

**FAIRHAVEN PLANNING BOARD**  
**APRIL 12, 2016**  
**Town Hall Banquet Room**

Wayne Hayward opened the meeting at 6:30 p.m. and noted it was going out live on the Government Access Channel

**A. ADMINISTRATIVE BUSINESS:**

**Quorum/Attendance:**

Present: Wayne Hayward, Chairman, Jeffrey Lucas, Cathy Melanson, Ann Richard, Rene Fleurent, Jr., Peter Nopper and Gary Staffon

Absent: John Farrell, Jr.

William Roth, Planning Director was also in attendance.

Board Elections:

Chairman:

Mr. Roth opened nominations for Chairman:

Mr. Fleurent, Jr. nominated Mr. Hayward. There were no other nominations so nominations were closed.

Roll Call Vote: 5-2, Ms. Richard and Ms. Melanson opposed.

Vice Chairman:

Mr. Hayward opened nomination for Vice Chairman. Mr. Nopper nominated Mr. Staffon, Mr. Hayward nominated Mr. Fleurent, Jr. There were no other nominations so nominations were closed. Roll Call Vote:

Mr. Lucas - Mr. Fleurent, Jr., Ms. Melanson - Mr. Staffon, Ms. Richard - Mr. Staffon, Mr. Fleurent, Jr. - Mr. Fleurent, Jr., Mr. Hayward - Mr. Fleurent, Jr., Mr. Nopper - Mr. Staffon and Mr. Staffon - Mr. Staffon. Vote: 4-3 - Mr. Staffon, Vice Chairman.

Clerk:

Mr. Hayward opened nominations for Clerk. Mr. Staffon nominated Mr. Nopper. There were no other nominations so nominations were closed. Roll Call Vote: Mr. Lucas - Mr. Nopper, Ms. Melanson - Mr. Nopper, Ms. Richard - Mr. Nopper, Mr. Fleurent, Jr. - Mr. Nopper, Mr. Hayward - Mr. Nopper, Mr. Nopper - Mr. Nopper, Mr. Staffon - Mr. Nopper. Vote: Unanimous. Mr. Nopper, Clerk.

SRPEDD Commissioner:

Mr. Hayward opened nominations for SRPEDD Commissioner. Mr. Hayward nominated Mr. Fleurent.

There were no other nominations so nominations were closed. Roll Call Vote: Mr. Lucas - Mr. Fleurent, Jr., Ms. Melanson - Mr. Fleurent, Jr., Ms. Richard - Mr. Fleurent, Jr., Mr. Fleurent, Jr. - Mr. Fleurent, Jr., Mr. Hayward - Mr. Fleurent, Jr., Mr. Nopper - Mr. Fleurent, Jr., Mr. Staffon - Mr. Fleurent, Jr. Vote: Unanimous. Mr. Fleurent, Jr., SRPEDD Commissioner.

Authorization for Chairman to sign Payroll

Mr. Roth indicated Town Accountant requires authorization every year to vote for the Chairman to sign payroll for the Recording Secretary and also in the absence of the Chairman, they could authorize Mr. Roth to sign.

Mr. Lucas made a motion to authorize Wayne Hayward to sign payroll for Recording Secretary and in his absence, authorize Mr. Roth to sign payroll and was seconded by Ms. Richard. The motion passed unanimously.

Acceptance of Minutes:

Mr. Staffon made a motion to accept the Minutes of March 22, 2016, and was seconded by Mr. Lucas. The motion passed unanimously.

Bills:

1. Pre-Printed Forms – **Monaghan Printing** - \$74.00

Mr. Staffon made a motion to pay Monaghan Printing \$74.00 and was seconded by Mr. Lucas. The motion passed unanimously.

2. Name Plate – Cathy Melanson – **Chadwick's** - \$7.50

Mr. Staffon made a motion to pay Chadwick's \$7.50 and was seconded by Mr. Lucas. The motion passed unanimously.

Mr. Hayward introduced Cathy Melanson, new Board member and re-elected members - Mr. Lucas and Ms. Richard.

