



Fairhaven Board of Selectmen Meeting Minutes August 17, 2020

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2020 SEP 22 P 1:39

FAIRHAVEN,
MASS.

Present: Chairman Daniel Freitas, Vice-Chairman Robert Espindola, Selectman Keith Silvia, Town Administrator Mark Rees and Cable Access Director Derek Frates

Present via Zoom: Town Counsel Tom Crotty, Administrative Assistant Vicki Oliveira and Cable Production Coordinator Eric Sa and members of the public.

The meeting was videotaped on Cable Access and Zoom meeting application.

Chairman Freitas opened the meeting at 6:31 pm in the Town Hall Banquet Room and read the following statement:

"This Open Meeting of the Fairhaven Board of Selectmen is being conducted remotely consistent with Governor Baker's Executive Order of March 12, 2020, due to the current State of Emergency in the Commonwealth due to the outbreak of the "COVID-19 Virus."

In order to mitigate the transmission of the COVID-19 Virus, we have been advised and directed by the Commonwealth to suspend public gatherings, and as such, the Governor's Order suspends the requirement of the Open Meeting Law to have all meetings in a publicly accessible physical location. Further, all members of public bodies are allowed and encouraged to participate remotely.

The Order, which you can find posted with agenda materials for this meeting allows public bodies to meet entirely remotely so long as reasonable public access is afforded so that the public can follow along with the deliberations of the meeting.

Ensuring public access does not ensure public participation unless such participation is required by law. This meeting will allow public comment related to the posted agenda items only. For this meeting, Fairhaven Board of Selectmen is convening by telephone conference/video conference via Zoom App as posted on the Town's Website identifying how the public may join.

Minutes

Mr. Espindola made a motion to approve the minutes of June 03, 2020 – Open Session. Mr. Freitas seconded. Mr. Silvia abstained because he was not present for that meeting. Vote passed. (2-0-1)

Mr. Espindola made a motion to approve the minutes of June 11, 2020 – Open Session. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the minutes of June 30, 2020 with amendments– Open Session. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the minutes of June 30, 2020 – Executive Session. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the minutes of July 13, 2020 with amendments – Open Session. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the minutes of July 13, 2020 – Executive Session. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the minutes of July 15, 2020 – Open Session. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the minutes of July 25, 2020 – Open Session. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the minutes of July 30, 2020 – Open Session. Mr. Silvia seconded. Vote was unanimous. (3-0)

Town Administrator's Report

Mr. Rees told the Board:

Building Commissioner Kris White has given his resignation, effective Friday, August 21, 2020. Acushnet's Building Commissioner, Jim Marot will fill in as the interim agent until the position is filled with a suitable replacement.

Preparations are underway with Department Directors for the Fall Town Meeting working on the FY21 operating and capital budgets.

The State Aid will only be reduced by \$75, 000 from an earlier projection.

The Town's Superfund contact, Dave Lederer will be retiring from the Environmental Protection Agency.

Job performance evaluations for the town's non-union personnel will begin this week.

Committee liaisons

Mr. Espindola showed a presentation on the expansion of the bike path into Mattapoisett. (Attachment A)

Mr. Espindola said the Marine Resources committee is almost done with reviewing the updated rules and regulations for the waterways and will share the results with the rest of the Board upon completion.

Police Chief Myers and Police Lieutenant Dave Sobral have come up with a possible solution to help eliminate jumpers off the causeway bridge. (Attachment B)

Mr. Espindola said the Economic Development Committee met recently via Zoom and will be discussing the building department fees at their next meeting.

Mr. Espindola said the Broadband Study Committee is close to having a final report from the consultant regarding the feasibility study.

Mr. Espindola said the Town Wellness Committee met recently and discussed ways to help town employees during the COVID pandemic

Mr. Silvia said at a recent Millicent Library meeting they said the curbside pickup has been very successful. The trustees will also be searching for a replacement for Library Director, Carolyn Longworth, who will be retiring soon.

Mr. Silvia met with Planning Director Paul Foley and Mr. Rees regarding other possible suitable locations for the Dog Park.

Buzzards Bay Coalition Watershed Ride

A request by the Buzzards Bay Coalition for the 14th annual Watershed bike ride was read by the Chairman. Mr. Espindola made a motion to approve the Watershed Bike ride scheduled for October 04, 2020. Mr. Silvia seconded. Vote was unanimous. (3-0)

Election Warrant – State Primary

Mr. Freitas read the election warrant. Mr. Espindola made a motion to approve the election warrant for the State Primary on Tuesday, September 1, 2020. Mr. Silvia seconded. Vote was unanimous. (3-0)

Revisions to Fir Street parking

Mr. Freitas read a request from Public Works Superintendent to revise the no parking on Fir Street from no parking on both sides to no parking on the east side and the west side only for overflow beach pass parking. Mr. Espindola made a motion to approve the request that parking be allowed on the West side of Fir Street to comply with beach overflow parking. Mr. Silvia seconded. Vote was unanimous. (3-0)

Broadband Study Committee

A request from Stephanie Garde to join the Broadband Study Committee was read. Mr. Espindola made a motion to appoint Stephanie Garde to the Broadband Study Committee. Mr. Silvia seconded. Vote was unanimous. (3-0)

Fall Town Meeting Calendar

The Town Administrator presented the draft calendar for the Fall Town Meeting to the Board. Mr. Espindola made a motion to accept the Special Town Meeting calendar as presented. Mr. Silvia seconded. Vote was unanimous. (3-0)

Economic Development Committee membership

Mr. Rees presented to the Board an amended charge for the Economic Development Committee, to remove the Town Administrator as a non-voting ex-officio and add one more at-large voting seat. Mr. Espindola made a motion to restructure the Economic Development as outlined in the memo dated August 14, 2020. Mr. Silvia seconded. Vote was unanimous. (3-0)

CDBG Public Hearing- Hedge Street Phase 2

Chairman Freitas opened the public hearing at 7:00 pm. Mr. Rees read the public hearing notice that was published in the newspaper on July 30, 2020. Breezeway Farms Consultant Linda Overing and GCG Associates Engineer Mike Carter were in attendance via Zoom to answer any questions regarding the project's progress. Ms. Overing explained the public hearing is a requirement of the Community Development Block Grant (CDBG) while the project is ongoing to allow the public the opportunity to comment. Mr. Carter said the contractor put in new drains and upgraded the sewer lines, they will be working on the sidewalks in September and should have phase 2 finished by October 2020. Prior to Phase 3 starting the Board of Public Works will hold a meeting with the neighborhood to gather their input. Ann Richard, 46 Hedge Street felt the project has been going fine but was disappointed to lose a large tree that was too close to the wires. She requested that for the next phase to save the trees on the non-wire side of the street. Jayna DeMedeiros, 80 Hedge Street, agrees with Ms. Richard about saving the trees. Diane Babbitt, 60 Hedge Street, has concerns about the cars speeding down the street once it is newly paved. Chairman Freitas will have the Town Administrator send an email to the Police Chief about the speeding. At 7:12 pm the Mr. Freitas closed the public comment portion of the hearing. Mr. Carter stated that part of the goal of this project is to save as many trees as possible and will work with the neighborhood's suggestions.

Update of Electrical Aggregation

Sustainability Committee Chairperson Ann Richard met with the Board via Zoom to share the results of the Electrical Aggregation survey. Sustainability Coordinator Whitney McClees said that over 60% of the responses said "yes" to electrical aggregation. The total number of responses was 128, with 80 in favor, 45 not in favor, and 3 didn't know. This increase would amount to about \$2/month per bill. Laura Garnder from Climate Reality Project thanked the Board for allowing their group to put out the survey to residents. She said Fairhaven is the only community that has allowed the survey to go out and has urged the Board to pass the 10% increase in renewable energy and once passed people will have the option of opting out. Resident John Methia, 3 Shawmut Street, expressed his concern about this project and feels that it has not been publicized enough for other residents to be informed. He feels that this should be an "opt in" option not the "opt out" and residents should have the right to choose for themselves. Residents Larry and Amy DeSalvatore stated that they are both in favor of this project. Selectman Espindola expressed that he doesn't want to see the Town miss this opportunity for renewable energy. Selectman Silvia feels that there needs to be more education to the public on this issue because even at \$2 a bill this could make a difference to those on fixed incomes. Selectman Freitas would like to see this on the next agenda for more discussion.

Fairhaven Shipyard

This item has been tabled until Kevin McLoughlin can be present.

Zoning and Licensing Conditions

Louie Baptiste, owner of RRR Auto met via Zoom with the Board stating that he feels certain by-laws are not being followed. He said he filed a complaint regarding former building commissioner Wayne Fostin to Mr. Rees and he felt the process took too long. Mr. Baptiste presented a copy of some photos and emails outlining his complaint. (Attachment C). Mr. Freitas suggested that he, Town Counsel and Mr. Baptiste can set up a meeting to discuss the issues and try to come to a resolution.

GNEU

GNEU Co-Presidents Heather Pimentel and Serge Moniz of the Greater New Bedford Educators Union at Greater New Bedford Regional Vocational Technical High School met via Zoom to ask the Selectmen to reach out to the Voke School Committee with their support regarding their Save Our Shops (SOS) campaign. Most recently the Voke School Board voted to close 2 shops (Fashion Design and Environmental Services) to start 2 new programs (Marine Industry and Aviation). The union feels these are 2 shops that are necessary to keep and help the community as well as the students who attend that school.

Seaport Inn abeyance

Mr. Freitas read a memo (Attachment D) from Mr. Rees stating that he has met with the manager of the Seaport Inn to discuss the past due rents for the use of town property; the Bridge Street abutment. Since the last Selectmen's meeting the Seaport Inn has continued to make up some of the past due payments and now currently has a balance of \$9,192.96. In the process of his research, Mr. Rees discovered that the lease for this property expired in 2017. Mr. Rees, with the help of Town Counsel would like to negotiate a new lease for the property. Mr. Espindola made a motion to authorize Mr. Rees and Town Counsel, Tom Crotty to negotiate with the Seaport Inn on a new lease. Mr. Silvia seconded. Vote was unanimous. (3-0)

Rogers School – next steps

Mr. Rees recently met with Selectman Silvia and Rogers School Committee member Sue Loo to discuss the next steps of Rogers School. They determined the best steps moving forward to preserve the building will be to mothball the school until a suitable use can be found. Mr. Rees has contacted Architect Stephen Kelleher and an engineer will be hired to look at the building and give their determinations. The funds for mothballing have already been put aside at a previous town meeting.

Flag/ Banner Policy

This item has been tabled to allow for more time to review.

Open Meeting Complaint

Mr. Rees told the Board that an Open Meeting Law (OML) complaint in regards to the Selectmen's agenda for June 30, 2020 stating that the agenda was not specific enough Town Counsel has reviewed the complaint and made his recommendations (Attachment E) Mr. Espindola made a motion to accept the recommendations of town counsel. Mr. Silvia seconded. Vote was unanimous. (3-0)

Roberts Rules of Order

Mr. Espindola gave the Board a copy of Robert's Rules of Order (Attachment F) and he explained his reason for asking for this is to better understand if the Board and other town boards are following the correct procedures. Mr. Silvia said he has received emails from concerned residents that other boards may not be following the correct procedures in their meetings.

Although Mr. Espindola feels the Board of Selectmen agendas are well organized he would like to recommend the agenda be formatted with a different structure and to encourage other town boards and committees to do the same.

Mr. Espindola made a motion ask Mr. Rees to review Roberts Rules and to consider changes the current agenda template. There was no second.

Mr. Rees will do some research for the next Selectmen's meeting and add this item to the agenda.

Zoning Appeals Procedures/Guidelines/Record Keeping

Mr. Freitas read a memo (Attachment G) from Selectman Espindola dated July 13, 2020 requesting that the Town use the 20 Technical Service hours allotted from SRPEDD, at no cost to the Town, to help update the policies and procedures that can be implemented to assist the ZBA, in an effort to avoid undue legal costs in the future. Mr. Espindola said he is still waiting to hear back from SSRPEDD.

Social Media Policy

Mr. Rees told the Board the Town Social Media policy has not been updated in many years. The Board would like to have Town Counsel review the policy.

