Fairhaven Select Board
Meeting Minutes
January 10, 2022

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2022 FEB -8 A 10:33
FAIRHAVEN
MASS.

Present: Chairman Robert Espindola, Vice-Chairwoman Stasia Powers, Clerk Keith Silvia Interim Town Administrator Wendy Graves and Administrative Assistant Vicki Oliveira

Present via Zoom: Attorney Tom Crotty

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

Chairman Robert Espindola opened the meeting at 6:00 pm in the Town Hall Banquet Room and announced the Board will be entering into executive session.

At 6:32 pm Chairman Espindola reopened the meeting.

Minutes

Ms. Powers made a motion to approve the Open Session Minutes of December 20, 2021 as amended. Mr. Silvia seconded. Vote was unanimous. (3-0)

Ms. Powers made a motion to approve the Executive Session Minutes of December 20, 2021. Mr. Silvia seconded. Vote was unanimous. (3-0)

Town Administrator Report

Ms. Graves said Massachusetts Department of Elementary and Secondary Education (DESE) has extended the mask mandates in school to the end of February regardless of vaccination percentage.

Ms. Graves said the Budget hearings with Department Heads is almost complete.

Ms. Graves said she has hired a Principal Office Assistant for both the Council on Aging and the Town Administrator's Office and is currently interviewing for the Council on Aging Director position.

Committee Liaison Reports

Ms. Powers will meet with the Bristol County Advisory Committee next week to discuss ARPA funding. Mr. Silvia said the Rogers Reuse Committee has met and reviewed the Request for Proposal (RFP).

Mr. Silvia said the Historical Commission met last week and completed the first public hearing regarding the demo delay by law. The Commission also located the plaque that was at the entrance of route 6 Bridge abutment.

Mr. Espindola will meet soon with Broadband, Belonging, Economic Development and SRPEDD.

Request for Proposal – Rogers School

Planning Director Paul Foley told the Board this is the final draft of the RFP for Rogers School. Mr. Foley said Town Counsel has made some minor changes and the Rogers Committee has met and defined the property description, also adding some additional language. Sue Loo, Chairwoman of the Rogers Reuse Committee (RRC) feels the RFP is ready to go out as it is. Mr. Espindola expressed that he would like the Town to have some flexibility for the land. RRC committee member Doug Brady is worried about losing the playground and the town's green space.

Ms. Powers made a motion to approve the draft RFP for the Rogers School property and to amend the paragraph under introduction to strike the word "larger" from the last sentence. Mr. Silvia seconded. Vote was unanimous. (3-0)

2021 Town Report Photo Submissions

The Board reviewed the photos submitted by residents for the Annual Town Report. Two photos were chosen and one alternate. Ms. Oliveira will consult with the printers to ensure that the size is suitable to fit on the cover and the Board will announce the names of the chosen photos at a later meeting once the printers have provided guidance.

Bijoux Theatre, 350 Main Street: Building Issues

Building Commissioner Chris Carmichael provided an update to the Board regarding the building code violations at the former Bijoux Theater located at 350 Main Street. Mr. Carmichael gave a brief presentation showing the code violations and explained currently the building is unsafe. (Attachment A)

There were no questions from the Board or the public.

Selectman Silvia recused himself at 7:15 pm

Gift Account for Grimshaw Park

Council on Aging Director Anne Silvia has received an anonymous donation from a Fairhaven resident for the beautification and upkeep of Grimshaw Park. Mrs. Silvia said the plan is to purchase benches and plantings at the park; she has already spoken to the affecting town departments and all have been given their approval. Mrs. Silvia will continue to be the administrator of the gift account even after her retirement. The Town Accountant has advised that a new gift account will need to be set up for this donation and purpose. Once the check is received, the Board will be notified.

Ms. Powers made a motion to approve setting up the gift account for Grimshaw Park. Mr. Espindola seconded. Vote passed. (2-0-1)

Selectman Silvia returned to the meeting at 7:27 pm

Commission on Disability

Mr. Espindola read requests to join the Commission on Disability from Janice Alves and Pamela Ferro.

Ms. Powers made a motion to appoint Janice Alves and Pamela Ferro to the Commission on Disability. Mr. Silvia seconded. Vote was unanimous. (3-0)

Broadband Study Committee

Chairman Espindola reminded the Board at the last meeting they discussed updating the Broadband Study Committee (BSC) to include 2 associate positions. Mr. Espindola read the updated charge for the committee. (Attachment B)

Ms. Powers made a motion to adopt the updated charge for the Broadband Study Committee as presented. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola said there was one resident interested in joining the BSC for one of the vacant associate positions. Resident Sean Daly met via zoom and said he has a background in Finance and telecom.

Ms. Powers made a motion to appoint Sean Daly to the Broadband Study Committee. Mr. Silvia seconded. Vote was unanimous. (3-0)

Beautification Gift Account –Route 6 Bridge Plaque

Mr. Espindola read a letter from Historical Commission Chairman Wayne Oliveira requesting to use funds from the route 6 median gift account to have the 1902 Bridge Plaque reinstalled on the pillar at the entrance of the Bridge. The Town Accountant has already stated this is an appropriate use of the funds. (Attachment C)

Ms. Powers made a motion to approve the use of the Beautification Route 6 median gift account to have the plaque replaced at the entrance of the route six bridge as requested by Mr. Oliveira. Mr. Silvia seconded. Vote was unanimous. (3-0)

Town Hall Auditorium – Tree Warden

Tree Warden Don Colllasius explained that he would like to use the Town Hall Auditorium to do a lecture and slide presentation called "Working 2 Miles Deep" about his time working at Woods Hole Oceanographic Institute. Mr. Collasius is looking to seek donations to raise money during this program for trees, and has already spoken to Town Accountant Anne Carreiro on the proper procedures to collect funds. The Fairhaven Improvement Association has potentially offered to cover the cost of the custodial fee. All COVID protocols will be followed.

Ms. Powers made a motion to grant the request to use the Town Hall Auditorium on February 17, 2022 by the Tree Warden, to waive the rental fee but only charge the custodian's fee. Mr. Silvia seconded. Vote was unanimous. (3-0)

Zoning Board of Appeals Vacancy

Mr. Carmichael said recently the Zoning Board of Appeals (ZBA) has had a quorum due to COVID issues and therefore could not hold a meeting. There is currently one associate position vacant. Mr. Espindola would like to reach out to the residents who had submitted letters back in July and to advertise again. The Board will appoint someone to fill the vacancy at their next meeting.

Ms. Powers made a motion to reach out to the prior candidates and to accept more requests by noon on Wednesday, January 19, 2022. Mr. Silvia seconded. Vote was unanimous. (3-0)

Selectman Silvia left the room at 7:54 pm

Update on Town Administrator Search

Mr. Espindola said the Collins Center has been meeting with the Town Administrator Search Committee and they are currently in the screening process and should be able to announce the names of the final candidates by the next Select Board meeting to set up interviews.

Selectman Silvia returned to the room at 7:55 pm

Waste Disposal Services Agreement

Attorney Crotty said this is a standard agreement between the Town and ABC Disposal, Inc. The charges are in regards to the rate that ABC/SEMASS can collect and if SEMASS doesn't take the town's trash then ABC has to take it. (Attachment D)

Ms. Powers made a motion to authorize the interim Town Administrator to sign the Waste Disposal Services Agreement on behalf of the Board. Mr. Silvia seconded. Vote was unanimous. (3-0)

Assumption Agreement- Delivery of Non-Town Waste to SEAMASS

Attorney Crotty said this is the agreement stating that the Town is aware that Waste Connections is purchasing ABC, Disposal, Inc. (Attachment E)

Ms. Powers made a motion to authorize the Interim Town Administrator to sign the Assumption Agreement on behalf of the Board. Vote was unanimous. (3-0)

Mask Mandate Update

Mr. Espindola read a memo from Health Agent Dave Flaherty suggesting the Town continue with the mask mandate. (Attachment F)

Public Comment

There were no questions, comments, or concerns from any residents at this time.

Notes and Announcements

Attorney Crotty told the Board there is no need for Executive Session as the information is public record and he can discuss it openly.

Mr. Crotty said there has been one claim from the Opioid litigation against McKinsey and Company. This claim was brought by multiple attorney generals but more have created a new case. The Town's attorneys for this case have suggested that Fairhaven should join the new case for opioids. The Town does not have act on anything and Mr. Crotty will formally move the town to the next arraignment.

