



FAIRHAVEN SELECT BOARD

Meeting Minutes

December 1, 2025

FAIRHAVEN TOWN CLERK
RCUD 2025 DEC 16 AM 9:17

Present: Charles Murphy Sr., Andrew Romano, Natalie A. Mello, Keith Silvia, Andrew B. Saunders and Keith R. Hickey

Mr. Murphy opened the Select Board meeting at 6:02pm

A moment of silence was observed for Octavia David and Gail Isaksen who recently passed away. He thanked Ms. Isaksen for her work in the community.

Mr. Murphy wished Robert "Hoppy" Hobson a happy 85th birthday.

EXECUTIVE SESSION

Motion: Mr. Saunders motioned to enter Executive Session Pursuant to G.L. c. 30A, s. 21(a)(7) to comply with or act under the authority of G.L. c. 30A, s. 22, to review the minutes of Executive Session on March 17, 2025, and to comply with, or act under the authority of, the Public Records Law, G.L. c. 4, s. 7(26)(discuss privileged written legal opinion regarding November 18, 2025 Open Meeting Law Determination 2025-201 and release of executive session minutes). AND to return to open session. Ms. Mello seconded. Roll Call Vote. Mr. Saunders, Ms. Mello, Mr. Murphy, Mr. Romano and Mr. Silvia in favor. The motion passes unanimously (5-0-0).

Meeting adjourned to Executive Session from 6:06pm to 6:34pm

PUBLIC HEARINGS

Application for a Farmers Distillery Pouring License Permit: Fairhaven Meadows, LLC, DBA

Nasketucket Bay Vineyard The purpose of the hearing will be to receive information and public comment on the proposed application for a Farmers Distillery Pouring License Permit. The name of the establishment is Fairhaven Meadows, LLC DBA Nasketucket Bay Vineyard, located at 237 New Boston Road, Fairhaven, MA 02719. Application submitted by: Nicholas Christy/Owner, 6 Terry Lane, East Wareham, MA 02571

The Public Hearing for 6:30pm was opened at 6:35pm and Mr. Murphy read the notice.

Nicholas Christy addressed the Board via zoom and clarified for the Board that he has worked with the Alcoholic Beverages Control Commission (ABCC) on the process to distill brandy and this license is needed to pour for tastings or other onsite pouring. Mr. Christy anticipates having some ready for the spring based on the aging required.

Public Comment: no public comments received

The Public Hearing was closed at 6:38pm

Motion: Mr. Saunders motioned to approve the application for a Farmers Distillery Pouring License Permit in the name of the establishment, Fairhaven Meadows, LLC DBA Nasketucket Bay Vineyard, located at 237 New Boston Road, Fairhaven, MA 02719. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Application for a License to operate a Car Dealer and Car Repair Business: TAG Fairhaven Holdings, LLC, DBA Tasca Hyundai Fairhaven

The purpose of this hearing is to consider an application submitted for a license to operate a Car Dealer and a Car Repair business at 37 Alden Road, Fairhaven, MA. Applicant is TAG FAIRHAVEN HOLDINGS LLC, dba TASCA HYUNDAI FAIRHAVEN. Robert F Tasca, Jr. President.

The Public Hearing for 6:35pm was opened at 6:39pm and Mr. Murphy read the notice.

David Tasca addressed the Board about the application details and clarified for the Board that the principal business will be new car sales; there will be used cars sold but not as the principal business. Mr. Tasca said if approved they anticipate opening in the first quarter of 2026 and about twenty to forty employees once fully established.

Public Comment: no public comments received

The Public Hearing was closed at 6:42pm

Motion: Mr. Saunders motioned to approve the application submitted for a license to operate a Car Dealer and a Car Repair business which allows the sale of new and used cars at 37 Alden Road, Fairhaven, MA. Applicant is TAG FAIRHAVEN HOLDINGS LLC, dba TASCA HYUNDAI FAIRHAVEN. Robert F Tasca, Jr. President. Ms. Mello seconded. The motion passed unanimously (5-0-0).

