



Fairhaven Board of Selectmen

February 27, 2019 Meeting Minutes

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2019 MAR 27 A 11:28

FAIRHAVEN,
MASS.

Present: Chairman Daniel Freitas, Vice Chairman Charles Murphy, Clerk Robert Espindola, Town Administrator Mark Rees, and Administrative Assistant Vicki Paquette.

Chairman Freitas called the meeting to order in the Town Hall Banquet Room at 6:39 p.m. The meeting was recorded by Cable Access.

Mr. Rees announced that the Executive Session was cancelled because there was not enough information available at this time to act on the matter.

MINUTES

Mr. Espindola made a motion to approve the minutes of February 11, 2019, open session. Mr. Freitas seconded. Mr. Murphy abstained because he was not at the meeting. Vote was unanimous. (2-0-0)

Mr. Espindola made a motion to approve the minutes of February 11, 2019, executive session. Mr. Freitas seconded. Mr. Murphy abstained because he was not at the meeting. Vote was unanimous. (2-0-0)

TOWN ADMINISTRATORS REPORT

- Mr. Rees informed the Board that he has been busy working on the Town's budgets
- Mr. Rees told the Board the Fairhaven Fire Department recently received an \$8,000 grant for pedestrian and bicycle safety

COMMITTEE LIASON REPORTS

Mr. Murphy said the Sister City committee is working on the Carriage House at the Manjiro museum for use as a Cultural Center

Mr. Espindola said the Municipal Fiber Study Committee had their first meeting and has proposed that the name of the committee be changed to better suit their mission. Mr. Espindola made a motion to change the name of the Municipal Fiber Study Committee to the Broadband Study Committee. Mr. Murphy seconded. Vote was unanimous. (3-0)

Mr. Espindola said he will be working with Mr. Rees, Human Resources Director, Anne O'Brien and the Town Clerk to update the responsibilities of committee chairpersons

Mr. Freitas will meet with the Bristol County Commissioners on Thursday, February 29, 2019

SWEARING IN CEREMONY

Police Chief Myers introduced Officer Christopher Beauregard to the board. Officer Beauregard, a lifelong resident of Fairhaven, an FHS graduate and is an Army veteran having served in Afghanistan and South Korea. Acting Town Clerk Carolyn Hurley swore Officer Beauregard into oath in front of his family, friends and members of the Fairhaven Police Department.

DISCLOSURE BY A NON-ELECTED MUNICIPAL EMPLOYEE

Mr. Rees explained that because Carolyn Hurley is the appointed acting Town Clerk and not an elected official there is a conflict because she is a paid employee and needs to disclose that she is on the ballot and handling the election.

Mr. Murphy made a motion to provide that as appointing official, as required by G.L. c 268A, 19, that the particular matter and the financial interest identified by a municipal employee has determined that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee. Mr. Espindola seconded. Vote was unanimous. (3-0) (Attachment A)

POLL WORKERS FOR ANNUAL LOCAL ELECTION

Mr. Murphy made a motion to accept the list of poll workers for the annual town election on April 1, 2019 as provided by the Town Clerk. Mr. Espindola seconded. Vote was unanimous. (3-0)

SAINT JOSEPH BLESSING OF THE BIKES

Mr. Espindola made a motion to approve the annual Blessing of the Bikes scheduled for May 5, 2019. Mr. Freitas seconded. Vote was unanimous. (2-0-0). Mr. Murphy recused himself because he is on the Board at Saint Joseph School

OXFORD SCHOOL PURCHASE AND SALE AGREEMENT EXTENSION

Mr. Murphy made a motion to sign the Oxford School purchase and sale extension. Mr. Espindola seconded. Vote was unanimous. (3-0) (Attachment B)

AMENDMENT TO THE NON-UNION PERSONNEL PAY AND CLASSIFICATION PLAN

Mr. Rees announced he had one correction for the Sewer Superintendent Position is step 7 not step 9. The difference in pay is about \$4,000. (Attachment C) Mr. Rees explained that the retro pay for this position will go back to July 1, 2018. Board of Public Works (BPW) member Robert Hobson spoke to the Selectmen and explained that in June 2018 the BPW gave a contract to the Sewer Superintendent for the non-union workers that asked for them. In November 2018 Town Council said the contract was not valid. Mr. Hobson feels if the contract is not valid then the BPW should not be giving the 8% raise to the Superintendent and the retro pay. Mr. Hobson stated that this is unfair to the Union workers who are only being offered 2-3% raises. As a taxpayer, he

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.