At 8:19 pm, Ms. Powers made a motion to adjourn the meeting. Mr. Silvia seconded. Vote was unanimous. (3-0)

Respectfully submitted,

Vicki L. Oliveira

Vicki L. Oliveira
Administrative Assistant
(Approved 02/7/2022)

A. Building Commissioner presentation
B. Updated Broadband Study Charge
C. Bridge Plaque letter, newspaper article and photos
D. Waste Disposal Services Agreement
E. Assumption Agreement

F. Health Agent memo

350 MAIN STREET "THE BIJOU"

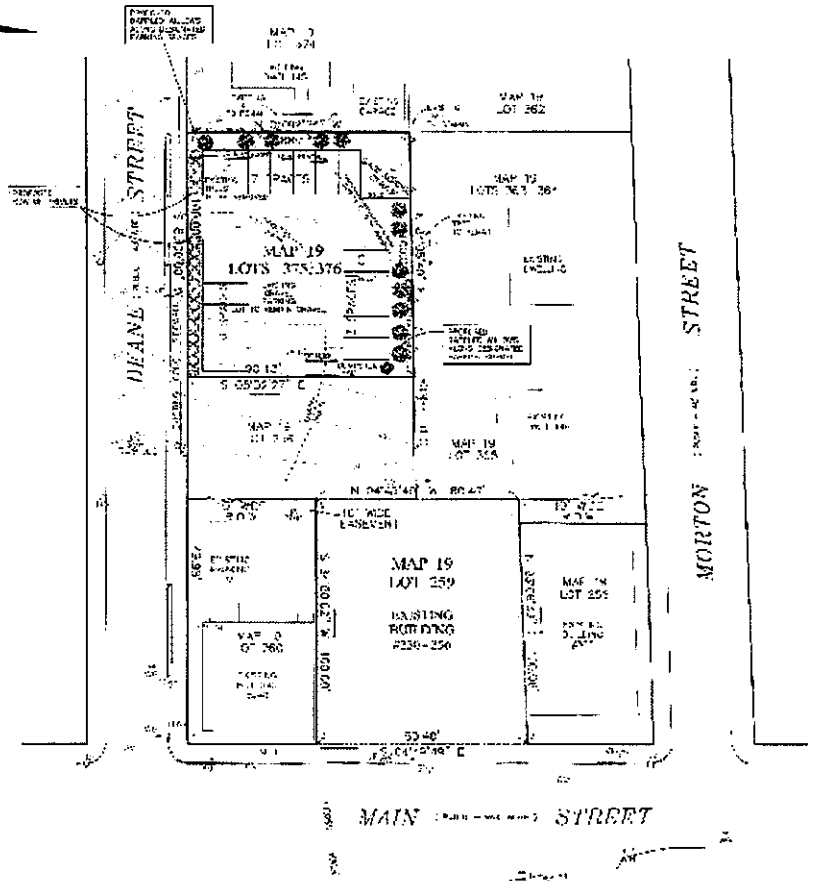
Attachment A

350 MAIN STREET

The building known as "the Bijou" or 350 Main Street was built in 1922. It is of a Type three (3) or ordinary construction having primarily brick veneer exterior with wooden floors, ceilings and roof assemblies. The structure is listed as having 24,600 gross feet of space with a net taxable area of 16,400 square feet. The building contains nineteen (19) mixed use units, including fifteen (15) R-2 residential apartment units located on the second/third levels, three (3) mercantile storefronts on the first floor facing the street and an A-3 use assembly theater to the rear of the first floor.

350 MAIN STREET

The building was abandoned in financial collapse of 2008, except that one storefront continued to operate for several years. On May 1st 2020 Julio and Nelia Barbosa purchased 350 Main Street Fairhaven "the Bijou" for $300,000.



PLAN FOR SPECIAL PERMIT

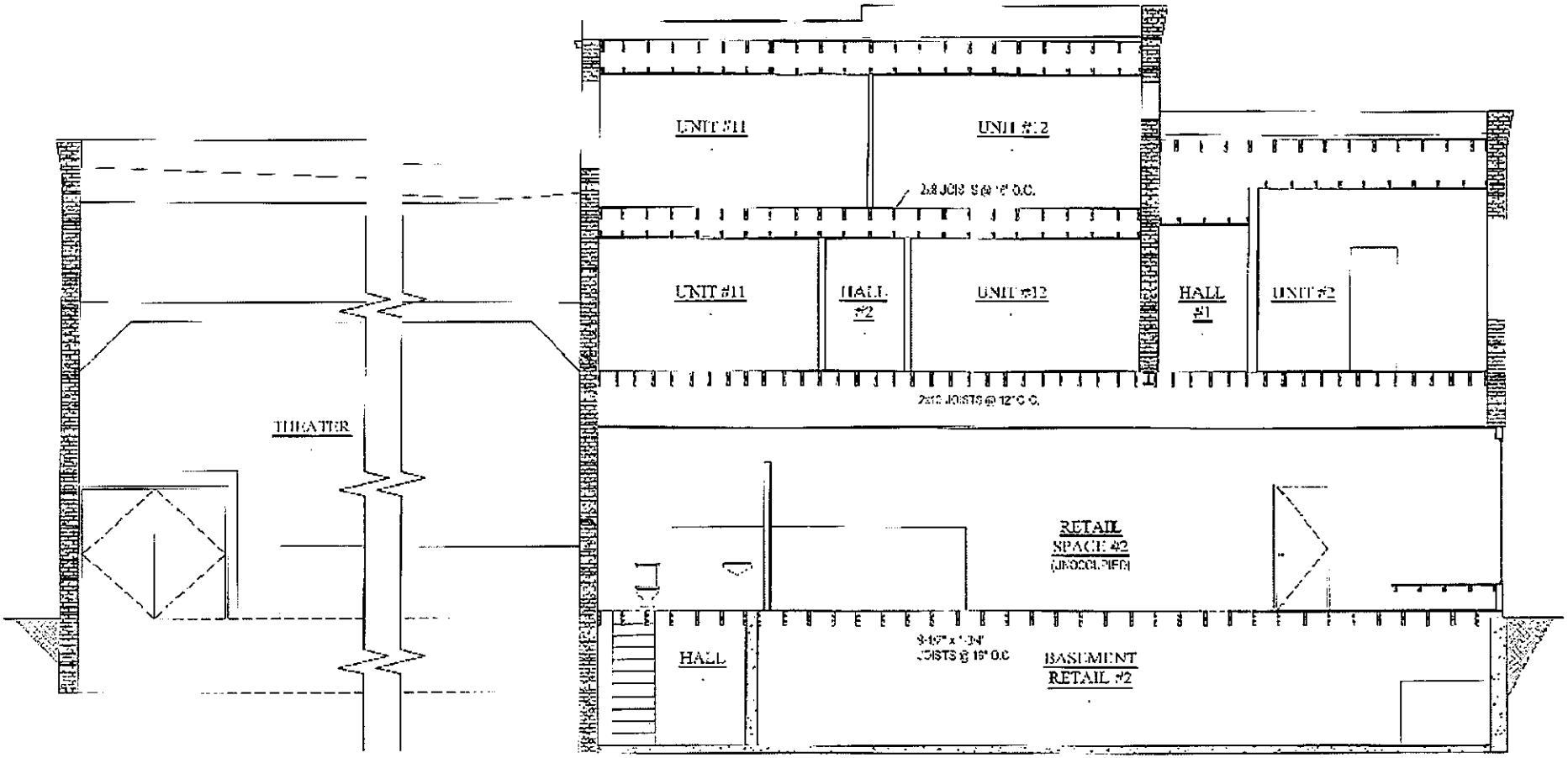
350-356 MAIN STREET

FAIRHAVEN, MA.

SCALE: 1"= 20' DATE: JULY 02, 202

ZLS

ZENITH LAND SURVEYORS, LLC



A EXISTING SECTION - A

SCALE: 3/16" = 1'-0"