Salary/Step of Interim Health Agent

Mr. Rees told the Board this issue arose because the Board of Health (BOH) members offered a Step 3 increase when recently hiring an interim health agent. Because the Town adopted a personal policy, the agent should have been hired at an entry level unless a reason warrants an increase as stated in the policy. Based on the personal policy the interim agent should have been hired at a step 2. Upon advice from the Human Resources Director, the BOH was advised to hire at a step 1. Mr. Freitas said he feels that the interim agent was hired with a Master's Degree and management experience, when there was no one in the office. He feels there needs to be a policy on how hiring is done by elected Boards. Mr. Espindola is afraid this will set a precedence even though the funds for the interim agent are coming from Federal Funds and not Town funds. Town Counsel said the personnel by-law determines salary, the Town Administrator acts as the personnel board. The Town by-law states that a person starts at step one, subject to Union Contracts. The whole purpose of the personnel by-law is to help stop boards from competing for salaries. Attorney Crotty said the hiring Board should consult with the Town Administrator because the Finance Director has to answer to the auditors through the town treasurer. Mr. Espindola understands that there is a recruiting process, the salary may have to be altered but there was not a recruiting process for this hire. Mr. Freitas feels that if the interim agent had not stepped in to help then there may not be anyone in the office to cover. It is unfair to her that she was offered the position at the rate and then it take it away. (Attachment H)

Board of Health member Mike Ristuccia told the Board via Zoom that he spoke to the State senior staff attorney, Cheryl Sbarra, who said unless the Town has a charter then the Town Administrator does not have authority over the Board of Health and that per MGL 111 Section 27 the Board of Health can set their salaries.

Mr. Espindola made a motion to follow the Town Administrator's recommendation for a step 2. There was no second.

Mr. Freitas made a motion to give the interim agent her salary she was offered (step 3). Mr. Silvia seconded. Vote carried. (2-1)

Correspondence

A letter of resignation from Suzanne Dwyer on the Broadband Study Committee was read. Mr. Espindola made a motion to accept the resignation of Suzanne Dwyer from the Broadband Study Committee. Mr. Silvia seconded. Vote was unanimous. (3-0)

A letter of resignation from Paula Medeiros on the Wellness Committee was read. Mr. Espindola made a motion to accept the resignation of Paula Medeiros from the Wellness Committee. Mr. Silvia seconded. Vote was unanimous. (3-0)

Notes and Announcements

Mr. Espindola made a motion to table a previous agenda item regarding the Department of Revenue. After some discussion Mr. Freitas told Mr. Espindola that the item would be on the next agenda in September.


Mr. Freitas said the Executive Session item I 2: Ethics Complaints pursuant to M.G.L. Ch. 30A Section 21(a)(1) was tabled per Town Counsel.

At 9:07pm Mr. Espindola made a motion to to adjourn to executive session to not to reconvene to open session to discuss: Real Estate Matter-Cherry Street pursuant to M.G.L. Ch. 30A Section 21(a)(6)

Mr. Silvia seconded. Vote was unanimous. (3-0)

Roll Call Vote: Mr. Espindola in favor, Mr. Silvia in favor, Mr. Freitas in favor.

Respectfully submitted,



Vicki L. Oliveira
Administrative Assistant
(Approved 9/21/2020)

Attachments:

- A. Bike Path presentation
- B. Memo re: Causeway jumpers
- C. Handout from Mr. Baptiste
- D. Memo re: Seaport Inn and Marina lease
- E. Open Meeting Law Complaint
- F. Memo re: Robert's Rules of Order
- G. Memo re: Zoning Appeals procedure/Guidelines/Record Keeping
- H. Town Counsel recommendation, Health Agent description and salary

Committee Liaison Reports

- Fairhaven Bikeway Committee
- South Coast Bikeway Alliance
- SRPEDD



**Fairhaven Bikeway
Committee**

@Fairhavenbikeway · Government Organization

Committee Liaison Reports

- Lois Callahan- Chair
- Mat Coes
- Bob Espindola
- Justin Gledhill
- James Anderson
- Staff support – Paul Foley



SRPEDD
Southeastern Regional Planning
& Economic Development District

\$85K Scenic Greenway Feasibility Study



\$5K Bike Ride Fund Raiser



\$10K Charitable Grant



Town of
Westport
MASSACHUSETTS

The Coastal Agricultural Resource Community of New England



\$40K Trails Grant



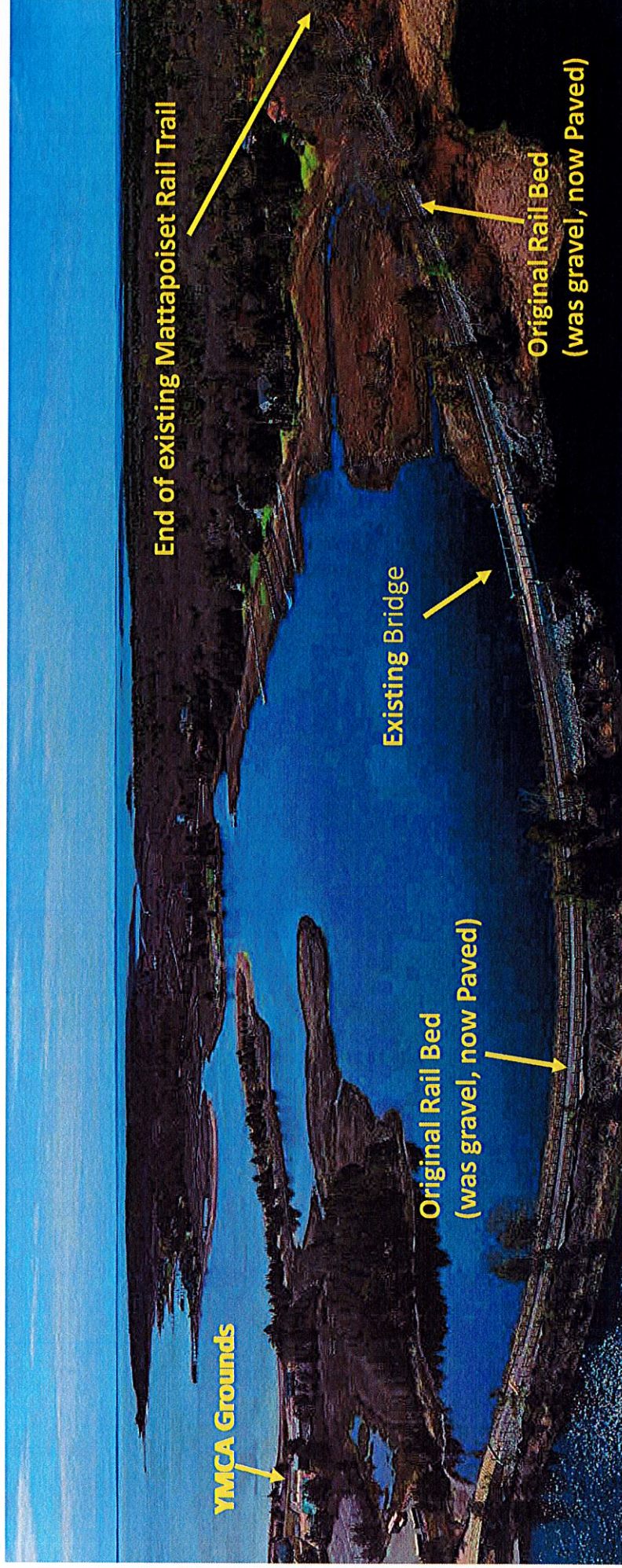
SRPEDD

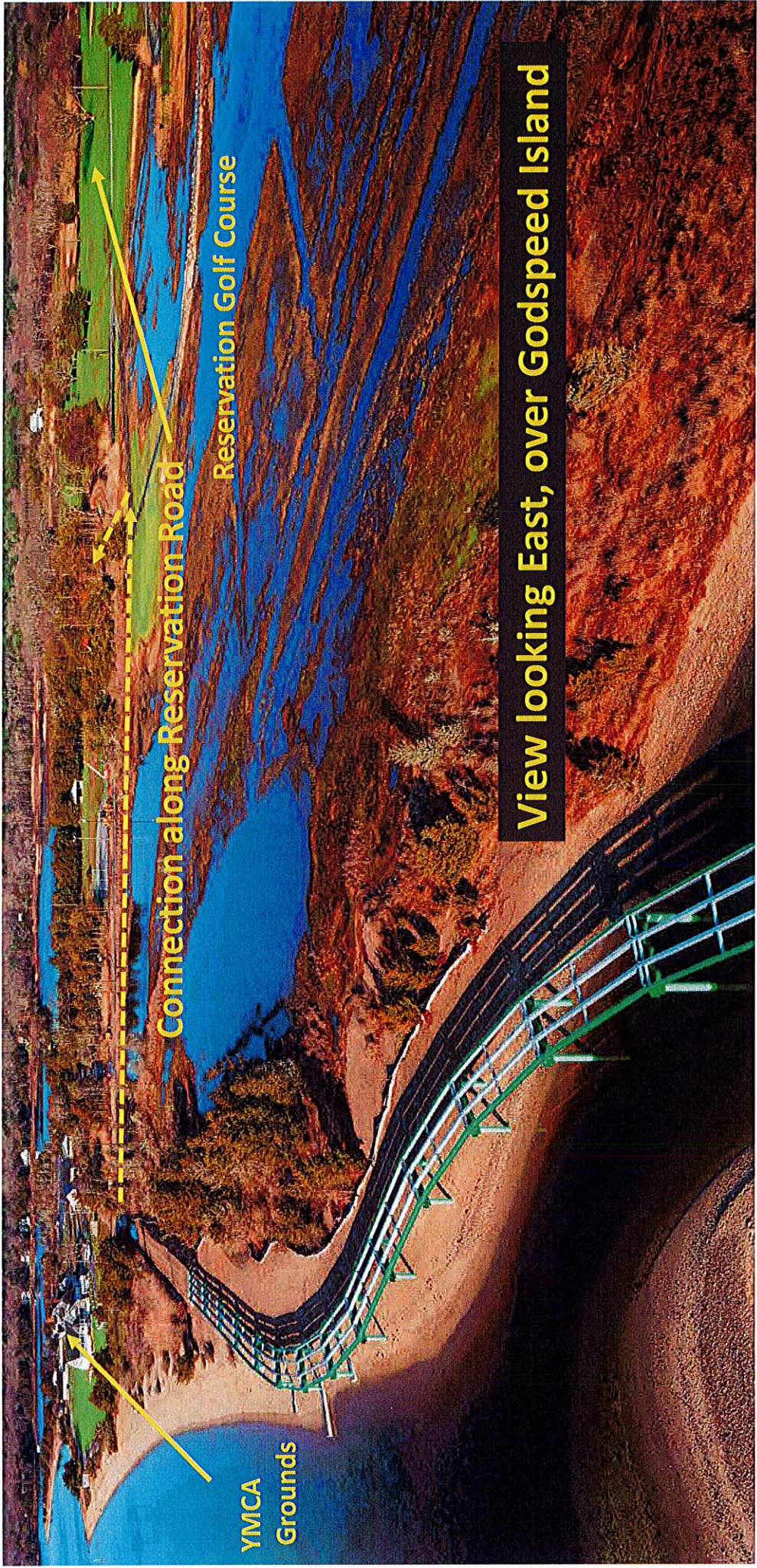
Southeastern Regional Planning
& Economic Development District
Project Management



\$10K Community Preservation Act Funds secured from Westport, Dartmouth & New Bedford
Total of \$30K in CPA Funds leveraged

Update on Mattapoissett Phase 1 B project
Panorama – looking South





Connection along Reservation Road

Reservation Golf Course

YMCA
Grounds

View looking East, over Godspeed Island

Attachment B

To: Chief Michael Myers

From: Lieutenant David R. Sobral

Re: Public Safety concerns Causeway Bridge Date: 08/14/2020

I received a memo in regards to Public Safety on West Island Causeway Bridge and the concerns that the Marine Resource Committee discussed at a meeting recently.

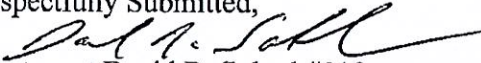
Some of the concerns are that the past two summers there appears to be more youths/adults that are jumping or diving off the Causeway Bridge then in the past. Also the type of activity which is taking place where youths/adults are in the middle of the roadway blocking the roadway at times and getting a running start doing cartwheels And other tricks off the bridge into the waters below. Other concerns are overcrowding issues on the bridge where youths/adults are not social distancing themselves from others. Also, blocking the sidewalk areas on the Causeway Bridge due to the large gatherings of youths/adults along with other items placed on the sidewalk areas (bicycles) and any other clutter on the sidewalk area which causes pedestrians to step off the sidewalk into the roadway.