FY20 WATER AND SEWER ENTERPRISE BUDGETS

Finance Director Wendy Graves met with the Board to discuss the water and sewer budgets. Ms. Graves said with the new meter reading system the Town could go to a better billing system, either quarterly or monthly. Ms. Graves is suggesting the town borrow the 1.5 million dollars for the meter reading program.

Ms. Graves discussed the Sewer budget and has suggested not borrowing any money for the projects this year.

FY20 GENERAL FUND BUDGET

Mr. Rees presented the general fund budget at the previous meeting and reminded the board that some departments have requested additional funding but to be careful entertaining these requests because in order to fund them you will have to cut money from another budget. The Board will request those departments to come before the Selectmen at the next meeting to further explain why they need additional funding.

NEW BEDFORD VOKE TECH

Chairman Freitas read a letter from Greater New Bedford Regional Vocational Technical High School (Voke) regarding the reappointment of Drew Tillett to serve on the school committee as the Fairhaven Community representative. Mr. Rees will follow up on this.

Chairman Freitas read a letter from Kenneth Blanchard who is interested in serving on the Voke school board.

STEAMSHIP PORT AUTHORITY

Mr. Murphy made a motion to accept the resignation of Frank Rezendes from the Steamship Authority. Mr. Espindola seconded. Vote was unanimous (3-0) Selectmen thanked Mr. Rezendes for his 11 years of serving on this board.

Mr. Murphy made a motion to appoint Town Administrator, Mark Rees, to the Steamship Authority. Mr. Espindola seconded. Vote was unanimous. (3-0)

FAIRHAVEN HOUSING AUTHORITY

Chairman Freitas read a letter of resignation from Gregory Tutcik from the Fairhaven Housing Authority. Selectmen thanked him for his service to this board. Mr. Rees will do some research on how to fill this seat.

SUSTAINABILITY COMMITTEE

Mr. Murphy made a motion to accept the resignation of Laura Hellstom, Lisa Elliot, and Vincent Marron from the Sustainability committee. Mr. Espindola seconded. Vote was unanimous. (3-0)

OTHER BUSINESS

Selectman Murphy thanked everyone for the condolences that were offered after the passing of his mother.

Mr. Murphy offered congratulations to Anne Silvia, Director of the Council on Aging for being awarded grant money for the LGBTQ community.

Mr. Murphy also offered congratulations to Megan Silvia for being named teacher of the year. Ms. Silvia is the daughter of COA Director Anne Silvia.

Mr. Espindola commended Cable Access Director Derek Frates for all his hard work on the Cable access channels.

Mr. Freitas noted that it was nice to seeing several shows being broadcast on cable access channel 95

Mr. Murphy made a motion to adjourn at 9:00 p.m. Mr. Espindola seconded. Vote was unanimous. (3-0)

Respectfully Submitted,

Vicki L. Paquette

Vicki Paquette
Administrative Assistant
(approved on 3/25/2019)

Documents appended:

A: Disclosure by non-elected municipal employees of financial interest

B: Oxford School purchase and sale extension

C: Rate comparison handout from Town Administrator

D: Documents from Frank Coelho

E: Fairhaven Getty zoning & licensure Compliance letter, specification options, map and reply letter

Attachment A

DISCLOSURE BY NON-ELECTED MUNICIPAL EMPLOYEE OF FINANCIAL INTEREST AND DETERMINATION BY APPOINTING AUTHORITY AS REQUIRED BY G. L. c. 268A, § 19

