



TOWN OF FAIRHAVEN, MASSACHUSETTS
PLANNING BOARD
Town Hall · 40 Center Street · Fairhaven, MA 02719

MEETING MINUTES

Tuesday, April 11, 2023 at 6:30 PM

Held both at Town Hall & Remotely via Zoom

1. GENERAL BUSINESS:

- a) **Chair's Welcome and Media Notification:** Madame Chair, Ms. Melanson, opened the meeting at 6:31 PM and advised who was present. She also read the revised Open Meeting Law Statement, covering the extension of remote meetings and public access by Governor Healy until March 31, 2025. Additionally, she covered the Zoom accessibility options to provide automatically generated captions for this meeting.
- b) **Quorum/Attendance:** Present: Cathy Melanson, Jessica Fidalgo, Patrick Carr, Sharon Simmons, David Braga, Jeff Lucas, Ruy daSilva in the Town Hall East Room. Kevin Grant joined temporarily via Zoom from 7:05 PM until 7:42 PM.

Absent: None.

Town Planner, Mr. Paul Foley, was also present.

- c) **Minutes: March 28, 2023:** Mr. Braga made a motion to accept the minutes of March 28, 2023, and was seconded by Ms. Fidalgo. When Ms. Melanson asked for comments, Mr. Foley pointed out that she was incorrectly referred to as "Vice chairperson" in the minutes and he would replace the term with "Madame Chair" as was her stated preference. **The motion then passed unanimously, with one abstention from Mr. Lucas. (6-0)**
- d) **Welcome new Board members:** Ms. Melanson welcomed newly elected board members Patrick Carr and Ruy daSilva. Mr. Foley gave them both an orientation the morning of the meeting.
- e) **Thank you to past Board members:** Ms. Melanson also thanked past board members Wayne Hayward and Rene Fleurent. Mr. Foley also extended his thanks to both Mr. Hayward and Mr. Fleurent for their many years of service and their families' long running dedication to the Town.
- f) **Board Elections:**
- i. **Chair:** Mr. Foley called for nominations for Chair. Mr. Carr nominated Ms. Melanson and was seconded by Ms. Simmons. Ms. Melanson accepted the nomination. No other nominations were made. **The election passed unanimously via roll call vote. (7-0)**

ii. **Vice Chair:** Ms. Melanson called for nominations for Vice Chair. Ms. Fidalgo nominated herself and was seconded by Mr. Braga. No other nominations were made. **The election passed unanimously via roll call vote. (7-0)**

iii. **Clerk:** Ms. Melanson called for nominations for Clerk. Ms. Melanson nominated Ms. Simmons. No other nominations were made. **The election passed unanimously via roll call vote. (7-0)**

Before moving on, Ms. Melanson noted that she believed that this is the first time that the Planning Board had an all-female executive board.

iv. **SRPEDD Commissioner:** Ms. Melanson called for nominations for SRPEDD Commissioner. Mr. daSilva nominated Mr. Braga to continue as SRPEDD Commissioner. No other nominations were made. **The election passed unanimously via roll call vote. (7-0)**

Ms. Melanson explained that the elections for the two outstanding assignments for Planning Board Representatives for the Rogers Re Use Committee and the Economic Development Committee would be held at the next meeting.

g) Planning Board Bills:

i. **\$1,982.50 for the GCG Peer Review of Starboard Drive:** Mr. Lucas made a motion to pay \$1,982.50 for the GCG Peer Review of Starboard Drive and was seconded by Mr. Braga. The motion passed unanimously. (7-0)

ii. **\$95 to CPTC for member training:** Reimbursement of Ms. Simmons' attendance fee for the CPTC Annual Conference. A second bill will be submitted later to cover her mileage. Ms. Simmons also offered to share all materials received from the conference with the rest of the Board. **Mr. Lucas made a motion to pay \$95 to CPTC for member training and was seconded by Mr. Braga. The motion passed unanimously. (7-0)**

h) Correspondence: None.

Before opening the public hearing, the board noted that without Mr. Grant in attendance, they may not be able to vote on any matters related to the Starboard Drive Definitive Subdivision. After some discussion between the board members and Mr. Davignon, Engineer for the applicant, they decided to table this matter until later in the meeting in case Mr. Grant would be able to attend via Zoom. As such, the meeting was taken out of agenda order.

