



FAIRHAVEN SELECT BOARD

Meeting Minutes

February 26, 2024

FAIRHAVEN TOWN CLERK
RCUD 2024 MAR 12 PM 12:43

Present: Chair Leon Correy, Vice-Chair Charles Murphy Sr., Clerk Stasia Powers, Select Board member Keith Silvia, Select Board member Robert Espindola and Town Administrator Angie Lopes Ellison

Mr. Correy opened the meeting at 6:30p.m.

PUBLIC HEARING

The Public Hearing for the FY24 Community Development Block Grant (CDBG) Application, Hedge Street, Phase Four opened at 6:35p.m.

Planning and Economic Development Director Paul DiGiuseppe reviewed the notice and introduced project consultant Melissa Jenks and consultant Mike Carter of GCG Associates addressed the Board via zoom. Mr. DiGiuseppe recapped the project history and provided an overview of phase four (*Attachment A*). Ms. Jenks reviewed the revised budget sheets included in the presentation.

The Board asked if the public concerns with Americans with Disabilities Act accessibility (ADA) and traffic calming will be addressed in this phase and if there will be any impacts to trees.

Public Comment:

Diane Hahn of Francis Street addressed the board about the previous work at the corner of Plymouth and Francis, promises of granite curb, removal and replacement of trees, suggestion for the corners and curbs, the lawn outside of her home, the final feel of a village for the neighborhood and the potential to discuss the atmosphere.

Ann Richard of Hedge Street addressed the Board and said her area was in phase two and is a wonderful addition and it has helped with parking. She said Mr. Carter and Mr. DiGiuseppe have done a great job and those on Hedge Street support it.

The Public Hearing remained open during adjournment for Executive Session.

Motion: Mr. Espindola motioned to take item J Executive Session out of order. Ms. Powers seconded. The motion passed unanimously (5-0-0).

Motion: Mr. Espindola motioned to enter into Executive Session pursuant to MGL Chapter 30A, Section 21 (a)(2): To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel – Town Administrator. And to return to open session thereafter. Roll Call Vote: Mr. Espindola opposed, Ms. Powers in favor, Mr. Murphy in favor, Mr. Silvia in favor and Mr. Correy in favor. The motion passed (4-1-0) Mr. Espindola opposed.

Discussion ensued regarding exemptions for Executive Session. Mr. Espindola referred to a handout of an email he sent to the Board and Ms. Ellison on February 22, 2024 containing determinations of the Attorney General regarding Executive Sessions and asked for verification that it was not to discuss goals for the Town Administrator.

Ms. Ellison addressed the matter and stated that there are specific matters in her contract and when they need to be discussed they need to be discussed and negotiated in Executive Session and that if the Board would like to negotiate in Open Session, they would first enter Executive Session to discuss and then come back to Open Session. Regarding goals and goal setting, if the Board is setting goals for the community that can be done in Open Session and that the Board cannot set a goal and go against her contract in Open Session. Reference was made to the messaging and interpretation of Mr. Espindola's dissemination of this information to the Board prior to tonight and his previous references earlier in the year to not sharing opinions prior to meetings. Ms. Ellison restated everything in her contract

is done in Executive Session and then, once done, comes out in an Open Session.

Mr. Espindola clarified that the information that was forwarded was the Attorney General's opinion. He referred to the goals set the prior two years in Open Session and referred to goals in existing contract as being already set and until the Board has a determination in writing he will not take part.

Ms. Ellison read from her contract (*Attachment B*) Section 5, Performance Evaluation. She reminded the Board that for ease of transition she took the previously established goals in her first year and last year and for this year it would be mutually agreed upon, negotiated in Executive Session and based on her contract.

Mr. Espindola restated his interpretation that it does not meet the standard of Executive Session. If there is not an agreement by the Board, he will not participate in the Executive Session.

Mr. Correy commented on the divisive environment of the last year and advised the Board they will enter Executive Session per the agenda as stated and can obtain clarity from Counsel to bring to a future meeting.

Meeting adjourned to Executive Session at 7:09p.m.

Open Session resumed at 8:07p.m.

The Public Hearing for the FY24 Community Development Block Grant (CDBG) Application, Hedge Street, Phase Four continued at 8:07p.m.

No further comments or discussion on the Public Hearing

The Public Hearing for the FY24 Community Development Block Grant (CDBG) Application, Hedge Street, Phase Four closed at 8:08p.m.

Motion: Mr. Espindola motioned to approve the FY24 Community Development Block Grant application for improvements to Hedge Street, Phase 4 as presented and to authorize the Select Board Chair to sign the FY24 Community Development Block Grant application-related documents and to designate the Town Administrator, Angeline Lopes Ellison as the Environmental Certifying Officer. Ms. Powers seconded. The motion passed unanimously (5-0-0).

EXECUTIVE SESSION

Labor Counsel Attorney Rich Massina addressed the Board in Open Session regarding the concerns expressed prior to the Board adjourning to Executive Session at 7:09p.m.

Atty. Massina advised that regarding the discussion prior to the Executive Session as to the purpose of the Executive Session and confusion on goal setting; the specific reason for the Executive Session this evening was to discuss strategy for negotiations for the Town Administrator contract that expires in 2025. The session tonight was not to set goals, that is a separate process. The purpose this evening was to discuss the strategy and how the Board goes about negotiating the agreement in the sanctity of Executive Session. Then, once the agreement is complete, the Board would discuss in Open Session before a vote is taken.

MINUTES

Motion: Mr. Espindola motioned to accept the minutes of February 12, 2024 as amended. Ms. Powers seconded. The motion passed unanimously (5-0-0).

Discussion on the amendment ensued and Ms. Powers explained that in Committee Liaison Report the reference in Financial Policy Review Committee should read "Capital Planning and Unfunded Liabilities: Other Post-Employment Benefits (OPEB)"

Motion: Mr. Espindola motioned to accept the minutes of February 12, 2024, Executive Session. Ms. Powers seconded. The motion passed unanimously (5-0-0).

Motion: Mr. Espindola motioned to accept the minutes of February 7, 2024 joint Select Board and Finance Committee meeting minutes. Ms. Powers seconded. The motion passed unanimously (5-0-0).

TOWN ADMINISTRATOR

Ms. Ellison reported on:

- Staff Updates: Departments are staffed.
- Department Head Updates:
Assessor Joanne Correia provided an update on the department (*Attachment C*).

The Board asked to clarify the budget shift in wages was due to Ms. Correia's work and what the consultant would do and for how long.

Treasurer Lisa Rose provided an update on the department including: the Treasurer's office relocation to within the Collector's office, the work to finalize the Sewer Treatment borrowing, a review being done on Town possessions for potential auction and letters to tax title accounts to set up a payment plan. She advised all efforts are being made to bring money into the Town.

The Board asked about engaging other groups like the Historic Commission and Conservation during the process of an auction. Ms. Rose agreed and advised there will be a process followed to include necessary departments.

Collector Pamela Bettencourt provided an update on the department including: third and fourth quarter tax bills were completed and mailed, excise tax bills were mailed, demands for sewer and water have been sent, tax title work advertised and posted, cross training of the Assistant Treasurer/Collector and continued training within the office of the new collector. Ms. Bettencourt recently celebrated thirty years with the Town.

The Board thanked Ms. Bettencourt for her update.

- The Belonging Committee is partnering with other organizations, Town departments and other businesses on an April Food drive, details are posted online.
- The Board and Town Administrator have been invited to participate in Coastline's March for Meals, a ride-a-long with meals for wheels, the Board should contact the Council on Aging to schedule time to participate
- Reminder that Town Hall will be closed to the public on Wednesday, February 28, 2024 for a staff professional development day, EARLY VOTING will still take place in the banquet room.
- Staff Contact Protocol: Ms. Ellison reminded the Board that the staff is receiving requests that should come through her office to help balance the workload and avoid duplicating efforts as well as balance priorities. Please ensure you have reached out to Ms. Ellison first.

Mr. Espindola asked if her reference was to posting of packets online or to the format of budget documents similar to previous budget consultant Mr. Bienvenue because they have not seen them. Ms. Ellison advised that this is a general reminder and ask and that if any member needs, they can speak with her offline.

- Request for Proposal (RFP)/Invitation for Bid (IFB) matrix: Ms. Ellison referred to the form and explained its use in regards to the procurement process.
- Website Redesign: the work is moving forward to make the Town's website more user friendly and organized.

Mr. Espindola asked what company. Ms. Ellison advised it is John Guilfoil Public Relations (JGPR), they handle PR for the police department.

BOARD OF ASSESSORS APPOINTMENT

Mr. Espindola stated he would like to have a joint meeting with the Board of Assessors to discuss circumstances as he has just spoken with another member and would like to understand what is going on before this Board considers a new appointment.

Discussion ensued about the request, Mr. Withington's resignation that was received on February 7, 2024 and making an appointment tonight.

Daniel Lane then addressed the Board and explained his background and qualifications.

The Board asked questions about his experience with shipyards. Mr. Lane explained that he can do the same work that Mr. Withington had in that regard and that there are a number of shipyard cases with the Appellate Tax Board (ATB) that have been open for years that he will help to work on.

Motion: Ms. Powers motioned to appoint Daniel Lane to the Board of Assessors for a term to end May, 2025. Mr. Silvia seconded. The motion passed (4-1-0) Mr. Espindola opposed.

LIVABLE STREETS APPOINTMENT

Miles Grant addressed the Board via zoom and explained his interests and background.

Mr. Espindola commented that Mr. Grant has attended meetings and is impressed.

Motion: Mr. Espindola motioned to appoint Miles Grant to the Livable Streets Committee for a term to end May, 2024. Ms. Powers seconded. The motion passed unanimously (5-0-0).

TOUR DE CRÈME CHARITY BIKE RIDE EVENT: SUNDAY, MAY 19, 2024

The Board reviewed the application for approval to hold the event.

Motion: Mr. Espindola motioned to approve the Tour de Creme to be held on May 19, 2024 as outlined in the proposal, contingent on approval by Police, Fire and BPW and to be signed by the chair of the Select Board. Ms. Powers seconded. The motion passed unanimously (5-0-0).

14 OXFORD STREET CONCERNS

Select Board member Silvia addressed the Board regarding numerous and longstanding complaints that have been brought to his attention from neighbors of 14 Oxford Street and photos given to Mr. Silvia (*Attachment D*). Mr. Espindola asked if the Board was considering the continuation asked for by Attorney Nicholas Sylvia in email to the Board on February 25, 2024.

Motion: Mr. Espindola motioned to table discussion to a further date in reference to the letter from 14 Oxford Street's attorney asking for more time. No second.

Ms. Ellison advised the Board that Town Counsel was made aware of the attorney's request and the Select Board would be listening to the concerns similar to past practice when other Board members have asked for items to be placed on the agenda. Jurisdiction for action would be with other boards and the Select Board can make recommendations for other boards to review.

Discussion ensued regarding the photos, cars with expired inspection stickers parked on surrounding streets including one on West Street that has been hit, vehicles impeding the trash collection vehicles from passing without multiple-point turns, concerns about emergency response vehicles being impeded by these vehicles, a handout from the Building Commissioner of Town bylaw §125-1 (*Attachment E*).

Mr. Correy said the Board should listen to the concerns and review the materials and then the Board can advise the Town Administrator to review with the Board of Health or other departments as needed.

Atty. Sylvia, 53 Boston Hill Road, representing Jay Simmons addressed the Board. He advised them that Mr. Simmons is ready to work side-by-side with deadlines and a strategy and asks for an administrative continuance as he is dealing with the death of his father and the posted agenda gave no indication as to what the concerns were.

Patrick McLoughlin of 2 Lafayette Street addressed the Board. He said that neighbors have been trying to work on concerns with the property at 14 Oxford Street since 2003 and they understand the current passing of Mr. Simmons' father. He reviewed the vehicles: one vehicle has an inspection sticker expired since September, 2020 with two flat tires and has not moved in forty-two months, another vehicle with flat tires has not moved in thirty-seven months and the vehicle on West Street has not moved in fourteen months. The vehicle on West Street causes trucks to have to back-up and turn multiple times or drive on the edge of the lawn of another neighbor to get by. Mr. McLoughlin reached out to the Select Board office in June, 2023 and the concerns were referred to the Fairhaven Police. There is an additional concern now that the pictures show waste that needs to be removed from the property. The potential for hazardous waste on the site is now a concern.

Select Board member Silvia referred to the photos and concerns of items on the property: multiple vehicles, fridges, buckets, drums, etc. that may need assessment from the Board of Health, Building Department and Conservation.

Nina Jones of 7 Oxford Street addressed the Board regarding safety and does not want to see an issue now that the debris there is known like the fire at the end of Lafayette and West Streets in 1992.

Select Board member Silvia recapped that he would like to request an onsite inspection by the Building Commissioner, Board of Health and Conservation Agent to assess the area.

Motion: Mr. Espindola motioned to request the Town Administrator coordinate removal of any vehicles illegally parked and illegally present on the property at 14 Oxford Street at the earliest opportunity and all concerns raised tonight be addressed in an administrative fashion with the attorney of 14 Oxford Street after a list of concerns is presented to them in writing. Ms. Powers seconded. Discussion ensued.

Select Board member Silvia asked for Ms. Ellison to oversee any actions needed and any additional referrals needed to address the issues. Mr. Espindola recapped his motion and the portion regarding the attorney from 14 Oxford Street in the motion would mean a mutual agreement of the two parties.

