



# Fairhaven Board of Selectmen

## Meeting Minutes

### July 13, 2020

**Present:** Chairman Daniel Freitas, Vice-Chairman Robert Espindola, Selectman Keith Silvia, Town Administrator Mark Rees, and Cable Access Director Derek Frates

**Present via Zoom:** Police Chief Michael Myers, Lieutenant David Sobral, Administrative Assistant Vicki Oliveira, Cable Access Production Coordinator Erick Sa and members of the public

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

Chairman Freitas opened the meeting at 6:30 pm and read the following statement:

*“This Open Meeting of the Fairhaven Board of Selectmen is being conducted remotely consistent with Governor Baker’s Executive Order of March 12, 2020, due to the current State of Emergency in the Commonwealth due to the outbreak of the “COVID-19 Virus.”*

*In order to mitigate the transmission of the COVID-19 Virus, we have been advised and directed by the Commonwealth to suspend public gatherings, and as such, the Governor’s Order suspends the requirement of the Open Meeting Law to have all meetings in a publicly accessible physical location. Further, all members of public bodies are allowed and encouraged to participate remotely.*

*The Order, which you can find posted with agenda materials for this meeting allows public bodies to meet entirely remotely so long as reasonable public access is afforded so that the public can follow along with the deliberations of the meeting.*

*Ensuring public access does not ensure public participation unless such participation is required by law. This meeting will allow public comment related to the posted agenda items only. For this meeting, Fairhaven Board of Selectmen is convening by telephone conference/video conference via Zoom App as posted on the Town’s Website identifying how the public may join.”*

The Board took a 10-minute recess due to technical issues

At 6:42 pm Chairman Freitas reopened the meeting.

### **Town Administrator's Report**

Mr. Rees has been busy putting the warrant together in preparation for the virtual annual town meeting and getting the FY20 books closed. A practice has been scheduled for Wednesday July 15, 2020.

Mr. Rees approved Police Chief Myers provisional promotion of Officer Scott Joseph to acting Sargent. This will save the department a lot of money in overtime.

Jay Simmons has successfully completed the Mass Association of Conservation Commission "Fundamentals for Massachusetts Conservation Commission training program"

### **Committee Liaison Reports**

Mr. Espindola said EDC is set to meet July 23, 2020.

Bikeway Committee, Cable Advisory and the Broadband study committee will be meeting soon

SRPEDD has sent out information on a census and Mr. Espindola encouraged residents to participate

Mr. Espindola said the Marine Resources Committee made progress reviewing the draft waterways rules and regulations policy and recently named Michael McNamara the Chair

MR. Espindola showed a draft of a new webpage for the Broadband Network

Mr. Silvia said he reached out to the members of the Dog Park Committee to see who had an interest in staying on the committee to continue the work of finding a suitable location

Mr. Freitas said he would be touring Bristol Aggie High School and meeting with their school committee

### **Selectmen Liaisons**

Mr. Espindola suggested that he would like to see the Selectmen liaisons be spread out more evenly amongst the Board and made possible suggestions on changing some listings.

(Attachment A) Mr. Espindola made a motion to adjust the Selectmen liaisons as presented in the spreadsheet. Mr. Silvia seconded vote was unanimous. (3-0)

### **Swearing in Ceremony- Police Department**

At 7:05 the Board went upstairs to the auditorium for the swearing in of two new police officers. Ryan Benoit and Jillian Jodoin Town Clerk Carolyn Hurley swore in the new officers in front of a small crowd of family and friends.

Chief Myers said both officers graduated on July 10, 2020 from the Cape Cod Municipal Police Academy located on Joint Base on Cape Cod.

Mr. Benoit holds a Bachelor's Degree in Crime and Justice Studies from UMASS Dartmouth, has Served as a Military Police Specialist in the Mass Army National Guard with the 772 Military Police Company. He is a NB Voc Tech graduate in Engineering Technology and also served as a squad leader in his police academy class.

Ms. Jodoin is currently the rank of E4 Specialist in the US Army National Guard working as a Chemical Biological Radiological and Nuclear Specialist. She was a civilian dispatcher with the Fairhaven Police department. Prior to joining the department she worked for the Barnstable County Sheriff's Office as a Corrections Officer and she has completed course work in the field of criminal justice at Pikes Peak Community College

At 7:14 back the Board went back downstairs to the Banquet Room.

### **Speed Control Measures**

Chief Michael Myers and Lieutenant David Sobral met via Zoom with the Board to provide an update about the measures the police department has been taking for speed control in town. The Department has implemented 3 portable radar systems that collects data and a speed trailer that will do the same. If a resident would like to request the speed radar on their street they can put in a request on the police webpage for their neighborhood. The data collected will help determine areas that may need more patrolling. The goal is to continue enforcing traffic issues to keep the town safe. The Board thanked Chief Myers and Lieutenant Sobral for the update.

### **Rogers School – Voiding of P&S and next steps**

Mr. Freitas said he received a message from Mike Ristucia regarding the Boards vote to void the Purchase and Sale of Rogers school to Mr. Ristuccia grandson Zachary Mayo. Mr. Ristuccia said his grandson did not know he was speaking to the Board tonight on his behalf. Mr. Ristuccia told the Board that Mr. Mayo's financial lender is worth millions of dollars but Mr. Mayo was unable to do anything with the town since February when the COVID-19 pandemic crisis arrived because no one was working. Mr. Ristuccia would like to the Board to give Mr. Mayo a second chance and he feels confident that by September 30, 2020 Mr. Mayo can get all the documents that the Board has requested.

The Board all feel that they did not want to see this project fail and had high hopes for its success bur feel there have been too many inconsistencies with Mr. Mayo and his representatives, with deadlines not being met continually. Mr. Silvia is concerned that there is no bond to cover the project. Mr. Espindola said he has a concern that Mr. Mayo never speaks on his own behalf and he has not changed his mind since the last meeting. Mr. Freitas voiced his concerns that the town has asked for several meetings and Mr. Mayo does not speak for himself and there has to be a face to face meeting to meet the financial lender and the engineer.

