

Fairhaven Planning Board

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TOWN CLERK

*Minutes*

Tuesday, January 14, 2020 – 6:30pm 2020 FEB 12 A 11: 39  
Town Hall, 40 Center Street,  
Fairhaven MA 02719

FAIRHAVEN,  
MASS.

**1. GENERAL BUSINESS:**

a) Chair's Welcome and Media Notification – Chairperson, John Farrell opened the meeting at 6:35p.m. and notified the public that the meeting was being recorded.

**b) Quorum/Attendance:**

Present: Mr. Farrell, Ann Richard, Cathy Melanson, Geoff Haworth, Wayne Hayward, John Malaspino, Rene Fleurent and Jeffrey Lucas.

**c) Minutes:**

December 10, 2019: Jeff Lucas made a motion to approve the December 10, 2019 minutes and was seconded by Cathy Melanson. Motion passed unanimously.

December 17, 2019: Jeff Lucas made a motion to approve the December 17, 2019 minutes and was seconded by Cathy Melanson. Mr. Haworth abstained as he was absent on December 17. The motion passed 7-0-1.

**d) Planning Board Bills:**

Standard Times, for advertising of Hiller & Timothy, Off the Hook, Hiller & Timothy and the Gas Station– for \$239.20. Mr. Lucas made a motion to pay The Standard Times \$239.20 and was seconded by Cathy Melanson. The motion passed unanimously.

GCG – re: Carri Corp - \$760.00; Mr. Lucas made a motion to pay GCG \$760.00 for Carri Corp and was seconded by Ms. Melanson. The motion passed unanimously.

Pitney Bowes – Mr. Foley stated it was for mailings for an upcoming Special Permit (for a 4-unit condominium on Huttleston Ave) - \$632.40 – Mr. Lucas made a motion to pay Pitney Bowes \$632.40 and was seconded by Cathy Melanson to prepay postage for the Huttleston Avenue project of four condo units. The motion passed unanimously.

**e) Correspondence:**

Paul Foley stated a few letters had been received regarding a hearing tonight. The two letters regarding Hiller & Timothy Streets were received from Ms. Isherwood and Mr. and Mrs. Espindola and are in the packets for that project review. The Board also received a letter from Toby Simmons regarding the proposed administrative review of cell phone equipment, which is a potential article for Town Meeting.

Mr. Foley also stated a letter re: a pier and floats near Union Wharf, which he believed was Fairhaven Shipyard was also received. He and Attorney Tom Crotty have shared correspondence. Mr. Foley to send an email again.

**2. PUBLIC HEARINGS:**

- i. **DS-2019-01: Pappas/Roderiques:** The Planning Board will hold a continued Public Hearing to review a proposed Definitive Subdivision off Hiller Avenue and Timothy Street for 16 buildable lots and two (2) drainage parcels on a 15-acre parcel of and (Map 28C, Lots 71 and 71A)

Mr. Farrell opened the Public Hearing.

Dave Davignon and Attorney John Mathieu were present for the applicant.

Mr. Davignon began stating the peer review letter was sent to them on December 30, 2019 and they had to do more revisions to the plans and they were submitted today. They also submitted a cover letter with an updated drainage report.

Mr. Hayward asked what the nature of the new plans is, specifically what were the characteristics of the new plan changes. Mr. Davignon stated it was mostly storm water design, and mostly off site stuff.

Ms. Richard stated she was unsure why they were continuing the hearing yet again, she said they received the latest correspondence at 4:30p.m. Mr. Lucas reiterated he was not sure why they were hearing from the applicant again, as they just received the revisions and have had no time to process them.

Mr. Foley stated he could go over his new staff report but they were on the previous plans; it is not based on the new plans submitted today. Mr. Foley stated there was also an outstanding bill due from the applicant for the peer review for about \$8,500.

Mr. Hayward stated he had a lot of concerns on this project. As he was not feeling well, and did not think he would make tonight's meeting, he did put his comments in writing. He submitted his comments in writing for the record. Mr. Hayward stated his concerns had more to do with Planning than stormwater regulation. He said there has been "zero movement" for a better design. Mr. Hayward said he objects to all the back and forth between engineers in track changes. He said the Planning Board first denied the preliminary plans, and since then none of those or the many concerns expressed during this review have been addressed. He said at this time he was comfortable in voting on this project. He said they have been buried in stormwater review for over a year on this project.

