



TOWN OF FAIRHAVEN, MASSACHUSETTS

# PLANNING BOARD

Town Hall · 40 Center Street · Fairhaven, MA 02719

## MEETING MINUTES

Tuesday, September 26, 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 6:30 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. She noted that going forward, this information would be posted on the agendas and would not need to be read aloud.

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, Jeff Lucas, Patrick Carr, and Ruy daSilva in the Town Hall Banquet Room.

Paul DiGiuseppe, Director of Planning & Economic Development, and Recording Secretary Stephanie Fidalgo were also present.

**Absent:** Kevin Grant

Ms. Simmons noted that there would not be enough eligible voting members to hold the public hearing on SD 23-03 Street Discontinuance – 5 Billy's Way, as she would be recused from the hearing as the applicant.

As noted in other minutes, both Vice Chair Jessica Fidalgo and Recording Secretary Stephanie Fidalgo will each be referred to by their full names for clarity as both were active participants during this meeting.

- c) **Minutes: September 12, 2023, drafts to be reviewed: Mr. daSilva made a motion to accept the minutes of September 12, 2023, and was seconded by Mr. Carr.**

Jessica Fidalgo noted a Point of Order issue with lines 41-56 of the September 12, 2023, minutes, the portion covering Ms. Melanson's requested change to the rules and procedures of the Board. She stated that changes to the rules and procedures of a board could not be made without a vote and discussion.

38 When Ms. Melanson countered that none of the rules were changed, only the way the Board  
39 enacted them, Jessica Fidalgo raised a Point of Order. As this interrupted Ms. Melanson, Mr.  
40 Carr also raised a Point of Order. Jessica Fidalgo stated that her Point of Order needed to be  
41 taken up before moving on. Ms. Melanson stated that her Point of Order would not be  
42 addressed.

43  
44 Amid attempts from Ms. Melanson and Mr. Carr to move on from the Point of Order and vote  
45 on the minutes, Jessica Fidalgo insisted on conducting a vote to address her Point of Order. Ms.  
46 Melanson requested a motion to vote to address the Point of Order.

47  
48 **Mr. Carr made a motion to vote to address Ms. Fidalgo's Point of Order.**

49  
50 While calling for a second on the motion, Ms. Melanson believed that Mr. Lucas had seconded  
51 the motion. However, Mr. Lucas was seeking clarity on the motion. When asked to explain  
52 proceedings, Jessica Fidalgo outlined the process by which a Point of Order could be taken by  
53 the Chair, or should the Chair not take the point, how an appeal could be made via a vote.

54  
55 Mr. Carr asserted that the issue should not have been raised during the vote on the minutes and  
56 that such concerns should instead be put on the agenda to discuss and vote on. Jessica Fidalgo  
57 noted that the rule changes put forth at the September 12, 2023, meeting, were not explicitly  
58 on the agenda. Ms. Melanson insisted that the changes outlined were considered to be  
59 correspondence to the Board.

60  
61 At this point, Jessica Fidalgo left the meeting while expressing her frustration with the  
62 proceedings.

63  
64 Ms. Melanson then explained to the gathered public that the Board now lacked enough  
65 members to vote on any of the Public Hearings scheduled for the evening and that the hearings  
66 would need to be continued to a future meeting. Mr. Lucas agreed with her point, noting the  
67 issues that could arise should they open the public hearing without enough members present to  
68 approve the special permits.

69  
70 The board discussed the best future meeting for rescheduling the public hearings before  
71 deciding on October 10, 2023.

72  
73 **Mr. Lucas made a motion to continue the public hearing for SD 23-03 Street Discontinuance –**  
74 **5 Billy's Way to October 10, 2023, and was seconded by Mr. daSilva. The motion passed**  
75 **unanimously, with Ms. Simmons abstaining. (4-0)**

76  
77 Mr. Carr asked for clarity on the number of members required to vote on special permits, with  
78 Mr. Lucas confirming that six members were required. Mr. Lucas again outlined the issues  
79 caused by opening a public hearing without enough members to vote on it present.