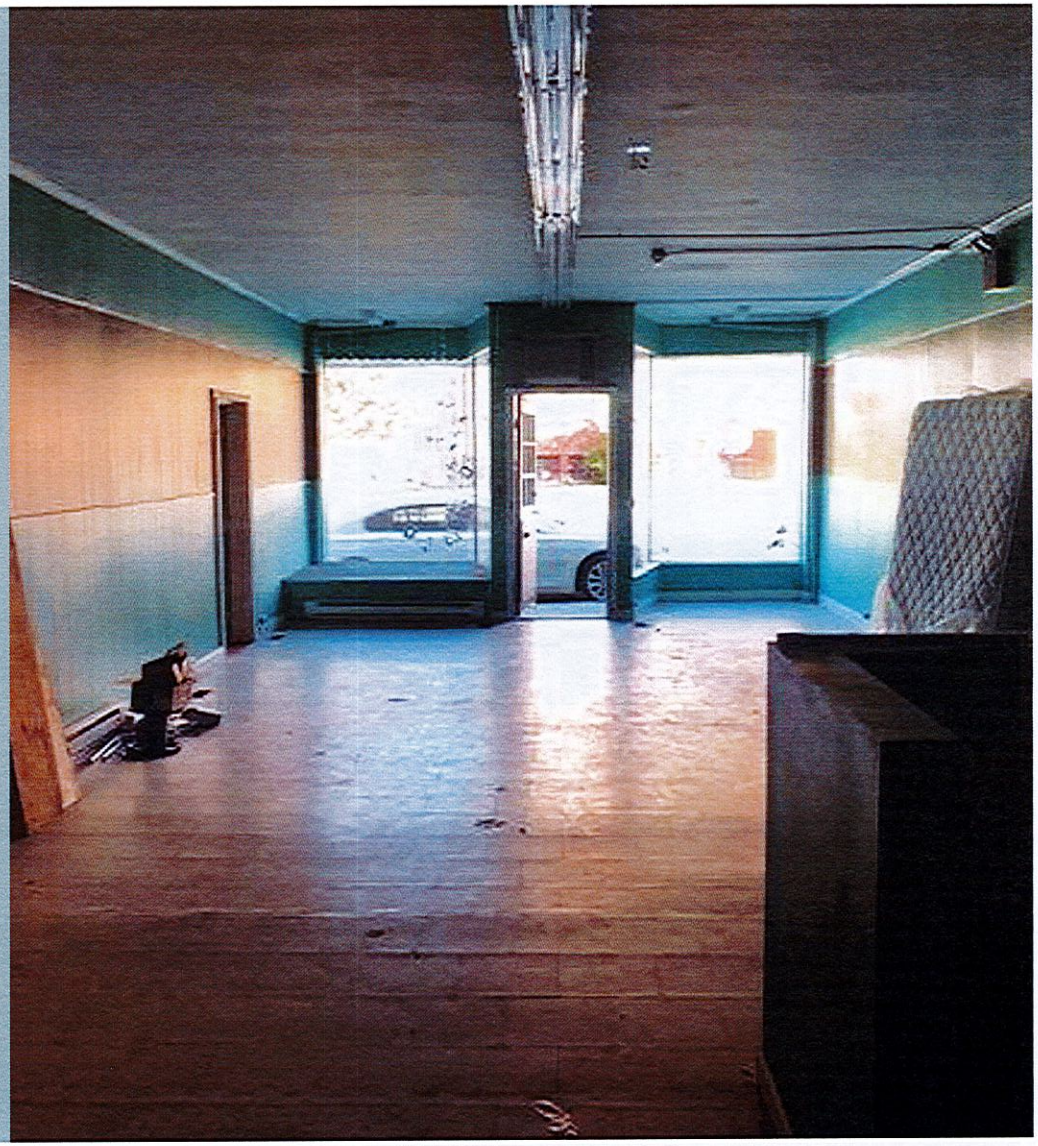
STOP WORK/CEASE AND DESIST

The structure currently sits under a Stop Work/ Cease and Desist Order for performing work without the proper building permits and or a Special Permit from the Planning Board. These Stop Work Orders were issued by the previous, interim and current Building Commissioners for starting and continuing work without the proper permits. The Planning Board did issue a Special Permit on July 13, 2021 for the fifteen residential apartment units and the three mercantile storefronts. All that is left is to show compliance with the State Building Code.

MERCANTILE STOREFRONT

This building was constructed one hundred (100) years ago prior to most building codes giving it numerous areas of concern. These include balloon framed walls, large interstitial spaces between the floors and ceilings, lack of insulation, no fire rated walls/ceilings, no fire separation between units, no fire doors, no fire suppression system. The egress system has problems with the length of travel distance and non-compliant fire escape system. As buildings of this age have shown numerous times there is a strong likelihood that these problems would allow a fire to race throughout the building and entrap its occupants and first responders.

The building is near the end of its useful lifespan.

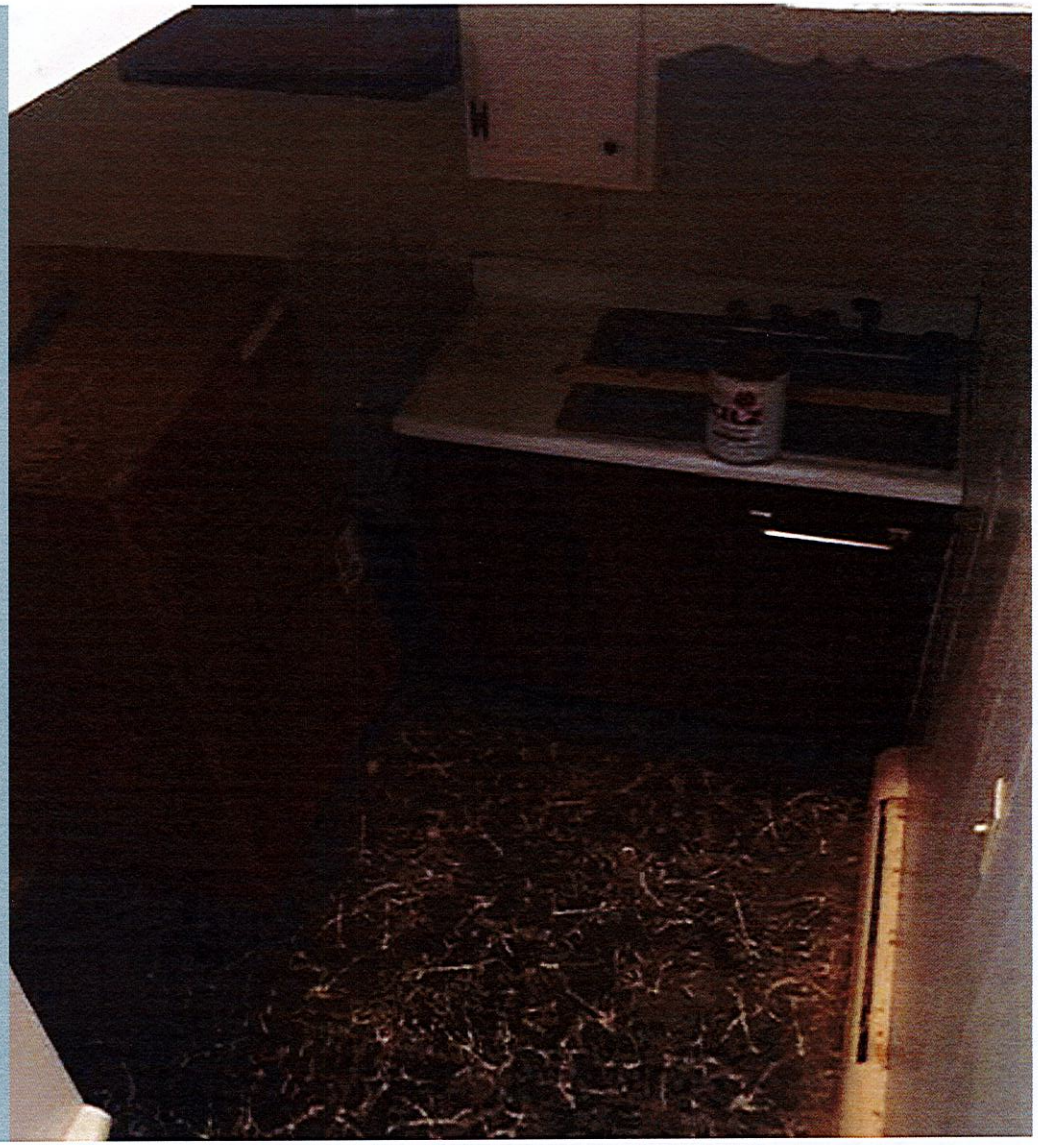


INTERIOR HALLWAY 2ND LEVEL

Applicant states no drywall work performed, notice the drywall dust (white chalk) and lack of reveal on the skirt boards indicating drywall work has been performed

RESIDENTIAL KITCHEN
2ND LEVEL

Typical kitchen, new gas stove still in box



RESIDENTIAL BATH
2ND LEVEL

Forty years of use and twelve years of abandonment have left them in a Inhabitable state. One of two undersized windows 60" above the floor

INSIDE UNIT BETWEEN 2ND & 3RD LEVELS

One of only two windows in each unit, not accessible for emergency egress

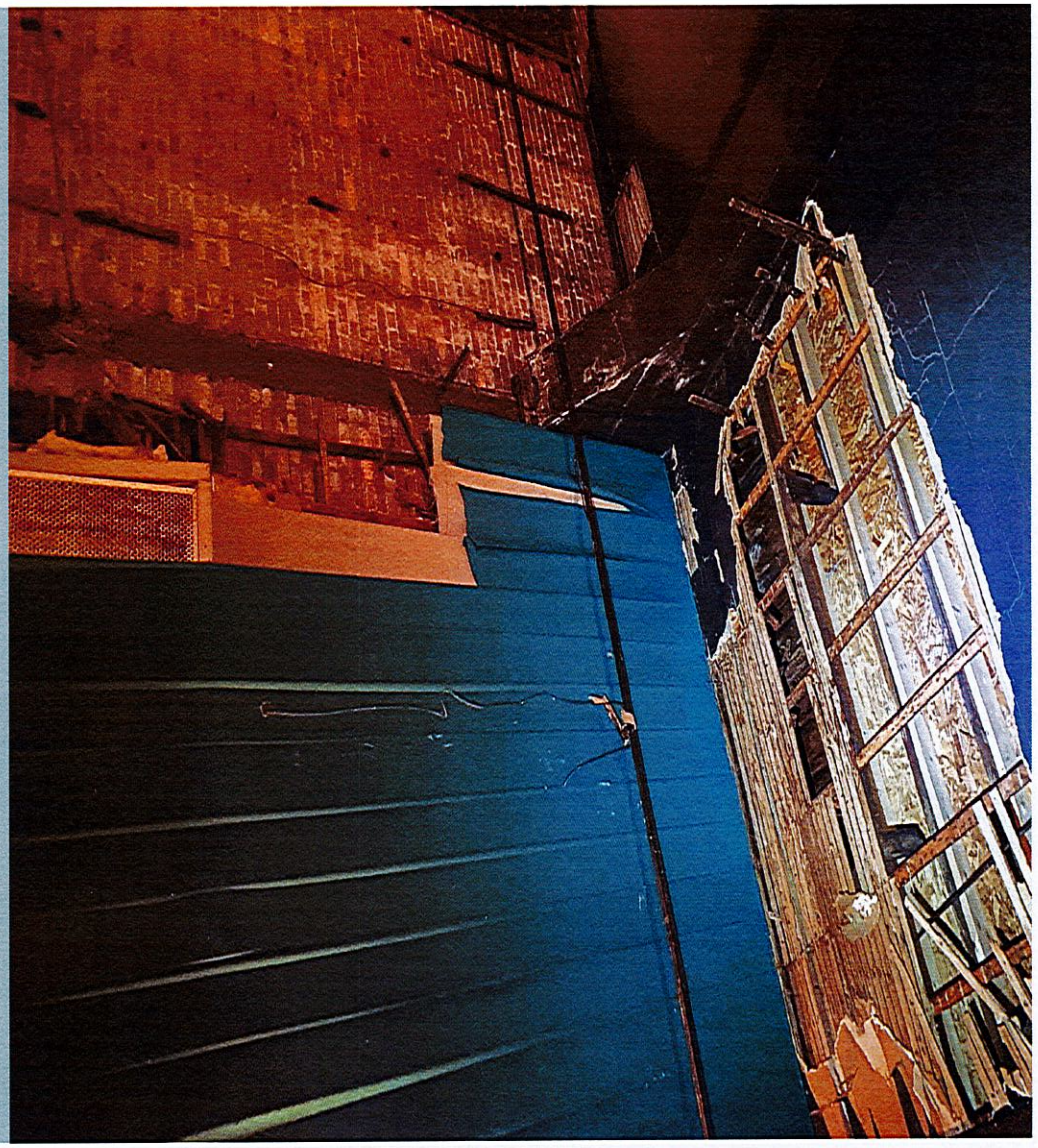
Notice the adult male standing on the stairs below

