

Fairhaven Planning Board  
Minutes  
Tuesday, October 16, 2019 – 6:30p.m.  
Town Hall, 40 Center Street  
Fairhaven, Massachusetts

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FAIRHAVEN,  
MASS.

**1. GENERAL BUSINESS:**

a) Chair's Welcome and Media Notification

Ann Richard, acting Chairperson welcomed everyone to the meeting and advised that the members of the Historical Commission members were also present. She then advised that the meeting was being recorded by Cable Access.

b) Quorum/Attendance:

**Present:** Ann Richard, Wayne Hayward, Rene Fleurent, Jay Malaspino, Cathy Melanson, Jeffrey Lucas

**Absent:** John Farrell and Geoff Haworth

Town Planner, Paul Foley was also in attendance.

Members of the Historical Commission, Wayne Oliveira, Gary Lavalette and Suzan Galpin were present.

c) Minutes: October 8, 2019 draft – there were no minutes to be voted on.

d) Planning Board Bills: None.

e) Correspondence

**2. PUBLIC HEARINGS:**

a) Public Hearings:

- I. **RZ 2019-02: Demolition Delay General Bylaw: The Planning Board and Historical Commission will jointly conduct a Public Hearing to receive information and public comment on a proposed Demolition Delay General Bylaw to be considered at the Fall Special Town Meeting to be held on November 12, 2019.**

Ms. Richard called the public hearing and read the description as listed.

Mr. Foley presented a staff report and slide show.

- o The proposal is to add a Demolition Delay Bylaw in order to help protect Fairhaven's Historic Character by preserving and protecting significant buildings and neighborhoods that exemplify the history of the town. We want to encourage owners of historic buildings to seek alternatives that will preserve, rehabilitate or restore such buildings as well as create incentives to make it easier for homeowners to do so and alert residents to impending demolitions of significant buildings.
- o The Massachusetts Historic Commission (MHC) recommends that the Demolition Delay bylaw should be a General Bylaw, not a Zoning Bylaw.
- o The MHC recommends that the Demolition Delay bylaw is for at least a (12) twelve-month delay period even though most demolition delay bylaws in Massachusetts are for six months.
- o Generally, there are three ways to begin the process of demolition delay review under a bylaw. The determination is based on either Age; Category or on a List.
- o The proposed bylaw language is:

- Any building proposed for demolition or significant alteration, in whole or in part, built before 1921 or those built after this date which have otherwise been determined by the Historic Commission to be potentially historically or architecturally significant based on established criteria, shall be referred to the Historic Commission for a public hearing to determine if they are "preferably preserved". Any building which the Historic Commission determines to be preferably preserved shall not be demolished within twelve (12) months of such determination in order for the Historic Commission and the Town to seek alternatives to demolition in order to protect the historic character of the community.
- He noted that after speaking to the Building Commissioner, Kristian White, before 1920 was switched to "before 1921" because some older houses they did not know the actual build date of were listed as 1920.

Mr. Fleurent asked if the date could be a 'rolling' date.

Mr. Foley said it is up to the Board and the Historical Commission to decide. If you do a rolling date then you will start eventually get to a point where you have many buildings that are old but not particularly historic. Most buildings built before 1920 are probably historic whereas most after World War 2 are probably not. But, since there will most likely be some buildings built after 1920 that could be considered historic we added the caveat that "those built after this date which have otherwise been determined by the Historic Commission to be potentially historically or architecturally significant based on established criteria..."

Mr. Oliveira stated he was not happy with the specific date listed in the bylaw, and would prefer it as a rolling date.

Mr. Hayward stated that the Historic Commission would be able to create a list of historic homes as they find them and could do a rolling date that way.

Gary Lavalette stated when he used the assessor's database there were approximately 1,800 homes, built before 1920. He said he has no problem with the rolling date; just that commission would have more work to do, questioning every date.

Mr. Fleurent stated he was not sure it would create more work.

