

Planning Board

*Minutes*

Tuesday July 23, 2019  
Town Hall, 40 Center Street,  
Fairhaven MA 02719

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FAIRHAVEN,  
MASS.

**1. GENERAL BUSINESS:**

- a) Chair's Welcome and Media Notification
- b) Quorum/Attendance: Chairperson, John Farrell, Vice Chairperson, Ann Richard, Wayne Hayward, Rene Fleurent, Jeffrey Lucas, Cathy Melanson, and Jay Malaspino  
Absent: Geoff Haworth

Planning Director, Paul Foley was also in attendance

- c) Minutes: July 9, 2019 – John Farrell noticed that the minutes are 'drafted'; Mr. Foley stated he just put the word, 'drafted' behind them in case there were any amendments.  
That being said, Ann Richard made a motion to accept the minutes as written and was seconded by Jeff Lucas. The motion passed unanimously.
- d) Planning Board Bills: Mr. Farrell stated there were four different Staples bills with end of the year office supplies. He read the invoice amounts and what was purchased.  
\$149.60 – For folders and batteries  
\$79.98 – Device protection on a printer  
\$599.98 – Printer  
\$55.55 – 3 ring binders

Jeff Lucas made a motion to pay all four invoices totaling \$885.11 and was seconded by Cathy Melanson. Motion passed unanimously.

- e) Correspondence: None.  
However, Mr. Farrell stated there was a letter that Mr. Foley received regarding 88 Fort Street that required a signature and Mr. Foley brought it to the Board regarding a proposed new seawall that had just been received in the mail and they were requesting a sign off. They have to go before the Conservation Commission. Ms. Richard asked if perhaps Mr. Foley should wait until Conservation approves it.

Ms. Richard asked whether the new with MS4 Stormwater Regulations which was recently voted in at the most recent Town Meeting would apply. Mr. Foley said he had checked and the zoning bylaw amendments that were approved at the May 4 Town Meeting had not been approved by the Attorney General yet. He will review the project with respect to zoning.

Mr. Farrell also read correspondence from New Bedford of a Public Hearing from their Planning Board. Mr. Foley stated it was just a courtesy from them and he shared it with the Board in case there were any interest in the project.

## **2. PUBLIC HEARING:**

- a) DS 19-02: Barboza Single-Lot Definitive Subdivision to create one buildable 7.752 acre lot on an 8.07-acre parcel of land off of New Boston Road on Map 40, Lot 26. The new road will occupy 10,460 square feet and a small 3,750 sf parcel around an existing shed that we be attached to an abutting property.

Mr. Farrell opened the public hearing. He stated he and Ms. Melanson reviewed the minutes from the July 9<sup>th</sup> meeting and signed the Mullin Rule sheet so they are able to vote tonight.

Mr. Allen Ewing was present to represent the owner, John Barboza who was also present. He put a paved apron with a width the same as the gravel road of 16' on the plan.

Mr. Hayward referred to the note on the plan, he called it a "poor man's covenant" that reads 'this is a one lot subdivision and owner states that no further subdivision will be allowed'.

Ms. Richard stated that this was one of the conditions on our approval, but because the covenant is written on the plans as well, we shouldn't have to rewrite the condition.

The Board discussed the waivers that were requested. The Board also discussed the conditions.

Mr. Lucas stated he felt that the 'fill' should be put in as a condition to where it is coming from and should be certified. Mr. Lucas feels that the Planning Board Department should be the ones to record the definitive plan. Mr. Foley stated he could add the word 'signed'. "The applicant shall record the signed definitive plan..."

Ms. Richard stated they should add this to the Planning Board Agenda for a future discussion.

Mr. Foley restated what the condition regarding the fill would be and added that it would have to come from an identified source. He read "the origin and the integrity of the fill will be from a verified source and verified by the Building Inspector and certified that it is clean before use or transportation to the site". Mr. Foley also stated that

condition number ten will read that a 16' paved apron applicable to all DPW standards and regulations is required.

Mr. Barboza stated the street name will be Barboza Way.

Ann Richard made a motion to approve the definitive subdivision for Lot 26 Map 40 off New Boston Road with the 11 conditions as written and was seconded by Jeffrey Lucas. The motion passed unanimously.

Mr. Foley stated there was a 20-day appeal period. He would then have the Board sign the Mylar Plans and contact the applicant.

b) Upcoming Public Hearing – The Pappas/Roderiques Definitive Subdivision off of Hiller Avenue and Timothy Street for 16 buildable lots was continued without taking public testimony to August 13, 2019. Mr. Foley stated they will send out letters to the abutters again and put it on the website as well as re-advertise.