MUNICIPAL EMPLOYEE INFORMATION	
Name:	Carolyn Hurley
Title or Position:	Acting Town Clerk
Municipal Agency:	Town of Fairhaven
Agency Address:	40 Center Street Fairhaven, MA 02719
Office Phone:	508-979-4023 X105
Office E-mail:	churley@fairhaven-ma.gov
	My duties require me to participate in a particular matter, and I may not participate because of a financial interest that I am disclosing here. I request a determination from my appointing authority about how I should proceed.
PARTICULAR MATTER	
Particular matter E.g., a judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, or finding.	Please describe the particular matter. Managing the Town Election (April 1, 2019) I am the Acting Town Clerk and will be on the ballot running for election.
Your required participation in the particular matter: E.g., approval, disapproval, decision, recommendation, rendering advice, investigation, other.	Please describe the task you are required to perform with respect to the particular matter. -Organizing the Town Election -Processing the end results by receiving the tally tapes from the polls & reviewing any provisional ballots cast.
FINANCIAL INTEREST IN THE PARTICULAR MATTER	
Write an X by all that apply.	<input checked="" type="checkbox"/> I have a financial interest in the matter. <input type="checkbox"/> My immediate family member has a financial interest in the matter. <input type="checkbox"/> My business partner has a financial interest in the matter. <input type="checkbox"/> I am an officer, director, trustee, partner or employee of a business organization, and the business organization has a financial interest in the matter. <input type="checkbox"/> I am negotiating or have made an arrangement concerning future employment with a person or organization, and the person or organization has a financial interest in the matter.

Financial interest in the matter	<p>Please explain the financial interest and include a dollar amount if you know it.</p> <p>If elected, I will receive the elected Town Clerk's salary.</p> <p>Approx. \$57,000</p>
Employee signature:	<i>Carolyn A. Turley</i>
Date:	<i>Feb. 20, 2019</i>

DETERMINATION BY APPOINTING OFFICIAL

	APPOINTING AUTHORITY INFORMATION
Name of Appointing Authority:	
Title or Position:	
Agency/Department:	
Agency Address:	
Office Phone:	
Office E-mail	
	DETERMINATION
Determination by appointing authority:	As appointing official, as required by G.L. c. 268A, § 19, I have reviewed the particular matter and the financial interest identified above by a municipal employee. I have determined that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.
Appointing Authority signature:	
Date:	
Comment:	

Attach additional pages if necessary.

The appointing authority shall keep this Disclosure and Determination as a public record.

**INSTRUCTIONS FOR DISCLOSURE BY NON-ELECTED MUNICIPAL EMPLOYEE
UNDER G.L. c. 268A, § 19**

FINANCIAL INTEREST IN A PARTICULAR MATTER

WHEN TO USE THE § 19 DISCLOSURE FORM

You are an appointed or non-elected municipal employee, as defined by G.L. c. 268A, § 1(g). Your duties as a municipal employee include participating in a particular matter. You may not participate in the matter because one or more of the following individuals or entities listed below has a financial interest in the matter:

- You;
- Your immediate family member (you and your spouse, and each of your parents, children, brothers and sisters);
- Your business partner;
- A business organization for which you are serving as an officer, director, trustee, partner or employee;
- A person or organization with whom you are negotiating or have made an arrangement about prospective employment..

You may file a § 19 Disclosure with your appointing authority describing the particular matter, your responsibilities in relation to it, and the financial interest that is preventing you from participating.

Your appointing authority has discretion to make a written § 19 Determination that the financial interest you have identified is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from you as its employee. You may not participate in the particular matter unless your appointing authority files a written Determination allowing you to do so.

If you choose not to seek authorization to participate, and do not file a § 19 disclosure, you may need to inform your appointing authority or agency that you will not perform your duties as you usually would.

PARTICIPATION IN A PARTICULAR MATTER

In a § 19 disclosure, you must explain in what way you participate in a particular matter.

A particular matter is any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination or finding.

You are expected to participate through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.

Explain in what way you are required to participate – e.g., reviewing a proposal, approving an application, deciding about a grant; making a recommendation about a budget, providing advice about a case, conducting an investigation, performing a task or taking an action – in relation to the particular matter.

FINANCIAL INTEREST

In the disclosure, you must explain the financial interest that prevents you from participating in a particular matter. You should include the dollar amount of the financial interest, if known.

