EXECUTIVE SUMMARY
INVESTIGATION INTO CIRCUMSTANCES THAT LED TO THE CONSTRUCTIVE APPROVAL OF THE TIMOTHY/HILLER SUBDIVISION
By Donna M. Brewer, Harrington Heep LLP
February 18, 2026

Introduction.

By report dated February 18, 2026, Donna Brewer detailed the results of an investigation into the circumstances that led to the constructive approval in August, 2025, of the Timothy/Hiller Subdivision. This Executive Summary gives an overview of the detailed findings and conclusions.

The Original Application.

The Subdivision is the subject of long-standing contention with the Town and neighborhood and years of litigation. The developer, Mr. Robert Roderiques, first submitted definitive subdivision plans in 2019. The Planning Board, after public hearing, denied the application. Mr. Roderiques sued in Superior Court. The Superior Court upheld the Planning Board's decision. Mr. Roderiques appealed. The Appeals Court, in July 2025, affirmed the trial court's decision. Mr. Roderiques filed a petition for further appellate review before the Supreme Judicial Court. That petition was denied.

The March 2025 Application.

Town officials and the developer held discussions in early 2025 to discuss potential modification of the 2019 submission and potential remand of the matter by the court to the Planning Board for consideration. Instead of a remand, plans for a definitive subdivision were hand-delivered to the Planning Department on March 24, 2025.

Findings (based on interviews and documents).

1. David Davignon, the engineer for the applicant Robert Roderiques d/b/a Windmill Acres LLC, hand-delivered to the Planning Department on March 24, 2025, the Form C Application, Form G Subdivision Plan Checklist, Project Narrative, Abutters List, DEP Stormwater Report, Fee Schedule Worksheet, and 10 sets of Definitive Subdivision Plans to the Planning Department, attention Cathy Melanson Madam Chair.
2. Mr. Davignon also hand-delivered a set of plans to the Board of Health, received by Health Agent David Flaherty, and the Town Clerk.
3. The Town Clerk stamped the plans as received on March 24, 2025.
4. The Planning Department did not stamp the plans as received and placed the checks for the application fees in a safe rather than depositing them.

5. Land Use & Planning Director Bruce Webb was not in the office on March 24, 2025, but his assistant, Barbara Paczosa, informed him that the plans had been delivered when he was in the office next day.
6. Mr. Webb informed Ms. Melanson and Planning Board Vice-Chair Patrick Carr of receipt of the new plans shortly after he became aware of them.
7. Ms. Melanson saw the plans in the office that week.
8. On April 2, 2025, Mr. Webb sent an email to Town Counsel Heather White informing her that the Department received a new application for the Timothy/Hiller subdivision and asking if the Planning Board could have a hearing on a new application while the old application was pending before the Appeals Court.
9. Town Counsel Michael Terry responded to Mr. Webb by emaildated April 3, 2025 in which he opined that the Board would have to approve an Application for Repetitive Petition and that the new application should be considered for refusal due to past due consultant fees, although he conceded that he did not have any support in law for the second grounds for refusal.
10. Mr. Terry stated that he had a telephone conversation with Mr. Webb on April 22, 2025, as reflected in his firm's statement of services, in which he informed Mr. Webb that his advice of April 3rd was incorrect and the application should be reviewed by the Planning Board.
11. Mr. Webb denies that that telephone conversation occurred and denies that the April 3rd advice was ever changed.
12. On May 5, 2025, Mr. Terry sent an email to Mr. Webb asking him what was the status of the new application. Mr. Webb did not respond.
13. On May 8, 2025, Mr. Terry sent an email to Mr. Webb asking him if a hearing had been scheduled on the modified plan. Mr. Webb did not respond.
14. Mr. Webb thought that Mr. Terry's email of May 8th was referring to remanded plans and to the executive session, not the new application.
15. On May 12, 2025, Mr. Carr had a telephone conversation with Mr. Terry to discuss whether to hold an executive session of the Planning Board. Mr. Carr learned in that conversation that the Planning Board was required to act by statute on the application within 135 days of receipt.
16. On May 12, 2025, Mr. Carr sent Mr. Webb an email in which he brought up the 135-day deadline and stated that he should be kept in the loop so that the 135 days were not exhausted. *Mr. Webb* did not respond to the statements about the deadline.
17. Between March and August, several people asked Mr. Webb what was happening with the plans. Mr. Webb consistently stated that he was told by Town Counsel to do nothing with them.
18. Between April and August, Mr. Webb neverasked Town Counsel whether the prior advice to do nothing with the plans had changed.
19. At no time did Mr. Webb direct Ms. Paczosa to prepare a legal advertisement for publication or send notices to the abutters, statutory prerequisites for the public hearing to occur within the 135 days.
20. Anne Carreiro, Assistant Town Administrator of Finance/Town Accountant, received a telephone call from Mr. Roderiques the evening of August 26, 2025, in which he

informed her that the plans had been constructively approved due to the Planning Board's inaction.

21. Mr. Webb sent an email to Town Counsel on August 27th in which he informed Ms. White and Mr. Terry that he had found an email from Mr. Davignon dated March 24th with a digital copy of the plans and found hard copies in the planning office.
22. After August 26th, Mr. Webb told some people variously that he did not know the plans were in the office, or did not know that the Town Clerk had stamped the plans as received, or had done nothing based on Town Counsel's advice.

Conclusions.

Mr. Webb knew by March 25th that a new application for the Timothy/Hiller Subdivision was received by the Planning Department. By the end of April, he was informed by Town Counsel that the plans needed to be reviewed by the Planning Board. His statements that he was never informed that Town Counsel's advice was changed are not credible in light of Town Counsel's recollections and emails and Mr. Carr's email.

The evidence supports the conclusion that Ms. Melanson and Mr. Carr were the only Planning Board members who knew, between March and August 26th, that the new plans had been received by the Planning Board. No one informed any other member of the Planning Board of their receipt and Ms. Melanson was no longer on the Planning Board after the April 2025 Town election.

Mr. Carr can be faulted for not informing the incoming Chair that the new plans had been received and that there was a 135-day deadline to act. He did not do so because he relied on those who were responsible for the operations of the Planning Department to inform her of pending applications.

Mr. Webb was absent for a considerable amount of time between April and August 2025. The evidence supports the conclusion that, with the distraction of his family's health issues, Mr. Webb's asserted misunderstanding of Town Counsel's advice, his failure to inform the new Planning Board Chair or members other than Mr. Carr of the plans' receipt, and his negligence at any time prior to the expiration of the 135-day deadline to confirm that he should do nothing with the plans, Mr. Webb is primarily responsible for the plans being constructively approved.

The evidence does not support the conclusion that there was any nefarious intent or conspiracy intentionally to cause the plans to be constructively approved.

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Select Board
Andrew Romano, Chair
Natalie A. Mello, Vice Chair
Pamela Kuechler, Clerk
Andrew B. Saunders
Richard Trapilo

Town Administrator/
Keith R. Hickey

MEMO

DATE: October 26, 2026

TO: Erin Carr
Select Board

FROM: Keith R. Hickey, Town Administrator

RE: Response to an Email Received from Erin Carr

On Monday, October 19, 2026, the Select Board, Amy Hart, and I received an email from resident Erin Carr questioning the process used to select Harrington Heep to conduct an independent investigation into the constructive approval of the Timothy-Hiller subdivision plans. A copy of Ms. Carr's email is attached as Exhibit A.