APPOINTMENTS AND COMMUNITY ITEMS

Consider Appointment: Dog Park Study Committee: Molly Turner, Carolina Martinez

The Board reviewed the applications from Molly Turner and Carolina Martinez. Mr. Romano advised the Board he has been in contact with the applicants and the two current members to schedule the first meeting once the Committee has a quorum of members.

Motion: Mr. Saunders motioned to appoint Molly Turner to the Dog Park Study Committee for a term through May, 2026. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Motion: Mr. Saunders motioned to appoint Carolina Martinez to the Dog Park Study Committee for a term through May, 2026. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Mr. Murphy asked Mr. Romano to advise the newly appointed members to be sworn in at the Town Clerk's office.

Consider Appointment: Historical Commission: Brian Messier, Doug Brady

Brian Messier and Doug Brady individually addressed the Board individually regarding their applications, interest and qualifications to join the Historical Commission. Mr. Brady advised the Board about a portion of Massachusetts General Law (c. 40 § 8D) that allows for alternate members.

Brief discussion ensued about appointing a full-time member and also an "alternate member" tonight. Mr. Hickey shared his opinion that the language of the agenda item could support the Board appointing a full-time member and also an alternate. The office will advertise the opportunity for applications for alternate members for future appointment consideration.

Motion: Mr. Silvia motioned to appoint Doug Brady as a full-time member of the Historical Commission for a term through May, 2028. Mr. Saunders seconded. The motion passed unanimously (5-0-0).

Motion: Mr. Silvia motioned to appoint Brian Messier as an alternate member of the Historical Commission for a term through May, 2026. Mr. Saunders seconded. The motion passed (4-1-0) Mr. Romano opposed.

Consider Appointment: Sustainability Committee: Wendy Drumm

Mr. Romano advised the Board Ms. Drumm was not available to address her application, she has been an active member in the past and he supports her nomination.

Motion: Mr. Saunders motioned to appoint Wendy Drumm to the Sustainability Committee for a term through May, 2026. Ms. Mello seconded. The motion passed (4-1-0) Mr. Silvia opposed.

PUBLIC COMMENT

No public comment received

ACTION / DISCUSSION

Consider Proposal for the Establishment of a Full-Time, Embedded Mental Health Clinician

This item was passed over by the request of the Police Chief to a future meeting.

Review Recommendations for 2026 Select Board Meeting Schedule

The Board reviewed the 2026 dates, no discussion or questions.

Motion: Mr. Saunders motioned to accept the proposed 2026 Select Board meeting schedule. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Consider a Policy for Select Board Agenda Deadlines

Mr. Hickey reviewed the proposal and Mr. Saunders suggested adding “close of business” to the language. The Board also suggested using the same deadlines for volunteer applications.

Motion: Mr. Saunders motioned to accept the policy for Select Board Agenda Deadlines as presented. Ms. Mello seconded. The motion passed unanimously (5-0-0).

TOWN ADMINISTRATOR REPORT

Mr. Hickey reported:

- The Fairhaven Police Department is hosting a toy drive on Saturday, December 6, 2025 from 9:00am to 3:00pm at the Fairhaven Walmart location. Donations of new, unwrapped toys can be dropped off during the drive. Contact Chief Dorgan through the police station with questions.

BOARD MEMBER ITEMS / COMMITTEE LIAISON REPORTS

Mr. Saunders had no meetings to report on.

Ms. Mello had no meetings to report on.

Mr. Murphy had no meetings to report on.

- The Turkey Trot was a success
- The Fairhaven Football Team won their game on Thanksgiving Day against Dartmouth High School and are on to the Super Bowl at Gillette Stadium on Thursday, December 4, 2025.

Mr. Romano had no meetings to report on.

- Thank you to the Board for participating in the Friends of Jack Tutu Challenge and challenged the Fairhaven School Committee.