A financial interest must be direct and immediate or reasonably foreseeable (and not remote, speculative or not sufficiently identifiable), and may be large or small, positive or negative – a gain or loss, a benefit or an obligation.

For example, a financial interest exists when the outcome of a particular matter may:

- Cause or prevent a financial gain or loss;
- Create or eliminate a financial opportunity;

- Determine who will make decisions affecting your or an immediate family member's wages, hours or working conditions as a municipal employee.

Abutters and Owners of Nearby Property: The following people are presumed to have a financial interest in a particular matter regarding real estate:

- An abutter;
- An abutter to an abutter within 300 feet of the property line;
- A person who may suffer an injury in fact which is different in kind or magnitude from that suffered by members of the general public.

Competitors: Your business interest will have a financial interest if the outcome of a particular matter would affect the financial interests of a competitor in a way that would likely decrease or increase your business or the business of your immediate family, your partner, or your private employer.

FILING THE § 19 DISCLOSURE AND DETERMINATION

For the municipal employee

Sign your completed Disclosure and submit it to your appointing authority.

For the appointing authority

You have received a § 19 Disclosure from a municipal employee who may not participate in a matter because of a financial interest in the matter. **You may make a written Determination** that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee. **You also may decide not to make this Determination.** If you make such a Determination, you should provide a copy to the employee. Keep a copy of the § 19 Disclosure as a public record.

If you need advice about completing the disclosure, please call the Attorney of the Day at (617) 371-9500 or e-mail the State Ethics Commission at requestadvice@massmail.state.ma.us.

2/26/2019

Town of Fairhaven Mail - Agenda items



Attachment B

Mark Rees <mrees@fairhaven-ma.gov>

Agenda items

Thomas P. Crotty <tomcrotty@tcrottylaw.com>

Mon, Feb 25, 2019 at 4:36 PM

Reply-To: tomcrotty@tcrottylaw.com

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

Mark

Oxford School The form of amendment is attached and has been reviewed and approved by buyer's attorney. The amendment sets a new target closing date of December 2020, (more realistic given the time it takes to get the funding organized) and allows two 6 month extensions if needed for the financing to be approved.

FIRST AMENDMENT TO OPTION TO PURCHASE AGREEMENT

That certain Option to Purchase Agreement (the "Agreement") entered into as of July 11, 2016 by and between the TOWN OF FAIRHAVEN, MASSACHUSETTS, a political subdivision of the Commonwealth of Massachusetts, (referred to therein as the "Seller"), and SCG DEVELOPMENT PARTNERS, a Delaware limited liability company or its successors, assigns or designee (the "Purchaser"), is hereby amended by deleting Section 1.3 of the Agreement in its entirety and substituting in its place the following:

Section 1.3 Closing Date. The transaction contemplated hereby shall close on or before December 31, 2020, which may be extended for two consecutive periods of six (6) months at the sole discretion of the Purchaser in order to secure the LIHTC, (the "Closing Date") as provided for herein; provided, however that if the conditions set forth below have not been satisfied, the Purchaser shall notify the Seller in writing and the Purchaser shall have the right to terminate this Agreement by written notice to Seller. The Purchaser shall not be required to close, in any event, unless (i) it has received all Approvals and thirty (30) days has passed after the expiration of the period for any appeal of the Approvals without an appeal having been taken (the "Appeal Expiration Date") or, if later, the dismissal of any such appeal, (ii) not less than sixty (60) days have passed following the satisfaction of the Financing Contingencies; and (iii) the Purchaser's first mortgage construction loan for the Project has closed and the equity investor has been admitted as a partner of the Purchaser and the initial loan and equity installments are funded. The Purchaser shall not be obligated to purchase the Property unless the Approvals and Financing Contingencies for the Property have been obtained by the Purchaser and, if the Approvals and Financing Contingencies are not obtained, the Purchaser may notify the Seller of its decision to terminate the Agreement pursuant to Section 8.1. Upon satisfaction of the Financing Contingencies and receipt of Approvals by the Purchaser, and any necessary release of federal funds, this Option to Purchase shall convert to a purchase and sale agreement for the Property.

Except as otherwise set forth herein all other terms and conditions of the Agreement remain in full force and effect.