**B. CURRENT PLANNING:**

1. Discussion ATM Article 33 – Amendment to Zoning Bylaw – Auto, Boat Sales, Rental, Service.

Mr. Hayward read into the record a portion from the Open Meeting Law and will allow discussion on the Article, but the Board will not deliberate or make any motions along those lines. If it were to occur, it would occur at the April 26, 2016, meeting.

Article 33

Mr. Hayward opened discussion up to the Board and there was none.

Mr. Roth noted there is a copy handout of the current Code and the proposed Bylaw change and gave a description of what was included within it.

Ms. Richard wanted to clarify when they started discussing this and how long it has been an agenda item. Mr. Roth noted since October 2014. Ms. Richard noted that since October 2014, they started discussing in open meeting. It is always on the agenda that gets posted on the website and outside.

Ms. Melanson asked why auto and boat. Mr. Hayward gave a description of how it came about, during their discussions.

Kevin McLaughlin of Fairhaven Shipyard, noted the date discussion started and asked when boats were put on and Mr. Hayward noted early on in discussion. Mr. McLaughlin said it has been topic and will become amendment and Mr. Hayward noted that was correct. Mr. McLaughlin asked the date of the Public Meeting and Mr. Hayward said the actual vote to recommend to Town meeting was on March 22, 2016, and it was a 5-2 vote and the Public Hearing was January 26, 2016.

Mr. McLaughlin referred to the Procedural Rules and read that parties directly affected by zoning amendment will be notified by card or letter of the date of the Public Hearing and asked if the parties were notified. Mr. Hayward informed they were, through advertisement and noted that depending on which process, would depend on whether a card would be mailed, which is State law. His concern is he was not notified and felt many people would be affected by zoning amendment and were not properly notified. Mr. Hayward explained that Ms. Healey of the State Attorney office reviews these and if anything done incorrectly, it will be denied. Mr. Hayward explained that town-wide zoning amendments do not require specific notification and did not violate any law. They are on live TV and they reach out to get business for input. They have minutes and agendas online, updated as soon as possible. Mr. McLaughlin disagrees and feels by the Planning Board procedural rules they are obligated to notify.

Mr. Roth noted they follow State Law on who they are required to notify and that is what they have done over the last 15 years. (Discussion ensued.)

Mr. McLaughlin referring to 198-25, section "C, classifying industrial uses, asked why that has changed and Mr. Roth noted it has not changed. It is verbatim. Mr. McLaughlin noted there were at least 4 boat storage facilities he is aware of that are not in Industrial Zones. They are in commercial zones. Mr. Hayward indicated some of the laws he was referring to were crafted in 1967 and others in 1978 and have been in place for over 38 years.

Mr. McLaughlin referred to section "D", explained he has work on boats now and they cannot be put inside and section "D" says he cannot do that. Mr. Hayward disagreed and noted that language has been in effect for 38 years. Mr. Roth said other than "boat motors" being added. Mr. Hayward said the law refers to boat sales under that definition and said they were under a different classification. Mr. Roth referred to page 70 in handout and read definition into the record noting it was added in 1967.

Mr. Hayward explained they never updated those parts of the law. They are classified under recreational uses and no one is proposing to change that and noted it would not make sense to put a line in there to make the working waterfront illegal. It's irrational. Mr. McLaughlin disagreed.

Mr. McLaughlin continued to read section "D" into record and explained they stored 68 boats outside in the winter in the parking lot, which is more than 60 days. Mr. Hayward said it does not apply to his boatyard and gave an example and definition of required parking and noted the Special Permit triggers. Mr. Hayward noted required parking is not an area to display retail products. It does not apply to his shipyard and gave examples.

Ms. Richard said even if it passes at May Town meeting, this is not going to change; this is for boat sales not boatyards. Mr. McLaughlin said it refers to boat services and re-read section "D".