Health Agent David Flaherty addressed the Board and explained that on February 8, 2024 he initiated contact and spoke with Mr. Simmons regarding a plan. Mr. Flaherty said he did not know of the issues in the yard, he saw the driveway and car that appeared to be undriveable and images from Google Earth and GIS. The approach has been the same as with any resident. Mr. Espindola asked about resources for hoarding. Mr. Flaherty said he will work with Mr. Simmons and review resources. Select Board member Silvia asked for an onsite walk-through to identify any hazardous materials. Mr. Flaherty said he would work with Deputy Fire Chief Nichols.

Conservation Agent Bruce Webb addressed the Board, he has not been onsite and cannot confirm what may or may not be onsite. He does agree with Mr. Flaherty's assessment of opening up a conversation to develop a plan of action for clean-up. Mr. Webb added that circumstances could exist that could alter the wetlands if there is debris in the buffer zone like vehicular fluids, which could be viewed as a violation under the Wetlands Protection Act.

Ms. Powers thanked Mr. Webb and Mr. Flaherty for compassion in their approach and acknowledged that there does appear to be a serious problem that the Town needs to address and also help the resident as much as possible.

Mr. Espindola asked if a referral to a resource like "Solution to Pollution" could be considered.

Select Board member Silvia asked if the Board wanted to have an individual in this situation as the Chair of the Conservation Commission. Mr. Correy advised that the Board would not discuss that matter tonight.

Ms. Ellison proposed an amendment to the earlier motion: To request the Town Administrator coordinate the clean-up efforts at 14 Oxford Street with the departments of the Board of Health, Conservation Commission Agent and

Building Commissioner in collaboration with public safety: Police and Fire to ensure compliance with all regulations and follow-up with the Select Board.

The Town will work with the attorney for 14 Oxford Street. Select Board member Silvia asked about removal of vehicles within seventy-two hours. Mr. Correy said Ms. Ellison will work with the proper departments to make sure this is addressed in a timely manner and in consideration of Mr. Simmons' circumstances and the loss of his father.

Motion: Mr. Espindola accepted the amended motion: To request the Town Administrator coordinate the clean-up efforts at 14 Oxford Street with the departments of the Board of Health, Conservation Commission Agent and Building Commissioner in collaboration with public safety: Police and Fire to ensure compliance with all regulations. Ms. Powers seconded. The motion passed unanimously (5-0-0).

DEPARTMENT FEES

The Board was provided with an analysis of Marine Resources fees. Other departments' fees and analysis are being gathered for review.

Motion: Mr. Espindola motioned to approve the fee increases to the Mooring Fees and Waterways Fees as recommended by the Town. Ms. Powers seconded. The motion passed unanimously (5-0-0).

TOWN ELECTION BALLOT QUESTION

The Board reviewed the Town Election ballot question.

Motion: Mr. Espindola motioned to include at the Town Election a ballot question: Shall the Town vote to have its elected Town Clerk become an appointed Town Clerk of the Town: Yes __ No __. Ms. Powers seconded. The motion passed unanimously (5-0-0).

2023 SELECT BOARD ANNUAL REPORT SUBMISSION

Ms. Powers advised the Board that the report draft in the packet needs a correction to change "Taunton River" to "New Bedford Harbor."

Motion: Mr. Espindola motioned to accept the 2023 Select Board/Town Administrator Annual Report with the replacement of Taunton River with New Bedford Harbor. Ms. Powers seconded. The motion passed unanimously (5-0-0).

COMMITTEE LIAISON REPORTS

Mr. Espindola reported on:

SRPEDD meets February 28, 2024 and The Broadband Study Committee has not met. Broadband Coalition and Livable Streets Committee updates are in Mr. Espindola's report (*Attachment D*).

Ms. Powers reported:

The Financial Policy Review Committee meets this week and they are making progress. Economic Development is planning another business gathering event on April 11, 2024.

Mr. Murphy reported:

The Sister City Committee is preparing for the Cherry Blossom Festival. The Manjiro Festival will take place in Japan this October.

Mr. Silvia reported:

A traffic study is in process regarding the intersection of Bridge and Adam Streets. No meetings to report on.

Mr. Correy reported:

Digital Equity is wrapping up.

PUBLIC COMMENT - None received.

BOARD MEMBER ITEMS

Mr. Espindola responded to earlier comments from Mr. Correy and said he is proud of his twelve-year record on entering executive session and understanding every executive session follows Attorney General's (AG) guidelines in order to advocate to stop conversations or leave if they are not following the AGs guidelines. When in doubt he has reached out to confirm or ask for guidance. He said he wanted to elaborate about the documents posted online and the policy to try and post everything online that is not confidential and in budget season it is important and he is asking for them to be posted online.

Mr. Espindola continued and said regarding the Capital Plan projects recommended and the five-year plan is what he has been referring to and use of the templates that were used last year by Mr. Bienvenue. He said he would like to see what was promised earlier for consistency including debt services and reserves. This would allow the public to follow along as well.

Ms. Powers said the Financial Policy Review Committee (FPRC) have been reviewing Capital Planning and they did want to also see the back-up for the projects to understand better which were emailed to Ms. Ellison to gather. Ms. Ellison said there are software limitations with the tool that has been used to enter the Capital Projects into and the Town is looking at options to update software which does not negate the five-year plan.

Ms. Powers commented on the meeting and the need to treat each other with respect because we owe this to the community. The Board can strongly disagree but also set an example that we can debate and be respectful.

Mr. Murphy asked for volunteers for the Lagoa Friendship Pact Committee and added that you do not need to be Portuguese in order to apply, they promote the Portuguese culture.

Mr. Espindola asked for more visibility into legal proceedings in the Town and referred to reading about an ongoing case in the Neighborhood News. He was not aware of the status when he was asked about it. He asked for an updated list for the Board.

Mr. Correy said part of the Board's job to act as the Town Administrator's (TA) boss and not any one individual Board member to do so. It is the Board's duty to provide a safe, comfortable and fair working environment, follow the terms of the TA's contract and negotiate if there is an issue within it for the next contract. When there is a contract, there are consequences for lack of results that are managed through the contract. The Board should not be a vessel or catalyst for public attacks of the TA. The Board hired someone to do a job and it is up to the Board to allow the person to do the job. The Board has a responsibility to work together to get things done on behalf of the Town and to support and provide a safe working environment for our employee acknowledging racist incidents and issues, it may not be the reputation of the Town but incidents happened. There are many ways to get things done.

NEWS AND ANNOUNCEMENTS

The next regularly scheduled Select Board meeting is on Monday, March 11, 2024 at 6:30p.m.

Meeting adjourned at 10:00p.m.

Respectfully submitted on behalf of the Select Board Clerk (ah)

ATTACHMENTS:

- A. Public Hearing: FY24 Community Development Block Grant (CDBG) Application, Hedge Street, Phase 4
- B. Town Administrator Ellison's contract
- C. Assessor's Report: Joanne Correia
- D. Committee Liaison Report: Robert J. Espindola

Approved on March 11, 2024



Monday, February 26, 2024 Public Hearing

Town of Fairhaven Notice of Public Hearing

FY 24 Community Development Block Grant Application

Town of Fairhaven will hold a Public Hearing at 6:30 P.M. on February 26, 2024, Town Hall, 40 Center Street, Fairhaven, MA. The purpose of the hearing is to seek public comment on the Town's FY2024 Community Development Block Grant (CDBG) application, which will request funding for reconstruction of Hedge Street (Phase 4), from Adams Street to approximately House #70. The Town intends to apply for up to \$950,000 for this project and general administration. The grant will be administered with private consultants. The performance of prior years' CDBG Awards may be discussed.



Town of Fairhaven

Department of Planning & Economic Development

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

TO: Town of Fairhaven Select Board
THROUGH: Angie Lopes-Ellison, Town Administrator
FROM: Paul DiGiuseppe, Director of Planning and Economic Development
DATE: February 20, 2024
RE: FY 24 CDBG Public Hearing, February 26, 2024
Grant Application Project, Budget and Motions

The Public Hearing scheduled for the Select Board on February 26, 2024 will provide detailed information on the Town's FY 24 Community Development Block Grant (CDBG) application for improvements to a section of Hedge Street from approximately 70 Hedge Street to Adams Street. This segment, referred to as Phase IV, will complete streetscape infrastructure improvements along the entire length of Hedge Street. Phase IV improvements include upgrades to sidewalk, water, sewer and drainage infrastructure.

The FY21 CDBG awarded to the Town included preparation of engineering design for Hedge Street, from Main Street to Adams Street, to enable the Town to finish the Hedge Street project. Phases 1 through 3 of Hedge Street improvements, from the Acushnet River to 70 Hedge Street, have already been completed with monies from three previous year's CDBG awards. GCG was contracted to complete the design of Phase IV as they were for the prior phases. There have been three public input meetings in the course of the development process. An engineering plan for improvements will be presented at the Public Hearing.

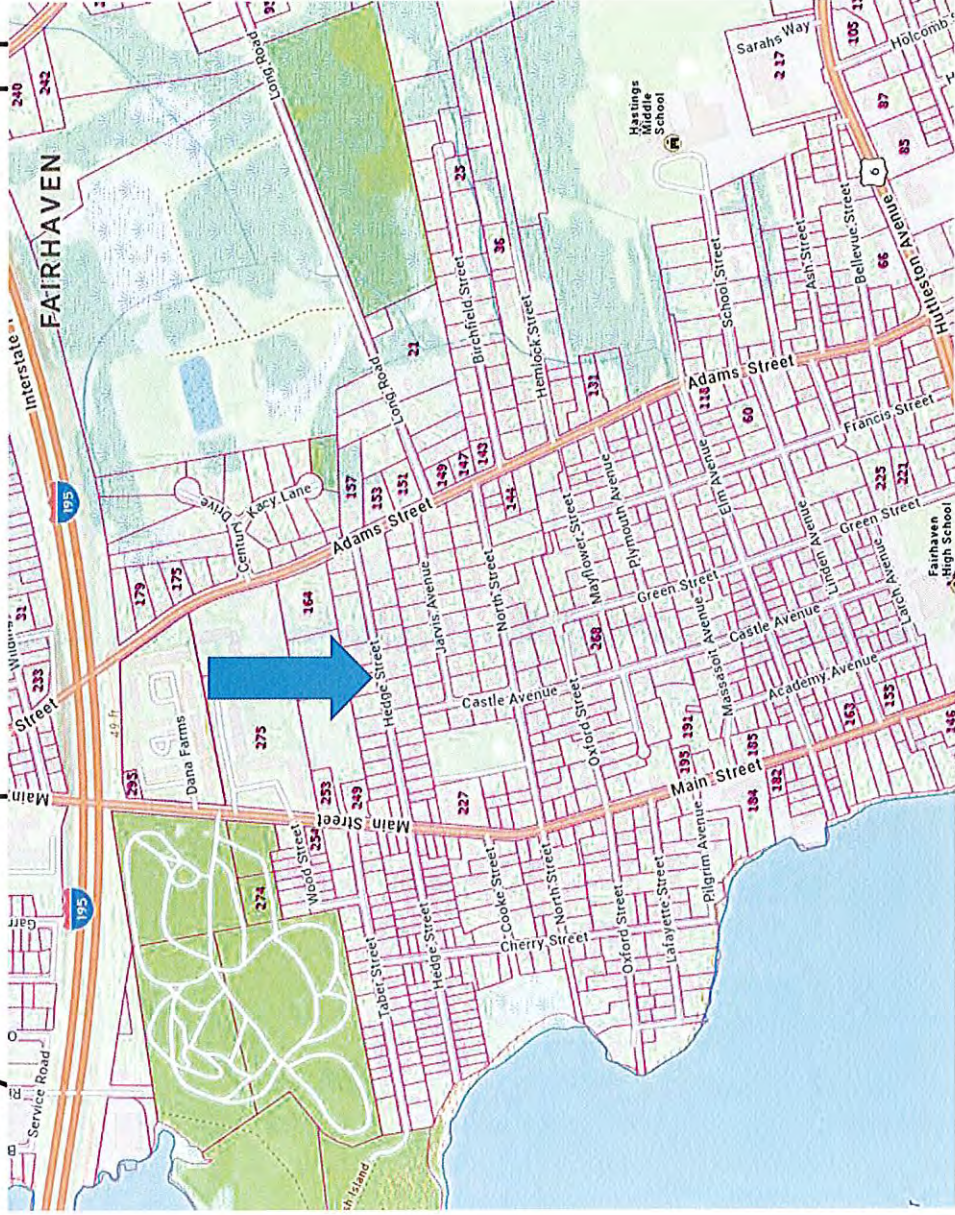
The application budget (attached) also includes funding for a CDBG Administrative Assistant as well as a CDBG consultant grant administrator and general administration expenses.

All CDBG applications require the Town to appoint an Environmental Certifying Officer (ECO) who can sign off on the environmental reviews required by the CDBG. The reviews for the types of projects in the grants that Fairhaven has submitted are straightforward; they identify any impacts that proposed improvements might have on the environment. In the past, a member of the Select Board has served as the ECO, with Robert Espindola being the last person appointed to the position. I have attached information from the CDBG Manual about the ECO position as well as a certifying statement that should be signed by the Select Board once the designation is made.

I ask the Board to make the following motions:

1. To approve the FY24 CDBG application as presented for improvements to Hedge Street, Phase 4.
2. To authorize the Select Board Chair to sign the FY24 CDBG application-related documents.
3. To designate _____ as Fairhaven's Environmental Certifying Officer.