Town Counsel told the Board there are several deadlines in the Ryder to the P&S:

1. The Schematic design (the town did accept the first design)
2. The commitment for financing- the Town has yet to see a binding contract of letter from a lender/financing company
3. The permitting has not been met yet.

Mr. Crotty said he has attempted to meet with Mr. Mayo and his lender and no attempt has been made to set up a meeting by Mr. Mayo.

Town Counsel said the P&S was put together along with Mr. Mayo's attorney and the Town has amended the zoning by law to help make the project move forward. There were specific deadlines that needed to be met by July 23, 2020 and they have not been made. Some conditions were specific to that date but others were open ended but to date none have been met. The Board feel that if they are to rewrite the P&S to allow Mr. Mayo more time then there needs to be a face to face meeting of all parties, furthermore, if the Town has to spend money on Rogers school to keep up with repairs then Mr. Mayo will have to pay for that as part of the purchase.

Planning Chairman John Farrell asked the Board if the Rogers school project and the Oxford school project were being treated equally. Mr. Rees explained that the terms of each contract were different and the Oxford school developers, Strafford group, have adhered to the terms and conditions of their agreement with the town.

Mr. Espindola made a motion to ask Town Counsel to set up a meeting before July 23, 2020 for the purpose of meeting with The Developer, Zachary Mayo (New England Preservation and Development) and his representatives along with Attorney Thomas Crotty, Town Administrator Mark Rees, Selectman Silvia with the condition that a commitment letter from a financial institution, approved by Town Counsel, be presented and a reasonable timeline for the project with engineering plans. Mr. Silvia seconded. Vote was unanimous. (3-0)

### **Liquor License issue**

Attorney John Markey joined the meeting via Zoom to represent business owner Cathy Melanson regarding the liquor license at the former Cleary's pub, 111 Huttleston Ave. Ms. Melanson owns the property but rents the space out. Mr. Markey stated that Ms. Melanson is in good standings with the Town on her property.

Mr. Markey said there is someone new running the bar/restaurant and would like to open but cannot open because the former tenant of Cleary's owes money to the Department of Revenue on the liquor license for that location therefore the ABCC (Alcohol and Beverage Control Commission) will not release the license. Attorney Markey is trying to help the new tenant of the restaurant find a creative solution to obtain a liquor license so that he can open this business. Mr. Markey stated that this is in no way the town's fault but one idea is to petition special town meeting for a new license. The Board all agreed they would like to see a new business be able to open up in town.

### **Stormwater Prevention and Management Plans**

Mr. Rees said the Board of Selectmen and the Board of public works, in 2018 signed an agreement with the DEP and the EPA to take actions to address pollution run off, the contracts need to be signed in order for the permits to be issued. (Attachment B)

Mr. Espindola made a motion to authorize the Chairman of the Selectmen to sign the Stormwater Prevention Plan. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to authorize the Chairman of the Selectmen to sign the SWMP- Volume 1. Mr. Silvia seconded. Vote was unanimous. (3-0)

### **COVID-19 Update**

Still rolling out programs in response to Governor Baker's orders. The Recreation Center has opened the exercise machines and the Council on Aging has started the floor exercises while maintaining social distance.

### **Town Hall key access- Board of Health**

Mr. Freitas said he received an email from the Board of Health requesting keys to Town Hall. Mr. Rees has recommended that the keys be issued for the duration of the COVID -19 pandemic. Mr. Rees will speak to the Town Hall custodian to have a set of temporary keys made and will work with the Board of Health members to find a suitable location for them to sign their bills without having to go into the office.

### **Display Flag policy**

Mr. Espindola, with the help of Town Counsel, drafted a flag/banner policy. They sent the draft to the Historical Commission chair, Wayne Oliveira, for his input as well. Selectmen discussed the idea of adding another flagpole and making sure that the Town Hall could also have any banners/ flags on the building because of the historic nature of the building. Attorney Crotty will check on the issues that the Board has addressed before they take a vote on this policy.

John Farrell questioned the Board why they were putting a policy together at this time. Mr. Espindola explained that this policy was discussed back in 2019 and they are now trying to implement something.

### **Town Meeting Preparation – Salaries of Elected Officials**

Mr. Rees explained that consistent with past practice elected officials who receive a stipend get a 2% COLA as all the employees. Mr. Espindola made a motion to approve the COLA increases for all elected officials, the Town Clerk, The Tree Warden and the Board of Health, except the Board of Selectmen. Mr. Silvia seconded. Vote was unanimous. (3-0)

### **RFP Employee Engagement/Work Culture**

Mr. Rees drafted the RFP for the employee engagement/work culture and suggested to the Board to obtain a grant to pay for the assessment. The Board will review the draft and meet with Mr. Rees with their questions.

### **Zoning Appeals Procedure/Guidelines/Record Keeping**

Mr. Espindola said he would like to use the 20 free hours for technical assistance provided by SRPEDD to help the zoning Board of appeals with procedures/ guidelines and record keeping methods. (Attachment C)

### **Filling open seat procedure- Board of Health**

Mr. Rees said as per MGL Chapter 41 Section 11 when there is a vacancy on the Board of Health, they must notify, in writing the Board of Selectmen of the vacancy. Once a formal letter is received the Board of Selectmen and the Board of Health will hold a joint meeting for the purpose of filling the vacancy. Mr. Rees will coordinate said meeting with the two boards.

### **Personnel Policy update**

Mr. Rees said the draft Personnel policy has been sent the Town's perspective unions for review. Mr. Rees suggested that the Board should consider adopting an updated Social Media policy. The Board will review all documents at the next meeting.

### **Letter from Housing Authority**

Mr. Freitas read a letter from Krissane Sheedy, the Director of Fairhaven Housing Authority, regarding how helpful Health Agent Mary Kellogg has been during the COVID- 19 pandemic.

### **Letter from Conservation Commission**

Mr. Freitas read a letter from the Conservation Commission supporting the 10% increase in renewables.

### **Notes and Announcements**

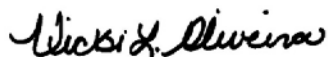
Mr. Espindola said that he recently went to the Town Beach on West Island over the weekend and "was told by the parking attendant there, Mr. Lavallette" that there were a lot of complaints because there is no walk in service this year.