Mr. Lavallette said that there are a number of criteria. A new building might not fit the neighborhood character. He does not think every building will meet the criteria. Yes a building might be old but does it have any historic significance.

Ms. Richard stated they could think about it, as it could always be changed in the future.

Mr. Foley gave an overview of the reasons for a demolition delay general bylaw. Fairhaven has been bequeathed four historic and magnificent buildings that are listed on the National Register of Historic Places and several more structures that are eligible to be listed on the National Register. The Town takes great pride in these buildings and makes efforts every year to maintain and utilize them and keep them active. They are a vital part of the identity of the Town. The image of one of these iconic structures is the logo for the Town of Fairhaven. The Town has hundreds of individual homes that add to the great character of the Town that have no protections at all. The Demolition By-Law was also something listed in the masterplan.

Mr. Foley gave an overview of the process and the criteria that would be used by the Historical Commission to determine if a house is "preferably preserved". He also discussed possible incentives to offer to homeowners to maintain the historic character.

Mr. Jeffrey Lucas arrived at 6:14p.m.

Mr. Foley continued stating that the historical commission would hold a public hearing within 15 days. If the building is voted to be "preferably preserved" by the HC at the public hearing then at that point the 12 month demolition delay would take effect.

Ms. Richard asked if the timeline worked for the Historic Commission.

Mr. Lavallette said it would depend on how fast the public meeting could be held.

Mr. Foley explained the process would start with the Building Commissioner. The Building Commissioner shall within ten (10) business days forward a copy of the application to the Historical Commission and the Planning Director. The Historical Commission shall, within fifteen (15) business days after receipt of the application, make a written determination of whether the building is potentially historically or architecturally significant or not. Upon determination by the Historical Commission that the building is potentially historically or architecturally significant, the Commission shall so notify the Building Commissioner and the applicant in writing within fifteen (15) business days after receipt of the application. No demolition permit may be issued at this time. If the Historical Commission finds that the building is potentially historically or architecturally significant, it shall hold a public hearing within twenty (20) business days of the written notification to the Building Department in order to determine if the structure is "preferably preserved".

Wayne Hayward stated it takes three days to get the agenda posted to Town Clerk. Mr. Hayward stated he spoke to Mr. White briefly and that his main concern was who he would have to get the application to directly; a name, a phone number that would start the process. That would definitely need to be part of the process. That is why they added that the Planning Director is notified so that there is a staff person to get the ball rolling.

Mr. Fleurent expressed his concerns with the specific date of 1921, and asked it to be a rolling date.

Ms. Richard stated they are still discussing and would like to move on.

Mr. Hayward thinks that the Historic Commission needs to make a list of the information they already have to create that database. Ms. Richard noted there will be a learning curve for everyone.

Mr. Lucas shared that a 'list' needs to be created so that the building commissioner is aware of the list.

Mr. Foley continued with his presentation. "Preferably Preserved" general criteria was reviewed. He would like to consider possible incentives, perhaps alternatives and exemptions to certain aspects of the Building Code, so re-using them is not as expensive. The Town could create some tax relief for historic buildings and look into different incentives.

He reviewed the 88 Hedge Street building that was built in 1780 and demolished this year.

Resident Beth Luey of the Historical Society said that the Colonial House that housed a historic club has been sold and hopefully they will preserve it. She agrees that a list needs to be created for historic homes. The survey work that was done in the 1980's is important and should be updated.

Gary Lavalette thought it might be a good idea to allow people to replicate what was there, if the building was determined to not be structurally sound then the demolition could take place if it is replaced by a similar building.

Mr. Foley said we should also ask that if a building were to be demolished that the historic materials be salvaged at the very least.

Ms. Richard stated that the Boards were meeting tonight to vote on specific language for the Town Meeting – joint boards should decide what specific language should be, before doing it at the floor at Town Meeting.

