



Fairhaven Board of Selectmen

July 7, 2014 Meeting Minutes

Present: Chairman Robert Espindola, Vice Chairman Geoffrey Haworth, Clerk Charles Murphy, Executive Secretary Jeffrey Osuch, and Administrative Assistant Anne Kakley

Chairman Robert Espindola called the meeting to order in the Town Hall Banquet Room at 6:31 p.m. The meeting was video-recorded and telecast by the Government Access channel and audio-recorded by Anne Kakley.

MINUTES

- Mr. Haworth motioned to approve the minutes of the **June 23, 2014** meeting, **open** session. Mr. Murphy seconded. Vote was unanimous. (3-0).
- Mr. Haworth motioned to approve the minutes of the **June 23, 2014** meeting, **executive** session. Mr. Murphy seconded. Vote was unanimous. (3-0).

EXECUTIVE SECRETARY'S REPORT

In his report, Mr. Osuch updated the Selectmen on the following meetings:

- Tuesday, **July 8** –
 - 3:30 p.m. – Mattapoisett River Valley Water Advisory Committee at BPW
 - 4:30 p.m. – Mattapoisett River Valley Water District meeting at BPW
- Tuesday, **July 15** –
 - 8:00 to 10:30 a.m. – Fire and Police Headquarters Roof – Architect interviews
 - 2:00 p.m. – Insurance Advisory Committee meeting – East Room
- Wednesday, **July 16** –
 - 12:00 p.m. – Managers meeting at the Mattapoisett Town Hall
- Tuesday, **July 22** –
 - 2:00 p.m. – Economic Summit meeting
 - 6:30 p.m. – Selectmen's Meeting

Also in his report, Mr. Osuch informed the Board that Representative William Straus' office had contacted the Selectmen's Office with the news that two articles from the May 3, 2014 Annual Town Meeting – one that would establish a Town Administrator and one that would abolish the

BPW – were on their way to a third reading in the House. Additionally, the Governor would likely be signing the final FY15 budget that day, which reflected about \$40,000 additional on the Cherry Sheet over FY14.

TOWN INSURANCE

Mr. Osuch presented to the Board an Injured-on-Duty insurance policy in the amount of \$2 million, which he said would create a net increase in the Town's insurance premium of \$8,720 policy and had a \$25,000 deductible and a 250 week payment period. The extra coverage was in response to several surrounding municipalities who have had emergency workers suffer serious, debilitating injuries while working. The policy would give the Town a little more coverage than what is required under the McNamara Law (\$594,000 in coverage with a \$25,000 deductible and 104 week payment period). Mr. Haworth motioned to purchase the \$2 million coverage for Injured-on-Duty. Mr. Murphy seconded. Vote was unanimous. (3-0).

CELL PHONE POLICY

Mr. Osuch said that the Town needed to create a cell phone policy that would discourage inappropriate use. The topic of cell phone use will be on the next agenda.

HISTORICAL COMMISSION APPOINTMENT

The Board read a letter from Pat Bernard, expressing interest in appointment to the Historical Commission. Ms. Bernard is a former Historical Commissioner for the Town of Mattapoisett. Mr. Haworth motioned to appoint Ms. Bernard to the Historical Commission. Mr. Murphy seconded. Vote was unanimous. (3-0).

DOG PARK COMMITTEE APPOINTMENT

The Board read a letter of interest from Tara Schryver, requesting appointment to the Dog Park Committee. The Board said that it would like an update on the Dog Park Committee's progress from the co-chairmen of the committee, Laurie Traudt and Carol Tyson. Mr. Haworth motioned to appoint Ms. Schryver. Mr. Murphy seconded. Vote was unanimous. (3-0).

BIKEWAY COMMITTEE APPOINTMENT

The Board read a letter of interest from Gary Lavalette, asking for appointment to the Bikeway Committee. Mr. Haworth motioned to appoint Mr. Lavalette to the Bikeway Committee. Mr. Murphy seconded. Vote was unanimous. (3-0).

CONTRACT AMENDMENT #4 FOR CDBG

The Board reviewed Contract Amendment #4 for CDBG North Fairhaven Target Area. Town Planner and CDBG Administrator Bill Roth was present. The contract reflected an increase of \$2,600 for services from Breezeway Farm Consulting and a contract period extension to

September 30, 2014. Mr. Haworth motioned to approve and sign Contract Amendment #4 for CDBG North Fairhaven Target Area. Mr. Murphy seconded. Vote was unanimous. (3-0).

CDBG TARGET DECLARATION

The Board reviewed a target declaration for the North Fairhaven CDBG project. Mr. Roth said that they looked at the quality of all the structures in the target area and over 51% are in fair to poor condition. Pursuant to M.G.L. Ch. 121B, the Board found sufficient evidence of disinvestment and deterioration in the buildings and infrastructure of the North Fairhaven Target Area. As such, Mr. Haworth motioned to sign the blight declaration for the North Fairhaven Target Area. Mr. Murphy seconded. Vote was unanimous. (3-0).

PLANNING INTERN

Mr. Roth informed the Board that Planning Intern Alex McIntosh would be leaving in August 2014. He said that he would like to hire one of the finalists for the CDBG Administrative Assistant position, Amanda Blais. He said that Ms. Blais would be a good fit for the intern position. He said that if Ms. Blais could start July 28, there would be enough time for Ms. McIntosh to train Ms. Blais. The paid intern position is funded through a CDBG grant. Mr. Haworth said that he always prefers interviewing paid employees before hiring them. Mr. Murphy agreed, but said that in this case, he would trust Mr. Roth's judgment. Mr. Haworth motioned to appoint Amanda Blais to Intern for the Planning Department. Mr. Murphy seconded. Vote was unanimous. (3-0).

BEER AND WINE ONE-DAY LICENSE – COA

The Board reviewed an application for a one-day beer and wine license for a LGBT supper and wine tasting at the Council on Aging. Kaisa Holloway-Cripps, Operations Manager for Running Brook Vineyard was present. Mr. Murphy noted that Ms. Holloway-Cripps was ServSafe certified. Mr. Haworth motioned to approve the one-day, beer and wine license for July 23 for the event. Mr. Murphy seconded. Vote was unanimous. (3-0).

A&A AUTO – VIOLATION MEMO

The Board read a memo from Town Planner Bill Roth regarding a potential car dealer license violation at A&A Auto at 196 Huttleston Ave. The license held by A&A Auto allows for four vehicles to be displayed on Map 26, Lot 13M. According to Mr. Roth, there were at least seven vehicles on that lot with a 20-foot setback, and an additional five at the rear of the lot that were customer or employee vehicles.

Mr. Roth, who was present, said that it was an enforcement issue. Mr. Osuch added that it was a universal issue, as there are other dealerships in Fairhaven that are violated the limits of their car dealer licenses.

Mr. Haworth motioned to hold a car dealer license hearing for A&A Auto at their next meeting on July 22. Mr. Murphy seconded. Vote was unanimous. (3-0).

SRPEDD SMMPO

The Board reviewed a letter from SRPEDD, looking for Selectmen interested in being elected to the Southeastern Massachusetts Metropolitan Planning Organization (SMMPO), which will be responsible for developing transportation policies, priorities and projects within southeastern Massachusetts. After some discussion, Mr. Haworth motioned to nominate Mr. Murphy as a candidate for the election. Mr. Espindola seconded. Vote was unanimous. (3-0).

WEST ISLAND FISHING PIERS

At 7:15 p.m., the Board met with Doug Cameron of the Department of Conservation and Recreation, Tim Cox and David Darmofal, for an update on a proposed project to bring fishing piers off the West Island causeway. In a brief presentation, Mr. Cameron showed four different configurations in which fishing piers could be placed on the causeway.

Discussion on the depth of water, potential parking issues and safety ensued. Mr. Cameron said that there would be signs posted to prohibit diving off the piers, and the plans would include improvements to Hoppy's Landing parking with pea stone and crushed stone. A State-sanctioned crosswalk will also be included. The project will require no Town funds, as it will be funded by various State agencies.

Mr. Osuch recommended moving the planned crosswalk closer to the parking lot. Mr. Darmofal asked that life rings be included in the decking design. In response to Mr. Osuch's concerns about litter in the riprap, Mr. Cameron said that trash barrels would be on the piers.

Mr. Haworth motioned to show support for the next phase of development in the project. Mr. Murphy seconded. Vote was unanimous. (3-0).

VETERANS MEMORIAL PARK

At 7:44 p.m., the Board met with Jim Leal and Gerry Payette to hear plans for a Veterans Memorial Park in Fairhaven. Mr. Leal said that the idea came from the Middleboro Veterans Memorial Park, which Mr. Payette described as being more "elaborate" than what they had planned for Fairhaven.

Mr. Payette said that he would like to enlist the help of combat veterans in the design stage of the process, but will need help from the Selectmen in finding a suitable location for the park. He said that he did not want to confuse their efforts with the memorial park on Route 6. Moreover, he said that the park they envisioned would be more accessible than the Route 6 park. Included in possible locations is a section of Cushman Park near Main Street. Mr. Leal added that he would like to see a wall at the memorial park, with the name of every Fairhaven resident killed in action from the Revolutionary War to present.

Mr. Haworth motioned to show support for the project. Mr. Murphy seconded. Vote was unanimous. (3-0).

COMMUNITY ACCESS TELEVISION STUDIO

At 7:55 p.m., the Board met with Barbara Acksen of the Cable Advisory Committee (CAC). Ronnie Medina, also of the Cable Advisory Committee, was unable to attend the meeting. Mr. Espindola is also a member of the CAC.

At a previous meeting, the CAC had discussed plans with the Selectmen to bring a Community Access television studio to the Town with the use of cable Public/Education/Government (PEG) funds. In that discussion, they had explored the possibility of creating a non-profit entity by which the Public Access would be managed.

The CAC had developed more of a plan to use PEG funds, which have amassed to \$600,000 over years of not having Public Access programming. Mr. Espindola presented plans to create a studio at the EMA building at 150 Sconticut Neck Road. See Attachment A for the proposal. Funding would come from the PEG fund, said Mr. Espindola. To start, he asked the Board to authorize the expenditure of \$2,400 from the PEG funds, for the purpose of creating a Town survey on the satisfaction of cable services to Town residents, and to employ the legal services of Epstein and August to advise the Selectmen in the formation of a non-profit.

Mr. Haworth said that he had wanted more information on why a non-profit formation was important in the process. Mr. Espindola said that he wanted to answer that question, and that is why he was looking to expend the PEG funds on an expert opinion.

Mr. Murphy asked if they were certain that they could expend PEG funds on a survey. Mr. Espindola said that he was not sure, but that they could consult with Town Counsel on that question.

John Roderiques was recognized by the Chairman. He said that the Town's current contract with Comcast should be reviewed by Town Counsel so he can advise whether or not the Town may use the PEG account for such activities. Mr. Roderiques added that the expenditure of PEG funds may require a Town meeting appropriation.

After discussion, Mr. Haworth motioned to authorize Town Counsel to review the contract advise the Board on if they could use the PEG account for legal services and a survey. Mr. Murphy seconded. Vote was unanimous. (3-0).

TAYLOR AQUACULTURE RENEWAL

At 8:13 p.m., the Board met with Rod Taylor of Taylor Aquaculture. Mr. Taylor was in front of the Board to request a three-year lease renewal for his existing 35-acre aquaculture farm in the area northwest of West Island.

To start, Mr. Taylor explained that he had been issued an Enforcement Order from the Conservation Commission in response to a pile of shells that he had left on his beach on Goulart Memorial Drive. He has cleaned up the shells and restored the beach to its original condition and he said that the Enforcement Order was lifted.

Mr. Murphy said that Mr. Taylor's business building on Goulart Memorial Drive is in bad condition and is a subject of concern to West Island residents. Mr. Taylor explained that he has plans to create a shellfish hatchery facility at that location, and for that reason, he does not want to invest too much in rehabbing the building, as it will be razed. He estimated that construction on the hatchery, barring permits, would begin in the spring of 2015. He said that his original investors in the hatchery had withdrawn their support. He had since obtained new investors, but he feared that a failure to renew his aquaculture lease would cause them to withdraw support as well.

Mr. Espindola read into record a letter from West Island resident William Yukna. See Attachment B.

Discussion ensued on the condition of the Taylor Seafood building. Mr. Taylor said that he piles his buoys at that location, dries out nets, etc. He said that he has made efforts to improve the appearance of the property. He claimed that some of the equipment shown in pictures submitted by Mr. Yukna did not belong to Taylor Seafood.

Robert Hobson was recognized by the Chairman. Mr. Hobson said that there was a problem with a clear property line between Mr. Taylor's property and the Town property. He agreed with Mr. Taylor that some of the equipment belonged to others. Likewise, Mr. Taylor has some upweller rafts on Town land.

Discussion included the possibility of approving a lease extension of three months to give Mr. Taylor time to clean up his property. Mr. Haworth asked what Mr. Taylor could accomplish in a short period of time. Mr. Taylor said that he could move the buoys to the back of the building, move nets and ask Earl's Marina to neaten a pile of traps at the front of the building. He said that he could not repair the roof, but he could perhaps disguise the hole in the roof with painted plywood.

Mr. Murphy asked if they would be able to have provisions in the lease renewal requiring the restoration and upkeep of the Taylor Seafood building. Mr. Espindola said that they would meet with Town Counsel to make changes to the lease with Taylor Seafood in time for their July 22 meeting. They will consider a vote on the changed lease at their August 4 meeting. Mr. Haworth motioned to name Mr. Murphy to serve as the Selectmen representative in the process. Mr. Espindola seconded. Vote was unanimous. (3-0).

COMPASSIONATE CARE CLINICS

At 8:46 p.m., the Board met with Shelley Stormo and Holly Carroll, both of Compassionate Care Clinics (Brighton Health Advocates). Ms. Stormo read from a prepared statement about CCC's

recent elimination from the Department of Public Health's medical marijuana license consideration.

Mr. Haworth said that he was not willing to comment on the elimination of CCC from the medical marijuana dispensary consideration, because he had not yet read the reasoning behind DPH's decision. However, he noted that the Town has been very receptive to the idea of hosting a medical marijuana facility, and that should be considered.

Mr. Murphy expressed dismay that CCC was eliminated from consideration for a dispensary license. He said that the Town has been very clear in its voting that it wants a dispensary and he said that he believes medical marijuana will ease pain for a lot of Town residents.

Ms. Stormo said that they would not give up. They will keep their Pequod Street location leased and continue with upkeep. She requested that the Board consider sending a letter to the DPH requesting a meeting to hear more about why CCC was eliminated from consideration for a dispensary license.

Mr. Haworth motioned to send a letter to the DPH requesting a meeting (see Attachment C). Mr. Murphy seconded. Vote was unanimous. (3-0).

BPW RECYCLING PROPOSAL

At 9:00 p.m., the Board met with Robert Hobson and Brian Wotton, both of the Board of Public Works. Mr. Hobson and Mr. Wotton presented to the Board of Selectmen a plan to move and upgrade the Town's current recycling operation.