Mr. McLaughlin referred to section "E" and read into the record, boat repair, that's what they do. If he decides to hire someone, is that considered an "expansion" or if he decided to take on new paint line, dose that "alter" his business? He feels it's a change and would need a Special Permit and Mr. Hayward explained triggers that would initiate a Special Permit. You have existing business and expansion refers to building new buildings or an increased parking demand. Mr. McLaughlin disagreed and felt the Board is not listening and felt that each person there is interpreting it the same.

Mr. Fleurent, Jr. explained they gave vested interest and they are people who don't want business expansion

Mr. McLaughlin said he deals with all different State and Federal agencies and there is a statute saying their action cannot force a business out of business and the way he reads this, he feels this effectively will take Fairhaven Shipyard out of business and he will have to cut business back according to this. He has been on the waterfront almost 30 years. He has a vested interest and cares about the Town. He provides a needed service and he is saddened by a situation no one was given an opportunity to speak on at Public Hearings. If he or anyone had known about this, word would have gotten out. Mr. McLaughlin feels the Board has gone behind their backs to try to force them into a difficult situation. He feels proper notice wasn't given and that the rules will eliminate a number of businesses in Town and not following procedures, has put the Town in potential liability. He feels the Article should be removed from the Town Warrant and suggested starting over where it is not adversarial. It is a working waterfront and the only use is for commercial marine. He feels the amendment is against the Town's best interest.

Mr. Hayward said he has stuck up for boat owners and for all of the working waterfront. The issues with the community are a separate process and have to do with the DEP and have nothing to do with the Fairhaven Planning Board. He feels the working waterfront is the life force and they are here to protect it and have protected it and because he is reading it that way, does not mean it is true. A complaint may be made to the Attorney General's office will be reviewed.

Jack Santo, said the Planning Board is supposed to protect the people. He has nothing to do with the waterfront. He is here as a taxpayer and is tired of seeing things like this. The Planning Board should write something they can all live with. People interpret in different ways and they need to make things to protect the taxpayer and they should all be able to understand it.

Mr. Hayward said they are referring to is a public taking and this has nothing to do with that. It is written with Town Counsel and it is for one objective only and not the objective they are reading into and what is the objective of the bylaw. The section they are referring to does not apply to existing businesses. These

are guidelines the Town would like to see when a project comes in. It was a recommendation from Mr. Osuch, former Executive Secretary, the Town Planner and himself regarding auto dealer license. Dealers were coming in for expansions and doing it through the renewal process, done on napkin prints. It is not the time to expand a license. There were hours of video on the website and minutes that were approved for the last year. It does not apply to boatyards. The purpose for the bylaw is so all licenses for boat sales or auto new car or used car dealerships wanting to expand, have to go through the proper channels.

Mr. McLaughlin said if they are targeting auto and boat sales so why does it say boat repair and storage Mr. Hayward said they put in no additional setbacks and actually removed one. They have not added anything new other than boat or boat sales because the Use Regulation has always said car dealers and boats. Mr. McLaughlin noted it says boat repair over and over.

Mr. Roth said Section 198-25 is a footnote X, for two specific uses and only applies to where the footnote is in the code and is only two places. Mr. Hayward noted the point of the Town bylaw is to clean up Town processes and example was given and discussion ensued. They are a regional community and working waterfront is part of their economy. The codes are not clear and the last thing the Board intends to do is step on business. Mr. McLaughlin asked why he has to send out notices and the Town does not? Mr. Hayward gave an example of the proposed Benoit Square Study zoning change and letters were hand delivered and no one showed up. Mr. Hayward noted the Fairhaven Neighborhood News has more circulation in Town than any other paper and ads are placed to notify of meetings.

Patrick Carr, A-1 Crane Co., 88 Middle Street said when it comes time to assess and tax on, then they get notification or need a plan, he has to hire a guy. He had one complaint and had to hire lawyer, which cost him. He feels no one has been told. Mr. Hayward said he does not disagree but they are not changing anything. Mr. Carr asked what the trigger was and Mr. Hayward noted when auto renewal licenses were coming in and discussion ensued. Residents were coming out at re-licensing hearings trying to talk about parking and setback and that is not the place to do it. Mr. Carr feels this is costing them money and why should everyone have the expense. Mr. Hayward said they do not intend to put anyone out of business. It is a business community.

