



FAIRHAVEN SELECT BOARD

Meeting Minutes

May 1, 2023

Present: Vice-Chair Charles Murphy Sr., Clerk Stasia Powers, Select Board member Keith Silvia, Select Board member Robert Espindola, and Town Administrator Angie Lopes Ellison.

Not Present: Chair Leon Correy

The meeting was videotaped by Cable access and Zoom meeting application.

Mr. Murphy opened the Select Board meeting at 6:30PM

A moment of silence was observed to bring peace into our world

Motion: Mr. Espindola motioned to enter Executive Session and return to Open Session at 7:00PM pursuant to G.L. c. 30A, § 21(a)(7) "[t]o comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements": Public Records Law, G.L. c. 4, s. 7(26) and Open Meeting Law, G.L. c. 30A, §§ 22(f), (g) (*Conservation Commission legal opinion*). Ms. Powers seconded. Roll Call Vote, Mr. Espindola in favor, Ms. Powers in favor, Mr. Silvia in favor and Mr. Murphy in favor. The motion passed unanimously (5-0-0).

The Select Board returned to Open Session at 7:35PM

Mr. Murphy stated that the Executive Session was to meet with Town Counsel to review the Conservation Commission operations. Town Counsel will be drafting policies, procedures, standards of operating processes. In this session we were advised that all alternates are not authorized in these statutes. Effective immediately we will be eliminating alternates from boards and committees and notifications will be sent to boards this week except where statutorily authorized.

MINUTES

Motion: Mr. Espindola motioned to accept the Open Session minutes of March 20, 2023. Ms. Powers seconded. The motion passed unanimously (4-0-0).

Motion: Mr. Espindola motioned to accept the Executive Session minutes of March 20, 2023. Ms. Powers seconded. The motion passed unanimously (4-0-0).

Motion: Mr. Espindola motioned to accept the Open Session minutes of March 23, 2023. Ms. Powers seconded. The motion passed unanimously (4-0-0).

Motion: Mr. Espindola motioned to accept the Open Session minutes of March 28, 2023. Ms. Powers seconded. The motion passed unanimously (4-0-0).

Motion: Mr. Espindola motioned to accept the Open Session minutes of April 3, 2023. Ms. Powers seconded. The motion passed unanimously (4-0-0).

Motion: Mr. Espindola motioned to accept the Open Session minutes of April 11, 2023. Ms. Powers seconded. The motion passed unanimously (4-0-0).

Motion: Mr. Espindola motioned to accept the Executive Session minutes of April 11, 2023. Ms. Powers seconded. The motion passed unanimously (4-0-0).

Public Hearing:

The Public Hearing for the discontinuance of Shirley Street, south of Jason Terrace and north of 4 Shirley Street was reopened at 7:39PM

Ms. Ellison reviewed the status of this item that was continued from the April 18, 2023 meeting and discussed her memo to the Board with Town Counsel's opinion (*Attachment A*). Town Counsel's recommendation is to postpone it to a later date due to the time it will take to review all factors and secure the Town's interest; because this is part of a Town Meeting article on May 6, 2023 there would not be time to care for it fully.

The Board asked about the overall process and timing. Ms. Ellison explained potentially mid-August if a Request for Proposals (RFP) is needed. Through contacting the Town Clerk, the Town has a fee interest from 1963 which would mean we need to follow 30B.

Mr. Davignon of Schneider, Davignon and Leone who represents the petitioner addressed the Board to clarify the status and stated concerns if it is put out to bid and purchased by someone else.

Public Comment:

Mr. Al Ouellette, 7 Shirley St., addressed the Board and stated the site has wrecked cars, potentially leaking oil into the sewer drains. He showed pictures from around the area to highlight his concerns. He added that the State had cut off the old Alden Road and put up a guard rail and the owners propose removing the guard rail. The area is being used by employees and customers and if the fence is extended across Shirley St. at Jason Terrace it will encroach onto Jason Terrace with people using the other side of the fence. The wrecked cars in the back are jeopardizing others' property values.

Ms. Rouba Sarkis, owner of A&A Auto addressed the Board and stated the business is a repair facility and there are cars there needing repair. The area is a commercial area which would or should have been known when people purchased homes in that area. She stated the Planning Board encouraged them as owners on both sides to petition for the street discontinuance. The fence should help to not have people parking beyond the fence but it is hard to distinguish where the business starts and ends.

