

Fairhaven Board of Health
Monday, August 24, 2020 – 3:30 pm

Present: Chairperson, Peter DeTerra; and Board Members Michael Ristuccia and Geoffrey Haworth all attended in the Town Hall Banquet Room. Interim Health Agent, Sarah Dupont, Town Counsel, Tom Crotty; Health Agent, Mary Freire-Kellogg; and Health Inspector, Daniel Shea were also attendance. Members of the public, and Attorney Beauregard, were in attendance via the Zoom platform.

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1. Call to Order:

Mr. DeTerra called the meeting to order at 3:36 pm.

2. Welcome and Meeting Notification:

Mr. DeTerra read off the notice regarding Gov. Baker's statements in regard to remote meetings still serving as public hearings and fulfilling Massachusetts Open Meeting Laws. Mr. DeTerra said that the meeting was open to the public, but there would be no public comment. Ms. Freire-Kellogg said that she was recording the meeting.

3. Minutes of Meetings:

Mr. Haworth asked the chair to speak on the matter of the meeting minutes. Mr. Haworth stated that Word files for the meeting minutes for the May 28, June 11, June 18, July 9, July 10, July 16, July 28, and potentially July 30th meetings have been deleted off of the server. Mr. Haworth added that the PDF files were altered at 9:30 at night from an unknown source and that the department is working with IT to determine what has been changed in the meeting minutes and trying to get the backup files. Mr. Haworth said that someone has accessed the files when they shouldn't have and altered the meeting minutes. He recommended that until such time that the department can determine what has happened to the minutes, they should hold these meetings due to tampering of the minutes. Mr. Haworth shared that the August 6, and August 10th meeting minutes have not been tampered with. Mr. Ristuccia asked Mr. Haworth how someone gets into those computer files? Mr. Haworth stated that IT has told him that based on the modification times that the files were most likely accessed remotely because it was done at 9:30, 8:30, 9:41 at night on August 4th, August 5th. Mr. Haworth shared that he has a file with this information in the Board of Health office. Mr. Ristuccia asked if you need a passcode to get into that. Mr. Haworth replied that you need access to the Z drive, so someone had to have had access to the town's mainframe and that from what he understood Ms. Dupont did not get access until August 10th. Ms. Dupont confirmed this was the case. Mr. Haworth said that he got access after that and that the department is still working with IT in finding a resolution. Mr. Haworth added that Town Counsel was aware of the situation. Mr. Haworth made a motion to approve the August 6, 2020 minutes. Mr. Ristuccia seconded the motion. The vote was unanimous to approve the August 6, 2020 minutes. Mr. Haworth made a motion to approve the August 10, 2020 minutes. Mr. Ristuccia seconded the motion. The vote was unanimous to approve the August 10, 2020 minutes.

4. Health Agent Report/COVID-19 Update:

Ms. Dupont shared that as of Wednesday August 19, 2020 there were 6 active cases in town as defined as a case within the last 14 days and that the total case count for the year was 254 cases. Ms. Dupont wanted to reiterate to the public that the limit for outdoor gatherings is 50 people, for indoor gatherings in 25 people and to continue to wear masks, practice social distancing, and washing their hands regularly. Ms. Dupont added that cases are starting to rise a little in the state and in the town. Ms. Dupont shared that they are trying to update the website every Thursday with the new case counts.

5. Pay for Board Members:

Mr. Ristuccia stated that as of right now he does not want to be paid for his work on the board and that he only wants to serve as an elected official, not as a town employee. Mr. Haworth had no objections to Mr. Ristuccia opting out of pay and stated that he has not come to a decision about that himself yet. Mr. Ristuccia motioned that at this time until further notice Mr. Ristuccia is not to be paid for his work on the Board of Health. Mr. Haworth seconded the motion. The vote passed unanimously.