Mr. Wotton said that they were particularly looking into a parcel of land at the rear of 124 Alden Road, to be accessed via Bridge Street. See Attachment D for the BPW proposal. Mr. Wotton said that they were looking to get rid of tipping fees, which would save them about \$40,000 annually.

Mr. Haworth called the current recycling center a "mudhole" and said that something definitely needed to be done, regardless of whether or not 124 Alden Road would be the selected location.

Mr. Hobson and Mr. Wotton said that they would consider any Town location for a new recycling center.

Mr. Osuch said that the rear of 124 Alden with a Bridge Street access point through the old dump would not be a good place for a recycling center. He said that it is under power lines and it would require crossing wetlands. He agreed that there was a need to change the recycling center location, but that 124 Alden Road was not the place. He said that 124 Alden needed to be sold, at auction, to the highest bidder.

Mr. Haworth said that if they were not going to consider 124 Alden Road for the recycling center, then the Board of Selectmen would need to prioritize collaborating with the Board of Public Works to find a new location.

CONSERVATION AGENT – TRANSFER REQUEST

At 9:15 p.m., the Board met with Conservation Agent Wayne Fostin and Conservation Commission chairman Jay Simmons, to discuss a request for a \$1,100 FY14 Reserve Fund transfer.

Mr. Simmons said that the Conservation Commission had voted to approve the transfer request. The Conservation Agent is a 10-hour per week position, and has always had 47 weeks of pay appropriated, with no pay allotted for his five vacation weeks. Mr. Simmons said that Mr. Fostin often ends up working Conservation issues throughout those weeks, in addition to nights and weekends. He said that as a result, Mr. Fostin works Conservation issues on some weeks without receiving Conservation pay.

Mr. Osuch said that the appropriation has always been 47 weeks, and he said that payment for the Conservation Agent has been an issue in the past. He said that it is a part-time position and that approving the transfer would be approving vacation benefits for a part-time employee, which would set precedent for other employees.

Mr. Simmons said that the Conservation Agent position should be more than 10 hours a week.

Mr. Espindola said that he did not think that this request was unforeseen and therefore, he did not support the request.

Mr. Haworth motioned to recommend the \$1,100 Reserve Fund transfer to the Finance Committee. Mr. Murphy seconded. Vote carried with one opposition from Mr. Espindola. (2-1).

Mr. Roderiques was recognized by the Chairman. He said that he was “dumbfounded” as to why the Selectmen thought that the Conservation request merited a transfer from the Reserve Fund. He argued that the Reserve Fund should only be used for unforeseen items.

At 9:25 p.m., Mr. Murphy left the meeting to go to the hospital for the birth of his first grandchild.

124 ALDEN ROAD – LEASE RFP

The Board again met with Shelley Stormo and Holly Carroll to discuss the possibility of putting together an RFP for a lease to 124 Alden Road. Mr. Espindola said that the Town had to start moving on the property and that an RFP would take a while. Mr. Haworth agreed, saying that he favored an RFP process. He said that if CCC were interested in the property, they could always bid on it.

Mr. Haworth motioned to send 124 Alden Road to auction, with the auctioneer being J.J. Manning, subject to a meeting with Mr. Manning. Mr. Espindola seconded. Vote carried. (2-0). Mr. Haworth reiterated that the Board of Selectmen must make every effort to find a new

recycling center for the BPW. Additionally, the Board requested a discussion item for the next agenda to hear progress on the Rogers and Oxford Schools from Jim Muse.

LETTER FROM WOOD SCHOOL STUDENTS

The Board read a letter from second graders at the Wood School. In the letter, the children said that they were upset to see the Rogers School get vandalized and that they hoped the Town would be able to send workers to clean the graffiti.

The Board thanked the children for their letter and said that they would make every effort to solve the problem.

HARBORMASTER REQUEST FOR SMART PHONE

The Board read a letter from the Harbormaster, David Darmofal, requesting a smart phone. Mr. Darmofal said that a smart phone would help him respond to emergencies. Mr. Haworth said that he understood the Town had some extra smart phones available. Mr. Osuch agreed that there were some additional smart phones but that the issue was the cost of the plan, not the cost of the phone. He said that he had a plan with Sprint that allowed for 10 smart phones at \$49.95 per month per phone and \$16 per month per flip phone. He said that he could not be sure that an additional phone would also be \$49.95.

Mr. Haworth asked Mr. Osuch to provide to him a breakdown of who currently has a plan with the Town and how much it would cost to add a smart phone to the plan.

BEACH ACCESS REQUEST FROM EPA

The Board read a letter of request from EPA to access property at Beach Street and Rear Sycamore Street. See Attachment E. Mr. Haworth motioned to authorize the Chairman to sign the document allowing access. Mr. Espindola seconded. Vote carried. (2-0).

POLICE DEPARTMENT VACANCIES

The Chairman read a memo from Police Chief Michael Myers, informing the Board that there would soon be two vacancies on the Police force with the transfer of Kevin Viveiros to another department and the retirement of Stephen Gwozdz. Mr. Haworth thanked Officers Viveiros and Gwozdz for their service to the Town.

OTHER BUSINESS

In Other Business:

- Mr. Espindola thanked everyone involved in the July 4 activities
- Mr. Haworth said that the Town enjoyed a beautiful day for the 2014 Homecoming Fair

- Mr. Haworth said that the Charles W. Morgan would be leaving the next day from the New Bedford port
- Mr. Haworth thanked all the emergency workers who responded to the substantial flooding on July 4. The New Bedford/Fairhaven area saw between six and eight inches of rain
- Ms. Kakley reminded the public to not leave emergency messages on the Selectmen's Office voicemail, as the messages are not checked outside of office hours
- Mr. Haworth said that the Town still needed volunteers to serve on the Local Emergency Planning Committee and the Capital Planning Committee. He asked Ms. Kakley to send out reminders to departments

At 10:00 p.m., Mr. Haworth motioned to enter Executive Session, pursuant to M.G.L. Ch 30A § 21:

- To discuss strategy with respect to 61A, right of first refusal – New Boston Road
- To discuss strategy with respect to potential litigation – health insurance settlement
- To discuss strategy with respect to the Fire Union contractual language
- To discuss strategy with respect to the Fire Union – personnel request

Mr. Espindola seconded the motion to enter Executive Session for the aforementioned reasons, not to reconvene into open session afterward. Vote carried. (2-0). Roll call vote: Mr. Espindola in favor. Mr. Haworth in favor.

Respectfully,

Anne Kakley

Administrative Assistant
Board of Selectmen
(Minutes approved 7/22/2014)

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Peter J. Epstein

June 5, 2014

By E-Mail

Mr. Robert J. Espindola
Board of Selectmen
Town of Fairhaven
Town Hall
40 Center Street
Fairhaven,
Massachusetts 02719

RE: Cable Television Matters

Dear Mr. Espindola:

I enjoyed speaking with you the other day. I am responding to your request for a proposal regarding (i) establishing a non-profit corporation in Fairhaven to provide PEG Access programming and services to Fairhaven cable subscribers and (ii) the upcoming cable television renewal process in Fairhaven. My Boston-based legal practice consists of representing municipalities in the cable television and telecommunications regulatory field.

(I) ESTABLISHING A NON-PROFIT ACCESS CORPORATION

As I understand it, there is interest in the Town in establishing a 501(c)(3) non-profit corporation which would be responsible for providing public, educational and governmental (“PEG”) access programming and services to Fairhaven cable subscribers. The Cable Advisory Committee (“CAC”) needs to provide a rationale for doing so. I can draft a memorandum to the CAC which provides the rationale for doing so. In addition, I can provide, among other things, background information regarding how to establish a non-profit, ongoing reporting requirements for a non-profit, the number of such non-profits in Massachusetts, typical non-profit annual budgets, etc. A rough estimate of the cost of preparing such a memorandum would be approximately \$750.00-\$800.00. I am assuming that I would not be meeting with the CAC before preparing the memorandum. If such a meeting is desired by the CAC, I would charge my hourly rate.

Mr. Robert J. Espindola
Town of Fairhaven
June 5, 2014

(II) CABLE TELEVISION RENEWAL PROCESS

We also talked about the upcoming renewal process with Comcast, which I have discussed below.

SCOPE OF PROFESSIONAL SERVICES:

I provide municipalities with professional assistance and legal advice throughout the cable television renewal and licensing processes, from assistance on the appropriate licensing procedures to follow, to aid in ascertainment activities, to help in drafting a Request For A Proposal, to periodically meeting with municipal representatives, to negotiating and drafting the terms and provisions of a cable television license.

APPLICABLE FEDERAL AND STATE LAWS:

The Cable Act comprehensively codifies various areas in the cable television field. Of particular importance are those sections relating to system rebuild/upgrade, local public, educational and governmental ("PEG") access facilities, funding and programming, Institutional Networks, license fees, service offerings, license renewal, as well as a number of programming and privacy areas. In 1992, Congress passed a cable television re-regulation bill, entitled the Cable Television Consumer Protection and Competition Act of 1992 (the "Cable Act of 1992"). Among other things, the Cable Act of 1992 contains provisions that allow the State of Massachusetts, with input from the Town, to regulate the basic service and equipment rates of Comcast Communications (unless it is deemed to be subject to "Effective Competition") based on standards adopted by the FCC on April 1, 1993. In addition, there are provisions covering FCC signal quality specifications, consumer protection, emergency announcements, subscriber bill itemization, consumer electronics equipment capability and license renewal. It is crucial that the Town of Fairhaven analyze all aspects of the applicant's proposal in light of the Cable Act. Because the Cable Act sets out a specific process to follow during renewal negotiations, the Town should be particularly careful in following this process and keeping detailed records of all public meetings and negotiation sessions. I can also advise the Town on the impact of the Telecommunications Act of 1996. The Town must also comply with the provisions of M.G.L. Chapter 166A and the regulations of the Massachusetts Cable Division.

Comcast's current cable television license in the Town of Fairhaven expires on **May 18, 2018**. The Cable Act requires communities to commence the so-called "formal" cable television renewal process anytime between 30-36 months *prior* to the expiration of the current license. This being the case, the formal process in the Town will have to be initiated anytime between *May 18, 2015 and November 18, 2015*. Comcast always sends such letters to the Issuing Authority reserving its right to proceed under the formal process, while suggesting that the parties could start negotiations pursuant to the so-called "informal" renewal process. Whether formal or informal, the renewal process is the only time that the Town can have truly meaningful input into system upgrade/rebuild, local access facilities, funding and programming and various other services that can be provided through the cable television medium during the renewal term.

SPECIFIC TASKS IN THE CABLE TELEVISION RENEWAL PROCESS:

(1) Meeting with the Board of Selectmen and other Town Officials: I can initially meet with you, the CAC and other Town officials and representatives to review applicable requirements regarding the cable television renewal process in Fairhaven. I can suggest timelines for the Town to follow to ensure timely compliance with these requirements. I will answer any questions from Town officials and representatives.

(2) Planning the Ascertainment Process and Hearing: Section 626 of the Cable Act requires the Town to conduct one or more public ascertainment hearings for the purpose of determining the types of services and facilities to be provided by Comcast during any renewal term. Note that the Town may also distribute a subscriber survey as part of its ascertainment process. After the Town has conducted all of its hearings, I can help draft a "Request for Proposal", in which such services and facilities are summarized for Comcast, which must then provide a detailed renewal proposal by a designated date. Note that while the parties may decide to proceed according to the formal procedures, informal negotiations may also commence at any time. The Town's ascertainment should specifically address, at a minimum, those "key issues" identified through ascertainment.

(3) Evaluation and Analysis of Renewal Proposal: I can assist the Town in analyzing any renewal proposals that are submitted including, but not limited to, financial, technical, access and service considerations. I can also analyze the information provided to determine its accuracy as well as appropriateness to the Town.

(4) Negotiations With Comcast: Once it has had time to review the renewal proposal, the Town should schedule a number of negotiating sessions with Comcast to determine if the parties can come to an agreement on renewal. Negotiating is a *crucial* part of the renewal process. The real benefits to a community invariably come as a result of strong and focused negotiations with the operator. This is the period to not only clarify the operator's proposal but to negotiate for terms and conditions that are agreeable to the Town and meet the needs of the community in each Town.

(5) Renewal License: Once the parties have completed negotiations and agreed upon all of the material terms and conditions of renewal, I can assist the Town in drafting the renewal license. Drafting a comprehensive and enforceable license document is the key step in ensuring that the Town ends up with the kind of cable system that it envisioned throughout the renewal process. The Town will want to ensure that the renewal license contains everything proposed by the applicant in its renewal proposal and subsequent negotiations, as well as effective enforcement provisions. I will provide recommendations and input regarding a new renewal license. A renewal license, by statute, must be non-exclusive so that potential competitors can apply for a license in the Town as well. The Cable Act contains provisions ensuring the enforceability of, among other things, PEG Access provisions and license fees. These provisions, however, must be clearly delineated in the license agreement.

Mr. Robert J. Espindola
Town of Fairhaven
June 5, 2014

CABLE TELEVISION EXPERIENCE:

I advise a number of Massachusetts, Maine and New Hampshire municipalities on various aspects of cable television regulation, renewal and initial licensing. Attached is a copy of my current client list. I also served as outside legal counsel for the City of Boston's Office of Cable Communications, where I was involved in virtually every aspect of the cable licensing process in Boston, as well as various other telecommunications regulatory matters. I have advised municipalities on rate regulation, license transfer, home-rule petitions to increase license fees, access programming, First Amendment matters, copyright, taxation, municipal uses of broadband systems, new technologies, and general telecommunications issues.

I have also represented approximately thirty-five (35) municipalities that have now issued final licenses to Verizon. I can discuss these licensing processes with the Town as well.

I was also involved, first as its legal counsel, then as its President, in the Massachusetts chapter of the National Association of Telecommunications Officers and Advisors (NATOA), which monitors the latest developments and activities in the cable and telecommunications fields for municipal officials.

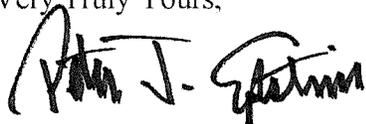
RENEWAL PROCESS COSTS:

I bill at \$200.00 an hour. Bills are sent out on a monthly basis, which list all work performed for the Town. A fee agreement would include the various services that the Town would like to have performed.

CONCLUSION:

I hope that this information and proposal gives you an idea of the range of assistance that I can provide to the Town of Fairhaven. Please let me know if there is further information that would be useful to the Town.