Jeff Lucas shared his concerns as well. Ms. Richard stated she too was ready to vote without any more discussion than that has already been stated. She is not in favor. Ms. Melanson agreed.

Resident, Robert Hobson, from Precinct 5 and a member of the Board of Public Works stated he was unsure why the Town could not afford to purchase these lots. He said he felt sorry for the people living in that area, that there were significant road issues and wetlands present. No one wants to live there. They deserve justice. There is not enough pressure to serve these lots with water and or sewer.

Resident, Karen Isherwood, 3 Teal Circle stated she was worried about if the development, she does not believe it should be allowed. They and other neighbors have offered to buy the land. What will go there down the line? The neighborhood needs a buffer, especially from the wind turbines.

Resident, Mike Collins stated the residents have been coming back and forth from Planning to Conservation. Conservation has many issues as well. He said there were water and sewer drainage concerns and that the residents are tired of all the going back and forth. They keep having the public hearing continued hoping the neighbors will not show up. As stated in the Peer Review they based their calculations on "A" soil which does not exist down there.

Frank Coelho, member of the Board of Public Works stated the project has not come before the BPW. Those trees are now tall enough to block the turbines and they want to come in and cut them all. He said there is not enough water going to that property or drainage.

Ms. Isherwood asked if the applicant ever considered the proximity of new houses to the turbines.

Mr. Hayward stated the distance from the turbines to residences was 1.5 times the height; it is what the state recommended at the time. The buffer now requires a setback of four (4) times the height of the turbine. Ms. Isherwood asked if a new by-law could be created.

Resident, Chelsea Isherwood noted that the developers said the turbines are not their problem. Ms. Isherwood said if the developers were so concerned they should have been part of the court proceedings back in the day.

Resident, Kathleen Audette stated she had concerns related to water. She is worried that there will be standing water caused by this. She agreed with everything that was in Bob Espindola's letter.

Mr. Coelho asked the Board not to make a quick decision before public can go through the different boards. He said you could hear the windmills in the existing neighborhood. The Town does not have the proper water, sewage or drainage for this proposal.

Michael McCarthy reiterated the comments from the room and concurred that the treatment plant stinks.

Ken Rezendes spoke on behalf of his mother who lives at 9 Paul Street and is against this project. There was a project like this done in New Bedford with all kinds of problems and the developer just walked away leaving a mess.

Resident, Jen Carter of 21 Paul Street stated that she noted every time there was a meeting, the applicant does not make significant change to his plan. The plan is essentially the same plan as we saw a year ago. She stated significant by-law issues are being broken. It is a kooky idea all around. She wondered how many Boards they have to go to. Ms. Isherwood asked if there is another Board that would be able to say or declare this land as 'hazardous' plots.

Mr. Farrell asked the Attorney if they have a meeting scheduled with the Board of Health as of yet? Mr. Davignon replied they do, on January 22, 2020. Mr. Hayward stated that when the applicant filed with the Planning Board, they should have filed with the Board of Health as well and they did not do that. He explained there was a process to a subdivision in the Massachusetts General Laws and the Fairhaven Subdivision Rules and Regulations and the applicants were not adhering to that process.

Mr. Farrell referred to a memo dated December 10, 2018, where Superintendent, Vinnie Furtado had concerns about the stormwater and other concerns after reviewing the plans. He asked the Applicant if they have a response.

Attorney Mathieu stated that the Pappas did not create the problem. They have developable land and it is their right to build on it.

Mr. Lucas referred to Section 322.15 Part 7 Design Standards, (D) of the Fairhaven Code, "No land shall be divided for residential use if it is of such a character that it cannot be used for building purposes without danger to health"

Attorney Mathieu objected to what was read, stating the health concerns were that of the Town. The Pappas did not create the problem. It sounds like a taking.

John Farrell asked whether the Applicant considered scaling the project down. Attorney Mathieu told him to stop right there. To which Chairman Farrell requested Attorney Mathieu stop right there.