Mr. Silvia had no meetings to report on.

MINUTES

Motion: Mr. Saunders motioned to accept the Open Session minutes of November 24, 2025. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Motion: Mr. Saunders motioned to accept the Executive Session minutes of November 24, 2025. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Motion: Mr. Saunders motioned to accept the amended Open Session minutes of September 30, 2025. Ms. Mello seconded. The motion passed (4-0-1) Ms. Mello abstained.

Determination regarding the release of Executive Session Minutes of March 17, 2025 (Attachment A)

Motion: Ms. Mello motioned to release with redactions the Executive Session minutes of March 17, 2025 as indicated in the OML 2025-201 Determination letter from the Division of Open Government. Mr. Romano seconded. The motion passed (4-0-1) Mr. Saunders abstained.

CORRESPONDENCE

Michelle Costen: Ref-11/24-25 SB meeting. (*Attachment B*)

Motion: Mr. Saunders motioned to enter the Select Board correspondence as listed into the record. Ms. Mello seconded. The motion passed unanimously (5-0-0).

NEWS AND ANNOUNCEMENTS

- The next meeting will be on Monday, December 15, 2025 at 6:30pm.

Quote:

"Peace is not absence of conflict, it is the ability to handle conflict by peaceful means." – Ronald Reagan

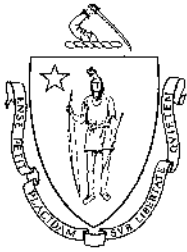
Meeting adjourned at 7:10pm

ATTACHMENTS

- A. Open Meeting Law Determination OML 2025 - 201
- B. Correspondence: Michelle Costen email: Ref-11/24-25 SB meeting

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

Accepted on December 15, 2025



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

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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

November 18, 2025

OML 2025 – 201

VIA EMAIL ONLY

Heather C. White, Esq.
Petrini & Associates, P.C.
372 Union Avenue
Framingham, MA 01702
hwhite@petrinilaw.com

RE: Open Meeting Law Complaint

Dear Attorney White:

This office received a complaint from Lee Baumgartner on May 15, 2025,¹ alleging that the Fairhaven Select Board (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Board on or about March 21, and Stasia Powers, who was chair of the Board at the time, responded on behalf of the Board by letter dated April 1. We understand the complaint to allege that with respect to an executive session meeting held on March 17: 1) the Board posted notice less than 48 hours prior to the meeting without there being an emergency, as defined in the Open Meeting Law, justifying the late notice; 2) the open session portion of the meeting was inaccessible to the public; 3) the Board discussed topics beyond the scope of the executive session purposes included on the notice; and 4) the meeting notice did not indicate whether the Board would reconvene in open session.

Following our review, we find that the Board violated the Open Meeting Law where it posted notice less than 48 hours prior to the March 17 meeting and there was no emergency justifying the late notice; the open session portion of the meeting was inaccessible to the public; and the Board discussed matters in executive session that were not appropriate for executive session. We find that the Board did not violate the Law by failing to indicate on the notice for the March 17 meeting whether the Board would reconvene in open session. In reaching this determination, we reviewed the Open Meeting Law complaint, the Board’s response, the request

¹ All dates are in 2025, unless otherwise stated.

for further review, and a video recording of the opening of the Board's March 17 meeting.² We also reviewed, *in camera*, the minutes of the Board's March 17 executive session. Finally, we communicated by email and telephone with the Board's legal counsel.³

FACTS

Background

The Fairhaven School Committee sought a permit to build a storage shed at the Fairhaven High School, and the Building Commissioner granted the permit. The Fairhaven Zoning Board of Appeals (the "ZBA") later rescinded the permit, and the School Committee appealed the decision, filing suit in Land Court against the ZBA and abutters.