Very Truly Yours,



Peter J. Epstein

PJE/

Mr. Robert J. Espindola
Town of Fairhaven
June 5, 2014

Attachments:

- Attachment 1: List of Municipal Clients
- Attachment 2: Peter J. Epstein Qualifications
- Attachment 3: Peter J. Epstein References
- Attachment 4: Epstein & August Newsletters
- Attachment 5: 1996 Telecommunications Act Summary
- Attachment 6: Renewal Process Schematic
- Attachment 7: "Franchise Renewal: An Overview"
- Attachment 8: "Coping with Cable"

ATTACHMENT 1
LIST OF MUNICIPAL CLIENTS

(See Attached)

PETER J. EPSTEIN
COMMUNICATIONS CLIENTS

Municipalities:

- 1) Town of Acushnet, MA-(1) *Renewal Process*, (2) *Transfer Process*
- 2) Town of Amherst, MA-(1) *Previous Renewal Process*, (2) *Assisted 1996 Renewal Process*
- 3) Town of Amherst, New Hampshire-*Rate Regulation, Transfer Process*
- 4) Town of Aquinnah, MA-*Renewal Process*
- 5) Town of Arlington, MA-*Transfer Process*
- 6) Town of Athol, MA-*Renewal Process*
- 7) Town of Bedford, Massachusetts-(1) *Transfer Process*, (2) *Current Renewal Process*
- 8) Town of Bedford, New Hampshire-*Renewal Process*
- 9) Town of Bernardston, MA-*Renewal Process*
- 10) Town of Belmont, MA-*Transfer Process*
- 11) Town of Billerica, MA-(1) *Previous Renewal Process*, (2) *Current Renewal Process*
- 12) Town of Bolton, MA-*Renewal Process*
- 13) City of Boston, MA-(1) *Original License Process*, (2) *Transfer Process*, (3) *Regulation*
- 14) Town of Boxford, MA-*Renewal Process, Verizon Licensing Process*
- 15) Town of Bourne, MA-*Renewal Process*
- 16) Town of Brimfield, MA-*Renewal Process*
- 17) City of Brockton, MA-*1996 Renewal Process*
- 18) Town of Brookline, MA-(1) *1997 Renewal Process*, (2) *1997 Original Licensing Process*
- 19) Town of Buckland, MA-*Previous Renewal Process*
- 20) Town of Burlington, MA-(1) *Previous Renewal*, (2) *Current Renewal*, (3) *Current OVS*
- 21) City of Cambridge, MA-(1) *Amendment Process*, (2) *Miscellaneous Regulatory Affairs*
- 22) Town of Camden, Maine-*Renewal Process*
- 23) Town of Canton, MA-*Current Renewal Process*
- 24) Cape Ann, MA Consortium {consisting of 4 municipalities}-*Renewal Process*
- 25) Town of Charlton, MA-*Renewal Process*
- 26) Town of Chatham, MA-*Renewal Process*
- 27) Town of Chelmsford, MA-(1) *1996 Renewal*, (2) *Transfer*, (3) *Amendment*
- 28) City of Chelsea, MA-*Renewal Process*
- 29) Town of Chester, MA-*Original Licensing Process*
- 30) Town of Chester, New Hampshire-*Transfer, Renewal*
- 31) City of Chicopee, MA-*Renewal Process*
- 32) Town of Chilmark, MA-*Renewal Process*
- 33) City of Concord, New Hampshire-*Renewal Process*
- 34) Town of Concord, MA-*Renewal Process*
- 35) Town of Danvers, MA-(1) *License Compliance Report*, (2) *Transfer Process*, (3) *Current Licensing*, (4) *Current Renewal*
- 36) Town of Dedham, MA-(1) *Current Renewal Process*, (2) *Current Compliance*, (3) *Verizon Licensing Process*
- 37) Town of Dennis, MA-*Renewal Process*
- 38) Town of East Longmeadow, MA-(1) *Previous Renewal Process*, (2) *Current Renewal*
- 39) Town of Eastham, MA-*Renewal Process*
- 40) Town of Easton, MA-*Renewal Process*
- 41) Town of Edgartown, MA-*Renewal Process*

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- 42) City of Everett, MA-*Renewal Process*
- 43) City of Fall River, MA-*Renewal and Licensing Process*
- 44) Town of Falmouth, MA-*Renewal Process*
- 45) City of Fitchburg, MA-*(1) Previous Renewal, (2) Current Renewal, (3) Amendment*
- 46) Town of Foxborough, MA-*Current Renewal Process*
- 47) Town of Framingham, MA-*Renewal Process, Verizon Licensing Process*
- 48) Town of Franklin, MA-*Transfer Process*
- 49) Town of Fremont, NH-*Renewal Process*
- 50) City of Gardner, MA-*Renewal Process*
- 51) Town of Goffstown, New Hampshire-*Renewal Process*
- 52) Town of Greenfield, MA-*(1) Previous Renewal Process, (2) Current Renewal Process*
- 53) Town of Halifax, MA-*Renewal Process*
- 54) Town of Hamilton, MA-*Renewal Process*
- 55) Town of Harwich, MA-*Renewal Process*
- 56) City of Haverhill, MA-*Previous Renewal Process*
- 57) Town of Hingham, MA-*(1) Previous Renewal, (2) Current Renewal Process*
- 58) Town of Hollis, NH-*Renewal Process*
- 59) Town of Holliston, MA-*Renewal, Verizon Licensing Process*
- 60) City of Holyoke, MA-*Renewal Process*
- 61) Town of Hudson, New Hampshire-*Current Renewal Process*
- 62) Town of Huntington, MA-*Original Licensing Process*
- 63) City of Jackson, Mississippi-*Current Renewal Process*
- 64) City of Keene, New Hampshire-*Regulatory Affairs*
- 65) Lakes Region Cable Television Consortium {11 N. H. municipalities}-*Renewal*
- 66) Town of Lakeville, MA-*Renewal, Verizon Licensing Process*
- 67) Town of Lexington, MA-*(1) 1996 Renewal, (2) Transfer*
- 68) Town of Litchfield, New Hampshire-*(1) Previous Renewal, (2) Current Renewal*
- 69) Town of Londonderry, New Hampshire-*Renewal Process*
- 70) Town of Longmeadow, MA-*1996 Renewal Process, Current Renewal Process*
- 71) City of Lynn, MA-*Verizon Licensing Process*
- 72) Town of Lynnfield-*Current Renewal Process, Current Licensing Process*
- 73) City of Malden, MA-*Renewal Process, (2) 1996 Renewal Process, (3) 2006 Renewal*
- 74) City of Manchester, New Hampshire-*Renewal Process*
- 75) Town of Marshfield, MA-*Renewal Process*
- 76) Town of Mashpee, MA-*Renewal Process*
- 77) City of Medford, MA-*(1) Renewal Process, (2) Transfer Process, (3) Tufts Licensing*
- 78) Town of Medway, MA-*Verizon Licensing Process, Renewal Process*
- 79) City of Melrose, MA-*Renewal Process*
- 80) Town of Merrimack, New Hampshire-*(1) Renewal Process, (2) Rate Regulation*
- 81) Town of Middleton, MA-*Renewal Process*
- 82) Town of Milford, New Hampshire-*Current Renewal Process, Transfer Process*
- 83) Town of Milton, MA-*Renewal Process, Licensing Process*
- 84) Town of Montague, MA-*Renewal Process*
- 85) City of Nashua, New Hampshire-*Renewal Process*
- 86) Town of Natick, MA-*(1) Renewal Process, (2) Rate Regulation, (3) Verizon Licensing*

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- 87) Town of Needham, MA-Renewal Process, Verizon Licensing Process
- 88) City of New Bedford, MA-Previous Renewal Process, Current Renewal Process
- 89) Town of New Boston, New Hampshire-Transfer Process, Licensing
- 90) City of Newburyport, MA-Renewal Process
- 91) Town of Newport, New Hampshire-Renewal Process
- 92) City of Newton, MA-(1) Renewal Process, (2) OVS Drafting, (3) Regulatory Affairs, (4) Verizon Licensing Process
- 93) Town of Newton, New Hampshire-Transfer Process, Renewal Process
- 94) Town of North Andover, MA-Transfer Process
- 95) Town of North Attleboro, MA-Renewal Process
- 96) Town of Northfield, MA-Renewal Process
- 97) Town of Norwood, MA-Renewal Process, Licensing Process, Verizon Licensing Process
- 98) Town of Oak Bluffs, MA-Renewal Process
- 99) Town of Orange, MA-Renewal Process
- 100) Town of Orleans, MA-Renewal Process
- 101) Town of Oxford, MA-(1) Renewal Process, (2) Transfer Process
- 102) City of Peabody, MA-(1) Renewal Process, (2) Licensing Process
- 103) Town of Pelham, New Hampshire-Renewal Process, Transfer Process
- 104) Town of Plymouth, MA-Renewal Process
- 105) Town of Plymouth, New Hampshire-Renewal Process
- 106) City of Portsmouth, New Hampshire-Renewal Process
- 107) Town of Provincetown, MA-Renewal Process
- 108) Town of Raymond, New Hampshire-Renewal Process
- 109) Town of Reading, MA-Renewal Process
- 110) City of Revere, MA-Competitive Licensing Process, Renewal Process
- 111) City of Salem, MA-Renewal Process, Licensing Process
- 112) Town of Salisbury, MA-Renewal Process
- 113) Town of Sandwich, MA-Renewal Process
- 114) Town of Sharon, MA-Renewal Process, Licensing Process
- 115) Town of Somerset, MA-Renewal Process
- 116) City of Somerville, MA-(1) 1992 Renewal, (2) Tufts Licensing, (3) 1997 Licensing; 2002 Licensing
- 117) Town of Shelburne Falls, MA-Renewal Process
- 118) Town of Southborough, MA-Verizon Licensing Process, Renewal Process
- 119) City of Springfield, MA-Renewal Process,
- 120) Town of Sudbury, MA-Renewal Process, Verizon Licensing Process
- 121) Town of Tewksbury, MA-Renewal Process
- 122) Town of Tisbury, MA-Renewal Process
- 123) Town of Topsfield, MA-Verizon Licensing Process, Comcast Renewal Process
- 124) Town of Tyngsborough, MA-Renewal Process
- 125) Town of Truro, MA-Renewal Process
- 126) Town of Upton, MA-Renewal Process
- 127) Town of Wakefield, MA School Committee-Amendment
- 128) Town of Walpole, MA-Renewal Process
- 129) Town of Watertown, MA-Original Renewal Process
- 130) Town of Wellesley, MA-Renewal Process, Regulatory Matters, Verizon Licensing Process

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- 131) Town of Wellfleet, MA-Renewal Process
- 132) Town of Wenham, MA-Renewal Process
- 133) Town of West Tisbury, MA-Renewal Process
- 134) Town of West Newbury, MA-2006 Verizon Licensing Process
- 135) City of Westfield, MA-Renewal Process
- 136) Town of Westford, MA-Current Renewal Process
- 137) Town of Westwood, MA-Verizon Licensing Process
- 138) Town of Wilmington, MA-(1) Previous Renewal, (2) 1997 Renewal, (3) Rate Regulation, (4) Verizon Licensing Process
- 139) Town of Wilton, New Hampshire-Transfer Process
- 140) Town of Winthrop, MA-(1) Previous Renewal. (2) 1997 Renewal
- 141) Town of Wrentham, MA-Renewal Process
- 142) Town of Yarmouth, MA-Renewal Process

Arts Organizations/Production Houses:

- 143) Appropriate Media Services, Inc.
- 144) Boston Resident Theatre Alliance
- 145) 911 Productions
- 146) StageSource, Inc.

Non-Profit Access Corporations:

- 147) Athol-Orange Community Television, Inc.
- 148) Billerica Access Television, Inc.
- 149) Brookline Access Television, Inc.
- 150) Burlington Cable Access Television, Inc.
- 151) Dedham Visionary Access Corporation
- 152) Fitchburg Access Television, Inc.
- 153) Greenfield Access Television, Inc.
- 154) Haverhill Community Television Corporation
- 155) Lakeville Community Access Media, Inc.
- 156) Community Access Television for Malden, Inc.
- 157) Martha's Vineyard Community Television, Inc.
- 158) Medford Community Cablevision, Inc.
- 159) Montague Community Cable, Inc.
- 160) Plymouth Area Community Access Television, Inc.
- 161) Reading Community Television, Inc.
- 162) Salem Access Television, Inc.
- 163) Sharon Community Television, Inc.
- 164) Southborough Access Media, Inc.
- 165) Spencer Cable Access Corporation
- 166) Walpole Community Television Inc.
- 167) Wilmington Community Television, Inc.

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- 168) Winthrop Cable Access Television, Inc.
- 169) Worcester Community Cable Access, Inc.

Non-Profit Corporations:

- 170) Luna Preservation Society, Inc.

ATTACHMENT 2
PETER J. EPSTEIN QUALIFICATIONS

(See Attached)

PETER J. EPSTEIN

101 Arch Street
Suite 900
Boston, Massachusetts 02110-1112
TEL: (617) 951-9909
FAX: (617) 951-2819

Professional Experience:

1985-present

Private Telecommunications Law Practice, Boston

Represent municipalities regarding all legal and regulatory aspects of cable communications licensing and renewal process, including financial and programming issues. Draft cable licenses for each community and all ancillary cable-related documents. Conduct license compliance review and advise municipality on remedies. Representation during license transfer and amendment process. Representation before the Massachusetts Cable Television Commission and courts. Incorporate and develop non-profit access corporations to produce and promote local programming.

Counsel municipalities on copyright, programming, anti-trust, First Amendment, the legal status of other video and data systems, FCC Rulemakings and regulations, technical matters, as well as other telecommunications-related issues.

1986-present

Legal Counsel, Massachusetts Chapter of the National Association of Telecommunications Officers and Advisors

Advise State group of municipal officials on cable television and telecommunications issues. Draft cable-related legislation.

1982-1984

Staff Attorney, Office of Cable Communications
City of Boston

Advise City of Boston on all aspects of the cable communications franchising and regulatory process, including applicable State and federal regulations and statutes governing cable television. Draft and negotiate agreements with the local cable operator. Draft comments to the FCC and the Massachusetts Cable Television Commission. Draft State cable-related legislation.

Peter J. Epstein

1980 Legal Intern, Massachusetts Cable Television Commission, Boston

Researched and advised General Counsel on constitutional issues related to cable television. Prepared memoranda on revocation of licenses, rate regulation and obscenity issues.

1978-1980 Reporter/Writer, WBUR Radio, Boston

Reported and produced news features for this National Public Radio affiliate.

Education:

1978-1981 Suffolk University Law School, Boston, MA

J.D., Dean's List

1968-1972 George Washington University, Washington, D.C.

B.A., Psychology/History, Dean's List

Affiliations:

Member of Massachusetts Bar; National Association of Telecommunications Officers and Advisors; National Federation of Local Cable Programmers; Trustee-Brookline Public Library

Publications:

1985 "Contract Modification and The Cable Communications Policy Act of 1984," appearing in the Spring 1985 edition of the NFLCP's Community Television Review.

1988 "Coping with Cable," appearing in the Spring 1988 edition of the Massachusetts Municipal Association's quarterly magazine, The Municipal Forum.

Peter J. Epstein

1991

“Cable Television Regulation,” appearing in the Massachusetts Continuing Legal Education’s November 1991 Municipal Law Update.

1992

“Franchise Renewal: An Overview,” appearing in the Spring 1992 edition of the NFLCP’s Community Television Review.