Mr. Hayward stated the Planning Board is not saying the land is not developable. He said his objections are to the design of the project. He also objects to the lot that he believes all records show is owned by the applicant but is shown on the plans as "owner unknown". He said that Superintendent Furtado was saying a water loop is necessary, and that was not part of the design.

Mike McCarthy asked about the Board of Health. Mr. Davignon stated he is meeting with Board of Health on January 22, 2020.

Frank Coelho said he knows the BPW does not have enough pressure for the water. In response to the statement about "developable land", he noted that many people have wetlands that they cannot build on and still pay taxes.

Ms. Richard stated that the revised staff report includes a lot of what we are talking about and perhaps Mr. Foley should be allowed to continue and go over the key planning issues and other items in the staff report again. The slide show on the screen had a number of slides listing the key planning concerns and issues related to Section 322 (Subdivision Rules and Regulations).

Keren Isherwood expressed her objection to the removal of all of the mature trees.

Mr. Hayward asked if the applicant objects to the public hearing closing. Attorney Mathieu said they do not object to the closing of the hearing.

Mr. Hayward reminded the Board the irony of this is that they are not digging anything. Everything you see here would be above what is there now because they have to bring so much fill in to bring the project out of the water table. This would force them to cut over 7-acres of trees. The way you mitigate issues is you design with the site.

Mr. Hayward made a motion to close the Public Hearing, and was seconded by Cathy Melanson. The motion passed unanimously.

Mr. Hayward asked Mr. Foley how much was still outstanding on the peer review bill. Mr. Foley stated \$8,512; stating they have paid over \$6,000 but that over \$8,500 is still outstanding. Most of that is peer review but there were some additional advertising costs. He noted the letter from the GCG consultants outlining why the review cost more than usual.

Mr. Hayward asked Attorney Mathieu what he was prepared to do to pay the bill. Attorney Mathieu stated they have not received a bill to date. Mr. Foley stated he sent it by email to both the engineer and attorney the previous Friday but would send it out again.

Mr. Hayward made a motion to deny the subdivision DS 2019-01: Pappas/Roderiques Project a proposed Definitive Subdivision off Hiller Avenue and Timothy Street for 16 buildable lots and two (2) drainage parcels on a 15-acre parcel of land (Map 28C, Lots 71 and 71A), and was seconded by Ann Richard. The motion passed unanimously.

- ii. **SP2019-14: Bridge St. Gas State Modifications.** The Planning Board held a continued Public Hearing to review a proposal to modify conditions of a previously approved Special Permit to use an alternative storm water control unit and modify a dormant easement at the southeast corner of Bridge Street & 240 (Map 30A, Lot 86B and 87A)

Attorney Michael Resnick was present along with owner, Alex Carrigg and the builder Edward Pietreski.

Attorney Resnick stated they submitted correspondence on January 13, 2020 from Tony Ma, of GCG the Towns peer review consultant regarding the revised modification. He stated in the correspondence, Mr. Ma states "GCG concurs that the First Defense FD-3HC unit has similar treatment efficiency equal to the Stormceptor 450i unit."

Attorney Resnick also stated they submitted a letter from Sitec Engineering that the unit was a comparable unit. He stated this evening they were present to request a modification to condition #17 that changes the "brand" of the water quality unit from Stormceptor 450i to First Defense Model FD-3HC, and withdrawing all other requests as submitted in prior meetings without prejudice.

Mr. Farrell asked if the applicant has an O&M plan on the unit and if that has been submitted.

Attorney Resnick stated, as it was a modification for the first defense unit, they would submit an O&M plan once they know what they are using.

Resident, Anna Newman, from Narragansett Boulevard asked about the shrubbery proposed.

Attorney Resnick stated they were not amending that plan at this time. He stated that landscaping plan was approved by this board with the Special Permit. We might be back with other modifications.

Mr. Hayward stated he believed the landscaping plan they approved shows more robust plantings than is what is at the site. Alex Carrigg said that the image that Mr. Hayward was showing from the original review was illustrative and not an engineered drawing. The plantings will reflect the engineered drawing.