Signature page follows:

IN WITNESS WHEREOF, Seller and Purchaser hereto have executed this Amendment effective upon signing by both parties:

PURCHASER:

SCG DEVELOPMENT PARTNERS, a
Delaware limited liability company, by SCG
Development Manager, LLC, its sole member

By: SCG Capital Corp., a Delaware
corporation, (d/b/a/ Strat Cap), its
manager

By:

Stephen Wilson
Executive Vice President

SELLER:

BOARD OF SELECTMEN FOR THE TOWN
OF FAIRHAVEN

By: _____
Name:
Title: Selectman

By: _____
Name:
Title: Selectman

By: _____
Name:
Title: Selectman

Attachment C

Sewer Supt.							
		\$Diff FY19 & Contract.	%Diff FY19 & Contract.				
		\$ 9,899	12%				
				\$ Diff/Level 7	% Diff Level 7	\$ Diff/Level 9	% Diff Level 9
FY19 Salary	\$ 84,428			\$ 14,351	17%	\$ 19,364	23%
Contract Salary	\$ 94,326			\$ 4,453	5%	\$ 9,466	10%
Grade 20 Level 7	\$ 98,779						
Grade 20 Level 9	\$ 103,792						

Water Supt.			
		\$ Diff	% Diff
Contract Salary	\$ 82,596		
Grade 20 Level 4	\$ 91,728		
		\$ 9,132	11%

Attachment D

Article _____

Amendment to the Town's Personnel By-Laws

To see if the Town will vote to amend the Town's Personnel By-Law 61-2

Changing from

All departments and positions shall be subject to the provisions of this chapter, except elected officers, employees of the School Department, and any other employee who is excluded by law. Notwithstanding anything contained herein to the contrary, the Town Administrator shall not be subject to the provisions of this chapter. Any department head may be exempted from the provisions of this chapter upon recommendation by the Town Administrator and vote of the Board of Selectmen. Any such exemption shall take effect upon the adoption of an employment contract between the Town and the department head. If there is a conflict between this chapter or any plans, policies, rules or regulations promulgated pursuant to this chapter and an approved collective bargaining agreement, the provisions of the collective bargaining agreement shall prevail.

Changing to

All departments and positions shall be subject to the provisions of this chapter, except elected officers, employees of the School Department ~~and the Board of Public Works~~, and any other employee who is excluded by law. Notwithstanding anything contained herein to the contrary, the Town Administrator shall not be subject to the provisions of this chapter. Any department head may be exempted from the provisions of this chapter upon recommendation by the Town Administrator and vote of the Board of Selectmen. Any such exemption shall take effect upon the adoption of an employment contract between the Town and the department head. If there is a conflict between this chapter or any plans, policies, rules or regulations promulgated pursuant to this chapter and an approved collective bargaining agreement, the provisions of the collective bargaining agreement shall prevail.

Name

Address

Precinct

MEMO

TO: Board of Selectmen
FROM: Mark Rees, Town Administrator
DATE: January 25, 2018
RE: Amendment to Non-Union Personnel Pay and Classification Plan

Per the attached letter from Town Counsel, the employment agreements entered into by the Board of Public Works (BPW) and the Sewer and Water Superintendents are no longer valid and they should come under the personnel bylaw. Pursuant to the personnel bylaw, the Board of Selectmen previously approved a pay and classification plan for non-union employees that did not include the positions of Water Superintendent and Sewer Superintendent.

However, the consultant when developing the recommended pay and classification plan did develop job descriptions for these two positions and classified them accordingly into a grade level, but because at the time of the plan approval it was thought that these positions were covered by the agreements with BPW, they were not included in the pay and classification plan approved by the Selectmen.