The Fairhaven Police Departments short term plan for the remainder of the summer will involve placing directive patrols in the area of the Causeway Bridge and hiring bike patrols to be assigned directive patrol in the area of the Causeway. Officers that are assigned these duties will have the ability to enforce any violations which are viewed by them. The method of enforcing these violations are by a verbal warning, written warning and a non-criminal By-Law ticket (No diving, swimming, or bathing will be permitted from the Causeway Bridge and for a distance of 100 feet east and 100 feet west of the bridge). The By-Law violation fine is 100.00 dollars.

Officers will also address any issues with large gatherings or items and clutter blocking the sidewalk areas on the Causeway Bridge.

The Fairhaven Police Departments long term plan for the future will be working with the BPW in placing a fence on the south side of the Causeway Bridge railing, similar to the fencing which was designed on the north side of the Causeway Bridge. Also, to place a sign on the Causeway Bridge which will have the By-Law and the fine posted on the sign. The Fairhaven Police Department will continue to monitor and enforce any violations that occur on the Causeway Bridge and continue to assure Public Safety on West Island and through out the Town Of Fairhaven.

Respectfully Submitted,



Lieutenant David R. Sobral #019

Fairhaven Police Department.

Subject Fairhaven Getty compliance.
From RRR Auto Sales <sales@rrrautosales.com>
To Cmurphy <cmurphy@fairhaven-ma.gov>, Dfreitas
<dfreitas@fairhaven-ma.gov>, Mrees <mrees@fairhaven-
ma.gov>, Selectmanbobespindola
<selectmanbobespindola@gmail.com>
Date 2018-06-18 11:30



Good morning all,
Looks like you can cancel my request for an inspection of noncompliance issues at Fairhaven Getty. Mr. Rees, I noticed you read the email this morning, but others read it on Friday early afternoon. Seems rather coincidental that after being out of compliance every single day since the last inspection performed, now, one business day after my complaint, he is magically in compliance. He removed as many as 20 vehicles over the weekend. Unless an inspection was done between my Friday email and this morning, it's obvious that someone is warning him before an inspection is performed, unless of course, one of you ordered the inspection on Friday afternoon immediately after my email. I'm attaching the link again of his inventory which actually shows 31 available cars for sale and 14 sold. The vehicles have been moved off the property temporarily. I'll let you know when they are back.

<https://www.fairhavengetty.com/inventory.aspx>

Respectfully,
Louis Baptiste
RRR Auto Sales, Inc.









Town of Fairhaven Commonwealth of Massachusetts

Kristian White
Building Commissioner

Building Department
Town Hall
40 Centre Street
Fairhaven, MA 02719
Phone 508 979 4019
kwhite@fairhaven-ma.gov

11/27/2018

Mark Rees
Town Administrator

Re: Status update of ongoing violations located at 371 Huttleston Ave (Fairhaven Getty)

The Building Department along with assistance from the Police Department have recently investigated multiple complaints at multiple locations in regards to alleged violations against Fairhaven Getty 371 Huttleston Ave, Fairhaven, MA. The following information was obtained by performing multiple site inspections at multiple addresses as noted below.

10/31/2018

Investigated a complaint of (3) unregistered vehicles located at 51 Mangham Way. This property is in control and owned by Hatem Elrifai (owner of Fairhaven Getty). I spoke with Mr. Elrifai and let him know he was not in compliance with the Fairhaven Use Regulation Schedule 198-16. (2) unregistered vehicles are still on the property as of 11/27/2018.

11/16/2018

Investigated an ongoing complaint regarding number of vehicles on the premises at 371 Huttleston Ave (Fairhaven Getty). Mr. Elrifai was on site and we proceeded to count the number of vehicles. Final count was (35) on the lot, (3) inside the garage, (1) Ramp truck. **Total(39)** (8) vehicles over the legal limit. There also were (3) registered vehicles parked on Grinnell St which I suspect may belong to the employees working at Fairhaven Getty.

11/19/2018

Investigated an ongoing complaint regarding number of vehicles on the premises at 371 Huttleston Ave (Fairhaven Getty). Mr. Elrifai was on site and we proceeded to count the number of vehicles. Final count was (31) on the lot, (3) inside the garage. **Total (34)** (3) vehicles over the legal limit. There also were (3) registered vehicles parked on Grinnell St which I suspect may belong to the employees working at Fairhaven Getty.

11/21/2018

Investigated an ongoing complaint along with assistance from the Police Department regarding number of vehicles on the premises at 371 Huttleston Ave (Fairhaven Getty). Proceeded to count the number of vehicles on site. Final count was (33) on the lot, (3) inside the garage, (1) Ramp truck. **Total (37)** (6) vehicles over the legal limit. There also were (4) registered vehicles parked on Grinnell St.

With assistance from the Police Department (registration check), we confirmed (2) vehicles were owned by neighbors and the other (2) vehicles were of unknown origin. I suspect the other (2) vehicles of unknown origin may belong to employees working at Fairhaven Getty.

11/21/2018

Investigated a complaint regarding unregistered vehicles located at 405 Huttleston Ave (Custom Floors). Upon investigation, I proceeded to count (9) unregistered vehicles at the premises (5) vehicles on one side of the building and (4) vehicles on the other side. I approached the store manager and asked about the unregistered vehicles on the property. The store manager told me the unregistered vehicles are not owned by Custom Floors, "they are owned by the guy down the street." I asked "what guy" and the store manager said "the guy that owns Fairhaven Getty." The store manager said the owner of Custom Floors and Fairhaven Getty have worked out a deal in which Fairhaven Getty can store vehicles on the Custom Floors property in exchange for repair work on Custom Floors vehicles.

I followed up with a phone call to the owner of Custom Floors and it was confirmed. The owner then stated the vehicles will be removed within 48 hours. There are (8) vehicles on the Custom Floors property as of 11/26/2018.

11/26/2018

Investigated an ongoing complaint regarding number of vehicles on the premises at 371 Huttleston Ave (Fairhaven Getty). Mr. Elrifai was on site and we proceeded to count the number of vehicles. Final count was (30) on the lot, (3) inside the garage, (1) Ramp truck. **Total (34)** (3) vehicles over the legal limit. There also were (5) vehicles parked on Grinnell St which I suspect may belong to employees working at Fairhaven Getty.

The following is a list of violations found at the multiple properties noted above based on the inspections completed by the Building and Police Departments:

- Number of vehicles allowed per license (31 allowed)
- Encroachment of vehicles within the 6 foot setback on the Grinnell St side lot line
- Parking of vehicles on Grinnell St
- Fire Department access required per the approved site plan
- Portable signage located on Huttleston Ave sidewalk
- Storing of unregistered vehicles at 51 Mangham Way
- Storing of unregistered vehicles at 405 Huttleston Ave

Respectfully,

Kristian White
Building Commissioner/Zoning Enforcement Agent
Town of Fairhaven

Cc: Police Chief



Kristian White
Building Commissioner

Attachment E

Town of Fairhaven
Commonwealth of Massachusetts

Building Department
Town Hall
40 Centre Street
Fairhaven, MA 02719
Phone 508 979 4019
kwhite@fairhaven-ma.gov

February 26, 2019

Mark H. Rees
Town Administrator

Re: 371 Huttleston Ave, Fairhaven Getty zoning & licensure compliance

Dear Mr. Rees,

This is a follow up letter in regards to a letter received from the Law Offices of Robert L. Perry dated February 20, 2019. In this letter, the owner of Fairhaven Getty has agreed to make changes to the existing site plan parking requirements in order to abate the current violations of licensure. This should be followed up with an updated site plan designed by a Professional Engineer to be submitted showing and labeling all parking spaces on site. The updated site plan shall show the changes recommended per the Fairhaven Building Department and agreed upon by the license holder in a letter dated January 22, 2019.

It appears as if the license holder has not agreed to pay for the weekly inspections at the premises in order to confirm compliance with the conditions of the license. This was a recommendation in the letter dated January 22, 2019.

Respectfully,

Kristian White
Building Commissioner/Zoning Enforcement Agent
Town of Fairhaven

Cc: Board of Selectmen
Thomas Crotty



Town of Fairhaven Commonwealth of Massachusetts

Kristian White
Building Commissioner

Building Department
Town Hall
40 Centre Street
Fairhaven, MA 02719
Phone: 508 979 4019
kwhite@fairhaven-ma.gov

January 22, 2019

Mr Hatem Elrifai
Owner Fairhaven Getty

Re: 371 Huttleston Ave, Fairhaven Getty zoning & licensure compliance specification options

This letter serves as a follow up to a letter dated November 27, 2018 in regards to ongoing violations at the above named address. The letter dated November 27, 2018 noted multiple violations at multiple properties. Although there were several zoning violations at different locations, the primary violation issues are located at 371 Huttleston Ave. (Fairhaven Getty).

The Fairhaven Fire, Police, and Building Department have exhausted countless hours of employee time researching, investigating, and inspecting violations at Fairhaven Getty. The inspections performed by the Building Department on multiple dates show, with clarity, the extent of persistent noncompliance on the premises.

Currently, the allowable number of vehicles per license are as follows: (4) Customer Spaces, (3) Employee Spaces, (17) Used Car Sales, (7) Repair Spaces-(4 outside, 3 inside bldg.) **Totaling: 31 Spaces.**

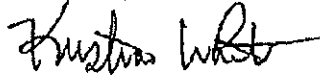
In order to abate the unrelenting violations at Fairhaven Getty, the Building Department is proposing possible modifications to the site plan (see site plan). The number of total vehicles on site will remain unchanged. The conversion of the number of for sale spaces to customer spaces will greatly reduce the congestion on site. This will also decrease the possibility of having continued violations in regards to the number of vehicles on site. The following is a list of possible options:

- Convert total number of cars for sale from (17) to (13) and take the (4) and convert to customer spaces
- Install a 28" high rigid guard rail at the 6'-0" side yard setback line on the Grinnell St side
- Install a 28" high rigid guard rail at the 10'-0" rear yard setback line on the Rivet St side beside dumpster
- Repair and maintain 6'-0" wood stockade fence on rear of property abutting residential dwellings per site plan
- Maintain arborvitae buffer at rear of property per site plan
- 1 of the 3 employee spaces shall be converted to a dedicated parking space for ramp truck
- Provide no parking striping around the island at Huttleston and Rivet
- Provide no parking/ fire lane striping at rear driveway off Grinnell St
- Provide no parking striping at Huttleston and Grinnell per site plan
- Provide no parking striping in front of dumpster
- Stripe, number, and label all spaces according to the amended site plan
- All pavement striping & labeling shall be legible and maintained in good order at all times

The conditions regarding the number of vehicles shall remain the same. The amended site plan along with the additional work required per the conditions mentioned above shall commence immediately and shall expeditiously conclude by May 17, 2019.

The Building Department/Zoning Enforcement Agent shall schedule and conduct weekly inspections at the premises in order to confirm compliance with the conditions of the license. The current cost of an inspection is \$52.00. The business owner shall be responsible for all incurred costs for the required inspections as well as any future costs related to enforcement action required by the Building Department or Town Counsel at the premises located at 371 Huttleston Ave.

Respectfully,



Kristian White
Building Commissioner/Zoning Enforcement Agent
Town of Fairhaven

Cc: Mark Rees
Board of Selectman

*Law Offices of
Robert L. Perry*

191 Main Street, Suite 215

Post Office Box 963

Wareham, Massachusetts 02571-0963

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FAIRHAVEN, MA

Tel. 1-800-293-6184

508-295-6184

295-6184

Fax 508-295-2154

February 20, 2019

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

Re: Fairhaven Getty
371 Huttleston Avenue

Dear Mr. Chairman and Members of the Board:

Mr. Elrifai is prepared to make the following changes to his property in order to satisfy the Board:

1. He agrees to a reduction from 17 to 13 spaces for the sale of motor vehicles, with 3 of the 4 spaces resulting from the reduction dedicated to customer and 1 used for parking of the ramp truck.
2. He will construct 28" high rigid guard rails at the 6'0" side yard set back off Grinnell Street and at the 10'0" rear yard set back on Rivet Street side as requested.
3. He will repair and maintain the existing 6-foot stockade fence and maintain the arborvitaes in front of the fence.
4. He will provide no parking striping at the Huttleston & Rivet island.
5. He will provide a No Parking/Fire Lane striping at the rear driveway.
6. He will provide no parking striping at Huttleston and Grinnell per the site plan.
7. He will provide no parking striping in front of the dumpster.

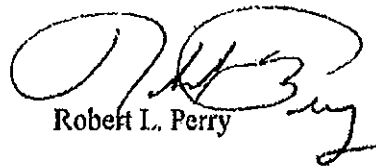
8. He will re-stripe and label spaces per plan.