ATTACHMENT 3

PETER J. EPSTEIN REFERENCES

(See Attached)

**MUNICIPAL REFERENCES
FOR PETER J. EPSTEIN**

- (1) Town of Brookline, Massachusetts:
Renewal Process
Transfer Process
Competitive Licensing
General Regulatory Work
- Mr. Melvin Kleckner
Town Administrator
Town Hall
333 Washington Street
Brookline, MA 02146
(617) 730-2210
- (2) Town of Canton, Massachusetts:
Renewal Process
Regulatory Matters
Compliance Review
Competitive Licensing
- Mr. William T. Friel
Executive Secretary
Upper Memorial Hall
801 Washington Street
Canton, MA 02021
(781) 821-5000
- (3) Town of Wilmington, Massachusetts:
Renewal Process
Competitive Licensing
- Mr. Jeffrey M. Hull
Town Manager
Town Hall
Wilmington, MA 01887-3597
(508) 658-3311
- (4) City of Concord, New Hampshire:
Renewal & Transfer Process,
- Mr. Thomas J. Aspell, Jr.
City Manager
City of Concord
City Hall
41 Green Street
Concord, N.H. 03301
(603) 225-8570
Merrimack, N.H. 03054
(603) 423-8558
- (5) Town of Londonderry, New Hampshire:
Renewal Process
Transfer
General Regulatory Matters
- Dottie Grover
Cable Coordinator
Town of Londonderry
Town Offices
50 Nashua Road
Londonderry, N.H. 03053-3416
(603) 432-1147

ATTACHMENT 4

EPSTEIN & AUGUST NEWSLETTERS

(See Attached)

THE MUNICIPAL WIRE

CABLE AND TELECOMMUNICATIONS UPDATE

Volume 2, Issue 1

Winter/Spring 2005

State Issues Renewal Guidelines and Amends License Application

The Massachusetts Cable Television Division recently issued an advisory Policy Statement on license renewal and municipal ascertainment of community cable-related needs. The Cable Division's Policy Statement also amended the cable license renewal and initial license application form (Form 100).

Declaring that "the importance of ascertainment cannot be overstated," the Cable Division's Policy Statement focused on the license renewal ascertainment process and the role of the license application form in the provision of information to municipal franchise issuing authorities. Ascertainment is the process prescribed by federal law by which issuing authorities identify community cable-related needs and interests through public hearings, surveys, focus groups and research. Cable operators had proposed a requirement that ascertainment terminate 18 months prior to license expiration. In comments filed on behalf of twenty-three municipalities and access centers, Epstein & August, LLP, with the support of the Massachusetts Municipal Association and the Alliance for Community Media-Northeast, urged that this proposal would drastically reduce the time period for municipal ascertainment. While the Cable Division's

(Continued on page 2)

Municipalities Rev Up for Verizon Cable Licensing

Verizon is currently seeking cable licenses in approximately 23 northeast Massachusetts municipalities and reports it will be seeking additional cable licenses throughout much of Massachusetts and other states.

Initial discussions between Verizon and municipal officials have addressed matters such as licensing rules, Verizon's fiber build, known as fiber to the premises (FTTP), and "level playing field" language in existing cable licenses. Municipal officials have emphasized their desire to have Verizon match or exceed the incumbent licensee's provision of license terms and conditions, at a minimum to the extent required under existing level playing field terms (if any).

Verizon's entry into cable licensing will require municipalities to implement initial licensing procedures, which are substantially different from renewal licensing. Accordingly, municipal officials in Massachusetts need to familiarize themselves with initial licensing procedures described below.

Depending upon the form of municipal charter in a community, the Issuing Authority can commence initial licensing by an initial selectmen's, Mayor's or City Manager's decision. The Issuing Authority then advertises for license applications to be submitted to the community from any and all bidders. Once received, the Issuing Authority reviews license application(s)

(Continued on page 2)

IN THIS ISSUE:	
1	State Issues Renewal Guidelines
1	Municipalities Rev Up for Verizon Cable
3	News Briefs
4	ACM Northeast to Hold Conference

Editor's Note: The **Municipal Wire** is published by Epstein & August, LLP, a partnership of attorneys Bill August and Peter Epstein. We look forward to sharing information on local, state and federal cable television, telecommunications and public right-of-way issues. We extend special thanks to Jenna Robins for her editorial assistance. Readers are advised that the newsletter is for general information purposes only and should not be applied to individual situations without inquiry or legal counsel as needed. For information about the **Municipal Wire**, contact Epstein & August, LLP, 101 Arch Street, Suite 900, Boston, MA 02110-1112; tel. 617.951.9909, billaugustUSA@aol.com or peter@epsteinandaugust.com. Copyright © 2005 Epstein & August, LLP.

Verizon Cable Licensing (Continued from page 1)

received and prepares an "Issuing Authority Report" ("IAR") which will include specifications for a new cable television license. The license applicant(s) then submits a revised application in response to the IAR. If Verizon is the only applicant, the municipality and Verizon may engage in direct negotiations. If there are multiple applicants, which is unlikely, the municipality must treat the applications as competitive bids. Because the initial licensing process is open to multiple applicants, the Cable Division's rules are designed for a competitive bidding process (in contrast to license renewal in which the municipality must address the incumbent licensee on a stand-alone basis). Essential details regarding the foregoing procedures may be found in 207 Code of Massachusetts Regulations 3.00 *et seq.*

Municipal officials should consider the licensing process only after carefully considering level playing field language, if any, in the incumbent's license. Because some level playing field clauses may allow a current cable provider to ask for amendment of existing license provisions if it can demonstrate that the new cable provider has received more favorable terms, it is essential to negotiate a Verizon license that contains provisions that are not more favorable or less burdensome than those in the incumbent's license. Although not binding law in Massachusetts, a recent Connecticut case illustrates potentially applicable level playing field clause principles. The Connecticut Department of Public Utility Control was upheld in its ruling that level playing field equivalency between new and incumbent cable licenses could be gauged by comparing the aggregate burdens and benefits of the two licenses when taken as a whole, and equivalency need not be established on an item-by-item basis. *United Cable Television Services Corp. v. Dept. of Public Utility Control*, 235 Conn. 334 (1995).

Another municipal concern is Verizon's reported efforts to seek further federal deregulation of municipal licensing requirements, which could undermine municipal licensing efforts. Some municipal officials are concerned that Verizon is representing that it will be subject to local licensing at the same time Verizon is reported to be seeking federal relief from that same licensing.

State Issues Renewal Guidelines (Continued from page 1)

Policy Statement rejected the industry's proposal, the Cable Division did, however, *recommend* that municipalities complete ascertainment 12-6 months before expiration. It should be noted that the Policy Statement section on license renewal is advisory; it is not a new regulation.

The revised Form 100 went into effect on January 1, 2005. The Cable Division stated that the license application is the minimum documentation that must be presented to Issuing Authorities. In its Policy Statement, the Cable Division emphasized that use or filing of the new license application form "in no way limit[s] the rights of the Issuing Authority to request additional relevant information...we specifically state that the Issuing Authority may ask an applicant for additional, relevant information." Significantly, the Cable Division also clarified that the license application should not generally be treated as a formal renewal proposal unless and until the Issuing Authority has first concluded ascertainment or requested filing of such a formal renewal proposal.

The Cable Division clarified that the license application must include a statement regarding how the cable operator's proposed service offerings differ from current offerings. Over cable operator objections, the Cable Division retained questions concerning Local Origination and PEG Access, and further required applicants to reveal their proposed amount of financial support. The Cable Division added a question requiring applicants to state their intentions concerning maintenance and/or construction of an I-Net.

NEWS BRIEFS

Comcast & Time Warner Bid on Bankrupt Adelphia Communications

Thirty-six Massachusetts municipalities with Adelphia Communications, Corp. cable systems, and many more New England licensing authorities, will be conducting license transfer proceedings if Adelphia accepts recent acquisition bids. In addition to other bids, Comcast and Time Warner tendered a joint bid for Adelphia, worth approximately \$17 billion. Colorado-based Adelphia is the fifth largest cable provider in the United States.

Adelphia filed for bankruptcy in June 2002 and is attempting reorganization. Adelphia began the sale process in November 2004. A sale of Adelphia would trigger municipal transfer proceedings under state and federal transfer rules. License transfer proceedings provide municipalities an opportunity to ensure that the new cable provider will “step into the shoes” of the existing cable provider. Municipal officials may review the transferee’s intent to fulfill existing license provisions and more generally review the transferee’s management, financial, technical and legal qualifications.

In Massachusetts, transfer is governed by Cable Division transfer regulations set forth at 207 CMR 4.00 et seq. State and federal regulations allow the municipality 120 days from the filing of a completed transfer application form to take final action on the proposed transfer.

Supreme Court to Hear *Brand X* Case in March

The U.S. Supreme Court granted the Federal Communication Commission’s petition for certiorari in *FCC v. Brand X Internet Services*. The case involves the landmark issue of whether cable modem service should be defined as a *telecommunications service*, *cable service* or as an *information service*.

Each such classification results in dramatically different regulatory and municipal treatment. If the Supreme Court upholds an earlier FCC ruling, cable modem service will be classified as a mostly deregulated “information service” not subject to cable service licensing and therefore not subject to franchise fees, among other things. Likewise, an information service is not subject to common carrier regulation under Title II of the Telecommunications Act of 1996.

The U.S. Court of Appeals for the 9th Circuit held in *Brand X* that cable modem service was a combination telecommunications and information service. Under that decision, cable modem services would not be subject to the cable television regulatory scheme, including licensing. However, these services could be subject to diverse state and federal common carrier regulatory frameworks.

Municipalities generally would prefer to see cable modem service defined as a cable service, since it would then be subject to municipal licensing, as is cable television. The case will be argued before the Supreme Court on March 29, 2005.

ACM Northeast To Hold Conference

The Alliance for Community Media is holding its Spring conference for the Northeast on May 12-13, 2005. Entitled "Changing Tides", the conference will feature workshops, speakers, and roundtable discussions, including:

- Public policy workshops on Verizon licensing and license renewals;
- "Ask the Lawyers" Panel;
- Community television studio management and fundraising;
- Trade show Thursday, May 12th.

The conference is co-sponsored by the Massachusetts chapter of the National Association of Telecommunications Officers and Advisors (NATOA). It will be held at the Seacrest Resort and Conference Center in Falmouth, MA.

Additional information and registration forms are available online at www.acm-ne.org

MUNICIPAL WIRE is a publication of Epstein & August, LLP, a Massachusetts law firm concentrating in cable television and related telecommunications law. Inquiries regarding representation in cable, telecommunications, or related municipal issues should be forwarded to: Epstein & August, LLP 101 Arch St., Suite 900, Boston, MA 02110-1112, tel. 617-951-9909.

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ATTACHMENT 5

1996 TELECOMMUNICATIONS ACT SUMMARY

(See Attached)

THE TELECOMMUNICATIONS ACT OF 1996

A MUNICIPAL PRIMER

by

Peter J. Epstein

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The Telecommunications Act of 1996
Law Office of Peter J. Epstein

INTRODUCTION

- a) President Clinton signed the Telecommunications Act of 1996 on February 8, 1996.
- b) The general purpose of the new law is to encourage competition in the telecommunications field, by eliminating those laws that currently prohibit different telecommunications companies from offering new services outside of their immediate "regulatory domain".
- c) The new law will allow the following to occur:
 - i) Telephone companies may now offer video services (like cable services) to customers;
 - ii) Cable companies may now offer telephone services to subscribers;
 - iii) The regional telephone companies, such as NYNEX, may now offer long distance services to customers, once they have made their facilities available to competitors; and
 - iv) Long-distance companies, such as AT&T and MCI, may now offer local telephone service.
- d) The new law also provides for the following:
 - i) All television sets in the future must include so-called "V-Chips", to allow parents to block the viewing of programming;
 - ii) Prohibits the transmission of indecent materials to minors over on-line services; and
 - iii) Eliminates the prohibition on the number of radio and television stations any one company can own, provided that such stations reach no more than 35% of the U.S. population.
- e) The new law does **not** explicitly change the current regulatory scheme in which cable television companies operate, such as the requirement for a municipal franchise, franchising procedures, transfer procedures, etc.
- f) The new law **does** change a number of cable-related matters, including the following:
 - i) Expanded-tier(s) rate regulation will be eliminated as of March 1999;
 - ii) The definition of "gross annual revenues" will be restricted to revenues from "Cable Services"; and
 - iii) Municipalities are restricted in their ability to require specific technical configurations, etc.

SPECIFIC PROVISIONS OF THE TELECOMMUNICATIONS ACT

I) *MUNICIPAL CONTROL OF RIGHTS-OF-WAY/COMPENSATION* {Section 253}

a) Section 253(a) generally preempts so-called "barriers to entry" to new telecommunications providers.

b) However, Section 253(c) states that:

Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a non-discriminatory basis, if the compensation required is publicly disclosed by such government.

i) Therefore, the Telecommunications Act does **not** restrict the right of the municipality to manage its public rights-of-way **and** to require compensation for such use, provided that the municipality manages the rights-of-way and charges compensation in a non-discriminatory manner.

ii) Given this language, municipalities should develop policies and procedures for negotiating rights-of-way agreements with telecommunications providers seeking to use the public rights-of-way.

iii) Most states, including Massachusetts, are currently examining telecommunications regulations on the state and local levels. It is likely that most states will adopt or revise laws that address local authority over public rights-of-way, including compensation issues.

a) Municipalities must participate in any on-going efforts by the state, including the Department of Public Utilities, to restrict municipal authority in this regard.

iv) This authority extends to all cable television and telecommunications providers who use the public rights-of-way.

v) Note that this authority does not extend to telecommunications providers not using the public rights-of-way, such as satellite providers, wireless cable providers such as MMDS (multichannel, multipoint distribution service), etc.

II) *TELEPHONE COMPANY PROVISION OF VIDEO SERVICES* {Section 302}

a) Section 302 grants telephone companies the right to provide video services to customers.

i) Note that telephone companies had already successfully challenged the previous statutory ban on providing cable services, on First Amendment grounds.

b) Telephone companies may now offer video services to customers through different means, including i) traditional cable systems, ii) wireless cable, iii) satellite and iv) Open Video Systems.

c) Open Video Systems

i) The Telecommunications Act creates a new video delivery category called Open Video Systems {"OVS"}.

a) OVS is defined as a delivery system in which a telephone operator makes at least two-thirds of its capacity available to unaffiliated programmers on a non-discriminatory basis.

ii) A telephone company providing an OVS "platform" may itself provide cable-like services to customers on that platform.

iii) OVS providers must be certified by the Federal Communications Commission ("FCC").

iv) OVS providers are exempt from having to obtain a cable franchise from the municipality.

v) However, OVS providers or operators may be subject to payment of franchise fees:

on the gross revenues of the operator for the provision of cable service imposed by a local franchising authority or other governmental entity in lieu of the franchise fees permitted under section 622. *The rate at which such fees are imposed shall not exceed the rate at which franchise fees are imposed on any cable operator transmitting video programming in the franchise area.* {emphasis added}

a) Note ramifications in Massachusetts given the current license fee "ceiling" of \$.50 per subscriber per year, pursuant to M.G.L. Chapter 166A, Section 9.

vi) OVS providers must also comply with public, educational and governmental ("PEG") access requirements to be set by the FCC.