Mr. Foley stated the language could be updated through a press release and on the website for Planning as well as on Historic Commission website. Mr. Foley explained the change to the definition of demolition included "demolition or significant alteration, in whole or in part".

Mr. Foley will not be at Town Meeting, the Board suggested one of each representatives be able to present at Town Meeting.

Ms. Richard asked if they could do a straw vote on keeping the 1921 date, or 'rolling' year as suggested by Mr. Fleurent.

Mr. Foley suggested they could say a date certain, plus a list or a rolling number of years. As you go forward, with the rolling date, the percent that are actually historic is going to go down.

Ms. Richard thinks we should keep to 1921 and a list. Mr. Malaspino agreed, as Mr. Hayward did as well. Mr. Fleurent voted for a rolling year; Ms. Melanson and Mr. Lucas, both voted to keep it as before 1921 or as otherwise determined by the Historic Commission.

Historic Commission Chair Mr. Oliveira was not in favor of the 1921 date. Mr. Lavalette agreed with the 1921 date as well as Ms. Galpin. Mr. Oliveira did not agree with the basic date, and thinks we should get it correct from the get go. Rolling date, he feels would be more significant.

Mr. Hayward asked if we could use 1921, and the date of the Special Town Meeting or a rolling date of 100 years. A discussion on keeping the date or 'rolling date' continued.

A straw poll resulted in keeping the language and date as written.

Mr. Hayward referred to the Model By-Law that Mr. Foley handed out at a previous meeting that is not included in the current proposed Fairhaven By-Law. There was an 'administration section' that is not included. Mr. Hayward believed it was important to add in the administration part to give the Historical Commission the authority as needed.

Mr. Foley he cut a few things out to streamline, but would be happy with whatever the board decides. Mr. Oliveira thought the administration paragraph should not be in the by-law as that would be a part of

the housekeeping of the historic commission. Mr. Hayward stated that the Historic Commission has no code and he feels the administration would be the most important part of the bylaw for fees, paying consultants and/or exacting fines if necessary.

Mr. Oliviera stated he did not think it gave the commission the authority even if written in the by-law. He believes they would have to get the 'authority'. Mr. Hayward said they might have to go to town meeting every time you want to make changes to the by-law. Mr. Lavalette thought it might get complicated. Mr. Oliveira stated he would like to strike the administrative part, he thinks it should be simple and noted that the Historic Commission is not a regulatory board.

Ms. Luey asked what criteria should be used to deem an historic structure as preferably preserved. She stated there has to be rules that need to be applied. Mr. Hayward stated that is why the list is important. Mr. Foley said that the criteria include whether the Building is listed on, or is within an area listed on, the National (and/or State) Register of Historic Places; or whether the Building has been found eligible for the National (and/or State) Register of Historic Places. It could be deemed preferably preserved if the Building is importantly associated with one or more historic persons or events or with the broad architectural, cultural, political, economic or social history of the Town or the Commonwealth. Or it could be preferably preserved if it is historically or architecturally important in terms of period, style, method of building construction or association with a recognized architect or builder either by itself or in the context of a group of buildings.

Ms. Richard advised most people said that the date of 1921 would be kept and reviewed with Town Counsel. Everything will stay the same as Mr. Foley wrote it.

**II. SP 19-09: Benny's Renovation. Continued Public Hearing and possible Decision for a Special Permit to remove the front portico of the existing building to create 18 additional parking spaces and divide the 40,290 sf space into several commercial tenant units.**

Mr. Foley stated the only new information was a letter that came from a resident, Lauren Grant. And Ms. Richard stated she also received a letter from Karen Vilandry. Mr. Hayward made a motion to move the letters to the correspondence file.

David Taglianetti was present representing Benny's.

Mr. Hayward asked if any of the materials on the building were wood or just synthetic. Mr. Talianetti stated it was synthetic and metal.

Ms. Richard asked if there was any option to have solar panels on the roof, as discussed previously. Mr. Taglianetti stated the building was not that large, and there were mechanical things on the roof. He did not feel it was designed for solar on the roof at this point.