Relatedly, the ZBA was experiencing some challenges, with one (now former) member asserting that the ZBA's Chair, Patrick Carr, and Vice Chair, Ruy Da Silva, had harassed and defamed her. These concerns and allegations were brought to the attention of the Board's chair, who at the time was Stasia Powers. Chair Powers determined that the Board should convene an executive session to discuss the complaints and allegations against Mr. Carr and Mr. Da Silva. Notice for a February 10 meeting was posted and included, among other topics, the following executive session topic:

Pursuant to G.L. c. 30A, § 21(a)(1) To discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual; Patrick Carr Pursuant to G.L. c. 30A, § 21(a)(1) To discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual; Ruy daSilva.

Notice of the anticipated executive session was served on Mr. Carr and Mr. Da Silva, who in response hired legal counsel. Legal counsel for Mr. Carr and Mr. Da Silva wrote to legal counsel for the Board, Attorney Heather White, objecting to the executive session and threatening legal action against the Town, Chair Powers, and Attorney White if the executive session went forward.

The Board convened in executive session on February 10. However, instead of convening under G.L. c. 30A, § 21(a)(1) to discuss the complaints brought against Mr. Carr and Mr. Da Silva, as originally anticipated, the Board convened under G.L. c. 30A, § 21(a)(3) to discuss potential litigation involving Mr. Carr and Mr. Da Silva.

The March 17 Executive Session

The Town's official notice posting location is its website, <http://www.Fairhaven-MA.gov>. On Saturday, March 15 at 1:32 p.m., the Board posted notice for a meeting to be held on Monday, March 17 at 6:00 p.m. The notice listed the location of the meeting as Town Hall, 40

² A recording of the opening of the Board's March 17 meeting may found at <https://vimeo.com/showcase/11515032?video=1066974031>.

³ For the sake of clarity, we refer to you in the third person.

Center Street, Fairhaven and did not include any means of remote access. The notice listed the following topics:

A. EXECUTIVE SESSION

G.L. C. 30A, s. 21(a)(3) discuss strategy with respect to litigation (Fairhaven School Committee v. Fairhaven Zoning Board of Appeals, Land Court 25MISC000064) and anticipated litigation (Patrick Carr and Ruy daSilva)

B. ADJOURNMENT

The notice did not indicate that the Board would first convene in open session and the webpage where the notice was posted included the following statement:

The Select Board has no Open Session Business and due to staff availability, will record the Opening of the meeting and the motion made to enter into Executive Session for broadcast later.

The Select Board will not return to Open Session this evening.

The Board convened as scheduled on March 17. Several members of the Board were present in person at Town Hall and a few members, along with Attorney White, attended remotely via Zoom. Chair Powers opened the meeting by calling for a motion to enter executive session, reading aloud the executive session topic as listed on the notice, and stating that “there was a suddenly and generally unexpected occurrence demanding immediate action and discussion that an open session would jeopardize the Town’s position in anticipated litigation.” Chair Powers then announced that the Board would not reconvene in open session. Thereafter, a motion to convene in executive session was made and the Board voted by roll call to enter executive session.

Because the minutes of the executive session have not yet been released to the public, we do not recount their content in detail here. However, we note that the primary discussion in executive session did not relate to strategy with respect to a litigation matter in which the Board has a litigating position.

DISCUSSION

I. The Board Violated the Open Meeting Law By Posting Notice of Its March 17 Meeting Less Than 48 Hours Prior to the Meeting Where There Was No Emergency Justifying the Late Notice.

The Open Meeting Law requires that “[e]xcept in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting excluding Saturdays, Sundays and legal holidays.” G.L. c. 30A, § 20(b). “In an emergency, a public body shall post notice as soon as reasonably possible prior to the meeting.” *Id.* The Open Meeting Law defines an emergency as “a sudden, generally unexpected

occurrence or set of circumstances demanding immediate action.” G.L. c. 30A, § 18; 940 CMR 29.02. The burden of justifying the need for an emergency meeting falls on the public body. See OML 2020-123.⁴ Emergency meetings are reserved for circumstances that are unanticipated and require an immediate response, that is, action that could not wait for notice of a meeting to be posted 48 hours in advance. See OML 2021-119; OML 2017-131; OML 2016-70; OML 2011-45.