Attorney Resnick stated they are here today for a revised modification to the stormwater system.

Mr. Lucas stated he signed a document for a Stormceptor 450i and 10 trees.

Attorney Resnick stated in hindsight there should not have been language for a specific brand, but a comparable unit.

Mr. Foley stated that the Board first received communication that it was not comparable, and later received communication that it was comparable after the public hearing began. Mr. Foley reiterated to the applicants they put the alternative unit in the ground without permission.

Attorney Resnick stated they understood that and have apologized, stating it was disrespectful to the Board, however they were present to move forward.

Mr. Lucas asked if the landscaping was in compliance.

Mr. Alex Carrigg stated that they were here tonight for the Stormceptor unit. He said that the landscaping will be in compliance before they get their temporary certificate of occupancy.

Mr. Hayward stated he personally, concurred with the engineer, and perhaps the error was the applicant went to the Conservation when Planning should've been the one to issue the Special Permit on the Stormwater.

Mr. Carrigg stated the trees were put there in good faith to see it as part of the plan.

Mr. Hayward stated before the full occupancy, the Town Planner will have to sign off on landscaping.

Mr. Pietreski stated the trees have been planted according to plan. He said they are not monstrous pine trees, but small trees to give greenery to the white fence we have to put back there. He said they would be seeking a temporary occupancy, as the landscaping and wetlands will not be ready for the full occupancy.

Ms. Richard asked about the previous change of request for hours as stated in a previous meeting and how the applicant agreed to more robust trees with that potential modification.

Attorney Resnick stated that was an appropriate discussion at a future meeting for the revised modification if needed and reiterated that tonight the meeting was for just the modification for this Stormceptor 4501. He feels the conditions have to be related to the modification. Regardless of whether his client made gratuitously generous offers about landscaping at the earlier public hearing.

Mr. Farrell stated that an abutter brought up the information on the landscape plan and that is why it is being discussed.

Attorney Resnick stated the landscaping that is there is what was approved by this Board through the Special Permit. He said it is legally improper to hold up the Stormceptor modification based on the landscaping. It is a constitutional issue.

Mr. Lucas said he was disappointed that Attorney Resnick's client seemed so very agreeable to landscaping and working with the neighbors and the Town Planner to plant more trees and now you are being so abrupt. Mr. Lucas said everything he discussed before was about wanting to do everything in good faith regarding a new vegetation plan, etc. Mr. Lucas said he was disappointed to hear his client backtrack on all of the wonderful intentions he expressed at the last public hearing.

Mr. Carrigg stated he has been on site and his intentions are to have a good relationship with the neighbors; but this meeting tonight was for the revised modification that is present.

Mr. Hayward stated he was sensitive to the fact that this is an after the fact filing. He said the issue is the permit has not been approved and the unit has already been installed. He said you will have to be in full compliance with the conditions and the landscape when the Planner is asked to sign off on the Certificate of Occupancy.

Mr. Pietreski stated it was his error as the builder. He said he did not think anything of it, as to say why someone would tell him he could not put in something that he thought was better than what was planned.

Ann Richard stated this particular site is on the Nasketucket River Basin and it was a very delicate situation and unique to this site. This is not the same situation as all of the other sites on the list of who else uses this unit.

Jeff Lucas reiterated that we were lead to believe the Applicant was going to make an attempt to make this better for the neighbors. Alex Carigg said that he had concerns with a sound barrier and was concerned that it could cost him a lot of money. Someone mentioned planting on someone else's property and he got concerned.

Mr. Hayward made a motion to close the public hearing and was seconded by Ms. Richard. The motion passed unanimously.

Mr. Hayward made a motion to modify the existing permit, modifying Special Permit Condition #17, which is to change the brand from unit 4501 to First Defense Model FD-3HC and was seconded by Geoff Haworth.

On the question, Mr. Farrell asked if the motion should not read 'like unit.' Mr. Hayward stated that the engineer uses this specific brand name; therefore specific should be part of the motion. Mr. Farrell agreed. Mr. Farrell reminded the Applicant that the Board is going to want to see the Operation and Maintenance Plan.

The motion passed unanimously.