Chronology of Events

- **November 5, 2025** - The Select Board and I received an email from resident Bob Espindola requesting the Select Board "consider an internal investigation of the failure of the Town to act on the Timothy-Hiller subdivision plans that were submitted on March 24th, 2025, which resulted in a "Constructive Approval." Please see Exhibit B.
- **November 24, 2025** - The Select Board considered an agenda item entitled Consider Conducting an Investigation for the Failure of the Town to Act on the Timothy-Hiller Subdivision Plans Resulting in 'Constructive Approval.' The Board unanimously approved the following motion:

  Motion: Mr. Saunders motioned to request the Town Administrator contract to have an external investigation conducted with different outside counsel to determine the sequence of events that occurred from on or before the date the Timothy-Hiller subdivision plans were accepted by the Town of Fairhaven to the date when the plans received constructive approval due to a Planning Board decision not being made. Ms. Mello seconded. The motion passed unanimously (5-0-0). The minutes to the November 24 2025 meeting are attached as Exhibit C.
- **November 26, 2025** - Following the Board's vote, I contacted Attorney Jay Talerman, a partner at Mead, Talerman and Costa, to discuss his firm's ability to conduct the investigation. Attorney Talerman initially agreed to undertake the assignment. I

- forwarded a package of relevant information to him on November 26, 2025, and sent a follow-up email on December 2, 2025, confirming that the materials had been provided.
- **December 2–30, 2025:** During a subsequent conversation, Attorney Talerman informed me that Attorney Adam Costa of his firm had previously represented the Planning Board during the development of Fairhaven's 40R zoning districts. We agreed that retaining Mead, Talerman and Costa could create a perception of a conflict of interest. Attorney Talerman offered to recommend alternative counsel to conduct the investigation. Attorney Talerman offered to provide other options to perform the investigation. On December 30, 2025, Attorney Talerman recommended Attorney Tom Harrington of firm Harrington Heep and Jonathan Silverstein of Blatman, Bobrowski, Haverty and Silverstein. See Exhibit D.
- **December 30, 2025:** Attorney Talerman recommended Attorney Tom Harrington of Harrington Heep and Attorney Jonathan Silverstein of Blatman, Bobrowski, Haverty and Silverstein as potential investigators. His recommendations are documented in Exhibit D.
- **December 30, 2025–January 8, 2026:** I contacted Attorney Harrington to determine whether his firm was interested in conducting the investigation. On January 8, 2026, Attorney Harrington advised me that Attorney Donna Brewer of Harrington Heep would serve as the lead investigator. The correspondence is attached as Exhibit E.
- **January 9, 2026:** I spoke with Attorney Brewer regarding the proposed investigation. During that conversation, we discussed that Attorney Chris Brown, who had previously worked with Town Counsel Attorney Heather White at Petrini and Associates, was now a partner at Harrington Heep. Attorney Brewer advised me that Attorney Brown would not participate in the investigation and that the firm would establish an electronic "Chinese Wall" to prevent Attorney Brown from accessing electronic documents related to the Timothy-Hiller subdivision investigation. I subsequently provided Attorney Brewer with information concerning the matter. The relevant correspondence and documentation are included in Exhibit F.
- **January 12, 2026:** During the Select Board meeting, my Town Administrator's Report included an update that I had signed a fee agreement with Harrington Heep to conduct the investigation.

Questions posed by Ms. Carr in her October 19, 2026 email.

1. Was the Select Board aware of this relationship before selecting Harrington Heep to perform the external investigation? **I have not located written documentation indicating that the Select Board was aware of the prior professional relationship between Attorneys White and Brown at Petrini and Associates when Harrington Heep was selected. Therefore, I will assume I did not make the Board aware.**

   I selected Harrington Heep following a recommendation from Attorney Talerman, the Town's current labor counsel, after concerns arose regarding the potential perception of a conflict involving his own firm. Before retaining Harrington Heep, I discussed Attorney Brown's prior professional relationship with Attorney White directly with Attorney Brewer. Attorney Brewer advised that Attorney Brown would not participate in the investigation and that electronic

access restrictions would be implemented to prevent him from accessing investigation-related materials.

2. If so, why wasn't it disclosed publicly? **The selection process followed the Board's November 24, 2025 vote authorizing me to retain outside counsel to conduct the investigation. The potential perception of a conflict involving Mead, Talerman and Costa was addressed by seeking recommendations for alternative counsel. Before executing the agreement with Harrington Heep, I also discussed Attorney Brown's prior professional relationship with Attorney White and the safeguards that would be implemented to maintain the independence of the investigation.**

3. If not, did Attorney White, Petrini & Associates, or Harrington Heep disclose the relationship during the selection process? **I was aware of the prior professional relationship between Attorneys White and Brown at Petrini and Associates before finalizing the engagement with Harrington Heep. Attorney Brewer advised that Attorney Brown would not participate in the investigation and that electronic access restrictions would be established to prevent him from accessing materials related to the investigation.**

   The information available to me establishes that this matter was discussed with Harrington Heep before the engagement was finalized.

4. Who was responsible for verifying that the firm met the independence requirements established by the Select Board? **The Select Board authorized me to retain outside counsel to conduct the investigation, and I was responsible for selecting and engaging the firm. In making that decision, I considered Attorney Talerman's recommendations, discussed the prior professional relationship between Attorneys White and Brown with Attorney Brewer, and received assurances that Attorney Brown would not participate in the investigation and would be restricted from accessing investigation-related electronic materials.**

   These were the steps I took to address the potential perception of a conflict and to support the independence of the investigation. The selection was made with the expectation that Harrington Heep would conduct an objective and independent review of the events surrounding the constructive approval of the Timothy-Hiller subdivision plans.

Exhibit A

khickey@fairhaven-ma.gov

From:	Erin Carr <ecarr0825@gmail.com>
Sent:	Monday, October 19, 2026 8:18 PM
To:	Andrew Romano; namello@fairhaven-ma.gov; pkuechler@fairhaven-ma.gov; rtrapilo@fairhaven-ma.gov; asaunders@fairhaven-ma.gov
Cc:	Keith Hickey; Amy Hart; selectboard@fairhaven-ma.gov
Subject:	Questions Regarding Independence of Timothy-Hiller Investigation
Attachments:	Timothy-HillerSummary - Harrington Heep - Donna Brewer.pdf

Dear Members of The Select Board,

The following questions are particularly important now as the Select Board considers which law firm will represent the Town of Fairhaven.

Transparency regarding prior professional relationships, disclosure practices, and the verification of eligibility should be an integral part of that decision-making process to ensure confidence by the town residents in their legal representatives.

At the November 24, 2025 Select Board meeting, Town Administrator Keith Hickey recommended selecting a firm without any "ties with the current legal counsel," noting that existing counsel "may have made a mistake." Select Board Member Andrew Saunders emphasized this recommendation when he requested language be added to the original motion requiring that the investigator have no connection to current town counsel. The Select Board voted unanimously in favor.

However, at the August 10, 2026 meeting, Attorney Christopher Brown, a current partner at Harrington Heep, publicly stated that he had worked with Attorney White at Petrini & Associates for approximately 12 years.

Attorney Brown joined Harrington Heep in 2022, directly from Petrini & Associates, meaning he was also employed at Petrini during the original litigation involving the developer.

I am writing to ask whether in 2025 or 2026 was the Select Board aware of the longstanding professional relationship between Attorney Heather White and Attorney Brown of Harrington Heep LLP before selecting Harrington Heep to conduct the independent investigation into the Timothy-Hiller Subdivision's constructive approval.

Given the Select Board's explicit emphasis on independence, I would appreciate clarification on the following:

1/ Was the Select Board aware of this relationship before selecting Harrington Heep to perform the external investigation?

2/. If so, why wasn't it disclosed publicly?

3/ If not, did Attorney White, Petrini & Associates, or Harrington Heep disclose the relationship during the selection process?

4/ Who was responsible for verifying that the firm met the independence requirements established by the Select Board?

The constructive approval controversy has already eroded public trust in local government and resulted in additional legal costs for the town at the taxpayers' expense.

In addition to the legal fees associated with the constructive approval, the investigation itself was estimated to cost between $6,000 and $10,000 in taxpayer funds.

Residents have every reason to expect that the Select Board's stated requirements for independence were carefully considered and upheld. While a prior professional relationship does not necessarily constitute a conflict of interest, the public was assured that this investigation would be independent.

In the interest of transparency and accountability, I request that the Select Board clarify whether these disclosures were made, both during the original investigative-firm selection process and as part of Harrington Heep LLP's current application to serve as Town Counsel.

Thank you. I look forward to your response.