An updated plan will be submitted depicting these renovations. Mr. Elrifai reserves the right to re-petition the Board in the future should he need changes.

All work will be completed as requested by May 17, 2019.

Feel Free to contact me should you have any question. I want to thank all of you for your courtesy and consideration.

Yours truly,



Robert L. Perry

RLP/mas

CC: Thomas Crotty, Esquire

feels the town is passing out too many raises. If these two employees are looking to void their contract, then they should pay the raises back that they were given when they signed on.

Department of Public works superintendent Vincent Furtado spoke to the Board and told them that the non-union people have been bypassed for raises for many years, but the Union people have been getting them all along. The Non-union raises was to catch them up. He further explained that the personnel by-laws changed in 2017 and the contracts were entered into in 2018, therefore they were considered invalid by Town Counsel.

Frank Coelho handed out some information to the Board regarding the Town's Personnel By-Law. Mr. Coelho feels with the pay and classification the water and sewer superintendents will make more money than the Department Superintendent. He is worried that water and sewer rates will go up as a result of these pay raises. (Attachment D)

Fire Department Union President Eddie Freitas feels that the union employees will never be able to achieve those types of salaries. He also feels that if an employee has entered into a contract they should fulfill their contract before deciding to take another option.

Mr. Rees stated that the process of the reclassification was started three years ago to strive to pay market price and to have the non-union employees be caught up from years of not having pay raises.

Mr. Murphy made a motion to approve the pay and classification to include the position of Sewer Superintendent to Level 20 step 7 and Water Superintendent Level 20 step 4. Mr. Espindola seconded. Mr. Freitas vote against. Vote passed. (2-1)

FAIRHAVEN GETTY OIL LICENSES

Fairhaven Getty owner Hatem Elrifai and his attorney Robert Perry met with the Board to discuss the ongoing violations the 371 Huttleston Avenue. Mr. Rees explained that this issue has been on the agenda for several meetings and Mr. Elrifai met the deadline of 1 February 20, 2019 at noontime to submit in writing how he was going to comply with the recommendations of the Building Commissioner. Attorney Perry said Mr. Elrifai will comply with all the recommendations but he feels that charging Mr. Elrifai \$52 per inspection to reimburse the Town for all the man power and time used is too high. Selectman Espindola feels that the former Building Commissioner has also spent countless hours on this issue. Mr. Espindola feels this is a management issue for Mr. Elrifai. Mr. Rees suggested to the Board the cost of the inspections be waived until May 17, 2019 while he shows his "good faith" effort to comply. (Attachment E)

Business owner Louis Baptiste reported to the Board that Mr. Elrifai is over the limit even today and is not in compliance. He feels that everyone should have to follow the same rules.

Mr. Murphy made a motion to extend the Getty Oil license until the Board of Selectmen's meeting to May 22, 2019. Mr. Espindola seconded. Vote was unanimous. (3-0)

FY20 CAPITAL IMPROVEMENT PLAN

Mr. Rees discussed the FY20 recommended Capital improvement plan. Mr. Rees explained that the Dog Park was added in case the Town does not get a grant to build a dog park. This plan does not include projects in the facilities plan.

Received last letter
of April 18

①
Mark Rees

From: Mark Rees
Sent: Friday, March 30, 2018 11:40 AM
To: 'RRR Auto Sales'
Cc: Charles K. Murphy; Daniel Freitas; Bob Espindola; Wayne Fostin;
tomcrotty@tcrottylaw.com
Subject: RE: Board of Appeals complaint filed with Mr. Fostin
Attachments: Letter from Town Counsel, Louis Baptiste.pdf

Dear Mr. Baptiste,

Attached please find a letter from Town Counsel Thomas Crotty informing the Building Commissioner that: "(Your) petition for appeal should not be processed". I apologize that this information was not shared with you when it became available in August of last year. We will return your filing fee immediately.

Mark

8 months after he received
it to protect Fostin

-----Original Message-----

From: RRR Auto Sales [mailto:sales@rrrautosales.com]
Sent: Monday, March 26, 2018 4:25 PM
To: Mark Rees <mrees@fairhaven-ma.gov>
Cc: Charles K. Murphy <cmurphy@fairhaven-ma.gov>; Daniel Freitas <dfreitas@fairhaven-ma.gov>; Bob Espindola <selectmanbobespindola@gmail.com>
Subject: Board of Appeals complaint filed with Mr. Fostin

Mr. Rees,

Several months ago, I filed a complaint with the Board of Appeals against Mr. Fostin. The complaint paperwork cost \$309 to file. I got the complaint form from Mr. Fostin as I was instructed to do. I still have not heard from the Board of Appeals. I have since called the chairman of the board on 2 occasions and have not heard back from him. I called the vice chairman, who returned my call from Florida, which I appreciated very much.

When I received the paperwork from Mr. Fostin regarding the complaint, he asked me what it was in regards to. I informed him the complaint was against him for lack of enforcement. His comment to me was, "Good luck." Mr. Fostin needs to be held accountable, now. He will be out of office soon, at which point he would get away with another one of his dishonest moves.

I filed a complaint to Mr. Fostin about Mr. Fostin. It is his job to forward that complaint through the proper channels, which he obviously did not do. It is a shame that a town employee, who clearly thinks he is above the law, can continue to be employed by the town. He may not agree with my complaint, but upon receiving it, it is his job to follow through with it. I pay taxes on 3 properties in Fairhaven, and I expect him to be held accountable for his actions. I recently started my 30th year in business in the town of Fairhaven. I have always run my business with respect to the laws and with honesty.

Please let me know how you are going to proceed with Mr. Fostin's disregard for town policy.

Respectfully,
Louis Baptiste
RRR Auto Sales, Inc.
508-997-0423

no answer

RRR Auto Sales Inc.
372 Huttleston Ave. - Route 6
Fairhaven, MA 02719
508-997-0423

Citizens Bank
5-7017/2110

54671

PAY TO
THE ORDER
OF

Young Fairhaven

Date *8/3/17*
\$ *309.00*

DOLLARS
E-Z-Check® Check Fraud
Protection for Business

Three hundred and nine dollars

Filing Fee

[Signature]

⑆216070175⑆

No. _____

Date

8-3-17

RECEIVED OF

RRR Auto Sales Inc

Three hundred nine ⁰⁰/₁₀₀ — DOLLARS \$ 309. —

BOA - application

Amt. of Account	
Amt. Paid	
Balance Due	

BY

[Signature]

Subject Fwd: Mr. Crotty's letter**From** RRR Auto Sales <sales@rrrautosales.com>**To** Mrees <mrees@fairhaven-ma.gov>, Selectmanbobespindola <selectmanbobespindola@gmail.com>, Cmurphy <cmurphy@fairhaven-ma.gov>, Dfreitas <dfreitas@fairhaven-ma.gov>**Date** 2018-06-22 09:59

Mr. Rees,
I am still waiting for a response regarding who was in possession of Mr. Crotty's reply. I have forwarded the email (below) that I sent on May 8th to refresh your memory. Please get back to me as soon as possible regarding this.

Thanks in advance,
Louis Baptiste
RRR Auto Sales, Inc.
508-997-0423

----- Original Message -----

Subject: Mr. Crotty's letter

Date: 2018-05-08 16:50

From: RRR Auto Sales <sales@rrrautosales.com>

To: Cmurphy <cmurphy@fairhaven-ma.gov>, Dfreitas <dfreitas@fairhaven-ma.gov>, Mrees <mrees@fairhaven-ma.gov>, Selectmanbobespindola <selectmanbobespindola@gmail.com>

Dear Mr. Rees,

Thank you for your email on March 18th. The letter from Mr. Crotty arrived the last week of April 2018. The decision he arrived at was based on the wrong information.

I was not attempting to appeal the Planning Board special permit on my property. I asked the Building Inspector to enforce the permit on Mr. ElRafie's property. He refused to enforce it so I filed the appeal.

This important series of events is what should have been reviewed by Town Council. Given the length of time these issues have been going on, I would appreciate an opportunity to explain facts that should have been reviewed with Mr. Crotty.

Thank you in advance. I'd also like to know who was in possession of Mr. Crotty's reply from August 31st, 2017 to the end of April 2018. I should have received notice immediately following the reply.

Thank you for your time, and I look forward to hearing from you as soon as possible.

Respectfully,
Louis Baptiste
RRR Auto Sales, Inc.
508-997-0423

Sent twice no answer



Attachment C

Town of Fairhaven

Department of Planning & Economic Development

Town Hall • 40 Center Street • Fairhaven, MA 02719

Telephone (508) 979-4082 • FAX (508)-979-4087

RECEIVED

2014 SEP 22 10 3 29

Memorandum

BOARD OF SELECTMEN
FAIRHAVEN MASS

Date: September 22, 2014

To: Board of Selectmen
Wayne Foster, Building Commissioner

From: William D. Roth, Jr., AICP *WR*
Planning and Economic Development Director

RE: Fairhaven City- Car Dealer/Repair License
371 Huttonston Avenue

The following review is based on the Zoning Bylaw Chapter 198. The site does not conform to our current zoning Bylaw; however, it has been in use for quite some time and certain aspects of the site may be considered grandfathered, with respect to its historic uses and setbacks. However, it appears that the applicant wants to expand the non-conforming setbacks further along the East and South property lines. This cannot be done without obtaining a Variance from the Board of Appeals.

Based on a review of the submitted plan, application and a site visit, it appears that the proposed project will require a Special Permit from the Planning Board for several issues. They are proposing to almost double the used car display area, alter the site circulation and reduce the customer parking. In order to reduce customer parking a Special Permit is specifically required. The following are the code citations from Section 198.27.B.4 and Section 198.29.A (2, 3 & 4) that apply. This determination would also need to be made by the Zoning Enforcement Officer.

198.27.B.4

(1) *(Amended 12-10-1992 STM by Art. 1) Other facilities. The parking requirements for uses not listed in this section shall be determined by the Planning Board upon review of each individual application. That determination shall take into account:*

- (a) *Accepted industry standards, if any for that particular use.*
- (b) *The requirement of this section for similar use,*
- (c) *The anticipated needs of the use of that particular property.*
- (d) *The intent of this section as stated in Subsection A(1) above.*

198.29.A (2, 3 & 4)

- (2) *Addition(s) or enlargement(s) that would require a total of five (5) or more parking spaces containing existing and new demand;*
- (3) *A change of use(s) or renovation(s) that would require the addition of new parking space(s). If the existing parking spaces can meet the new demand based on the change of use(s) or renovation(s) then no special permit is required;*
- (4) *Restriping of a parking lot of five (5) or more spaces that changes the existing site circulation and/or number of parking spaces*

Foster Licenser eny way

01/21/2019 09:07

5093978534

Mr Roth last time.

With regards to the proposed site plan, the proposed project does not comply with the Zoning Bylaw Chapter 198.18 with regards to setbacks. The setback from a street is 20-feet and from a residential district is 10-feet. However, Section 198.25, requires a 50-foot setback from a residential district for Automobile Services; therefore, if the use is classified as "Automobile Services" than the more stringent setback would apply. The site circulation does not provide for adequate access to the various proposed customer and employee spaces. The required parking may or may not be met; however, the information provided is not sufficient to make that determination and as mentioned above the Planning Board through the Special Permit process needs to make that determination.

The site is quite small and does not have adequate space for the proposed increase. It should be noted that if the applicant were to need and apply for a Special Permit, I do not see how it could ever be approved because of the site limitations.

cc: Eric

Attachment D

MEMO

TO: Board of Selectmen
FROM: Mark Rees, Town Administrator
DATE: August 14, 2020
RE: Seaport Inn and Marina Lease

Per the Board's direction I met with Ms. Jami Calvao, General Manager of the Seaport Inn and Marina to discuss past due rents for the use of town property; the Bridge Street abutment. At the time the Board reviewed this matter, the Seaport Inn was in arrears for 10 months' rent from October 2019 through July 2020. Since that time the Seaport Inn has made payments for October, 2019, November 2019 and December, 2019 leaving an outstanding balance of \$9,192.96 for seven months (Jan.2020 through July 2020). The proposed resolution I agreed to bring before the Board of Selectmen was that \$9,192.96 currently owed would be held in abeyance until the State enters into Phase IV of their Reopening Plan after which we will meet again to discuss a repayment schedule. In the meantime, the Seaport Inn will remain current in their monthly lease payments beginning in August of 2020.

In doing background research on this matter, it was discovered that the lease for this property actually expired in 2017. As such it is recommended that the Board authorize me with the assistance of Town Counsel to negotiate a new lease for property for Board of Selectmen approval at a future meeting.