Mr. Espindola requested to have an important item regarding the DOR Financial Management Review placed on the next Board of Selectmen agenda. (Attachment D)

At 9:39 pm Mr. Espindola made a motion to go into Executive Session, not to reconvene into Open Session, to discuss strategy with respect to litigation A-1 Crane: pursuant to M.G.L. Ch.30A, Section 21 (a)(3). Mr. Freitas seconded. Vote was unanimous. (3-0)

Mr. Silvia seconded. Vote was unanimous. Roll call vote. Mr. Espindola in favor, Mr. Silvia in favor, Mr. Freitas in favor.

Respectfully submitted,



Vicki L. Oliveira  
Administrative Assistant  
(Approved 08/17/2020)

Attachments:

- A. Changes to Selectmen liaison appointments
- B. Stormwater Management Plan email/contracts
- C. Memo from Selectman Espindola re: Zoning Appeals Procedure/Guidelines/Record Keeping
- D. Memo from Selectman Espindola re: Agenda items request for next meeting

Number	Commission	June 11th BOS Meeting Selectmen	If Change only MRC Selectmen	RJE Recommendation Selectmen
1	Bristol County Advisory Board	Dan Freitas	Dan Freitas	Dan Freitas
2	Broadband Study Committee	Bob Espindola	Bob Espindola	Bob Espindola
3	Cable Advisory Committee	Bob Espindola	Bob Espindola	Keith Silvia
4	Contract Compliance Officer	Dan Freitas	Dan Freitas	Dan Freitas
5	Dog Park Study Committee	Keith Silvia	Keith Silvia	Keith Silvia
6	Economic Development Committee	Bob Espindola	Bob Espindola	Bob Espindola
7	Fair Housing Coordinator	Keith Silvia	Keith Silvia	Keith Silvia
8	Fairhaven Bikeway Committee	Bob Espindola	Bob Espindola	Bob Espindola
9	Fire Apparatus Study Committee	Dan Freitas	Dan Freitas	Dan Freitas
10	Historical Commission	Dan Freitas	Dan Freitas	Keith Silvia
11	Lagoa Friendship Pact Committee	Dan Freitas	Dan Freitas	Dan Freitas
12	Local Emergency Planning Committee	Dan Freitas	Dan Freitas	Dan Freitas
13	Marine Resources Committee	Keith Silvia	Bob Espindola	Bob Espindola
14	Millicent Library Trustees	Dan Freitas	Dan Freitas	Keith Silvia
15	Rogers Reuse Committee	Keith Silvia	Keith Silvia	Keith Silvia
16	Sister City Committee	Dan Freitas	Dan Freitas	Dan Freitas
17	SRPEDD	Bob Espindola	Bob Espindola	Bob Espindola
18	Wellness Committee	Bob Espindola	Bob Espindola	Bob Espindola
<b>Count - Dan Freitas</b>		<b>8</b>	<b>8</b>	<b>6</b>
<b>Count - Keith Silvia</b>		<b>4</b>	<b>3</b>	<b>6</b>
<b>Count Bob Espindola</b>		<b>6</b>	<b>7</b>	<b>6</b>
<b>Total Commissions</b>		<b>18</b>	<b>18</b>	<b>18</b>



Mark Rees &lt;mrees@fairhaven-ma.gov&gt;

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**Stormwater Management Plan**

1 message

Vincent Furtado &lt;vfurtado@fairhaven-ma.gov&gt;

Thu, Jul 9, 2020 at 2:46 PM

To: Mark Rees &lt;mrees@fairhaven-ma.gov&gt;, Vicki Paquette &lt;vpaquette@fairhaven-ma.gov&gt;

Hi Mark

Since I won't (most likely) be able to attend the Select board meeting on Monday night, as I have a BPW meeting concurrently, I thought that I would provide the below narrative for your Board so they have a refresher as to what it is that I'm requesting them to sign for the Stormwater Management Plan.

In any Municipality, sewage and drainage are either contained (conveyed) in the same pipe or in two separate pipes. In those municipalities (Fairhaven is one) where sewage is carried in a separate system than drainage (rain water), the EPA requires this community to have a permit granting stipulated permission for the drainage discharge. The EPA calls this permit MS4 which stands for municipal separate storm sewer system

The Town applied for such a permit back in 2003. Since then, the Town has been following the required protocols of the permit, such as, but not limited to, stormwater education, sweeping streets, cleaning catch basins and compiling and submitting an annual report.

In 2018, the EPA required all MS4 communities (including Fairhaven) to reapply for a new permit which built upon the prior stipulations and now contains many more requirements than the permit issued prior. As part of the newly received permit, we have to do everything that the prior permit required and more.

- The Town is required to continue with public education and outreach and have to target our audience to ensure that residents and businesses are aware to not throw various materials down the storm drain.
- The Town has to map its' entire drainage system and collect samples at all of its' outfalls. Depending on the results revealed from these collected samples, the Town will be required to investigate high bacteria counts and remove them from the system.



- The Town is required to conduct annual stormwater training and create various SOP's to ensure permit compliance.
- The Town must require and issue a stormwater permit to any contractor conducting construction in Town and enforce the recent bylaw that was created for this purpose should the contractor fail to comply with stormwater cleanup.
- The Town has to create a stormwater pollution prevention plan for all of its' municipal owned buildings.

In order to accomplish and comply with the above, we had to create/request a new line item in the BPW Highway budget, which the Select Board and Finance Committee approved at the Special Town Meeting back last November.

The document that needs to be signed by the chairs of the BOS and BPW (because the permit we have was jointly signed by both Boards) will be contained in the Stormwater Management Plan, which our permit requires us to have (see above) and we utilized \$\$ in the new line item to help us create.

The copy of the plan can be found at the link below.

Fairhaven MS4 Deliverables.