Hedge Street Phase IV Streetscape Improvements Community Development Block Grant Application



Hedge Street Phase IV Streetscape Improvements Community Development Block Grant Application





Three Community Engagement Events



- Team discussed the improvements
- Public discussed:
 - Compliance with ADA
 - Safety of children and pets
 - Traffic calming
 - Relocating existing fire hydrant
 - Crossing Adams Street
 - Drainage issues







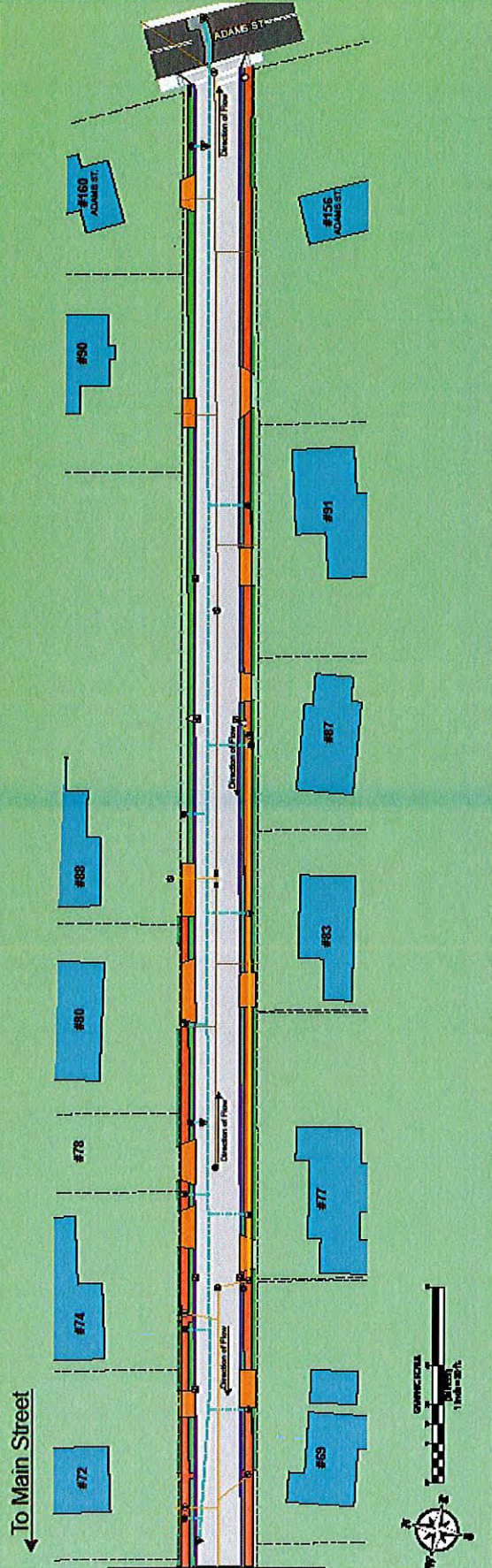
FAIRHAVEN HEDGE STREET PHASE 4 PROJECT MAP

KEY

PROPERTY LINE	PROPOSED DRAIN MANHOLE	REPLACE DRAIN MANHOLE	EXISTING DRAIN MANHOLE	PROPOSED DRAIN MANHOLE	NEW SEWER SERVICE	NEW WATER SERVICE	NEW HYDRANT	REMOVED GUTTER INLET	NEW WATER VALVE	NEW STOP SIGN	NEW STREET SIGN	NEW CROSSWALK LINES	REPAIR CONNECTIONS
RECONSTRUCTED ROADWAY	NEW CONCRETE DRIVEWAY APRON	NEW CONCRETE DRIVEWAY	TRENCH PATCH	LOAM AND SEED	NEW CONCRETE CURB	REPLACE EXISTING WATER LINE	REPLACEMENT SEWER LINE	EXISTING SEWER LINE	EXISTING ROADWAY (ADAMS)	EXISTING SIDEWALKS AND BERMS	PHASE LINE		

Engineer's Table of Improvements

Item	Existing Quantity	Existing Material	Replace or New	New Quantity	New Material
Pipe	700 LF	Structural Concrete	Replace	700 LF	Structural Concrete
Curb	1,240 LF	Precast Concrete	Replace/New	1,240 LF	Precast Concrete
Sidewalk	870 LF	Concrete	Replace/New	870 LF	Concrete
Storm Drain Pipe	200 LF	Concrete	Replace/New	200 LF	Concrete
Storm Catch Basin/Inlet	1	Concrete	Replace	1	Concrete
Water Main	700 LF	Cast Iron	Replace	700 LF	Ductile Iron
Water Service	200 LF	Copper/Lead	Replace	200 LF	Copper
Fire Hydrant	1	Cast Iron	Replace	1	Ductile Iron
Street Light	700 LF	Cast Iron	Replace	700 LF	Pole
Street Sign	4	Cast Iron	Replace	4	Pole
Street Light Pole	200 LF	Cast Iron	Replace	200 LF	Pole
Street Light Fixture	1	Cast Iron	Replace	1	Pole
Street Light Transformer	1	Cast Iron	Replace	1	Pole
Street Light Pole	200 LF	Cast Iron	Replace	200 LF	Pole
Street Light Fixture	1	Cast Iron	Replace	1	Pole
Street Light Transformer	1	Cast Iron	Replace	1	Pole
Street Light Pole	200 LF	Cast Iron	Replace	200 LF	Pole
Street Light Fixture	1	Cast Iron	Replace	1	Pole
Street Light Transformer	1	Cast Iron	Replace	1	Pole



**MASSACHUSETTS CDBG PROGRAM
Budget Summary Sheet - FY**

6	PUBLIC FACILITIES/INFRASTRUCTURE		
A	Program Delivery	\$11,569	\$0
B	Streets and Sidewalks	\$820,798	\$0
C	Parks and Recreation	\$0	\$0
D	Neighborhood Facilities	\$0	\$0
E	Parking	\$0	\$0
F	Water	\$0	\$0
G	Sewer	\$0	\$0
H	Drainage	\$0	\$0
I	Architectural Barriers	\$0	\$0
J	Other	\$0	\$0
K	Design only (architectural and engineering)	\$0	\$0
7	PLANNING	\$0	\$0
8	PUBLIC SOCIAL SERVICES		
A	Program Delivery	\$0	\$0
B	Program Costs	\$0	\$0
9	GENERAL ADMINISTRATION	\$87,259	\$0
	TOTAL PROGRAM COSTS	\$919,626	\$0

Requested Motions

- To approve the FY24 CDBG application as presented for improvements to Hedge Street, Phase 4.
- To authorize the Select Board Chair to sign the FY24 CDBG application-related documents.
- To designate someone as Fairhaven's Environmental Certifying Officer.

MASSACHUSETTS COMMUNITY DEVELOPMENT BLOCK GRANT FFY 2024

Community Development Fund 2024
Application Cover Sheet

CDF-2024-Fairhaven-00020

Individual who prepared Grant Application: Fairhaven

Other Participating Communities:

Contact Person

Name Paul DiGiuseppe
Title Dir. of Planning & Economic Development
Address 40 Center Street
Fairhaven, MA 02719
Phone (508) 979-4082 x 122
Email pdigiuseppe@fairhaven-ma.gov

Proposed use of CDBG Funds

1. Property / Acquisition	\$0
2. Clearance / Demolition	\$0
3. Relocation (Permanent)	\$0
4. Housing Rehabilitation	\$0
5. Community Economic Development	\$0
6. Public Facilities / Infrastructure	\$832,367
7. Planning	\$0
8. Public Social Services	\$0
9. General Administration	\$91,009
Total CDBG Grant Request	\$923,376

Authorization

Leon Corey
Name of Chief Elected Official
Select Board Chair
Title

Signature Chief Elected Official (CEO)

Date

To the best of my knowledge, all information in this application is true and correct. I have read and agree to the following certifications. When applicable, the Chief Financial Officer has also read and agrees to the following certifications:

- Displacement of Non-CDBG Funds Certification
- Anti-displacement and Relocation Assistance Certification
- Chief Elected Official Certification
- Chief Financial Officer's Certification
- Program Income Certification
- Civil Rights Certification

**MASSACHUSETTS CDBG PROGRAM
Budget Summary Sheet - FY**

PROGRAM/PROJECT/ACTIVITY		CDBG FUNDS (\$)	OTHER FUNDS
1	PROPERTY ACQUISITION	\$0	\$0
2	CLEARANCE/DEMOLITION	\$0	\$0
3	RELOCATION (Permanent)	\$0	\$0
4	HOUSING REHABILITATION		
A	Program Delivery	\$0	\$0
B	Unit Development/Creation	\$0	\$0
C	Rehabilitation Loans/Grants	\$0	\$0
D	Other	\$0	\$0
5	COMMUNITY ECONOMIC DEVELOPMENT		
A	Program Delivery	\$0	\$0
B	Acquisition	\$0	\$0
C	Commercial Improvements (Signs/Facades)	\$0	\$0
D	Assist to For-profits (formally Sm. Business Assist.)	\$0	\$0
E	Infrastructure or Streetscape Improvements	\$0	\$0
F	Planning	\$0	\$0
M	Other	\$0	\$0
N	Mirco enterprise Assistance	\$0	\$0
6	PUBLIC FACILITIES/INFRASTRUCTURE		
A	Program Delivery	\$11,569	\$0
B	Streets and Sidewalks	\$820,798	\$0
C	Parks and Recreation	\$0	\$0
D	Neighborhood Facilities	\$0	\$0
E	Parking	\$0	\$0
F	Water	\$0	\$0
G	Sewer	\$0	\$0
H	Drainage	\$0	\$0
I	Architectural Barriers	\$0	\$0
J	Other	\$0	\$0
K	Design only (architectural and engineering)	\$0	\$0
7	PLANNING	\$0	\$0
8	PUBLIC SOCIAL SERVICES		
A	Program Delivery	\$0	\$0
B	Program Costs	\$0	\$0
9	GENERAL ADMINISTRATION	\$91,009	\$0
	TOTAL PROGRAM COSTS	\$923,376	\$0

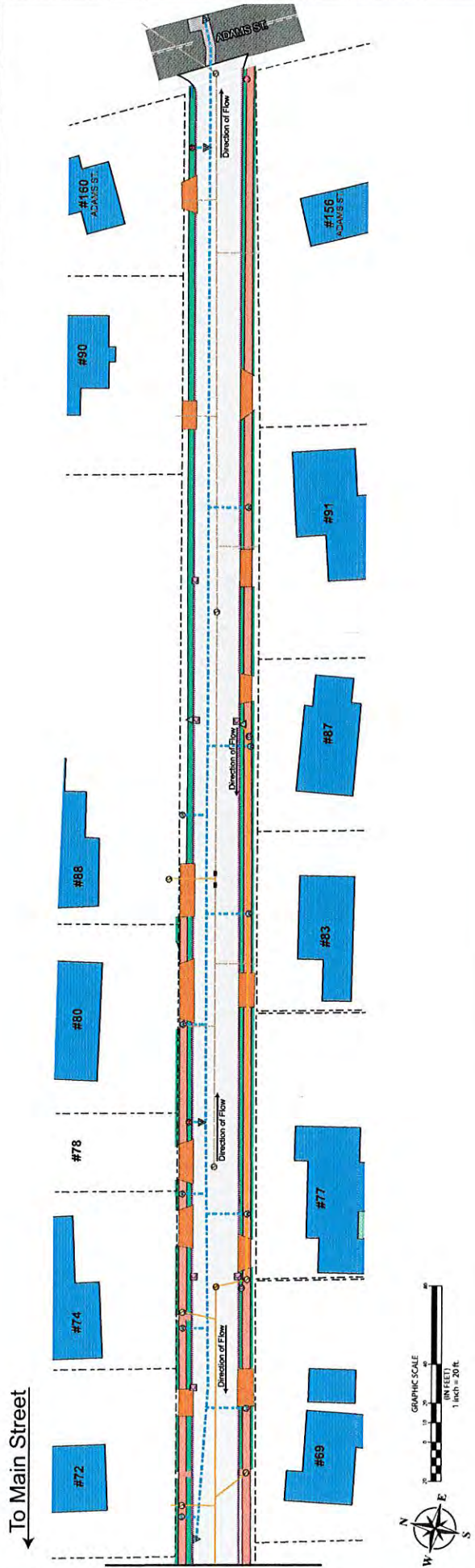
FAIRHAVEN HEDGE STREET PHASE 4 PROJECT MAP

Engineer's Table of Improvements

Item	Existing Quantity	Existing Material	Replace or New	New Quantity	New Material
Road	785 LL	Bituminous Concrete	Replace	785 LL	Bituminous Concrete
Curb	1,240 LL	Precast Concrete	Replace/New	1,240 LL	Precast Concrete Curb
Sidewalk	870 LL	Cement/Bit. Concrete	Replace/New	870 LL	Cement Concrete
Driveway Aprons/Ramps	290 U.	Cement Conc.	Replace/New	290 U.	Cement Concrete
Storm Drain Pipes	530 LL	Clay/Concrete	New/Replace	300 LL	PVC, Ductile Iron
Storm Catch Basins/Manholes/Gutter Inlet	5 ea.	Block/Block Concrete	New/Replace	4 ea.	Precast/Block Concrete
Water Main	790 LL	Asbestos Concrete	Replace/New	790 LL	Ductile Iron
Water Services	200 LL	Copper, Lead /Iron	Replace	200 LL	Copper (lead free)
Fire Hydrant	1 ea.	Cast Iron	Replace/New	2 ea.	Ductile Iron
Sewer Main	710 LL	Clay/Asbestos Concrete	Replace	150 LL	PVC
Sewer Manholes	4 ea.	Block, Precast Concrete	Replace	1 ea.	Precast Concrete
Sewer Services	325 LL	Clay/Asbestos Concrete	Replace	100 LL	PVC