Mr. Davignon was asked how much land the Sarkis' own and if he could relate what portions Mr. Ouellette's pictures relate to. Mr. Davignon reviewed and pointed to some of the outlined portions of the map. He also stated the guard rail would be removed if there was a fence across the area.

Motion: Mr. Espindola motioned to postpone the request for discontinuance until further notice and review of the 30B protocols. Ms. Powers seconded. The motion passed unanimously (4-0-0)

The Public Hearing for Eversource: petition for FO pole installation and conduit under public road; Causeway Rd. and Alder St. was re-opened at 7:58PM

No Eversource representative was present and no information from the Eversource engineers was received.

Public Comment:

Mr. Dan Wood of 7 Causeway Road addressed the Board and said he sent pictures to the Board individually and he feels the proposal would interfere with his use and enjoyment of the property. He requested notification of when Eversource is able to appear.

Motion: Mr. Espindola motioned to continue the Eversource petition for FO pole installation and conduit under public road at Causeway Road and Alder St and only schedule a public hearing after we receive the information from Eversource as requested and have notified the residents that it will be on our agenda. Ms. Powers seconded. The motion passed unanimously (4-0-0)

The public hearing on 99 Restaurants of Boston, LLC: Change of Manager and Change of Officers/Directors was opened at 8:05PM.

Proposed new manager is Linda Belliveau and proposed new officers are Clinton Lautenschlegar, Marjorie Nemzura, Phillip Purcell, Mark Spurgin and Kara Jacobs.

Public Comment: No public comment received

The public hearing on 99 Restaurants of Boston, LLC: Change of Manager and Change of Officers/Directors was closed public hearing at 8:07PM

Motion: Mr. Espindola motioned to approve the change of manager from Amy Sherburne to Linda Belliveau for The 99 Restaurant of Boston, LLC and to approve the change of Officers from Wendy Harkness, Charles Noyes and Kurt Schnaubelt to Clinton Lautenschlegar, Marjorie Nemzura, Phillip Purcell, Mark Spurgin and Kara Jacobs. Ms. Powers seconded. The motion passed unanimously (4-0-0)

TOWN ADMINISTRATOR REPORT

Ms. Ellison updated the Board on:

- Staffing Updates, Paul Foley resigned as of last Friday. The Planning and Economic Development Director position has been posted. The Town is also still searching for a Finance Director/Treasurer/Collector and may consider the use of a third-party consultant.
- The Summary Report from Mr. Bienvenue was received over the weekend and forwarded to the Board. His recommendations are similar to some from the Department of Revenue.
- The Department of Revenue Report dated August 2022 will be passed over.
- In reviewing the Town Meeting booklet there were errors and an addendum sent to all Town Meeting members and re-posted online. The three corrections are indicated with an asterisk. Ms. Ellison asked the Board to review the documents and advise on any issues or questions so that final documents can be prepared for the Town Moderator.
- The Municipal Aggregate contract is expiring and bids are opening on May 2, 2023. Ms. Ellison opted for the state standard which is the same as the Good Energy report from April 3, 2023. The clean option would be ten percent higher, the option of the state standard does show some savings.
- The Greater New Bedford Regional Vocational Technical High School Regional School Committee opportunity has been posted on the Volunteer page on the Town's website. The Chair of the Select Board, Town Moderator and Chair of the School Committee are the appointing authority. Anyone interested should complete the volunteer application form. Mr. Brian Monroe, Vice-Chair of the School Committee suggested newspaper ads and social media for more exposure to a broader audience.
- The Conservation Commission report was addressed in Executive Session with Town and Labor Counsel.

Mr. Espindola asked follow-up questions about the Town Administrator's report regarding the budget summary report and asked if it could be posted online for the public. Mr. Espindola suggested a meeting the morning of the Town Meeting to care for any last-minute items. Ms. Ellison proposed 8AM. Mr. Espindola questioned if the Board could be involved in the Municipal Aggregate process as it had been previously treated as a policy decision so the Board could weigh in. Ms. Ellison explained that the Board could vote on an alternative tonight. Ms. Ellison stated that the options were reviewed with the consultant and the default is the state standard.

Ms. Powers asked for more information. Ms. Ellison will schedule Good Energy for a future meeting.

Mr. Espindola asked if there would be any videos or presentations from the Board or Department of Public Works or other departments ahead of Town Meeting to educate the public. Ms. Ellison explained that there is a video presentation on the budget posted online which will be played at Town Meeting and is posted on the FY24 Override Hub online.

Conservation Commission Candidates

Caroline “Carrie” Hawthorne via zoom, addressed the Board and spoke to her background, training and interest in being appointed as a full member of the Conservation Commission.