Vinnie

Vinnie Furtado  
Public Works Superintendent  
Fairhaven, MA

# Stormwater Pollution Prevention Plan (SWPPP)

Fairhaven, Massachusetts

## BOARD OF PUBLIC WORKS 5 ARSENE STREET

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Prepared by: BETA GROUP, INC.  
Prepared for: Town of Fairhaven

July 2020

### SWPPP Certification

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: Brian Wotton Title: Chair of Board of Public Works

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: Daniel Freitas Title: Chair of Board of Selectmen

# Stormwater Management Program (SWMP): Volume 1

Town of Fairhaven, MA

*NPDES Phase II Small MS4 General Permit*

## STORMWATER MANAGEMENT PLAN

Prepared by: BETA GROUP, INC.  
Prepared for: Town of Fairhaven

June 2020

Contact Person: **Vincent Furtado** Title: **DPW Superintendent**  
Telephone #: **508-979-4030** Email: [vfurtado@fairhaven-ma.gov](mailto:vfurtado@fairhaven-ma.gov)  
Mailing Address: **Department of Public Works**  
**5 Arsene Street**  
**Fairhaven, MA 02719**

Certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: **Brian Wotton** Title: **Chair of Board of Public Works**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name: **Daniel Freitas** Title: **Chair of Board of Selectmen**

## Memorandum

7-13-2020

To: Selectman Freitas, Selectman Sylvia, Mark Rees

From: Selectman Espindola

CC: Mark Rees, Vicki Oliveira (record)

**Subject: Agenda item E6 – Zoning Appeals Procedure / Guidelines /Record Keeping**

Selectman Freitas and Selectman Sylvia,

Our planning Board and Town planner work very hard to create planning documents and zoning regulations such as the recently updated Town Master Plan. The ZBA plays a critical role in assuring that the goals of the master plan are adhered to and to protect the Town's overarching interest when appeals are brought to them. As such, I believe a coordinated working relationship between the Planning Board, Planning Director, Building Inspector and the ZBA is essential to making sure that the long term future of Fairhaven as envisioned by the master <sup>plan</sup> place is protected.

Additionally, it is my belief that the Town has incurred undue legal costs that could easily have been avoided had proper input been required by the Building Department, Town Planner and/ or Town Counsel (probably in that order).

With these thoughts in mind, I would like to request that the Town Administrator work with the Building Commissioner, the Director of Planning, and Town Counsel, as required, to identify policies and procedures that can be implemented to assist the ZBA, in an effort to avoid undue legal costs in the future.

It may be possible for SRPEDD to provide guidance in this area. The Town is allotted 20 Technical Service hours each year from SRPEDD, at no cost to the Town, for the Board of Selectmen to determine the use of.

**§ 198-9. Variances.**

The Zoning Board of Appeals may authorize upon appeal, or upon petition in cases where dimensional modifications are sought with respect to a particular parcel of land or to an existing building thereon, a variance from the terms of this chapter, where, owing to conditions specifically affecting each parcel or such building, but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the appellant and where desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of this chapter, but not otherwise. The Zoning Board of Appeals shall hold a public hearing in accordance with the provisions of Chapter 40A on all variance applications brought before it.

**§ 198-10. Amendments.**

This chapter may from time to time be changed by amendment, addition or repeal by the Town Meeting in the manner provided in MGL c.40A, § 5, and any amendments therein.

**§ 198-11. Validity**

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.

**§ 198-12. Applicability of greater restrictions**

Where the application of this chapter imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants or agreements, the provisions of this chapter shall control.

**§ 198-13. When effective**

This chapter shall take effect when, following adoption by the town, it is approved by the Attorney General of the Commonwealth of Massachusetts and is published or posted as provided by law. Upon its effective date, it shall supersede the Zoning Bylaw and all amendments to it previously in effect.

**Article II  
Use and Intensity Regulations**

**§ 198-14. Establishment of districts.**

A. [Amended 3-28-1970 ATM by Art. 56; 5-15-1976 ATM by Art. 69; 10-7-1982 STM by Art. 14; 5-10-1988 ATM by Art. 11; 5-6-1995 ATM by Art. 24; 5-3-1997 STM by Art. 15; 5-2-1998 STM by Art. 26; 5-1-1999 ATM by Art. 8; 5-3-2008 ATM by Art. 50; 5-1-2010 ATM by Art. 32; 5-7-11 STM by Art. 10] The Town of Fairhaven is hereby divided into the following districts:

Rural Residence Districts	RR
Single Residence Districts	RA
General Residence Districts	RB
Apartment/Multifamily Districts	RC
Park Districts	P
Business Districts	B
Industrial Districts	I
Agricultural Districts	AG
Nasketucket Overlay District	NRB
Floodplain Districts (Refer to § 198-28)	FP
Mixed Use District [Added 5-2-1998 STM by Art. 26]	MU
Wetland Resource Protection District [Added 5-1-1999 ATM by Art. 8]	WRP



- B. The boundaries of these districts are defined and bounded on the map accompanying this chapter and on file with the Clerk of the Town of Fairhaven entitled "Town of Fairhaven Zoning Map" as amended through May 7, 2011. That map, as clarified through measurements identified on plats on file with the Town Clerk's office, all explanatory matter thereon and all subsequent amendments to it are hereby made part of this chapter.<sup>1</sup>
- C. Except when labeled to the contrary, boundary or dimension lines shown approximately following or terminating at streets, railroad or utility easement, center or layout lines, boundary or lot lines, or the channel of a stream shall be construed to be actually at those lines; when shown approximately parallel, perpendicular or radial to such lines shall be construed to be actually parallel, perpendicular or radial thereto. When not locatable in any other way, boundaries may be determined by scale from the map.
- D. Where a district boundary line divides any lot existing at the time such line is adopted, the regulations for any district in which the lot has frontage on a street may be extended not more than 20 feet into the other districts.

