



## FAIRHAVEN SELECT BOARD

### Meeting Minutes

August 21, 2023

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

**Also Present:** via zoom, Christopher Petrini from Petrini & Associates PC.

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

**Mr. Correy opened the Select Board meeting at 6:31p.m.**

A moment of silence was observed for Barbara Souza, retired clerk in the Collector's Office and Albena "Bena" Haaland who recently passed.

#### EXECUTIVE SESSION

**Motion:** Mr. Espindola motioned to enter executive session pursuant to G.L. c. 30A, § 21(a)(3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares (6 Evergreen Street) and to return to open session. Ms. Powers seconded. Roll Call vote, Mr. Espindola in favor, Ms. Powers in favor, Mr. Silvia in favor, Mr. Murphy in favor and Mr. Correy in favor. The motion passed unanimously (5-0-0).

*The Select Board exited the Banquet Room at 6:36p.m. for Executive Session*

*The Select Board returned to Open Session at 7:02 p.m.*

Mr. Correy stated that the Board of Health was not in attendance during the Executive Session and further discussion on the matter has been continued to September 18, 2023.

#### MINUTES:

**Motion:** Mr. Espindola motioned approve the Open Session minutes of June 20, 2023, July 10, 2023, July 17, 2023 and August 7, 2023. Seconded by Ms. Powers. The motion passed unanimously (5-0-0).

**Motion:** Mr. Espindola motioned to approve the Executive Session minutes of July 10, 2023 and July 17, 2023. Seconded by Ms. Powers. The motion passed unanimously (5-0-0).

**Motion:** Mr. Espindola motioned to postpone approval of the Executive Session minutes of August 7, 2023 until they can be reviewed in Executive Session. Seconded by Ms. Powers. The motion passed unanimously (5-0-0).

#### **Select Board Retreat Minutes, July 15, 2023**

Mr. Espindola asked for an amendment to the minutes and distributed a document to the Board and Ms. Ellison outlining his proposed amendment (*Attachment A*). Discussion ensued regarding the proposed update regarding the establishment of a committee to review financial policies and planning. Ms. Ellison informed the Board of her objection with the proposed amendment to the minutes from Mr. Espindola as it takes the discussion and her position regarding the makeup of a new committee out of context; minutes are intended to be a summary and not a transcript. Mr. Espindola stated his intention was to discuss tonight for the record and add as a future agenda item.



**Motion:** Mr. Espindola motioned to approve the Select Board Retreat minutes of July 15, 2023 amended to include the first paragraph from his proposed update (*Attachment A*). Seconded by Ms. Powers. The motion passed unanimously (5-0-0).

**Motion:** Mr. Espindola motioned to take Action Item E2, Appointment of Planning and Economic Development Director out of order. Seconded by Ms. Powers. The motion passed unanimously (5-0-0).

Appointment of Planning and Economic Development Director: Paul DiGiuseppe.

Mr. DiGiuseppe introduced himself to the Board and expressed his excitement to work with the Planning Board as well as the Economic Development. The Board welcomed Mr. DiGiuseppe. Mr. Silvia suggested department heads submit updates for future meetings and then continue ninety days out.

**Motion:** Mr. Espindola motioned to approve the appointment of Paul DiGiuseppe as Planning and Economic Development Director. Seconded by Ms. Powers. The motion passed unanimously (5-0-0).

**TOWN ADMINISTRATOR REPORT:**

Ms. Ellison updated the Board on:

- Compliment from a resident for the Building Commissioner Randy Bassett and Administrative Assistant Suzanne Vieira.
- Due to the difficulty in finding a Finance Director, Ms. Ellison is working with the Human Resource Director on a restructure to the Finance Department and develop a system to create a pool of internal candidates using our existing employees and skill sets. Once a final model is available, she will bring before the Board.
- Cable Access Director Derek Frates presented the Alliance for Community Media (ACM) Award to David Fauteux. This is a national award won by "The Magazine" which is produced by Mr. Fauteux and hosted by Charlie Murphy. They won the 2023 ACM for Best Magazine Show. The Board congratulated and thanked Mr. Fauteux, Mr. Murphy and Mr. Frates.

