PUBLIC HEARINGS:

- a) **DS 2022-01 Starboard Drive Definitive Subdivision:** Continued Public Hearing to February 28, 2023, on a proposed 8-lot subdivision on Starboard Drive with 9.5 acres and the five existing cottages.

Mr. Lucas made a motion to continue, per the applicant's request to February 28, 2023, and was seconded by Mr. Grant. The motion passed unanimously.

- b) **DS 2019-01: Timothy & Hiller Avenue:** Continued hearing on a Remand Review of a previously denied subdivision after Joint Motion to review a revised conceptual 15- Lot Subdivision Plan.

Ms. Melanson handed the hearing over to Ms. Fidalgo as she previously was the Chairperson who opened the meeting. Ms. Fidalgo read the advertisement in for the record.

Mr. Foley reviewed the timeline of the remand review of the proposed Hiller & Timothy Subdivision. In 2019 the Board reviewed a Definitive Subdivision to create a 16-lot subdivision. In January 2020 the proposed 16-

lot subdivision was unanimously denied. This was primarily due to: Proximity to the sewage treatment plant; Proximity to the wind turbines; Extensive wetlands; and the amount of fill could impede stormwater runoff from its natural flow through the site. In June 2022 the Planning Board and Applicant agreed a Joint Motion to Remand to review a revised plan. In November 22, 2022 the public review of the revised conceptual 15-Lot Subdivision Plan began with Lot 11 removed and an added tree preservation zone to see whether the Board and applicant could settle.

The public review was continued December 13, 2022. The Board asked whether the Applicant could do more to create a buffer from the sewage treatment and wind turbines, particularly in the center of the site. The Applicant requested all comments from other Departments first.

On January 6, 2023 the Applicant submitted a revised plan with a smaller detention basin and a new 50' buffer between the detention basin and sewage treatment plant. The January 10 review was therefore continued to January 24 to give time to review. On January 20, 2023 the Planning Board visited the site of the proposed subdivision. Brining us to the continued Review on January 24, 2023.

Dave Davignon, the engineer for the project, reviewed the updated plans with the 50' buffer between the detention basin and sewage treatment plant. He said the hammerhead was also revised to be in accordance to the rules and regulations. The Fire Department comments were positive. He said they submitted updated peer review comments with forty-six items. He watched the Board of Health meetings and wanted to make comments on what he heard. He said that Mr. Lavalette was misinformed, on the acreage of the property at what was to be cleared. Mr. Davignon also stated someone else stated there was 10.5 acres being cleared and that too was incorrect.

Mr. Davignon also referred to a comment made by Mr. Foley at a past meeting that "there were dozens and dozens of outstanding issues" with the last peer review, and he believes that is an unfair statement. Mr. Davignon also brought to the board's attention that the chairperson of the Board of Health referred to a 'ponding' issue at the property and mosquitos. He said that he has been at the site numerous times and is not aware of a standing water problem.

Mr. Foley referred to the peer review comments that the applicant submitted. He said the Town's peer reviewer would need to review the answers; however, the applicant still owes \$8,000 and the peer reviewer was not going to review until those fees were paid and enough deposited to cover the continued review.

Mr. Hayward addressed the engineer. He asked if the applicant is aware if the peer reviewer has reviewed or seen the updated plans (the new buffer and retention basins). Mr. Davignon stated he has no direct contact with the Town's peer reviewer and has no knowledge if they have seen the plans or not.

Mr. Hayward reviewed the proposed waivers with Mr. Davignon. He also asked about the Highway Superintendent's comments and whether Mr. Davignon agreed with them.

Ms. Fidalgo stated she still had issue with the middle of the project. She said to her it was better with the additional buffer, but not good enough.

Mr. Lucas asked about the calculations on the stormwater retention basins. Mr. Davignon stated the numbers have not been run as of yet. He said he made the volumes match. Mr. Lucas said he had concerns about the water down there. Mr. Davignon stated they could downsize the pond.

Ms. Fidalgo opened it up for public for any new thoughts or comments.

Resident, Gary Lavalette stated he did get misinformation about the acreage. He stated he was a Conservation Commission member, and he still believes the area is not conducive to a subdivision. He commented on his comment regarding the "smoking gun", that the applicant stated at an earlier meeting that residents would have to sign a release that they are aware of the sewage plant before buying. He said the site is not conducive to the quality of life of the residents. He read a quote that the applicant's attorney had made at a previous meeting regarding the proximity of homes to the sewage plant and stated that resonated with him. Mr. Lavalette said that the Conservation committee denied the project as they had felt there were too many environmental issues in that area.