2. RECEIPT OF PLAN:

a) ANR: Reconfiguration of 267 – 270 Huttleston Avenue Map 31 B Lots 302 and 302 A.

An ANR Proposal from applicant/owner G. Bourne Knowles for a reconfiguration of Map 31 B Lots 302 and 302A. Lot A will have 8 acres (348,480 sq. ft.) with approximately 450 feet of

frontage from Huttleston Avenue. Lot B will have 6.237 acres (271,681 sq. ft.) with approximately 150 feet of frontage from Huttleston Avenue. Both lots will meet the commercial zoning requirements for both 15,000 sq. ft. minimum lot size and 100 feet of frontage on an adequate road.

G. Bourne Knowles & Co. will continue to operate their landscaping business on Lot B, while Niemiec Marine will move into Lot A. Niemiec Marine will have to come before the board for a special permit to do so in the future. The owner is also in the process of getting approval for their conservation restrictions.

Ms. Melanson originally made a motion to approve the ANR but was told that the language of the motion must contain a reference to the subdivision regulations.

Mr. Lucas made a motion that the ANR Reconfiguration of 267 – 270 Huttleston Avenue Map 31 B Lots 302 and 302 A did not fall under subdivision regulations and was seconded by Mr. Braga.

There was a discussion regarding the zoning of the property with the reiteration that the zoning would be defined during the special permit process.

The motion passed unanimously. (7-0)

Afterward, the board took time to sign off on the ANR plans while discussing how to handle the tabled public hearing.

b) Street Discontinuance: Section of Torrington Road behind 270 SNR. Tentatively scheduled for May 9, 2023.

Mr. Foley briefed the board on the plan to discontinue a section of Torrington Road. The owners and applicants, Jean and Alexander Easterday, own property at both 270 Sconticut Neck Road and Thompson Avenue and are looking to discontinue the section that cuts through those properties. This matter is tentatively scheduled for discussion at the May 9, 2023 meeting.

3. CURRENT PLANNING:

a) Town Planner Update:

i. 40R Overlay District

While waiting for Mr. Grant to arrive at the meeting via Zoom, Mr. Foley was encouraged to discuss the 40R Overlay District. He thanked Will Gardner from the 40R Working group for his attendance that evening. The Working Group as a whole is invited to the next Planning Board meeting.

As an update to his map of the different 40R zones, Mr. Foley has labeled the areas based on if they are to be considered Mixed Use (MU) or Substantially Developed (SD) and how many

stories would be allowed in each area, with the options being 3.5, 5, and 7.5. The state's monetary incentives for a 40R differ depending on if the area is Substantially Developed or not. To explain the allowance for up to 7 stories in certain areas, Mr. Foley showcased several drone photographs for the board to show the various views from 75 ft. up.

There also would be language in the by-law for adjustment to the areas to either expand or connect areas. With any of the selected areas, Mr. Foley has spoken to the property owners or their legal representatives to ensure that they would be interested in participating.

The presentation ended when Mr. Grant arrived via Zoom at 7:05 PM.

4. PUBLIC HEARINGS:

**a) DS 2022 - 01 - Starboard Drive Definitive Subdivision: Continued From March 28, 2023.
Continued Public Hearing on a proposed 8-lot subdivision on Starboard Drive.**

Ms. Melanson and Ms. Fidalgo gave a summary of the public hearing, originally begun on November 10, 2022.

Mr. Davignon, Engineer for the applicant, was invited to speak to the board. Within the week prior to this meeting, a revised plan, a revised waiver letter, and a response to the peer review from GCG were submitted to Mr. Foley and the Planning Board members. He covered the changes made in response to the peer review:

- Adding and renumbering the soil test pit locations.
- Removal of the infiltration system from Lot 5.
- Adding trap rock to armor the 4' wide berms of ponds A & B.
- Adding a 3rd 6" diameter pipe to Basin A.
- A typo was corrected regarding the finish grade of the roof recharge trench.
- Street sweeping was added to the O&M plan.
- Plans updated to reflect the Woods Hole group delineations of the coastal resource areas into coastal beach, barrier beach, coastal dune, and salt marsh.
- Adjusting the slopes of ponds A & B to be 3H:1V on the inside and 5H:1V on the outside.