THEATER

Placing of the gas pipes on the floor without protection violates the Fire and Gas codes, this also cuts the room in half and eliminates the ability to exit through the rear egress doors

THEATER ROOF/WALL

The roof would have leaked for over a decade to cause this much rot and damage to the roof wall and floor systems



ROOF REPAIR

Applicant states no roof repairs were made

THEATER FLOOR

Poor repairs to the rotted floor

CRAWLSPACE BELOW THEATER FLOOR

The roof leak and no vapor barrier have left the theater floor rotted

TYPICAL BASEMENT

Charred floor joist and asbestos wrapped pipes

FIRE ESCAPE SYSTEM

Fire escape system has problems with height of windows above floor, the size of windows are too small and length of travel distance.

These wooden stairs are past their life expectancy

FIRE ESCAPE

Noncompliant fire escape system

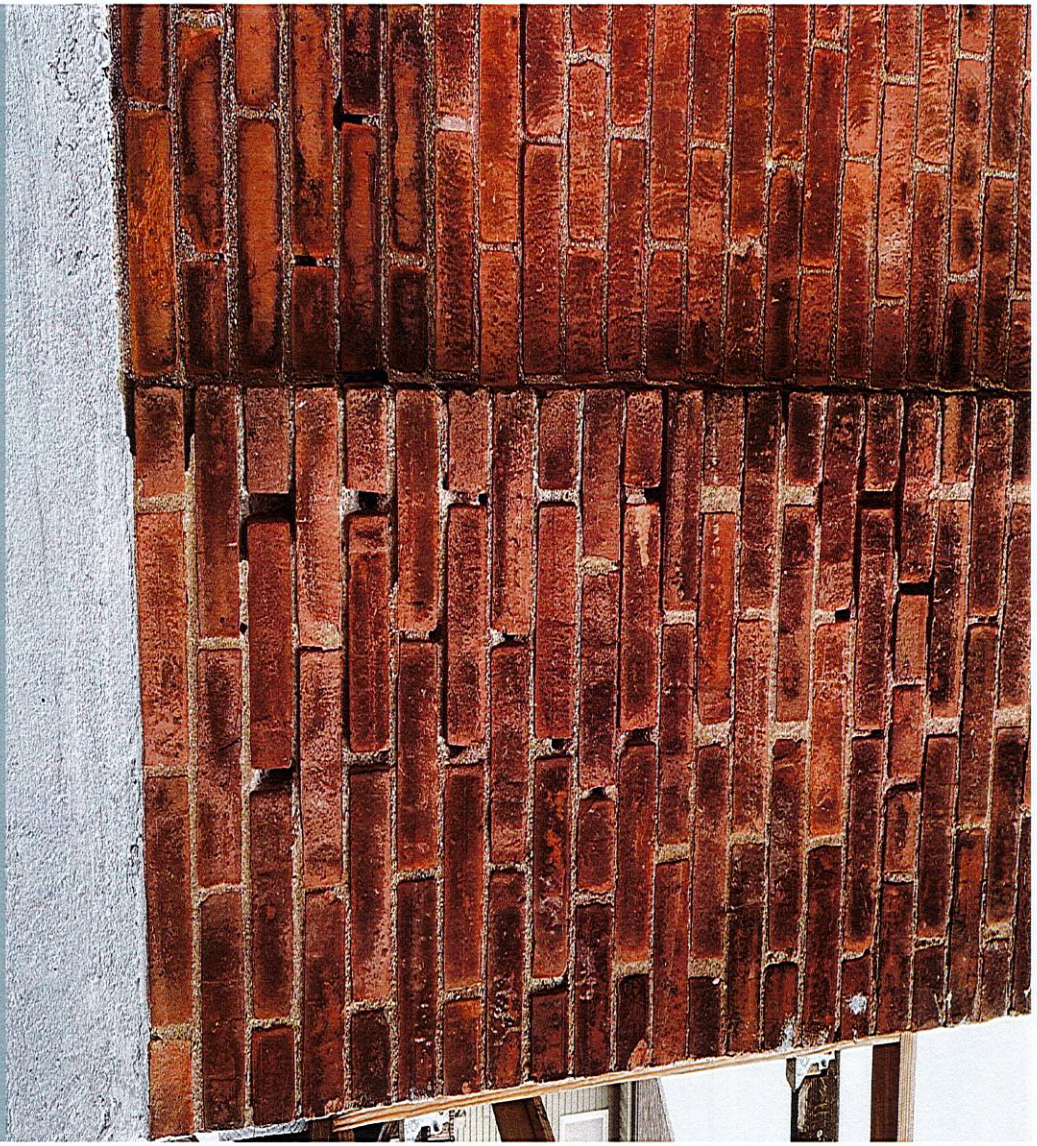
BLOCKED REAR EGRESS

DECAYED PARAPET WALL

Lack of maintenance a leaking roof and one hundred year old mortar may cause the parapet to fail, there is parking below

BRICK EXTERIOR

No maintenance visible



REPAIRS?

Poor repairs to façade still allows water into the wall cavity causing mold and rot