Chelsea Isherwood via zoom, addressed the board and spoke to her application, background and interest in being appointed as a full member of the Conservation Commission.

Motion: Ms. Powers motioned to appoint Caroline Hawthorne to the Conservation Commission for a term to end May, 2024. Mr. Espindola seconded. The motion passed (3-1-0). Mr. Murphy, Ms. Powers and Mr. Espindola in favor, Mr. Silvia opposed.

Ms. Ellison explained the term would be through May 2024 because this appointment is to complete a resigning member’s term.

Use of Town Hall for Concerts under the Stars, Thursdays from July 13-August 10, 2023

The Fairhaven Improvement Association requests the use of Town Hall to host this event outside of the Town Hall and use bathroom facilities and power.

Motion: Mr. Espindola motioned to allow the Concerns under the Stars to take place on the following dates: July 13th, July 20th, July 27th, August 3rd and August 10th, all Thursday nights, starting at 7:00PM. Ms. Powers seconded. The motion passed unanimously (4-0-0)

Shed registration

Ms. Ellison presented information from the Building Commissioner for a shed registration process. This new initiative is for registering sheds under 200 square feet and would be for new and existing sheds. It is a one-time voluntary registration and includes documenting setbacks. Ms. Ellison had Town Counsel review and was advised it is similar to other municipalities and Ms. Ellison recommends the Board endorse the process.

Mr. Silvia explained that structures over 200 square feet require a building permit and this process appears to be to help control adherence to those rules when a building permit is not required.

Mr. Espindola asked how this will be communicated and how the Assessors will address it. Ms. Ellison will review the implementation and communication process with the Building Commissioner.

CORRESPONDENCE

- Eversource: tree and vegetation maintenance notice

COMMITTEE LIAISON REPORTS

Mr. Silvia had no meetings to report

Ms. Powers had no meetings to report

Mr. Espindola reported:

Updates from the Fairhaven Bikeway Committee, the Broadband Study Committee, the Broadband Coalition and SRPEDD. (*Attachment B*). He attended the Fairhaven-Acushnet Baseball League opening day and a dedication was made at the event to the Matty Oliveira Memorial Fund.

Mr., Murphy reported:

The Cherry Blossom Festival that was to take place on May 7th was canceled and the Sister City Committee will be focusing on the upcoming Manjiro Festival on October 7th.

PUBLIC COMMENT

Mr. Jay Simmons, 14 Oxford St. addressed the Board via zoom with concerns that the public notice of the opening for the Conservation Commission was only on the Town's volunteer page and felt it should have been in the Neighborhood News. Ms. Ellison explained that we do not typically advertise these types of vacancies in the newspaper. Mr. Simmons asked for the reason associate members are being eliminated. Mr. Murphy explained that it is not in the statute and due to the advice from Town Counsel. Mr. Espindola added that Town Counsel said associate members cannot be voting members so having an associate or non-voting member has no privilege.

Ms. Amy DeSalvatore, Conservation Commission member, addressed the Board via zoom and stated that associate members have had the right to speak and never to vote and it has been a convenient tool to train them to be full members. It takes experience and time to be an effective member.

Ms. Karen Isherwood, 3 Teal Circle addressed the board via zoom and stated the Conservation Commission does not have associate members, they have non-voting consultants under the Wetlands Protection Act and determined by the Conservation Commission back to 2020 if you review the minutes.

Mr. Espindola asked about the distinction between attending a meeting and being an associate member; anyone attending a public meeting can speak at the discretion of the Chair. Ms. Ellison added that Town Counsel would be the appropriate entity to weigh in on that distinction.

BOARD MEMBER ITEMS

Ms. Powers reminded everyone that Precinct Meetings are Wednesday at 6:30PM at the Hastings Middle School followed by the Town Meeting Prep with the Town Moderator.

Mr. Espindola asked about agenda items and if there should be times set for public hearings. He suggested the category of Action be Action/Discussion.

Mr. Murphy reminded everyone to get involved and come out to volunteer.

News and Announcements:

The next regularly scheduled meeting of the Select Board is ***Monday, May 15, 2023*** at 6:30 p.m. in the Town Hall Banquet Room. The Select Board will meet at a time to be determined on Saturday, May 6, 2023 prior to Town Meeting.