**§ 198-15. Use regulations [Amended 5-4-1991 ATM by Art. 24]**

- A. No building or structure shall be erected or used and no premises shall be used except as set forth in the Use Regulation Schedule. Symbols employed shall mean the following.
  - Y A permitted use
  - N An excluded use
  - A A use authorized under special permit as provided for in §§ 198-6, 198-7, 198-8, 198-15C and 198-16 and as otherwise specified within this chapter.
- B. Where an activity might be classified under more than one of the following uses, the more specific classification shall determine permissibility; if equally specific, the more restrictive shall govern.
- C. Special Permit uses.
  - (1) The Planning Board shall be the SPGA for all use allowed by special permits within the Apartment/Multifamily [RC], Park [P], Wetland Resource Protection District [WRP], Business [B], Mixed Use (MU), Industrial [I] Districts and as otherwise specified in this bylaw. The Zoning Board of Appeals shall be the SPGA for all uses allowed by special permits within the Rural Residence [RR], Single Residence [RA], General Residence [RB], Agricultural [AG] Districts and as otherwise specified in this bylaw. [Added 5-6-2006 ATM by Art. 9]
  - (2) Where any proposed use, or expansion of a use otherwise permitted [Y] or authorized [A] in an Apartment/Multifamily [RC], Park [P], Wetland Resource Protection District [WRP], Business [B], or Industrial [I] District results in a requirement of a total of five (5) or more parking spaces for the previously existing and new demand combined pursuant to the provisions of § 198-27 of this chapter, such use shall be deemed authorized by special permit granted by the Planning Board pursuant to the provisions of § 198-29 of this chapter upon review by the Planning Board of the site development plan. [Added 5-4-1991 ATM by Art. 24; amended 12-10-1992 STM by Art. 1; amended 5-1-1999 ATM by Art. 8; amended 2-11-2004 STM by Art. 15, amended 5-6-2006 ATM by Art. 9]
  - (3) The provisions of § 198-29 shall apply to a change of use, to new construction and to the expansion of the gross floor area of a building existing before January 1, 1998 in the Mixed Use (MU) District as provided in § 198-27B(4). [Added 5-2-1998 STM by Art. 26; amended 2-11-2004 STM by Art. 15, amended 5-6-2006 ATM by Art. 9]
- D. Wetland Resource Protection District. [Added 5-1-1999 ATM by Art. 8, amended 5-6-2006 ATM by Art. 9]
  - (1) The Purpose of the Wetland Resource Protection District is to:

<sup>1</sup> Editor's note: The Zoning Map is included in a pocket at the end of this volume



Bob Espindola &lt;selectmanbobespindola@gmail.com&gt;

**RE: ZBA Training Opportunities**

1 message

Jeffrey Walker &lt;jwalker@srpedd.org&gt;

Mon, Jul 13, 2020 at 7:03 AM

To: Bob Espindola &lt;selectmanbobespindola@gmail.com&gt;

Hi Bob,

We would be happy to talk with you all about possible training technical assistance along those lines.

We have a number of staff members, myself included, with ongoing or prior service on local Planning or Zoning Board of Appeals, and acquainted as well with a number of programs/consultants and curricula that may be of interest.

Although familiar with Chapter 40B-specific training provided by MHP, and some of the more ZBA-related content accessible annually through CPTC, am not aware of any statewide or model local training expressly for ZBA members, but we will check and get back to you.

Either way, we should be able to point you in the direction of an existing training offering, or if for whatever reason unavailable, work with you to develop an affordable approach, if interested, that meets the town's needs.

Thanks for your inquiry. We look forward to hearing more and helping out in whatever way that we can.

With best regards,

Jeff

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Jeffrey Walker, AICP

Executive Director, Southeastern Regional Planning and Economic Development District (SRPEDD)

88 Broadway

Taunton, MA 02780 (508) 824-1367 ext. 220 ofc

[www.srpedd.org](http://www.srpedd.org)





Bob Espindola &lt;selectmanbobespindola@gmail.com&gt;

**RE: Memo regarding ZBA**

1 message

**Thomas P. Crotty** <tomcrotty@tcrottylaw.com>

Mon, Jul 13, 2020 at 12:42 PM

Reply-To: tomcrotty@tcrottylaw.com

To: Bob Espindola &lt;selectmanbobespindola@gmail.com&gt;, Mark Rees &lt;mrees@fairhaven-ma.gov&gt;

Bob

What we discussed, and what you are proposing, is already in place in other communities.

By way of example, the City of New Bedford has a process in place for preliminary review of applications for special permits. The city planning department prepares a staff report on the application. The report covers, among other things, most aspects of the subject property (size, structures, use, neighborhood, etc.), the proposal for the property, and whether the proposal complies with the legal and technical requirements of the zoning ordinance. That report is submitted to the permit granting authority before the application comes up for hearing.

Tom

**From:** Bob Espindola [mailto:selectmanbobespindola@gmail.com]**Sent:** Monday, July 13, 2020 12:10 PM**To:** Mark Rees; Tom Crotty**Subject:** Memo regarding ZBA

Mark and Tom,

This is what I came up with to distribute during tonight's meeting, in an effort to facilitate / streamline the discussion.

If you see any concerns with it, please let me know.

Thanks,

Bob



## Memorandum

7-13-2020

To: Selectman Freitas, Selectman Sylvia

From: Selectman Espindola

CC: Mark Rees, Vicki Oliveira (record)

Subject: Meeting Agenda Requests

As you know, the Open Meeting Law allows for discussion of what will be on a meeting agenda to be held outside of Open Meetings provided that “no member of the public body expresses an opinion on matters within the body’s jurisdiction”.

It is on that basis that I would like to ask this question publicly that if any member of the Board of Selectmen requests of the Chairman that an item be placed on our BOS meeting agenda that that the Chairmen would make every reasonable effort to accommodate that request.

I ask this because, as you both know I made repeated request for the DOR Financial Management Review that was on our agenda during the June 30<sup>th</sup> meeting as item F.6, to reappear on tonight’s meeting agenda because the vote we took during our June 30<sup>th</sup> meeting included the stipulation that if the letter was not sent to the DOR last Friday, we would revisit the subject during our next meeting.

While I made other agenda request that were granted, and I thank you for that Mr. Chairmen, I made it very clear that if there was any concern for the volume of issues on our agenda, that I would ask you to remove other requests I made in order for the DOR Financial Management Review to be placed on this agenda.

That did not happen. I would like to request that the item be placed on our next meeting agenda for reasons I can’t discuss because that would be considered deliberation of an item that was not on the agenda.