The complaint alleges that the Board posted notice for the March 17 meeting less than 48 hours prior to the meeting without there being an emergency, as that term is defined in the Open Meeting Law, to justify the late notice. We agree. After review of the materials before us and discussion with counsel for the Board, we find that the Board has not met its burden to show that there existed an emergency such that the Board was relieved of the requirement to post notice 48 hours, excluding weekends and holidays, prior to the March 17 meeting. Although we credit the Board’s representation that the circumstances leading to the March 17 meeting were unexpected and felt urgent, we do not find that they demanded immediate action that could not wait for 48 hours’ notice of the meeting.

The complaint also asserts that the Board should have indicated on the notice that the meeting was an emergency meeting and asserts that this is something the Commonwealth recommends as a best practice. To the extent this was intended as an additional allegation, we find no violation where the Open Meeting Law does not require that a public body indicate on its meeting notices whether a meeting is an emergency; instead, the public body must be able to demonstrate emergency circumstances if challenged.

II. The Board Violated the Open Meeting Law Where the Open Session Portion of Its March 17 Meeting Was Inaccessible to the Public.

All meetings of a public body shall be open to the public, unless properly convened in executive session. G.L. c. 30A, § 20(a). Prior to convening in executive session, the public body must follow established procedures, including announcing the purpose for the executive session; taking a roll call vote to enter executive session, a vote that could fail in which case the body may choose to discuss the matter in open session; and announcing whether the body will reconvene in open session. G.L. c. 30A, § 21(b); see also OML 2013-856 (Board, realizing that it had posted notice for an improper executive session topic, chose to hold the meeting in open session). The public body must take these procedural steps in open session and the public has a right to observe the body taking these steps in order to learn the purpose for the executive session and to be present should the discussion be held in open session instead. See OML 2020-104; OML 2013-856. When the only business to be discussed during an open session is the procedural requirements for entering executive session, public bodies must list “open session” on the meeting notice or otherwise make clear that the public is invited to attend and witness the procedural steps, as this is the only means by which members of the public are informed that a public body will, in fact, hold an open meeting that the public is permitted to attend. See OML 2020-47; OML 2013-9; OML 2012-68. Without such notice, members of the public are essentially denied the opportunity to attend and learn the reasons for the executive session or the

⁴ Open Meeting Law determinations may be found at the Attorney General’s website, www.mass.gov/ago/openmeeting.

opportunity to witness the discussion should it proceed in open session. See OML 2025-167 (“Additionally, and perhaps of greater concern, at least two of the Board’s calendar entries and meeting notices gave the impression that the Board was to meet in executive session without first meeting in open session.”); OML 2024-26; OML 2013-195.

The complaint alleges that the open session portion of the Board’s March 17 meeting was inaccessible to the public for three reasons: 1) the notice did not include a Zoom link for the public to access the meeting; 2) the notice did not include a topic such as “Opening of the Meeting” indicating that the Board would first convene in open session; and 3) the website where the notice was posted stated that the Board would have no open session business and that the opening of the meeting and the vote to enter executive session would be recorded and broadcast later. The Board does not dispute that the notice lacked a topic such as “open session” and acknowledges that the website where the notice was posted stated that there would be no open session business. Finally, the Board explains that the meeting was held in person at a location that was open and accessible to the public and that it held an open session where it performed the required procedural steps prior to convening in executive session.

We find that the Board violated the Open Meeting Law where the notice of its March 17 meeting failed to indicate that the Board would first meet in open session, essentially denying the public the opportunity to attend the open session. See OML 2024-26; OML 2013-195. Furthermore, we find that the language included on the Town’s website noting that there would be no open session business and that the call to order and vote to convene in executive session would be recorded and broadcast later gave the public the impression that the Board was to meet in executive session without first meeting in open session.