Ms. Richard stated there was a recent article in the local newspaper about the project, which created an outcry from the community regarding this project. The public is not necessarily aware of what we can and cannot do. Planning Board cannot generally say who occupies the tenant space. She stated that the Economic Development Committee in Town is an avenue where residents could express their suggestions to what should or wants to come into the Town, but that was not the purview of the Planning Board.

Mr. Hayward echoed that. The EDC is the Board to go to ask for a Trader Joe's or other business. He stated that Planning Board decides on parking spaces, stormwater, landscaping, lighting and appearance.

Mr. Foley stated he did put a request into Trader Joe's as did Mr. Taglianetti.

Ms. Melanson stated the building is going to look better than it does now, and she is happy about this. Ms. Richard stated she supports small businesses, but this is what has been proposed and we do not vote on the business, we vote on the building.

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Mr. Foley was asked to attend the Board of Selectmen's meeting, so left at 7:32pm

Mr. Foley wrote a staff report for the Board to review. Ms. Richard advised the landscaping has been revised as requested. Mr. Hayward was not under the impression that conditions were written specifically for this project, so therefore didn't think the board could vote without those conditions.

Mr. Tanglaetti stated he thought he was coming in tonight for final conditions to vote on this project. Mr. Hayward made motion to close the public hearing, and was seconded by Cathy Melanson. The motion passed unanimously.

Mr. Hayward stated that the Planning Board has 90 days to render a decision once the hearing is closed. He said it usually does not take them that long, but they do in fact have ninety days.

**III. SP 2019-08: Haskell Solar Farm. The Planning Board will hold continued Public Hearing and possible decision for a Special Permit application public hearing to install an approximately 11-acre ground mounted solar photovoltaic energy facility (SPEF) on an approximately 49-acre farm located at 46 Charity Stevens Lane.**

Mr. Hayward requested a point of order stating he believes that the Planning Director needs to be in attendance, and the Board decided to take a recess to wait for Mr. Foley.

Rene Fleurent made a motion to adjourn for five minutes, and was seconded by Jay Malaspino. The motion passed unanimously at 7:40p.m. Ms. Richard re-opened the Haskell Solar Farm at 7:47p.m., and moments later Mr. Foley rejoined the meeting.

Greg Carey of Clean Energy was present.

Mr. Carey stated because of their first meeting, especially related to tree cutting in the North East array, they met with David Haskell and relayed concerns. It was a positive meeting. He said they would be increasing the southern lease line by two additional rows of panels, and came up with a design with new plans, eliminating 19,000 sq. ft. of tree cutting. They would be removing three top panels and adding 2 ½ rows to the south side of the proposed array. He said they have an updated tree-cutting summary that shows the previous cutting area (1.09 acres proposed previously, and tonight's plan to reduce .65 acres) which he feels is a significant reduction.

Ms. Richard asked if the array still had the same wattage. Mr. Carey stated that it is "Roughly the same".

Ms. Richard asked if there were any other changes. Mr. Carey stated the fence line would move a little bit behind this building as he pointed to the plan.

Ms. Richard asked specifically about something that was circled on the plans. Mr. Carey stated it was an isolated vernal pool that has since been marked on the plans.

Mr. Hayward asked if there were any order of conditions as of yet from the Conservation Commission. Mr. Carey replied Yes. No changes will be done as of those Order of Conditions. He said they did agree to a 6" gap at the bottom of the fence for small critters as part of the Order of Conditions with Conservation.

Ms. Richard asked if there were any discussion of dual use with Mr. Haskell. Mr. Carey said 'no', that he will use the land to build up his nursery.

Mr. Carey stated they have requested waivers, and provided a decommissioning plan with an \$85,000 bond. He said the waivers included lighting, noise study, overhead utilities, and several related to storm water management. Those were submitted with the original packet.