Next, Mr. Davignon covered the requested waivers:

- Section 322-14 D. (7) Construct Cost Estimate
The applicant proposes to provide a Form D Covenant and the roadway will remain private in perpetuity.
- Section 322-14 F. Staking of the centerline of the roadway.
This has not been provided at the time of the submission because the proposed roadway improvements fall within the existing gravel roadway which is currently in use.
- Section 322-26 d. — BMP is located within a common easement vs. common parcel

The BMP will be maintained by an HOA in perpetuity and therefore never conveyed to the town.

- Section 322-16. B. Street Design Standards — Table A and Section 322-32:
No curbing or cape cod berms have been provided because the roadway has been designed to fit the site sloping south to north to divert stormwater into a water quality swale.
- Section 322-17 Sidewalks and Section 322-16. B. — Table A
Sidewalks have not been provided as none exist in Sconticut Neck Road.
- Section 322-25 — Landscape Street Tree Belts
Trees are only proposed along the southerly side and cul de sac and cannot be placed along the northerly side due to the existing water main, existing sewer forcemain pipe, and proposed water quality swale.

Continuing, Mr. Davignon then covered the waivers related to the stormwater management systems:

- B.(3)(c) [2] [b] - 10-year volume control has not been provided.
C. Design Standards
- (1) (a) 10-year volume control has not been provided.
- (2) (k) [d] 4-foot deep forebay has not been provided.
- (2)(m)[7] 12-inch reinforced concrete drainage pipe has not been provided.
- 198-31.1 C. (2) (2) [6] [d] - Pond slopes on interior = 3':1' vs. 4':1'. Note: Exterior side slopes provided = 5':11' for coastal storm protection.
- 198-31.1 C. (2) (K) [i] [d] - 4-foot deep forebay not provided.
- MSH Vol. 2, Ch. 2, Pg. 90 - 6" freeboard provided vs. 12".
- 198-31.1 A. (1) (b) - First Flush design meets MSH standard but not the more stringent 1.25-inch standard.
- 198-31.1 A. (1) [2] — Minor increase of runoff volume during 10- year storm.

During this conversation, Mr. Lucas pointed out that some of the waivers, such as for "MSH Vol. 2, Ch. 2, Pg. 90" would have to be granted by the Conservation Commission instead of the Planning Board and he inquired if this project has been evaluated by the Commission. Mr. Davignon explained that the Commission wanted to wait until the project was finalized before granting the waivers, but they plan to go before the Commission during their April meeting if possible. In working out the hierarchy of the boards regarding this decision, Mr. Foley explained that the Conservation Commission would have the higher authority to either grant or reject the waiver.

Mr. Foley then covered two additional waivers required or grounds for denial:

§ 322-19 Emergency Routes, wherein for streets providing a route out of the subdivision, no part of the route can lie below the thirteen-foot elevation above mean sea level.

§ 322-27.C: Utilities: Protection from flooding, wherein no definitive plan shall be approved by the Planning Board for a subdivision which includes land less than 13 feet in elevation above mean sea level, unless the Planning Board shall determine that all utilities are located, constructed or elevated so as to minimize or eliminate flood damage and that methods of disposal for sewage, refuse, and other wastes and for providing drainage are adequate to reduce flood hazards.

Finally, both the Planning Board and the Conversation Commission must make determinations as to whether this is a new development or a redevelopment. The MSH (Massachusetts Stormwater Handbook) includes a checklist for determining a redevelopment project which Mr. Foley planned to forward to the Board Members. Mr. Davignon noted that the subdivision meets the requirements of the MSH, except for the freeboard. Regarding the emergency routes, research would have to be done to determine how far out the subdivision is from the connector. As for utilities, the subdivision currently includes the existing electrical poles as those are owned and operated by Eversource.

Concerning whether this is a new development or a redevelopment, Ms. Melanson asserted that she considered the subdivision to be a redevelopment. Ms. Simmons asked about the definition of an impervious surface and whether gravel could be considered an impervious surface. Reading from the Peer Review, Mr. Davignon explained that the applicant is considering the subdivision to be a redevelopment. GCG's interpretation of a new development condition was based on the MSH which considers new pavement to be a new development. However, if a new development proposed a gravel roadway in a new project, the Town would most likely treat it as an impervious surface. As such, GCG does not object to the argument that it is a redevelopment project but noted that the Board must decide on the status themselves. After that explanation, Ms. Fidalgo also agreed that she considered the subdivision to be a redevelopment.