Mr. Foley reviewed the timeline of when the Conservation denied the project and that was in 2020. Mr. Foley also stated the confusion of the acreage, he believed came from what the Assessor's office had on file for the acreage. He said that the Assessor's office information was 15 acres and Mr. Davignon was 10. Which is what they eventually went with.

Mr. Davignon stated that all assessor's maps state they are used for 'assessing purposes only'; and that sometimes there are definite errors on those plans. Mr. Davignon stated the only person that can confirm acreage is a certified land surveyor, who puts his stamp on the plans.

Ms. Karen Isherwood of 3 Teal Circle was present and shared her concern for stormwater run-off as she lives in that area.

Resident, Mr. Rezendes stated his mother lives on Paul Street and had concerns about her property being flooded as well.

Attorney Michael Terry, Town Counsel, introduced himself and stated that they could condition the new plans and use the regulations to confirm the conditions they were approving. He said the applicant would have to bring them a plan with all the conditions as requested. If they deny come to an agreement it goes back to court.

Ms. Melanson asked if Mr. Roderiques owned the land. Mr. Davignon stated the property is owned by an LLC, and Mr. Roderiques in the trustee of the LLC.

Ms. Melanson asked why there is an outstanding \$8,000 owed to the Town and why it hasn't been paid.

Attorney Mathieu, for the applicant, said this is something he is in discussion with the Town Attorney. Attorney Terry stated that they are discussing that with Ms. White of the firm and not him directly.

Mr. Grant asked how close the nearest home to the nearest turbine is and Mr. Foley said it was approximately 1,100 feet. Mr. Davignon stated it would be lot 12 which would be the closest (13, 10, 9, & 8 lots would be about the same).

Ms. Fidalgo asked if the Board members think improvements are enough to keep on going or whether we feel more needs to be done to move forward. In any case a decision needs to be made. Ms. Fidalgo said that for her the middle section of the project is the most questionable for her and questions whether it's healthy to put people in homes in that area.

Mr. Hayward asked questions regarding the frontage on a few lots, as he didn't feel they were at the 100'. Mr. Davignon confirmed they were at the required 100' frontage.

Mr. Hayward said he thinks the area between lots 6 and 7 should be an easement, as he would hate to see the trees in that area destroyed. Mr. Hayward asked for more plantings and shrubs be located throughout the heart of the subdivision as another layer of buffering. He also felt there should be more language needed for a permanent buffer.

Ms. Melanson made a motion to deny the plan as this subdivision was not suitable for residential living and was seconded by Ms. Fidalgo. Via roll call the motion did not pass with Mr. Hayward, Mr. Lucas, Ms. Simmons and Mr. Gran voting in the negative; and Ms. Melanson, Ms. Fidalgo, Mr. Braga and Mr. Fleurent voting in the affirmative. However, five votes in the affirmative are needed to pass a motion.

Mr. Lucas suggested they speak to the Town Attorney on how to move ahead.

Ms. Fidalgo said she doesn't want to continue to waste the applicant's time as well as the Boards time. She said that Mr. Hayward gave the applicant some direction, but it was really up to them if they were going to pursue it.

Mr. Hayward made a motion to continue the hearing, but Ms. Fidalgo did not ask for a second, before Mr. Braga stated that he believed the applicant needed to be asked how they want to move ahead at this juncture.

Speaking for the applicant, Attorney Mathieu said the plans they have in front of them is all they were going to get. He said it was either this plan with very minor tweaking or he would take the original plan back to court. He said he is not in agreement to a continuance.

Mr. Hayward said that the Planning Board had a right to condition the plans and there was no way he was going to approve the plans without conditions. He said if they aren't going to accept conditions on the plans, that he would then be a 'no' vote.

Mr. Foley said there was also the issue of the peer review. He said their peer reviewer should look at their response but can't until the past due bill is paid and real plans are in front of them, and not just conceptual plans.

Attorney Terry stated that what they should be reviewing is the concept that is before them. He said they need to think about whether the change in the layout is enough in detail to weigh out or add in a plan that is in compliance. He said that if the board wants to send comments to him and he can then discuss them with Attorney Mathieu and come back with a final decision.

Ms. Melanson made a motion to continue so that the attorneys can discuss and produce a layout. Mr. Foley reminded everyone that it takes five positive votes to approve a subdivision. He noted that if the motion had been in the positive the subdivision would have failed. Ms. Melanson asked about whether the peer review response should be considered. Mr. Terry said that might not happen if there seems to be a billing issue.

Ms. Simmons asked the board members if these changes came back would that change the mind of some people on the board? She said if it didn't then they would be in the same place as they are now.

Mr. Hayward asked for a date certain. He said the bigger concern is the need for the peer review consultant get back to the board.