The Telecommunications Act of 1996
Law Office of Peter J. Epstein

vii) The Act requires the FCC to promulgate detailed OVS rules and regulations within six (6) months of enactment of the new Act, or by August 8, 1996.

a) The FCC has released a Notice of Proposed Rulemaking regarding OVS. Comments are due on April 1, 1996, with Reply Comments due on April 11, 1996.

viii) The FCC's previous video dialtone regulations are terminated by the new Act.

ix) Questions in connection with OVS regulations:

- + Will cable operators attempt to become OVS providers? How?
- + Can municipalities come to other agreements with OVS providers?
- + How to define the scope of gross revenues applicable to OVS providers?

III) *PREEMPTION OF MUNICIPAL REGULATION OF TELECOMMUNICATIONS SERVICES* {Section 303}

a) Section 303 prohibits local governments from requiring and/or prohibiting the provision of telecommunication services by a cable television operator.

i) The term "telecommunications services" is defined as:

The offering of telecommunications for a fee directly to the public, or to classes of users as to be effectively available directly to the public, regardless of the facilities used.

ii) The term "telecommunications" is defined as:

The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received.

b) However, these restrictions do not prohibit local governments from treating cable operators like other telecommunications providers, to the extent that cable companies provide telecommunications services.

i) Cable operators providing telecommunications services may be subject to the same requirements as other telecommunications providers for compensation for use of the public rights-of-way.

ii) Note, however, that State law, unless changed, may likely preempt the right of local governments to realize any such benefits.

The Telecommunications Act of 1996
Law Office of Peter J. Epstein

c) Section 303 explicitly permits local governments to continue to require that cable operators provide PEG access channels and facilities, as well as the provision of Institutional Networks ("I-Nets"), "..as a condition of the initial grant of a franchise, a franchise renewal, or a transfer of a franchise."

IV) *OTHER CABLE TELEVISION-RELATED PROVISIONS*

a) Cable Television Rate Deregulation {Section 301}

i) Rates for all Cable Programming Services ("CPS") (usually all regulated tiers of service above a Basic Tier) are deregulated as of March 31, 1999.

a) FCC review of CPS rates will no longer be initiated by complaints from subscribers directly. Instead, it may only be initiated by a municipality as a result of more than one subscriber complaint(s).

ii) CPS rates of "small systems" (defined as having 50,000 subscribers or less, and not owned by, or affiliated with, an operator serving over one percent (1%) of subscribers in the U.S. and with less than \$250 Million in gross revenues annually) are deregulated immediately.

iii) Basic service rate regulation remains in place, as long as there is no "effective competition" in the franchise area.

b) Definition of Cable System {Section 301(a)(2)}

i) The current definition is revised by striking the requirement that a SMATV system must 1) serve buildings under common ownership and control and 2) not use the public rights-of-way in order to avoid municipal franchising requirements. Rather, if a SMATV now uses the public-rights-of-way, it must obtain a franchise from the municipality. In addition, the definition of a cable system does not include "a facility that serves subscribers without using any public right-of-way."

c) Definition of Franchise Fees {Section 303(b)}

i) Section 622 of the 1984 Cable Act is revised to read:

For any twelve month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed five percent of such cable operator's gross revenues derived in such period from the operation of the cable system *to provide cable services*. {new language in emphasis}

The Telecommunications Act of 1996
Law Office of Peter J. Epstein

a) Note that the 1984 Cable Act defines the term "cable services" as:

{A} the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and {B} subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

ii) This revision is intended to restrict "gross revenues" to revenues from cable television services, not common carrier services such as telephone service, etc.

d) Technical Standards/Subscriber Equipment {Section 303(e)}

i) The Telecommunications Act amends the Cable Act, by 1) deleting language that allowed municipalities to require cable operators to comply with FCC technical standards; and 2) adding the following language:

No state or franchising authority may prohibit, condition or restrict a cable system's use of any type of subscriber equipment or any transmission technology.

a) However, given this language and other sections of the Cable Act, it is not clear that municipalities, in fact, are prohibited from addressing these types of issues with cable operators.

e) Cable Television Transfers {Section 303(i)}

i) Restrictions from the 1992 Cable Act on transfers of cable systems are repealed. This includes the repeal of the prohibition against transferees selling a cable system within three (3) years after its transfer.

ii) However, municipalities are still required to act upon a transfer request within 120 days of the receipt of the FCC Form 394. If no action is taken, the transfer is deemed to be automatically approved.

f) Obscene Programming {Section 506}

i) The Telecommunications Act adds language to the Cable Act that a "...cable operator may refuse to transmit any *public access program or portion of a public access program* which contains obscenity, indecency, or nudity." {emphasis added}

a) Note that this restriction applies to public access programming, not educational or governmental access programming.

The Telecommunications Act of 1996
Law Office of Peter J. Epstein

V) *ZONING OF CELLULAR TOWERS* {Section 704}

a) The Telecommunications Act retains local zoning authority over the placement of "personal wireless service facilities" {ie: cellular towers}.

i) The term "personal wireless service facilities" is defined as "facilities for the provision of commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services."

b) In considering cellular tower applications, a municipality may not unreasonably discriminate among "providers of functionally equivalent services."

c) The municipality must act upon such requests within a reasonable period of time.

d) Any denial of a request for the placement of such facilities must be in writing and be "supported by substantial evidence contained in a written record."

e) Persons adversely affected by municipal zoning decisions concerning wireless facilities may appeal to any court of competent jurisdiction, rather than to the FCC {as was originally drafted}. As a result, the FCC is prohibited from preempting municipal decision-making regarding zoning matters.

f) Note, however, that the Telecommunications Act grants the FCC *exclusive* authority to regulate direct-to-home satellite services.

VI) *DIRECT BROADCAST SATELLITE TAXATION* {Section 602}

a) The Telecommunications Act exempts providers of direct-to-home satellite services "...from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service."

i) Direct-to-home satellite service is defined as "programming transmitted or broadcast by satellite directly to subscribers' premises without the use of ground receiving or distribution equipment, except at the subscribers' premises or in the uplink process to the satellite."

b) Note that the language of Section 602 does not preempt or prohibit local taxation of satellite-related equipment.

c) Note also that Section 602(c) does not prevent "...a local taxing jurisdiction from receiving revenue derived from a tax or fee imposed and collected by a State."

d) Given the overall vague language of Section 602, local governments should pay attention to additional efforts to further preempt or erode local taxing authority.

CONCLUSION

The Telecommunications Act of 1996 will fundamentally change the telecommunications landscape today. We have already seen one result: the U.S. West purchase of Continental Cablevision. Such purchases, as well as possible mergers of regional telephone companies, will undoubtedly increase in the next several months.

Municipalities were able to wrest some victories in the final version of the Telecommunications Act of 1996, including the right to i) continue to manage the public rights-of-way, ii) receive fair and reasonable compensation from all telecommunications provisions for such use, iii) receive a franchise-like fee from multichannel video programmers, iv) control siting, construction and modification of wireless facilities, and v) retain essential oversight and control over cable television franchising and regulation.

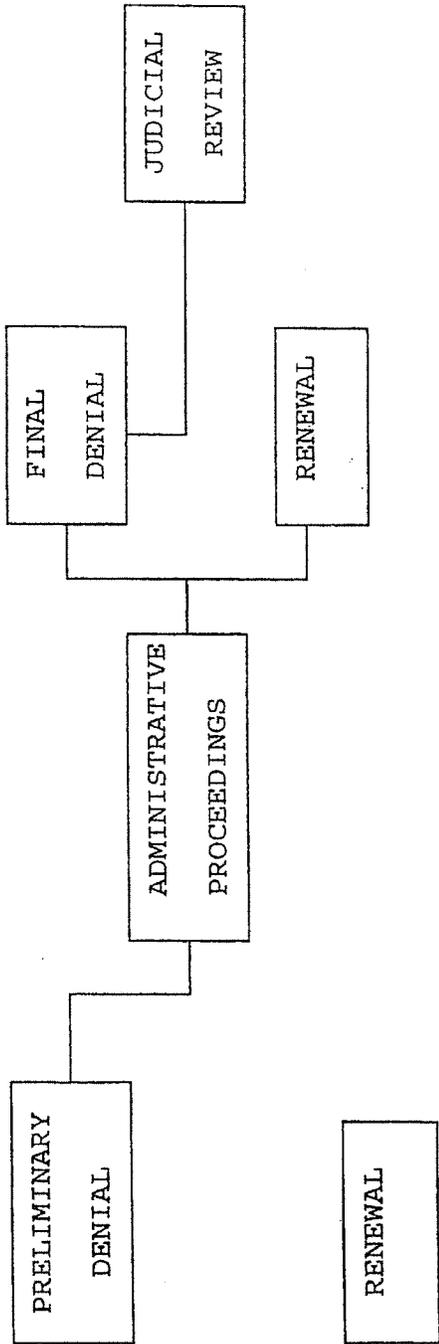
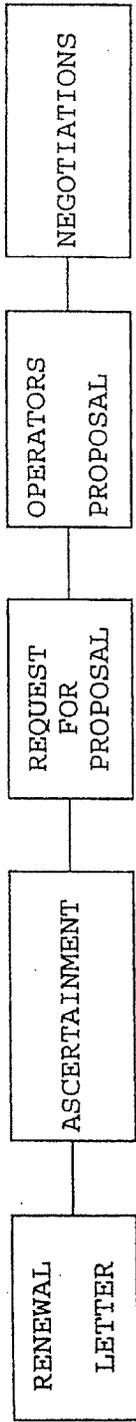
The Telecommunications Act of 1996 is lengthy and complicated. The FCC has already commenced a rulemaking into the Open Video System regulations. More rulemakings are forthcoming. These rulemakings will be the forum for deciding on exactly how a number of key sections of the Telecommunications Act of 1996 are put into practical effect. Decisions on these matters will affect local governments and how information technology is utilized, and impacted, on the local level. Local governments have a crucial role in participating in these rulemakings, as well as proceedings on the State level. These opportunities for input must not be missed by local governments.

Local governments must stay abreast of these fundamental changes in the telecommunications environment. The Telecommunications Act of 1996 provides opportunities for growth for not only the telecommunications industry. It provides municipalities with such opportunities on the local level as well.

ATTACHMENT 6
RENEWAL PROCESS SCHEMATIC

(See Attached)

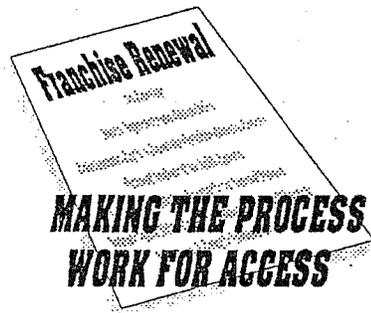
-CABLE TELEVISION RENEWAL PROCESS-



ATTACHMENT 7

“FRANCHISE RENEWAL: AN OVERVIEW”

(See Attached)



During the 1970s and early 1980s, the "Great Age" of Cable Franchising took place. Despite the fact that the Midwest Video Case had struck down the FCC's mandatory access rules, many of our towns and cities negotiated access provisions that spread PEG throughout the nation. In this post Cable Act period, most of these franchises are coming up for renewal.

For municipalities facing renewal, times seem uncertain. Cable regulation efforts continue to move through the Congress; the FCC is moving forward with Video Dialtone proposals; new technologies are being developed that we haven't even dreamed uses for. The nation's economy has placed unrelenting strains on municipal budgets, making cable dollars look increasingly attractive. These uncertain times pose new challenges to the development of community communications and the very survival of access.

For all these challenges, access is still growing. Franchise renewals have been negotiated in a thoughtful and productive manner. At least two factors are essential for this to happen. The first is continued grassroots advocacy on behalf of access. The second critical factor is to make sure that municipalities are prepared and committed to the renewal process.

This issue of CTR is aimed at providing a foundation for communities nearing or participating in cable franchise renewal. The articles cover a variety of issues and techniques for handling the process. It is our hope that you will find this issue to be informative and useful.

— Sharon B. Ingraham
Guest Editor-in-Chief

Franchise Renewal: An Overview

by Peter J. Epstein, Cable Attorney and General Counsel
to The Communications Policy Group, and
Sharon B. Ingraham, Breuster Ingraham Consulting Group

Franchise renewal is just as important as the original search and negotiations for the initial cable franchise. Technology and regulations have changed, experience has been gained from previous years of service (or lack thereof) and communities may want to negotiate to have PEG access services that may have been unavailable 10 or 15 years ago. However, unlike 10 or 15 years ago, the renewal process today is subject to the Cable Communications Policy Act of 1984, commonly referred to as "The Cable Act." Section 626 of the Cable Act sets out the process for municipalities and cable operators to follow during the renewal process.

Negotiating a cable franchise is a complex process which creates long term agreements affecting subscribers, the municipality and the cable operator. It is important to have proper legal, technical and strategic advice when drafting the cable contract to ensure that consumer services, access provisions, fees and other critical areas are included in the franchise in a clear and explicit manner.

Preparing for Renewal

A community should prepare for franchise renewal throughout the term of the existing franchise by holding periodic reviews of operator performance. Periodic evaluation of a cable operator's performance can create a valuable tool for a municipality by:

- Keeping the municipality up-to-date regarding the cable operator's performance;
- Allowing municipalities to build a complete compliance history for later use in a possible transfer, renegotiation and/or renewal process;
- Collecting data on provisions that were poorly or unclearly stated in the present franchise or are needed in the future franchise document.

Each provision in the cable franchise should be carefully reviewed. If the cable operator is providing unsatisfactory performance in any area, it should be informed in writing of the specific problem, including subsequent reporting requirements and a deadline for compliance.

This is important because a city cannot deny renewal based on the operator's past failure to comply with the franchise or provide quality service in any case where it is documented that the franchising authority has waived its right to object; has effectively acquiesced to the operator's conduct; or has failed to notify the operator of any defect. A community that performs periodic reviews of operator compliance with the franchise can protect itself against such claims.

Community Responsibilities in the Franchise Process

The municipality should take the following steps to prepare for renewal:

- Collect all relevant documents including the current franchise or ordinance, state and federal regulations, copies of all prior performance reviews, subscriber satisfaction documents and financial reports;
- Conduct consumer and community needs ascertainment;
- Assess the legal, technical and financial ability of the operator; and
- Carefully consider the community's cable-related needs, including but not limited to: Public, Education and Government Access provisions such as operating funds, equipment, facilities, channel capacity and management models;
 - Educational uses such as classroom utilization of cable, distance learning and shared teaching resources;
 - Municipal cable services such as data communications, institutional networks, metering, etc.

The Cable Television Renewal Process

Section 626 of the Cable Act mandates that a community and its operator can follow either a "formal" renewal process or an "informal" renewal process. Congress initially believed that while many communities would follow the informal process, it was necessary to design a more formal process as well, with explicit time frames and procedural protections for the operator, in those situations where an informal process was impractical. Deciding upon and understanding which process is to be followed is the first important decision the municipality has to make.