Sincerely,
Erin Carr

Request for Agenda Items - Timothy-Hiller subdivision

Exhibit B

1 message

Bob Espindola <bobespindola02719@gmail.com> Wed, Nov 5, 2025 at 11:14 AM
To: Charles K Murphy Sr <cmurphy@fairhaven-ma.gov>, Keith Hickey <khickey@fairhaven-ma.gov>, Amy Hart <ahart@fairhaven-ma.gov>, Jessica Fidalgo <jessfidalgo121313@gmail.com>
Cc: spiritshine01@yahoo.com, Chris <frolo572@comcast.net>, Dianne Clark <dianneclark72@icloud.com>, Jessica King <jessaking9212@gmail.com>, "dwelly09@gmail.com" <dwelly09@gmail.com>, Gail & David Branco <gnails7@yahoo.com>, danpelletier30@gmail.com, "eharne@gmail.com" <eharne@gmail.com>, kataudette@comcast.net, "thecomedybarbarian@hotmail.com" <thecomedybarbarian@hotmail.com>, Sue Powers <sueppowers@gmail.com>, Mikey Freire <Michaelfreire70@gmail.com>, Ann Espindola <annespindola@gmail.com>, whyme855 <whyme855@comcast.net>, Bob Espindola <bobespindola02719@gmail.com>, Kellie McCarthy <272moomay@gmail.com>, Kraig Perry <ksperry2016@gmail.com>, Victoria Carter <Victoriacarter64145@gmail.com>, Rebecca <rebecca.medeiros@aol.com>, Joan Gallagher <jngallagher2@gmail.com>, Louis Braga <lmbraga9@comcast.net>, Donna McKenna <Donna@stonegaterate.com>, mmm195358 <Mmm195358@gmail.com>, Wayne Gifford <wgiffy5@gmail.com>, Jeff King <jeffking83@comcast.net>, "erosparka@gmail.com" <erosparka@gmail.com>, "kjharne@gmail.com" <kjharne@gmail.com>, Jeanne Green <jeanne306@yahoo.com>, Joe' <rosaj681957@aol.com>, Carol Staiti <cstaiti12@gmail.com>, Jennifer Carter <bug_bear@verizon.net>, Karen Isherwood <isherwoodkf@gmail.com>

Chairman Murphy,

I write to you on behalf of many abutters and neighbors of the Timothy-Hiller Subdivision project asking for a very time sensitive item to be placed onto the Select Board agenda on Monday, November 10th, 2025.

Please find two reference files attached that explain what the group is looking for.

The first is a Draft Letter that those on copy here are asking for the Select Board to vote on at your Monday night meeting.

The second file is a copy of the Administrative Appeal that was submitted for review by the Zoning Board of Appeals but will not be heard until their December 4th meeting.

While the Town causes delays in action, there is a constant stream of heavy equipment passing by abutters properties and construction of new homes, six days a week,is ongoing. This group of affected abutters and neighbors is asking for the bare minimum, at this time, that the Select Board would review this attached letter and consider taking action as outlined herein.

We are also still awaiting confirmation that you, as the Chair, will allow for the request, as originally made on October 27th, for the Select Board to consider an internal investigation of the failure ot the Town to act on the Timothy-Hiller subdivision plans that were submitted on March 24th, 2025, which resulted in a "Constructive Approval".

We believe your Monday, November 10th meeting presents a unique opportunity to have both of these items on your agenda as the meeting will be a joint meeting of the Select Board and the Planning Board and if there are any questions or concerns about either letter, the Planning Board would be on hand to comment.

We would like to ask that you please acknowledge receipt of this email when you read it and we look forward to your response on this and if either of these items will not be on the Select Board agenda on Monday, November 10th, we would like an explanation as to why not.

I have copied Planning Board Chair, Jessica Fidalgo for efficiency.

Respectfully,

Bob Espindola
14 John St.
Fairhaven, MA 02719
(774) 263-1046

2 attachments

Draft Letter from Fairhaven Select Board to Fairhaven Planning Board Chair 11-5-2025.pdf
152K

Building Permit Appeal File - Time Stamped by Town Clerk.pdf
376K

DRAFT — Letter from the Fairhaven Select Board to the Fairhaven Planning Board

Date: Monday, November 10th, 2025
To: Ms. Jessica Fidalgo, Chairperson, Fairhaven Planning Board
CC: Town Administrator, Town Counsel, Town Clerk, Building Commissioner
From: Fairhaven Select Board
Subject: Procedural Deficiencies and Request for Corrective Action – Windmill Acres Subdivision (Robert Roderiques / Windmill Acres LLC)

Dear Ms. Fidalgo,

The Fairhaven Select Board has received information indicating that the definitive subdivision plan submitted by Windmill Acres LLC, Developer: Mr. Robert Roderiques, may have proceeded toward constructive approval without compliance with mandatory procedural requirements under Massachusetts General Laws Chapter 41, §§ 81T–81V, and the Town of Fairhaven Subdivision Regulations (Ch. 322) and Planning Board Rules (Ch. 316).

Specifically, it appears that:

1. The Planning Board did not conduct a duly advertised public hearing as required by M.G.L. c. 41, § 81T, prior to taking action on (or failing to act on) the plan.
2. Abutters within 300 feet were not provided with notice by certified mail, as required by local and state law.
3. The Board did not file a timely certificate of action with the Town Clerk under § 81U.
4. The developer has since asserted constructive approval due to the Board's inaction.
5. Homes are being built on lots where no permits have been issued, based on the only set of plans issued to the Town for this project, dated March 24th, 2025.
6. The Conservation Commission stated, during their October 27th, 2025 meeting, that the Commission would be reviewing the Timothy-Hiller Subdivision, just as they would any other subdivision.
7. The Town has not negotiated a surety in accordance with Town Bylaws for the subdivision, placing the Town at financial risk.

Pursuant to the Select Board's authority under the Town Charter and Massachusetts law to ensure compliance with all municipal procedures and to protect the legal interests of the Town and its residents, we formally request that the Planning Board:

1. Immediately review the Windmill Acres file and determine whether the statutory notice and hearing requirements were satisfied.
2. Cease recognition of any constructive approval or development activity associated with the plan until the Board's procedural compliance is verified by Town Counsel and a written report is made public.
3. Schedule and conduct a public hearing, properly noticed and advertised in accordance with M.G.L. c. 41, § 81T, and provide certified notice to all abutters as identified in the most recent tax list.
4. File a written report with the Select Board and the Town Clerk within 30 days confirming that all procedural steps have been followed or identifying the deficiencies and corrective actions taken.
5. Continue the hold on recognition of any constructive approval or development activity associated with the plan at least until the Zoning Board of Appeals have heard the Administrative Appeal filed (due to be heard on December 4th Zoning Board of Appeals meeting.

Furthermore,

The Selectmen are directing the Town Administrator, Building Commissioner, and all relevant departments to withhold the issuance of building permits, infrastructure connections, or municipal approvals related to the Windmill Acres subdivision until the Planning Board certifies compliance with M.G.L. c. 41 and Fairhaven's Subdivision Rules and Regulations.

Conclusion

The Select Board takes no position on the merits of the proposed development but is obligated to ensure that all statutory procedural rights—including public hearings and abutter notifications—are fully observed.
Failure to follow these procedures risks invalidation of any approval and exposes the Town to legal challenge and liability.

We appreciate the Planning Board's prompt attention to this matter and request a written response at your earliest convenience.

Sincerely,

Fairhaven Select Board
[Chairperson's Name]
[Member Names & Signatures]

References

- Copies of M.G.L. c. 41 §§ 81T–81U
- Fairhaven Subdivision Regulations § 322-16 (Public Hearing requirement)
- Planning Board Procedures § 316-2 (Abutter notification rule)

Exhibit C

FAIRHAVEN SELECT BOARD
Meeting Minutes
November 24, 2025

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 6:30pm

A moment of silence was observed to reflect on Thanksgiving blessings, remember those lost or who may be facing hardships and to give thanks for the community.

Mr. Murphy congratulated the Fairhaven High School Blue Devils on going to the Super Bowl for a third year in a row.