Ms. Richard explained the Board does not have specific conditions to vote on tonight and asked if the applicant would like to keep open the public hearing or close it tonight. Mr. Foley stated next meeting available would be November 5, 2019. Cathy Melanson made a motion to close the public hearing.

Ms. Richard stated the two Board members that were not here tonight that would have to apply a Mullin rule to be rehabilitated.

Mr. Hayward second the Motion which passed unanimously. Mr. Foley will get a date to the applicant in the near future.

Mr. Foley stated he was called down to the Board of Selectmen to review the by-laws that Planning was presenting at Special Town Meeting. He said they were supportive of the Mixed Use Benoit Square By-law and voted to move it forward, but did not vote yet on the demolition delay by-law because they had not had a chance to read it and would make a recommendation on the floor at Town Meeting.

Mr. Hayward felt the Board of Selectmen should have been at our meeting to hear about the by-law rather than have Mr. Foley be interrupted to attend their meeting.

### **3. CURRENT PLANNING:**

- a) Receipt of Plans: SP 2019-14: Carricorp Gas Station Modifications – Mr. Foley said they want to modify conditions of a previously approved Special Permit to use an alternative storm water control unit, modify the hours of operation and change the size of a dormant easement.
- b) Review of Plans: None
- c) Signing of Plans: Signing of Form E Covenant Release for DS 2013 – 04: Teves/1 Judson Drive approved October 8, 2016. Mr. Foley went to get the form for the Board to sign.
- d) Written decision: SP19-10: Verizon/Cellco Small Cell Antenna – Fort Street. Special Permit approved for installation of Small Cell Equipment and associated equipment on Utility pole #43216

Mr. Foley said the only change to the draft was adding a letter from Attorney Klasnick to the written decision.

#### **OTHER BUSINESS:**

Proposed Benoit Square Amendment to Zoning Map to make it Mixed Use Zoning.

Mr. Hayward spotted lots missing on the GIS database. There is a difference between how the Assessors see a property that is taxed and the multiple parcels that make up that lot held by one owner. For zoning purposes, one lot; for tax purposes, there may be separate bills for separate lots. For example, one house sits on 8 lots. Mr. Hayward would hate to see anyone challenge the lots so he revised the proposed language for the zoning change so that all property lots are now in the proposed amendment to zoning map for article 19. He said there were 43 lots that have been extended to 64 lots.

Mr. Hayward revised in red on the amendment. He stated the lots go to the South side of Magnolia and Hawthorne Street. Mr. Hayward would feel better if all lots are included.

Ms. Richard noted the Benoit Square rezoning will be discussed at a public hearing at our next meeting on October 22, 2019.

#### **4. LONG RANGE PLANNING:**

Mr. Foley stated he went to SRPEDD today and saw a preview of a presentation that will be at the Blue Tech, Blue Economy conference at UMASS on November 1<sup>st</sup>, 2019 from 8:00 am to 1:00 pm if anyone was interested in attending.

Mr. Foley will attend the Southern NE American Planning Association (APA) Conference in Springfield. He will report.

Next meeting, will be Tuesday, October 22, 2019 at 6:30p.m.

Ms. Richard reviewed the following  
Hiller/Timothy – continued to December 10, 2019.  
Off the Hook – Special Permit needs to be updated.  
Nye's Lubricant – repaving the parking lot.

In other business, Mr. Hayward stated that Conservation Commission should not be regulating the board's stormwater regulations. He said this is new for Conservation. Stormwater is in the Zoning by-law. We should not have competing standards. Ms. Richard suggested Chair from both Boards should meet with Staff, Mr. Foley and Ms. McClees to go over the jurisdiction they both have regarding stormwater management. Mr. Hayward, If an applicant needs a special permit, stormwater regulations have to be done through Planning Board.

Cathy Melanson made a motion to adjourn and was seconded by Wayne Hayward. Motion passed unanimously at 8:34p.m.