NEW NATURAL GAS SYSTEM

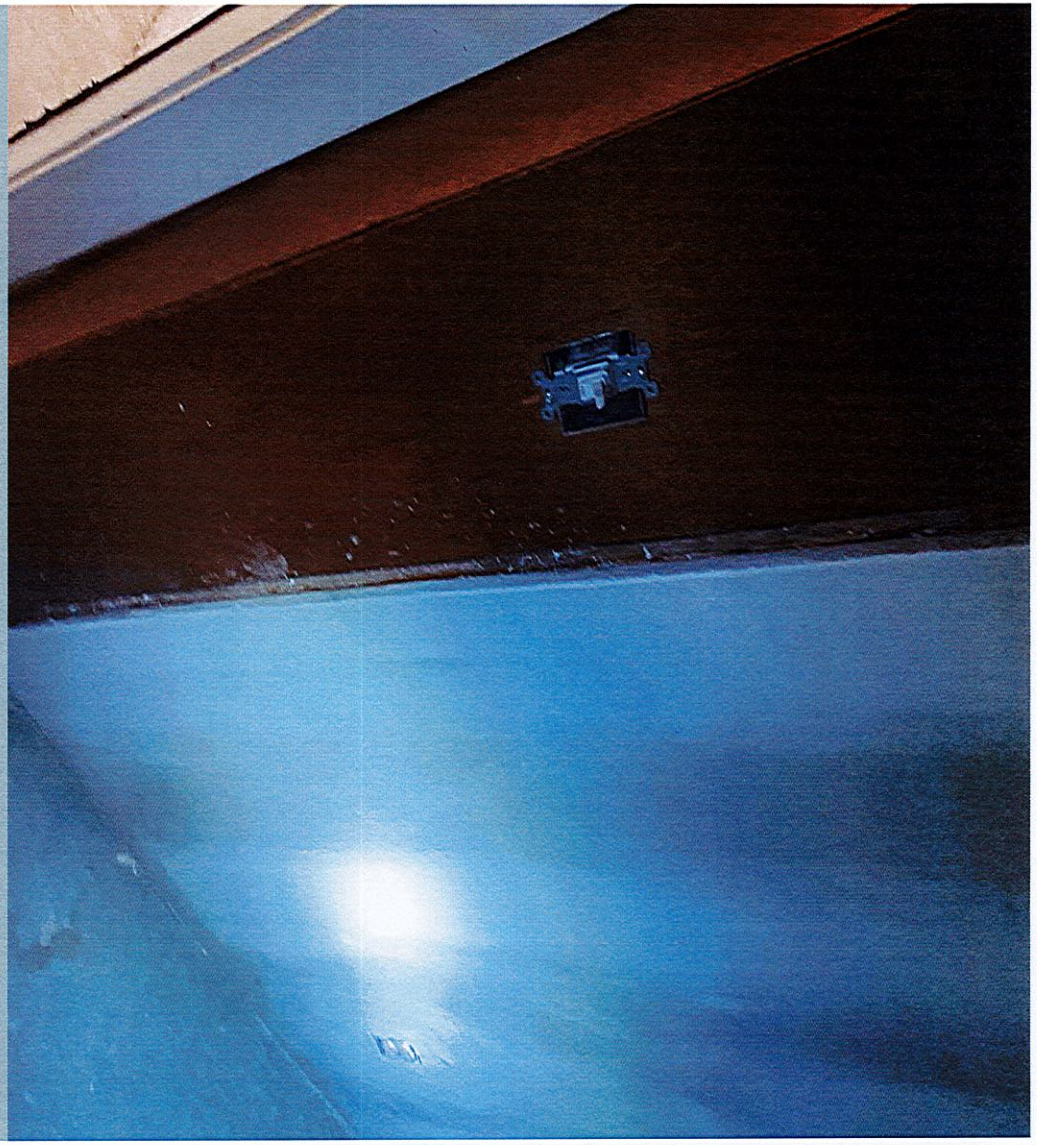
NEW ELECTRICAL SYSTEM

Reconfiguration of space to create electrical room

NEW WINDOWS AND DOORS

NEW DRYWALL

Applicant states no drywall was installed



NEW MECHANICAL

New condensate drip line for mechanical system, no permits applied for or inspections performed

IEBC SECTION 504
ALTERATION—LEVEL 2

504.1 Scope. Level 2 alterations include the reconfiguration of space, the addition or elimination of any door or window, the reconfiguration or extension of any system, or the installation of any additional equipment.

This Level of alteration requires upgrades to the buildings fire protection, means of egress and accessibility that the plans do not indicate will be performed.

IN AN INTERVIEW FOR AN ARTICLE WITH THE FAIRHAVEN NEIGHBORHOOD NEWS DATED MARCH 31, 2021. MR. BARBOSA IS QUOTED AS STATING "HE FIGURED THE BUILDING WOULD COST HIM ABOUT $400,000 TO GET COMPLETELY RENOVATED. AND HE HOPED TO GET THE RETAIL SPACES RENTED QUICKLY TO HELP WITH EXPENSES. BUT THE CHANGES THE TOWN WANTS WILL COST HIM AT LEAST $800,000 AND PROBABLY MORE".

Fairhaven NEIGHBORHOOD NEWS

ABOUT US TOWN MEETINGS LATEST NEWS LOCAL NOTICES EVENTS OPINIONS

Bijou's new owner looking to give it new life

Local Local Local

Cyclone Cleaning & Restoration Services

The Numbers

In the past year the **Building Department** has issued just over two thousand (**2000**)permits.

We have had problems with less than **2%** of that number, in that time the Department has issued:

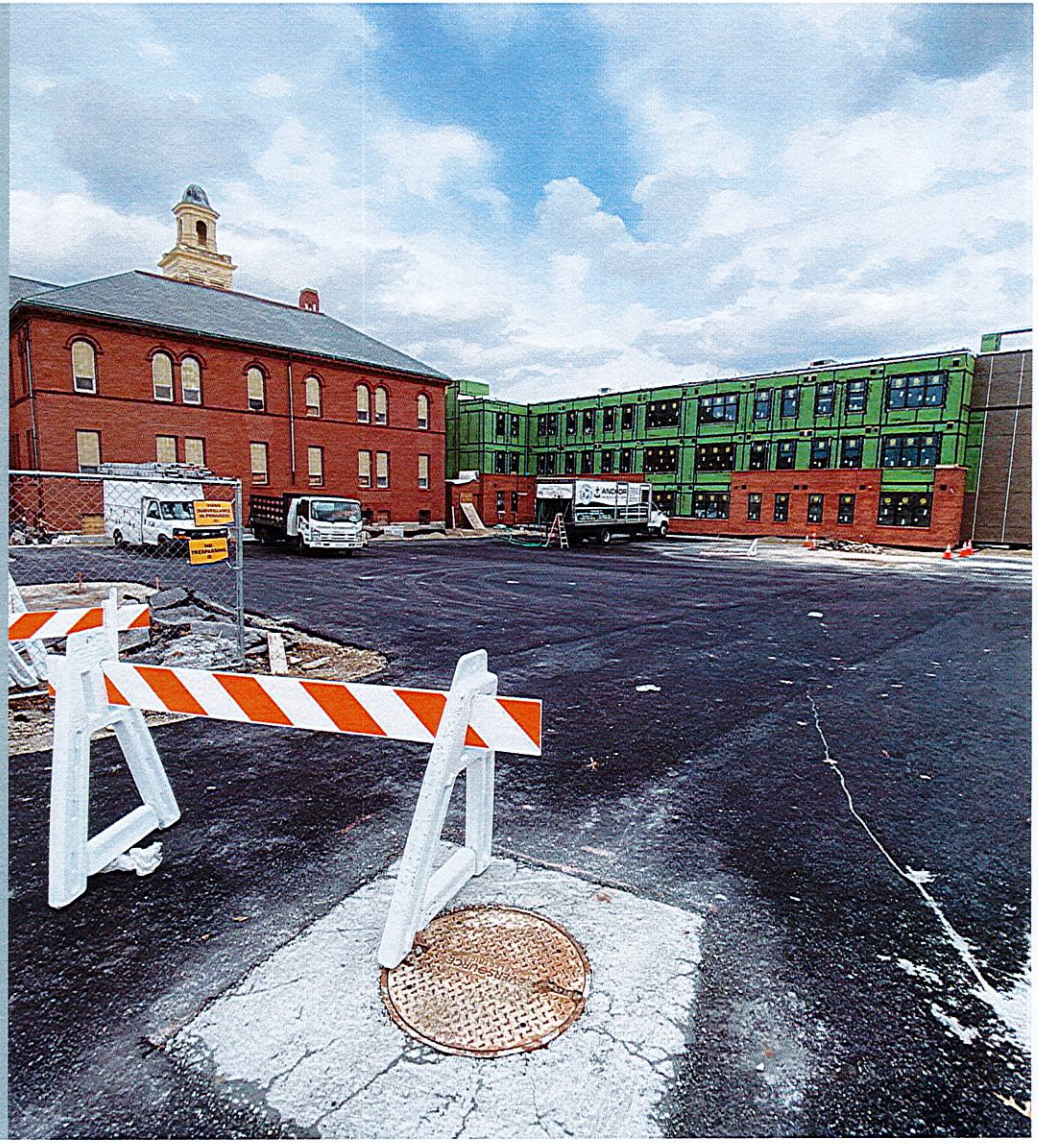
- Ten (**10**) Stop Work Orders
- Nine (**9**) Cease and Desist Orders (some zoning)
- Five (**5**) Violation Notices (zoning)
- Six (**6**) Unsafe structure notices
- Four (**4**) Permits have been revoked (2 floodplain/2 building)
- Seventeen (**17**) permits have been denied

We treat everyone the same, sixteen thousand five hundred (**16500**) people one (**1**) set of rules

For each permit we must show compliance with some twenty thousand (**20,000**) pages of Building codes, Zoning by laws, Handicap Accessibility, Energy conservation laws and Floodplain regulations. As you can see we almost always find a compliance path for those who wish to follow the laws.