KEY

---	PROPERTY LINE	(D)	PROPOSED DRAIN MANHOLE
---	RECONSTRUCTED ROADWAY	(S)	REPLACE DRAIN MANHOLE
---	NEW CONCRETE DRIVEWAY APRON	(S)	EXISTING DRAIN MANHOLE
---	NEW CONCRETE SIDEWALK	(C)	PROPOSED CATCH BASIN
---	TRENCH PATCH	(S)	NEW SEWER SERVICE
---	LOAM AND SEED	(W)	NEW WATER SERVICE
---	NEW CONCRETE CURB	(H)	NEW HYDRANT
---	REPLACE EXISTING WATER LINE	(G)	REMOVED GUTTER INLET
---	REPLACEMENT SEWER LINE	(V)	NEW WATER VALVE
---	EXISTING SEWER LINE	(S)	NEW STOP SIGN
---	EXISTING ROADWAY (ADAMS)	(S)	NEW STREET SIGN
---	EXISTING SIDEWALKS AND BERMS	(S)	NEW CROSSWALK LINES
---	PHASE LINE	(S)	REPAIR CONNECTIONS



B. Designate an Environmental Certifying Officer (ECO)

The Grantee's Chief Executive Officer must designate either him/herself or a competent staff person to serve as the Environmental Certifying Officer (ECO). The ECO must be:

- designated in writing. See sample form in Appendix 2 Chapter 10. A copy of the designation must be kept in the ERR file.
- an employee of the municipality. The ECO may not be a person or entity with whom the municipality contracts to carry out project activities. *The ECO acts as the responsible Federal official under the provisions of NEPA and will be named as the responsible party in any legal action.*

Responsibilities of the ECO include making findings and signing all required certifications. The ECO does not need to be a technical expert on environmental activities but should be credible if it becomes necessary for the grantee to defend a finding or conclusion of the review.

C. Define the project

While the definition does not have to be lengthy, it should include enough information to provide the reader with a clear understanding of what is to take place. This should include all project activities, the location of the project and the anticipated cost of the project. The description should not be isolated in time and place and must consider future related actions, cumulative effects and activities associated with non-HUD funds.

D. Determine the Level of Environmental Review Required for Each Activity

Each program activity which is or will be funded by Mass. CDBG must be reviewed for its impact on the environment. In addition, all activities which are part of a federally funded project must be reviewed even if the particular activity receives no federal funds.

The levels of environmental review are as follows:

- Exempt activities (58.34)
- Categorically Excluded Activities Not Subject to Section 58.5
- Categorically Excluded Activities Subject to Section 58.5 [Statutory review, 58.35(b)]
- Full Environmental Assessment Required Activities [NEPA review, 58.35(a)]

Each review category is fully detailed below. Defining the correct level of review is a critical step. Grantees must be sure that they are categorizing a project correctly. An incorrect determination for the level of review can lead to delays or a discontinuation of project activities



Town of Fairhaven
Massachusetts
Office of the Select Board

40 Center Street
Fairhaven, MA 02719

Leon E. Correy III, Chair
Charles K. Murphy, Sr., Vice Chair
Stasia Powers, Clerk
Keith Silvia
Robert J. Espindola

Tel: (508) 979-4023
Fax: (508) 979-4079

February 27, 2024

Housing Secretary Edward Augustus
Executive Office of Housing and Livable Communities
100 Cambridge Street
Boston, MA 02114

Dear Housing Secretary Augustus:

On February 26, 2024, the Fairhaven Select Board voted to express support of the Town's application for a 2024 Community Development Block Grant (CDBG). Fairhaven proposes to complete the final phase of Hedge Street, located in the Anthony School Neighborhood and within an Environmental Justice District (Block Group 4, Census Tract 6552). The project will address deteriorating conditions in this neighborhood, which has a Slums and Blight designation from the EOHLIC.

Hedge Street is a major cross street in our Anthony School Neighborhood. Roads, sidewalks, drainage, water, and sewer systems are all in poor condition overall. The Town proposes a Phase 4 construction project for an easternmost section of this lengthy road, from #70 Hedge Street to Adams Street, continuing improvements undertaken with FY 18, FY 19, and FY 21 CDBG funds. The engineering design for Phase 4 construction was funded with the FY 21 CDBG award. The project will address inadequate drainage and deteriorated water, sewer, sidewalk and pavement.

BID READY PLANS AND SPECIFICATIONS: GCG Associates has prepared final plans and specifications for the Hedge Street Improvements Project, Phase 4. The project is ready to proceed to construction upon award.

PROJECT MANAGEMENT AND OVERSIGHT: Through an RFQ process, Fairhaven will hire an engineering firm to provide construction administration and resident inspector services for the Hedge Street Phase 4 construction. The Town will also hire a grant administration consultant to assist existing Planning and Economic Development Department staff with grant oversight and administration.

OWNERSHIP AND MAINTENANCE: Fairhaven owns all necessary easements for proposed construction work on Hedge Street. The projected annual maintenance cost of the improved road, as estimated in the Engineering Report, is already part of the Town's operating budget.

The Fairhaven Select Board sincerely hopes that the EOHLIC recognizes the importance of the Hedge Street project and will provide the funding necessary to complete it.

Respectfully,

Leon E. Correy, III
Fairhaven Select Board, Chair

**EMPLOYMENT CONTRACT
BETWEEN ANGELINE LOPES ELLISON
AND THE TOWN OF FAIRHAVEN**

THIS AGREEMENT, pursuant to Chapter 41, Section 108N of the Massachusetts General Laws, is made and entered into this ^{10th} ~~28th~~ day of ^{March} ~~February~~, 2022, by and between the Town of Fairhaven, Commonwealth of Massachusetts, a municipal corporation, acting by and through its Select Board, who act hereunder in their representative capacity only and without any personal liability to themselves, hereinafter called "Employer," and Angeline Lopes Ellison, hereafter called "Town Administrator," collectively the "Parties."

WITNESSETH

1. Employer desires to employ the service of Angeline Lopes Ellison, as Town Administrator for the Town of Fairhaven, as provided by Chapter 381 of the Acts of 2014 and (the "Town Administrator Act") the Fairhaven Town Bylaws or the authority granted to the Select Board therein; and
2. It is the desire of the Employer to describe and define the duties, to provide certain benefits, to establish certain terms and conditions of employment, and to set the working conditions of said Town Administrator pursuant to Chapter 41, Section 108N of the Massachusetts General Laws; and
3. The Town Administrator represents that she is qualified and capable of performing the duties and responsibilities of said position, which shall include but not be limited to those specified in the Town Administrator Job Description as specified in this Agreement, subject to the Town Special Acts, which shall be incorporated by reference herein; and
4. Town Administrator desires to accept full time employment as Town Administrator of said Town and to use her best efforts, skills, abilities and training to carry out his duties and responsibilities.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

Section 1. Duties

The Town Administrator shall perform the duties described in the Town Administrator Act , as well as all duties and responsibilities assigned by the Select Board. Those duties shall include, but are not limited to:

- a. Consult and advise the Select Board regarding its policies and implement those policies.
- b. Attend all meetings of the Select Board, except when excused, and consult with and advise the Select Board on all matters that come before the board.
- c. Attend all town meetings and advise the town meeting on all warrant articles within the jurisdiction of the Select Board.
- d. Attend all finance committee meetings, except when excused by the Select Board, and keep the finance committee informed on all matters under the jurisdiction of the town administrator that come before the committee.
- e. Manage and direct the daily reporting and supervision of all town departments under the jurisdiction of the Select Board, including: assessors, building commission, council on aging, police, civil defense, animal control officer, gas inspector, plumbing inspector, wiring inspector and weights and measures inspector, recreation, tree, planning, finance, finance director, collector, treasurer, accounting, veterans, town counsel, other committees appointed by and under the jurisdiction of the Select Board and the fire department, subject to section 42 of chapter 48 of the General Laws, but not including the school department or the public works department.
- f. Review and advise the Select Board on all warrants for the payment of town funds as prepared by the town accountant in accordance with section 56 of chapter 41 of the General Laws.
- g. Except with respect to the school department, and except with respect to the hiring and firing of employees within the public works department, the town administrator shall have sole authority over the administration of personnel policies for all town employees. With respect to the fire department. The town

administrator shall act as the personnel board under all applicable laws and by-laws, except as otherwise set forth in this act.

- h. Administer the Town's insurance policies, including the ability to settle claims; provided, however, that all insurance contracts and claims settlements shall receive the approval of the Select Board.
- i. With the approval of the Select Board, appoint and remove all department heads under the direct control of the town administrator. Each department head, with the approval of the town administrator, shall appoint and remove all department staff within their respective departments. All appointments shall be based entirely on merit and fitness. All appointments and terminations shall be conducted in accordance with the General Laws, personnel policies, by-laws of the town of Fairhaven and any applicable employment contracts; provided, that fire department appointments shall also be subject to section 42 of chapter 48 of the General Laws.
- j. With the approval of the Select Board, reorganize any departmental structures under the jurisdiction of the town administrator.
- k. With the approval of the Select Board, negotiate all collective bargaining agreements on behalf of the town, except for the school department. In collective bargaining negotiations with unions representing employees in the public works department, the town will be represented by the town administrator, the superintendent of public works and a member of the board of public works. The town administrator may seek the assistance of labor counsel if the town administrator deems it necessary to effect successful negotiations. All final agreements must be approved and executed by the Select Board.
- l. With the approval of the Select Board, establish compensation packages for all town employees under the jurisdiction of the town administrator, not subject to a collective bargaining agreement. Such compensation shall not exceed the amount appropriated therefor by town meeting and shall be subject to all applicable laws and by-laws.
- m. Submit to the Select Board a written proposed budget for town government for the ensuing fiscal year. The proposed budget shall detail all estimated revenue

from all sources, and all proposed expenditures, including debt service for the previous, current and ensuing 5 years. The proposed budget shall include proposed expenditures for both current operations and capital projects during the ensuing year, detailed by department, committee, agency, purpose and position and proposed financing methods. The proposed budget shall include estimated revenues and free cash available at the close of the fiscal year, including estimated balances in special accounts. The town may, by by-law establish additional financial information and reports to be provided by the town administrator. To assist the town administrator in preparing the proposed annual budget of revenue and expenditures, the finance director, all boards, officers and committees of the town, including the school committee and the board of public works, shall furnish to the town administrator, in a writing in such a form as the town administrator shall establish, all relevant information in their possession, including a detailed estimate of the appropriations required and any available funds.

- n. Report on the probable amount required to be levied and raised by taxation to defray all expenses and liabilities of the town together with an estimate of the necessary tax rate.
- o. Establish calendar dates by which the proposed budget, revenue statement and tax rate estimate are to be submitted to the Select Board.
- p. Submit annually to the Select Board a 5-year capital improvements program, or the same as approved by a formal capital planning committee, to include: (i) a list of all capital improvements and supporting data proposed to be undertaken during the next 5 years; (ii) cost estimates, methods of financing and recommended time schedule; and (iii) the estimated annual cost of operating and maintaining any facility to be constructed or acquired.
- q. Advise the Select Board at least monthly, of all departmental year-to-date revenues.
- r. Direct action as deemed necessary to ensure that all operating and capital budgets under the direct control of the town administrator are maintained in accordance with the town meeting vote that approved those budgets and coordinate efforts with the governing bodies of those departments not under the direct supervision of

the town administrator to ensure that those operating and capital budgets are maintained in accordance with the town meeting vote that approved those budgets.

- s. Keep and complete records of the office of the town administrator and annually submit to the Select Board, unless requested to do so more frequently, a full report of the operations of the office.
- t. Be responsible for coordination of operational and strategic planning for the town.
- u. Serve as the procurement officer for the town, establish and enforce procurement policies and guidelines in accordance with applicable state laws.
- v. Manage and oversee the use, maintenance, security and, with the approval of the Select Board, regulate the rental for all the town buildings, properties and facilities, including information technology, except those under the jurisdiction of the school department or the public works department, unless so requested by either of those departments.
- w. Prepare the application of all town warrants for approval by the Select Board.
- x. With the approval of the Select Board, prosecute, defend and settle all litigation for or against the town or its officers and employees, subject to such appropriation as may be necessary to effect settlement, except for litigation involving only the school department or the public works department, unless so requested by either of those departments.
- y. Delegate and direct any qualified town official or employee to carry out any duty that is within the authority of the town administrator.
- z. During a temporary absence, with the approval of the Select Board, the town administrator may designate a qualified administrative employee or officer to exercise the powers and perform the duties of the town administrator.
- aa. Perform any other duties or tasks reasonably related and assigned by the town meeting, mandated by applicable state law, or reasonably related to the effective management of the Town.