Meeting adjourned at 9:21PM

Respectfully submitted on behalf of the Select Board Clerk (ah)

Attachments:

- A. Town Administrator memo: Shirley Street discontinuance**
- B. Committee Liaison Report-Robert Espindola**



Town of Fairhaven
Massachusetts
Office of the Town Administrator
40 Center Street, Fairhaven, MA 02719

MEMORANDUM

To: Select board members

From: Angie Lopes Ellison, Town Administrator

Date: May 1, 2023

Re: Shirley Street discontinuation

Town Counsel weighed in regarding the discontinuation of Shirley Street. With that opinion, I would recommend rejecting the request until we can find more supporting documents to verify whether there was a fee interest or if it was an easement. If the former, there are other measures that the town needs to take, which will not occur before town meeting.

Below is a summary of the law regarding ownership of ways as it relates to a potential discontinuance. To briefly summarize the applicable law as further described below:

The abutters will automatically own the area of Shirley Street upon discontinuance if the Town acquired an easement at the time of the layout.

The Town will retain ownership of the area if it acquired a fee interest at the time of the layout and must comply with G.L. c. 30B before disposing of its ownership interest.

LAYING OUT A PUBLIC WAY

The Select Board of a town has the authority to lay out a public way pursuant to G.L. c. 82, ss. 21-23, and the way becomes public upon acceptance by Town Meeting. G.L. c. 82, s. 24 requires the Select Board to record an Order of Taking within 120 days after the Town Meeting vote. The Order of Taking may provide that the Town acquires either an easement or a fee interest in the land area of the way in order to secure the public's right of passage upon the layout of the public way. Taking an easement or a fee interest each have pros and cons, and it is essential to review the Order of Taking in order to determine whether an easement or fee interest was acquired at the time of a past layout.

DISCONTINUING A PUBLIC WAY

By statute, a Town public way may only be discontinued by vote of Town Meeting. Additionally, the Fairhaven General Bylaws establish a local procedure prior to Town Meeting's vote of discontinuance, including submission of certain materials from the petitioner and a Planning Board public hearing.

*When a way is discontinued, the municipality's interest in the way is released. This means that if the Town initially acquired only an easement for public way purposes, the underlying fee in the way will be free of the easement upon discontinuance. If one abutter owns the properties on both sides of the way, that owner takes title to the whole of the way, free of rights of the public or others. See *id.* at 161 (1996); *Recore v. Conway*, 59 Mass. App. Ct. 1 (2003).*

*On the other hand, if the Town acquired a fee interest in the land at the time the public way was laid out, the Town's fee simple ownership remains with the Town upon discontinuance. *Public Ways-Discontinuance*, Robert S. Mangiaratti, Esq., *Streets and Ways for Surveyors*, March 26, 2010. In that case, the abutters do not automatically acquire ownership of the land area of the way upon discontinuance. Any disposition of the Town's fee interest is subject to G.L. c. 30B. Accordingly, if the Town wishes to*

dispose of the fee in a way, it must make a determination that the discontinued way is no longer needed and must comply with the G.L. c. 30B (16) (b) procedure for disposition of real estate, i.e. "[t]he governmental body shall determine the value of the property through procedures customarily accepted by the appraising profession as valid." If the land is valued at \$35,000.00 or more, a request for proposals and Central Register Publication is required.

SHIRLEY STREET (FORMERLY ALDEN ROAD)