6. Opening Meeting Law Complaint Discussion- Meetings of July 9, July 16, July 28, August 6:

Mr. Haworth stated that the open meeting law complaints were forwarded over to Town Counsel and that everyone has his response in their packets. Attorney Crotty stated that if the Board is satisfied with his proposed responses, they can adopt them and appoint anybody to formalize the response in the form of a letter. Attorney Crotty added that it could be him, anybody on the board, Ms. Dupont that it didn't matter. Attorney Crotty stated that in his email he referenced the fact that on tonight's agenda that the meetings minutes from May 28th to date were to be reviewed, so that a note to that response would be needed due to the computer issues preventing minutes from being approved. Mr. Haworth stated that he thinks that was a good response. Mr. Haworth confirmed with Attorney Crotty that they do not need to read the complaints in open meeting. Attorney Crotty added that because his email is being considered in meeting it becomes part of the record and will need to be attached to the minutes so that the public gets access to it. Ms. Dupont stated that meeting minutes go online once approved. Mr. Haworth said that a copy of the email can be made available. Mr. Haworth motioned that the Board issues a response in the form of Attorney Crotty's email, while adding the note that we have a computer issue for those meetings May 28th through July 30th and that they will remain on the agenda until they are approved. Mr. Ristuccia seconded the motion. The vote passed unanimously.

7. Marina Permits

Mr. Haworth stated that it appears that most of the marinas in town have been operating without permits all of this season and some of them last season. Mr. Haworth added that the department became aware of it after one marina came forward asking for a marina permit. Mr. Haworth went on to say that for some reason administration

had not issued marina permits or performed marina inspections this year. Ms. Dupont stated that she had 2 marina permits on file, that one marina reached out to her so she inspected them and issued their permit after the board signed it, that another marina has been reached out to with an inspection scheduled, and that the last two will be receiving letters, requesting they renew their permits, that will go out in tomorrow's mail. Mr. Haworth stated that 66% plus of the marinas in town have been operating for the entire season without permits and it was a concern of his, so he wanted to make sure that the Board was aware of that. Mr. Haworth added that we need to address this as soon as possible and that they are operating without being inspected as they don't have permits.

8. Septic Plan Approval- 148 Shaw Rd and Request for 2 Variances:

The Board members all reviewed the plan. Mr. DeTerra stated that they are looking for 2 variances, one for percolation due to high water table analysis and one for 3 feet water table. Mr. Haworth motion to approve the septic plans for 148 Shaw Rd. with 2 variances for the water table and the percolation test. Mr. Ristuccia seconded the motion. The vote passed unanimously.

9. Food Establishment Permit- JSC New England Operating LLC DBA Burger King #4932, 180 Huttleston Ave.

10. Mr. DeTerra asked Ms. Dupont if this was due to a change in manager. Ms. Dupont confirmed that there was a change in ownership and that the establishment and the footprint was the same. Mr. DeTerra stated that everyone had their paperwork in their packet. Mr. Haworth noted that they have proper ServSafe, proper CPR, and allergen awareness, that all paperwork was in order. Mr. Ristuccia stated he had no problem with it. Mr. Haworth motioned to approve the food establishment permit for JSC New England Operating LLC DBA Burger King #4932 at 180 Huttleston Ave Fairhaven. Mr. Ristuccia seconded the motion. The vote passed unanimously. The Board signed the permit.

11. Personnel Discussion- Mary Freire-Kellogg:

Mr. DeTerra asked who would be speaking for Ms. Freire-Kellogg. Mr. DeTerra asked Attorney Beauregard if he wanted the discussion in open or executive session. Attorney Beauregard stated that it should be in open session. Mr. DeTerra said okay and that the discussion should be kept to the personnel discussion of Ms. Freire-Kellogg only. Attorney Crotty stated that, based on his discussion with Mr. DeTerra, the intention today was to reschedule this to a later date to put together a specific notice to Ms. Freire-Kellogg with regard to what the substance of the discussion will be and that in the meantime she will stay on administrative paid leave until further determination by the Board. Attorney Crotty asked Mr. DeTerra if he summarized that correctly. Mr. DeTerra confirmed he had. Mr. Haworth stated that the Board wants to make sure they do their due diligence both for Ms. Freire-Kellogg and for the town and to make sure they have all their ducks in a row for all parties involved. Mr. Ristuccia agreed. Attorney Beauregard asked what the reason was for the paid administrative leave. Attorney