PUBLIC COMMENT

Tara Dwelly of John Street addressed the Board with a statement about the constructive approval, failure of elected officials, the importance of being involved in Town affairs and asked for an external investigation regarding the constructive approval of the Timothy/Hiller subdivision.

Kevin Grant of Fort Street addressed the Board as a resident and not as a Planning Board member. He asked for an external, third-party investigation of the Timothy/Hiller subdivision and said the cost to investigate is dwarfed by the potential cost of litigation and people deserve answers.

Jennifer Carter of Paul Street addressed the Board; she is a direct abutter and has many questions on the matter. She is very proud of her neighborhood and asked the Board to vote for an external investigation. Never in the Town's history has a constructive approval happened and it should be investigated.

Motion: Mr. Saunders motioned to take item C3 out of order. Ms. Mello seconded. The motion passed unanimously (5-0-0).

ACTION/DISCUSSION

Consider Conducting an Investigation for the Failure of the Town to Act on the Timothy-Hiller Subdivision Plans Resulting in a "Constructive Approval"

Mr. Hickey addressed the Board regarding the constructive approval of the Timothy-Hiller Subdivision and apologized for Town staff not bringing this project forward. He has met and spoken with abutters and residents to understand the concerns. Processes have been put in place to prevent something like this from happening in the future. In meeting with the developer, their attorney and Town Counsel, the developer has agreed to additional terms and compliance with as many bylaws as possible.

Mr. Hickey said the Public Works Superintendent has also reviewed concerns about smells from the Wastewater Treatment facility and advised that the smells are due, in part, to the plant upgrade and anticipates a significant decrease by July of 2026 as the work progresses.

Discussion ensued as to how to proceed on the matter, potential outcomes and how the results would be handled, releasing a redacted report, whether action could be taken with elected officials, transparency in any investigation, concerns on future budget deficits of one and a half to four million dollars, Mr. Hickey's time will be focused on the budget and concerns on the overall cost and timeline of an investigation. The Board's consensus was for an external investigation, estimated costs are between six and ten thousand dollars. Mr. Hickey recommended Town Counsel not be involved in selecting an investigator and will report back an estimated timeline.

Motion: Mr. Saunders motioned to request the Town Administrator contract to have an external investigation conducted with different outside counsel to determine the sequence of events that occurred from the date the Timothy-Hiller subdivision plans were accepted by the Town of Fairhaven to the date when the plans received

constructive approval due to a Planning Board decision not being made. Ms. Mello seconded.

Bob Espindola of John Street asked the Board to consider not limiting the start date in their motion. Mr. Hickey suggested a revision to the motion. Mr. Saunders rescinded his motion and Ms. Mello rescinded her second.

Motion: Mr. Saunders motioned to request the Town Administrator contract to have an external investigation conducted with different outside counsel to determine the sequence of events that occurred from on or before the date the Timothy-Hiller subdivision plans were accepted by the Town of Fairhaven to the date when the plans received constructive approval due to a Planning Board decision not being made. Ms. Mello seconded. The motion passed unanimously (5-0-0).

APPOINTMENTS AND COMMUNITY ITEMS

Assessors: Tax Rate Presentation and Set Rate

Mr. Hickey reviewed the 2026 Tax Rate Presentation prepared by former Assessor Joanne Correia (***Attachment A***). The Board asked clarifying questions about the rate, calculation, proposition two-and-a-half constraints, the average increase residents would see, comparison to the 2025 rate (***Attachment B***), how the Board has voted in the past on the residential exemption and small business exemption.

Discussion ensued about the residential tax shift and that "savings" (slide 3 of ***Attachment A***) means a portion is shifted to the commercial rate. Massachusetts' towns' revenue sources like the Cherry sheets are not being given to municipalities at the same proportion and asking the state to use the rainy-day fund interest to help towns because shortfalls will result in cuts to staff, teachers and services.

Motion: Mr. Saunders motioned to adopt the shift of 1.75 resulting in a residential factor of 88.38 for 2026. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Mr. Murphy confirmed the Board would not adopt a residential exemption or small business exemption and no votes were taken on them.

ACTION/DISCUSSION

Consider Member Removal Request: Sustainability Committee: Susan Spooner

Mr. Romano explained the request to remove a member from the Sustainability Committee.

Motion: Mr. Saunders motioned to remove Susan Spooner from the Sustainability Committee. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Consider Appointing a Select Board Representative for a Hiring Panel for Principal Assessor and Planner

Mr. Hickey advised the Board that he is seeking a member or two members to participate in an interview committee for the positions of Principal Assessor and Planner. He clarified it can be one member for both or one for each depending on the Board. Brief discussion ensued about interest.

Motion: Mr. Saunders motioned to appoint Andrew Romano as Select Board Representative to the interview committee for Principal Assessor. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Motion: Mr. Saunders motioned to appoint Natalie Mello as Select Board Representative to the interview committee for Planner. Mr. Romano seconded. The motion passed unanimously (5-0-0).

Mr. Romano asked if both positions had been advertised and if Land Use Director was changing back to a Planner and Conservation Agent. Mr. Hickey will confirm the job postings and said the Conservation Coordinator is looking at budget impacts of completing training to step into the Conservation Agent role. Mr. Hickey will send the Board the salary and job description changes.

TOWN ADMINISTRATOR REPORT

Mr. Hickey reviewed his report (***Attachment C***). The department deadline for submitting Capital Improvement

Plan requests was extended to allow departments to include additional details.

Mr. Romano reminded the Board that he had asked for a follow-up on solar at a previous meeting as a alternative to the wind turbines and advised the Board he would like to attend future Kearsarge Solar meetings with the Town Administrator. Mr. Murphy said the Board did not appear to object but could not vote on this tonight.

Mr. Hickey added that he has asked the Building Commissioner to review his report on the decision and justification of the request from Fairhaven Wind with Town Counsel and confirm next steps.

Mr. Hickey read a memo from Discover Fairhaven about the upcoming Olde-Tyme Holiday on December 13, 2025 (***Attachment D***). He added that he will be in Foxboro to see the Fairhaven Football Team in the Super Bowl.

BOARD MEMBER ITEMS / COMMITTEE LIAISON REPORTS

Mr. Saunders had no meetings to report on

Ms. Mello had no meetings to report on.

- Shout-out to all those who participated in the recent Veterans Day events, activities, the parade and for the opportunity to speak.

Mr. Murphy reported:

- Thank you to Ms. Mello for her heartfelt words on Veterans Day and gave Mr. Hickey a proclamation from the governor for Veterans Day.
- Lagoa Friendship Pact Committee met at the same time as the Board, no report
- The Sister City Committee met to debrief about the Manjiro Festival and protocol for future events.
- He reminded everyone that there are many events for Thanksgiving like the Turkey Trot and Fairhaven vs. Dartmouth football game. There are also meals available for free and a place to go, check resources if you need a place to go for a meal.

Mr. Romano reported:

- Thank you to Chief Correia and Harbormaster Cox for the blessing of the new boat today and thanks to the County Commissioners.
- Sustainability met, anyone with a pumpkin to get rid of can take it to any of the community gardens at the schools to be composted. They are looking into an "adopt-a-drain" program to help with unclogging the sewer drains.
- SRPEDD will meet in December
- The Friends of Jack Foundation raises money for Children's Hospitals and has an annual red tutu challenge and asked the Board and TA to participate at the next meeting.

Mr. Silvia reported:

- The Commission on Disability met and volunteer Christin Ritz offered to create a native garden that is accessible.

MINUTES

Motion: Mr. Saunders motioned to accept the Open Session minutes of November 10 and 19, 2025. Ms. Mello seconded. The motion passed unanimously (5-0-0).

Ms. Mello asked for an additional correction to the September 30, 2025 minutes as she was not in attendance. The office will review the minutes and this item was tabled until the December 1, 2025 meeting.

CORRESPONDENCE

Blog Post: Frank Haggerty: Massachusetts Wind Turbines: Harbingers of Death

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 1, 2025 at 6:00pm.
- Mr. Murphy thanked residents, volunteers, and staff who work every day to strengthen the community and for their engagement, kindness, and commitment to the Town. He wished everyone a safe, peaceful, and happy Thanksgiving.