Given Town Counsel's determination, it is now recommended that the Board of Selectmen vote to include these two positions in the Non-Union Personnel Pay and Classification Plan at the consultant recommended grade level and at the step consistent with the length of service schedule previously used for other non-union employees (one step for five years of service)

Sewer Superintendent: Level 20, Step 9

Water Superintendent: Level 20, Step 4

Cc: Anne O'Brien, Human Resources Director
Vincent Furtado, BPW Superintendent
Linda Schick, Sewer Superintendent
Jeffrey Furtado, Water Superintendent

THOMAS P. CROTTY & ASSOCIATES, PLLC

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

TELEPHONE 508.990.9101
FACSIMILE 508.990.9108
E-MAIL: info@tcrottylaw.com
www.tcrottylaw.com

THOMAS P. CROTTY
RUSSELL G. WYNNACOTT
RECEIVED
2019 JAN 22 10 23 30
BOARD OF SELECTMEN
FAIRHAVEN MASS

January 16, 2019

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

RE: Personnel By-Law – Employee Contracts

Dear Mark:

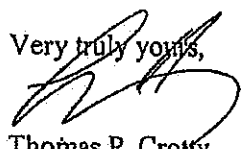
You have asked for my opinion regarding contracts entered into by the public works department heads as they relate to the personnel by-law.

In early 2018 the Board of Public Works entered into employment contracts with two department heads. As amended by the Town Meeting of May 2017, the personnel by-law provides that all department heads are subject to the personnel by-law, but may be exempted "upon recommendation by the Town Administrator and vote of the Board of Selectmen". Ch. 61 §61-2. The exemption becomes effective upon adoption of an employment contract. (Under the terms of the by-law before the May 2017 amendments, the adoption of an employment contract alone was all that was required to exempt a department head.)

As a result of the 2017 amendments these subsequent contracts are not sufficient to exempt those department heads, and they remain subject to the personnel by-law.

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

Very truly yours,


Thomas P. Crotty
Town Counsel

TPC/mch

There are three options for exempting department heads from the personnel by-law:

1. Under the terms of the personnel by-law, the Board of Selectmen can vote to exempt "department heads" from that by-law. The personnel by-law lists "assistant public works superintendent, sewer division superintendent, and water division superintendent, under the heading "executive group", along with various exempt department heads. So I assume that all those positions may be considered "department heads", and therefore could be exempted by vote of the selectmen. That vote would not require the consent of the employee. (The personnel by-law also lists "treatment plant operator class 5, and assistant chief wastewater operator" under the heading executive group. I don't know enough about those positions to say whether they might qualify as "department heads" for purposes of the personnel by-law.)
2. Under the terms of the personnel by-law, a department head is also exempted from that by-law "upon the adoption of an employment contract between the Town and [the] department head." In the case of the public works department heads, such a contract would apparently be entered into by the Board of Public Works and the employee. The Board of Selectmen would not be involved in that contracting process, although the selectmen are involved in the budgeting process which could impact the contract terms. The employee's consent is implicit, having entered into the contract.
3. Finally, an employee can be exempted from the personnel by-law by vote of the Town Meeting. The vote should be in the form of an amendment to the personnel by-law, adding language to Section 1B of the by-law, expressly exempting a certain position or positions from that by-law. Neither the Board of Selectmen, nor the employee, would be required to consent to that action by town meeting.

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

Tom

Thomas P. Crotty
Thomas P Crotty & Associates, PLLC
5 Dover Street, Suite 102
New Bedford, MA 02740

tel 508.990.9101
fax 508.990.9108

tomcrotty@fcrottylaw.com



Attachment E

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

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.**

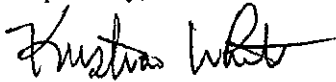
In order to abate the unrelenting violations at Fairhaven Getty, the Building Department is proposing possible modifications to the site plan (see site plan). The number of total vehicles on site will remain unchanged. The conversion of the number of for sale spaces to customer spaces will greatly reduce 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.