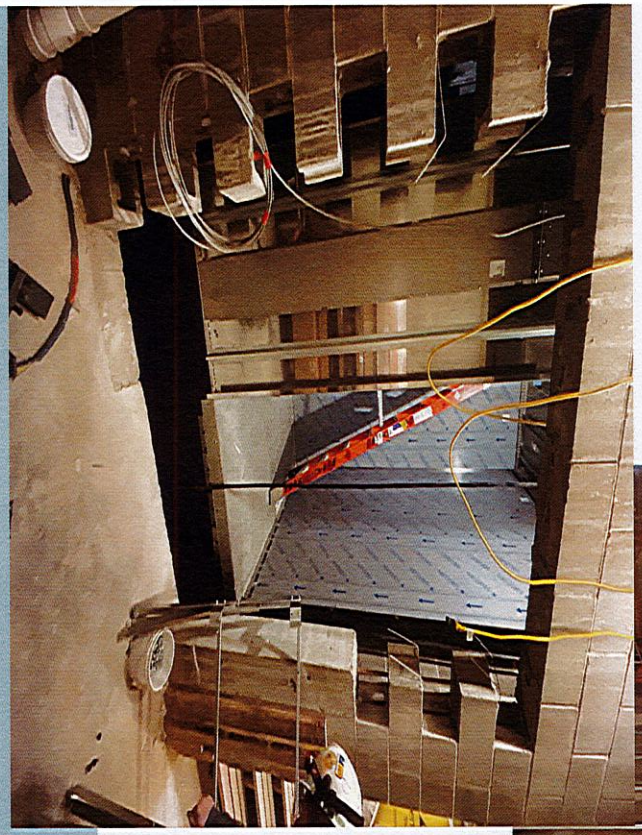
BENOIT SQUARE RENOVATIONS

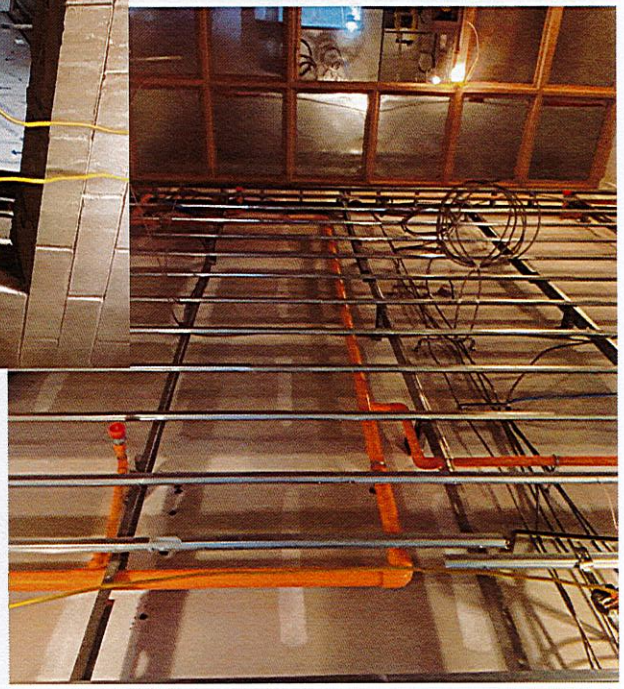
This Special Permit for Oxford School took more than four years to accomplish, millions of dollars are being spent to bring this building into compliance. The Town would welcome the renovation of the Bijou with its additional residential units and Storefronts to help revitalize this square in North Fairhaven.



347 MAIN ST RENOVATIONS

Renovations to the Oxford School include the change of use to a multi family building with fifty two (52) apartments, they were required to include sprinklers and an elevator





346 MAIN STREET

This mixed use building includes a pub on first level and six (6) apartments above, they also were required to install a sprinkler system

350 MAIN STREET

The Town looks forward to continue to work with Mr. Barbosa to bring the building into compliance and rejuvenate Benoit Square.

QUESTIONS?

Attachment B

Town of Fairhaven
Broadband Study Committee

The Broadband Study Committee shall be charged with the following:

- Assist the Town Administrator in the preparation of a request for proposals (RFP) in compliance of MGL Chapter 30B for the purpose of engaging a consultant to study the feasibility, benefits and costs of a municipally owned and controlled town wide fiber optic system that would deliver electronic content to residents and businesses in a manner that both enhances services and controls costs.
- Evaluate the proposals submitted and make recommendations to the Town Administrator and Board of Selectmen regarding which consultant to hire and the reasons therefore.
- Once the consultant is contracted be the primary party the consultant would work with in developing the report including assisting in gathering information, public outreach and coordinating with other town agencies.
- Review the draft report of the consultant and advise the consultant as to content and format, but not on conclusions, findings or recommendations (unless determined to based on erroneous information)
- Be present at the Board of Selectmen's meeting when the final report is presented and comment on areas of agreement or disagreement.

The committee shall be comprised of seven (7) individuals as follows;

1. Selectmen Representative (appointed by the Board)
2. Member of the Economic Development Committee (appointed by the committee)
3. Member of the Cable Advisory Committee (appointed by the committee)
4. Town Administrator appointee (to understand potential impact on Town Staffing (Direct or third-party coordination)
5. Three At-Large Members from the community
    a. Desirable qualifications for At-Large Members would be
        i. Technical Knowledge of the subject
        ii. Knowledge of Finance
        iii. Knowledge of Project Management
6. Two Non-Voting Associate Members
    a. In the event that there is no quorum of the 7 full voting members, associate members may act as voting members for the purposes of quorum for that meeting. The alternate member(s) will be chosen by seniority in service as alternate members on the committee

Terms shall be one year, reappointed annually. If a newly appointed member or alternate member does not get sworn in within 3 months of appointment, they will no longer be a member of the committee. Members shall not have more than 6 absentees in a calendar year or they may be removed from the committee.

This is an Ad hoc committee and will serve until the work of the committee is completed as determined by the Board of Selectmen after which the committee will be disbanded.

Adopted by vote of the Board of Selectmen on December 17, 2018

Amended by vote of the Board of Selectmen on February 27, 2019 to change the name from Municipal Fiber Study Committee to Broadband Study Committee

Attachment C

Fairhaven Historical Commission

40 Center Street
Fairhaven, MA 02719

Wayne Oliveira
Chairman

December 29, 2021

Dear Selectboard members,

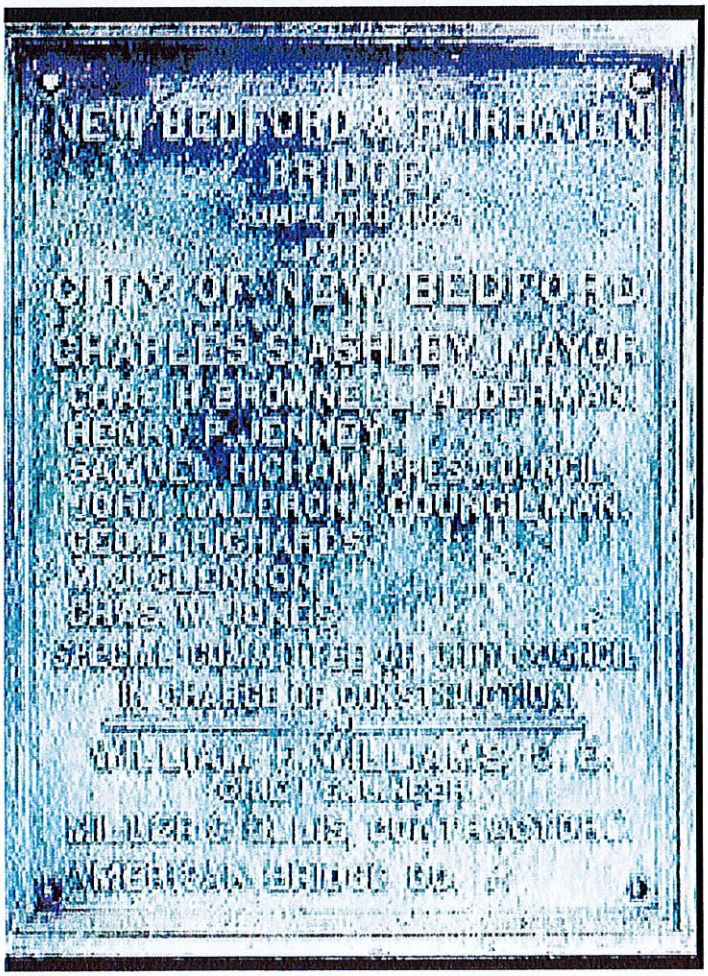
For the last 25 to 30 years the plaque at the entrance to the Bridge Approach on Route 6 has been missing. Through cooperative efforts of the Fairhaven Historical Commission and the City of New Bedford Preservation Office we have located the missing plaque and it is available to be reset into its granite pillar that has been empty for many years. The plaque, which was placed at the East end of the bridge approach was dedicated in 1902. Mass DOT is in possession of the plaque and is willing to cooperate in its re-installation. Unfortunately, they do not have the resources to do the work.

I have contacted Rex Monument in New Bedford who has looked at the work to be done and has quoted between $1200 and $1500. The work would entail removing the granite pillar, transporting it to the New Bedford Workshop and performing stone work to countersink the plaque to its original look.

We are seeking permission to use the Route 6 Median Gift Account to fund the work. This account was set up years ago to clean and maintain the Route 6 medians in front of Fairhaven High School. Because MA DOT has told us that they prefer not to have plantings in the cobblestone median strip the account has basically sat dormant for many years. Because the plaque sits within the Route 6 median corridor, I feel this would meet the guidelines for us of the funds.

Please help to bring this piece of history back to our Town.

Wayne Oliveira
125 Bridge Street
Fairhaven, MA 02719
Cell: 774-930-4966
WOliveira@Fairhaven-MA.Gov


NEW BEDFORD & FAIRHAVEN
BRIDGE
CITY OF NEW BEDFORD
CHARLES S ASHLEY MAYOR

SouthCoastTODAY | The Standard-Times

c/c
MJ

HISTORY

Curious SouthCoast: Where did the plaque on the New Bedford-Fairhaven Bridge go?

Linda Roy Standard-Times

Published 5:01 a.m. ET Mar. 2, 2021 | **Updated 7:15 a.m. ET Mar. 2, 2021**

FAIRHAVEN — Thousands of motorists travel over the New Bedford-Fairhaven Bridge every day, but did you know there is a bit of a mystery regarding the granite pedestals on the Fairhaven side of the bridge?

If you look at the pedestals, also called plinths, clearly they have an inlay and drill holes, making it evident that a plaque used to be affixed to it.

But what happened to the plaque?

And what was written on it?

Some on social media theorized it was stolen by vandals. Others thought it was taken down to be cleaned and never put back.