RECEIVED

2020 JUN 22 P 1:45

Seaport Inn & Marina

BOARD OF SELECTMAN
FAIRHAVEN MASS

110 Middle Street
Fairhaven, MA, 02719
P. 508.997.1281
F. 508.996.5727

June 18, 2020

TOWN OF FAIRHAVEN

40 CENTER ST

FAIRHAVEN, MA 02719

ATTN: BOARD OF SELECMEN

Dear Board,

This letter is in response to the memo we received regarding the past due payments for the Bridge St. Lease.

We are respectfully asking that the Board consider forgiveness for the past due payments and suspend future payments until we are able to get past the financial devastation this pandemic has caused for our Business. We would like to Thank You in advance for taking the time to consider our current circumstances and any assistance the Board can provide.

Sincerely,

Jami Calvao

Seaport Inn and Marina General Manager

**FW: Open Meeting Law Complaint re: 6.30.20 Meeting (revised)**

1 message

Thomas P. Crotty <tomcrotty@tcrottylaw.com>

Thu, Aug 13, 2020 at 3:48 PM

Reply-To: tomcrotty@tcrottylaw.com

To: Mark Rees <mrees@fairhaven-ma.gov>

Mark

You have asked my advice for the Board's review of this complaint, and for its response to the complainant.

The complaint relates to the agenda for the meeting of June 30, 2020. The six numbered complaints can be reduced to four categories:

1. The agenda did not list the names of the candidates for appointment to various positions.

The Attorney General's regulations require that the agenda contain "sufficient specificity" that a member of the public reading it would "understand the anticipated nature of the public body's discussion". Neither the Open Meeting Law nor the regulations specifically require that you list the names of candidates. But in decisions made on prior open meeting law complaints, the attorney general has ruled that when a board is going to discuss an appointment the agenda should identify the vacancy and list the names of anyone who has submitted a letter of interest in being appointed. If the board is still accepting letters of interest when the agenda is posted, or will accept nominations of others at the time of the meeting that should be stated on the agenda.

Response and action: This is the first complaint of this nature to the board. The board should direct its staff to compile and include on the agenda the names of all persons who have submitted letters of interest for appointments. And if the board is still accepting letters of interest when the agenda is posted, or will accept nominations of others at the time of the meeting that should be stated on the agenda.

2. The agenda did not list the end-of-year transfers that were being considered.

The Attorney General's regulations require that the agenda contain "sufficient specificity" that a member of the public reading it would "understand the anticipated nature of the public body's discussion". Neither the Open Meeting Law nor the regulations specifically require that you list the specific end of year transfers that may be considered. In decisions on open meeting law complaints that relate to budgetary actions, the attorney general has found that an agenda that lists the budget items that are going to be discussed, including proposed amounts if known, does not violate the open meeting law. I have not found a case in which an agenda was found to be a violation of the open meeting law because of a lack of information regarding budget items.

Response and action: This is the first complaint of this nature to the board. The board should direct its staff to include on the agenda the list of proposed transfers, if they are known in time for inclusion on the agenda. There will be times when the list of budget items under consideration is long, and would overwhelm the agenda. (For example when the warrant for town meeting is being considered.) The town has adopted its website as its official site for the posting of open meeting law notices. I would suggest that where the list of budget items, or of any topic, is overly long for inclusion on the agenda, that a link to the a document listing the items would serve the same purposes. In fact, it would help anyone who was concerned about other topics to find those topics on the agenda, without having to scroll through a long list of budget items.

3. The agenda did not list the name of the bargaining unit that was anticipated to be discussed in executive session.

The Attorney General's regulations require that the agenda contain "sufficient specificity" that a member of the public reading it would "understand the anticipated nature of the public body's discussion". Neither the Open Meeting Law nor the regulations specifically require that you identify the bargaining unit which is the subject of an executive session discussion. The Attorney General has ruled in a prior case that before entering into executive session for the purpose of discussing collective bargaining, a board must identify the unit that is the subject of discussion. That case did not specifically require that the same disclosure be made on the agenda (as opposed to being made at the time of the decision to go into executive session), but I would expect that if the issue were addressed to the attorney general such a disclosure would be required on the agenda.

Response and action: This is the first complaint of this nature to the board. The board should direct its staff to include on the agenda the identity of the unit that is subject of the executive session.

In this particular case the executive session was related to all of the collective bargaining units in the town, and I am informed that the Town Administrator made a report to the board of his communications with the unions, that there was no deliberation, and no vote was taken by the board. Under the circumstances it appears that since there was no deliberation, there was no violation of the open meeting law or, at most, any violation of the open meeting law was negligible.

4. The agenda did not list the name of the non-union employee to be discussed in executive session.

The Attorney General's regulations require that the agenda contain "sufficient specificity" that a member of the public reading it would "understand the anticipated nature of the public body's discussion". Neither Open Meeting Law nor the regulations specifically require that you identify the non-union person who will be the subject of discussion in executive session. But in decisions made on prior open meeting law complaints, the attorney general has ruled that when a board contemplates an executive session discussion related to non-union personnel the agenda should identify the person.

Response and action: This is the first complaint of this nature to the board. The board should direct its staff to include on the agenda the identity of the non-union employee who is subject of the executive session.

In this particular case the board did not discuss this topic in either open or executive session, so there was no violation of the open meeting law.

Let me know if you have any further questions in this regard.

Thanks

Tom

Thomas P. Crotty

Thomas P. Crotty & Associates, PLLC

5 Dover Street, Suite 102

New Bedford, MA 02740-4992

TomCrotty@tcrottylaw.com

Tel: 508-990-9101 Fax: 508-990-9108

Cell/SMS: 508-916-7862

8/14/2020

Town of Fairhaven Mail - FW: Open Meeting Law Complaint re: 6.30.20 Meeting (revised)

This e-mail message is generated from the law firm of Thomas P. Crotty & Associates, PLLC, and may contain information that is confidential and may be privileged as an attorney/client communication or as attorney work product. The information is intended to be disclosed solely to the addressee(s). If you are not the intended recipient, any disclosure, copying, distribution or use of the contents of this e-mail information is prohibited. If you have received this e mail in error, please notify the sender by return e-mail and delete it from your computer system.

 Patrick Higgins Complaint.pdf
121K

OpenMeeting (AGO) <openmeeting@state.ma.us>
To: Mark Rees <mrees@fairhaven-ma.gov>
Cc: Patrick Higgins <patrick@patrickhiggins.co>

Wed, Jul 29, 2020 at 11:27 AM

Mark:

The request for an extension of time for the Fairhaven Board of Selectmen to respond to the Open Meeting Law complaint filed by Patrick Higgins on July 20 is approved. Since you state that the Board's next meeting will be August 17, I am adding three additional days to the time requested. The Board shall send its response to Mr. Higgins, with a copy (by email) to our office, by August 20, 2020.

Sincerely,

Carrie Benedon

Assistant Attorney General

Director, Division of Open Government

Massachusetts Office of the Attorney General

One Ashburton Place

Boston, MA 02108

Phone: 617-963-2080

Carrie.Benedon@mass.gov

From: Mark Rees <mrees@fairhaven-ma.gov>
Sent: Wednesday, July 29, 2020 9:42 AM
To: OpenMeeting (AGO) <OpenMeeting@MassMail.State.MA.US>
Subject: extension request

To whom it may concern, This email is being written to request an extension to respond to an open meeting violation complaint filed by Patrick Higgins on July 20, 2020 to August 17, 2020. The reason being is that the Board of Selectmen meet once a month in July and August and their next regularly scheduled meeting is August 17th. Thank you for your consideration.

[Quoted text hidden]

Patrick Higgins <patrick@patrickhiggins.co>
To: "OpenMeeting (AGO)" <openmeeting@state.ma.us>, Mark Rees <mrees@fairhaven-ma.gov>

Wed, Jul 29, 2020 at 11:29 AM

Mark:

Please send the response of the board(s) to this email address, a hard copy by mail is not needed nor requested.

Thanks

Patrick Higgins



OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

Your Contact Information:

First Name: Patrick Last Name: Higgins

Address: P O Box 24

City: Swansea State: MA Zip Code: 02777

Phone Number: +1 (508) 674-3140 Ext.

Email: patrick@patrickhiggins.co

Organization or Media Affiliation (if any): Patrick Higgins and Associates

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?
(For statistical purposes only)

☐ Individual ☒ Organization ☐ Media

Public Body that is the subject of this complaint:

☒ City/Town ☐ County ☐ Regional/District ☐ State

Name of Public Body (including city/
town, county or region, if applicable): Fairhaven Board of Selectmen

Specific person(s), if any, you allege
committed the violation: All members

Date of alleged violation: Jun 30, 2020

Description of alleged violation:

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

The Fairhaven Board of Selectmen violated the open meeting law as follows:

1. Did not list the candidates to be considered for the appointment to the Economic Development Committee. D1
2. Did not list the candidates to be considered for appointment to the vacancy on the Board of Public Works. D2
3. Did not list the candidates to be considered for appointment of the Marine Resources Committee Liaison. D4
4. Did not list the end of year transfers to be considered, i.e. from Board of Selectmen to Board of Health as an example. D8
5. Did not list the name of the bargaining unit to be discussed in executive session pursuant to 21(a)(3) Executive Session 2
6. Did not list the name or title of the "non-union" employee to be discussed in executive session pursuant to 21(a)(2). Executive Session 3

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

Learn and comply with the Open Meeting law.

The amount of violations requires that the Board be required to attend the webinar training or review the training videos located on the website for the Division of Open Government.

Review, sign, and submit your complaint

I. Disclosure of Your Complaint.

Public Record. Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

Publication to Website. As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

II. Consulting With a Private Attorney.

The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

III. Submit Your Complaint to the Public Body.

The complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to openmeeting@state.ma.us.

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: Deek Higgins

Date: 2/20/2020

Revised

FAIRHAVEN BOARD OF SELECTMEN

Meeting Agenda

Tuesday June 30, 2020

7:00 p.m.

Town Hall – 40 Center Street – Fairhaven

2020 JUN 30 PM 7:02

Due to the recent changes by Governor Baker to the Open Meeting Law, G.L. c. 30A, § 20, we are providing public access via the phone number and meeting ID below:

Log on to: <https://zoom.us/j/96671368255?pwd=TmtUL1R3QTRVVmIYbWZSTWd6WFZ5dz09>

or call: 1-929-205-6099

Meeting ID: 966 7136 8255

Password: 610333

The meeting can also be viewed live on Channel 18 or on FairhavenTV.com

A. MINUTES

1. Approve the minutes of May 28, 2020—Open Session
2. Approve the minutes of May 28, 2020—Executive Session

B. TOWN ADMINISTRATOR'S REPORT

C. COMMITTEE LIAISON REPORTS

D. ACTION

1. Interview Candidates for Economic Development Committee
2. Fill vacancy on Board of Public Works
3. (Re)appointment to Boards and Committees
4. Resignation and Appointment of Marine Resources Committee Liaison
5. Request from Town Moderator to:
 - a. Approve July 25, 2020 Annual Town Meeting to be held through remote participation
 - b. In conjunction with Town Moderator set the quorum for the July 25, 2020 Annual Town Meeting to be not less than 40% of the current quorum of 100
6. No Parking sign request- Town Beach, Fir Street
7. Request for Rent Abeyance: Seaport Inn and Marina
8. Approval of year end budget transfers
9. Mike's Restaurant: Outdoor Table Service Expansion Application
10. Event Permit: Fitness in Cushman Park
11. Approval for sending letter to utility companies regarding utility pole information

E. APPOINTMENTS

1. 7:00 pm: Mary Kellogg, Board of Health Agent

F. POSSIBLE ACTION/DISCUSSION

1. COVID -19 Response Update
2. Rogers School Purchase and Sale Agreement
3. Policy regarding display of flags/banners on Town Property
4. Building Department Permit Fees/Revenues

5. Employee Engagement/Work Culture
6. Dept. of Revenue Financial Management Review
7. Preparation for July 25, 2020 Town Meeting
8. Procedure for filling vacant Board of Health seat.

G. CORRESPONDENCE

1. Resignation from Commission on Disability- Kelly Smith
2. Certificate in Local Government Leadership and Management- Wendy Graves
3. Carnegie Hero Fund Commission: Carnegie Medal Awarded to Mr. Ross Dugan

H. NOTES AND ANNOUNCEMENTS

1. The next regularly scheduled meeting of the Board of Selectmen is **Monday, July 13, 2020** at 6:30pm p.m. in the Town Hall Banquet Room.