The Board recessed from 7:31p.m. to 7:35p.m. due to technical issues.

**PUBLIC HEARING:**

The Public Hearing for the proposed application for a Farmers Series Pouring License Permit opened at 7:40p.m

Owner Nicholas Cristy addressed the Board and explained his application for a Farmers Series Pouring Permit to pour and sell wines and cider products on the premises at Nasketucket Bay Vineyard. Currently the business can sell and give away but not pour unless the Town approves this Pouring License.

Mr. Espindola advised the Board he received a message from Wayne Hayward (*Attachment B*) and read the email. Mr. Cristy said his application does indicate Rural Residential District "RR" as the type. Ms. Ellison advised the Board the vote can be contingent upon verification of the zone.

Public Comment:

Craig Soares of 241 New Boston Road, a direct abutter addressed the Board and raised concerns about ongoing issues at the property related to flooding from the Quonset Hut that was built. Mr. Soares asked the Board not to vote until other issues and concerns were resolved.

Ms. Ellison reminded the Board this hearing is about a Pouring License not zoning or building. Concerns related to Building, Zoning Board of Appeals or Planning Board can be referred back to her for review and the Board cannot put land use conditions on a Liquor License. Mr. Soares can contact the Town Administrator's office to coordinate a meeting to discuss concerns outside of the Pouring License.



The Board asked about special parking permits and restrooms to which Mr. Cristy said he has submitted through the Planning Board. Mr. Cristy has already addressed the points raise by Mr. Soares and actions he has taken to address Mr. Soares' concerns and he has not heard of continuing issues with run off.

The Public Hearing for the proposed application for a Farmers Series Pouring License Permit closed at 8:02p.m

Mr. Cristy expressed his concerns with each portion of the process dependent on another department and would like to keep this permit application just to a Pouring Permit and leave the other parts out of the process.

**Motion:** Mr. Espindola motioned to approve the Farmers Series Pouring License Permit for Fairhaven Meadows, LLC d/b/a Nasketucket Bay Vineyard pending approval and verification of zoning requirements. Seconded by Ms. Powers. The motion passed unanimously (5-0-0).

**Motion:** Mr. Espindola motioned to take Action Item E1, Draft Decision: Gary Lavalette out of order. Seconded by Ms. Powers. The motion passed unanimously (5-0-0).

Atty. Christopher Petrini joined via zoom and Mr. Silvia recused himself from these proceedings and left the Banquet Room at 8:08p.m.

Atty. Petrini explained to the Board that the draft letter summarized the recent two nights of the hearings concerning Mr. Lavalette and some of the exhibits, the letter is intended to be a summary of the evidence before the Board and the vote taken to remove Mr. Lavalette pending approval of the decision letter. The Board had no questions.

**Motion:** Mr. Espindola motioned to approve the draft decision letter for the removal of Mr. Gary Lavalette from the Historical Commission as written. Seconded by Ms. Powers. The motion passed (4-0-1) Mr. Espindola, Ms. Powers, Mr. Murphy and Mr. Correy in favor, Mr. Silvia abstained.

#### **TOWN ADMINISTRATOR REPORT:**

Ms. Ellison continued her update for the Board:

- Heidi Hacking has resigned from the Board of Health due to health reasons, Ms. Ellison thanked Ms. Hacking for her service and time on the Board and wished her well.
- Alberto Silva submitted a resignation from the Zoning Board of Appeals, the position is advertised on the Town's website and Ms. Ellison encouraged those interested to review the requirements and consider applying.
- The Council on Aging (COA) was awarded a grant for Enhancing Digital Literacy for Older Adults. The Fairhaven COA was one of twenty-four communities who received the grant, good job Ms. Reed and staff.
- Ms. Ellison thanked Conservation/Sustainability Agent Bruce Webb for his work applying for the Municipal Vulnerability Preparedness (MVP) FY24-25 Pilot Program Grant, the award is ninety-five thousand dollars.
- A temporary street closure was approved for a portion of Laurel Street on September 30, 2023 based on the process for block parties.
- The Town of Fairhaven along with the Massachusetts Broadband Institute has a residential internet survey, it is posted online and in Town offices, looking for as many to participate as possible.
- Ms. Ellison explained a concern was raised recently about a potential Open Meeting Law (OML) violation regarding Peter Deterra from the Zoning Board of Appeals. The office has attempted to contact him several times to schedule a meeting without a response. Ms. Ellison stated she is now publicly asking Mr. Deterra to schedule an appointment, take the training on the OML or she will ask the Board to consider his removal.
- The Select Board Retreat minutes summarized the day and future agenda items will be on protocols, the chain of command and financial topics and asked each Select Board member to send her an individual email on items they would like to add.



- Ms. Ellison received a scholarship to attend the International City/County Management Association (ICMA) at the end of September.
- The application for the Rogers School to be placed on the National Registry is moving forward, no new updates at this time.
- The Sustainability Committee is hosting a Halloween Costume swap and there are boxes at Town Hall, all ages can participate in the swap.
- Human Resource Director Cam Durant addressed the Board regarding recent work done through the Public Employee Committee comprised of the ten unions that represent Town employees. As of October 1, 2023, the Town will be adding a Health Savings Account option for employees.
- Ms. Ellison acknowledged Cathy Melanson for her work on the interim of hiring Mr. DiGiuseppe.

Mr. Espindola asked for a written summary of the ARPA funding schedule and the differences between the revised list and the annual report. He also asked when the monthly financial reports would start.

Ms. Ellison will forward the ARPA information this week and reminded the Board that in July and in response to Mr. Espindola's email the staff is closing out FY23 before opening FY24, monthly reports will be delayed until that changeover is completed. Outside assistance has been brought in to help balance the books for FY23, until that is complete a date would be difficult to target.

Recognition: Firefighter Jesse Lacerda

Mr. Correy read the press release regarding an incident on August 12, 2023 and Firefighter Lacerda's assistance

Transfer of Liquor License: from Elisabeth's Restaurant to OEA Restaurant Group, Corp. d/b/a Olivia's Restaurant, Brandon Roderick owner

Mr. Roderick addressed the Board and explained his concept for the new restaurant. He is working to address a lien on the liquor license to allow for the Board to vote on the transfer.

The Board tabled this item until the office receives notification of the removal of the lien on the liquor license.

Proclamation: Deirdre Healy

Mr. Correy read the proclamation for Ms. Healy and the Board thanked her for her service to the Town through the Sustainability Committee.

**Motion:** Mr. Espindola motioned to approve the proclamation for Deirdre Healy. Seconded by Ms. Powers. The motion passed unanimously (5-0-0).

Proposed Changes to the name and charge for the Bikeways Committee

Will Gardner addressed the Board on behalf of the Bikeways Committee and reviewed the proposal (*Attachment C*).

Mr. Espindola thanked Mr. Gardner for his work and dedication and the Board voiced support for the review.

Ms. Ellison also commended Mr. Gardner for his work and recommended the scope be reviewed by the new Planning Director and other departments to make it less broad before the Board votes. The item was tabled.

Event Request/Use of Town Hall Auditorium: The Shepherd Center for Performing Arts Film Festival

Local filmmaker and Fairhaven High School Alumni Alyssa Botelho reviewed the specifics of the application to the Board.

**Motion:** Mr. Espindola motioned to approve Event Request/Use of Town Hall Auditorium for The Shepherd Center for Performing Arts Film Festival on Friday, August 25, 2023 from 6-9PM as written in the application and waive the fees due to their 501 (c)(3) status. Seconded by Ms. Powers. The motion passed unanimously (5-0-0).



Declare Surplus items for Town Auction on September 16, 2023

The list of surplus items was submitted from each department for the annual Town Auction on Saturday, September 16, 2023 at the Board of Public Works.