Although we find that the public was denied access to the open session portion of the March 17 meeting, we note that where the meeting was held in person, the Board was not required to provide the public with remote access via Zoom, as the complaint asserts. Although we encourage public bodies to provide multiple means of access to their meetings, we have consistently explained that this is not a requirement. See OML 2023-168 (“There is no requirement in the Open Meeting Law that a public body provide the public with remote access if the meeting is instead held in-person at a location that is open and physically accessible to the public, even if a public body member participates remotely.”); OML 2023-155; OML 2021-79.

III. The Majority of the Board’s Discussions in Executive Session on March 17 Were Not Appropriate for Executive Session.

The purposes for executive session, as exceptions to the general rule that meetings of a public body shall be open, are narrowly construed. See *McCrea v. Flaherty*, 71 Mass. App. Ct. 637, 641 (2008); OML 2014-42. One such purpose allows a public body to enter executive session “[t]o discuss strategy with respect to . . . litigation if an open meeting may have a detrimental effect on the . . . litigating position of the public body and the chair so declares” (“Purpose 3”). G.L. c. 30A, § 21(a)(3). A public body’s discussions with its counsel do not automatically fall under Purpose 3 or any other executive session purpose. See *Dist. Atty. for Plymouth Dist. v. Bd. of Selectmen of Middleborough*, 395 Mass. 629, 634 (1985) (“We view [the Open Meeting Law] as a statutory public waiver of any possible privilege of the public

client in meetings of governmental bodies except in the narrow circumstances stated in the statute.”); accord Revere Retirement Bd. v. Attorney General, 93 Mass. App. Ct. 1117 (2018) (Rule 1:28 Decision); OML 2012-55.

Purpose 3 offers the narrow opportunity to discuss strategy with respect to litigation that is pending or clearly and imminently threatened or otherwise demonstrably likely; the mere possibility of litigation is not sufficient to invoke Purpose 3. See Doherty v. Sch. Comm. of Boston, 386 Mass. 643, 648 (1982); Perryman v. Sch. Comm. of Boston, 17 Mass. App. Ct. 346, 352 (1983); OML 2012-5. To invoke Purpose 3, a public body must have a litigating position to protect. See OML 2012-55; OML 2011-47 (where Town Meeting passed an article specifically including the Finance Committee in aspects of the litigation strategy beyond its traditional budgetary oversight role, the Committee had a litigating position to protect); OML 2018-110 (where the Subcommittee’s role was to advise on issues relating to the school district agreement, and breach of that agreement was threatened, the Subcommittee had a litigating position to protect with respect to initiating litigation if the contract were breached).

The complaint raises issues regarding the propriety of the March 17 executive session. First, with respect to the School Committee’s lawsuit against the ZBA, after *in camera* review of the minutes of the Board’s March 17 executive session and discussion with counsel for the Board, we find that the Board did not have a litigating position with respect to the lawsuit and was not discussing litigation strategy. Instead, we find the Board’s executive session discussions here to share some similarities with those of the Brookline Advisory Committee’s at issue in OML 2019-164. In that determination, we found that the Brookline Advisory Committee improperly convened in executive session to discuss whether the Committee should make a statement about litigation involving the Brookline Select Board and explained that,

the Committee had no litigating position of its own. It was not meeting, for example, to discuss whether to intervene in the lawsuit, whether to join an *amicus curiae* brief, or whether to initiate its own litigation. Instead, it was considering whether to publicly comment on the litigation of another public body. That the Committee’s contemplated action may have impacted the Board’s ongoing litigation matters did not create a litigating position for the Committee.