In the event that the municipality decides or is asked to follow the formal process, several things must occur. First, the decision to follow the formal process must be made within a 6 month window starting 36 months prior to the franchise expiration and ending 30 months before such expiration. Once the parties have agreed to proceed "formally", the Issuing Authority must commence so-called ascertainment proceedings to:

- identify future cable related needs; and
- review the performance of the cable operator under the current franchise.

At the end of these proceedings, the Issuing Authority may request that the operator submit a renewal proposal to the municipality. Many communities do so by issuing a Request for Proposals (RFP) to the cable operator, which details the types of services and facilities considered to be important to the community. The operator may also submit such a renewal proposal on its own initiative. In general, however, cable operators will wait and respond to an RFP, if that is the wish of the municipality. The franchising authority must pro-

vide public notice upon receipt of the renewal proposal. Once the operator has submitted a proposal to the municipality, the parties have four months from the end of ascertainment to negotiate the terms and conditions of a renewal license. If they are unsuccessful in doing so the Issuing Authority must issue a "preliminary assessment" that the license should not be renewed. At that point, and pursuant to Section 626(c)(1) of the Cable Act, the Issuing Authority, on its own initiative or at the request of the operator must commence an "Administrative Proceeding" to consider whether:

- 1) The cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
- 2) The quality of the operator's service, including signal quality, response to consumer complaints and billing practices, but without regard to the mix, quality or level of cable services or other services provided over the system, has been reasonable in light of community needs;
- 3) The operator has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the operator's proposal; and
- 4) The operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

At the completion of this administrative proceeding, the Issuing Authority will have to issue a "written decision granting or denying the proposal for renewal based upon the record of such proceeding." Note that the Issuing Authority may deny renewal if any one of the above criteria has not been met to the satisfaction of the municipality. If the Issuing Authority does deny the renewal proposal, the operator may appeal that decision pursuant to Section 635 of the Cable Act.

If the "election" (or reservation of the right) to follow the formal process has not been made within the initial 6-month time frame, the parties must follow the informal process, which simply allows the parties to negotiate renewal in whatever manner they wish (including the possibility of stricter evaluation criteria), at any time prior to the expiration of the cable license.

Conclusion

Local officials should take advantage of the opportunities that exist at the renewal stage. While some would argue that the Cable Act has placed severe confines on communities during renewal, the opposite is more accurately the case. Indeed, communities have a rare opportunity during the renewal process to ensure that renewal will be granted only if the operator builds and operates a system that optimally serves subscribers and the overall community.

Peter J. Epstein is a Boston attorney specializing in cable issues and franchising. He also serves as general counsel for The Communications Policy Group, a cable consulting group based in Massachusetts. His offices are at 101 Arch Street, Ste. 900, Boston, MA 02110. Phone: (617) 951-9909.

ATTACHMENT 8
“COPING WITH CABLE”

(See Attached)

Coping with Cable

by
Peter
Epstein

Most municipal officials are all too familiar with consumer calls and complaints regarding their cable television service. These calls typically concern rates, programming, billing, service problems, and signal quality. The local official is very often the first person to whom subscribers turn when faced with unresolved problems.

What can local officials do for such subscribers? What can't they do? The answer depends on the type of problem involved, the terms and conditions in the cable license, and the relationship between the community and the operator. Applicable federal, state, and local laws are particularly important to what can, and cannot, be regulated at the local level. The status of such laws are in flux today, as they have been for the past several years. Despite this, local officials still have considerable regulatory authority in a number of different cable-related areas. Consequently, they need to understand the scope of such authority in order to maximize service to residents.

Federal and State Regulation

The most comprehensive, and fast-changing, regulatory scheme is federal. The federal government has

Peter Epstein is a Brookline attorney specializing in cable communications and telecommunications law in Massachusetts. He is a founder and legal counsel of the Massachusetts chapter of the National Association of Telecommunications Officers and Advisors.

been regulating communications carriers for more than half a century, and cable television operators for approximately twenty-five years. Federal regulation of cable television was based originally on the Communications Act of 1934, and it was not until 1984 that Congress passed legislation that applied specifically to the regulatory status of cable television. The purpose of the Cable Communications Policy Act of 1984 (the "Cable Act") is to "establish a national policy concerning cable communications" and to "establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community." Congress intended the Cable Act to eliminate the widely varying regulatory schemes that existed throughout the country at the time.

Massachusetts is one of only a handful of states that have state regulatory authorities. The Massachusetts Community Antenna Television Commission (the "Cable Commission") was created in 1971 to oversee cable development and operation in the state. Chapter 166A of the Massachusetts General Laws sets out the cable regulatory scheme in Massachusetts, including license requirements, fees, license transfers, revocation, renewal, and municipal ownership. Since the emergence of the Cable Act, however, certain areas of commission jurisdiction have been pre-empted, most noticeably rate regulation and in part, renewal

procedures. The Cable Commission advises communities when its authority has been pre-empted. The commission today oversees cable activity in approximately 290 of the 354 municipalities in the commonwealth. To further its authority to regulate cable in the state, the commission has promulgated regulations covering initial franchising procedures, renewal, transfer, license amendments, and security deposits.

These federal and state laws have restricted some municipal authority regarding cable television companies. We now look at a few of these areas.

Franchises

The federal Cable Act gives a municipality the statutory right to grant one or more franchises within its jurisdiction. According to the Massachusetts statute, a municipality cannot issue an exclusive license to a cable company.

Municipalities are given by the Cable Act the right to charge a franchise fee of up to five percent of the operator's gross revenues annually; however, Massachusetts law limits license fees to \$5.50 per subscriber per year. The issue of whether the federal Cable Act pre-empts the lower limit set by state law has yet to be resolved.

Franchise fees can legally go to the general fund and need not be earmarked for cable-specific uses. The Cable Act explicitly does not count as part of these fees such payments as:

- taxes of general applicability;

- some payments for public, educational, and governmental use;
- support of public, educational, and governmental access facilities;
- requirements or charges that are incidental to awarding or enforcing the franchise, including payments for bonds and other securities, insurance, indemnification, penalties, and liquidated damages.

Based on the above, the Massachusetts Cable Commission recently allowed communities to pass to cable vendors any consultants' fees incurred in the process of awarding or enforcing the franchise.

Rates and Renewals

The federal Cable Act bars municipalities from regulating the rates that operators charge subscribers, except in situations where "effective competition" does not exist. Unfortunately, the Federal Communications Commission has taken an extremely narrow view of what constitutes such "effective competition:" the ability to receive three different television broadcast signals. Virtually all Massachusetts communities meet this test. In any case, the Massachusetts Cable Commission prohibited local rate regulation in 1980.

One of the most important areas for municipal officials concerns re-

wal of existing licenses. Because much of a municipality's regulatory authority has eroded in the past several years, renewal remains the primary opportunity to ensure that the operator will rebuild or upgrade the system so as to meet the needs of residents throughout the renewal term. It is the opportunity to draft a new license that explicitly spells out the requirements to be met during such a renewal period; it can also contain contractual remedies to enforce such requirements. A renewal license can contain a wide array of terms and conditions that can be enforced, provided that the Cable Act does not bar them.

The Cable Act sets out the proce-

dures, both formal and informal, that must be followed in a renewal scenario. While the Cable Act gives operators explicit safeguards throughout the process, it does not give an explicit "expectation" of renewal to the incumbent operator. The operator that has substantially complied with its existing license and has proposed a system, during the renewal term, that will meet the needs and interests of the community, is entitled to a renewal of its license. However, the Act does give each community some flexibility in determining whether these criteria have been met.

Other sections of the Act allow municipalities to require a number of community benefits, including:

- The provision of local channels for public, educational, or governmental use;
- Terms and conditions related to system configuration and capacity, including system upgrade or rebuild, subscriber and institutional networks, addressability, two-way service, and head-ends;
- Local programming studios, video equipment and grants;
- Construction schedules;
- Customer service requirements.

The Cable Act, however, does prohibit municipalities from requiring or regulating specific video programming offered by operators.

The Municipal Role

Local regulation is mainly accomplished through the municipal cable franchise or license. Because of the increasing deregulation of the cable industry, the local franchise has become increasingly important. A

Rates Frozen By Contract

On February 11, 1988, the Massachusetts Supreme Judicial Court, in *Town of Norwood v. Addams-Russell Co., Inc.*, upheld the right of a community to enforce a contractual rate freeze. In the decision, the court described a contractual rate-freeze as a "time-limited provision in a license," as opposed to rate regulation *per se*, as a community "attempting to fix, or control permanently, the rates of an already existing cable system." This is potentially a very important decision because it is the first time that a Massachusetts court has defined the terms "rate freeze" and "rate regulation" and found an important difference between the two. An unresolved issue remains the length of time that a contractual rate-freeze may be enforced. The law explicitly allowed for an interim rate-regulation period until December 30, 1986. In its decision, the court recognized the enforceability of that period but was silent on whether the freeze could extend past that time.

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comprehensive and effective license can be of immeasurable help in protecting consumer rights, guaranteeing residents the right to produce and receive local programming, and providing cable service to all residents. The local franchise can contain specific requirements, as long as they do not contradict explicit federal and state laws and regulations. Areas open to contractual requirements include certain system design issues, consumer rights, local access programming, contractual remedies, and reporting requirements. It is therefore essential for the community to fully understand its rights and to negotiate an effective, comprehensive license agreement. One bit of advice: the municipality should draft the license agreement itself. A fran-

Cable Aid

Two sources of accurate and up-to-date information exist today for local officials with cable-related questions or problems. The first is the Cable Commission, located in Boston, (617) 727-6925. The second is the Massachusetts chapter of the National Association of Telecommunications Officers and Advisors, located in Boston, (617) 725-3112. This organization represents the interests of municipalities and aims to keep local officials informed of developments in the cable communications and telecommunications fields.

chise agreement drafted by the operator will almost certainly benefit the operator, not the community, in a number of key areas.

In particular, local officials should take advantage of the opportunities that exist at the renewal stage. While some would argue that the Cable Act has placed severe confines on com-

munities during renewal, the opposite is more accurately the case. Indeed, communities have a rare opportunity during the renewal process to ensure that renewal will be granted only if the operator builds and operates a system that optimally serves the subscriber.

June 2, 2014

Fairhaven Board of Selectmen
Town Hall
40 Center Street
Fairhaven, MA 02719

Re: Aquaculture License Renewal - Potential Environmental Hazard / Use of site as
Dumping Ground / Junk Yard

Dear Selectmen,

Attached please find two separate correspondence, this one with attached current pictures and one I hand delivered to Executive Secretary Jeff Osuch and Building Inspector Wayne Fostin in September of 2010. I represent a number of Fairhaven and more specifically West Island taxpayers and residents whom are concerned with the hazards of items dumped on the grounds at 53 Goulart Memorial Drive / Causeway Street adjacent to the Town owned public landing (Hoppy's Landing) and the condition of the building and site.

As stated in my previous letter the site has become a dumping ground for the tenant/land owner who to our knowledge is also the party which is seeking to renew and possible expand his lease of 35 acres of aquaculture off West Island in the public waters. As you will see from the pictures I took Sunday June 1st from Hoppy's landing (attached to this letter) the conditions of the site not only hasn't improved but is getting worst. The building roof is now severely deteriorated which I'm sure has created other structural issues, but that is for the Building Commissioner to determine. The site now has a number of 40 foot storage containers all within 100 feet of the coast line. Netting which was on site in 2010 is still on site and additional materials have been dumped onto the site. Hundreds of buoys are piled up, scallop shells have been dumped in piles, pallets and other wood is covering the site. In addition the owner has placed other items on the site, large float/docks and an old lift truck. I assume most of the materials specifically the netting is no longer usable as it has been left to rot in the sun for many years. If the items are no longer usable which appears to be the situation, then a legal disposal option should be utilized as a good business practice and good business neighbor.

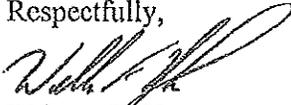
I appreciate the efforts of Mr. Osuch and Mr. Fostin whom met with the owner back in 2010 and he did bring in a couple of dumpsters and removed the materials that had spilled over to the shoreline along with some other debris. However, this hardly made a dent in the volume of materials on the site. I realize it is cheaper to use the site as a dumping ground rather than properly dispose of the old materials, I have been told there is a recycling process available to the site owner for old fishing gear but again it is not an option he has been willing to avail himself of.

If the Island takes a direct hit from a major storm in the future it is certain that much of this material will be pulled out to sea causing an environmental hazard for sea life and a safety hazard for boaters, swimmers, and others. We continue to question the placement of structures, whether "temporary" or not within 100' of the shore line without town approval.

We respectfully request that the Selectmen hold off on granting an extension of the aquaculture lease and use whatever resources are available (Building, ConCom, ZBA), including involvement of state agencies to clean-up this serious environmental hazard before it's too late. We believe that as the owner/tenant is licensed by the Town to use public waters for his business activities from which these materials come, there is an opportunity for the Town to withhold this license if he refuses to properly dispose of his materials and clean-up the site and that any extension of the lease should include language in it to require him to keep the site clean.

I will attempt to be at your meeting on June 9th but I currently have a conflict with another board in Foxborough on the same night. I would appreciate it if you would include these letters and pictures which document our concerns into your minutes.