**Motion:** Mr. Espindola motioned to approve the list of items presented as surplus and transfer them to the Board of Public Works to be auctioned off on Saturday, September 16th, 2023. Seconded by Ms. Powers. The motion passed unanimously (5-0-0).

Select Board email process management

Ms. Ellison asked the Board to reconsider the process on handling emails sent to the Select Board email address and have the office review and care for the concerns, escalate or redirect as appropriate and add to a future Select Board agenda when needed. The Board will continue to receive each email that is sent to [selectboard@fairhaven-ma.gov](mailto:selectboard@fairhaven-ma.gov) and the website can be updated to show the office staff will respond to these emails. The process for individual emails sent to a Select Board member would not change.

**Motion:** Mr. Espindola motioned for Select Board email to be handled by the office and any items needing the collective Board's attention will be on the next available Select Board agenda. Seconded by Ms. Powers. The motion passed unanimously (5-0-0).

SRPEDD Technical assistant hours for the Broadband buildout at the Fairhaven Housing Authority (FHA)

Mr. Espindola reviewed the concern on potential loss of grant funds for the FHA broadband buildout project which has a deadline of September 30, 2023. He proposed asking if SRPEDD might be a resource for technical assistance if we are able to use the hours allotted with the funding coming from the grant.

Ms. Ellison explained that she reached out to SRPEDD, described the need and asked about the use of Fairhaven's allotted hours. She is waiting for a response to see if SRPEDD can meet the scope of the project. The funding is not lost and a request for the state contact was submitted so that an extension can be requested. Ms. Ellison further advised that the Request for Proposal (RFP) has multiple parts and a major concern is that the scope of the project follows procurement laws. The complexity of the project requires the RFP to be prepared properly and in accordance with procurement laws and not to fit a company.

Mr. Espindola reviewed other details of the overall project and advocated to use the hours allotted from SRPEDD to the Select Board and Planning Board and supplement with grant funds for time over the forty hours. Discussion continued on the history and details of the project.

Ms. Powers recommended asking for a one-year extension when the request is submitted.

**Motion:** Mr. Espindola motioned to approve the use of available technical service hours for this fiscal year be allocated to use of procurement related services associated with the Fairhaven Housing Authority project coordination. Seconded by Ms. Powers.

Mr. Espindola rescinded his motion. Ms. Powers rescinded her second.

**Motion:** Mr. Espindola motioned to authorize the Town Administrator to use the available technical assistant service hours from SRPEDD in this fiscal year to help advance the Fairhaven Housing Authority project for broadband. Seconded by Ms. Powers. The motion passed unanimously (5-0-0).

Mr. Correy asked for an update on broadband to better understand resources. Mr. Espindola referred the Board to his committee liaison reports over time and he will gather the reports, supporting documents and forward a summary.

Bylaw change: Chapter 50 Meetings § 10-11



Mr. Espindola asked the Board to consider the change as written (*Attachment D*). He added that the intention of the bylaw when proposed was to have all meetings recorded and if cannot record due to a technical issue or no staff that would be the exception where it was not recorded. To allow the Town Administrator to decide as an operational piece could be dangerous precedent.

Discussion ensued regarding the language of the bylaw and the precedent to propose the costly and long process of a bylaw change based on one event where this is a policy/process with the staff. The Select Board retreat not being recorded raised the concern. The Board briefly discussed their understanding of the intention of the retreat.

**Motion:** Mr. Espindola motioned to adopt a policy where any open meeting that is not going to be recorded have a notice on it that states the meeting will not be recorded in accordance with the bylaw. The motion failed.

Ms. Powers suggested the Board review the meeting posting policies that we have in place and add to the policy if needed.

### **CORRESPONDENCE**

The Board received the following pieces of correspondence

- Invitation to recognition ceremony for the Fairhaven Acushnet Youth Baseball team
- Community Preservation Committee FY24 CPA Project Funding Appropriation and Grants Awarded: Fairhaven Housing Authority and Town Hall Facilities
- Open Meeting Law Complaint Response 2023 – 129 from Attorney General’s Office
- KIZUNA Magazine: Summer edition

### **COMMITTEE LIAISON REPORTS**

*Mr. Espindola reported on:*

Broadband Study Committee upcoming meeting, The Massachusetts Broadband Coalition upcoming meeting, SRPEDD Commission and the Fairhaven Bikeways Committee (*Attachment E*).