Ms. Melanson made a motion that DS 2022 - 01 - Starboard Drive Definitive Subdivision should be considered a redevelopment and was seconded by Ms. Fidalgo.

When requesting further discussion of the issue, Mr. Lucas countered that he considered this project to be a new development, given that it is centered around the creation of eight lots for eight houses with an HOA.

Mr. Grant brought up his interpretation that the discussion of impervious surfaces is related to drainage concerns. As the property is close to the ocean and surrounded by wetlands, that helps to ease concerns about drainage as compared to if the subdivision was located in another area in town. To him, the semantics are more about if the addition of impervious surfaces changes the drainage in an area such as adding them to where they have not previously existed.

Mr. Lucas argued that calling it a new development would better protect the property and Buzzard's Bay.

Mr. Braga chimed in that if a gravel road could be considered an impervious surface, then paving the gravel road would not change the amount of impervious surface in the subdivision. He also pointed out that the addition of the new drainage systems would provide better drainage than what is currently present on the property.

Mr. Lucas asked if currently marked pervious driveways would ever be paved by an owner, with Mr. Davignon answering that it could happen if the owner went through the process of getting the change cleared by the Conservation Commission. Mr. Foley noted that leaving the driveways as pervious surfaces could be made into a condition for approval. Mr. Lucas requested a copy of the HOA rules for review.

Before the roll call vote, Mr. Lucas asked for clarification that they were only voting on whether this was considered a new development or redevelopment, which Ms. Melanson confirmed. Mr. Davignon stated that the plans in front of the Planning Board should be the final version, but that could not be confirmed until after the meeting with the Conservation Commission. After that meeting, they would come back to the Planning Board for a vote on the rest of the waivers.

The motion passed via roll call vote, with Mr. Grant, Ms. Melanson, Ms. Fidalgo, Mr. Braga, and Ms. Simmons in favor and Mr. Lucas opposed. (5-1)

During the vote, it was noted that Mr. Carr and Mr. daSilva were not eligible to vote on this project as there had already been two public hearings.

Mr. Foley suggested that the additions and corrections made to the project after the GCG peer review should also go through their own smaller-scale peer review. As to whether the review should be done before or after the project goes before the Conservation Commission, Mr. Davignon requested that it happen beforehand so they could submit an essentially finalized plan.

Mr. Braga made a motion that DS 2022 - 01 - Starboard Drive Definitive Subdivision be sent back to peer review to confirm the edits and comments presented to the Board and was seconded by Mr. Lucas. The motion passed unanimously via roll call vote (6-0).

Afterward, Mr. Davignon requested a continuance to the next meeting and promised to send a letter of request to continue further if it was necessary after the meeting with the Conservation Commission. Mr. Foley requested that after the vote, Mr. Davignon also send an email with the request for this continuance.

Ms. Fidalgo made a motion to continue the public hearing on DS 2022 - 01 - Starboard Drive Definitive Subdivision to April 25, 2023 and was seconded by Mr. Braga.

Before the vote, Mr. Lucas requested further information on the removal of the infiltration system from Lot 5. Mr. Davignon cited the response to the peer review detailing how the infiltration system was located within fifty feet of the wetland setback at approximately 33 feet

back. The area, designated as HSG 'D' soil, was not suitable for infiltration and the recommendation was either to relocate or remove it. Following that recommendation, it was removed. It was optional to remove the infiltration for other lots with HSG 'D' soil, so those remained in the plan and only Lot 5's was removed.

Mr. Lucas also inquired about the possibility of Basin 'B' becoming a wet basin and how that would be determined and how maintenance would change if it did so. Mr. Davignon answered that such a change would be several years in the future and that maintenance would be adjusted accordingly.

For his last question, Mr. Lucas wished to know if the addition of trap rock over the 4' wide berms was to prevent erosion, which Mr. Davignon confirmed to be the case.

The motion passed unanimously via roll call vote (6-0).

After the motion passed, Mr. Grant left the meeting at 7:42 PM.

After the public hearing, before moving on to Long Range Planning, Mr. Foley covered plans for the upcoming meetings including:

- Definitive Subdivision: Two existing lots on an unaccepted stretch of Lincoln Drive and Jason Terrace.
- Special Permit: Proposal to locate a Domino's Pizza Delivery store at 117 Huttleston Ave. Part of the special permit will be for the drive-thru.