Section 2. Term

The term of this Agreement shall be from ~~March 23~~^{April 4}, 2022 through ~~March 23~~^{April 4}, 2025, unless sooner terminated in accordance with the provisions hereof. The Town Administrator agrees to remain in the exclusive employ of the Employer during the term of this Agreement. The starting date of this Agreement may be modified by mutual agreement of the Parties. This Agreement shall terminate at the end of said term unless it is extended for an additional term of a year or years by the Employer. The Employer shall notify the Town Administrator prior to the termination of this Agreement if they do not intend to renew or extend this Agreement. In the event that the Town Administrator is not interested in a renewal of the Agreement, she shall give the Employer written notice of such fact at least one-hundred eighty (180) days prior to the end of the term. In the event that the Select Board fails to provide at least one-hundred eighty (180) days' notice of non-renewal, the Town Administrator shall receive the severance pay described in paragraph 4(E) of this Agreement.

Section 3. Salary

Subject to the terms and conditions of this Agreement, and while she is engaged as and performing the duties of the Town Administrator, the Employer agrees to pay the Town Administrator for her services rendered pursuant hereto an annual salary of \$163,000. Subject to positive performance reviews, the Select Board will consider wage increases on July 1, 2023 and July 1, 2024.

The Town Administrator recognizes and agrees that she will not be entitled to any salary increases or changes in benefits accorded to other Town employees other than those explicitly described in this Agreement during the term of this Agreement, unless the Employer agrees to same by an amendment to this Agreement. To that end, the terms of this Agreement shall supersede and prevail over any terms and conditions of the Personnel Bylaw of the Town of Fairhaven except where otherwise specifically provided for in this Agreement. The foregoing annual salary for the period of this Agreement shall not be subject to the budget appropriation for said salary.

Section 4. Suspension, Termination, and Severance

- A. Suspension. Pursuant to the Town Administrator Act, the Employer may suspend the Employee for just cause, without pay, at any time during the term of this Agreement. Such unpaid suspension shall be in accordance with the Fair Labor Standards Act (FLSA). Paid administrative leave shall not be considered a suspension under this Agreement, and the Employer retains the right to place the Employee on such leave for any reason. "Just cause" under this Agreement shall be defined as poor performance or serious misconduct in violation of any law or Town policy, whether such misconduct occurs on or off duty.
- B. Termination. The Town Administrator may only be removed by the Select Board for just cause following a formal procedure including a written intent to dismiss, a written response, and public hearing, to be completed within thirty (30) days after the issuance of a written intent to dismiss, as described in Section 1(i) of the Town Administrator Act.
- C. In the event Town Administrator voluntarily resigns her position with Employer before expiration of the term of employment provided for herein, then Town Administrator shall give the Employer two (2) months' notice in advance unless the Parties agree otherwise.
- D. Nothing shall prevent the Employer from undertaking the termination of the Town Administrator at such time as the Town Administrator is under suspension, subject to the provisions of this Agreement.
- E. Severance - If the Town Administrator is terminated for poor performance or a reason other than serious misconduct, the Town shall pay the Town Administrator a lump sum cash payment equal to four (4) months' salary plus one (1) additional month for each full year of service in that position, less applicable taxes and deductions. If the Town Administrator is terminated for serious misconduct in violation of any law or Town policy she shall not receive the severance payment described above.

Section 5. Performance Evaluation

Within ninety (90) days after the commencement of this Agreement the Select Board and the Town Administrator shall define the goals and performance objectives, and the Town Administrator's role in the attainment of such goals and objectives, which they determine necessary for the proper operation of the Town and attainment of the Employer's policy objectives. The Town Administrator shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. The Town Administrator shall prepare and submit for the Select Board's approval a written document summarizing said goals and objectives which shall be signed by both parties.

During each December of the term of this Agreement, the Select Board shall review and provide feedback regarding the performance of the Town Administrator. During said review, the Select Board will also consider the Town Administrator's future goals and objectives.

Section 6. Hours of Work

Except as otherwise authorized, the Town Administrator shall devote, as a minimum, such time and effort as is necessary to properly perform the duties and responsibilities of the position.

Due to the unique nature of the municipal management function, it is understood and agreed that in order to properly perform the job required, the Town Administrator may have to expend additional time beyond normal business hours, and the Town Administrator agrees to do same as required. The Employee shall maintain business hours unless she has given advance notice on a work calendar viewable to the Select Board and staff of the Town Administrator's Office detailing the reason(s) for said absence, or unless she is on sick leave or vacation leave. It is acknowledged that the position is one of an Executive/Administrative nature as that term is used in the Fair Labor Standards Act, its rules and regulations. There shall be no paid overtime or additional compensation for said additional time.

Section 7. Vacation, Holiday, Personal Leave, Sick Leave and Jury Duty

- A. Town Administrator shall be granted five (5) days of vacation leave upon hiring for the period of March 23, 2022 – through June 30, 2022. She shall receive four (4) weeks' vacation (20 days) leave on July 1st of each succeeding year of this Agreement.
- B. With the approval of the Employer, the Town Administrator may request to carry over up to two (2) weeks (10 days) of vacation into the following year. Total accumulated carried over vacation leave cannot exceed two (2) weeks (10 days) at any time. Subject to the terms and conditions of this Agreement, upon termination the Town Administrator shall be paid for all unused vacation leave.
- C. The following shall be paid holidays for the Town Administrator:
- i. New Years Day
 - ii. Labor Day
 - iii. Martin Luther King Day
 - iv. Columbus Day
 - v. President's Day
 - vi. Veteran's Day
 - vii. Patriot's Day
 - viii. Juneteenth
 - ix. Thanksgiving Day
 - x. Memorial Day
 - xi. Christmas Day
 - xii. Independence Day.

If any of these days falls on a Saturday, the preceding Friday will be considered the holiday. Holidays on a Sunday will be celebrated on Monday.

- D. The Town Administrator shall accrue sick leave at a rate of 1.25 days per month. Said sick days may be accumulated or carried over up to a maximum of one-hundred twenty (120) days. The Town Administrator shall notify the Chair of the Select Board when absent due to illness and maintain a record of all time off

taken due to illness. The Town Administrator shall not be compensated for unused sick leave upon termination or separation.

On March 23, 2022, the Town Administrator shall be advanced ten (10) days' worth of sick leave. The Town Administrator will not be able to accrue any additional sick leave until after she has recouped these ten (10) days at the rate of 1.25 days per month. Once the ten (10) day advancement has been recouped, the Town Administrator shall accrue additional sick leave at a rate of 1.25 days per month.

- E. The Town Administrator shall be granted one (1) day personal leave, effective March 23, 2022, which may be used for the period of March 23, 2022 through June 30, 2022. She shall receive three (3) days personal leave on July 1st of each succeeding year of this Agreement. The Town Administrator may not carry over unused personal leave into a subsequent fiscal year. Said personal leave days are not eligible for buyback upon resignation or termination.

- F. In the event of the death of a member of the Town Administrator's Immediate Family, she shall be allowed three (3) days off without loss of pay. "Immediate Family" shall be defined as a spouse, parent, sibling, child, grandchild, mother-in-law, father-in-law, or spouse of a sibling.

- G. In the event that the Town Administrator serves as a juror in a federal court or in the Courts of the Commonwealth, she shall receive from the Town the difference between her salary and the compensation she received for such jury services, exclusive of any travel or other allowance; provided, however, she shall receive his or her full pay for his or her first three days of service for the Commonwealth of Massachusetts.

Section 8 Health and Life Insurance

The Town Administrator (which term in this context under this provision shall include her dependents) shall be entitled to participate in whatever group medical, dental,

life insurance and benefit plans are offered by or through the Town of Fairhaven and the pension benefit plan through the Bristol County Retirement Board on the same basis as other Town employees.

Section 9. Indemnification

Employer shall provide indemnification and legal defense for the in accordance with G.L. c. 258. To the extent not otherwise prohibited by law said indemnification and legal defense shall include any claim made following the expiration of the term of this agreement or the termination from employment of the Employee, so long as the Employer would have been otherwise obliged to provide indemnification and legal defense had the term not expired or the employment not have been terminated. Employee shall, as a condition of said indemnification and legal defense, cooperate with the Town, its attorneys and agents in all matters relating to said claim. The Town, during the term of this Agreement, will maintain adequate professional liability insurance for the Town Administrator in connection with the performance of her duties as Town Administrator.

Section 10. Other Terms and Conditions of Employment

- A. Deferred Compensation, the Town shall contribute to the Town Administrator's deferred compensation plan, payments above and beyond the base salary as defined in Section 3 of this Agreement, in accordance with G.L. c. 44 §67, in the amounts as follows:

- Prior to December 31, 2022: \$4,000

- Prior to December 31, 2023: \$4,000

- Prior to December 31, 2024: \$4,000

During the term of this Agreement, in the event the State changes the Retirement Laws so that deferred compensation does not count towards retirement income, the respective annual amount will be added to the Town Administrator's annual compensation

- B. Reimbursement for Expenses, The Town Administrator shall be reimbursed for mileage for authorized business use of her private automobile, excluding commuting to and from work, at the applicable rate for the Internal Revenue Service (IRS) including tolls and parking. The Town Administrator will also be reimbursed for other authorized expenses incurred in the conduct of Employer's business. Subject to available funding, the Town Administrator will be reimbursed for any expenses incurred as an official representative of the Town including attendance at civic or social events.
- C. Professional Dues and Activities, Educational courses, seminars and/or meetings are encouraged to maintain professional certifications and promote knowledge for the Town Administrator. The Town shall pay for membership in professional organizations, and certificate programs including but not limited to: the Massachusetts Municipal Managers Association (MMMA) and the International City Managers Association (ICMA), MCCPO Certification, and for expenses related to attendance at conferences sponsored by those organizations, subject to available funding. The Town Administrator shall notify the Select Board if she will be out of the office for one (1) day or longer for professional development activities.
- D. The Town Administrator is an Exempt Official under the Town of Fairhaven Personnel Bylaw, and as such, is not entitled to any other right or benefit under the Personnel Bylaw not specifically enumerated in this Agreement.
- E. The Town Administrator shall be provided with a cell phone for conducting Town business. Since the Town Administrator's duties require that she be on duty and available 24 hours a day, 7 days each week, she shall be allowed personal use of the cell phone.
- F. If the Town Administrator leaves the employment of the Town and serves as a witness in depositions, trials, or administrative proceedings, she shall be paid

for each day of preparation and attendance at the trial on a per diem basis based on her salary at the time of his separation from employment from the Town.

G. The Town shall not at any time during the term of the Agreement reduce the salary, compensation or other benefits of the Town Administrator, except to the degree such a reduction is across the board for all other employees of the Town.

H. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect. This Section shall survive the termination of this Agreement.

Section 11. Notices

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, First Class Mail, postage prepaid, addressed as follows:

1. Employer: Select Board
40 Center Street
Fairhaven, Massachusetts 02719
2. Town Administrator: Angeline Lopes Ellison
61 Brookfield Road
Sturbridge, Massachusetts, 01518

Section 12. General Provisions


A. This Agreement shall constitute the entire Agreement between the Parties except to the extent that other documents are referred to herein which documents shall be deemed to be incorporated by reference herein.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Town Administrator.

- C. This Agreement shall become effective commencing March 23, 2022, unless the Parties agree to a different date in writing.
- D. All benefits and obligations of the Employer, except as otherwise provided herein, shall be conditional upon the Town Administrator being employed as and performing the services required of the Town Administrator.
- E. The failure of a Party to insist on strict compliance with a term of provision of this Agreement shall not constitute a waiver of any term or provision of this Agreement.

IN WITNESS WHEREOF, the Town of Fairhaven, Massachusetts, has caused this Agreement to be signed and executed in its behalf by its Select Board and the Town Administrator has signed and executed this Agreement, both in duplicate, the day and year first above, written.

Select Board




Robert J. Espindola, Chairman



Stasia Powers, Vice Chairwoman

Town Administrator



Angie Lopes Ellison

Date: March 10, 2022

Keith Silvia
Keith Silvia, Clerk

Date: 3/11/2022

Approval as to Form:

Labor Counsel

February 26, 2024 – Assessors Department Update for the Select Board

- AFTER THE TAX CLASSIFICATION HEARING ON 12/4/2023, THE DOR APPROVED THE SPLIT TAX RATE OF \$9.23 AND \$18.37 ON 12/12/2023. THE FY24 ACTUAL TAX BILLING WAS COMPLETED ON 12/14/2023 RESULTING IN 7,585 RE TAX BILLS & 784 PP TAX BILLS.
- ON 1/4/2024, AP5 (OUR ASSESSMENT PROGRAM) WAS ROLLED OVER FOR FY2025 & THE ONLINE PROPERTY CARD LINK ON THE ASSESSORS PAGE WAS UPDATED FOR THE FINAL FY24 VALUES.
- TAX PAYERS WERE ABLE TO FILE ABATEMENTS ON RE & PP STARTING 1/1/2024 & THE DEADLINE WAS 2/1/2024. 24 RE & 6 PP APPLICATION WERE FILED. THE BOARD HAS 3 MONTHS TO ACT ON THESE APPLICATIONS. TO DATE, RE: REAL ESTATE (6 GRANTED, 3 DENIED & 15 ARE STILL UNDER REVIEW). RE: PP, 3 GRANTED & 3 UNDER REVIEW.
- BUSINESS OWNERS ARE REQUIRED TO FILE AN ANNUAL FORM OF LIST SHOWING THEIR TAXABLE ASSETS. REMINDER POSTCARDS WERE MAILED ON 12/31/2023 & THE FILING DEADLINE IS 3/1/2024.
- CHARITABLE ORGANIZATIONS ARE ALSO REQUIRED TO FILE A 3ABC FORM (THE FY25 RETURN OF PROPERTY HELD FOR CHARITABLE PURPOSES) AND THOSE ARE ALSO DUE ON 3/1/2024.
- THE 1ST MOTOR VEHICLE EXCISE TAX COMMITMENT FOR 2024 WAS RECEIVED IN JANUARY. WE MAILED 15,041 BILLS FOR 2024 WHICH RESULTED IN NUMEROUS ABATEMENT APPLICATIONS FOR CARS THAT ARE NO LONGER IN A PERSON'S POSSESSION. THE APPLICATIONS HAVE STARTED SLOWING DOWN.
- STARTING 3/1/2024, WE WILL START ASSESSING A FEE OF \$25 FOR EACH ABUTTERS LIST REQUEST.
- THE NEXT FOCUS WILL BE BUILDING PERMITS, THERE ARE APPROXIMATELY 1200 OPEN BUILDING PERMITS THROUGH 12/31/2023. THERE ARE ALSO 573 PROPERTIES THAT ARE DUE FOR A 10 YEAR CYCLICAL INSPECTION.