OML 2019-164. Additionally, in OML 2019-164 we explained that although not binding, we found the reasoning in Collins v. Wayland Bd. of Selectmen, 31 Mass. L. Rptr. 189 (Mass. Super. June 3, 2013) persuasive. In Collins, the Wayland Board of Selectmen met in executive session thirteen times to discuss litigation brought against the Wayland Historic District Commission (“HDC”). In finding that eleven of the thirteen executive sessions were lawful and two were not, the court stated, “the Board may lawfully discuss matters relating to a potential litigating position of the Board in a closed session even where the Board is not a party to a lawsuit. But the fact that some town entity or official is involved in litigation does not give the Board license to discuss matters not affecting the Board’s own litigating positions out of public view.” Collins, 31 Mass. Rptr. 189 at *1. The court concluded that the Board of Selectmen lawfully met in executive session when it discussed issues such as how the Town’s refusal to pay for legal representation of the HDC would impact the Board of Selectmen’s own litigating position, whether the Board of Selectmen should intervene in the HDC litigation, whether to join

an amicus curiae brief, and whether to initiate its own lawsuit. However, “[o]nce the Board determined that it was not going to seek to press its own position in any lawsuit . . . the litigation exception no longer applied to any further Board discussions” Id. at *4.

Here, the Board is not a named party in the School Committee’s lawsuit against the ZBA and abutters, and the Board was not discussing whether to intervene in the litigation, file an amicus brief, or initiate its own litigation. Instead, the majority of the discussion related to a situation the Board was concerned about and action the Board might take in response. That the action contemplated by the Board could have impacted the litigation between the School Committee and the ZBA did not create a litigating position for the Board.

Finally, although we find that the majority of the Board’s discussion in executive session on March 17 was improper for executive session, we find that the discussion recorded in the final substantive paragraph of the minutes related to litigation that had been threatened against the Board and therefore was proper for discussion in executive session under Purpose 3.

IV. We Find No Violation With Respect to the Allegation That the Notice for the March 17 Meeting Did Not Indicate Whether the Board Would Reconvene in Open Session.

The complaint alleges that the Board violated the Open Meeting Law where the notice for the March 17 meeting did not indicate whether the Board would reconvene in open session following its executive session. We find no violation with respect to this allegation where the Open Meeting Law does not require that a public body include such information on its meeting notice. Instead, the Open Meeting Law requires that during the open session portion prior to entering executive session the chair must announce whether the public body will reconvene in open session. In this case, Chair Powers made the required announcement and we therefore find no violation.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law where it posted notice less than 48 hours prior to the March 17 meeting and there was no emergency justifying the late notice; the open session portion of the meeting was inaccessible to the public; and the Board discussed matters in executive session that were not appropriate for executive session. We find that the Board did not otherwise violate the Open Meeting Law as alleged. We order the Board’s immediate and future compliance with the Open Meeting Law and caution that similar future violations may be considered evidence of an intent to violate the Law.

Additionally, we order the Board, within 30 days of the date of this letter, to release to the public the minutes of its March 17 executive session. The Board may not redact or withhold any portion of the minutes recording the discussions that were inappropriate for executive session. See G.L. c. 30A, § 22(f) (the minutes of any executive session may be withheld from disclosure to the public as long as publication may defeat the lawful purposes of the executive session; provided, however, that the executive session was held in compliance with the Open Meeting Law’s provisions regarding executive sessions); District Att’y. for Plymouth Dist. v. Bd. of Selectmen of Middleborough, 395 Mass. 629, 634 (1985) (“We view [the Open Meeting Law] as

a statutory public waiver of any possible privilege of the public client in meetings of governmental bodies except in the narrow circumstances stated in the statute.”); OML 2019-164; OML 2017-23; OML 2015-120. However, the Board may redact the last substantive paragraph of the minutes if the executive session purpose remains ongoing or if the attorney-client privilege or an exemption to the Public Records Law applies.

