

Fairhaven Planning Board  
*Minutes*  
Tuesday August 13, 2019 @ 6:30 pm  
Town Hall, 40 Center Street,  
Fairhaven MA 02719

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1. **GENERAL BUSINESS:**

a) Chair's Welcome and Media Notification

FAIRHAVEN,  
MASS.

Mr. Farrell stated that Al Borges, age 90 recently passed and was a valued member of the Planning Board. Mr. Farrell noted that he had served well for many years on several boards and Ann Richard added that he was a presence at every public meeting for many years. Mr. Farrell noted Mr. Borges extended family included great-great grandchildren and on behalf of the Planning Board he would like to thank the Borges family for essentially giving him to the Town for all of his service.

b) Quorum/Attendance: Chairperson, John Farrell, Vice Chairperson, Ann Richard, Rene Fleurent, Jeffrey Lucas, Cathy Melanson, and Jay Malaspino.

Absent: Geoff Haworth and Wayne Hayward

Planning Director, Paul Foley was also in attendance

c) Minutes: July 23, 2019 – Jeffrey Lucas made a motion to accept as read and was seconded by Ann Richard. Motion passed unanimously.

d) Planning Board Bills: None

e) 61A Removal request for Solar Farm at 46 Charity Stevens Lane. The Board of Selectmen request the Planning Boards input to determine whether or not to exercise the Town's right of first refusal. TA request response by August 14 otherwise will assume no interest.

Mr. Farrell read the letter regarding the 61a removal request for the proposed Solar Farm at 46 Charity Stevens Lane.

Mr. Foley explained the applicant would like to remove two sections with a total of 11-acres from the 49-acre farm from 61A protected Chapter Land status to install a large ground-mounted solar array. The two sections are about the same size and the western section abuts the Town Forest. Mr. Foley explained they got a variance from the Zoning Board of Appeals for frontage and that they will still have to come back to the Planning Board for a Special Permit. This is only about whether the Planning Board wants to recommend to the Board of Selectmen to pursue acquiring this land for conservation purposes. Mr. Foley noted that the Conservation Commission did vote last night to recommend to the Selectmen that they should look at the westerly side of the land to possibly purchase.

Mr. Farrell asked why should taxpayers have to pay for it.

Mr. Lucas asked if they are asking if we are looking into the 11-acres or the total parcels as a whole, which is 49-acres. Mr. Farrell reread the letter from Clean Energy. Ms. Richard stated that she understood it to mean that they are just removing the eleven acres, not the whole property. There was a discussion of whether we were talking about the 11-acres, the western 5-6 acres or the total 49-acres.

Mr. Malaspino asked about how much of the land would have to be clear-cut to allow the solar panels. Mr. Foley estimated 1-2 acres. Mr. Farrell advised that the applicant would need to come to them for a Special Permit and that would be the time that discussion would happen.

Ms. Melanson said she would like to see the Town exercise that right for first refusal of the property, at least the western portion, to add to the Town Forest.

Mr. Farrell said he didn't see the need for the purchase, as the tax payers shouldn't have to pay for it. There are a lot of wetlands there and how would anyone get to that piece. Mr. Fleurent didn't think purchasing it for the Town would be necessary at this time.

Ms. Richard would like to see the Town pursue our options with the land, perhaps with the Buzzards Bay Coalition. She would like to see it stay in Chapter 61A Land or conservation. She is all for solar in the right place but this is not the right place.

Mr. Lucas thought it might be too disjointed to be worthwhile with two separate pieces of property and doesn't see any future or current use for the Town to use. Mr. Lucas thought it would be more valuable to the Town Forest if we were looking at the whole 49-acres instead of two unconnected pieces of a bigger property.

Mr. Farrell asked Mr. Foley what he thought. Mr. Foley is of the opinion that solar panels should cover rooftops, parking lots, landfills and brownfields rather than farm fields and forest. He thinks the Applicant could install enough energy to run the farm and then some without taking any land out of farming and forest by strategically placing some panels along the south-facing edge of forest and some of the rows of landscape plants and shrubs they grow. He would rather solar panels were being put on buildings and already developed space. It would be better if these ground mounted arrays were dispersed through farms without taking them out of production or conservation rather than a race to fill up fields with panels which is what we have now.

Mr. Farrell asked if the Board sees an intended purpose other than conservation space? Mr. Lucas said when the contract is over in 20-25 years then it can go back to being a field. Ms. Richard said that it might then become a subdivision. This might be the only chance we have to conserve this land. Cathy Melanson added that we should at least pursue it, if it gets developed now we probably won't get another chance.