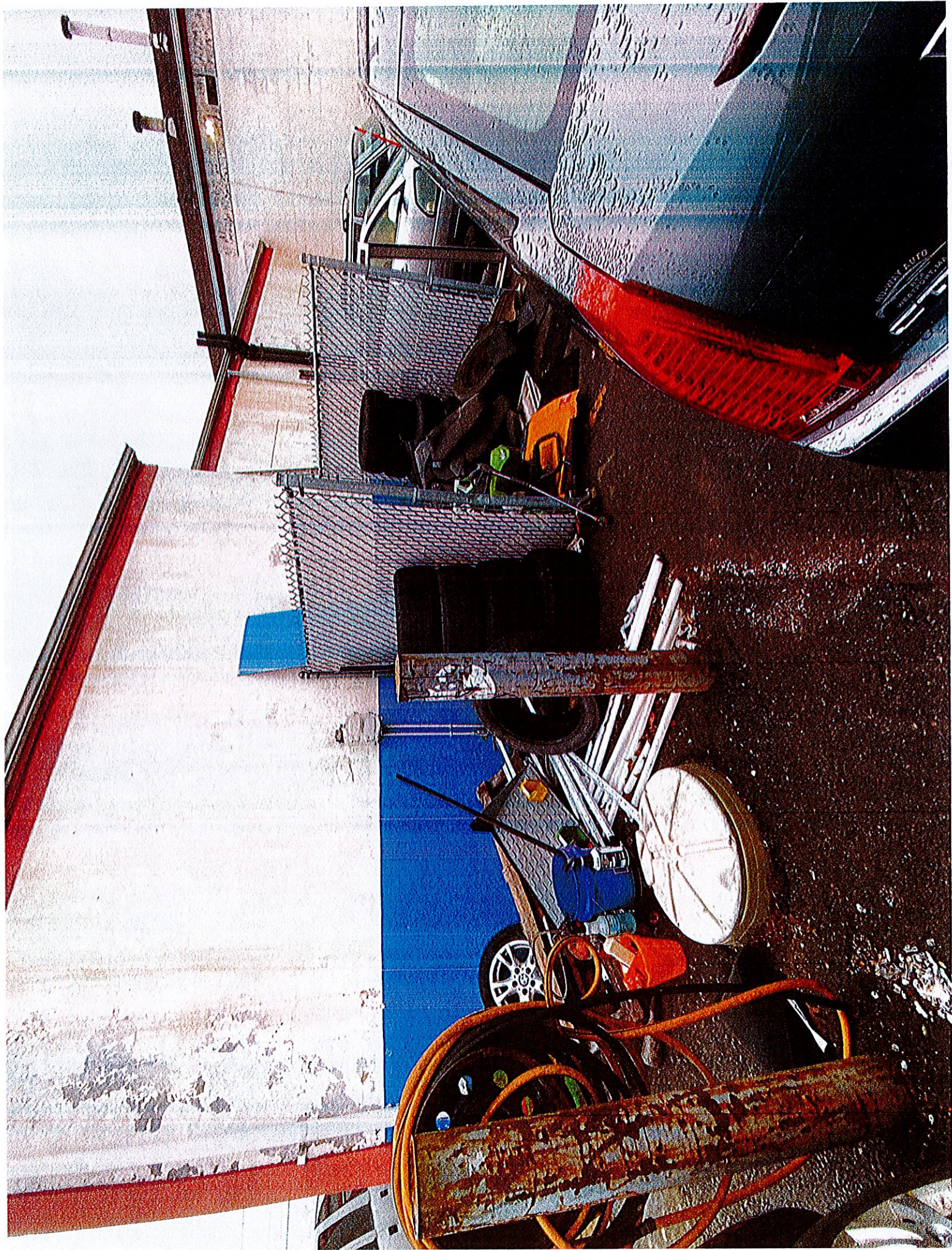
According to the materials provided by the petitioner, Shirley Street was formerly called Alden Road. The petitioner has provided a proposed deed for the Town to convey ownership of Shirley Street to the petitioner upon discontinuance. The petitioner's proposed deed references a layout plan recorded at Plan Book 64, Plan 11 on April 15, 1963. A search of Town Clerk's records revealed that Town Meeting voted on March 9, 1963 to "appropriate \$1,000.00 to accept Alden Road...and to instruct the Selectmen to take by eminent domain the land" further described by metes and bounds. We have not been able to locate the Order of Taking yet, but the language of the Town Meeting vote suggests that the Town might possibly have taken the fee interest rather than an easement.

Since Bylaw Section 316-9 requires the petitioner to provide the necessary deed and plan information, I recommend that this petitioner locate the Order of Taking and other deed information demonstrating the historical ownership of the way and the abutting properties so that we may determine how the ownership rights will be affected upon discontinuance. If the petitioner is unable to provide this information sufficiently in advance of Town Meeting, I recommend passing over the warrant article and deferring action to a future Town Meeting. While it may be desirable to both the Town and the petitioner to discontinue Shirley Street as requested, it is not advisable to take such action until the necessary background information has been provided and reviewed.

If it turns out that the Town acquired a fee interest in Shirley Street, ownership of the way will not automatically transfer to the abutters upon discontinuance. Rather, the Town would have to comply with the procedures set forth in G.L. c. 30B, s. 16 prior to disposing of such interest in land. If the Town wishes to transfer ownership after complying with G.L. c. 30B, the deed should explicitly reserve the utility easements requested by DPW. Upon request, I am available to assist with the review of further documents provided by the petitioner and to advise the Select Board with respect to future discontinuance and disposition of Shirley Street.