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 the Board or with our office. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Elizabeth Carnes Flynn
Assistant Attorney General
Division of Open Government

cc: Charles K. Murphy, Sr., Chair, Fairhaven Select Board
(via email: cmurphy@fairhaven-ma.gov)
Elisabeth E. Horan, Town Clerk (via email: ehoran@fairhaven-ma.gov)
Lee Baumgartner (via email: sethrylie@aol.com)

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.

michelle costen <michcosten@gmail.com>

Tue, Nov 25, 2025 at 12:15 AM

To: Charlie Murphy <cmurphy@molifeinc.com>, selectboard@fairhaven-ma.gov, TownAdmin@fairhaven-ma.gov

To The Selectboard,

I was not able to attend the SB meeting on 11/24/25

But I fully supported an investigation into what exactly happened, behind Timothy Street. And I truly appreciate that the SB voted yes to an investigation.

I have a very dear friend who lives on Timothy Street, and I know firsthand what this has done to her and her family. It devastated them.

The 11 acres including a 2 acre wet drainage area that was dug up and chopped down, took all the people on Timothy Street by surprise. None of the people on Timothy Street received a notice in the mail, which is a Massachusetts law that we used to respect and follow.

Truth be told, There are a number of laws that have been broken in this situation, and in many other situations here in Fairhaven, over the last few years, especially.

It appears that breaking the law or ignoring them has become the new normal. And public trust has been lost.

But hopefully with the new TA and TH officials stepping up to do the right thing, will help turn things around here in Fairhaven. And get us back in the right direction.

We are in a deficit, high heating & water bills, the highest we've ever seen. And endless tax increases. Not to mention our community preservation funds being misappropriated, and the highest percentages being sent off to private entities, instead of being used for our community & modest housing needs over the past 8 years.

I was told by a town official that the state of Massachusetts is behind all this over development in dense inappropriate areas. And if that's true, then I think we need to get the Federal government involved, too.

I was also told that we're doing all this developing in the name of housing, but are we really?

When we are developing and bulldozing property that is not prime for housing development, while causing an absolute nightmare for our long standing residents, all in the name of providing homes that will be sold for \$750,000 and up, you can bet you're not doing our community any real favors, because most of the people here in Fairhaven can't afford a house at that price.

So we wreck the lives of the people who have been here for many years, steal their peace, while bringing a new people that can afford those kind of homes, instead of providing 'Affordable homes' in the appropriate areas, for the modest income earners, who offer vital services to our community, and who make up the majority of Fairhaven residents.

Sometimes aiming for profit rather than a healthy cash flow can become a terrible detriment, and end up backfiring as it has, as we see in our town's financial shortages. Robbing Peter to pay Paul.

Residents have witnessed this livable community idea being pushed onto us by the state, but all we have seen is high priced homes and the highest rents we've ever witnessed in our lifetime. Who do they think they're kidding?

Someone needs to step up, a few of our town officials need to step up, and say enough is enough.

There was a \$5 billion dollar housing plan that was passed in August 2024, but no one has witnessed any modest affordable homes being built with that money.

There were supposed to be incentives given to developers to build affordable modest homes, has anyone looked into it?

And what about the USDA, from what it appears now, we don't qualify for rural development modest home building, but we could, we just need to approach them.

CPA funds, they can also be used to help our modest housing needs.

And we need to get a real cap on our housing inventory that we already have in stock, and make sure that all these ADU's are not being used strictly for STR profits, because that would be against the bylaws. We have not been following STR bylaws, and we are over our cap amount of 120- That alone has used up much of our housing inventory, and grossly de-stabilized our housing prices. And priced out our hard working modest income earners from buying a home and having a chance to grow their own equity.

We need to keep doing the right thing, and we need to move forward and get on the right track, we can do it if we stay honest and don't get greedy.

Putting people before profit can create unexpected miracles. Fairhaven has always been a gem of a town. It was never meant to be an overpopulated city, and we still have rural areas/land that we can look into for more home building opportunities.

Thank you again so much, for voting yes at tonight's meeting about having an investigation, and making sure that these people on Timothy Street, who have been so violated, have a fair recompense for their suffering.

Michelle Costen
Fairhaven Advocate