Crotty spoke on behalf of the Board and stated that right now there is an interim health agent and Ms. Freire-Kellogg has asked to be reinstated to her position so there are two health agents and the Board needs to decide where to go at this point with that transition. Attorney Beauregard stated that he did not agree with that characterization and that there is one appointed health agent by the name of Mary Freire-Kellogg who has been on the job for almost 3 years. Attorney Beauregard referenced the other Town Counsel's report. Mr. Ristuccia said he could continue so long as he stays on topic. Attorney Beauregard stated that Ms. Freire-Kellogg is subject to the personnel procedure of town, which falls under the Town Administrator. Attorney Beauregard added that an acting health agent was hired on the basis that Ms. Freire-Kellogg was on a sick leave that was for a predicted specific period of time. Attorney Beauregard stated that she has returned to work in that period of time and that she is perfectly capable even by medical clearance to resume her duties as Board agent. Attorney Beauregard asked on what basis there is to penalize Ms. Freire-Kellogg at this point with paid administrative leave. Attorney Crotty asked if Mr. DeTerra wanted them to debate back and forth right now and Mr. DeTerra said no, no debate. Mr. Ristuccia stated that according to the papers and Facebook he allegedly screamed at Ms. Freire-Kellogg in the office. Mr. Ristuccia emphasized allegedly as he had someone sitting outside the office listening to the conversation. Mr. Ristuccia stated that he chose someone of great moral character- Selectman Keith Silvia. Mr. Silvia called the Town Administrator expressed his disgust for the things he saw on Facebook regarding the meeting. Mr. Silvia wrote a letter, as a taxpayer not in his Selectman capacity, detailing what he observed. Mr. Ristuccia read the letter in its entirety. Mr. Ristuccia shared that he is very upset and that he is seeking personal legal counsel. Mr. Haworth stated that he is probably the most neutral party on the Board as he walked in on this and that he has been trying to keep an open mind and look at this from all aspects. Mr. Haworth said this is no accusation to anybody, but someone accessed the minutes; he does not know if it was Ms. Freire-Kellogg, Mr. Shea, Ms. Blais only that is someone who has access to the server from the Board of Health. Mr. Haworth added that until they find out who did that and then we have things like marina permits that haven't been issued this season which should have been done back in May, June so if you want a reason these are the things we are looking at. Mr. Haworth stated that he is sure Ms. Freire-Kellogg is a good health agent and added that he is just looking at the facts and the facts are there are a few problems right now and until they are resolved he doesn't see how it is detrimental to Ms. Freire-Kellogg to stay on paid leave. Mr. Haworth said he needs more time as a Board member to decide how he is going to vote and handle this situation because he wants to be fair to Ms. Freire-Kellogg, the residents, and to the Board. Mr. Haworth motioned that Ms. Freire-Kellogg will go on administrative leave until such time that the Board. Mr. Haworth paused and asked Town Counsel for help on the motion. Attorney Crotty suggested making a date for a hearing on the matter as part of the motion, with respect to putting together whatever notification needed for Ms. Freire-Kellogg, and a designation of which Board member will write that up. Mr. Haworth stated he wants Ms. Freire-Kellogg to have ample time. Ms. Freire-Kellogg asked if she could speak about what happened Tuesday and Mr. Haworth said he thinks it should wait until the next

hearing. Attorney Beauregard stated that it is unfair for her to be sent home with pay and no reason. Mr. Haworth recommended Thursday September 10th. Mr. Haworth motioned for Ms. Freire-Kellogg to be placed on paid administrative leave and to have a hearing to address that administrative leave on September 10th and in the meantime he, on behalf of the Board, will get together all of the necessary documentation. Mr. Ristuccia seconded the motion. The vote passed with two votes (Mr. Haworth and Mr. Ristuccia) with one abstaining (Mr. DeTerra).

Attorney Beauregard said that Mr. Shea was present and still employed. Mr. DeTerra said that Mr. Shea was not on the agenda and this could not be spoken about. Mr. Haworth said that Mr. Shea is not on the agenda and as this Board continues to get open meeting law complaints, he personally is recommending to the Board to not address anything that is not on the agenda.

12. Invoices/Other Business

Mr. Haworth asked Mr. DeTerra if there were invoices and Mr. DeTerra said no.

13. Next Meeting

The next meeting was set for September 10th at 4 pm.

14. Executive Session

There was no executive session.

15. Adjourn

Mr. Haworth made a motion to adjourn. Mr. Ristuccia seconded to the motion. The vote passed unanimously. The meeting adjourned at 4:10 pm.

Minutes taken by Sarah Dupont, Interim Health Agent