Thank you for your consideration.

Attachments for reference;

- 1) June 30<sup>th</sup> Meeting Agenda
- 2) Memo from me to both of you regarding DOR agenda item from June 30<sup>th</sup>
- 3) E-mail correspondence where multiple requests were made for this time sensitive issue to be on our agenda tonight.
- 4) Excerpt from Open Meeting Law Training – Mass Attorney Generals’ office

Distribution of this Memo made during July 13<sup>th</sup>, 2020 Board of Selectmen meeting.

# Memorandum

6-29-2020

To: Selectman Freitas, Selectman Sylvia, Mark Rees  
From: Selectman Espindola  
CC: Mark Rees, Vicki Oliveira (record)  
Subject: Division of Local Services Technical Services study

Selectman Freitas and Selectman Sylvia,

In light of two very significant developments / considerations I would like to request that we are proactive and take advantage of the service offered by the Commonwealth of Massachusetts Division of Local Services, Technical Assistance Bureau. This would come at no cost to the Town.

The developments / considerations I am referring to are as follows;

- 1) **Short Term:** The impact of COVID-19 on our upcoming budget decisions which will either result in making cuts in services, drawing from reserves that the Town has worked very hard to build, or some combination of the two.
- 2) **Long Term:** Looming major capital projects either planned or under consideration.
  - a. The Wastewater Treatment Plant. We all know the estimated cost of the upgrades required for the Wastewater Treatment Plant will be on the order of tens of millions of dollars and significantly impact water and sewer rates in the future.
  - b. Public Safety Facility. The Town is considering investing in a new Public Safety Facility, as recommended by consultants hired by the Town and the by the Capital Planning Committee.

With these concerns in mind, I would like to make a motion to ask Mr. Rees request the DLS-TA to place us on their schedule to perform the following scope at their earliest opportunity;

- a. Review the Town's current financial standing and, in light of difficult decisions the Town will be facing due to the impact of COVID-19, and provide commentary on its financial flexibility
- b. Circle back to the 33 recommendations made by the DOR back in 2012, comment on the status of each and outline any recommendations for continued action with regard to any open items. The lone line item of the 33 recommendations that the Town would not like to have reviewed, would be item number 4, Eliminate the Board of Public Works because that issue was to a formal vote by the Town and there is no need to revisit that subject.
- c. Identify any new opportunities for improvement, increased operating efficiency, best practices, etc. that the DLS sees for the Town, especially in any areas that were non-existent back in 2012.
- d. Identify any new resources, tools, or funding sources that the Town should be considering to gain more access to grants, or to be better prepared to deal with challenges coming down the road.
- e. Provide commentary on whether or not the Town is in a good position to withstand multiple, major capital investments, on the order of \$50M in total, simultaneously. If so, comment on the potential impact that doing so would have on rate-payers / tax payers and that it would have on the Towns current financial standing with rating agencies.





Bob Espindola <selectmanbobespindola@gmail.com>

## July 13th Agenda requests

1 message

**Bob Espindola** <selectmanbobespindola@gmail.com>

Mon, Jul 6, 2020 at 12:29 PM

To: Daniel Freitas <dfreitas@fairhaven-ma.gov>, Mark Rees <mrees@fairhaven-ma.gov>, Vicki Paquette <vloliveira@fairhaven-ma.gov>

Dan,

Mark Rees told me that he received feedback from you and Keith suggesting he not send the request to the Mass.Gov Division of Local Services that I had requested during our last Board of Selectmen meeting.

My motion included putting the subject back onto our agenda for the upcoming meeting on July 13th if the letter was not sent out. With that in mind, I would like to reiterate that I am still interested in that being on the agenda on July 13th. along with all the other things I mentioned in my prior e-mail sent last Wednesday.

If it will be a problem to have any of these items on the agenda for our next meeting, July 13th, please let me know before the meeting notice is posted.

Thank you.

=====  
From my prior e-mail .....

Mark, Dan .... Please correct me if I am wrong but I believe one item from last night's meeting was missed, Item F.8, Procedure for filling the vacant Board of Health seat.

If so, please add that to the July 13th Agenda.

Please also add the following to the July 13th Agenda;

- 1) Procedure for filling the open Board of Health Seat
- 2) Department of Revenue, Financial Management Review (repeat from last night, pending outcome of responses from Selectmen by this Friday, July 3rd).
- 3) Zoning Appeals Procedure / Guidelines / Record keeping
- 4) Correspondence from Krissanne Sheedy, Fairhaven Housing Authority, Commendation of Mary Kellog-Freire
- 5) Flag / Banner Policy
- 6) Consider implementing Mothballing procedures for former Rogers School Property
- 7) Speed Control - Appointment with Chief Myers or designee
- 8) Adoption of draft Policy Manual (including social media policy).
- 9) RFP for Employee Engagement / Work Culture.
- 10) Consider revising Selectmen Committee Liaison Distribution.
- 11) Appointments to Boards and Committees (those held from our July 30th meeting).

Again, if it will be a problem for any of these items to make it on the agenda, please let me know in advance of posting the agenda. If there is a legitimate concern about the length of the agenda then I would like the opportunity to prioritize the list and resubmit prior to posting the meeting notice.

Thank you.

Bob



Bob Espindola &lt;selectmanbobespindola@gmail.com&gt;

**Re: Request for DLS Appointment via Zoom 6-13 meeting**

1 message

Daniel Freitas &lt;dfreitas@fairhaven-ma.gov&gt;

Mon, Jul 6, 2020 at 1:38 PM

To: Bob Espindola &lt;selectmanbobespindola@gmail.com&gt;

Bob

When we get to the next agenda I will see if we have enough time available to us. I'm sure it won't be a problem.

Dan

Sent from my iPhone

> On Jul 6, 2020, at 1:35 PM, Bob Espindola <selectmanbobespindola@gmail.com> wrote:

&gt;

&gt;

&gt; Dan,

&gt;

> As you know, as part of my motion at our last meeting, we voted to put the DLS study onto our agenda for July 13th if you or Keith had any concerns about the request I made at the last meeting by July 3rd which, I understand from Mark Rees, you both had concerns.