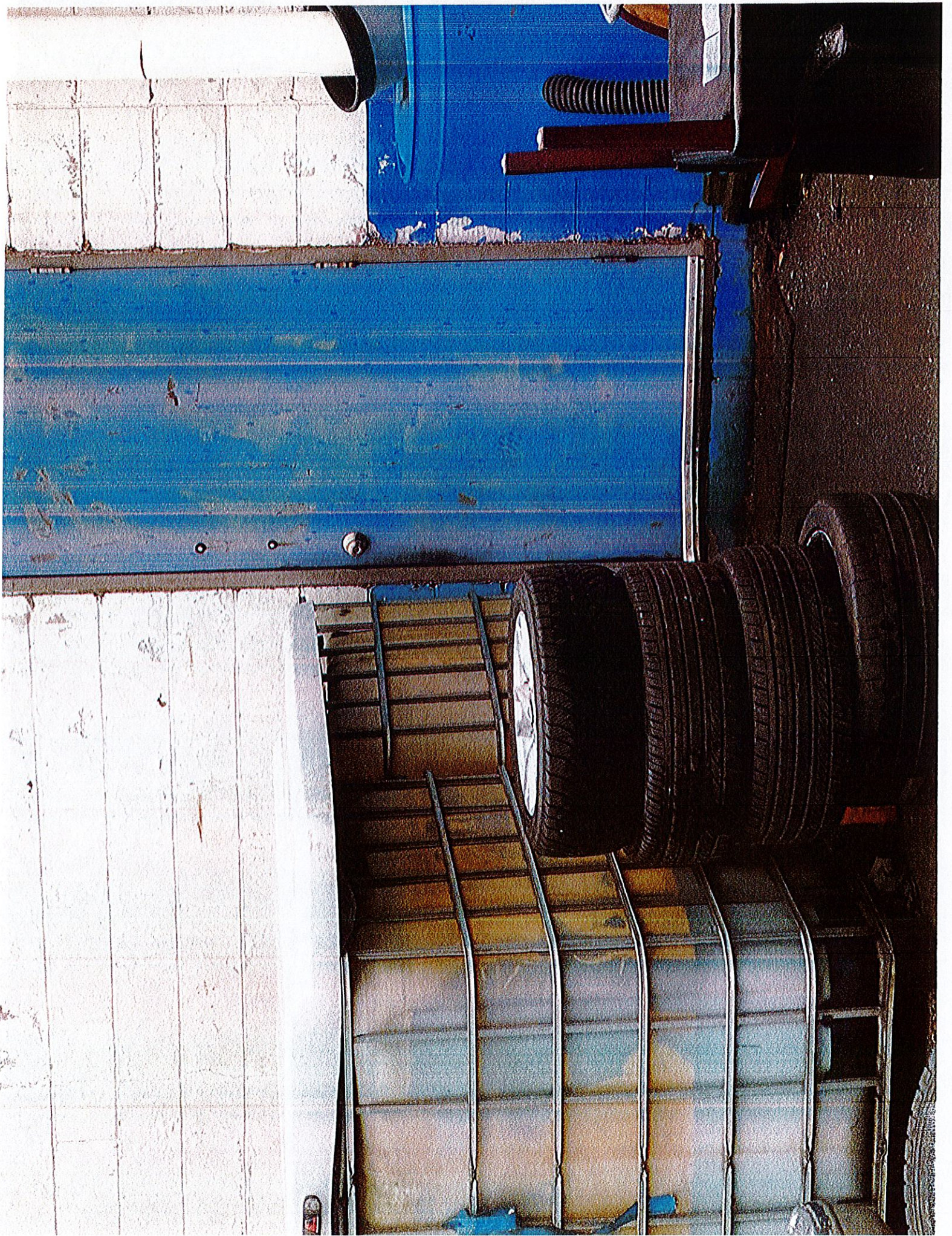


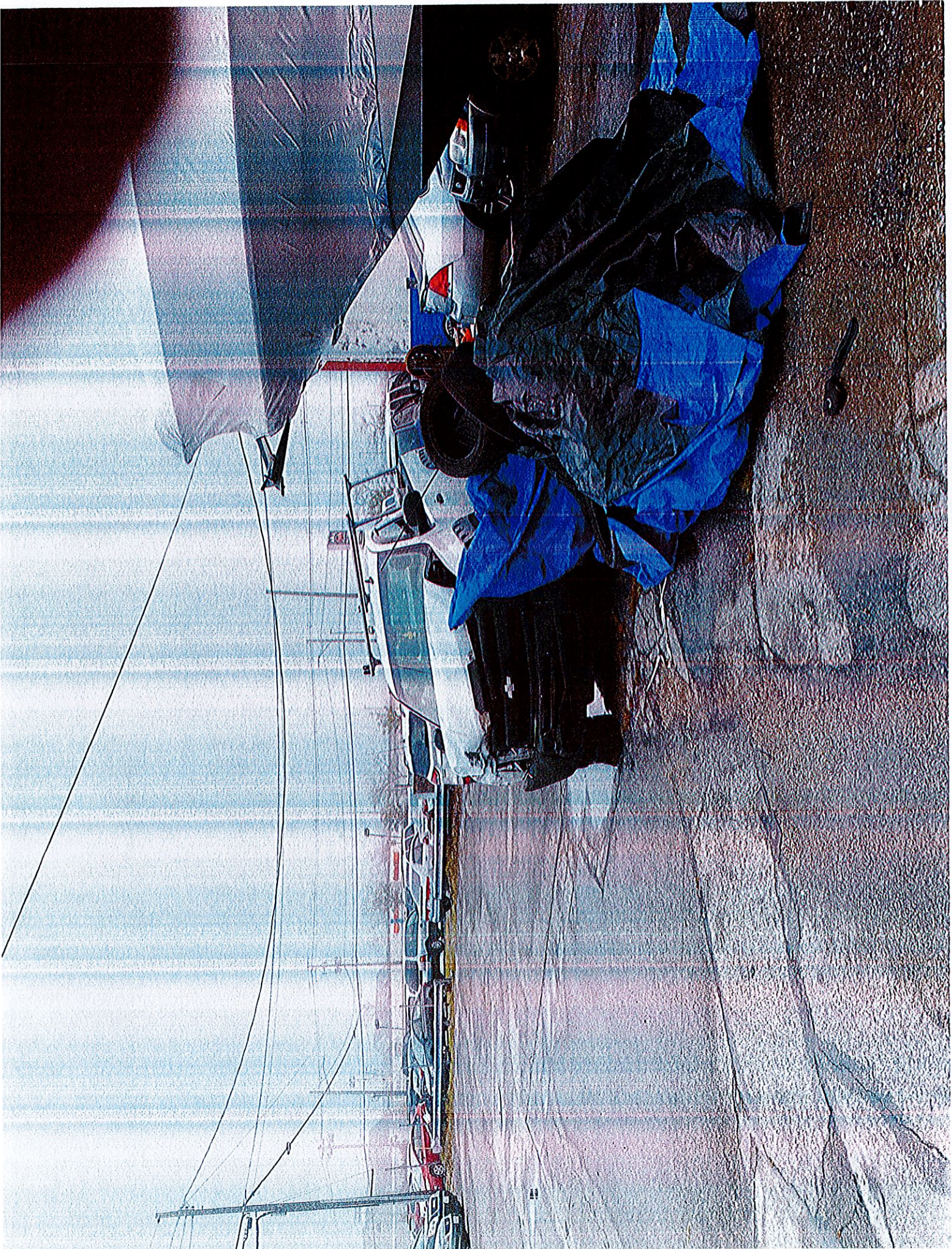














Committee Liaison Report – Bob Espindola – May 1st, 2023

The Fairhaven Bikeway Committee met on Thursday, April 27th.

The Committee did not have a quorum so it was an informational meeting.

Vinnie Furtado and Joshua Crab both attended the meeting and provided information to the group about the Safe Routes to School project, bike path safety improvements they have made, etc.



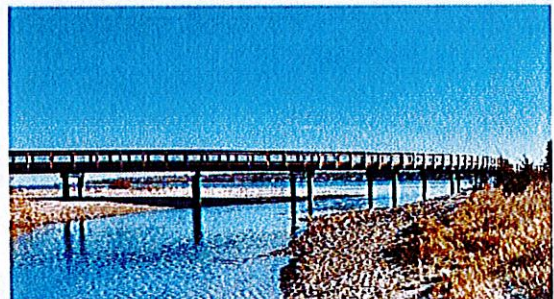
On Friday morning last week, there was a very successful first ride of the Bike Bus from Pleasant Street, near the old Atlas Tack Property, all the way to Wood school in the morning and then back again in the afternoon. There were about 25 students who participated and another half-dozen parents / grandparents as well.

They will be doing this each Friday morning.



center of Fairhaven all the way to the center of Mattapoisett.

You may have heard, but I think it bears repeating, that the new section of the Mattapoisett Bike Path has opened, leading from Reservation Road to Depot Street. I had the opportunity to ride the new route and it is spectacular. You can now ride from the



Broadband Study Committee.