Rui DaSilva of Artistic Auto Body noted he has owned it 11 years and thought he was an asset to the Town, and with the new bylaw it will affect him. He keeps a clean place. How will he keep a body shop if he has to keep cars inside? He has asked if he needed a license to store cars and was told no. He deals with many different situations and has to pay to get the property surveyed and next thing; he was approached and told he has too many cars. It is storage and with the new bylaws, how can he run a business? He feels it is very disturbing when someone says they are going to shut him down. He is the only body shop in town and feels he is a target. He pays handicap guy to clean up and keep busy. If there is an issue, address it with him. Mr. DaSilva feels he is being harassed, feels he has to build a superdome. Mr. Hayward noted he met with him and tried to explain the bylaw.

Mr. DaSilva said he provides a service for the Town and he is the only auto body shop in town. He would like to expand his investment. Mr. Hayward said he is in the Mixed Use Zone and his use is grandfathered. Mr. Hayward spoke about the term "grandfathered". Mr. DaSilva felt with the new Town Administrator, everything should be changed. He feels the Town is up in arms over this and he heard about this by talking to the Building Commissioner and he spread the word. He wants to get more involved with the Town. Mr. Lucas asked if it was one or two business and Mr. DaSilva explained that across the street is all storage. Mr. Hayward said he is not auto sales and Mr. DaSilva said he is, for two autos as sometimes there is a need for it. Mr. DaSilva does not want to lose what he has. He would hope this goes away.

Mr. Hayward asked who in the room would like to get rid of all zoning bylaws and there were several hands raised. Mr. Hayward noted it protects the business owner as well and discussion ensued. Mr. Hayward said zoning is design specifications. He feels they are losing businesses left and right.

Mr. Lucas said they went at this to make sure that people who have dealerships don't go over and noted they never did change the setbacks. They are design standards, what to expect and not expect and for new businesses coming in. (Discussion ensued.)

Mr. Staffon agreed with Mr. Lucas and noted they wanted to add assistance in the Selectmen's licensing ability. None of this is law and it has to go to Town meeting and feels it should be moved to Passover and felt they should work on making it effective.

Mr. Hayward explained the Planning Board regulates parking, parking demand, and that's why it triggers and setbacks come up in residential neighborhoods and they do very much consider who is impacted and the language that is used. These are the laws by the Town for the citizens of the Town.

James Rocha, of 42 Spring Street, asked what it would take to change the language from repair to sales so there is no worry. Mr. Hayward noted that most of the repair shops have sales licenses. Mr. McLaughlin said not boats. Mr. Hayward said boat sales is not a major concern in the Town and minimal language was put in.

Matt Hebert, of Earl's Marina, asked what if it is an existing boatyard and they do repairs and they are considering picking up a line for sales of recreational boats. That will change the whole dynamic of the repair and storage and for them to increase business; they will put themselves out of business. Mr. Hayward said if they were to propose a new use, expansion of retail use area, it would require Special Permit, under current zoning.

Mr. Roth read into the record the definition of boatyard and noted 198-25 does not apply to boatyards. Mr. Hayward said it does not apply to an existing shipyard and they are going to kill a bylaw which will help future generation.

Johan Gundersen, of Scandia Propeller, said each are experts with their own vocabulary and it is difficult to understand each other. On the 1978 version 198-25, the word "boat" is not in there at all and why are you now choosing to add it? Mr. Hayward said the Town does not have any regulations for boat sales. They have a use in the Use Regulation Table. The Town of Fairhaven zoning is crafted with the Use Regulation Table, if your use is not listed on the Table, it is prohibited. That line item protects anyone who wants to create boat sales. He feels they need to have slight regulations on an industry to protect the owner. Special Permit is a defense for a business. There is no language for boats for new establishments coming in, it is a design regulation for the future to show the intent of the future and felt the section should contain the word boat.