EXECUTIVE SESSION

Motion: Mr. Saunders motioned to enter Executive Session pursuant to Open Meeting Law (Chapter 30A Section 21 (a)(3)) - To discuss strategy with respect to collective bargaining if an open meeting may have a detrimental effect on the bargaining position of the public body and the chair so declares – Police Union; AND pursuant to Open Meeting Law (Chapter 30A Section 21 (a)(3)) - To discuss strategy with respect to collective bargaining if an open meeting may have a detrimental effect on the bargaining position of the public body and the chair so declares – American Federation of State, County and Municipal Employees (AFSCME) and not 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 passed unanimously (5-0-0).

Meeting adjourned to Executive Session at 7:42pm

ATTACHMENTS

A. 2026 Tax Rate Presentation
B. Tax Rate Comparison Grid
C. Town Administrator Report
D. Discover Fairhaven Olde-Tyme Holiday Memo
E. Correspondence: Blog Post: Frank Haggerty: Massachusetts Wind Turbines: Harbingers of Death

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

Accepted on December 1, 2025

Exhibit D

khickey@fairhaven-ma.gov

From: khickey@fairhaven-ma.gov
Sent: Tuesday, December 30, 2025 11:28 AM
To: 'Jay Talerman'
Subject: RE: Investigator

Thanks Jay. Hope all is well.

Keith

Keith R. Hickey, Town Administrator
Town of Fairhaven, MA 02719
khickey@fairhaven-ma.gov
508 979-4107

From: Jay Talerman <jay@mtclawyers.com>
Sent: Tuesday, December 30, 2025 10:22 AM
To: khickey@fairhaven-ma.gov
Subject: Re: Investigator

Apologies Keith. Perhaps one of the following:

Tom Harrington at Harrington Heep - tom@harringtonheep.com
Jonathan Silverstein at Blatman, Bobrowski, Haverty and Silverstein - jms@bbhslaw.net

Jason R. Talerman

Mead, Talerman & Costa, LLC

730 Main Street · Suite 1F · Millis, Massachusetts · 02054

Phone: (978) 463-7700 ext. 201

Direct Dial: (978) 572-2190

jay@mtclawyers.com · www.mtclawyers.com

***** Please note my new phone numbers*****

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If you have received the above transmittal in error, please delete the message and any attachment(s) hereto from your e-mail system and notify us immediately.

Think before you print.

From: khickey@fairhaven-ma.gov <khickey@fairhaven-ma.gov>
Sent: Tuesday, December 30, 2025 8:40 AM
To: Jay Talerman <jay@mtclawyers.com>
Subject: Investigator

You don't often get email from khickey@fairhaven-ma.gov. Learn why this is important
Good morning Jay. Any progress on someone available to perform the Planning Board investigation we discussed? I really need to get this moving forward.

Keith

Keith R. Hickey, Town Administrator
Town of Fairhaven, MA 02719
khickey@fairhaven-ma.gov
508 979-4107

khickey@fairhaven-ma.gov

Exhibit E

From: khickey@fairhaven-ma.gov
Sent: Thursday, January 8, 2026 5:04 PM
To: 'Tom Harrington'
Cc: 'Donna Brewer'
Subject: RE: Fee Agreement; Request to perform an investigation

Thanks. I will reach out to Attorney Brewer tomorrow.

Keith

Keith R. Hickey, Town Administrator
Town of Fairhaven, MA 02719
khickey@fairhaven-ma.gov
508 979-4107

From: Tom Harrington <tom@harringtonheep.com>
Sent: Thursday, January 8, 2026 1:20 PM
To: khickey@fairhaven-ma.gov
Cc: Donna Brewer <dbrewer@harringtonheep.com>
Subject: Re: Fee Agreement: Request to perform an investigation

Thanks Keith.

We've received the materials and the investigation has begun. My partner, Donna Brewer will take the lead. I told Donna to contact you with any questions she has on the package of documents.

Regards,
Tom

Harrington Heep

THOMAS J. HARRINGTON
Partner at Harrington Heep

direct 617.804.2421
cell 617.921.7325
email tom@harringtonheep.com
website harringtonheep.com
address 40 Grove Street, Suite 190 Wellesley, MA 02482

Follow Us:

From: khickey@fairhaven-ma.gov <khickey@fairhaven-ma.gov>
Date: Tuesday, January 6, 2026 at 8:53 AM
To: Tom Harrington <tom@harringtonheep.com>
Subject: RE: Fee Agreement: Request to perform an investigation

Tom,

Thank you for sending the agreement. Attached is the signed agreement. Please let me know when the investigation may begin.

Keith

Keith R. Hickey, Town Administrator
Town of Fairhaven, MA 02719
khickey@fairhaven-ma.gov
508 979-4107

From: Tom Harrington <tom@harringtonheep.com>
Sent: Monday, January 5, 2026 3:58 PM
To: Keith Hickey <khickey@fairhaven-ma.gov>
Subject: Fee Agreement: Request to perform an investigation

Hi Keith,

Attached is our fee agreement. Any concerns, please don't hesitate to contact me.

We haven't received the package of information yet, but I assume it will arrive tomorrow.

Regards,
Tom

Harrington Heep

THOMAS J. HARRINGTON

Partner at Harrington Heep

direct 617.804.2421
cell 617.921.7325
email tom@harringtonheep.com
website harrintgonheep.com
address 40 Grove Street, Suite 190.Wellesley, MA 02482

Follow Us:

From: Tom Harrington <tom@harringtonheep.com>
Date: Wednesday, December 31, 2025 at 9:53 AM
To: khickey@fairhaven-ma.gov <khickey@fairhaven-ma.gov>
Cc: Molly Danzig Schultz <mdanzig@harringtonheep.com>
Subject: Re: Request to perform an investigation

Hi Keith,

Nice to speak with you. My address is below, please send whatever information you'd like to share to that address. I'll email you again on Monday with a contract and our initial thoughts.

Thanks and happy new year!

Regards,
Tom

Harrington Heep

THOMAS J. HARRINGTON

Partner at Harrington Heep

direct 617.804.2421
cell 617.921.7325
email tom@harringtonheep.com
website harrintgonheep.com
address 40 Grove Street, Suite 190 Wellesley, MA 02482

Follow Us:

From: khickey@fairhaven-ma.gov <khickey@fairhaven-ma.gov>
Date: Tuesday, December 30, 2025 at 11:07 AM
To: Tom Harrington <tom@harringtonheep.com>
Subject: Request to perform an investigation

You don't often get email from khickey@fairhaven-ma.gov. Learn why this is important

Attorney Jay Talerman provided your name me when I reached out to him about the need for someone to perform an independent investigation regarding a developer who submitted an application to subdivide a parcel of property to the Planning Board that was never heard by the Planning Board.

I would be happy to expand on the situation if you are interested in completing the investigation. I am here today, until noon tomorrow and back next week. Please contact me by email or at the number below if you would like to discuss my request further.

Thank you for your consideration. I hope to speak to you soon.

Keith

Keith R. Hickey, Town Administrator
Town of Fairhaven, MA 02719
khickey@fairhaven-ma.gov
508 979-4107

Exhibit F

khickey@fairhaven-ma.gov

From: khickey@fairhaven-ma.gov
Sent: Friday, January 9, 2026 1:20 PM
To: 'Donna Brewer'
Subject: RE: Hiller Subdivision PRIVILEGED ATTORNEY-CLIENT COMMUNICATION
Attachments: SKM_C451i26010913550.pdf; 2025-10-14-REVISED-Planning-Board-Meeting-Agenda.pdf; Planning Meeting 11-18-25 (2).pdf

Donna,

The Planning Board discussed holding a public hearing at their October 14th meeting. They held the meeting on November 18th. Attached are the meeting minutes to each meeting. Below are links to both of the meeting video.