The Board returned to their discussion on the 40R, with Mr. Foley noting the support from the Selectboard before he then outlined the different properties which will be part of the 40R. When asked about other areas that could be considered such as Park Motors, Mr. Foley replied that the property was already considered to be mixed-use. However, he would like to see adjustments made to the existing mixed-use zoning by-laws to encourage the building of commercial properties with residential units and rework the setbacks in commercial and industrial areas for better commercial density. For Park Motors, in particular, there are concerns about drainage in that area.

Mr. Carr wanted to make sure that the messaging about the 40R addresses the concerns of a rumored additional 2000 housing units being built within the town. Mr. Foley assured the Board that he would present the figures at the next meeting on the maximum number of new units that could be added. He also reiterated his hopes that the state will adjust the 40R laws to allow for a cap on the maximum number of new units in an area.

5. LONG RANGE PLANNING:

a) Town Planner Update: Bridge St.; Harbor Plan; Benoit Square; MVP; HMP; Summary

i. **Bridge St.** - Mr. Foley is currently working with the BPW, the highway department, and GCG on the updates to Bridge St, utilizing the \$1 million Transportation Bond Bill (TBB) grant to make improvements between Route 6 to 240. He is seeking a further \$2.5 million from

MassWorks to supplement the project. The focus will be on adding sidewalks and drainage along Bridge St. along with covered bus stops and the possibility of bike lanes. If possible, he would like to connect the planned bike lanes along Alden Road to the Phoenix Bike path, even if that meant taking the paths behind the Walmart or through the possible new developments in Plaza Way.

Mr. Carr asked if the plans for new drainage along Bridge Street would include the new 90% filtration systems. Mr. Foley assured that he would bring that concern to the engineer, and they also discussed the proposed changes at the water treatment center. The Board also discussed the Buzzard's Bay Coalition's clean-up efforts at "Tin Can Island" and the updates to the old Atlas Tack building within the last year.

ii. **Harbor Plan** – At Town Meeting, there needs to be a vote on the \$40,000 local match for the \$320,000 SEC Grant to update the Harbor Plan in conjunction with New Bedford. The plan hasn't been updated in 13 years and needs a major revision. Mr. Foley would like to see some more investment in research & development along the harbor, hopefully in tandem with the Northeast Maritime Institute.

iii. **Benoit Square** – Mr. Foley had worked in conjunction with Mr. Hayward, SRPEDD, MassDOT, the local police and fire departments, and the North Fairhaven Improvement Association to submit several scenarios to the state to improve the square. Given the new developments both at the Oxford School Residences and the old Bijou Building, changes need to be made to better control the traffic around the square. He hopes to receive an answer from the state soon as he was promised one by Spring 2023 and will contact them by June if he does not get a timely response.

iv. **MVP** – Currently, a climate vulnerability assessment is in progress and one public meeting has occurred, with the second planned for May. Mr. Foley has been in contact with the consultant at Woods Hole Group and is working with the Conservation Agent on a grant for the MVP Adaptation plan.

v. **HMP** – Mr. Foley will be putting out an RFP for an update to the Hazard Mitigation Plan, having received a \$35,000 grant to cover that cost. The plan was last updated in 2018 and needs to be updated every 5 years.

vi. **Summary/Other** – Mr. Foley put in a letter of interest for a 1-Stop for Growth grant to calm and improve the traffic on Sconticut Neck Road. In the future, Mr. Foley would like to see the area be re-zoned as Mixed Use or become part of the 40R.

The BPW has also received a Safe Routes to School Grant south of Wood School. There are also plans to improve the crossing at Orchard St and Sconticut Neck as well as adding signage to direct bikers to the Little Bay Bike Path that branches off the Phoenix Bike Trail.

6. **OTHER BUSINESS:** Any other business that may properly come before the Board, not reasonably anticipated when posting 48 hours prior to this meeting.

There was no other business before the Board for this meeting.

7. **Next Meeting:** Tuesday April 25, 2023.

Mr. Braga made a motion to adjourn and was seconded by Ms. Fidalgo. The motion passed unanimously at 8:02 PM.

Respectfully submitted,
Stephanie A. Fidalgo
Recording Secretary,
Planning Board