80 **Mr. Lucas made a motion to continue the public hearing for SP 23-07 350 Main Street Special**  
81 **Permit to October 10, 2023, and was seconded by Mr. Carr.**

82  
83 Before the vote could be taken, the Board verified that Mr. Grant was not on Zoom.

84  
85 **The motion passed unanimously. (5-0)**

86  
87 **Mr. Lucas made a motion to continue the public hearing for SP 23-06 54 Main Street Special**  
88 **Permit to October 10, 2023, and was seconded by Mr. Carr. The motion passed unanimously.**  
89 **(5-0)**

90  
91 Ms. Melanson and Mr. Lucas informed the gathered public that Jessica Fidalgo's previous point  
92 was not concerning the public hearings.

93  
94 The board then returned to the acceptance of the September 12, 2023 minutes, which had been  
95 delayed by the previous discussions. Before the discussion of accepting the minutes began in  
96 earnest, Mr. Lucas requested that Jessica Fidalgo's concerns be an agenda item at the next  
97 meeting.

98  
99 After confirming that Mr. Carr previously made the motion and Mr. daSilva had seconded it, Ms.  
100 Melanson asked to take a vote to accept the minutes of September 12, 2023. Before the vote  
101 could be taken, Mr. Lucas made a point of explaining that an acceptance of the minutes simply  
102 meant that the Board agreed that the minutes recorded what was said at the meeting and that  
103 approval of acceptance was not a value judgment on those comments.

104  
105 **The motion to accept the minutes of the September 12, 2023 meeting passed unanimously.**  
106 **(5-0)**

107  
108 **d) Correspondence:** There was no general correspondence for this meeting, though the Board had  
109 received correspondence in relation to the public hearings.

110  
111 **e) Bond Release for Alves Way:** Ms. Melanson invited Mr. DiGiuseppe to speak on Alves Way. He  
112 noted that Mr. Antonio Alves was present at the meeting to answer questions. Two years ago, at  
113 the March 9, 2021 meeting, the Board approved a Definitive Subdivision, DS 2021-01 46  
114 Sconticut Neck Road (Alves), otherwise known as the "Residence by the Girls Creek." As part of  
115 that approval process, the Board and applicant agreed on a \$900,000 bond to construct Alves  
116 Way. A year ago, at the July 26, 2022 meeting, the Board agreed to reduce the bond to  
117 \$300,000.

118  
119 The Planning Department received a letter from GCG Associates on September 26, 2023,  
120 recommending that the Town move forward with releasing the bond and accepting the  
121 roadway, pending their final review and acceptance of the as-built plans. This letter is attached

122 to the end of these minutes.

123  
124 Mr. Lucas asked if there had been any comments received from the BPW. Mr. DiGiuseppe  
125 explained that they had not heard from the Highway Superintendent, Josh Crabb and that his  
126 staff report on the topic outlined that both the Planning Board and BPW would need to make  
127 recommendations to the Select Board regarding the acceptance of Alves Way.

128  
129 Overall, the Board trusted the review and recommendations by GCG, with Mr. Lucas noting that  
130 he had visited the site and seen that the work was at or near completion.

131  
132 Ms. Melanson requested a motion to release the bond.

133  
134 **Mr. daSilva made a motion to approve releasing the bond and was seconded by Mr. Carr.**

135  
136 Ms. Melanson clarified that the bond would be released for the value of \$300,000.

137  
138 **The motion passed unanimously. (5-0)**

- 139  
140 **f) Street Acceptance: Request to review the petition to accept Alves Way at Special Town**  
141 **Meeting:** Ms. Melanson suggested voting in favor of the Street Acceptance, but with the  
142 stipulation that the Board needed to receive a letter of approval from the Highway  
143 Superintendent. She then explained that while the Board could vote in favor of the Street  
144 Acceptance, the Article of approval would have to wait for the spring Annual Town Meeting as  
145 the warrant was closed for the Special Town Meeting in November. She informed Mr. Antonio  
146 Alves that the spring meeting was tentatively scheduled for the first Saturday in May – May 4,  
147 2024.