14 Oxford Street

§ 125-1 License required.

A.

No person, who is not licensed under this chapter for the operation of a garage, repair shop or service station or under MGL c. 140 for the sale of motor vehicles, shall keep more than one unregistered motor vehicle un-garaged on premises owned by him/her or under his/her control, except farm vehicles used on the premises for farming. No such unlicensed person shall keep any unregistered motor vehicle or any vehicle in need of substantial repair in a yard fronting on a way.

B.

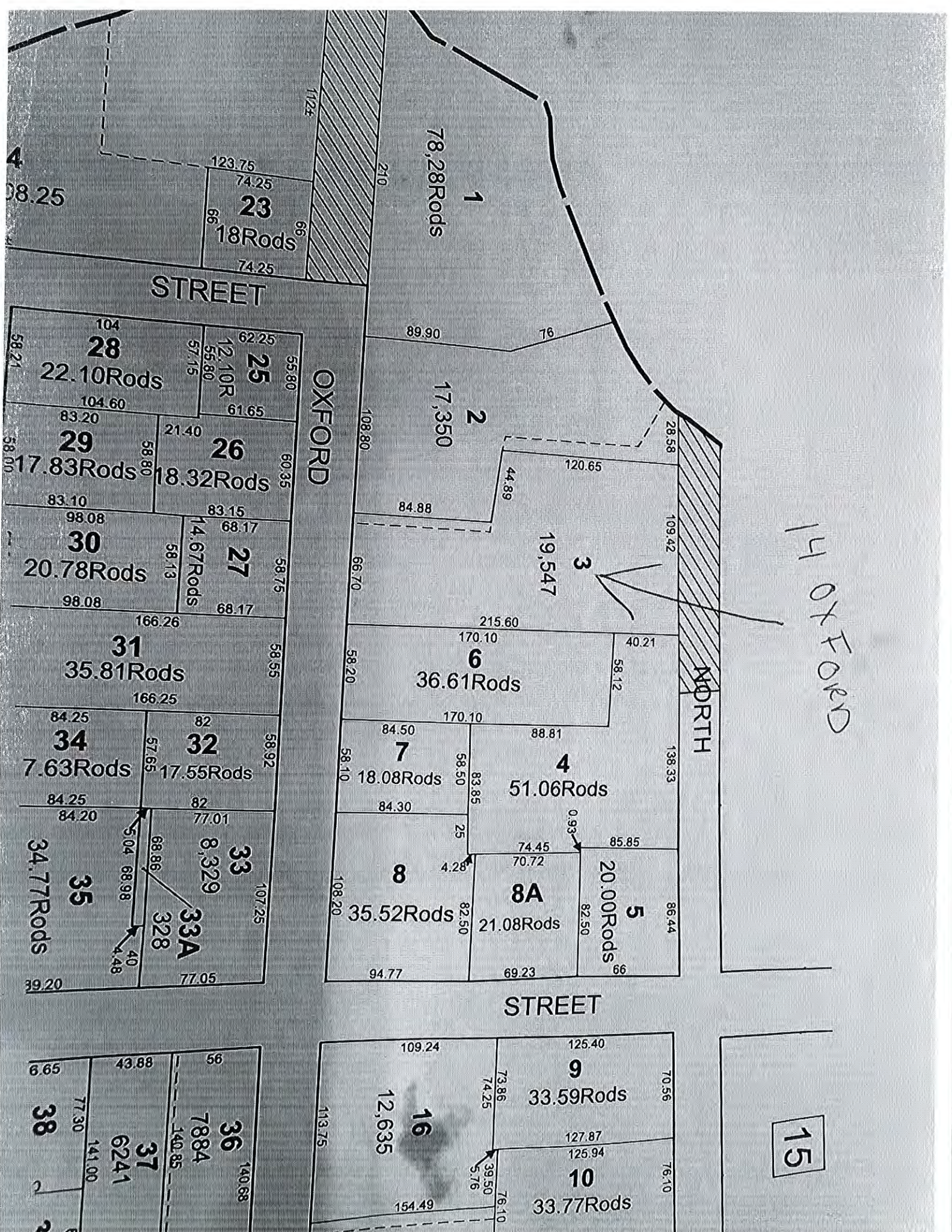
No person or employee of a person who is not licensed under this chapter shall operate a garage, repair shop or service station.

Definitions:

JUNKYARD

The use of any lot, whether inside or outside a building for the storage, keeping or abandonment of junk or scrap or discarded materials, or the dismantling, demolition or abandonment of automobile(s) or other vehicle(s), boats or machinery, or parts thereof.

Property located in Single Residence RA Zoning district where the operation of a Junkyard is not an allowed use per 198-16 Use Regulation Schedule.



14 OXFORD

4
08.25

123.75
74.25
66
23
18Rods
66
74.25

78,28Rods
1

STREET

104
58.21
28
22.10Rods
104.60
57.15
12.10R
55.80
62.25
61.65
25

83.20
58.00
29
17.83Rods
21.40
58.80
26
18.32Rods
60.35
83.10
98.08
30
20.78Rods
58.13
14.67Rods
68.17
27

166.26
58.75
31
35.81Rods
58.55
84.25
82
34
7.63Rods
57.65
17.55Rods
32

84.25
82
35
34.77Rods
5.04
68.86
68.98
328
33A
107.25
33
8,329
328
40
77.05
35A

84.25
82
36
7884
140.88
37
6241
141.00
38

6.65
43.88
56
36
7884
140.88
37
6241
141.00
38

OXFORD

89.90
76
17,350
2

108.80
84.88
19,547
3
44.89
120.65
28.58
109.42
108.80

215.60
170.10
36.61Rods
6
40.21
58.12
58.20

84.50
170.10
18.08Rods
7
88.81
51.06Rods
4
58.10
83.85
84.30

84.30
25
35.52Rods
8
74.45
70.72
85.85
20.00Rods
5
86.44
82.50
66
82.50
21.08Rods
8A
0.93
4.28
94.77
69.23

NORTH

STREET

109.24
12,635
16
113.75
73.86
74.25
33.59Rods
9
127.87
125.94
33.77Rods
10
76.10
76.10
76.10
39.50
5.76
154.49

15

Bob Espindola

Committee Liaison Report 2-26-2024

The BROADBAND STUDY COMMITTEE. The Broadband Study Committee has not met since our last Select but I did have an opportunity to attend a forum on February 13th hosted by Open Cape that was focused on the issue of Dark Money where national figure Gigi Sohn explained what can be done to combat campaigns being waged against public broadband by private investors with deep pockets, primarily existing Internet Service Providers. She and her organization, the American Association for Public Broadband, were a pivotal piece of exposing the Dark Money working against the people in Falmouth and their broadband efforts.

The BROADBAND COALITION (MBC) held our February meeting right here in the Town Hall Auditorium on February 14th with National Broadband Gigi Sohn completing her regional tour by attending our MBC meeting as guest speaker. There were a dozen people in attendance in person with people having traveled from Falmouth, Bourne and Chelsea as well as local communities of New Bedford, Westport, Dartmouth a representative from Senator Edward Markey's office, and a similar number of people joined via Zoom. Thanks to Derek Frates for doing a great job setting up to record the event and sending a file that can be viewed now on the MBC website.

One of the key takeaways from Ms. Sohn's visit were that she recommended that we engage local legislators to assist with finding additional ways that communities can be supported in building broadband infrastructure. The timing appears to be good as Senator Markey's is currently very focused "Telecommunications and Emerging Technology" sent his aid, David Lanagan, to attend the meeting.

Mayor Mitchel was unable to attend but he and several City staff members met for coffee with Ms. Sohn just prior to our meeting and it is clear that Mayor and his staff are diligently on several Broadband initiatives.

There was an agreement among the local communities of Fairhaven, New Bedford, Dartmouth, Westport and Mattapoisett to plan for a meeting where we would invite the local delegation to listen to our concerns and ask for their assistance at the State level. A planning meeting among these communities will take place on Monday, March 4th. I will keep you informed thereafter.



Members of the Mass Broadband Coalition with Gigi Sohn

LIVABLE STREETS COMMITTEE

The committee met on **Thursday, February 15th**. True to their new mission statement, the group was focused on studying issues beyond the bike path. Their discussion including advocating for changes to make the intersection at Adams and Bridge Street safer, for inclusion of bike/pedestrian accommodations on CDBG projects and they are starting to study the long list of recommendations in the Complete Streets study done when Mr. Foley was here to see what priorities they should advocate for future Complete Streets project.

Bike and Brew series continues with plan to sponsor a group ride on Saturday, March 2nd that will run from Fort Phoenix up to North Fairhaven to review the changes at Benoit square and to stop at the Rescue Café. Part of their goal it to allow for people who may not feel comfortable cycling on main roads by themselves to feel more comfortable traveling in a larger group. Anyone interested can find information on their Facebook page.



Members of the Bike and Brew Crew on Popes Island enroute to New Bedford in February.



Robert Espindola <respindola@fairhaven-ma.gov>

Executive Session Question - Goals and Objectives

2 messages

Robert Espindola <respindola@fairhaven-ma.gov>
To: openmeeting@mass.gov

Fri, Feb 16, 2024 at 9:49 AM

Good morning,

I am writing to ask if going into executive session for the purpose of discussing the goals and objectives that will be set in place for the Town Administrator for the upcoming year (i.e. the basis for how the Town Administrator will be scored at their annual review under their existing contract) is a valid reason for a Select Board to enter executive session or if, instead, that type of discussion must take place in Open Session according to the exception list in the link below.

Thank you,

Bob Espindola
Select Board member
Town of Fairhaven
Cell (774) 263-1046

<https://www.mass.gov/info-details/guide-for-members-of-public-boards-and-commissions-appendix-b-reasons-for-entering-executive-session>

OpenMeeting (AGO) <OpenMeeting@massmail.state.ma.us>

Wed, Feb 21, 2024 at 2:20 PM

To: Robert Espindola <respindola@fairhaven-ma.gov>, "OpenMeeting (AGO)" <OpenMeeting@massmail.state.ma.us>

Bob,

Thank you for contacting the Division of Open Government. Please note that we cannot provide an advisory opinion as to whether a particular discussion is appropriate for executive session unless a complaint is filed for full review and investigation. However, we can offer general information or point you to resources.

A public body may enter an executive, or closed, session for any of the ten purposes enumerated in the Open Meeting Law. One permissible reason to convene in executive session is "[t]o conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel." G.L. c. 30A, § 21(a)(2) ("Purpose 2"). We have explained in a few prior determination letters that discussions of the process or metrics through which an evaluation will be conducted is not a proper matter for executive session. Please see the attached determinations, and others that are cited within them.

Sincerely,

Carrie Benedon (she/her/hers)

Assistant Attorney General

Director, Division of Open Government

Massachusetts Office of the Attorney General

(617) 963-2540

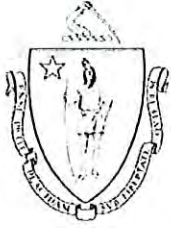
From: Robert Espindola <respindola@fairhaven-ma.gov>
Sent: Friday, February 16, 2024 9:49 AM
To: OpenMeeting (AGO) <OpenMeeting@MassMail.State.MA.US>
Subject: Executive Session Question - Goals and Objectives

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

[Quoted text hidden]

3 attachments

-  **DETERMINATION - 7_2_2021 - OML 2021-88 - DIGHTON BOARD OF SELECTMEN.pdf**
122K
-  **DETERMINATION - 5_29_2019 - OML 2019-57 - GREAT BARRINGTON HOUSING AUTHORITY.pdf**
2008K
-  **DETERMINATION - 4_16_2021 - OML 2021-45 - GREAT BARRINGTON HOUSING AUTHORITY BOARD OF COMMISSIONERS.pdf**
134K



MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

(617) 727-2200
(617) 727-4765 TTY
www.mass.gov/ago

April 16, 2021

OML 2021 – 45

VIA EMAIL

James Mercer, Chair
Board of Commissioners
Great Barrington Housing Authority
[REDACTED]

RE: Open Meeting Law Complaint

Dear Mr. Mercer:

This office received a complaint from Eileen Mooney on September 8, 2020, alleging that the Great Barrington Housing Authority Board of Commissioners (the "Board") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Board on June 18.¹ The Board responded by email dated August 24.² Ms. Mooney alleges that the Board discussed a matter in executive session on May 21 that was not appropriate for executive session.