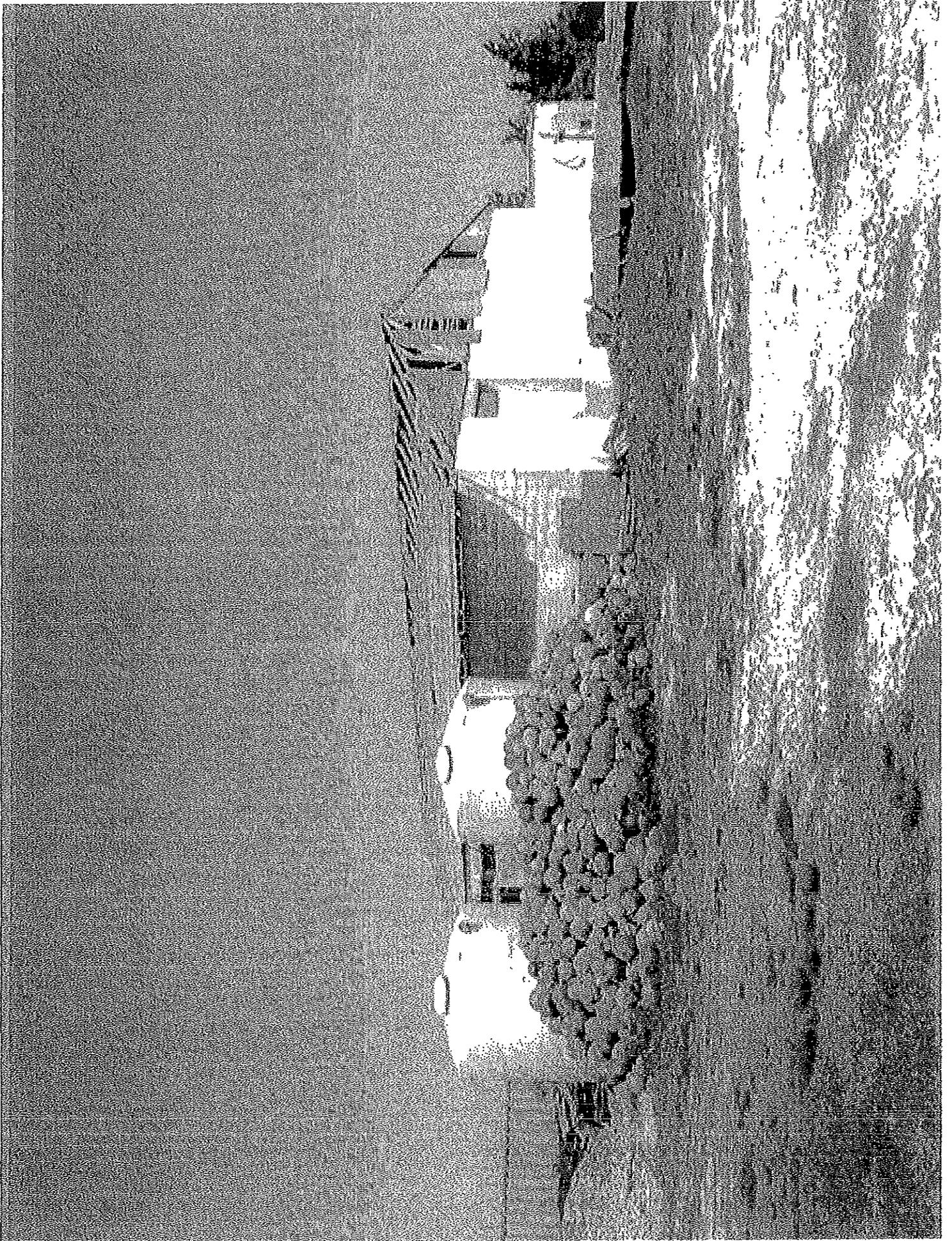
Respectfully,

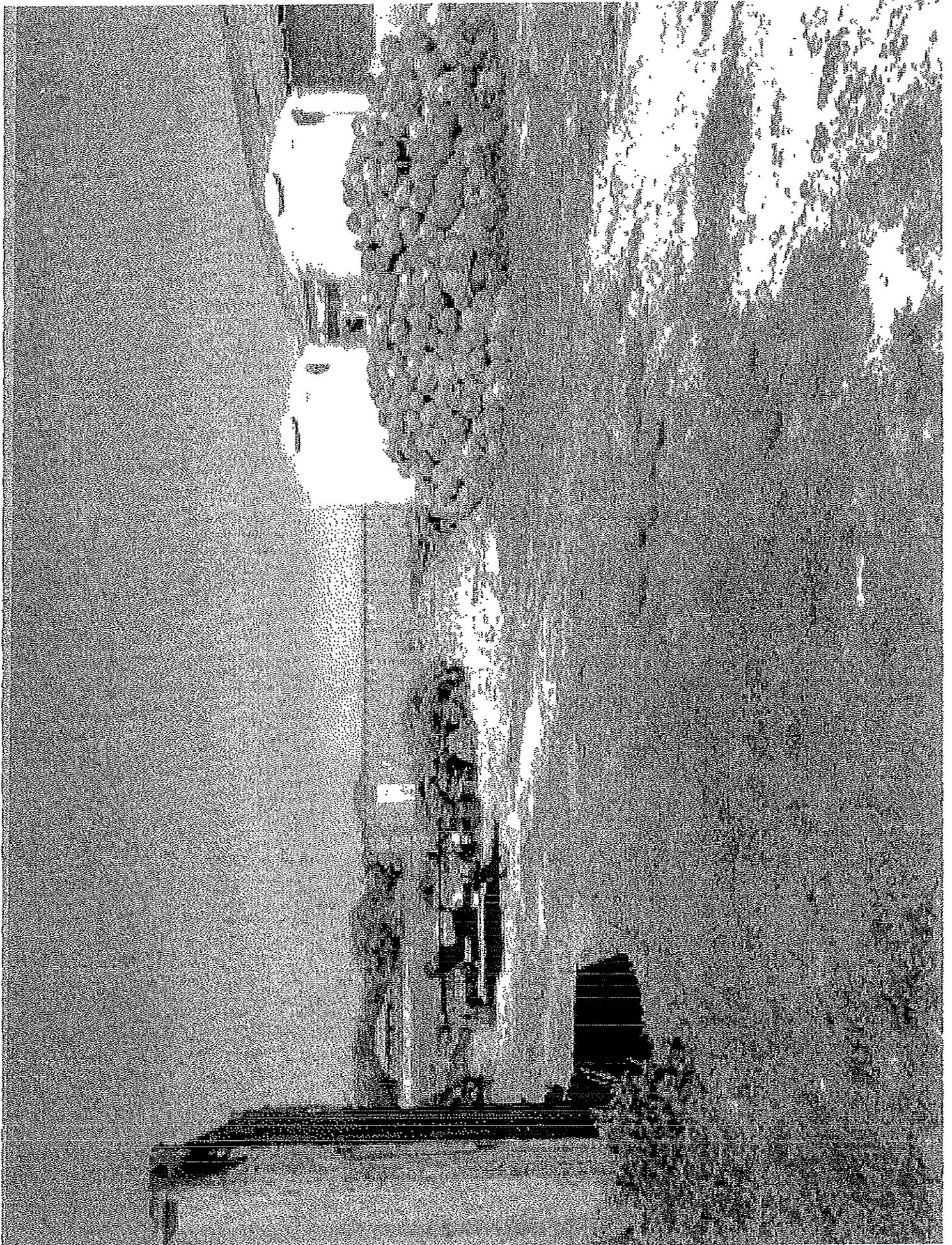


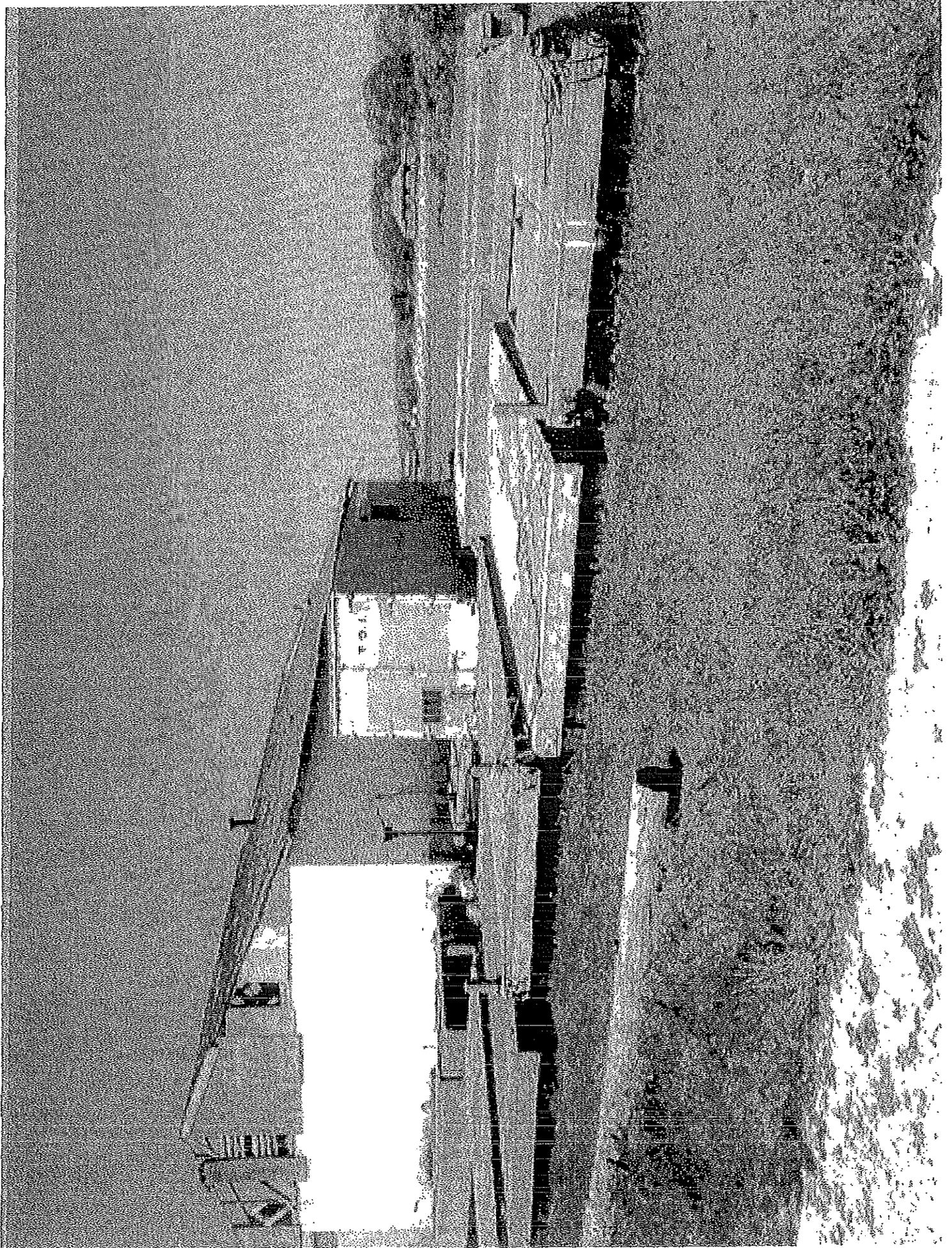
William F. Yukna
160 Balsam Street
Fairhaven, MA