### **3. CURRENT PLANNING:**

Mr. Foley stated that Acushnet Company/Titleist had dropped off plans to build a new 900' square foot entry to their building and add a 7,500 sf wellness area. They were also looking to remove 6,000 sq feet of pavement.

Mr. Foley also stated that he heard from Bask, who will be putting forth a Special Permit for recreational marijuana soon.

#### **c) Discussion of potential Town Warrant Articles for May 2, 2020 Town Meeting:**

Mr. Foley stated that a place saver for preliminary articles were due by February 3, 2020 with the final articles on March 16, 2020.

#### **i. Discussion on short-term rentals (possible by-law).**

Resident, Mr. Robert Hobson stated he owns a few houses in the Town; and he is aware of many houses on Sciticut Neck being rented out on the internet by the night. He said he has asked people and they said there are no rules or their not enforceable. He suggested that the Planning Board look into a by-law for short-term rentals.

Mr. Farrell stated they have it on their radar and that is why they are discussing it. Mr. Foley stated there is a Massachusetts law regarding short-term rentals and he will do some research and back what other towns have been adding to the Board.

Cluster by-law: Mr. Foley is reviewing Dartmouth at this time. He said it was something that should also be on their radar. Mr. Fleurent stated he has heard about this at different seminars. He said it was a good concept that allows development and also protects open space. Mr. Lucas said it is not a new issue and that it also saves the developer costs on infrastructure. Mr. Hayward agreed that it has been discussed in the past.

Mr. Farrell stated he felt it was not a priority in his opinion for the February 3<sup>rd</sup> deadline. He did not want to feel rushed to create a by-law. Short-term rental is a big deal, administrative review of wireless equipment is a big deal. Those two should be our focus.

Discussion ensued on the administrative review of wireless equipment and whether the Board should discuss with Town Counsel. Ms. Richard asked for reviews from other Towns' to give us more info. Mr. Foley will try to get more information to the Board by the next meeting.

Mr. Hayward made a suggestion that the Planning Board consider adding an amendment to the wording to say Special Permits can be approved for "up to three years" before null and void.

#### 4. LONG RANGE PLANNING:

##### **Town Planner Update:**

Mr. Foley went to Marion Route 6 corridor study and there were 150 people; Mattapoissett only about 25. He went over the SRPEDD website that describes the Route 6 study. He reviewed the information and said it was largely driven by the desire to make a bike lane. They did a lot of work but they need more alternatives. They presented some alternatives that are not very realistic such as do nothing or buy two feet on either side. They also seemed to be pushing to make Route 6 only two lanes, one in each direction. They are also looking to "T" off a few of the intersections that have old New England style geometry that goes back to before the automobile. They are proposing a light at Route 6 and New Boston Lane. He asked members to complete the Preference survey on the SRPEDD site. Mr. Foley also attended a Complete Street Course last week and described that a bit.

Mr. Foley said he was setting up a meeting with MassDevelopment and the State and the Town Administrator about the PACE Program – Publicly Accessed Renewable Energy. Mr. Foley stated this would be something where the Town would adopt the policy and businesses could then take advantage of it. He said it helps with putting solar on roofs and efficiency methods by offering a 20-year low interest loan instead of 5 or 10. He said it is treated as a betterment and the Town funnels the payment to the banker. Mr. Hayward stated the Town would have to take on the administration role.

Hacker Street update – BPW took down no parking signs, and Mr. Foley has an upcoming meeting with Lt. Sobral, Officer Cannon and Vinny Furtado to determine where a few signs would go. He said there were too many no parking signs put on the street at first and a home business or two were taking up too many of the parking spaces.

Mr. Foley reported there were a couple of workshops coming up and he will send the Board dates.

Mr. Foley also submitted an application to SRPEDD regarding getting some traffic counts in North Fairhaven. That would be the first step to see if you are eligible for a truck exclusion zone. They said they do not do traffic counts in the winter. He will meet with head of transportation at SRPEDD in the near future.

Cathy Melanson made a motion to adjourn, and was seconded by Jeff Lucas. The Motion passed unanimously at 9:25pm.

Respectively submitted,

Patricia A. Pacella  
Recording Secretary

Documents reviewed: