



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

**MEETING MINUTES**

**Tuesday, June 20, 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. Cathy Melanson, opened the meeting at 6:34 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, Sharon Simmons, David Braga, Jeff Lucas, Patrick Carr, and Ruy daSilva in the Town Hall East Room.

**Absent:** Kevin Grant.

Jeff Lucas arrived at 6:40 PM.

c) **Minutes: May 23, 2023:** Mr. Carr made a motion to approve the minutes of the May 23, 2023 meeting and was seconded by Ms. Fidalgo. The motion passed unanimously (6-0).

d) **Planning Board Bills:** There was a \$180 bill from the Neighborhood News for the legal ads related to SP 23-02 (Ecogy Energy) and SD 23-01 (Street Discontinuance of a section of Torrington Road). Ms. Fidalgo made a motion to approve the bill of \$180 from the Neighborhood News for the legal advertisement and was seconded by Mr. Braga. The motion passed unanimously (6-0).

e) **Correspondence:** There was no correspondence for this meeting.

**f) Comments from the Public:**

- **Benoit Square Concerns from John Medeiros**

Mr. John Medeiros was invited to speak to the board. He wished to discuss SP 2021-01, The Bijou Theater Building Apartments special permit that the board had approved on July 13, 2023. Specifically, he had concerns that the conditions to add a parking lot on Deane Street with an enclosed dumpster had not been fulfilled. He wished to know who would enforce the conditions of that decision. He also pointed out the condition that the owner, Julio Barbosa, would need to come to the Planning Board before renovating the decommissioned theater. Mr. Lucas arrived at the meeting during this conversation.

Building Commissioner, Randy Basset, was invited to speak to the board. He had been in talks with Mr. Barbosa and explained that he was currently looking into purchasing property to give more space for the parking lot and dumpster and would come back before the Planning Board if need be. However, Mr. Barbosa was currently in California so it would be some time before Mr. Bassett could arrange a site visit.

Mr. Braga had concerns that waiting for the sale would cause a breach of the terms of the special permit and require Mr. Barbosa to reapply for a new special permit. Ms. Fidalgo had questions as to how to handle a project that is not finished within the two-year time frame and if an extension could be granted. Mr. Basset outlined the current state of the parking lot, noting the issues with the dumpster and the wall. Mr. Braga outlined his further concerns with the conditions of the special permit going unfulfilled.

Mr. Carr wished to give Mr. Barbosa a chance to speak before the board and ask for an extension before requiring him to reapply. Mr. Lucas answered Ms. Fidalgo's prior question, explaining that the two-year time frame was to obtain other permits related to the project, not necessarily to finish the project.

Ms. Melanson encouraged Mr. Bassett to continue his dialogue with Mr. Barbosa and stated that Mr. Barbosa was welcome to speak to the board to explain the situation. Mr. Medeiros had further questions as to the enforcement of the Planning Board decisions, and in this case, Mr. Bassett explained that he would not issue a certificate of occupancy or close the permit until everything was satisfied.

Ms. Melanson suggested that Mr. Medeiros continue to communicate with the Planning Board and Building Commissioner about his concerns with the Bijou building. At the suggestion of Town Administrator, Ms. Angie Lopes Ellison, Ms. Melanson entertained a motion to table this discussion until the July 18, 2023 Meeting.

**Mr. Lucas made a motion to table the discussion of the Bijou building to the July 18, 2023 meeting and was seconded by Mr. Braga. The motion passed unanimously (7-0).**

- **Additional Comments from the Public**

Ms. Ellison was invited to speak to explain to several members of the public that, in accordance with Open Meeting Law, the board was only able to speak and act on items specifically listed on the agenda. While a Planning Director could handle some issues without the Board, given the current absence of a director, the board currently handled most actions themselves at the meetings. Mr. Braga promised that even though they could not vote on specific items, the Board could still receive comments.

Ms. Lori Nery, the realtor for Mr. Agostinho Pinto explained that they needed the approval of

a Form A to redraw the lot lines between 40 Point Street and 17 Beachwood Street to facilitate the sale of the property. The plan for the Form A had been dropped off on Friday, June 16, 2023, but Ms. Melanson was not present to receive it. The plan was also the only item dropped off – a full application and fee had not been submitted in time for this meeting. As such, the board could take no action on the Form A at this meeting, and it would have to be addressed at a later one.

Mr. Lucas suggested reviewing the plans carefully ahead of when they would be officially brought before the board to ensure swift approval. Ms. Melanson promised that she would be happy to meet with Mr. Pinto or anyone else involved with the Form A the next day.

## **2. PUBLIC HEARINGS:**

Secretary's Note – Going forward both Vice Chair Jessica Fidalgo and I, Recording Secretary Stephanie Fidalgo, were active participants in the meeting. For the sake of clarity, we shall both be referred to by our full names.

### **a) SP 23 – 02 – Ecogy Energy - 11-39 Berdon Way: Public Hearing on a proposed front-of-meter rooftop solar panel system at the Fairhaven Ocean State Job Lot.**

Mr. Michael Shelter of Ecogy Energy was invited to speak to the board. Ecogy Energy was seeking to install a front-of-meter rooftop solar panel system at the Fairhaven Ocean State Job Lot. While behind-the-meter systems are allowed by the by-laws, front-of-meter systems require a special permit. He gave an overview of Ecogy Energy, which develops and finances renewable energy projects across the country. He gave a presentation showing the plans for the 200kW-AC solar panel system, consisting of 812 panels. The solar array system would feed energy out into Fairhaven's power grid and Ecogy would be responsible for the entire project from start until final decommission. The array was projected to offset the energy usage of approximately 60 homes. It would also be a part of the MA Smart program and receive a feed-in tariff.

Immediately afterward, Stephanie Fidalgo gave her presentation on the project on behalf of the planning department. While largely covering the same information, she also gave a brief history of the property for the last decade and noted the other businesses currently operating in the Berdon Way Plaza. She also noted that the project would require new underground and overhead wires, utility poles, and a transformer and prompted Mr. Shelter to explain the 27/4 monitoring for the system. Photos of similar completed projects in Johnston, Hope Valley, and Woonsocket, Rhode Island were shown to the board. As for comments from other departments, most of the other town departments had no issues with the project and Conservation Agent Bruce Webb specifically offered support to the project.

Mr. Carr requested further details on the lifespan of the project and the ownership of the panels. Development Manager Kate Nota explained that Ecogy would own and operate the

system while leasing the roof space from Ocean State Job Lot. At the end of the project, the 20-year lease would either be extended, and the system would then be upgraded. Otherwise, the project would be decommissioned, and the system would then be removed. In the case of Ecology needing to close their business, they would also have a budget set aside for decommissioning projects and properly disposing of systems.

Mr. Carr also inquired about the new transformer required and it was shown on the plans to be on the grass by the southwest rear entrance to the property. Ms. Nota explained that the unit would be protected with bollard posts and locked to keep it inaccessible to the public. Ecology requires the new transformer as the existing one is used by Ocean State Job Lot and the location of the new transformer was reached through discussions with both Ocean State Job Lot and Eversource.

Mr. Lucas requested that Ecology send a copy of their roof structure study to be included in the file for the project. He also asked for further details about the height of the panels, with Ms. Nota confirming that the full height would be approximately one foot. He wanted to make sure that the transformer would maintain visibility even in winter.

**Mr. Carr made a motion to approve Special Permit SP 23 – 02 and was seconded by Mr. Braga. The motion passed unanimously (7-0).**

Ms. Melanson promised to remain in communication with the applicants as the decision was drafted and submitted.

**b) SD 23 – 01 – Street Discontinuance: Section of Torrington Road behind 270 SNR.**

Both applicant, Jean Easterday, and surveyor, Christian Farland, were invited to speak to the board. Mr. Farland explained that his company was only responsible for the plot plan and Ms. Easterday then outlined the project to the board. She and her husband, Alexander Easterday, own 270 Sconticut Neck Road as well as the beachfront property at Thompson Ave directly to the west. Currently, the parcels are separated by a paper street, Torrington Road, and they wish to discontinue the road to eventually join the two properties together.

Stephanie Fidalgo gave a presentation to the board, covering the history and state of the properties, including that the house at 270 Sconticut Neck Road was built in the 1950s and that the land at Thompson Ave was undeveloped. She made note that the area was within the conversation jurisdiction and that an unofficial trail existed within the paper street that led down to the beach on the Thompson Ave property. Both the plans and aerial photos were shown to the board to show exactly which portion of Torrington Road would be discontinued. Other town departments had no major issues with the project, save for Conservation Agent Bruce Webb noting that the unofficial trail may be providing public access to the beach and as

the location is within the conservation jurisdiction, any plans for further development would have to go through the Conservation Commission.

Mr. Braga asked if the paper street was used for beach access and Ms. Easterday confirmed that residents of Baxter Street often used it to access the areas of the beach they had deeded rights to. So far, there had been no issues with allowing their neighbors to use the property or the path to access the beach. At Jessica Fidalgo's prompting, Ms. Easterday explained that the plan after the discontinuation of the paper street was to combine the properties into a single parcel and give them the ability to update the trail as needed, rather than having the trail be on Town property. They also would continue to allow their neighbors to use the path as Baxter Street currently does not provide easy access to the beach.

Ms. Easterday confirmed to Mr. Carr that all the abutters had been notified of the project and affirmed that the eventual plan is to create a single lot that extends from the front of 270 Sconticut Neck Road to the beach at what is currently Thompson Ave.

Resident Susan Spooner of 15 Baxter Street was invited to speak to the board. She had concerns regarding any additional construction on the eventually joined property given the wetlands in the area. Mr. Lucas stated that the property at Thompson Ave should not be buildable and Ms. Easterday explained that she had spoken with both the Conservation Commission and the Accessor's Office regarding the property's status as an unbuildable lot.

Ms. Spooner then requested to know if the path – which had originally been constructed unofficially and then repaired by Mr. Easterday – had been reviewed by the Town. Ms. Easterday explained that they had spoken with the Conservation Commission about the path being non-conforming and since then had the area around the wetlands staked and they were working with Mr. Webb on a notice of intent.

Mr. Carr wished to confirm that the beach in the area was private to residents only and that the public was not parking on Baxter and using the path for beach access, all of which Ms. Easterday confirmed.

**Mr. Carr made a motion to approve Street Discontinuance SD 23 – 01 and was seconded by Mr. Braga. The motion passed unanimously (7-0).**

**c) DS 2023 - 01 – Lincoln and Jason Subdivision: Seaport Homes LLC (Farland Corporation)  
Continued From April 25, 2023. Continued Public Hearing on a proposed 2-lot Definitive Subdivision and road standard for Map 30A Lots 85M and 85N.**

Mr. Christian Farland was once again invited to speak to the board. Since the April 25, 2023 meeting, he had spoken with Highway Superintendent Joshua Crabb regarding the requested changes to the project and had submitted updated plans to the board.

Before the public hearing could be open, Mr. Braga pointed out that there would only be five members eligible to vote on this subdivision, given that Mr. Carr and Mr. daSilva were not present at the earlier public hearings. Mr. Farland stated that he was comfortable with opening the hearing and presenting it to the board.

Stephanie Fidalgo made a presentation to the board, covering the information that former Town Planner, Paul Foley, had previously presented regarding the history of the properties. She then brought up the newest plans, noting the major change to have Rita's Way be a paved 16-foot-wide street and to be superelevated to direct stormwater towards the new stone trenches as well as the catch basin and Cultec recharge system on Lot 85N. Other changes included Cultec recharge systems for both proposed houses, a redirection of the water line for Lot 85M, an increase in street trees, and further notes on the proposed new fire hydrant. On page five of the plans, there were new notes on soil erosion and sediment control as well as new diagrams for tree planting, water lines, hydrant, catch basin, the recharge systems, the roadway cross-section, and the concrete cross-section.

Moving on from the plans, Stephanie Fidalgo also presented the letter received from Farland Corp to certify that the plans would meet the DEP Stormwater Management Regulations. She also covered the comments from other Town Departments and the ways that Farland Corp had addressed them:

- Conservation Agent Bruce Webb stated that his department was satisfied with the updated stormwater management plan.
- The waterline on Lot 85M had been relocated per previous water department comments.
- For highway department concerns:
  - The plan now includes a plan and profile sheet.
  - Rita's Way is planned to be a paved 16-foot-wide street, meeting the minimum requirements for two houses.
  - Stormwater is to now be directed towards the catch basin on the northeast corner of Lincoln Drive and Lines coming off recharge systems are now identified.
  - Sheet 5 is updated with erosion and sediment controls, new cross-sections, planting details for the increased street trees, water service, and trenching detail.
  - Sheet 6 is updated with new cross-sections, details on the Cultech recharge systems, hydrant install detail, and the super elevated roadway cross-section.
- For planning department concerns:
  - Roadway standards meet the minimum requirements for a road with less than three houses. A 40-foot drainage easement is now present on the northern side of lot 85N.
  - Documentation with stamp and certification of meeting DEP Stormwater Management Regulations received June 20, 2023.

- There are currently no plans to add a fence but plans now show nine red maple street trees.
- Verified as not in an NHESP Priority Habitat by the Conservation Agent.

Mr. Farland confirmed the changes covered and elaborated further on how they would improve the area such as providing ease of access between Lincoln Drive and Jason Terrace, improving the stormwater management, and adding a new fire hydrant in the neighborhood. As for fencing, they want future homeowners to decide to add a fence if they wish along the stone wall.

Mr. Lucas asked if the tree line simply indicated the extent of the clearing, which Mr. Farland confirmed. As for the stone wall, Mr. Lucas asked for clarifications on its location as it was not marked on the plans, with Mr. Farland informing him that the wall follows the east property line.

Mr. Braga and Mr. Lucas discussed the conditions and waivers for the project, noting the request for an LSP. Mr. Farland explained that he had already spoken to one and would provide more information after the meeting via email. As there was not a prepared list of conditions before the board at the time, they debated if they could approve the project. Mr. Carr noted the number of changes and conditions that the applicant had already met during this process. At the request of Ms. Melanson, Stephanie Fidalgo left the meeting to locate a copy of the standard list of conditions for a subdivision.

Mr. Farland suggested to the board, given his own experience as the chair of the New Bedford Planning Board, that they could vote on the waivers and then the standard order conditions as two separate votes for approval. That would allow time to draft the conditions if needed. Ms. Melanson agreed with the suggestion, stating that they would still read out the standard order of conditions once provided.

**Jessica Fidalgo made a motion to accept the waiver of street lighting (§ 322-14.D.), waiver of sidewalks, (§ 322-17), and waiver of curbing and Cape Cod berm (§ 322-32) and was seconded by Mr. Braga. The motion passed unanimously (5-0), with Mr. daSilva and Mr. Carr abstaining as they were ineligible to vote on this application.**

Stephanie Fidalgo returned with the standard list of conditions and began to read them to the board. Upon reaching number 5, which would have the road be private, the board requested to strike that condition. At that point, Mr. Braga took over reading and reviewing the conditions for the board. Condition number 6 was also stricken as it was in reference to homeowner associations. Condition number 8 was also stricken as the subdivision would utilize overhead electric wires. Condition number 10 was edited to read that the applicant shall install any street signs in compliance with the DPW standards. All other standard conditions were kept as is.

Mr. Farland agreed that he would accept those conditions and Ms. Melanson promised that she would send him a copy the next day for his records. Mr. Farland also agreed to send the email regarding the LSP the next day for the planning department's records.

**Mr. Braga made a motion to approve DS-2023-01 Lincoln and Jason Subdivision, with twelve conditions, with condition number 10 on the standard conditions list – to become number 7 on the amended list – with an amendment to say “any street sign” and a deletion of “a stop sign and a dead end sign,” and with the deletion of conditions number five, six, and eight on the standard conditions list and was seconded by Jessica Fidalgo. The motion passed unanimously (5-0), with Mr. daSilva and Mr. Carr abstaining as they were ineligible to vote on this application.**

- 3. 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 for this meeting. Once the meeting adjourned, the board would sign off on the finalized plans for the previously approved Starboard Drive Subdivision.

Ms. Melanson did thank the board for their patience regarding hearing from the public regarding the Form A for 40 Point Street.

- 4. NEXT MEETING: Tuesday, July 18, 2023.**

Ms. Melanson reminded the board of the next meeting on July 18, 2023, as they were currently on a lighter summer schedule. The August meeting is currently planned for the 22nd.

**Mr. Braga made a motion to adjourn and was seconded by Jessica Fidalgo. The motion passed unanimously at 8:20 PM.**

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