October 14, 2025
https://vimeo.com/showcase/11515067?video=1127669522

November 18th
https://vimeo.com/showcase/11515067?video=1137912077

Keith

Keith R. Hickey, Town Administrator
Town of Fairhaven, MA 02719
khickey@fairhaven-ma.gov
508 979-4107

From: Donna Brewer <dbrewer@harringtonheep.com>
Sent: Friday, January 9, 2026 12:40 PM
To: khickey@fairhaven-ma.gov
Cc: 'Heather C. White' <hwhite@petrinilaw.com>; 'Michael Terry' <mterry@petrinilaw.com>
Subject: Re: Hiller Subdivision PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

Thank you.

Donna Brewer
dbrewer@harringtonheep.com
(617) 804-2423 dd

From: khickey@fairhaven-ma.gov <khickey@fairhaven-ma.gov>
Date: Friday, January 9, 2026 at 12:35 PM
To: Donna Brewer <dbrewer@harringtonheep.com>
Cc: 'Heather C. White' <hwhite@petrinilaw.com>, 'Michael Terry' <mterry@petrinilaw.com>
Subject: RE: Hiller Subdivision PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

Attorney Brewer,

Happy to have your speak to Heather and Mike. I have copied them on this email. Their office number is 508-665-4310.

Keith

Keith R. Hickey, Town Administrator
Town of Fairhaven, MA 02719
khickey@fairhaven-ma.gov
508 979-4107

From: Donna Brewer <dbrewer@harringtonheep.com>
Sent: Friday, January 9, 2026 12:31 PM
To: khickey@fairhaven-ma.gov
Subject: Re: Hiller Subdivision PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

Thanks for forwarding this, Keith. In light of Heather's email, I'd like to talk with Heather/Mike about whether they ever discussed with Bruce the notifications that should have been made before the public hearing. May I speak with them on this topic? Do you want to let them know I will be calling them?

Donna Brewer
dbrewer@harringtonheep.com
(617) 804-2423 dd

From: khickey@fairhaven-ma.gov <khickey@fairhaven-ma.gov>
Date: Friday, January 9, 2026 at 11:51 AM
To: Donna Brewer <dbrewer@harringtonheep.com>
Subject: FW: Hiller Subdivision PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

You don't often get email from khickey@fairhaven-ma.gov. Learn why this is important

Keith

Keith R. Hickey, Town Administrator
Town of Fairhaven, MA 02719
khickey@fairhaven-ma.gov
508 979-4107

From: Heather C. White <hwhite@petrinilaw.com>
Sent: Friday, January 9, 2026 11:45 AM
To: Keith Hickey <khickey@fairhaven-ma.gov>
Cc: Michael Terry <mterry@petrinilaw.com>
Subject: Hiller Subdivision PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

Keith,

Attached is the draft memo Mike Terry prepared in April 2025. As we discussed, this opinion is an internal law firm document that was never distributed to the Planning Board. Mike was planning to provide it to the Board for discussion in executive session on 4/22/25, but we learned on that day that the meeting would not be going forward because there was an error in the posting of notice. Mike was then prepared to provide it to the Board at the next meeting in May 2025, but after speaking with the then-Chair, it was decided that Mike would not be meeting with the Board at that time. It is my understanding that, in the meantime, Mike verbally communicated with both the Planner and the PB Chair regarding the advice set forth in this memo. Mike and/or I are available to be interviewed as part of the investigation if it would be helpful for further information to be provided regarding those verbal communications.

Please let me know if I can be of any assistance.

Thanks,
Heather

Heather C. White
Petrini & Associates, P.C.
372 Union Avenue
Framingham, MA 01702
508-665-4310 tel
508-665-4313 fax
hwhite@petrinilaw.com

PETRINI & ASSOCIATES, P.C.
Counselors at Public Law
2004 20 202

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FAIRHAVEN TOWN CLERK
RCUD 2025 NOV 24 PM4:13

TOWN OF FAIRHAVEN, MASSACHUSETTS
PLANNING BOARD
Town Hall - 40 Center Street - Fairhaven, MA 02719

Meeting Minutes
Tuesday, October 14, 2025
at 6:30PM Held both at Town Hall
& Remotely via Zoom

GENERAL BUSINESS:

a. Chair's Welcome and Media Notification:

Chair, Ms. Diane Tomassetti, opened the meeting at 6:30pm and welcomed all. Ms. Tomassetti read the open meeting law protocols and procedures.

b. Pledge of Allegiance:

The Board stood for the Pledge of Allegiance.

c. Quorum/Attendance:

Present: Diane Tomassetti, Patrick Carr, Ruy DaSilva, Miles Grant, Sean Powers, Sharon Simmons, Jessica Fidalgo, & Kevin Grant.

Mr. Bruce Webb, the Director of Land Use and Planning, and Ms. Hailey Hemingway, the Recording Secretary, were present at the Town Hall.

d. Minutes-September 23, 2025, drafts to be reviewed:

Motion to approve the minutes for the meeting on September 23, 2025 made by Ms. Fidalgo, seconded by Mr. Kevin Grant. Motion passed unanimously (8-0).

e. Correspondence:

Mr. Webb noted there was correspondence received by Mattapoisett.

EXECUTIVE SESSION:

a. Pursuant to G.L. c. 30A, s. 21(a)(3) to discuss litigation where the Chair declares that an open meeting would have a detrimental effect on the Board's litigating position and s. 21 (a)(7) to comply with or act under the authority of the Public Records Law, G.L. c. 4, s. 7(26) (Rodericques v. Fairhaven Planning Board and privledged written legal advice regarding same and regarding constructive approval of resubmitted plan):

Motion to enter executive session made by Ms. Fidalgo, seconded by Mr. Kevin Grant. Motion passed unanimously (8-0).

Motion to return to open session made by Mr. Kevin Grant, seconded by Ms. Tomassetti. Motion passed unanimously (8-0).

OTHER BUSINESS:

a. Public Informational Q & A regarding the Timothy Street and Hiller Avenue Subdivision Project. Questions and answers to be directed to the Land Use & Planning Director, Bruce Webb:

Ms. Tomassetti noted that questions are to be directed to Mr. Webb.

Mr. Bob Espindola, from 14 John Street, submitted a document to the Board. (See Attachment A)

Mr. Webb was given questions concerning access to plans on the town website, differences on the plans, the validity of the applications, building permits issued, the procedure for stamping in plans, and the application submitted.

The public hearing closed at 9:02pm.

b. ~~Vote to move forward with legal review of Constructive Approval and potential action of Constructive Approval.~~ Vote on whether to conduct a public hearing to consider taking

action with respect to constructive approval of the Timothy Street and Hiller Avenue Subdivision Project:

Motion to move to conduct a public hearing to consider whether to modify, rescind, or take other action with respect to the constructive approval of the plan dated March 24, 2025 made by Mr. Kevin Grant, seconded by Ms. Fidalgo. Motion passed (5-3).

RECEIPT OF PLANS:

FA25-06-169-171 New Boston Road: Form A proposal to reconfigure 169-171 New Boston Road Map 34 Lot 38C by dividing the existing properties into two (2) separate properties resulting in Parcel A (43,385 sq. ft.) and Parcel B (44,785 sq. ft.) with frontage to remain the same as they exist:

Mr. Webb spoke in favor of the Board approving.

Motion to approve FA25-06-169-171 New Boston Road made by Ms. Fidalgo, seconded by Mr. Kevin Grant. Motion passed unanimously (8-0).

NEW/OTHER BUSINESS:

a. Site visit request for Timothy-Hiller Subdivision subject to property owners approval:

Motion for a site visit for Timothy-Hiller Subdivision made Ms. Fidalgo, seconded by Mr. Kevin Grant. Motion passed unanimously (8-0).

b. General Information: OML Webinar Trainings offered by the Office of the Attorney General link: mass.gov/the-open-meeting-law:

The Board discussed regarding this webinar.

c. Mattapoisett Planning Board Meetings- Shared Information:

The Board noted the information was received.

LONG RANGE PLANNING:

a. Any other business that may properly come before the Board, not reasonably anticipated when posting 48 hours prior to the meeting:

NEXT MEETING:

The next Regular Board Meeting is scheduled for Tuesday, October 28, 2025 at 6:30pm.

ADJOURN:

There being no further business before the Board, the meeting is adjourned.