I. EXECUTIVE SESSION

1. Discuss strategy with respect to litigation – A-1 Crane: pursuant to M.G.L. Ch. 30A Section 21(a) (3)
2. Discuss strategy with respect to Collective Bargaining pursuant to M.G.L. Ch. 30A Section 21(a) (3)
3. Discuss strategy sessions with preparation for negotiations with non-union employee(s) pursuant to M.G.L. Ch.30A Section 21(a) (2)

ADJOURNMENT

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

MGL, Ch. 30a, § 20(f) requires anyone that intends to record any portions of a public meeting, either by audio or video, or both, to notify the Chair at the beginning of the meeting.



The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108

OPEN MEETING LAW COMPLAINT FORM

Instructions for completing the Open Meeting Law Complaint Form

The Attorney General's Division of Open Government interprets and enforces the Open Meeting Law, Chapter 30A of the Massachusetts General Laws, Sections 18-25. Below is the procedure for filing and responding to an Open Meeting Law complaint.

Instructions for filing a complaint:

- o Fill out the attached two-page form completely and sign it. File the complaint with the public body within 30 days of the alleged violation. If the violation was not reasonably discoverable at the time it occurred, you must file the complaint within 30 days of the date the violation was reasonably discoverable. A violation that occurs during an open session of a meeting is reasonably discoverable on the date of the meeting.
- o To file the complaint:
 - o For a local or municipal public body, you must submit a copy of the complaint to the chair of the public body AND to the municipal clerk.
 - o For all other public bodies, you must submit a copy of the complaint to the chair of the public body.
 - o Complaints may be filed by mail, email, or by hand. Please retain a copy for your records.
- o If the public body does not respond within 14 business days and does not request an extension to respond, contact the Division for further assistance.

Instructions for a public body that receives a complaint:

- o The chair must disseminate the complaint to the members of the public body.
- o The public body must meet to review the complaint within 14 business days (usually 20-22 calendar days).
- o After review, but within 14 business days, the public body must respond to the complaint in writing and must send the complainant a response and a description of any action the public body has taken to address it. At the same time, the body must send the Attorney General a copy of the response. The public body may delegate this responsibility to its counsel or a staff member, but only after it has met to review the complaint.
- o If a public body requires more time to review the complaint and respond, it may request an extension of time for good cause by contacting the Division of Open Government.

Once the public body has responded to the complaint:

- o If you are not satisfied with that the public body's response to your complaint, you may file a copy of the complaint with the Division by mail, e-mail, or by hand, but only once you have waited for 30 days after filing the complaint with the public body.
- o When you file your complaint with the Division, please include the complaint form and all documentation relevant to the alleged violation. You may wish to attach a cover letter explaining why the public body's response does not adequately address your complaint.
- o The Division will not review complaints filed with us more than 90 days after the violation, unless we granted an extension to the public body or you can demonstrate good cause for the delay.

If you have questions concerning the Open Meeting Law complaint process, we encourage you to contact the Division of Open Government by phone at (617) 963-2540 or by e-mail at openmeeting@state.ma.us.

→ hotline openmeeting@mass.gov
Left a message - leave message
7/28/2013: 06 P.M.

Memorandum

8-17-2020

To: Selectman Freitas, Selectman Sylvia, Mark Rees

From: Selectman Espindola

CC: Mark Rees, Vicki Oliveira (record)

Subject: Agenda Item F.5 – Recommendations - of Roberts Rules of Order

Selectman Freitas and Selectman Silvia,

In Roberts Rules of Order, in the chapter II, "The Conduct of Business in a Deliberate Assembly" and in the paragraph titled "Call to Order, Order of Business" it states that "Although an organization has no binding order of business until it has adopted its own or has adopted a parliamentary authority that specified one, the following order of business (which is fully explained in Chapter 41) has come to be regarded as usual or standard for one meeting sessions of ordinary societies"

- 1) Reading and Approval of Minutes*
- 2) Reports of Officers, Boards and Standing (that is permanently established) Committees
- 3) Reports of Special (Select or Ad Hoc) Committees, that is committees appointed to exist only until they have completed a task.
- 4) Special Orders (that is, matters which have previously been assigned a type of special authority as explained in 14 and 41.
- 5) Unfinished Business and General Orders (that is matters that which have come over from the preceding meeting or which have been scheduled for the present meeting.
- 6) New Business (that is, matters initiated in the present meeting.

In an effort to establish uniformity across all of our Government meetings and to ensure that things are not missed,

I make a motion that we Establish a formal template for future Board of Selectmen meeting agendas that is modeled after recommendations made in the latest edition of Roberts Rules of Order and that the content and order of the main sections of the agenda be changed from the existing template to a revised template as follows;

Current Template

- A) Minutes
- B) Town Administrators Report (no change*)
 - * This would also be a placeholder for Agent/Staff report in the case of committees like Conservation, Economic Development, Cable Advisory, Marine Resources, etc.
- C) Committee Liaison Reports
- D) Action
- E) Discussion/Possible Action
- F) Correspondence
- G) Notes and Announcements
 - a. Next Meeting Date
- H) Executive Session
- I) Adjournment

Revised Template (red text are new sections, replacing "Action and Discussion / Possible Action")

- A) Minutes
- B) Town Administrators Report (no change to BOS agenda but other committees would use as place holder for their own Staff / Agent report (i.e. for Conservation, Economic Development, Cable Advisory, Marine Resources, etc.
- C) Committee Liaison Reports (no change for us but add to other committees templates as applicable (i.e. where members are appointed to be represented on another committee (BPW, EDC, BSC, etc).
- D) Special Orders
- E) Unfinished Business
- F) New Business
- G) Correspondence
- H) Notes and Announcements
 - a. Next Meeting Date
- I) Executive Session
- J) Adjournment

Memorandum

7-13-2020

To: Selectman Freitas, Selectman Sylvia, Mark Rees

From: Selectman Espindola

CC: Mark Rees, Vicki Oliveira (record)

Subject: Agenda item E6 – Zoning Appeals Procedure / Guidelines /Record Keeping

Selectman Freitas and Selectman Sylvia,

Our planning Board and Town planner work very hard to create planning documents and zoning regulations such as the recently updated Town Master Plan. The ZBA plays a critical role in assuring that the goals of the master plan are adhered to and to protect the Towns overarching interest when appeals are brought to them. As such, I believe a coordinated working relationship between the Planning Board, Planning Director, Building Inspector and the ZBA is essential to making sure that the long term future of Fairhaven as envisioned by the master ^{plan} place is protected.

Additionally, it is my belief that the Town has incurred undue legal costs that could easily have been avoided had proper input been required by the Building Department, Town Planner and/ or Town Counsel (probably in that order).

With these thoughts in mind, I would like to request that the Town Administrator work with the Building Commissioner, the Director of Planning, and Town Counsel, as required, to identify policies and procedures that can be implemented to assist the ZBA, in an effort to avoid undue legal costs in the future.

It may be possible for SRPEDD to provide guidance in this area. The Town is allotted 20 Technical Service hours each year from SRPEDD, at no cost to the Town, for the Board of Selectmen to determine the use of.

§ 198-9. Variances.

The Zoning Board of Appeals may authorize upon appeal, or upon petition in cases where dimensional modifications are sought with respect to a particular parcel of land or to an existing building thereon, a variance from the terms of this chapter, where, owing to conditions specifically affecting each parcel or such building, but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the appellant and where desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of this chapter, but not otherwise. The Zoning Board of Appeals shall hold a public hearing in accordance with the provisions of Chapter 40A on all variance applications brought before it.

§ 198-10. Amendments.

This chapter may from time to time be changed by amendment, addition or repeal by the Town Meeting in the manner provided in MGL c.40A, § 5, and any amendments therein.

§ 198-11. Validity

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.

§ 198-12. Applicability of greater restrictions

Where the application of this chapter imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants or agreements, the provisions of this chapter shall control.

§ 198-13. When effective

This chapter shall take effect when, following adoption by the town, it is approved by the Attorney General of the Commonwealth of Massachusetts and is published or posted as provided by law. Upon its effective date, it shall supersede the Zoning Bylaw and all amendments to it previously in effect.

Article II Use and Intensity Regulations

§ 198-14. Establishment of districts.

A. [Amended 3-28-1970 ATM by Art. 56; 5-15-1976 ATM by Art. 69; 10-7-1982 STM by Art. 14; 5-10-1988 ATM by Art. 11; 5-6-1995 ATM by Art. 24; 5-3-1997 STM by Art. 15; 5-2-1998 STM by Art. 26; 5-1-1999 ATM by Art. 8; 5-3-2008 ATM by Art. 50; 5-1-2010 ATM by Art. 32; 5-7-11 STM by Art. 10] The Town of Fairhaven is hereby divided into the following districts:

Rural Residence Districts	RR
Single Residence Districts	RA
General Residence Districts	RB
Apartment/Multifamily Districts	RC
Park Districts	P
Business Districts	B
Industrial Districts	I
Agricultural Districts	AG
Nasketucket Overlay District	NRB
Floodplain Districts (Refer to § 198-28)	FP
Mixed Use District [Added 5-2-1998 STM by Art. 26]	MU
Wetland Resource Protection District [Added 5-1-1999 ATM by Art. 8]	WRP

- B. The boundaries of these districts are defined and bounded on the map accompanying this chapter and on file with the Clerk of the Town of Fairhaven entitled "Town of Fairhaven Zoning Map" as amended through May 7, 2011. That map, as clarified through measurements identified on plats on file with the Town Clerk's office, all explanatory matter thereon and all subsequent amendments to it are hereby made part of this chapter.¹
- C. Except when labeled to the contrary, boundary or dimension lines shown approximately following or terminating at streets, railroad or utility easement, center or layout lines, boundary or lot lines, or the channel of a stream shall be construed to be actually at those lines; when shown approximately parallel, perpendicular or radial to such lines shall be construed to be actually parallel, perpendicular or radial thereto. When not locatable in any other way, boundaries may be determined by scale from the map.
- D. Where a district boundary line divides any lot existing at the time such line is adopted, the regulations for any district in which the lot has frontage on a street may be extended not more than 20 feet into the other districts.

§ 198-15. Use regulations [Amended 5-4-1991 ATM by Art. 24]

- A. No building or structure shall be erected or used and no premises shall be used except as set forth in the Use Regulation Schedule. Symbols employed shall mean the following.
 - Y A permitted use
 - N An excluded use
 - A A use authorized under special permit as provided for in §§ 198-6, 198-7, 198-8, 198-15C and 198-16 and as otherwise specified within this chapter.
- B. Where an activity might be classified under more than one of the following uses, the more specific classification shall determine permissibility; if equally specific, the more restrictive shall govern.
- C. Special Permit uses.
 - (1) The Planning Board shall be the SPGA for all use allowed by special permits within the Apartment/Multifamily [RC], Park [P], Wetland Resource Protection District [WRP], Business [B], Mixed Use (MU), Industrial [I] Districts and as otherwise specified in this bylaw. The Zoning Board of Appeals shall be the SPGA for all uses allowed by special permits within the Rural Residence [RR], Single Residence [RA], General Residence [RB], Agricultural [AG] Districts and as otherwise specified in this bylaw. [Added 5-6-2006 ATM by Art. 9]
 - (2) Where any proposed use, or expansion of a use otherwise permitted [Y] or authorized [A] in an Apartment/Multifamily [RC], Park [P], Wetland Resource Protection District [WRP], Business [B], or Industrial [I] District results in a requirement of a total of five (5) or more parking spaces for the previously existing and new demand combined pursuant to the provisions of § 198-27 of this chapter, such use shall be deemed authorized by special permit granted by the Planning Board pursuant to the provisions of § 198-29 of this chapter upon review by the Planning Board of the site development plan. [Added 5-4-1991 ATM by Art. 24; amended 12-10-1992 STM by Art. 1; amended 5-1-1999 ATM by Art. 8; amended 2-11-2004 STM by Art. 15, amended 5-6-2006 ATM by Art. 9]
 - (3) The provisions of § 198-29 shall apply to a change of use, to new construction and to the expansion of the gross floor area of a building existing before January 1, 1998 in the Mixed Use (MU) District as provided in § 198-27B(4). [Added 5-2-1998 STM by Art. 26; amended 2-11-2004 STM by Art. 15, amended 5-6-2006 ATM by Art. 9]
- D. Wetland Resource Protection District. [Added 5-1-1999 ATM by Art. 8, amended 5-6-2006 ATM by Art. 9]
 - (1) The Purpose of the Wetland Resource Protection District is to:

¹ Editor's note The Zoning Map is included in a pocket at the end of this volume



Bob Espindola <selectmanbobespindola@gmail.com>

RE: ZBA Training Opportunities

1 message

Jeffrey Walker <jwalker@srpedd.org>

To: Bob Espindola <selectmanbobespindola@gmail.com>

Mon, Jul 13, 2020 at 7:03 AM

Hi Bob,

We would be happy to talk with you all about possible training technical assistance along those lines.