Following our review, we find that the Board violated the Open Meeting Law by discussing matters in executive session that did not fall within any of the ten enumerated purposes for which executive session is permitted. In reaching this determination, we reviewed the original complaints, the Board's response to the complaints, and the complainant's request for further review. We also reviewed executive session minutes of the Board's May 21 meeting.

FACTS

We find the facts as follows. The Board is a five-member public body. Therefore, a quorum is three members. The complainant is a member of the Board.

¹ Unless otherwise specified, all dates refer to 2020.

² We remind the Board of its obligation to respond to an Open Meeting Law complaint within 14 business days of receipt, or within the time allotted pursuant to an extension granted by our office. See G.L. c. 30A, § 23(b); 940 CMR 29.05(5).

The Board duly posted notice for a meeting to be held on May 21. The notice included the topic "Executive Session under MGL c. 30A, §21(a)(2) to conduct strategy sessions in preparation for negotiations with nonunion personnel and to conduct contract negotiations with nonunion personnel (Executive Director)." The May 21 meeting was held as planned, with four Board members participating remotely via a conference line. The Board voted to convene in executive session "under MGL c. 30A, §21(a)(2) to conduct strategy sessions in preparation for negotiations with nonunion personnel and to conduct contract negotiations with nonunion personnel (Executive Director)." In executive session, Chair Mercer recapped the steps of the process for the annual review of the Board's Executive Director thus far, which included conducting peer, Board and tenant evaluations. A Board member, Cara Becker, had collected and summarized the evaluations, and the summary was then distributed to all Board members via email ahead of the May 21 meeting. At the meeting, Ms. Mooney expressed concern that the Board's discussion of the executive director's annual evaluations should take place in an open meeting, and that the executive session was improper. After Chair Mercer stated that he believed the executive session was proper, Ms. Mooney objected again and then left the meeting.

The remaining three members of the Board continued the executive session in Ms. Mooney's absence. First, Ms. Becker stated that she was "confident in renewing" the executive director's contract as both the peer and tenant evaluations were generally "glowing." Another Board member, Marie Ryan, agreed. Ms. Becker then suggested that the Board could provide some goals for the Executive Director to work on in the coming year. She further stated that the Executive Director was on the "right track" with leading the Housing Authority. Chair Mercer and Ms. Ryan agreed with her assessment. The three Board members then voted unanimously to adjourn the executive session.

DISCUSSION

Ms. Mooney alleges that the Board improperly convened in executive session on May 21 to discuss employee evaluations of the Board's Executive Director. The Open Meeting Law was enacted "to eliminate much of the secrecy surrounding deliberation and decisions on which public policy is based." Ghiglione v. School Board of Southbridge, 376 Mass. 70, 72 (1978). The Open Meeting Law requires that meetings of a public body be properly noticed and open to members of the public unless an executive session is convened for one of the enumerated permitted purposes. See G.L. c. 30A, §§ 20(a)-(b), 21.

A public body may enter an executive, or closed, session for any of the ten purposes enumerated in the Open Meeting Law provided that it has first convened in an open session, that a majority of members of the body have voted to go into executive session, that the vote of each member is recorded by roll call and entered into the minutes, and the chair has publicly announced whether the open session will reconvene at the conclusion of the executive session. G.L. c. 30A, §§ 21(a), (b); see also OML 2014-94. Before entering the executive session, the chair must state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called. See G.L. c. 30A, § 21(b)(3); see also District Attorney for the N. Dist. v. Sch. Comm. of Wayland, 455 Mass. 561, 567 (2009) ("[a] precise statement of the reason for convening in executive session is necessary ... because that is the only notification given the public that a [public body] would conduct business in private, and the only way the public would know if the reason for doing so was

proper or improper”). This level of detail about the executive session topic must also be included in the meeting notice. See OML 2016-72.

One permissible reason to convene in executive session is “[t]o conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel.” G.L. c. 30A, § 21(a)(2) (“Purpose 2”). A public body may not discuss an individual’s professional competence in executive session. See *District Attorney for the North District v. School Comm. of Wayland*, 455 Mass. 561, 568 (2009) (although it is clear that professional competence must first be discussed in an open session, how that evaluation will factor into a contract or salary negotiation strategy may be a suitable discussion for an executive session); OML 2019-57.³

Here, during the May 21 executive session, the Board reviewed the evaluation process to date, which was not a permissible topic for executive session. See OML 2019-57. The Board also discussed the Executive Director’s professional competence with comments about the generally “glowing” evaluations and the Executive Director being on the “right track.” This is also an impermissible topic for executive session. See OML 2018-38 (“Performance evaluations and discussions of an employee’s professional competence must occur in open session.”). We therefore find that the Board discussed topics in executive session that did not fall within Purpose 2 or any of the ten enumerated purposes for executive session. G. L. c. 30A, § 21(a). Thus, the Board violated the Law.

Finally, we must determine whether the Board’s violation was, as the complainant urges, intentional. See G.L. c. 30A, § 23(c). An intentional violation is an “act or omission by a public body or a member thereof, in knowing violation of [the Open Meeting Law].” 940 CMR 29.02. An intentional violation may be found where the public body acted with deliberate ignorance of the Law’s requirements or has previously been advised that certain conduct violates the Open Meeting Law. Id.

On May 23, 2019, just one year prior to the violation we find here, we found that the Board violated the Open Meeting Law by discussing topics in executive session, purportedly under Purpose 2, which were not appropriate for executive session. See OML 2019-57. In that determination, we specifically advised that “[a] public body may not discuss an individual’s professional competence in executive session.” Two of the Board members who participated in the May 21 executive session were members of the Board at the time we issued OML 2019-57, and the third member, like all members, was required to certify that they reviewed each Open Meeting Law determination issued to the Board by the Attorney General within the last five years in which the Attorney General found a violation of the Open Meeting Law. See 940 CMR 29.04. For these reasons, we conclude that the three Board members who participated in the May 21 executive session had been previously advised by our office that the topics they discussed were improper for executive session. In addition, Ms. Mooney informed the Board at the start of the executive session that the topic to be discussed was improper for executive session. See OML 2016-69. We therefore find the Board’s violation to be intentional.

³ All previous determinations issued by the Division can be found on the Attorney General’s website: <https://www.mass.gov/the-open-meeting-law>.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law by discussing topics in executive session that did not fall within a proper executive session purpose. We order the Board's immediate and future compliance with the Open Meeting Law and caution the Board that a determination by our office of a similar violation in the future may be considered evidence of intent to violate the Open Meeting Law, and may result in a civil penalty of up to \$1,000 per violation.

In light of our finding of an intentional violation, we order all members of the Board who participated in the improper executive session, and who are still serving on the Board, to attend an Open Meeting Law webinar training provided by our office within ninety (90) days of the Board's receipt of this letter. We also order the Board to certify to our office that these same Board members have completed the webinar training within ninety-five (95) days of the Board's receipt of this letter. As the Board has already released the May 21 executive session minutes to the public, we order no further relief.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the Board. Please feel free to contact the Division at (617) 963 - 2540 if you have any questions.

Sincerely,



Sarah Monahan
Assistant Attorney General
Division of Open Government

cc: Eileen Mooney (via e-mail: [REDACTED])

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.



MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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(617) 727-2200
www.mass.gov/ago

May 23, 2019

OML 2019 – 57

Colin Boyle, Esq.
Morgan, Brown & Joy, LLP
200 State Street
Boston, MA 02109

RE: Open Meeting Law Complaints

Dear Attorney Boyle:

This office received six complaints from Eileen Mooney of the NEWSletter on December 3 and December 6, alleging that the Great Barrington Housing Authority Board of Commissioners (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ The complaints were originally filed with the Board on or about September 28, October 17, October 18, October 26² and October 31, and you responded to the complaints, on behalf of the Board, in separate letters dated November 6 and November 27. In her complaints, Mr. Mooney alleges that the Board created a subcommittee for the purpose of conducting a performance evaluation of the Great Barrington Housing Authority executive director that did not comply with the Open Meeting Law and withheld the performance evaluation that was created during a meeting of the subcommittee. Ms. Mooney also alleges that a quorum of the Board met privately with a candidate for interim executive director, and that the Board’s October 16 executive session, during which the Board took a vote to terminate the executive director, was improperly held. Finally, Ms. Mooney alleges that the Board improperly discussed Open Meeting Law complaints in executive session on October 30.

Following our review, we find that the Board violated the Open Meeting Law by deliberating outside of a meeting and by discussing matters that were not appropriate for an executive session. Additionally, we find that the Board’s Personnel Subcommittee violated the Open Meeting Law by failing to comply with the Open Meeting Law, including by failing to post notice and create minutes of its meetings, and failing to make available a document

¹ All dates in this letter refer to the year 2018, unless otherwise indicated.

² We note that Ms. Mooney filed another complaint with the Board on October 31 that contains the same allegations.



used during a meeting. We do not find that the Board violated the Open Meeting Law in the other ways alleged. In reaching a determination, we reviewed the original complaints, the Board's responses to the complaints, and the complaints filed with our office requesting further review. We also reviewed the notices and open and executive session minutes of the Board's October 16 meeting notice and the notice and open session minutes of the Board's October 30 meeting. Finally, we reviewed a letter, dated April 29, 2019, you sent to us in response to our request.

FACTS

We find the facts as follows. The Board is a five-member body, thus three members constitute a quorum. In the fall of 2018, the Board terminated its executive director and hired an interim executive director. Prior to that, on August 30, the Board voted to delegate the task of conducting a performance evaluation of the then-executive director to Board members Karen Smith and James Mercer. On or about September 17, Ms. Smith and Mr. Mercer began gathering documentation in preparation for the evaluation. They scored the executive director's performance separately and then reviewed the results together. According to the Board's response, in early October, they met with the executive director to discuss her performance and provide her with an evaluation with a 180-page attachment. This evaluation was also shared with the other Board members.

The Board then met in executive session on October 16 to approve a separation agreement to be executed with the executive director, which was publicly announced at its October 30 meeting. On its meeting notice and in the public announcement, the executive session topic was listed as follows:

Executive Session under MGL c. 30A, §21(a)(2) to conduct strategy sessions in preparation for negotiations with nonunion personnel and to conduct contract negotiations with nonunion personnel (Executive Director).

During the executive session, the Board discussed the outcome of the Personnel Subcommittee's evaluation of the executive director, which was a recommendation to terminate her. The Board members individually reviewed the separation agreement. Ms. Smith repeatedly noted that neither the evaluation nor the former executive director's professional competence could be discussed behind closed doors, although much of the discussion revolved around the evaluation. The Board voted to "accept the separation agreement as written," which Ms. Smith then signed. The Board briefly discussed the process for hiring the interim and permanent executive director.

On October 18, Mr. Mercer called Ms. Smith to inform her that he had found a potential candidate for interim executive director. On October 20, Mr. Mercer and Ms. Smith met with the candidate to discuss her resume and work experience. On October 26, Mr. Mercer sent an email to the Board informing them that they need to "get an Interim Director in the office ASAP. I reached out to the state regarding the process and found a potential candidate. Prior to the 'update' at the meeting I would like to arrange a meet/greet with the

potential candidate.” Ms. Smith and Board member Diane Dillon, via email to the rest of the Board, each expressed an interest in attending the meeting with the candidate. Board member Jackie Sinico declined to attend, but asked Mr. Mercer for the resume and other information. On October 28, Mr. Mercer and Ms. Dillon met with the candidate and discussed her work experience.

On October 30 in open session, the Board discussed the candidate, including her qualifications and the process by which it selected her as a candidate, and voted to offer her the position. Ms. Smith then signed the employment contract on behalf of the Board. This topic was listed on the meeting notice under “New Business” as “Update on Interim Director-James Mercer.” Also during this meeting, the Board convened in executive session for the purpose as stated on the meeting notice and in open session as follows:

under MGL c. 30A, §21(a)(1) to discuss complaints or charges brought against, a public officer, employee, staff member or individual, specifically the complaints by Eileen Mooney and Michelle Loubert alleging violation of Open Meeting Law by the Commissioners of the Housing Authority and/or under MGL c. 30A, §21(a)(3) to discuss litigation strategy regarding same. Discussion in open session would have a detrimental effect on the Board’s litigating position.

During the executive session, the Board discussed several Open Meeting Law complaints recently filed with the Board.

DISCUSSION

The Open Meeting Law’s purpose is “to eliminate much of the secrecy surrounding deliberations and decisions on which public policy is based.” Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). The Law requires that all meetings of a public body be properly noticed and open to members of the public, unless an executive session is convened. See G.L. c. 30A, §§ 20(a)–(b), 21. “Public body” is defined, in part, as “a multiple member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose[.]” G.L. c. 30A, § 18. A “subcommittee” is defined as a multiple-member body created to advise or make recommendations to a public body. Id.

A “meeting” is defined, in relevant part, as “a deliberation by a public body with respect to any matter within the body’s jurisdiction[.]” G.L. c. 30A, § 18. The law defines “deliberation” as “an oral or written communication through any medium, *including electronic mail*, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that ‘deliberation’ shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.” Id. (emphasis added). Expression of an opinion on

matters within a body's jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. See OML 2012-15; OML 2012-8; OML 2011-37.

I. The Board's Personnel Subcommittee Failed to Post Notice of its Meetings, Instead Improperly Deliberating Outside of a Noticed Meeting.