Subject matter listed in the agenda consists of items reasonably anticipated (by the Chair) to be discussed. Not all items listed may be discussed and other items not listed (i.e. urgent business not available at the time of posting.) may also be brought up for discussion in accordance with applicable law.

This agenda was posted in accordance with the provisions of MGL 30A ss 18-25 and approved by the town clerk's office on 10-9-25.

Ms. Tomassetti closed the meeting at 9:17pm.

Respectfully submitted,

Hailey Anne Hemingway

Minutes approved at Board Meeting on November 18, 2025

FAIRHAVEN TOWN CLERK
RCVD 2025 OCT 9 PM3:48

TOWN OF FAIRHAVEN, MASSACHUSETTS

PLANNING BOARD

Town Hall · 40 Center Street · Fairhaven, MA 02719

PUBLIC MEETING AGENDA - REVISED

Tuesday, October 14, 2025 at 6:30 pm
Town Hall, 40 Center Street, Fairhaven, Massachusetts
East Room 2nd Floor
To access remotely Log onto:
https://us06web.zoom.us/j/93163358101?pwd=NXg5WnUxZ3ILK3drSVBBM12JPTXE0QT09
or call 1-689-278-1000 - Meeting ID: 931 6335 8101- Passcode: 740257
Available on Fairhaven TV Channel 18 and fairhaventv.com the following day

On March 28, 2025, the bill to extend Open Meeting Law regulations governing remote participation has passed MA legislation and been signed by the Governor. This bill will allow remote and hybrid meeting options for public bodies through June 30, 2027.
Pursuant to an amendment to Town Bylaw Chapter 50 § 13,
all government meetings are available through web/video conference and are recorded.

1. **GENERAL BUSINESS:**
   a) Chair's Welcome and Media Notification
   b) Pledge of Allegiance
   c) Quorum/Attendance
   d) Minutes, September 23rd, 2025 drafts to be reviewed
   d) Correspondence

2. **EXECUTIVE SESSION:**

   a) Pursuant to G.L. c. 30A, s. 21(a)(3) to discuss litigation where the Chair declares that an open meeting would have a detrimental effect on the Board's litigating position and s. 21(a)(7) to comply with or act under the authority of the Public Records Law, G.L. c. 4, s. 7(26) (Roderiques v. Fairhaven Planning Board and privileged written legal advice regarding same and regarding constructive approval of resubmitted plan)

3. **OTHER BUSINESS:**
   a) Public Informational Q & A regarding the Timothy Street and Hiller Avenue Subdivision Project. Questions and answers to be directed to the Land Use & Planning Director, Bruce Webb.

   b) ~~Vote to move forward with legal review of Constructive Approval and potential action of Constructive Approval.~~ Vote on whether to conduct a public hearing to consider taking action with respect to constructive approval of the Timothy Street and Hiller Avenue Subdivision Project.

4. **RECEIPT OF PLANS:**
FA25-06 – 169-171 New Boston Road: Form A proposal to reconfigure 169-171 New Boston Road Map 34 Lot 38C by dividing the existing properties into two (2) separate properties resulting in Parcel A (43,385 sq. ft.) and Parcel B (44,785 sq. ft.) with frontage to remain the same as they exist.

5. **NEW/OTHER BUSINESS:**
a) Site visit request for Timothy-Hiller subdivision subject to property owners approval.

b) General Information: OML Webinar Trainings offered by the Office of the Attorney General link: mass.gov/the-open-meeting-law

c) Mattapoisett Planning Board Meetings - shared information

6. **LONG RANGE PLANNING:**
a) Any other business that may properly come before the Board, not reasonably anticipated when posting 48 hours prior to this meeting.

7. **Next Meeting:** Next Regular Meeting, Tuesday, October 28, 2025.

ADJOURN: There being no further business before the board, the meeting is adjourned.

Subject matter listed in the agenda consists of items reasonably anticipated (by the Chair) to be discussed. Not all items listed may be discussed and other items not listed (i.e., urgent business not available at the time of posting) may also be brought up for discussion in accordance with applicable law.

This agenda was posted in accordance with the provisions of MGL 30A §§18-25 and approved by the town clerk's office on 10-9-2025.

TOWN OF FAIRHAVEN, MASSACHUSETTS
PLANNING BOARD
Town Hall - 40 Center Street - Fairhaven, MA 02719

Meeting Minutes
Tuesday, November 18, 2025
at 6:30PM Held both at Town Hall
& Remotely via Zoom

1. GENERAL BUSINESS:

a. Welcome and Media Notification:

Interim Chair, Ms. Sharon Simmons, opened the meeting at 6:32pm and welcomed all. Ms. Simmons read the open meeting law protocols and procedures.

b. Pledge of Allegiance:

The Board stood for the Pledge of Allegiance.

c. Quorum/Attendance:

Present: Sharon Simmons, Jeffrey Lucas, Sean Powers, Ruy DaSilva, Miles Grant, Kevin Grant, & Patrick Carr.

Absent: Jessica Fidalgo.

Ms. Hailey Hemingway, the Recording Secretary, was present at the Town Hall.

d. Vote on Board Position Opening:

Motion to pass over this agenda item made by Mr. Carr, seconded by Mr. Lucas. Motion passed (6-1).

e. Correspondence- Notifications from City of New Bedford Planning Board and New Bedford City Council:

Ms. Simmons noted this correspondence received.

f. Meeting Minutes drafts to be reviewed:

Motion to approve minutes made by Mr. Carr, seconded by Mr. Kevin Grant. Motion passed (6-0). Mr. Lucas abstaining.

Motion to enter Executive Session made by Mr. Carr, seconded by Mr. Kevin Grant. Motion passed unanimously (7-0).

2. EXECUTIVE SESSION:

a. 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 Sessions held on 6/14/2022, 12/13/2022, 9/9/2025, 9/23/2025, 10/14/2025, & 10/28/2025):

b. Meeting with Town Counsel pursuant to G.L. c. 30A, s. 21(a)(7) 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 Hiller Timothy Subdivision):

3. PUBLIC HEARING:

Ms. Simmons opened the public hearing at 7:50pm.

a. SD25-02 at 0 Duchaine Street- Potential Properties, LLC. Proposes to subdivide the property to create 2 building lots by creating the legal frontage along the street with a construction of a 20-foot-wide gravel roadway and hammerhead turn around. The property is located 0 Duchaine Street Map 34A Lot #38. – Applicant is requesting to continue to December 16, 2025:

Motion to continue SD25-02 at 0 Duchaine Street to December 16, 2025 made by Mr. Carr, seconded by Mr. Kevin Grant. Motion passed unanimously (7-0).

b. DS25-03 0 Hiller Timothy- For the Planning Board to receive information, hear public comment, and consider whether to modify, rescind, or take over action with respect to the constructive approval on an application for approval of a definitive subdivision plan dated March 24, 2025 submitted by Robert Rodericques d/b/a Windmill Acres LLC for the Hiller Avenue and Timothy Street Subdivision proposed for Map 28C / Parcel 071 and 71A:

Ms. Simmons read a statement made by the Planning Department. (See Attachment A).

Ms. Simmons noted there was a mortgage recorded at the property. Ms. Simmons noted due to the mortgage, the Planning Board can only modify plans with consent of the Developer and the Mortgage Holder.

Mr. Jonathan Silverstein, attorney for the developer, was present to speak to the Board.

Condition 1 Proposal: Remove the 10 foot pipe along Hiller Avenue, and either install a larger diameter pipe as agreed to by the Board of Public Works Highway Superintendent or create a 50 foot long drainage ditch in its place to eliminate flooding potential relative to Assessor's map 28C, Lot 78 & 79 and accommodate the 100 year per stormwater modeling, with the final implementation be reviewed and revised as necessary by the Town.

Condition 2 Proposal: To incorporate the conditions set forth in the DEP superseding order of conditions dated July 26, 2021, to address the potential ponding issue relative to the solid concrete sump proposed at the 4 Bay bottom with the final implementation to be reviewed and revised as necessary by the Town.

Mr. Silverstein noted the plans show the removal of the 10 foot pipe and the installation of the trench.