&gt;

> Open Meeting Law allows for discussion of agenda so that is why I have copied both of you on this email.

&gt;

> With that in mind and without debating the issue outside of our open meetings, I would like to request that the agenda item (already requested in my prior email) include an appointment with Mr. Zachary Blake (of the Mass. Department of Revenue, Division of Local Services) to address the Board and answer questions. Mr. Blake understands that our meeting will be next Monday, July 13th starting at 6:30 and he has already confirmed his availability to join via Zoom that night.

&gt;

> If you could please confirm at your earliest opportunity that the agenda will include an appointment with Mr. Blake that would be helpful, so that we can get back to him as a courtesy to him and his very busy schedule.

&gt;

> Thank you.

&gt;

> Bob





Bob Espindola &lt;selectmanbobespindola@gmail.com&gt;

**Re: Request for DLS Appointment via Zoom 6-13 meeting**

1 message

Daniel Freitas <dfreitas@fairhaven-ma.gov>  
To: Bob Espindola <selectmanbobespindola@gmail.com>

Mon, Jul 6, 2020 at 2:20 PM

Bob

Prioritize away!

Dan

Sent from my iPhone

On Jul 6, 2020, at 1:58 PM, Bob Espindola <selectmanbobespindola@gmail.com> wrote:

OK,

Thank you.

Given the time sensitivity I mentioned in our last meeting, if too much being on the agenda is an issue, I'd like the opportunity to prioritize the requests I e made prior to posting the agenda.

Thank you.

Bob

On Mon, Jul 6, 2020 at 1:38 PM Daniel Freitas <dfreitas@fairhaven-ma.gov> wrote:  
Bob

When we get to the next agenda I will see if we have enough time available to us. I'm sure it won't be a problem.

Dan

Sent from my iPhone

> On Jul 6, 2020, at 1:35 PM, Bob Espindola <selectmanbobespindola@gmail.com> wrote:

&gt;

&gt;

&gt; Dan,

&gt;

> As you know, as part of my motion at our last meeting, we voted to put the DLS study onto our agenda for July 13th if you or Keith had any concerns about the request I made at the last meeting by July 3rd which, I understand from Mark Rees, you both had concerns.

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> With that in mind and without debating the issue outside of our open meetings, I would like to request that the agenda item (already requested in my prior email) include an appointment with Mr. Zachary Blake (of the Mass. Department of Revenue, Division of Local Services) to address the Board and answer questions. Mr. Blake understands that our meeting will be next Monday, July 13th starting at 6:30 and he has already confirmed his availability to join via Zoom that night.

&gt;

> If you could please confirm at your earliest opportunity that the agenda will include an appointment with



Bob Espindola &lt;selectmanbobespindola@gmail.com&gt;

**Re: Agenda for Monday night**

1 message

Daniel Freitas &lt;dfreitas@fairhaven-ma.gov&gt;

Thu, Jul 9, 2020 at 3:51 PM

To: Bob Espindola &lt;selectmanbobespindola@gmail.com&gt;

Bob

I sent my response to Mark

Dan

Sent from my iPhone

&gt; On Jul 9, 2020, at 3:00 PM, Bob Espindola &lt;selectmanbobespindola@gmail.com&gt; wrote:

&gt;

&gt;

&gt; Dan,

&gt;

&gt; I called Mark Rees to find out what was planned for Monday night's agenda.

&gt;

&gt; I was surprised to learn that the DLS request that I asked for was not on the agenda.

&gt;

&gt; During our last meeting, the vote we took was that if there were concerns expressed by the Board by Friday, July 3rd Mark would not send the letter to the DLS and that we would add to our next meeting agenda for further discussion.

&gt;

&gt; In any case, I am respectfully asking that it be added back to the agenda to discuss publicly what the concerns are. Mr. Zachary Blake from the DLS has agreed to be available to answer any questions any of us might have and I do have a few for him myself that I would like addressed publicly.

&gt;

&gt; If adding this to the agenda is a concern for time, I would ask that this be a priority over any or all of the line items for Zoning Appeals and the one for Speed Control and the Policy Manual that I asked to be on the agenda and did make it on.

&gt;

&gt; Thank you for your consideration.

&gt;

&gt; Bob

FAIRHAVEN BOARD OF SELECTMEN

Meeting Agenda

Tuesday June 30, 2020

7:00 p.m.

Town Hall – 40 Center Street – Fairhaven

RECEIVED  
TOWN CLERK

2020 JUN 26 P 2:02

Due to the recent changes by Governor Baker to the Open Meeting Law, G.L. c. 30A. § 20, we are providing public access via the phone number and meeting ID below:

Log on to: <https://zoom.us/j/96671368255?pwd=TmtUL1R3QTRVVmlYbWZSTWd6WEZ5dz09>

or call: 1-929-205-6099

Meeting ID: 966 7136 8255

Password: 610333

The meeting can also be viewed live on Channel 18 or on FairhavenTV.com

**A. MINUTES**

- 1. Approve the minutes of May 28, 2020—Open Session
- 2. Approve the minutes of May 28, 2020—Executive Session

**B. TOWN ADMINISTRATOR’S REPORT**

**C. COMMITTEE LIAISON REPORTS**

**D. ACTION**

- 1. Interview Candidates for Economic Development Committee
- 2. Fill vacancy on Board of Public Works
- 3. (Re)appointment to Boards and Committees
- 4. Resignation and Appointment of Marine Resources Committee Liaison
- 5. Request from Town Moderator to:
  - a. Approve July 25, 2020 Annual Town Meeting to be held through remote participation
  - b. In conjunction with Town Moderator set the quorum for the July 25, 2020 Annual Town Meeting to be not less than 40% of the current quorum of 100
- 6. No Parking sign request- Town Beach, Fir Street
- 7. Request for Rent Abeyance: Seaport Inn and Marina
- 8. Approval of year end budget transfers
- 9. Mike’s Restaurant: Outdoor Table Service Expansion Application
- 10. Event Permit: Fitness in Cushman Park
- 11. Approval for sending letter to utility companies regarding utility pole information

**E. APPOINTMENTS**

- 1. 7:00 pm: Mary Kellogg, Board of Health Agent

**F. POSSIBLE ACTION/DISCUSSION**

- 1. COVID -19 Response Update
- 2. Rogers School Purchase and Sale Agreement
- 3. Policy regarding display of flags/banners on Town Property
- 4. Building Department Permit Fees/Revenues





5. Employee Engagement/Work Culture
6. Dept. of Revenue Financial Management Review
7. Preparation for July 25, 2020 Town Meeting
8. Procedure for filling vacant Board of Health seat.