148  
149 Mr. Josh Alves asked if they would need to resubmit the application and Ms. Melanson  
150 promised that there would be further correspondence from the Town as to their next actions.

151  
152 Stephanie Fidalgo requested names and addresses for the record, and Mr. Josh Alves gave their  
153 business address at 150 John Vertente Blvd. in New Bedford. Mr. Lucas informed them that they  
154 would need to appear before the board ahead of the spring meeting. He then noted that if the  
155 board voted to approve the Street Acceptance in October, it would take care of that part of the  
156 process for the annual town meeting.

157  
158 **2. UPCOMING REVIEWS:**

159  
160 Ms. Melanson briefly noted the upcoming reviews planned for the October 10, 2023, meeting.

- 161  
162 **a) Special Permit: 88 Fort Street, building a private use pier.** Tentatively scheduled for 10/24.

Ms. Melanson explained that the special permit had already passed through the Conservation Commission, Zoning Board of Appeals, and Harbor Master and that the Planning Board was the last approval in the process.

Mr. Lucas outlined his issues with the private permit special permit granting process and determining which board acted as the Special Permit Granting Authority. Stephanie Fidalgo explained that 88 Fort Street needed its special permit from the Planning Board as it was zoned for Mixed Use and thus fell under the Planning Board's purview.

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

Ms. Melanson informed the board that there would be a joint meeting with the Select Board on October 23, 2023, to select an applicant to fill the Planning Board seat vacated by David Braga and carry out the rest of his term.

Additionally, on November 21, 2023, there would be a training conducted by Town Counsel for the Planning Board and Zoning Board of Appeals to cover jurisdiction and the applicable bylaws and Mass. General Law.

Mr. Carr asked if there were any plans for an independent review of the Town Bylaws. Ms. Melanson stated that there would be an item on the agenda of the October 10, 2023 meeting, to vote on hiring a consultant to review the bylaws. Mr. DiGiuseppe would be seeking grants to hire the consultant. Ms. Melanson, Mr. Carr, and Mr. DiGiuseppe all agreed that the bylaws needed a full review to find issues to be addressed and contradictions to be corrected.

Mr. Lucas asked if applications for the new board member would be forwarded to the Planning Board ahead of the October 23 joint meeting with the Select Board, and Ms. Melanson promised that she would check with the Town Administrator and that any available information would be shared with the Board.

Stephanie Fidalgo asked if the Board wished to address the comments in the Zoom chat made by Mr. Christopher Fidalgo and the Board choose not to do so. Mr. Carr suggested having Town Counsel present at the next meeting to help with interpreting Robert's Rules of Orders. Ms. Melanson wished to have a discussion with both Jessica Fidalgo and Ms. Ellison to address the issues raised. She also stated that Ms. Ellison had approved of the rule change and how it was presented to the Board.

**4. NEXT MEETING: Tuesday, October 10, 2023.**

Mr. daSilva made a motion to adjourn and was seconded by Ms. Simmons. The motion passed unanimously at 7:15 PM.

206 Respectfully submitted,  
207 Stephanie A. Fidalgo  
208 Recording Secretary, Planning Board

September 26, 2023

Paul DiGiuseppe, CNU-A, MPA  
Director of Planning & Economic Development  
Fairhaven Town Hall  
40 Center Street  
Fairhaven, MA 02719

RE: Alves Way  
Residence by the Girls Creek  
Definitive Subdivision  
Final Construction

Dear Mr. DiGiuseppe :

All Construction comments as outlined in the letter from this office dated September 25, 2023 for Alves Way have been addressed. Based upon observations during construction and today, the roadway has been constructed to the approved plans. We are recommending that the Town move forward with releasing the bond and accepting the roadway pending our final review of the Acceptance and Asbuilt Plans.

If you have any questions regarding this matter, please do not hesitate to contact our office.

Respectfully Submitted,

GCG Associates, Inc.

*Michael J. Carter*

Michael J. Carter, P.E., P.L.S.  
President