"I have vague memories of bronze plaques. They've been gone for decades," posted Dave Despres.

"I remember them, but then one day they were just gone, but that was many years ago," replied Judy Lange, formerly of Fairhaven.

The mystery of at least one of the plaques was solved by Arthur Motta, of the New Bedford Public Schools, who actually found one of the plaques several years ago.

"That granite plinth held the bronze dedication/construction tablet from 1902 when the east and west approaches were completed," Motta said. "It's been off for at least 25 to 30 years."

It was back when he was doing research on the history of the City Seal for the Sesquicentennial that led Motta to the discovery of the bridge plaque.

"Then city clerk, Janice Davidian, led me down to their storage vaults to view the earliest records. The tablet was stored there," Motta said. "As tablets are both unique historical records and material culture, I always photograph them."

More from Curious SouthCoast:

Memories of the ragman are vivid, frightening for some
Stairs from MacArthur Drive to Route 6 that some don't even know exist

The bronze plaque, greenish-blue from age, is inscribed: "New Bedford & Fairhaven Bridge completed 1902 by the City of New Bedford." It lists Charles S. Ashley as the mayor, Charles H. Brownell as alderman. Other names on the plaque include Henry P. Jenny, Samuel Hichham, John Waldron, George D. Richards, M.J. Glennon and Charles W. Jones. William F. Williams was the chief engineer and Miller & Ellis, and American Bridge Company were the contractors.

The first bridge was built in 1800 for $30,000, according to *A Picture of Fairhaven* by Spinner Publications (1986) and had two draws. It was damaged a couple of times by storms and hurricane force winds, but the Gale of 1869 "nearly wiped out the bridge."

The bridge underwent repairs, ceased being a toll bridge, and the trolley car tracks were removed and a road for cars was built in its place.

The new bridge was completed in 1902 – the date on the bronze plaque – at a cost of $1.4 million.

There were granite pedestals at both ends of the bridge. The ones on the New Bedford side were removed to make way for the new Route 18 corridor back in the 1960s.

The plaque that Motta noticed in the basement at city hall ended up being stored at the city planning department for a little while. But it's apparently moved on from that location.

Anne Louro, New Bedford preservation planner, said she had the plaque in her office for storage at one time, but now thinks it might be in the city hall attic.

Jonathan Carvalho, city public information officer, confirmed the plaque is being stored at city hall adding that the planning office is reaching out to the state Department of Transportation about the possibility of affixing the plaque to the pedestal once again.

What do you want to know about the SouthCoast? To ask a Curious SouthCoast question, email Linda Rou at lrou@s-t.com and she'll do her best to find the answer.

Attachment D

WASTE DISPOSAL SERVICES AGREEMENT

This Agreement entered into between the Board of Selectmen for the Town of Fairhaven ("the Town") and ABC Disposal, Inc. ("the Hauler"), a Massachusetts corporation, on this__ day of January 2022.

WHEREAS, by the terms of a Waste Acquisition Agreement ("the WAA") dated October 14, 1984, and as subsequently amended, the Town of Fairhaven has the right to deliver certain amounts of solid waste to the COVANTA/SEMASS Partnership plant at Rochester ("SEMASS") for disposal, regardless of whether that solid waste originated from sources inside or outside the Town of Fairhaven, ("the Maximum Tonnage"), and provided that SEMASS may, but is not obligated to, accept more than the Maximum Tonnage of such waste, and

WHEREAS, by the terms of the WAA the Town may be obligated under certain circumstances to pay SEMASS for a short fall in the tonnage delivered on the Town's account to SEMASS, (the "Minimum Tonnage") and

WHEREAS, the Hauler is in the business of hauling waste for disposal, or is a municipality which directly or through a contractor hauls waste generated within that municipality, and

WHEREAS, the town wishes to sell to the Hauler a portion of its right to deliver waste to SEMASS for disposal, and the Hauler wishes to buy from the Town that right to deliver waste,

THEREFORE, the parties agree as follows:

1. Term

The term of this Agreement shall be from January 1, 2022 (the "Commencement Date") until December 31, 2022 unless earlier terminated as otherwise provided herein (the "Termination Date").

2. Delivery of Waste

Subject to any restriction imposed by SEMASS on the delivery of waste beyond the Maximum Tonnage, the Hauler shall deliver to SEMASS, on the Town's account, 25,000 tons ("the Contract Tonnage") of solid waste during the term of this Agreement. The Hauler may not deliver to SEMASS more than 2500 tons of solid waste in any calendar month except with the prior written permission of the Town.

3. Additional Waste Delivery

The Town may from time to time offer, or the Hauler may request and the Town may approve, the option to deliver additional waste to SEMASS during the remainder of the term of this Agreement, or of any extension thereof, depending on the availability of unused allocation. The Town will give the Hauler seven (7) days to notify the Town of its intent to exercise that option, and if the Hauler

exercises that option, the Contract Tonnage and the Pre-payment pursuant to Article 5 of this Agreement will be adjusted accordingly.

4. Quality of Waste

The Hauler will not deliver to SEMASS solid waste which fails to comply with both (i) the provisions of the WAA regarding quality of solid waste, or (ii) any applicable laws or regulations. The hauler will comply fully with the directions of SEMASS for removal of unacceptable waste delivered by the Hauler to SEMASS. The Hauler will pay to the Town the amount of any charge imposed upon the Town as the result of delivery by the Hauler to SEMASS of unacceptable waste.

5. Disposal Fee and Pre-payment, Final Adjustment

The disposal services fee, advance payments and adjustments shall be as follows:

A. DISPOSAL FEE.

1) The fee for each ton of solid waste delivered under this Agreement to SEMASS, subject to the adjustment described in Article 6, below, is the greater of $80.80 or one hundred twelve and one-half percent (112.5%) of the acceptance fee charged to the Town by SEMASS per ton for such solid waste (the "Disposal Fee").

2) Except to the extent such failure is the result of any restriction imposed by SEMASS on the delivery of waste beyond the Maximum Tonnage, in the event that the Hauler fails to deliver 25,000 tons of solid waste to SEMASS during the term of this Agreement the Hauler will pay to the Town $8.08 for the difference between 25,000 tons and the tonnage actually delivered by the Hauler to SEMASS. Payment shall be made pursuant to the terms of paragraph E., below.

3) In the event that the Hauler's failure to deliver solid waste to SEMASS during the term of this Agreement results in the Town being charged by SEMASS for failure to deliver the Minimum Tonnage to SEMASS under the WAA, the Hauler will pay to the Town one hundred ten percent (110%) of the amount so charged to the Town by SEMASS. Payment shall be made pursuant to the terms of paragraph E., below.

B. PRE-PAYMENT. Simultaneously with the execution of this Agreement, the Hauler will pay the Town the amount which is equal to 25,000 × Disposal Fee × 1.5 ÷ 12. In the event that a pre-payment made by the Hauler to the Town under the similar provisions of a prior agreement has not been reimbursed to the Hauler, the parties may agree that the Town will continue to hold that pre-payment, and that the amount of that pre-payment will be credited toward the Pre-payment otherwise due upon execution of this Agreement.

C. USE OF PRE-PAYMENT. Each month the Town shall pay from the Pre-payment, the amount due by the Town to SEMASS for solid waste authorized or delivered by the Hauler to

SEMASS up to the last day of the preceding month, plus any costs imposed upon the Town by SEMASS as a result of the delivery by the Hauler to SEMASS of unacceptable waste, and the obligation of the Hauler pursuant to Article 8, Paragraph B of this Agreement.

D. MONTHLY PAYMENT. The Town shall issue a statement each month to the Hauler for solid waste authorized or delivered by the Hauler to SEMASS up to the last day of the preceding month, plus any costs imposed upon the Town by SEMASS as a result of the delivery by the Hauler to SEMASS of unacceptable waste. Within fourteen (14) days of receipt of that statement from the Town the Hauler will pay that amount to the Town. The Town will allocate a portion of that payment to the Pre-payment account, so that the Pre-payment balance is returned to the original Pre-payment amount set forth in paragraph B., above. The balance of that payment will be allocated to Town revenues.

E. FINAL ADJUSTMENT. Upon completion of all deliveries of waste under this Agreement, any over-payment including any unused balance of the Pre-payment, will be reimbursed to the Hauler, or set off against any amount due by the Hauler to the Town under Article 7; and any underpayment will be paid by the Hauler to the Town, subject to the set-off provisions of Article 7, below, in either event within thirty (30) days of determination and notice of the amount due.

6. Adjustment to Disposal Services Fees

In the event of an increase in the acceptance fee charged to the Town by SEMASS under the terms of the WAA, the Disposal Fee will be increased to an amount equal to one hundred twelve and one-half percent (112.5%) of the acceptance fee charged to the Town by SEMASS. The Pre-payment pursuant to Article 5 of this Agreement will be increased based upon the increased Disposal Fee. In the event of such an increase in the acceptance fee, the Town shall notify the Hauler of the change and of the new Disposal Fee and Pre-payment. The adjustment shall be effective simultaneously with the effective date of change in the acceptance fee charged by SEMASS.