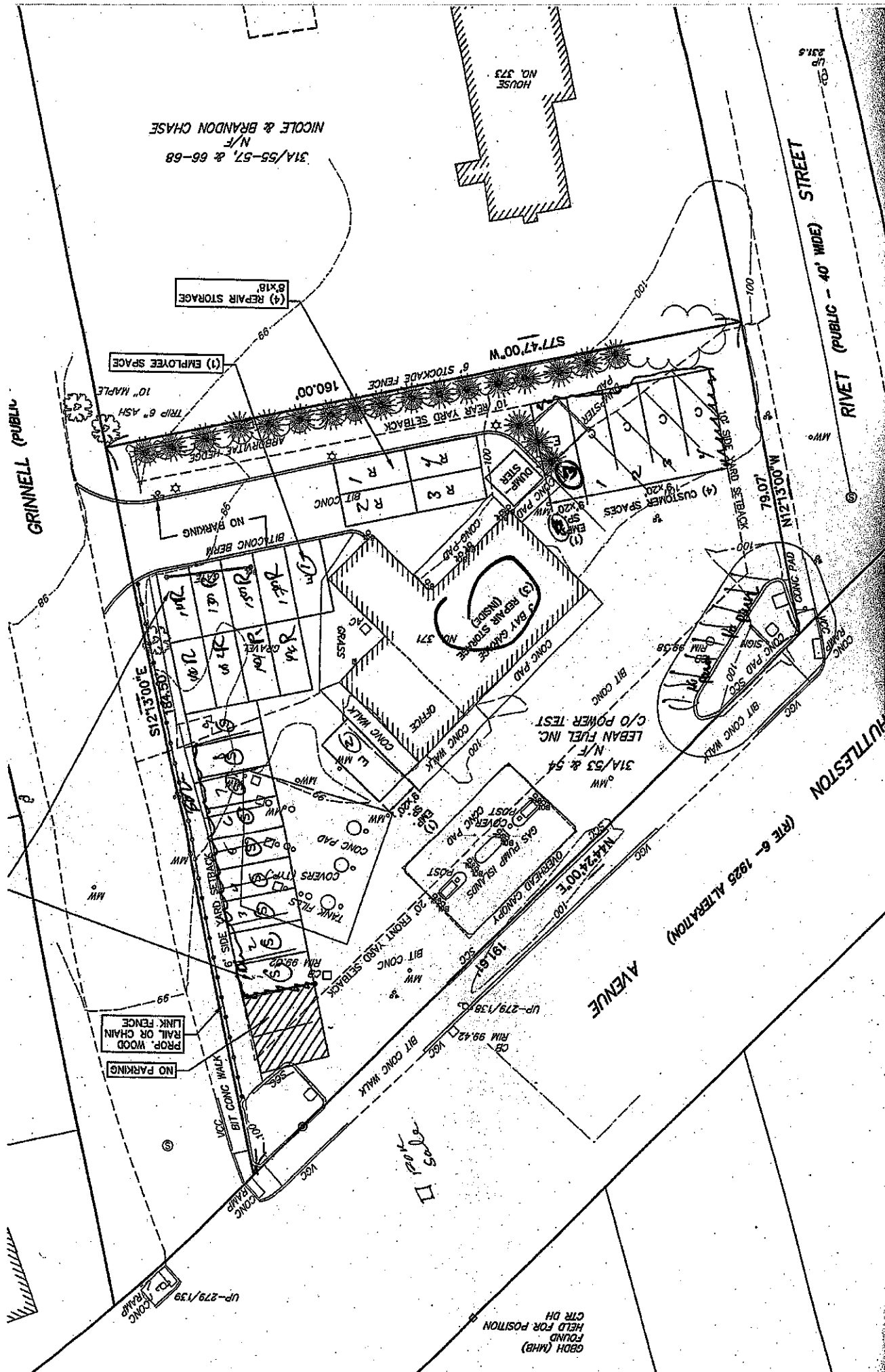
The Building Department/Zoning Enforcement Agent shall schedule and conduct weekly inspections at the premises in order to confirm compliance with the conditions of the license. The current cost of an inspection is \$52.00. The business owner shall be responsible for all incurred costs for the required 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,

A handwritten signature in black ink, appearing to read "Kristian White", with a stylized flourish at the end.

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

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Wareham, Massachusetts 02571-0963

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BOARD OF SELECTMEN
FAIRHAVEN, MA

Tel. 1-800-293-6124

508-295-6124

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.

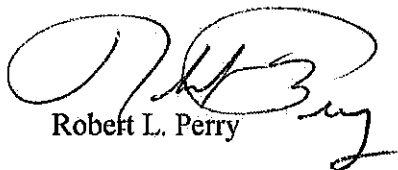
8. He will re-stripe and label spaces per plan.

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