Mr. Silverstein confirmed that if the Stormwater Authority requests a modification with the sump, the applicant will agree to the modification.

Condition 3 Proposal: The developer will meet with the Board of Public Works to discuss plantings, species and alike in the public way.

Ms. White noted this item addresses the plantings in the cul-de-sac islands.

Mr. Silverstein confirmed he will discuss this with his client, but he doesn't anticipate an issue meeting with the BPW to discuss the plantings.

Condition 4 Proposal: Performance guarantee shall be provided in accordance with section 322-14.I of the subdivision regulations.

Mr. Silverstein noted there was a Form F Covenant signed and notarized that the applicant left with the Town Administrator. Mr. Silverstein noted the covenant will be brought to the Registry of Deeds Wednesday, November 19, 2025.

Condition 5 Proposal: Street names will be updated to be consistent with Assessor's records.

Mr. Silverstein requested that the modification be to acknowledge that the names of the two subdivision roads have been reversed from what is shown on recorded plans and that the modification will be on record.

Condition 6 Proposal: Owner identification for the vacant parcel at the end of Paul Street will be updated.

Mr. Silverstein noted the owner is unknown and it's unclear who has the record title to that parcel.

Mr. Carr questioned if the parcel is part of the subdivision. Mr. Silverstein confirmed the parcel is not part of the subdivision.

Condition 7 Proposal: Within 30 days, the developer will provide proof of consent of any mortgage holders to these conditions.

Mr. Silverstein noted he will seek consent.

Condition 8 Proposal: Developer shall submit revised plans to the Planning Board reflecting such changes. Once endorsed by the Planning Board, this decision and the approved plans shall be recorded in the Registry of Deeds with reference to the previously recorded constructive approval and the book and page number shall be provided for this.

Mr. Silverstein was in favor of recording the modifications but not the revised plans.

Abutters raised concerns with the amount of lots on the parcel, flooding, replanting of trees, and sinkholes forming on properties.

Motion to allow public comment under new and other business made by Mr. Kevin Grant, seconded by Mr. Powers. Motion passed (7-0).

Mr. Kevin Grant per an earlier request from an abutter, asked the applicant if they would agree to a rescind of the applications constructive approval by the Planning Board. The applicant was not in favor.

Mr. Lucas questioned if a berm is on the plan. Mr. David Davignon, engineer for Schneider, Davignon, and Leone, confirmed there is a berm that will go along the property line and there will be trees planted on the berm.

The Board and Mr. Silverstein discussed doing a site visit.

Mr. Silverstein noted GCG Associates has been overseeing the construction.

Motion to hold three separate votes, one on whether or not to rescind constructive approval, one on whether or not to take no action against constructive approval, and one on whether or not to approve the constructive approval with a request for modifications made by Mr. Kevin Grant, seconded by Mr. Carr. Motion passed unanimously (7-0).

Motion to rescind the construction approval made by Mr. Kevin Grant, seconded by Mr. Carr. Motion did not pass (1-6).

Motion to vote as to whether to take no action against constructive approval and let it stand without modification made by Mr. Kevin Grant, seconded by Mr. Carr. Motion did not pass (0-7).

Motion to vote to add modifications to the constructive approval made by Mr. Kevin Grant, seconded by Mr. Carr. Mr. Kevin Grant rescinded his motion.

Motion to recess briefly in order to figure out what these modifications may or may not be so that we can then therefore vote yes or no as to whether or not we will modify applications made by Mr. Kevin Grant, seconded by Mr. Carr. Motion passed (7-0).

Meeting reopened at 10:58pm.

Ms. Simmons entertained a Motion to modify the constructive approval of the Windmill Acres Subdivision as follows:
A. To add the following findings:

1. Since no stormwater review was conducted in connection with the application for definitive subdivision approval, the Towns Stormwater Authority met on November 10 to review the projects stormwater management system and its review is summarized in an updated letter. Entered into the record on the boards November 18, 2025 public hearing the subdivision now shown on the constructive approved plans as Nolan's Way is now to be called Collins Drive. And the subdivision now shown on the constructive approved plans as Collins Drive is now to be called Nolans Way.

B. to add the following conditions:

1. As requested by the stormwater authority, the operations and management plan manual will be updated to reflect final site conditions after completion of construction.
2. The applicant will meet with the DPW to discuss plantings in the public way.
3. A Form A covenant performance guarantee has been signed by the applicant and shall be recorded.
4. within 14 days after filing this modification decision with the Town Clerk, the applicant shall request that the mortgage holder consent to the modification. Upon receipt of the mortgage holders' consent, this modification shall be recorded in the Bristol County Registry of Deeds with reference to the previously recorded constructively approved plans and the recording information shall be provided to the Planning Board.
5. The project shall be constructed with substantial conformance with the

constructively approved plans and this modification.
Motion made by Mr. Carr, seconded by Mr. Kevin Grant. Motion passed unanimously (7-0).

4. NEW/ OTHER BUSINESS:

a. Planning Board to discuss and vote on investigation of Hiller Timothy constructive approval:

Ms. Heather White, Town Counsel, suggested the Planning Board has a discussion about requesting that the Town Adminstrator initiate an investigation. Ms. White later noted the request would be to the Town Administrator and the Select Board.

Mr. Silverstein noted in the motion to modify there was a reference to a Form A Covenant and the motion as written was a Form F Covenant. Mr. Silverstein confirmed it is a Form F Surety Covenant.

Ms. White suggested the record reflect the motion as written.

Motion to correct the language of the modification, which read Form A to Form F and acknowledge that correction as a board made by Mr. Kevin Grant, seconded by Mr. Carr. Mr. Kevin Grant rescinded his motion.

Mr. Lucas confirmed Form F is an inspection form and Form D is a Covenant.

Motion to amend the language of the modification from a Form A to Form D made by Mr. Kevin Grant, seconded by Mr. Lucas. Motion passed unanimously (7-0).

Motion to formally request a third-party investigation be initiated by the Town Administrator and the Select Board regarding the process of constructive approval which occurred regarding the Timothy Hiller Subdivision, including but not limited to the questions of the abutters with a goal of fact finding, full accountability, and improved policy procedure and training requirements in Town Hall made by Mr. Kevin Grant, seconded by Mr. Carr. Motion passed unanimously (7-0).

b. Updates from Committee Liaisons:

Motion to continue all other discussion items to the next meeting made by Mr. Kevin Grant, seconded by Mr. Carr. Motion passed unanimously (7-0).

5. LONG RANGE PLANNING:

a. Any other business that may properly come before the Board, not reasonably anticipated when posting 48 hours prior to this meeting:

6. **NEXT MEETING:**

The next regular Board Meeting is scheduled for Tuesday, December 16, 2025 at 6:30pm.

7. **ADJOURN:** There being no further business before the Board, this meeting is adjourned.

The Meeting closed at 11:40pm.

Respectfully submitted,

Hailey Anne Hemingway

~~Attachment E~~ Exhibit G

Town of Fairhaven
Report of the Town Administrator
January 12, 2026

Financial Updates

- The Capital Planning Committee has begun reviewing the FY27-FY31 Capital Improvement Plan. Their recommendation is will be provided to me by January 20th.
- The Harbormaster was awarded a $1 million grant to fund the majority of the Union Wharf improvements. In addition, there is $230,000 from a prior state grant and $140,000 from ARPA funds that will be used for the repairs. The remaining amount of $280,000 will need to be funded locally. A source has not been identified at this moment.

Project Updates

- There are no project updates.

Personnel Update

- I have completed final interviews with the two finalists for the Assessor position. I will have a recommendation for the Select Board's consideration at the January 26th Board meeting.
- The Interview Committee for the Tax Collector/Treasurer position will be reviewing the resumes during the week of January 19th. I hope to have a recommended candidate for Select Board consideration as early as January 26th.

Miscellaneous Updates

- I have signed a Fee Agreement with the law firm Harrington Heep to perform the Planning Board investigation. Harrington Heep was referred to me by the Town's labor counsel, Mead, Talerman and Costa. I will forward their anticipated timeline once I receive it.
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