Ms. Richard made a motion to recommend to the Board of Selectmen that the Town pursue the right of first refusal to conserve the western section of 61A land proposed for a solar farm, either through purchase or other avenues. The Motion was seconded by Cathy Melanson. Four in favor – Ann Richard, Cathy Melanson, Jay Malaspino and Jeff Lucas in favor; and 2 in opposition – John Farrell and Rene Fleurent in opposition.

f) Planning Board Bills: None.

## **2. PUBLIC HEARING:**

- a) DS 19-01: Pappas/Roderiques Definitive Subdivision off of Hiller Avenue and Timothy Street for 16 buildable lots and two drainage parcels on a 15-acre parcel of land. The Applicant has requested a continuation without taking public testimony to be considered by the full Board at the meeting.

Mr. Farrell advised that the applicants have requested a continuation. Mr. Foley gave an update on the project, that the applicant may need to adjust their plans, after a peer review by GCG pointed out 77 issues. He said some of the key points in the Peer Review such as setbacks to infiltration basins may require them to redraw the plan. He added that the BPW letter of concerns from December and some of his concerns lead the applicant to request more time to address the concerns.

Mr. Lucas asked how their agenda looks like for the next couple of meetings to schedule appropriately.

Ms. Richard feels that we've accommodated the applicant and that if there is a full meeting on August 27<sup>th</sup>, that we should postpone or continue to the September meeting.

Ms. Richard made a motion to continue the DS 19-01 Definitive Subdivision applicant to the September 10, 2019 meeting and was seconded by Jeff Lucas.

Mr. Foley stated he will notify abutters by mail again and advertise the meeting date.

Motion passed unanimously.

Resident, Karen Isherwood asked if there is a number of times the applicant can request a continuance.

Mr. Farrell asked that the packets be available by copies to members who are requesting them by mail. Cathy Melanson, John Farrell, Wayne Hayward and Rene Fleurent would like the packets by mail.

#### **CURRENT PLANNING:**

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

Mr. Foley said that Attorney Klasnick had contacted him and they are meeting on Friday at 10:00a.m. Mr. Foley will make sure the concerns expressed in the Motion to remand and the Special Permit decision are addressed. They are that the Applicant make a good faith effort to review alternative locations and pursue co-location. He will send Mr. Farrell a phone number to call to be a part of the discussion. Mr. Farrell stated one of Attorney Klasnick's frustrations was that the Board should make every effort to be present when they are coming back to be re-heard.

b) Receipt of Plans:

i. Carapace, LLC; New Mazda Dealership – 250 Bridge Street – Update

Mr. Foley said that the Conservation Commission voted, last night Monday 8/12/19, that the delineation of the wetlands lines requires a peer review. They are scheduled before the ZBA for two variances on September 3, 2019. Mr. Foley said that the Applicant, Carapace, seemed to agree with him in an email that they should wait for the ZBA to determine the variance issue first and the Conservation Commission, at the very least, to determine the wetland line before filing with the Planning Board for a Special Permit. The Planning Board cannot approve a plan that is not allowed by zoning. The Planning Board does not have to approve a project that has received a variance but they cannot approve one that needs a variance, or more than one in this case, and has not received them. Also, if the Conservation Commission determines that the wetland delineation is different, as suggested by the Conservation Agent and the DEP Circuit Rider, then the plan will have to be altered to address that.

ii. ANR – 732 Sconticut Neck; Plan received to divide one 10.84-acre parcel into four (4) lots through the Form A (Approval not Required) Process.

Mr. Foley stated that he is working with the Assessor's office, as Mr. Garcia stated that there are back taxes owed and the land is 61A Chapter Land and they have not offered the Town right of first refusal. Mr. Foley asked Town Counsel with the Town Administrator's okay for guidance. Attorney Crotty said the Planning Board could endorse an ANR but that the applicant has to abide by 61A before they do anything with the land. Mr. Farrell asked if that

was in writing. Mr. Foley stated that it was in an email but that he will ask Mr. Crotty to give a bit more details in writing for the Board to review for the August 27 meeting. Mr. Foley stated that he has tentatively scheduled it for the August 27, 2019 meeting.