We have a number of staff members, myself included, with ongoing or prior service on local Planning or Zoning Board of Appeals, and acquainted as well with a number of programs/consultants and curricula that may be of interest.

Although familiar with Chapter 40B-specific training provided by MHP, and some of the more ZBA-related content accessible annually through CPTC, am not aware of any statewide or model local training expressly for ZBA members, but we will check and get back to you.

Either way, we should be able to point you in the direction of an existing training offering, or if for whatever reason unavailable, work with you to develop an affordable approach, if interested, that meets the town's needs.

Thanks for your inquiry. We look forward to hearing more and helping out in whatever way that we can.

With best regards,

Jeff

Jeffrey Walker, AICP

Executive Director, Southeastern Regional Planning and Economic Development District (SRPEDD)

88 Broadway

Taunton, MA 02780 (508) 824-1367 ext. 220 ofc

www.srpedd.org





Bob Espindola <selectmanbobespindola@gmail.com>

RE: Memo regarding ZBA

1 message

Thomas P. Crotty <tomcrotty@tcrottylaw.com>

Mon, Jul 13, 2020 at 12:42 PM

Reply-To: tomcrotty@tcrottylaw.com

To: Bob Espindola <selectmanbobespindola@gmail.com>, Mark Rees <mrees@fairhaven-ma.gov>

Bob

What we discussed, and what you are proposing, is already in place in other communities.

By way of example, the City of New Bedford has a process in place for preliminary review of applications for special permits. The city planning department prepares a staff report on the application. The report covers, among other things, most aspects of the subject property (size, structures, use, neighborhood, etc.), the proposal for the property, and whether the proposal complies with the legal and technical requirements of the zoning ordinance. That report is submitted to the permit granting authority before the application comes up for hearing.

Tom

From: Bob Espindola [mailto:selectmanbobespindola@gmail.com]**Sent:** Monday, July 13, 2020 12:10 PM**To:** Mark Rees; Tom Crotty**Subject:** Memo regarding ZBA

Mark and Tom,

This is what I came up with to distribute during tonight's meeting, in an effort to facilitate / streamline the discussion.

If you see any concerns with it, please let me know.

Thanks,

Bob

THOMAS P. CROTTY & ASSOCIATES, PLLC

LAW OFFICES
5 DOVER STREET ~ SUITE 102
NEW BEDFORD, MASSACHUSETTS 02740

THOMAS P. CROTTY

RUSSELL G. WHYNACHT

Attachment H

2020 JUL -1 A 11:54
RECEIVED
BOARD OF SELECTMEN
FAIRHAVEN, MA

TELEPHONE 508.990.9101

FACSIMILE 508.990.9108

E-MAIL: info@terottylaw.com

www.terottylaw.com

August 5, 2020

Mark Rees, Town Administrator
Town of Fairhaven
40 Center Street
Fairhaven, MA 02719

Dear Mark:

You have asked me whether a town board has authority to hire an employee at higher than the first step of the applicable wage classification schedule. In the present case the board of health hired a health agent and voted to pay her a starting salary at step 3 of the wage schedule.

In 2017 the town meeting, acting under the authority of General Laws C. 41§§ 108A et seq., amended the town code at Ch. 61 recognizing the authority of the town administrator, with the approval of the board of selectmen, to establish a personnel system, including a classification system and recruitment policy. That town meeting vote repealed the 1995 personnel by-law, but the town code, at § 61-7 provides that all prior actions under that by-law shall remain in full force and effect subject to later action by the town administrator. That latter provision means that until a new personnel system is put into place, the provisions of the 1995 by-law and personnel rules remain in effect.

The 1995 by-law provides a compensation plan which establishes categories for each position in town employment, and within each category provides for step increases for which an employee becomes eligible with each year of employment. Specifically, at § 8(c) the by-law provides that "no administrative authority [that is, the town board which hires an employee] shall fix the salary of an employee in a position in the classification plan except in accordance with the compensation plan." At § 8(e) the by-law provides that an employee shall receive incremental rate increases "as follows: 1) After completion of one year at the minimum or entrance rate. 2) Thereafter one year from the date of his previous increase. 3) The increase in rate which this increment represents must be recommended by the employee's department head and approved by the [Personnel] Board. 4) The increase shall be based on performance of the employee during the preceding twelve-month period, and not solely on length of service." Put in simple language, when an employee is hired, she must start at step 1, and becomes eligible for the next step after one year of employment.

Mark Rees, Town Administrator
Town of Fairhaven
August 5, 2020
Page -2-

There is an exception to that rule which the personnel board (now town administrator) may implement. The 1995 by-law provides at § 2(d) that the personnel board shall establish a recruitment policy "to ensure that reasonable effort is made to attract qualified persons..." To the extent that the applicant for health agent might be offered a higher salary as a recruitment tool, that is within the authority of the town administrator. It is not within the board of health's authority.

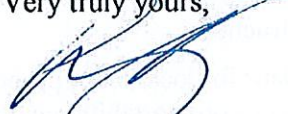
Lastly, there are two seemingly contradictory laws to consider. General Law C. 111 § 27 provides that a board of health "may fix the salary or other compensation of such physician and its clerk and other agents and assistants." On its face that appears to give the board of health the authority to decide its employee's pay rate. However, General Law C. 41 §§ 108A et seq. provide that a town may establish a classification plan with minimum and maximum salaries for all positions other than those filled by election, or under the direction of the school committee.

In a 1966 case the Supreme Judicial Court ruled that a town's personnel by-law that established overtime benefits for all employees was not inconsistent with another statute (for police overtime) that gave the police department permissive authority to establish overtime benefits for police. The court emphasized that the purpose of C. 41 §§ 108A et seq. authorizing personnel by-laws was to provide uniformity among job classifications that would be of general application in all departments. Allowing individual boards to vary from that classification system would defeat the purpose of that statute. Based on that court ruling I believe that the personnel by-law applies in this situation.

The clear language of the personnel by-law means that a new employee must start at the minimum or entrance rate for the classification assigned to that position unless otherwise determined by the town administrator. The board of health does not have authority to vary from that requirement.

Please let me know if you have any further questions in this regard.

Very truly yours,



Thomas P. Crotty
Town Counsel

TPC/mch

BOARD OF HEALTH AGENT

FAIRHAVEN, MA

Position Purpose:

The primary function of this position is to enforce the rules and regulations and policies of the Board of Health (BOH), provide administrative and technical duties in accordance with the policies of the Board of Health, MA. Department of Public Health, and, inspect food service establishments, conduct public health inspections, provide assistance to residents and businesses in health related fields, and assist in the normal operations of the BOH (emergency and non-emergency), in a timely manner, abiding by all municipal, state and federal guidelines, regulations and quality standards and ensuring safe, courteous and professional behavior is observed in all situations. This position is responsible for maintaining and improving upon the efficiency and effectiveness of all areas under his/her direction and control; performs all other related work as required.

Essential Functions:

(The essential functions or duties listed below are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.)

- Attend required Board of Health meetings, training sessions, staff, vendor and resident appointments as required.
- Oversee all administrative functions; schedule, invoices, billing ,etc., direct the daily operations of the Board of Health office, prepare and administer departmental payroll, budget, warrants, annual report and capital acquisition documents and budget preparation.
- Provide administrative / technical / clinical assistance to the Public Health Nurse, and providing all necessary administrative work required for the department, as well as function as the Flu Clinic Coordinator for the BOH
- Participate with the BOH to negotiate, approve and oversee the curbside recycling contracts and landfill engineering/maintenance as required.
- Review construction plans for Title 5 properties for compliance with allowed septic design flow for Conservation, Building and Planning Departments.
- Monitor BOH soil evaluations and percolation tests, review proposed Title 5 system plans, monitor system construction, system inspection and direct homeowners on need and procedure for any mandated system repairs.
- Assist the Board of Health by reviewing and recommending approval of septic system plans for alterations and/or construction
- Review and approve plans for location of proposed potable and irrigation wells for regulatory compliance, receive and record portability analysis for potable wells.
- Review, comment and recommend to BOH on proposals for new and existing establishments that require BOH licenses and permits to operate food establishments, motels, pools, nursing homes, etc.
- Enforce and inspect to code compliance, housing standards per complaint received, public health nuisances, sale of tobacco products, nicotine use in public places, food establishments, as well as provide written documentation per task and follow up.

BOARD OF HEALTH AGENT

FAIRHAVEN, MA

- Perform all Food Plan Reviews, Food and Housing inspections and take appropriate actions concerning all establishments licensed by the Board, including but not limited to rest homes, day care centers, food service establishments, motels, hotels, public and other swimming pools, tanning facilities, and facilities handling hazardous materials.
- Monitor and assist food establishments to comply with local, state, and federal food safety and health standards, including personal hygiene, temperature control of potentially hazardous foods, cross contamination control, pest control, and chemical use training.
- Investigate and take actions relative to complaints of violations of local and state rules and regulations, and conduct general inspections in the interest of protecting the public and environmental health.
- Participate in regional and local emergency preparedness programs including preparing for public health emergencies, including potential infectious disease outbreaks due to natural or man-made causes, by participating in a regional coalition in accordance with CDC and MDPH, perform decontamination investigations at SEMASS as required.
- Represent BOH in court matters regarding state and local sanitary codes, burial agent for MDPH disposition permits, assist Animal Control Officer in zoonotic disease events (rabies).
- Oversee Health Inspector, and draft proposed BOH regulations per direction of the BOH.
- Perform any other duty as needed to protect the public and environmental health as needed and required by state and local rules, regulations, laws, and bylaws and maintain the confidentiality of information.
- Review email, voice mail and other communications, check schedule / calendar for meetings / appointments.
- Keep equipment and work areas clear, clean and in a safe condition, at end of shift, secure office and equipment as required.
- Serve as a liaison to the Board of Health with other Town boards and departments.
- Performs similar or related work as required, directed or as situation dictates.

Recommended Minimum Qualifications:

Education, Training and Experience:

Bachelor of Science Degree with an area of concentration of public health, environmental health, biology, or other related science field. Five to seven (5 - 7) years of related experience of public health, environmental health or related field, and supervisory experience or equivalent combination of education, experience, training. Must be certified Soil Evaluator, Septic Inspector, Certified Food Manager, and Lead Paint Determinator. Must be eligible to become a Certified Health Officer, and /or a Registered Sanitarian in the Commonwealth of Massachusetts. Current Certified Health Officers /Registered Sanitarians preferred. Must have / maintain a valid Massachusetts driver's license.

Knowledge, Ability and Skill:

BOARD OF HEALTH AGENT

FAIRHAVEN, MA

Knowledge: Thorough knowledge of state public health codes and regulations, the principles and practices of environmental sanitation and the principles and practices of administration. Working knowledge of the design, operation and maintenance of private and commercial on-site sanitary disposal systems and the operation and maintenance of private and semi-private potable water wells. Must have knowledge of the local and Commonwealth's public health rules and regulations, and shall have the ability to enforce and interpret regulations firmly, tactfully and impartially.

Ability: Ability to analyze problems independently and to arrive at solutions; ability to establish working relationships with contractors, the general public and public officials; ability to plan, coordinate and direct the activities of technical personnel; ability to enforce and interpret regulations firmly and impartially; ability to communicate effectively orally and in writing; ability to operate and manage Town owned public water systems; ability to establish and maintain effective and harmonious working relationships with town officials, the public and members of the community; ability to communicate effectively in written and oral form; ability to prioritize multiple tasks and deal effectively with interruptions; ability to operate standard office equipment.

Skill: Detecting code violations and persuading violators to correct them without resorting to legal action; excellent organizational skills; excellent communication skills both verbally and in writing.

Physical Requirements:

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently required to stand; walk; sit; use hands to finger, handle or feel; reach with hands and arms; climb or balance; stoop, kneel, crouch or crawl; talk, see or hear. The employee must occasionally lift and/or move up to 50 pounds. This role may have exposure to hazards associated with construction sites and potential exposure to communicable diseases and hazardous waste. Must be able to identify and distinguish color; ability to see peripherally. Must be able to judge distances and spatial relationships.

Supervision:

Supervision Scope: Exercises considerable initiative and independent judgment in the planning, administration and execution of the department's services, works independently in formulating decisions regarding department policies, procedures, operations and plans.