7. Offset, Interest

A. OFFSET In the event of the failure by the Hauler to pay the monthly statement in full when due under Article 5 Paragraph D., the Town shall offset against the amount due the total amount due by the Town to the Hauler under the terms of any other agreement or agreements.

1. If the amount due by the Hauler to the Town under this Agreement exceeds the total amount due by the Town to the Hauler under the terms of any other agreement or agreements, the Town shall credit the amount due by the Town against the amount due by the Hauler, and shall submit a revised statement to the Hauler setting forth the amount so credited and the net amount payable by the Hauler to the Town. The amount credited by the Town as a result of the offset shall be paid by the Town into the Hauler's Pre-payment.

2. If the amount due by the Town to the Hauler under the terms of any other agreement or agreements exceeds the amount due by the Hauler to the Town under this Agreement, the Town shall credit the amount due by the Town against the amount due by the Hauler, and shall submit a revised statement to the Hauler setting forth the amount so credited and the net amount payable by the Town, which the Town shall pay to the Hauler. The amount credited by the Town as a result of the offset shall be paid by the Town into the Hauler's Pre-payment.

Notwithstanding the provisions of any other agreement or agreements between the Hauler and the Town, the time for payment by the Town to the Hauler for services rendered during the same monthly period shall commence upon payment by the Hauler to the Town under this Agreement, or upon the exercise of the Town's right of offset, whichever occurs later.

B. INTEREST. A late charge of one percent (1%) per month shall be charged on all overdue payments.

8. Indemnity

A. The Hauler shall indemnify and hold the Town harmless from any and all claims of any sort whatsoever including, without limitation, claims for property or financial damages or bodily or personal injury, and shall reimburse to the Town all costs, including reasonable attorney's fees, incurred by the Town in defense of, or as a result of such claims, which are alleged to arise from or be in any way related to i) the Hauler's performance or failure to perform under this Agreement, or ii) any act, omission or default by the Hauler whether negligent, intentional or otherwise; and excepting only such claims arising solely from the acts or omissions of the Town.

B. If the delivery of waste under this Agreement, combined with the delivery of waste generated within the Town of Fairhaven, results in the refusal of SEMASS to accept further delivery of solid waste generated within the Town of Fairhaven, the Hauler will indemnify the Town for any and all additional costs incurred by the Town, including but not limited to, costs for the collection, transportation and disposal of solid waste. The obligation of the Hauler under this provision may be charged by the Town to the prepayment held by it pursuant to Article 5 of this Agreement.

9. Insurance

The Hauler shall keep in full force and effect insurance in the following types and amounts, and shall provide to the Town at the time of execution of this Agreement, and no later than December 31 prior to the commencement of any subsequent calendar year in which this Agreement may be extended, a certification that such insurance is in effect for the term of this Agreement, or extension thereof. Such certificate of insurance shall indicate that the insurance required by this Agreement will not be canceled except upon thirty (30) days written notice to the Town. The Town shall be an additional named insured under this coverage.

Type of Coverage	Amount

Public Liability and Automobile Liability	$1,000,000
Personal Injury	$1,000,000
Property Damage	$500,000
Workers' Compensation	Statutory

10. Default and Remedies

A. The following shall be considered a default by the Hauler of its obligation under this Agreement:

1. Failure by the Hauler to pay any statement or Pre-payment when it has become due;
2. Delivery by the Hauler of unacceptable waste to SEMASS;
3. Violation by the Hauler of the Board of Health's regulations for delivery of waste to SEMASS; or
4. Failure by the Hauler to perform any other obligation under this Agreement.

B. In the event of a default by the Hauler, the Town shall have the following remedies and may, without waiving any of its rights, elect to exercise any or all of them:

1. It may terminate this Agreement.
2. It may terminate the Hauler's access to deliver waste to SEMASS under the Town's account.
3. It may, without notice to the Hauler, seek and obtain payment of all amounts due from the Pre-payment provided under Article 5.
4. It may contract with any other party or parties to assume the Hauler's rights under this Agreement.
5. It may pursue all other remedies available in law and equity, notwithstanding the availability of the remedies otherwise provided herein.
6. It will be entitled to its costs, including reasonable attorney's fees, incurred in the pursuit of any of its remedies.

11. Force Majeure

It shall not be an event of default if performance of this Agreement is prevented by circumstances beyond the control of the parties, including, but not limited to, acts of God, acts of war or the public enemy, legal prohibition, or order of any court or agency of competent jurisdiction. In the event delivery of waste to SEMASS is prevented by such circumstances the Hauler's right to deliver waste, and obligation to make payment, shall be proportionately reduced.

12. Non-Assignment

This Agreement may not be assigned in whole or in part by the Hauler except with the prior written consent of the Town, which consent may be withheld in the sole discretion of the Town.

13. Non-Waiver

The failure of either party to exercise any right or to enforce any obligation of this Agreement shall not be deemed a waiver of that right or obligation.

14. Amendments

This Agreement shall not be amended except in writing signed by both of the parties.

15. Notices

Written notices shall be sent to the parties at the following addresses:

Town of Fairhaven
Fairhaven Board of Selectmen
Attn: Wendy Graves, Interim Town Administrator
40 Center Street
Fairhaven, MA 02719

Hauler:
ABC Disposal Services
Attn. Mike Camara
1245 Shawmut Avenue
New Bedford, MA 02745

Signed By:

Town of Fairhaven by its Interim Town Administrator	ABC Disposal, Inc.
_____	Michael Camara CEO
Date: _____	Date: 1/3/2022

Attachment E

ASSUMPTION AGREEMENT

Delivery of Non-Town Waste to SEMASS

This agreement entered into this ____day of January, 2022 by and between the Town of Fairhaven (the "Town"), 40 Center Street, Fairhaven, MA 02719 and Waste Connections, doing business as ABC Disposal ("Waste Connections") and ABC Disposal Services, Inc. ("ABC").

WHEREAS, the Town entered into an agreement with ABC on January __, 2022 by which the Town sold to ABC a portion of its right to deliver waste to SEMASS for disposal, (the "Agreement"), a copy of which is attached hereto as Appendix A; and

WHEREAS, the Agreement provides that it may not be assigned in whole or in part by ABC except with the prior written consent of the Town, which consent may be withheld in the sole discretion of the Town; and

WHEREAS, ABC has notified the Town of its pending sale to Waste Connections, and has requested that the Town consent to the assignment of the Agreement to Waste Connections;

THEREFORE:

1. The Town hereby consents to the assignment of the Agreement by ABC to Waste Connections

2 Waste Connections hereby assumes all of the rights and obligations of ABC in the Agreement, and without limiting the generality of the foregoing, specifically assumes all rights of ABC in and to any funds held by the Town on account of, or for the benefit of, ABC.

3. Effective upon the execution of this Assumption Agreement by the Town, ABC is released from any future obligations under the Agreement.

4. This Assumption Agreement shall not constitute a release of ABC from any of its liabilities under the Agreement which liabilities, or any claim for breach or

default thereof, accrued prior to the date of this Assumption Agreement. Waste Connections hereby assumes joint and several liability with ABC for ABC's liabilities under the Agreement which liabilities, or any claim for breach or default thereof, accrued prior to the date of this Assumption Agreement.

5. Attached hereto as Appendix B is a Certificate of Insurance issued on behalf of Waste Connections to the Town as required by paragraph 9 of the Agreement.

6. Except as otherwise set forth herein the Agreement shall continue in full force and effect and without modification.

Signed by the parties:

Town of Fairhaven,

By: _____

Its: _____

ABC Disposal, Inc.,

By: Michael Plamer CEO

Its: VP/CEO

Waste Connections,

By: _____

Its: _____

Attachment F

Town of Fairhaven
Board of Health

Town Hall · 40 Center Street · Fairhaven, MA 02719
Telephone: (508) 979-4023 ext. 125 · Fax: (508) 979-4079

Michael Ristuccia, Chair
Peter DeTerra, Vice-Chair
Kevin Gallagher, Clerk
David D. Flaherty Jr, RS , Health Agent

MEMO

DATE: **January 6, 2022**

TO: Fairhaven's Select Board

FROM: David D. Flaherty Jr., RS
Fairhaven's Health Agent

RE: Masking Policy for Municipal Buildings

Dear Chairman Espindola,

Fairhaven's Select Board has maintained a policy of mandating shields or masks for visitors and staff at all Fairhaven municipal buildings. This policy has been an integral aspect to attempting reduction of cases and positivity for COVID-19 virus occurrence in Fairhaven. Since last week the Town of Fairhaven has moved down from 11.53% positivity to 11.31%; our total case count has moved down from 223 to 212. Bristol County's and the Commonwealth's COVID data are trending in an unsatisfactory manner as well. In light of this data, I would suggest that your Board consider maintaining the policy of a "Mask Mandate" for all municipal buildings. I will be involved with Public Service Announcements to help the citizens of Fairhaven better understand what these numbers mean and how they can better protect themselves. I will also be reaching out to the many businesses in Town to strongly urge, at the recommendation of the Board of Health, that all employees wear masks while at work. Also to be recommended is that all customers are strongly urged to wear masks to help reduce case counts and to reduce the hospitalizations the South Coast is experiencing.

Hopefully I will be offering different advice after the holidays.

Sincerely,

David D. Flaherty Jr., RS
Health Agent

Cc: BOH