The complainant alleges that the Personnel Subcommittee met outside of a noticed meeting to discuss and conduct a performance evaluation of the former executive director. We agree. During its August 30 meeting, the Board voted to delegate the task of conducting the "employee performance review" to Ms. Smith and Mr. Mercer. This formal delegation of authority to two Board members created a subcommittee that is subject to the Open Meeting Law. See OML 2017-50; OML 2016-33; cf. OML 2017-111 (the delegation of authority to one member is not a public body because it is not a "multiple-member body"). Because we find that the Personnel Subcommittee is a public body subject to the Open Meeting Law, we find that it violated the law by failing to comply with the Law's requirements. Accordingly, we order the Personnel Subcommittee to create meeting minutes to the best of its ability for the meetings it held, whether in person or via telephone, and to publicly disclose any written communication exchanged between its members. This includes the meeting at which the Personnel Subcommittee reviewed the performance evaluation with the former executive director, a meeting for which no executive session purpose would have applied. See District Attorney for the North District v. School Comm. of Wayland, 455 Mass. 561, 568 (2009) (although it is clear that professional competence must first be discussed in an open session, how that evaluation will factor into a contract or salary negotiation strategy may be a suitable discussion for an executive session); see also G.L. c. 30A, § 21(a)(1) (Purpose 1 allows a public body to convene in executive session to "discuss the reputation, character, physical condition or mental health, *rather than professional competence*, of an individual]") (emphasis added).

II. The Evaluation Created by the Personnel Subcommittee is a Document Used at a Meeting That Must Be Disclosed to the Public.

The complainant also alleges that the Board improperly withheld the evaluation created and discussed by the Personnel Subcommittee with the former executive director. We agree. Because the Personnel Subcommittee is a public body subject to the Open Meeting Law, any document it "used" during a meeting is public in its entirety. The Open Meeting Law states that all documents and exhibits used during an open meeting "shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions" to the public records law, although certain material may be exempt from disclosure to the public as personnel information, including "materials used in a performance evaluation of an individual bearing on his professional competence, provided they were *not created by the members of the body for the purposes of the evaluation.*" G.L. c. 30A, § 22(e) (emphasis added). Where a document is physically present, verbally identified, and the contents are discussed by the members of a public body during a meeting, it has been "used" for purposes of the Open Meeting Law. See OML 2014-12; OML 2012-42. Here, the Personnel Subcommittee compiled documentation regarding the former executive director's performance, scored her performance, and created an evaluation with a 180-page attachment,

which it discussed with the former executive director. Because this meeting should have been held during a properly posted open meeting, the evaluation created by the Personnel Subcommittee (along with its attachment) is a document it “used” during that meeting and is a public record.³ See G.L. c. 30A, § 22(c). Furthermore, because the evaluation was created by the Personnel Subcommittee, it does not fall within the exception for materials used in a performance evaluation that were created by others. Accordingly, we order the Personnel Subcommittee to disclose the evaluation to the public within 30 days of this letter.

III. The Board Improperly Deliberated About the Interim Director Outside of a Noticed Meeting.

The complainant alleges that a quorum of the Board met with a candidate for interim director outside of a properly noticed meeting. We agree. First, Mr. Mercer’s October 26 email to the Board notifying them that he had located a potential candidate and inviting them to meet with her before the Board’s next meeting is clearly a matter of Board business and thus constituted deliberation. See G.L. c. 30A, § 18. Second, although only two members (hence a subquorum) met at any given time with the candidate outside of a meeting, Mr. Mercer was present for both meetings, creating a rotating quorum of three members discussing the same topic: the candidate. A public body may not engage in a serial communication, whereby a quorum communicates in a noncontemporaneous manner outside of a meeting, on a matter within the public body’s jurisdiction. See *McCrea v. Flaherty*, 71 Mass. App. Ct. 637 (2008) (holding that private serial communications violate the spirit of the Open Meeting Law and may not be used to circumvent the intent of the law). Accordingly, the Board violated the Open Meeting Law by serially deliberating outside of a meeting. See OML 2014-93.

IV. Portions of the Board’s October 16 Executive Session Discussion Were Improper.

The complainant alleges that the Board improperly convened in executive session on October 16 to discuss the former executive director’s evaluation and improperly voted to terminate her behind closed doors. During this executive session, the Board relied on G.L. c. 30A, § 21(a)(2) “[t]o conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel.” G.L. c. 30A, § 21(a)(2) (“Purpose 2”). A public body may not discuss an individual’s professional competence in executive session. See *District Attorney for the North District v. School Comm. of Wayland*, 455 Mass. at 568. Although we find no evidence that the Board discussed the details of the former executive director’s evaluation or professional competence in executive session,⁴ several members discussed the process by which the evaluation was handled. Additionally, the Board briefly discussed the process for hiring the interim and permanent executive director; a topic that was unrelated to the purpose

³ We note, however, that to the extent the Subcommittee used any evaluations of individuals who were not members of the Committee, those might be withheld pursuant to G.L. c. 30A, § 22(c).

⁴ We note that at several points during the discussion, Ms. Smith appropriately cautioned the other Board members not to discuss professional competence.

for the executive session and therefore inappropriately discussed behind closed doors. Finally, the Board's vote to approve the separation agreement should have been done in open, rather than executive session. A public body may agree on terms with individual non-union personnel in executive session; however, the final vote to execute such agreements must be taken by the public body in open session. *Id.*; OML 2016-164; OML 2013-84. All three of these topics were inappropriate for executive session and in violation of the Open Meeting Law.

As a result of our finding, we order the Board, within 30 days of this letter, to publicly release the portion of the executive session minutes regarding the evaluation, the vote, and the subsequent discussion regarding the interim and permanent executive director. The Board may not redact or withhold that portion of the minutes in any way. *See* G.L. c. 30A, § 22(f) ("The minutes of any executive session . . . may be withheld from disclosure to the public in their entirety . . . as long as publication may defeat the lawful purposes of the executive session, but no longer; *provided, however, that the executive session was held in compliance with section 21*") (emphasis added)); OML 2014-42.

V. The Board's October 30 Executive Session Discussion Was Appropriately Held under Purpose 1, not Purpose 3.

Finally, the complainant alleges that the Board improperly convened in executive session on October 30 to review Open Meeting Law complaints that had been filed with it. We have consistently said that a public body may convene in executive session pursuant to G.L. c. 30A, § 21(a)(1) to review Open Meeting Law complaints. *See* G.L. c. 30A, § 21(a)(1) ("Purpose 1" allows a public body "[t]o discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual"); OML 2013-82; OML 2012-119; OML 2011-6.

The Board also cited to Purpose 3 as the basis for its executive session executive session. *See* G.L. c. 30A, § 21(a)(3) ("Purpose 3" allows a public body "to discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares"). Although some administrative adjudicatory matters before an agency may be appropriate for a discussion of litigation strategy under Purpose 3, *see* OML 2015-13, Open Meeting Law complaints result in an administrative review process conducted by our office, rather than a proceeding before a judge or an adjudicatory hearing officer, and are therefore not considered litigation for which strategy would need to be protected. Additionally, this administrative complaint process could ultimately lead to litigation if our office found an intentional violation for which an adjudicatory hearing officer would be appointed to conduct an independent review of the case or if the public body appeals our decision in superior court. However, the review of Open Meeting Law complaints for the purpose of preparing an initial response does not rise to the level of imminently threatened litigation. The mere possibility of litigation is not sufficient to invoke Purpose 3. *See Doherty v. School Comm. of Boston*, 386 Mass. 643, 648 (1982); *Perryman v. School Comm. of Boston*, 17 Mass. App. Ct 346, 352

(1983); OMI. 2012-05. Accordingly, the Board should not have relied on Purpose 3 for this discussion. Because the discussion was appropriately held under Purpose 1, however, we find no violation in this regard.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law by deliberating outside of a meeting and by discussing matters that were not appropriate for its October 16 executive session. Additionally, we find that the Board's Personnel Subcommittee violated the Open Meeting Law by failing to comply with the Open Meeting Law, including failing to post notice and create minutes of its meetings, and make available a document used during a meeting. We order the Board's immediate and future compliance with the law's requirements, and we caution that similar future violations could be considered evidence of intent to violate the law. Additionally, we order the Personnel Subcommittee to create and approve minutes of its meetings and to disclose the evaluation of the executive director, including the 180-page attachment, to the public. We also order the Board to release its October 16 executive session minutes in accordance with the above guidance. Finally, we order all Board members to review the Attorney General's Open Meeting Law Training Videos #1-7 and certify to our office within thirty (30) days of this letter, using the attached form, that it has complied with this order.⁵

We now consider the complaints addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the Board. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Carrie Benedon
Assistant Attorney General
Division of Open Government

cc: Eileen Mooney, the NEWSletter
Great Barrington Housing Authority Board of Commissioners

This determination was issued pursuant to G.L. c. 30A, § 23(e). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.

⁵ The videos may be found at the Attorney General's website, www.mass.gov/ago/openmeeting.

Certification of Compliance with Order

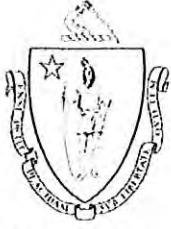
I _____ hereby certify that I have read the Attorney General's determination
(print name)

number OML 2019-57 and, pursuant to the order therein, reviewed the Attorney General's

Open Meeting Law Training Videos #1-7 on _____.
(date)

Board Member Signature

Date



THE COMMONWEALTH OF MASSACHUSETTS
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July 2, 2021

OML 2021 – 88

VIA EMAIL

Dighton Board of Selectmen
Chair Kenneth Pacheco
[REDACTED]

RE: Open Meeting Law Complaint

Dear Chair Pacheco:

This office received a complaint from Patrick Higgins on March 14, 2021, alleging that the Dighton Board of Selectmen (“the Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Board on February 12 and the Board responded by letter dated February 25.¹ In his complaint, Mr. Higgins alleges that the Board convened in executive session without a proper statutory purpose.

We resolve this complaint by **informal action** in accordance with 940 CMR 29.07(2)(a), and find that the Board violated the Open Meeting Law by meeting in executive session without a proper statutory purpose. In reaching this determination, we reviewed the original complaint, the Board’s response to the complaint, and the complainant’s request for further review. We also reviewed the video recordings of the Board of Selectmen’s public meetings from January 25 and February 12.

The Open Meeting Law requires that meetings of a public body be properly noticed and open to members of the public unless an executive session is convened. See G.L. c. 30A, §§ 20(a)-(b), 21. A public body may enter an executive, or closed, session for any of the ten purposes enumerated in the Open Meeting Law provided that it has first convened in an open session, that a majority of members of the body have voted to go into executive session, that the vote of each member is recorded by roll call and entered into the minutes, and the chair has publicly announced whether the open session will reconvene at the conclusion of the executive session. G.L. c. 30A, §§ 21(a), (b).

¹ Unless otherwise specified, all dates refer to 2021.

One permissible reason to convene in executive session is “[t]o conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel.” G.L. c. 30A, § 21(a)(2) (“Purpose 2”). However, a public body may not discuss an individual’s professional competence in executive session. See *District Attorney for the North District v. School Comm. of Wayland*, 455 Mass. 561, 568 (2009) (although it is clear that professional competence must first be discussed in an open session, how that evaluation will factor into a contract or salary negotiation strategy may be a suitable discussion for an executive session); OML 2019-57.²

During a January 25 meeting, the Board entered executive session for two purposes, the first of which was the subject of this complaint. On the meeting notice, the Board cited the Open Meeting Law’s executive session Purpose 2 and further specified that the Board would discuss an “Update on Performance Evaluations.” Performance evaluations and discussions of an employee’s professional competence must occur in open session as they do not fit within any of the ten permissible purposes to enter executive session. See OML 2021-45; OML 2018-38. Therefore, if the Board had discussed the performance evaluation or professional competence of an individual employee in executive session, this would have been a violation of the Open Meeting Law.

In response to the complaint, the Board asserts that the Board did not enter executive session to discuss the performance evaluation or professional competence of any one individual. Rather, the Board states that it discussed a more general topic - the performance evaluation process for non-union personnel. This purpose also does not fit within any of the ten permissible purposes for convening in executive session and was therefore not a permissible topic for the January 25 executive session. See OML 2019-57.

For these reasons, we find that the Board violated the Open Meeting Law by meeting in executive session without a lawful purpose. We order the Board’s immediate and future compliance with the Open Meeting Law and caution the Board that a determination by our office of a similar violation in the future may be considered evidence of intent to violate the Open Meeting Law.

We also order the Board, if it has not already done so, to release to the public within 30 days of receipt of this letter the portion of the January 25 executive session meeting minutes which relate to the impermissible “performance evaluations” discussion. However, this order does not extend to any portions of the January 25 executive session minutes that were convened under a separate executive session purpose, as we make no ruling on the permissibility of the Board continuing to withhold minutes on other topics.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the Board. Please feel free to contact the Division at (617) 963 - 2540 if you have any questions.

² All previous determinations issued by the Division can be found on the Attorney General’s website: <https://www.mass.gov/the-open-meeting-law>.

Sincerely,



Sarah Monahan
Assistant Attorney General
Division of Open Government

Assisted by: Alexis Kenney, Legal Intern, Division of Open Government

cc: Patrick Higgins (via e-mail: [REDACTED])
Dighton Board of Selectmen Executive Assistant Karin Brady (via e-mail:
[REDACTED])

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.