**3. CURRENT PLANNING:**

a) Cellco d/b/a Verizon vs. Town of Fairhaven

Mr. Farrell stated that Verizon is working with the Town Attorney to come back before the Board. The Board had voted at the previous meeting to have the court remand to project to the planning board to re-hear the case. The Town attorney is waiting to get an official reply from the Applicant.

b) Receipt of Plans: Carapace LLC, New Mazda Dealership – 250 Bridge Street

Mr. Farrell stated we haven't seen anything from them for a few years. Mr. Foley stated that a previous approval had expired. They reapplied in late April then withdrew due to some questions on the delineation of the wetlands line through Conservation. The Conservation Agent and the circuit rider from the DEP and gone to the site to do some testing and found that more of the site was a wetland than the expired lines indicated. They reapplied to Planning and the ZBA with the same exact plans and basically ignored the Conservation Commission even though the delineation of the wetland is expired and the actual demarcation line is believed to have changed. Mr. Foley stated he has not stamped the plans in as of yet. They did re-file with Conservation today, July 23<sup>rd</sup>.

Mr. Foley agrees with a comment made at the previous hearing by Wayne Hayward that there should be an order to permits that are applied for and that Planning Board should be the last on the list. The project also needs to go to ZBA for a variance. In his opinion the Planning Board cannot approve a plan that is not allowed by zoning. So if they need a variance they should go to the ZBA first. The Planning Board does not have to approve a project that has received a variance but they cannot approve one that needs a variance and has not received one yet. Also, in this case they have a significant amount of wetlands and are both proposing work in wetlands and replicating wetlands and their lines are expired and apparently need to be revised. In such a case it would seem that

the project should be reviewed by the Conservation Commission first. At the very least the wetland line delineation should be confirmed by Conservation Commission if not waiting for an Order of Conditions to be included in a Planning Board decision.

c) Review of Plans: None

**4. LONG RANGE PLANNING:**

a) Town Planner Update

Mr. Foley has been asked to work on the Dog Park Study Committee. He and Whitney McClees, the Conservation Agent, will go out and review sites ased on criteria developed by the Dog Park Study Committee. He and Harbormaster Tim Cox had submitted an application to the Dams, Seawalls and Levees Program for a grant to complete the reconstruction and expansion of Union Wharf. It was something Mr. Roth had done in the past and had prepared most of the information but that we might have a better chance now because the Union Wharf is, as of August 2018, also a Public Safety Marina and public safety is one of the priority areas this grant is looking for. They will be applying to the MassWorks Infrastructure Grant Program for the same project in August.

Mr. Foley said he has been asked to look into short-term rentals and the trailers/campers issue.

Mr. Foley stated he went to the Bates House last week on an invite and it was a good experience with a tour of the impressive new house Museum. Mr. Bates was the founder of the 7<sup>th</sup> Day Adventist Church and they had totally restored the house that he was born in that was originally built in 1742. Just behind the building are the remains of the oldest house in town that was lived in by one of the pilgrims. There is a single stone wall that was the end of the house that remains and they called it a "stone-ender". There is a single painting of the house intact at the Whaling Museum and a photograph of the house in some disrepair from the late 1800's. They would like to apply for CPC monies to reconstruct the old house. Mr. Foley suggested they consider doing the reconstruction in situ rather than at the back of the property and they were very excited about that possibility.

Mr. Farrell said that we need to expedite discussing the Demolition by-law. Mr. Farrell would like a workshop on the 27<sup>th</sup> of August to start discussing the demo by-law, as well as the North Fairhaven Benoit Square Mixed Use district as well.

Mr. Farrell also asked Mr. Foley to have discussions with Building Commissioner, Kristian White and Conservation Agent, Whitney McLees about going forward with how 'fill' for projects gets certified as clean. Mr. Foley agreed.

Mr. Hayward requested that the Benoit Square be put on as a top priority. There was also a discussion of whether we want to have a procedure in the bylaws that says the

Planning Board will file the signed plan at the Registry of Deeds or do we want to rely on a condition such as the one in the decision that states: "Once endorsed by the Planning Board, the applicant shall record the definitive plan at the Registry of Deeds and provide the Book and Page number to the Planning Board within six months of its endorsement".

Ms. Richard asked if there was an update for Oxford School as of yet. Mr. Foley to follow up with Mr. Rees.

Cathy Melanson made a motion to adjourn and was seconded by Wayne Hayward. The motion passed unanimously at 7:25pm.

Respectively submitted,

Patricia A. Pacella