Mr. Gundersen said there are different interpretations. Mr. Hayward noted they have to be very specific when they write bylaws. Discussion ensued.

Mr. Hayward said this is 48-hour meeting notice and they heard there were concerns and wanted to hear them. April 26, 2016, is next the meeting and he cannot allow a motion or any such thing tonight.

Gunnar Gundersen, of Scandia Propeller, talking about 198-25, "boat sales" and why is he reading the word services and repairs and Mr. Hayward said usually they go hand in hand. Mr. Gundersen said by adding word boat, it affects a whole new group. Mr. Hayward said to what extent do they want to allow servicing of the boats and feels it pretty nominal using sales and service in the same thing.

Mr. Santo said take out service and repair and everybody is happy

Mr. Hayward said there has to be minimal regulation and that is what this is.

Mr. Robert Roderick asked how many boat facilities and car dealerships do they have in town. Mr. Hayward said a good 20-25 car dealerships. Mr. Roderick asked about the Beniot Square project and who was notified, as he is an owner within 300' from Main Street, in North Fairhaven and asked how many letters or fliers were sent out. Mr. Roth said it was a Public Meeting, and the property owners in the

affected area were noticed, which does not require a 300-foot notice. Mr. Hayward noted they contacted all businesses and homeowners on Main Street. Mr. Roderick said he wasn't notified and couldn't they send notices as courtesy.

Mr. Hayward said they are changing 198-27, if you are boat sales or auto dealer or repair and go in for a license and want to expand, you are going to have to get a Special Permit. Bylaws have to be updated all the time and every year they address an area and if he knew it would apply to someone, he would call them.

Mr. McLaughlin feels the bylaw could potentially take away from any business. It starts with one thing and goes on and on and he feels it is not required.

Jerry Bettencourt, former owner Jerry's Auto, noted there are two places that are illegal and that is why they're here today. He had an auto repair shop, kept clean operation and got nothing but flack, too much noise, starting too early and his hours of operation were set to 8-5. He was zoned industrial and they are all here today because they are afraid. He has had it. He sold his business because he is tired of it. Don't chastise the rest of them; go after the ones perpetrating it.

John Medeiros, of North Fairhaven, said regarding the Benoit Square neighborhood meeting, the first public meeting took place on Wednesday, September 2, 2016, at 6:30 and notices were sent to all addresses along Main Street between Dover and Howland. It was a just a small section of North Fairhaven that was notified. Mr. Staffon noted because of the scope and how the money raised for that project. Mr. Roderick said he owns 5 properties directly in that area and why was he not notified. Mr. Hayward said the process is just beginning. If his property is in the study phase and he will be notified.

Mr. Hayward asked if there anyone else who has not had chance to speak and there was none.

(Discussion of non-conforming property and grandfathering ensued.)

Ms. Richard noted them to keep in mind if you feel you were wronged; there is an April 26, 2016, meeting. It will also come up at Town meeting on May 7, 2016. It is a Saturday; let your voices be heard. They want active members of the community and they want to hear from people.

Mr. Hayward said everyone is sufficiently notified that there is an April 26, 2016, meeting and nothing will be mailed. Mr. Hayward said they cannot legally deliberate on this tonight.

A short recess was taken at 8:49 p.m.  
The meeting resumed at 8:52 p.m.

### **C. PUBLIC HEARING:**

#### **1. Street Discontinuance - Livesey Parkway and Deane Street – Board of Selectmen**

Mr. Roth read the advertisement into the record.

Mr. Roth said a memo was prepared and within it is a letter from Mark Rees, Town Administrator, that talks about the Oxford School sale and discontinuance of the street. It is the paper street of Livesey Parkway and Deane Street and gave description of the area affected. As part of sale and disposition of Oxford School those two street areas are to be portioned of the overall project. Mr. Roth noted in this case, if there were underground utilities and there are none and ultimately the disposition and configuration is those will be combined and there will be two lots.