#### **LONG RANGE PLANNING:**

##### **a) Town Planner Update:**

Mr. Foley reviewed several of the possible dog park sites based on the criteria developed by the Dog Park Study Committee with the Conservation Agent last week. There are a few options that seem to be better than others. They will visit the rest and grade them as well. They are scheduled to report to Selectmen Espindola on Thursday with their status of the review.

He submitted a grant to the MassWorks Infrastructure Program last Friday for the reconstruction of Union Wharf.

Mr. Foley went to a public meeting regarding the State Enhanced Dredging (SER) today and is working with Mr. Cox, the Fairhaven Harbormaster, and Ed Anthes-Washburn, the New Bedford Harbormaster, on it. They are operating under the CERCLA or Superfund to clean the harbor up to a higher degree and do dredging throughout the harbor that should be a great economic development boost to both sides of the harbor. Several business owners were at the public meeting and expressed that with the dredging they will be able to do more business. For example, Mr. McLaughlin said that he would now be able to handle bigger ships. He had to turn one down that this would allow that would have put 8-10 workers to work for 6 months with good wages. There will be another public meeting in front of the Select Board on Monday. Our Consultant, Foth, has put together a good slide show presentation with the history of dredging in the harbor and how it works and what the SER will do. Mr. Foley said that he will add that and other information to the website regarding the SER dredging program.

##### **b) Demolition Delay: Steps to prepare draft for Zoning Bylaw on Fall Special TM**

Mr. Foley stated that he discussed Demolition Delay with the Historical Commission, who would like to meet jointly with the Planning Board to discuss creating a draft bylaw. There is going to be a Special Town Meeting in November that is only three months away so if we want to do it this year we need to act.

He believes we all agree on the basic framework that is in the MHC suggested draft bylaw but the key issue is determining how we define what is "historic". Is it a date or a list or a combination of the two? If a date, what is the date. Mr. Lavallette thinks the mid-1920's when plumbing and electricity started to become common in houses. Mr. Foley noted that the quality of houses generally went down after World War 2. Mr. Fleurent thought it should be a rolling date. Mr. Foley added that if we determine a date we should also have language that allows for something special after that date. For example, if Frank Lloyd Wright had built a house here in the 1950's then we could consider that as historic.

Ms. Richard said it would be helpful to have the Historic Commission at their next meeting and work together on this. Ms. Richard stated it might be helpful to start with Debbie Charpentier's binder that has historical homes/pictures listed in it.

Mr. Farrell will draft a letter to invite the Historical Commission to the next Planning Board meeting on August 27 to discuss.

##### **c) Benoit Square Mixed-Use Zoning: Steps to prepare draft for Zoning Bylaw on Fall Special TM**

Mr. Foley said he thought we could essentially use the same Mixed-Use District on Benoit Square as was used on Main Street. He thought what needs to be reviewed and revised are the Minimum Yard Requirements and setbacks from the Use Regulation Tables. The Board could review the uses in the Tables but he thinks that will be pretty much the same. It's the setbacks that make the historic buildings non-conforming. He checked the record and the previous planner had asked SRPEDD to do a zoning analysis of the area which he felt he could do. Mr. Farrell recommended to keep this on the agenda for the August 27, 2019 meeting for discussion.

Mr. Foley stated that there was a special town meeting tentatively planned for early November, possibly November 12, 2019 – he will be on a planned vacation, but hopefully it might be a little later so he can attend.

#### **OTHER BUSINESS:**

Mr. Foley talked about the Bates House/Museum and the original stone wall that is left from the first house in town. They had called him a few weeks ago and asked if he thought the Town Community Preservation Committee would be interested in funding a replica of the original house somewhere on the property. He had suggested building it off of the original stonewall and they were very excited by that. They have had their architect drawing up plans to develop a replica in situ as close to authentic as they can get. Mr. Foley said the key concerns were whether they can do it as close to historically accurate as possible without threatening what is left of the original wall. There is also an issue about ownership of a small piece of land around the wall. The Historic Commission gave their blessing to the project but did not think they could do much beyond that.

Ms. Richard asked if there was an update on Oxford School as of yet, to which Mr. Foley said there was not.

Mr. Foley stated that he got an email today from the Town Attorney informing him that the Historic Site Reuse zoning approved at the May 4 Town Meeting was approved by the Attorney General.

Cathy Melanson made a motion to adjourn and was seconded by Rene Fleurent. The Motion passed unanimously. The meeting was adjourned by 7:50p.m.

Respectively submitted,

Patricia A. Pacella  
Recording Secretary