**G. CORRESPONDENCE**

1. Resignation from Commission on Disability- Kelly Smith
2. Certificate in Local Government Leadership and Management- Wendy Graves
3. Carnegie Hero Fund Commission: Carnegie Medal Awarded to Mr. Ross Dugan

**H. NOTES AND ANNOUNCEMENTS**

1. The next regularly scheduled meeting of the Board of Selectmen is **Monday, July 13, 2020** at 6:30pm p.m. in the Town Hall Banquet Room.

**I. EXECUTIVE SESSION**

1. Discuss strategy with respect to litigation – A-1 Crane: pursuant to M.G.L. Ch. 30A Section 21(a) (3)
2. Discuss strategy with respect to Collective Bargaining pursuant to M.G.L. Ch. 30A Section 21(a) (3)
3. Discuss strategy sessions with preparation for negotiations with non-union employee(s) pursuant to M.G.L. Ch.30A Section 21(a) (2)

**ADJOURNMENT**

*Subject matter listed in the agenda consists of those items that are reasonable anticipated (by the Chair) to be discussed. Not all items listed may be discussed and other items not listed (such as urgent business not available at the time of posting) may also be brought up for discussion in accordance with applicable law. MGL, Ch. 30a, § 20(f) requires anyone that intends to record any portions of a public meeting, either by audio or video, or both, to notify the Chair at the beginning of the meeting.*

its committees, bodies of the judicial branch, and bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer.

Boards of selectmen and school committees (including those of charter schools) are certainly subject to the Open Meeting Law, as are subcommittees of public bodies, regardless of whether their role is decision-making or advisory. Individual government officials, such as a town manager or police chief, and members of their staff are not subject to the law, and so they may meet with one another to discuss public business without needing to comply with Open Meeting Law requirements. This exception for individual officials to the general Open Meeting Law does not apply where such officials are serving as members of a multiple-member public body that is subject to the law.

Bodies appointed by a public official solely for the purpose of advising the official on a decision that individual could make alone are not public bodies subject to the Open Meeting Law. For example, a school superintendent appoints a five-member advisory body to assist her in nominating candidates for school principal, a task the superintendent could perform herself. That advisory body would not be subject to the Open Meeting Law.<sup>2</sup>

#### What constitutes a deliberation?

The Open Meeting Law defines deliberation as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.” Distribution of a meeting agenda, scheduling or procedural information, or reports or documents that may be discussed at a meeting is often helpful to public body members when preparing for upcoming meetings. These types of communications generally will not constitute deliberation, provided that, when these materials are distributed, no member of the public body expresses an opinion on matters within the body’s jurisdiction. Additionally, certain communications that may otherwise be considered deliberation are specifically exempt by statute from the definition of deliberation (for example, discussion of the recess and continuance of a Town Meeting pursuant to G.L. c. 39, § 10A(a) is not deliberation).

To be a deliberation, the communication must involve a quorum of the public body. A quorum is usually a simple majority of the members of a public body. Thus, a communication among less than a quorum of the members of a public body will not be a deliberation, unless there are multiple communications among the members of the public body that together constitute communication among a quorum of members. Courts have held that the Open Meeting Law applies when members of a public body communicate in a serial manner in order to evade the application of the law.

Note that the expression of an opinion on matters within the body’s jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. For

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<sup>2</sup> See Connelly v. School Committee of Hanover, 409 Mass. 232 (1991).



example, if a member of a public body sends an email to a quorum of a public body expressing her opinion on a matter that could come before that body, this communication violates the law even if none of the recipients responds.

### What matters are within the jurisdiction of the public body?

The Open Meeting Law applies only to the discussion of any “matter within the body’s jurisdiction.” The law does not specifically define “jurisdiction.” As a general rule, any matter of public business on which a quorum of the public body may make a decision or recommendation is considered a matter within the jurisdiction of the public body. Certain discussions regarding procedural or administrative matters may also relate to public business within a body’s jurisdiction, such as where the discussion involves the organization and leadership of the public body, committee assignments, or rules or bylaws for the body. Statements made for political purposes, such as where a public body’s members characterize their own past achievements, generally are not considered communications on public business within the jurisdiction of the public body.

### What are the exceptions to the definition of a meeting?

There are five exceptions to the definition of a meeting under the Open Meeting Law.

1. Members of a public body may conduct an on-site inspection of a project or program; however, they may not deliberate at such gatherings;
2. Members of a public body may attend a conference, training program or event; however, they may not deliberate at such gatherings;
3. Members of a public body may attend a meeting of another public body provided that they communicate only by open participation; however, they may not deliberate at such gatherings;
4. Meetings of quasi-judicial boards or commissions held solely to make decisions in an adjudicatory proceeding are not subject to the Open Meeting Law; and
5. Town Meetings, which are subject to other legal requirements, are not governed by the Open Meeting Law. See, e.g. G.L. c. 39, §§ 9, 10 (establishing procedures for Town Meeting).

The Attorney General interprets the exemption for “quasi-judicial boards or commissions” to apply only to certain state “quasi judicial” bodies and a very limited number of public bodies at other levels of government whose proceedings are specifically defined as “agencies” for purposes of G.L. c. 30A.

We have received several inquiries about the exception for Town Meeting and whether it applies to meetings outside of a Town Meeting session by Town Meeting members or Town Meeting committees or to deliberation by members of a public body – such as a board of selectmen – during a session of Town Meeting. The Attorney General interprets this exemption to mean that the Open Meeting Law does not reach any aspect of Town Meeting. Therefore,