Mr. Fleurent, Jr. asked what the likelihood of utilities being under the street and Mr. Roth said the Board of Public Works has reviewed it and there are no utilities.

Ms. Richard if the sale does not go through, this will happen regardless and Mr. Roth said any disposition of this property would need to involve these streets and is a house cleaning issue so whenever they find them, they try to deal with them.

Ms. Richard asked if they will become part of the property to be sold and Mr. Roth noted in original RFP, it included the boundaries of those streets.

Mr. Medeiros asked how close can the future building or parking get to the lot line of the abutters. Mr. Roth noted that there is no engineered layout yet and that would come when a Comprehensive Permit law, a friendly 40 B was submitted. The Town and developer are looking to build an affordable housing project and would be reviewed under a Comprehensive Permit through the Board of Appeals and State law allows for modifications to any and all zoning requirements. There are no specific setbacks, it is based on the design and what is agreed upon and under a 40B, and everything is negotiable.

Mr. Medeiros feels it is unfair to person on the other side. Mr. Roth said it would have to go before the Board of Appeals under Comprehensive Permit. Mr. Roth said the property that NFIA is on is lot 193 and will be re-configured for the building and parking in the rear. Mr. Roth said he did not know what the ultimate line or configuration would be.

Mr. Lucas said it is up to the Selectmen to delineate the line and Mr. Roth noted it does not conform now. There is a concept plan with a 30-car lot for the park and neighborhood, not business. (Discussion ensued.) There is meeting tomorrow night and is hoping for a conceptual plan.

Mr. Staffon made a motion to discontinue Livesey Parkway and Deane Street adjacent to lot 192 & 193 subject to the condition identified in the staff report dated April 1, 2016 and was seconded by Mr. Lucas. The motion passed unanimously.

**D. LONG RANGE PLANNING:**

None.

**E. CORRESPONDENCE:**

None.

**F. OTHER BUSINESS:**

1. Demolition Delay Bylaw Discussion – Rene Fleurent, Jr.

Mr. Fleurent noted he attended the CPTC Seminar and it related to zoning which addressed a demo delaying bylaw and is hoping the Board would entertain looking at a bylaw, which most of the Commonwealth has adopted. It protects some historical buildings in the community. They set a delay in the destruction, which allows people in Town to come up with an alternative. The bylaw timeframe could be 30, 60 or longer days and at the end of the period, if an individual wants to raze a building, they can. Mr. Fleurent can get a presentation to share with the Board and could be potentially drafted into bylaw.

Ms. Richard who determines the historic value and Mr. Fleurent was not sure. When a bylaw is drafted, there is a group that is designated who determine that. Mr. Fleurent is hoping the Board will entertain this.

Mr. Roth said typically it is administered by the Historic Commission. If Board wants to move forward, they should reach out to the Historic Commission and Mr. Fleurent said many times it is a private citizen or group and feels they probably have buildings in town that are historic. Mr. Fleurent will give Mr. Roth a presentation.

Ms. Richard said she does not know enough about it.

Mr. Fleurent said he will reach out.

Mr. Hayward feels with the updating of a Growth Management plan, feels there is need for it, but maybe not at this time.

Mr. Roth feels after Town meeting, they can put it on the agenda or may be a suggestion that comes out of the Master Plan

Mr. Roth mentioned in the packet given out, there were two articles in the Beacon Magazine that he felt would be interesting to the Board, EPA MS-4 Permit, which would drastically affect how they do storm water management in the Commonwealth. And the other is from the Senate to consider zoning reform legislation and may get to the floor of the Senate and he feels these are pertinent to the Planning Board.

Mr. Fleurent, Jr. noted the Senate was also looking at 119, changing the building codes and bylaws that the Commonwealth has and has given an update.

Mr. Hayward asked if there were any other matters and there were none.

Mr. Staffon made a motion to adjourn and was seconded by Ms. Richard. The meeting adjourned at 9:23 p.m.

Respectfully Submitted,

Tracy White,  
Recording Secretary