Cc: Jeff Osuch -- Executive Secretary

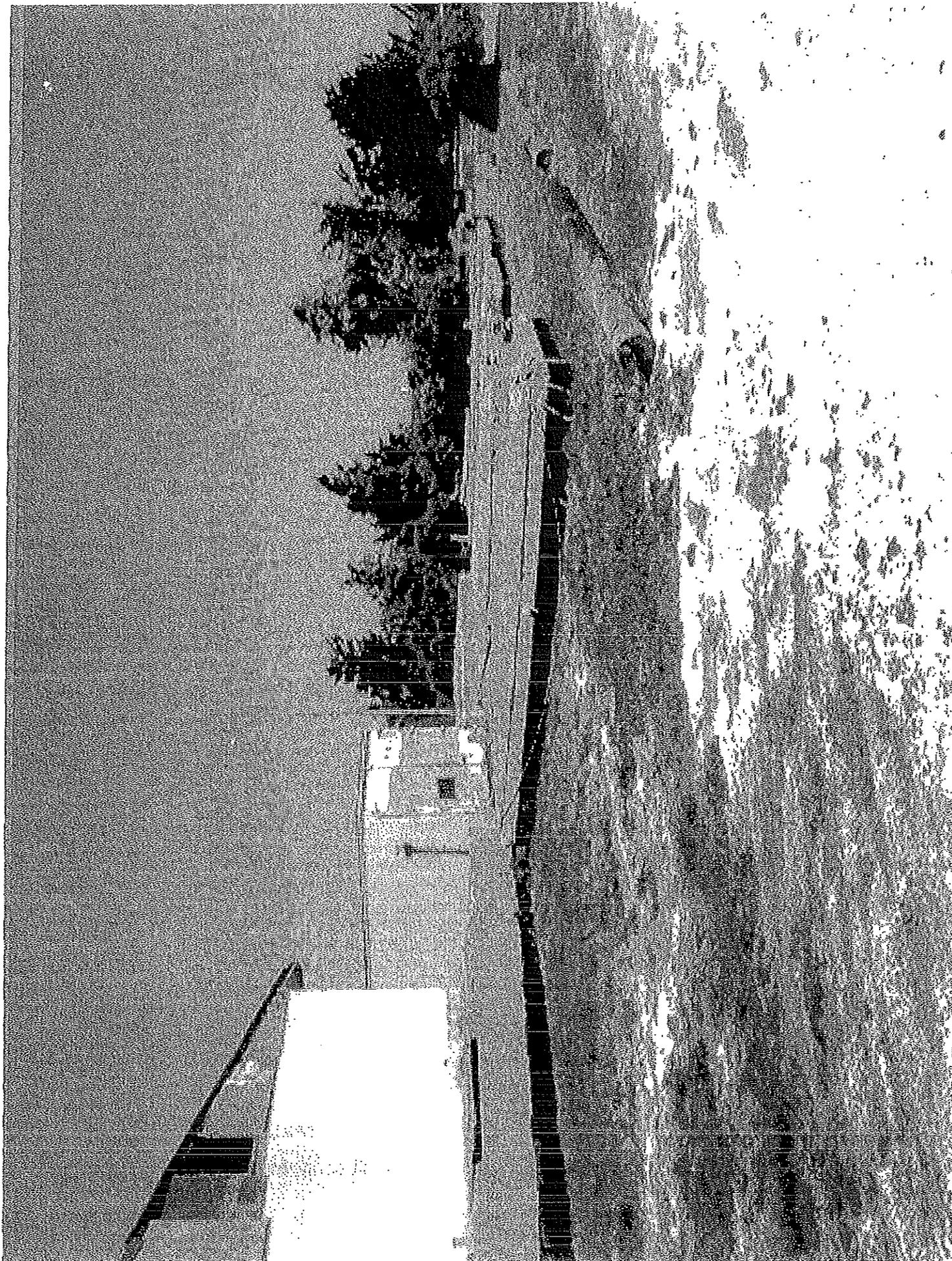
Wayne Fostin -- Building Commissioner

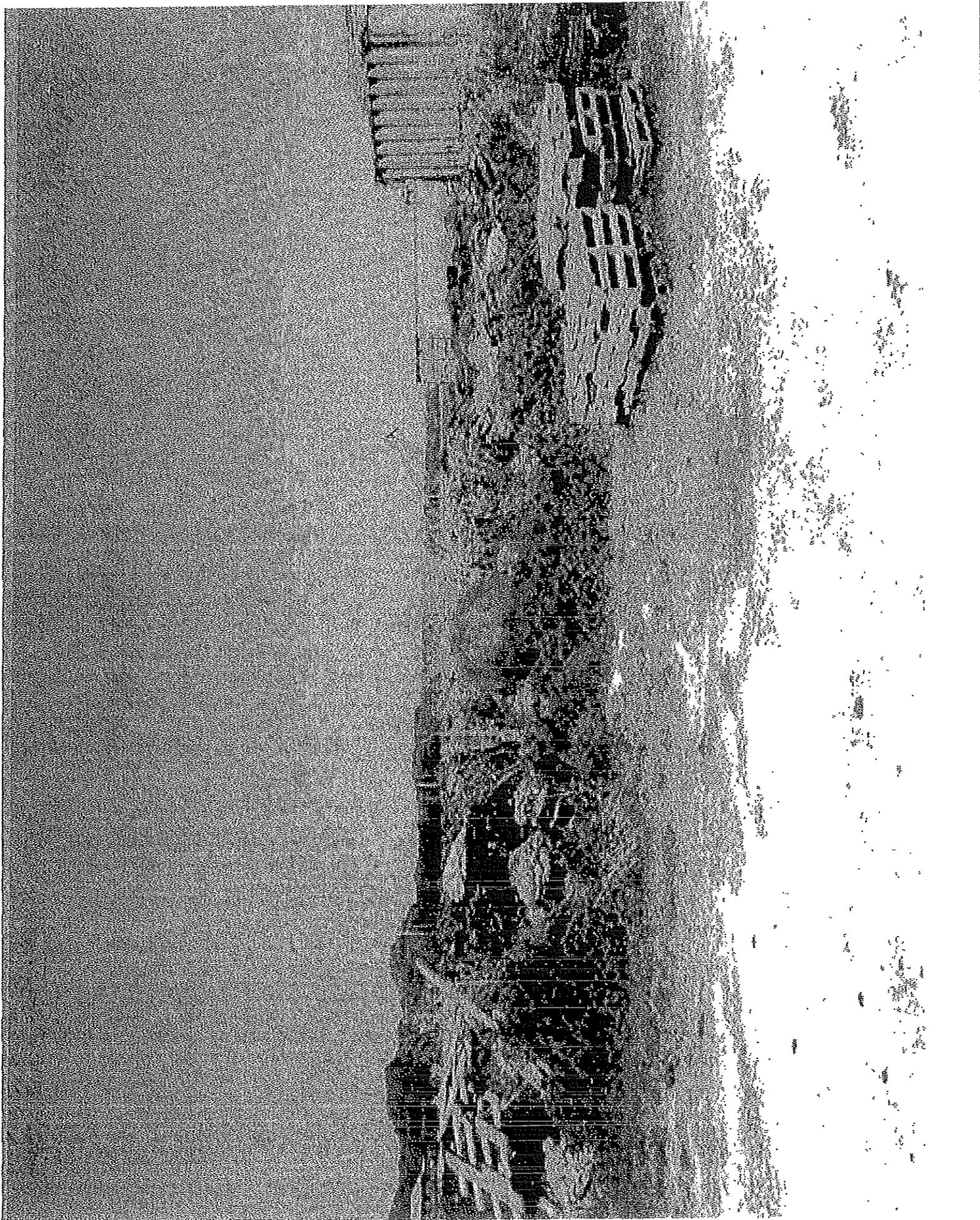
















Robert Espindola, Chairman
Geoffrey A. Haworth II
Charles K. Murphy

Town of Fairhaven
Massachusetts
Office of the Selectmen

40 Center Street
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July 7, 2014

Ms. Karen Van Unen
Executive Office of Health and Human Services
Department of Public Health
Bureau of Health Care Safety and Quality
Medical Use of Marijuana Program
99 Chauncy Street, 11th Floor
Boston, MA 02111

Ms. Van Unen:

On behalf of the residents of Fairhaven, we are writing to express our great concern and disappointment with the Department's decision to deny to Compassionate Care Clinics (Brighton Health Advocates) a license to operate a registered marijuana dispensary in our community.

Our town boards, numerous individual town employees, town department heads and our Town Meeting spent countless hours developing a collaborative relationship with the principals of Compassionate Care Clinics (CCC) and have a very good sense of their personal and professional integrity and are committed to the core mission of helping patients struggling with difficult and debilitating illnesses.

The Department's denial letter is at odds with what we believed was a collaborative process between the applicant, the host community and the DPH. Had this been a collaborative process, the Department would have worked with its successful Phase 2 applicants to help them resolve remaining issues and build an even stronger relationship with their host communities.

Based on the "green light" given by the Department, CCC executed a building lease, started its build-out and even began a process to create additional space as the dispensary began to expand its patient base. Our town boards and town employees were directly involved in all of that activity.

CCC principals attended weekly board meetings and answered every question put to them. They met with local police and fire departments to get their input on operational fire and safety issues and won both of those department's endorsements. They collaborated with the planning board to get zoning approval for an RMD in Fairhaven, which was overwhelmingly approved by the residents of Fairhaven in the special town meeting.

The process you set into motion under this law puts a tremendous burden on those communities willing to invest in an applicant. We did so because we believed – and continue to believe – in CCC and the company's leadership. We were convinced that this would be an asset to this community and that CCC's non-profit model would disperse as much as 35 percent of its net income for community drug and alcohol

Compassionate Care Clinics

July 7, 2014

- Page 2-

education, a pledge that they made publicly. That is not a company diverting excessive profits away from the community or the non-profit entity.

We would like to request a meeting with your senior staff and a representative of our town to ask that the Department work with CCC to cure those outstanding issues to the Department's satisfaction and then reverse the Department's decision. We have a very strong applicant and a future business in CCC and we want them to become a part of this community.

Thank you for your consideration.

Sincerely,

Robert Espindola
Fairhaven Board of Selectmen
Chairman

The Board of Public Works is requesting to utilize 1.85 acres of the property (back portion) at 124 Alden Rd as the site for the new recycling center.

Currently, the Town accepts the following items, at the listed associated costs:

1. Brush and yard waste; leaves, grass, branches, brush no greater than 12" in diameter, 4' maximum length. Branches and brush must be kept separate and put in a separate pile.

2. Curbside Recycle Items

3. Items with FREON:	\$20.00 each
(Air Conditioners, Refrigerators, Freezers, Dehumidifiers)	
Microwaves:	\$20.00 each
Televisions, Printers, Scanners, Stereos, Fax Machines, VCR's, Computers, Monitors, Main Frames	\$20.00 each
Propane Tanks	\$20.00 each
Oil	\$.25 per gallon
Oil Filters	\$1.00 each
Tires (no rims)	Car: \$2.00 each
	Truck: \$10.00 each
	Tractor: \$30.00 each

4. Keyboards, Mouse, Speakers, Telephone Equipment and batteries.

Currently the Town sells the following permits, at the listed rates

\$5.00 - Senior Citizen

\$20.00 – Resident

\$100.00 – GVW 10,000 – 19,999 lbs.

\$400.00 – Commercial Landscapers and vehicles

GVW 20,000 – 35,000 lbs.

NO vehicles or containers weighing 35,000 lbs +

NO vehicles or containers over 15 cubic yards.

NO Out of Town Landscapers

Based on the above, Table lists the Town’s receipts

Table 1 RECYCLE RECEIPTS

MONTH	CENTER	PERMITS	MARTIN/MID CITY	DEPOSIT	TOTAL
July 2013	865.50	1,320.00		2,185.50	2,185.50
August 2013	1,082.00	1,210.00	1,000.00	3,292.00	5,477.50
September 2013	703.00	570.00	429.29	1,702.29	7,179.79
October 2013	674.25	395.00		1,069.25	8,249.04
November 2013	771.50	280.00		1,051.50	9,300.54
December 2013	385.75	955.00	1,009.69	2,350.44	11,650.98
January 2014	180.00	1,140.00		1,320.00	12,970.98
February 2014	68.00	680.00	400.00	1,148.00	14,118.98

March 2014	90.50	4,920.00		5,010.50	19,129.48
April 2014	1,139.50	10,255.00	1,911.17	13,305.67	32,435.15
May 2014	897.25	5,855.00		6,752.25	39,187.40
June 2014	582.00	1,975.00	847.55	3,404.55	42,591.95
TOTALS	7,439.25	29,555.00	5,597.70	42,591.95	

With the added footprint of 1.85 acres of recycling, the Town proposes to accept the following, and to provide the following services, in addition to the above. Further, greater than 50% of the parcel will be available so that the Select Board may entertain RFP's from private concerns.

- Footwear, Cell Phones, Backpacks, Purses, Baseball Hats, Belts, and Printer Ink Cartridges
- **Clothing:** shirts, pants, belts, socks (singles ok), undergarments, scarves, blankets, sheets, plush toys, curtains/draperies, ties, pillow cases, pillows, purses. Ripped clothing is fine, but wet/moldy material is not acceptable
- Fluorescent lamps: spiral (also, called compact fluorescent), 4 feet, 8 feet, u-shaped, circular
- Cardboard (Cereal, pop, beer, and shoe boxes)
- Sorted Office Paper

- Newspaper
- Magazines
- Hardback Books
- Metal
- Scrap Metal:
- Used Antifreeze
- Appliances (no Freon containing) – Furnace; Stove; Microwave; Dishwasher;; Washer; Dryer; Water Heater
- **PICK-UP SERVICE AVAILABLE** – Public Works is working on the logistics of offering a *pick-up service of large items for residents, in accordance with the following.*
 - Cost:**
 - Pick-up \$ 25.00
 - Disposal \$ 15.00 per item
 - \$ 15.00 for items containing freon (Refrigerators, air conditioners & dehumidifiers)
 - \$25.00 per piece for mattresses and box springs
 - All items must be in the driveway or easily accessible.
- **Mulch available;** Public Works is planning to chip delivered brush and combine this product with organic material for sale to residents at a substantial savings

Additional (initial) estimated revenue streams..\$35,000

- Fees (more permits sold)
- Items collected (white goods, etc.)
- Tipping fee savings at SEMASS
- Pick-up service (if/when)
- Mulch (if/when)
- Savings on Rubbish Contract Bulky Item pickups (if/when)

Additional (initial) estimated expenditures..\$23,000

- Labor costs (increased hours)
- Roll offs (extra ones needed)
- Printing (additional recycling stickers)
- Portajohns
- Brush chipping (assumed extra)

Estimated Revenue to Town = \$12,000

The initial projections are modest in regards to revenue increase, yet true to expenditures. Therefore, the estimated net gain of \$12,000 per year, we believe, is a minimum projection.

The above program also doesn't include the below suggested future recycling incentives such as:

- Frequent recyclers (tracked) will receive free mulch or some other item (TBD)
- For every \$100 spent in recycling fees (not including the permit), Public Works will reduce the following year's permit fee by 5%
- There will be more incentives as program progresses.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 1
 5 POST OFFICE SQUARE, SUITE 100
 BOSTON, MA 02109-3912

URGENT LEGAL MATTER - PROMPT REPLY NECESSARY
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

June 19, 2014

Jeffrey Osuch, Executive Secretary
 Board of Selectmen
 Town of Fairhaven
 40 Center Street
 Fairhaven, MA 02719

RECEIVED
 2014 JUN 27 A 11:01
 BOARD OF SELECTMEN
 FAIRHAVEN MASS

Re: Request for Access to Property
 Beach Street, Map 17, Lots 5, 6 and 7; Rear Beach Street, Map 19, Lot 16; and,
 Rear Sycamore Street, Map 20, Lots 1-4, 24-26 and 323-326; Fairhaven, MA 02719

Mr. Osuch:

The United States Environmental Protection Agency ("EPA") respectfully requests permission for EPA, its agents, contractors, and other authorized representatives to have access to your properties located at Beach Street, Rear Beach Street and Read Sycamore Street, Fairhaven, MA 02719. The properties are further defined at the Town of Fairhaven Assessor's Office on Map 17, Lots 5, 6 and 7; Map 19, Lot 16; and Map 20, Lots 1-4, 24-26 and 323-326.

EPA requests access to the property in order to investigate, remediate, monitor and/or install control measures during EPA's performance of the remediation of the New Bedford Harbor Superfund Site, located in Bristol County, Massachusetts ("the Site"). Access is necessary to abate the potential danger to public health and the environment posed by the release of hazardous substances, in particular polychlorinated biphenyls ("PCBs"), at the Site. PCBs were once widely used in the electronic industry, but are now banned as a probable human carcinogen. The 18,000-acre Site extends from the shallow northern reaches of the Acushnet River estuary, south through the commercial harbor of the City of New Bedford, and into 17,000 adjacent acres of Buzzards Bay. EPA's cleanup of the Site requires the removal of sediment in the harbor and certain shoreline and wetland areas that are contaminated with PCBs above cleanup criteria. Fish, lobster, quahog and other seafood from New Bedford Harbor and the Acushnet River contain high levels of PCBs, and EPA and the Massachusetts Department of Public Health have issued seafood consumption restrictions to protect public health. For more information about the New Bedford Harbor Superfund Site, please see EPA's website at: www.epa.gov/nbh.

In order to conduct the cleanup, a variety of work is required on properties impacted or potentially impacted by the cleanup and/or that are adjacent to impacted areas. Examples of initial activities that may occur include land surveying, sampling activities, wetland delineation and archeological investigations. Further, access to your properties may be required in order to access contaminated areas. EPA will contact those property owners whose properties will be



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

CONSENT FOR ACCESS TO PROPERTY
New Bedford Harbor Superfund Site

OWNER: Town of Fairhaven

ADDRESS: Beach Street, Rear Beach Street and Rear Sycamore Street, Fairhaven, MA 02719
Map 17, Lots 5, 6 and 7; Map 19, Lot 16; and Map 20, Lots 1-4, 24-26 and 323-326

I (We) consent to the officers, employees, agents, contractors, subcontractors, consultants, and other authorized representatives of the United States Environmental Protection Agency ("EPA") entering and having continued access to the above-referenced properties for the following purpose(s):

- to install and operate air monitoring stations, as necessary;
- to allow equipment access for use on the property and/or access to the shoreline;
- to collect sediment, soil, and air samples from the property, as may be needed;
- to mitigate exposure to Site-related hazardous substances, including removal and disposal of sediment, soils, or other media contaminated above EPA's cleanup criteria, as necessary;
- to survey the property to establish property boundaries and ground elevations;
- to erect fencing, signage, and/or visual markers, as appropriate, to restrict and prevent exposure to contaminated sediment, soil, or other media;
- to remove and/or relocate obstacles that may interfere with the excavation of sediment, soils, or other media, as necessary;
- to perform wetland delineation and/or a cultural resources survey, including digging test pits, if required;
- to conduct other work and activities incidental to performing the investigation and remediation of the New Bedford Harbor Superfund Site;
- to return the property to the original condition, to the extent practicable; and,
- to take any other response actions, or evaluate the need for other response actions, related to the investigation and remediation of the New Bedford Harbor Superfund Site, as needed.

EPA will give reasonable notice before conducting the above activities unless an emergency arises for which immediate access is necessary. Access to the properties is required throughout EPA's performance of the remediation of the Site.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

Consent for Access to Property: New Bedford Harbor Superfund Site
Beach Street and Rear Beach Street, Fairhaven, MA 02719
Map 17, Lots 5, 6 and 7; Map 19, Lot 16; and Map 20, Lots 1-4, 24-26 and 323-326

LESSEE IDENTIFICATION

Please fill out completely for each lessee at the above listed properties.

Lessee Name: _____
Contact Person:(if
different) _____
Address _____
Phone : _____

Lessee Name: _____
Contact Person:(if
different) _____
Address _____
Phone : _____

Lessee Name: _____
Contact Person:(if
different) _____
Address _____
Phone : _____

Lessee Name: _____
Contact Person:(if
different) _____
Address _____
Phone : _____

Please attach additional pages as necessary.