The Broadband Study Committee is planning to meet again later this month or early next month to review several things, including the status of the Fairhaven Housing Authority project and the Public Private Partnership work going on with the Broadband Coalition and other local communities.

Broadband Coalition

The subset of the Broadband Coalition that has been studying Public Private Partnerships is looking to schedule another meeting later this month. Members of the Dartmouth IT department have been in touch with members of the UMASS Dartmouth IT Department and they appear to have interest as well. I spoke with Select Board member David Wojnar of Acushnet and they said they are interested as well but are waiting for a joint meeting of our Select Board and the Acushnet Select Board to discuss opportunities for collaboration / regionalization.

SRPEDD

SRPEDD met last Wednesday. One of the key elements of the meeting was a discussion about PDA's and PPA's which are Priority Development Areas and Priority Protection Areas. The goal is to help communities coordinate local plans to allow them to be in a better position to win competitive grants in areas like new growth, and protection of natural or cultural resources, historic resources, farmland, etc.

The presentation slides included a link (included below) to an interactive map so each community can see what is already in their respective communities as of the last time the plan was updated.

<https://srpedd.maps.arcgis.com/apps/instant/basic/index.html?appid=49448928b9794e4b97d41ffb8ddcc146&locale=en¢er=-71.0394;41.778&level=12&selectedFeature=SRPEDD Plus1 Community PAs 2013 8700:237>

SRPEDD is looking for our help in scheduling a meeting with our board to discuss further.

What's a PDA? PPA?



Priority Development Areas (PDA)

- Areas for additional growth
- Meet regional needs
- Good transportation, infrastructure



Priority Protection Areas (PPA)

- Areas important to protect
- Significant natural or cultural resources
- Includes habitats, water resources, historic resources, and farms



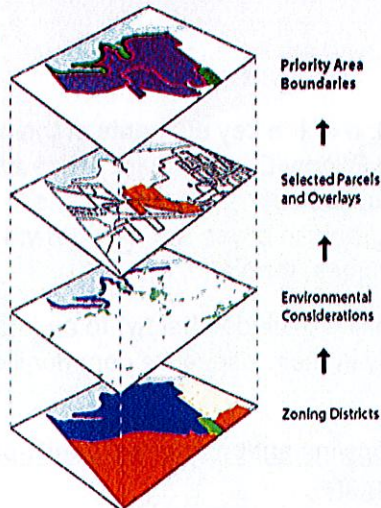
Smart Planning

Key Data

- Zoning
- Land Use
- Infrastructure

Key Environmental Data

- Habitats
- Water Resources
- Conservation Areas



Benefits of PDA

PDA Designations help communities to coordinate local plans and win competitive grants.

Success Story: North Attleborough

- Funding for new zoning
- \$1.3M MassWorks grant for roads and water/sewer
- 193 units located Downtown

Benefits of PPA

PPA Designations help communities coordinate local conservation efforts and win competitive grants.

Success Story: Norton

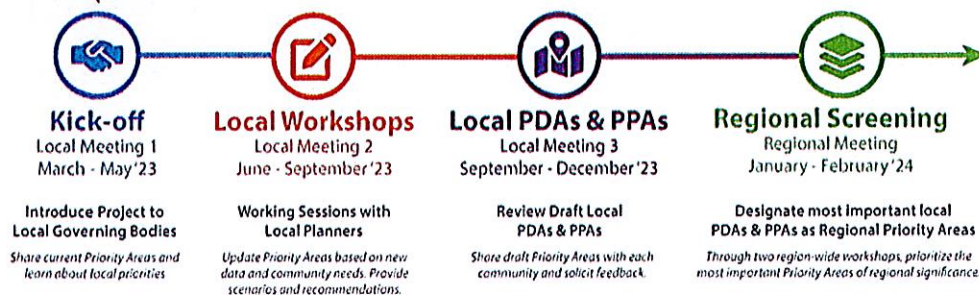
- Updated OSRP
- \$575k LAND grant for conservation acquisitions
- 150 acres permanently protected



Priority Areas
DEVELOPMENT • PROTECTION
© 2018 Norton-Klein, Inc. All rights reserved.

Project Timeline

We're here!



Your Role



- Review your existing PDAs/PPAs
- Help us schedule meetings
- Participate in the update with your knowledge of local, regional, and state priorities and initiatives



SMMPO – The SMMPO will be discussed as part of the main agenda.