Supervision Received: Works under the direction of the Board of Health, exercising considerable judgment on the interpretation and application of laws and local regulations to frequently changing conditions and problems.

Supervision Given: Supervises department staff and various contract employees.

Job Environment:

- Some work is performed under typical office conditions with a moderate noise level; some work is performed in the field, with exposure to various weather conditions; potential exposure to communicable diseases and unsanitary conditions with a loud noise level.

BOARD OF HEALTH AGENT

FAIRHAVEN, MA

- Operates automobile, hand tools, computer, telephone, facsimile machine, copier, calculator, and other standard office equipment, as well as various testing equipment.
- Employee has frequent contact with the public, town employees, departments, Conservation Commission, state organizations, food handlers/restaurant owners, contractors, and other towns and cities. Contacts are primarily in person, by telephone and occasionally by email or written correspondence.
- Employee has access to department-oriented confidential and personal information concerning citizens and local businesses.
- Errors could result in monetary loss, reduced levels of service, delay in the provision of services and could have legal and/or financial repercussions for the town.

(This job description does not constitute an employment agreement between the employers and is subject to change by the employer as the needs of the employer and requirements of the job change.)

FAIRHAVEN, MASSACHUSETTS
CLASSIFICATION PLAN
GRADE/POSITION

1
Gate Assistant - Seasonal
Receptionist
2
Assistant Animal Control Officer
Volunteer Coordinator - COA
3
Van Driver
4
Lifeguard - Seasonal (BPW)
5
Deputy Harbormaster/Shellfish Deputy Warden
Tree Laborer
6
Recreation Supervisor
Videographer
Assistant Harbormaster/Senior Shellfish Deputy Warden
7
Account Payable Clerk I
Outreach Worker - COA
Recording Secretary
Social Day Assistant Program Coordinator
Veteran's Administrative Assistant
8
Custodian
9
Account Payable Clerk II
On-Call Firefighter - Base (A-F)
10
Programs Coordinator - Recreation
Planning and Economic Development Administrative Assistant
11
Animal Control Officer
Social Day Director - Coordinator
12
Executive Assistant or Administrative Assistant (Fire)
Executive Assistant or Administrative Assistant (Police)
13
Fire Alarm Technician
14
Assistant to the Town Administrator
Gas and Plumbing Inspector

Health Inspector
Sealer of Weights and Measures
Tourism Director
Assistant Building Commissioner
Director of Community Television
Veterans Services Officer
Wiring Inspector
15
BPW Office Manager
Council on Aging Director
Fire Alarm Coordinator
Recreation Director
16
Assistant Sewer Superintendent
17
Conservation/Sustainability Coordinator
Harbormaster/Shellfish Warden
Health Agent
18
Human Resources Director
Principal Assessor
19
Building Commissioner
Planning and Economic Development Director
Town Accountant
20
Sewer Superintendent
Water Superintendent
21
Finance Director
22
No Positions Assigned

Accepted by vote of the Board of Selectmen 11-13-19

NEW GRADE	Amount	1	2	3	4	5	6	7	8	9
1	Hourly	13.01	13.01	13.01	13.01	13.12	13.45	13.79	14.13	14.48
	Weekly	520.40	520.40	520.40	520.40	524.80	538.00	551.60	565.20	579.20
	Annual	27,060.80	27,060.80	27,060.80	27,060.80	27,289.60	27,976.00	28,683.20	29,390.40	30,118.40
2	Hourly	13.01	13.01	13.13	13.46	13.80	14.14	14.49	14.86	15.23
	Weekly	520.40	520.40	525.20	538.40	552.00	565.60	579.60	594.40	609.20
	Annual	27,060.80	27,060.80	27,310.40	27,996.80	28,704.00	29,411.20	30,139.20	30,908.80	31,678.40
3	Hourly	13.37	13.70	14.05	14.40	14.76	15.13	15.50	15.89	16.28
	Weekly	534.80	548.00	562.00	576.00	590.40	605.20	620.00	635.60	651.20
	Annual	27,809.60	28,496.00	29,224.00	29,952.00	30,700.80	31,470.40	32,240.00	33,051.20	33,862.40
4	Hourly	14.31	14.66	15.02	15.40	15.78	16.18	16.59	17.00	17.43
	Weekly	572.40	586.40	600.80	616.00	631.20	647.20	663.60	680.00	697.20
	Annual	29,764.80	30,492.80	31,241.60	32,032.00	32,822.40	33,654.40	34,507.20	35,360.00	36,254.40
5	Hourly	15.30	15.69	16.09	16.49	16.91	17.33	17.77	18.22	18.68
	Weekly	612.00	627.60	643.60	659.60	676.40	693.20	710.80	728.80	747.20
	Annual	31,824.00	32,635.20	33,467.20	34,299.20	35,172.80	36,046.40	36,961.60	37,897.60	38,854.40
6	Hourly	16.37	16.78	17.20	17.63	18.06	18.51	18.96	19.44	19.93
	Weekly	654.80	671.20	688.00	705.20	722.40	740.40	758.40	777.60	797.20
	Annual	34,049.60	34,902.40	35,776.00	36,670.40	37,564.80	38,500.80	39,436.80	40,435.20	41,454.40
7	Hourly	17.52	17.96	18.40	18.86	19.33	19.81	20.31	20.82	21.34
	Weekly	700.80	718.40	736.00	754.40	773.20	792.40	812.40	832.80	853.60
	Annual	36,441.60	37,356.80	38,272.00	39,228.80	40,206.40	41,204.80	42,244.80	43,305.60	44,387.20
8	Hourly	18.75	19.22	19.70	20.19	20.70	21.22	21.75	22.29	22.85
	Weekly	750.00	768.80	788.00	807.60	828.00	848.80	870.00	891.60	914.00
	Annual	39,000.00	39,977.60	40,976.00	41,995.20	43,056.00	44,137.60	45,240.00	46,363.20	47,528.00

9	Hourly	20.06	20.56	21.07	21.60	22.14	22.70	23.27	23.85	24.44
	Weekly	802.40	822.40	842.80	864.00	885.60	908.00	930.80	954.00	977.60
	Annual	41,724.80	42,764.80	43,825.60	44,928.00	46,051.20	47,216.00	48,401.60	49,608.00	50,835.20
10	Hourly	21.46	22.00	22.55	23.11	23.70	24.30	24.90	25.52	26.15
	Weekly	858.40	880.00	902.00	924.40	948.00	972.00	996.00	1,020.80	1,046.00
	Annual	44,636.80	45,760.00	46,904.00	48,068.80	49,296.00	50,544.00	51,792.00	53,081.60	54,392.00
11	Hourly	22.96	23.53	24.12	24.74	25.35	25.98	26.62	27.29	27.98
	Weekly	918.40	941.20	964.80	989.60	1,014.00	1,039.20	1,064.80	1,091.60	1,119.20
	Annual	47,756.80	48,942.40	50,169.60	51,459.20	52,728.00	54,038.40	55,369.60	56,763.20	58,198.40
12	Hourly	24.56	25.17	25.82	26.46	27.12	27.80	28.50	29.20	29.94
	Weekly	982.40	1,006.80	1,032.80	1,058.40	1,084.80	1,112.00	1,140.00	1,168.00	1,197.60
	Annual	51,084.80	52,353.60	53,705.60	55,036.80	56,409.60	57,824.00	59,280.00	60,736.00	62,275.20
13	Hourly	26.53	27.19	27.88	28.57	29.28	30.02	30.76	31.54	32.32
	Weekly	1,061.20	1,087.60	1,115.20	1,142.80	1,171.20	1,200.80	1,230.40	1,261.60	1,292.80
	Annual	55,182.40	56,555.20	57,990.40	59,425.60	60,902.40	62,441.60	63,980.80	65,603.20	67,225.60
14	Hourly	28.40	29.10	29.82	30.58	31.23	32.12	32.92	33.74	34.58
	Weekly	1,136.00	1,164.00	1,192.80	1,223.20	1,249.20	1,284.80	1,316.80	1,349.60	1,383.20
	Annual	59,072.00	60,528.00	62,025.60	63,606.40	64,958.40	66,809.60	68,473.60	70,179.20	71,926.40
15	Hourly	30.38	31.14	31.92	32.72	33.54	34.38	35.25	36.13	37.04
	Weekly	1,215.20	1,245.60	1,276.80	1,308.80	1,341.60	1,375.20	1,410.00	1,445.20	1,481.60
	Annual	63,190.40	64,771.20	66,393.60	68,057.60	69,763.20	71,510.40	73,320.00	75,150.40	77,043.20
16	Hourly	32.50	33.31	34.15	35.00	35.87	36.77	37.68	38.63	39.60
	Weekly	1,300.00	1,332.40	1,366.00	1,400.00	1,434.80	1,470.80	1,507.20	1,545.20	1,584.00
	Annual	67,600.00	69,284.80	71,032.00	72,800.00	74,609.60	76,481.60	78,374.40	80,350.40	82,368.00
17	Hourly	34.78	35.66	36.55	37.46	38.40	39.36	40.35	41.36	42.38
	Weekly	1,391.20	1,426.40	1,462.00	1,498.40	1,536.00	1,574.40	1,614.00	1,654.40	1,695.20

	Annual	72,342.40	74,172.80	76,024.00	77,916.80	79,872.00	81,868.80	83,928.00	86,028.80	88,150.40
18	Hourly	37.22	38.14	39.10	40.08	41.10	42.11	43.16	44.24	45.34
	Weekly	1,488.80	1,525.60	1,564.00	1,603.20	1,644.00	1,684.40	1,726.40	1,769.60	1,813.60
	Annual	77,417.60	79,331.20	81,328.00	83,366.40	85,488.00	87,588.80	89,772.80	92,019.20	94,307.20
19	Hourly	39.82	40.81	41.83	42.88	43.96	45.06	46.19	47.34	48.52
	Weekly	1,592.80	1,632.40	1,673.20	1,715.20	1,758.40	1,802.40	1,847.60	1,893.60	1,940.80
	Annual	82,825.60	84,884.80	87,006.40	89,190.40	91,436.80	93,724.80	96,075.20	98,467.20	100,921.60
20	Hourly	42.61	43.67	44.76	45.88	47.02	48.21	49.41	50.64	51.92
	Weekly	1,704.40	1,746.80	1,790.40	1,835.20	1,880.80	1,928.40	1,976.40	2,025.60	2,076.80
	Annual	88,628.80	90,833.60	93,100.80	95,430.40	97,801.60	100,276.80	102,772.80	105,331.20	107,993.60
21	Hourly	45.59	46.74	47.90	49.09	50.33	51.58	52.88	54.19	55.55
	Weekly	1,823.60	1,869.60	1,916.00	1,963.60	2,013.20	2,063.20	2,115.20	2,167.60	2,222.00
	Annual	94,827.20	97,219.20	99,632.00	102,107.20	104,686.40	107,286.40	109,990.40	112,715.20	115,544.00
22	Hourly	55.62	57.02	58.44	59.82	61.39	62.93	64.50	66.12	67.77
	Weekly	2,224.80	2,280.80	2,337.60	2,392.80	2,455.60	2,517.20	2,580.00	2,644.80	2,710.80
	Annual	115,689.60	118,601.60	121,555.20	124,425.60	127,691.20	130,894.40	134,160.00	137,529.60	140,961.60

Call Firefighter Inset (Based on Level 9)

Level 9(A) FF only									
1	2	3	4	5	6	7	8	9	
20.06	20.56	21.07	21.60	22.14	22.70	23.27	23.85	24.44	
Level 9(B) FF/EMT (1%)									
20.26	20.77	21.28	21.82	22.37	22.92	23.50	24.09	24.68	
Level 9(C) FF/Medic (2%)									
20.46	20.97	21.49	22.04	22.59	23.15	23.73	24.32	24.93	
Level 9 (D) FF LT (3%)									
20.67	21.18	21.71	22.25	22.81	23.38	23.96	24.56	25.17	
Level 9 (E) FF/LT/EMT (4%)									
20.87	21.39	21.92	22.47	23.03	23.60	24.20	24.80	25.42	
Level 9 (F) FF/LT/Medic (5%)									
21.07	21.59	22.13	22.68	23.25	23.83	24.43	25.04	25.66	

Schedule E		
Miscellaneous Salary Schedule		at 2% levels
7/1/2020	Town Election	State Election
Wardens (per election)	125.06	156.30
Clerks (per election)	114.60	143.16
Workers (per election)	104.19	135.42
Registrars (per election)	163.20	210.83
EMA Director	4,000 per year, paid in montly increments	