Attorney Mathieu asked for a continuance until March 14, 2023. Mr. Hayward felt that was too long and withdrew his first motion.

Ms. Melanson made a motion to continue to March 14, 2023 at the applicant's request and was seconded by Ms. Fidalgo.

On the question, Mr. Braga said he wasn't sure they should continue. He said attorney Mathieu has been clear that there were only going to be a few minor details that would change. He said if that isn't satisfactory to everyone, he wasn't sure why they would continue to waste everyone's time and money. He said he was under the impression that with the first motion and vote, people weren't sure what they were voting for, as the motion would have been clearer in the positive and not in the negative.

Ms. Melanson stated she understood what her motion meant and thought people understood it.

Mr. Lucas made a motion to approve this plan and was seconded by Mr. Braga. Via Roll call vote the board members voted accordingly: Mr. Fleurent voted to deny; Mr. Hayward stated, 'in light of the recent statements of the applicant,' he also voted to deny; Mr. Grant voted to deny; Mr. Braga voted to deny; Ms. Fidalgo voted to deny; and Ms. Melanson voted to deny.

Approving was Mr. Lucas and Ms. Simmons.

The motion does not pass 6-2-0; and will be remanded back to the court.

### **3. RECEIPT OF PLAN:**

#### **a) Shirley Street – Street Discontinuance: Petition from Select Board for Planning Board Review**

Mr. Foley reviewed the Shirley Street Discontinuance. This is for review at a later time as we just got this. This is between the A&A Repair at 196 Huttleston Avenue and the recently reviewed A&A Auto Sales located at 200 Huttleston Avenue. He said that the Select Board asked for their comments. He said he wasn't sure when the Select Board was making a decision.

Engineer, Mr. Davignon reviewed the street discontinuance as it was listed in two separate entities. He said it's a real simple thing that can be taken care of within the deeds. He said it's usually just separated in half with a piece one side or the other.

Mr. Hayward said they are already using this property to park their cars here. He says there is a Special Permit already at the property and the SP wouldn't hold if the Select Board decided to add the number of spots to the already granted Special Permit. He said the applicant should've come in to do this prior to the Special Permit.

#### **b) ANR 2023-01 – 62 Manhattan Avenue: A Form A proposal to break up a long lot fronting on Manhattan Avenue with approximately 300' of waterfront into 7 lots, such that the primary lot would still be conforming but the other non-buildable, non-conforming lots could be conveyed to abutters giving them waterfront access.**

Mr. Foley advised there is a revised plan. He said the note in each lot says it is 'unbuildable' and cites a note on the plan that has the full language required about the lot not being buildable. There was a question whether the neighborhood abutters were going to buy the lots.

Mr. Firth, the engineer was present. He said the neighbors are interested in the lots and his client assumes they will sell the lots to the neighbors.

Mr. Foley said other plans from the previous meeting were stamped on January 10<sup>th</sup>. He suggested perhaps they deny that plan as these plans are slightly revised and dated today on January 24, 2023. He said they were stamped in today.

The board discussed if lots were divided by the dotted or solid lines.

Mr. Hayward said he sees no dotted lines on his plans, he says he sees solid lines all the way across. He says he needs clarification. Mr. Foley also saw a solid line but others thought the line was dotted

Firth said it was a very subtle dotted line added at the request of a board member. Mr. Foley said since the surveyor is here he can easily manually make the line solid.

Ms. Melanson made a motion to approve the plans of January 24, 2023 but have them corrected with the solid line versus a dotted line. The motion was seconded by Mr. Grant.

Voting via roll call, Mr. Fleurent voted yes, Ms. Simmons, yes; Mr. Grant, yes; Mr. Braga, yes; Ms. Fidalgo, yes. And Ms. Melanson, yes.

Both Mr. Lucas and Mr. Hayward abstained from the vote. (6-0-2).

#### **4. CURRENT PLANNING:**

Mr. Foley reviewed the main projects.

- The 5<sup>th</sup> meeting of the 40R Working Group is tomorrow at 4:30 pm
- Municipal Vulnerability Preparedness (MVP) has a Steering Committee tomorrow at 2:30 pm
- We have received a SRPEDD Technical Memo for Benoit Square to be discussed at next meeting
- Working with Highway, GCG, and Kimley-Horn Scope to access the Bridge Street Bond funds.
- The Town received a Grant for updating the Hazard Mitigation Plan (HMP).
- The Town received a Grant for updating the Municipal Harbor Plan (MHP) with New Bedford.

Mr. Lucas made a motion to adjourn and was seconded by Mr. Grant. The motion passed unanimously.

Respectively submitted,

Patricia Pacella