*Ms. Powers reported on:*

The Library met and discussed their HVAC project

*Mr. Murphy reported on:*

The Lagoa Friendship Pact Committee will be marching in the procession at the Upcoming Our Lady of the Angels feast and the Sister City Committee is focusing on details of the upcoming Manjiro Festival on Saturday, October 7, 2023, vendor applications are available (*Attachment F*).

*Mr. Silvia reported on:*

The Historical Commission has placed a plaque on a home on Fort Street, The Commission on Disability reports the beach mats will be out at all times.

*Mr. Correy reported on:*

Digital Equity project has officially started with the survey Ms. Ellison referenced, in July the Belonging Committee held a Disability Pride month event at the Council on Aging in conjunction with M.O.Life.

### **PUBLIC COMMENT**

No public comments received

### **BOARD MEMBER ITEMS**

Ms. Powers advised that there will be a groundbreaking at the Pickleball Field at Livesy Park on August 22, 2023 at 7:15a.m.



The Board thanked Cathy Melanson again for her work in Planning during the interim.

Mr. Espindola asked if the Board could be asked about availability for meetings in advance. He distributed a document with a proposal on a temporary hold on creating new positions and reminded the Board of his concerns on policy versus operations items (*Attachment G*). He mentioned the signing of an Intermunicipal Agreement on Dispatch, the renewable energy contract renewal and creation of a new position at Town Hall as recent examples of policy versus operational items.

Mr. Correy thanked the Fairhaven Firefighters for the recent foam party. He encouraged everyone to get involved and volunteer. Mr. Correy and the Fairhaven Firefighters will be sponsoring an event at the Recreation Center on Sunday, August 27, 2023 from 12:00 to 4:00p.m. called Too Cool For School with haircuts, school supplies and fun. He thanked all those who have contributed. Mr. Correy ended by congratulating the parents for making it through the summer and welcomed all the kids back to school.

Mr. Espindola asked if we also made the internet survey available through the school. Ms. Hart will contact the School Department and ask for the link to be on their website as well.

Ms. Ellison asked for the Board to send her digital equity stakeholders, please send to her and Mr. Correy.

**Meeting adjourned at 10:30p.m.**

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

**ATTACHMENTS:**

- A. Proposed amendment to the Select Board Retreat minutes of July 15, 2023
- B. Wayne Hayward correspondence
- C. Proposed Changes to the name and charge for the Bikeways Committee
- D. Proposed bylaw update Chapter 50 Meetings §10-11
- E. Committee Liaison Report – Robert Espindola
- F. Manjiro Festival vendor application
- G. Policy vs. operational proposal – Robert Espindola

*Approved on \_\_\_\_, 2023*





### OPEN MEETING LAW COMPLAINT FORM

Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Please note that all fields are required unless otherwise noted.

**Your Contact Information:**

First Name: Patrick Last Name: Higgins

Address: P O Box 290

City: Northport State: AL Zip Code: 35476

Phone Number: 8662838301 Ext. \_\_\_\_\_

Email: patrick@openmeetinglawenforcer.com

Organization or Media Affiliation (if any): Patrick Higgins and Associates

Are you filing the complaint in your capacity as an individual, representative of an organization, or media?

(For statistical purposes only)

Individual  Organization  Media

**Public Body that is the subject of this complaint:**

City/Town  County  Regional/District  State

Name of Public Body (including city/town, county or region, if applicable): Fairhaven Select Board

Specific person(s), if any, you allege committed the violation: Leon E. Correy III, Chair

Date of alleged violation: 8/21/23



**Description of alleged violation:**

Describe the alleged violation that this complaint is about. If you believe the alleged violation was intentional, please say so and include the reasons supporting your belief.

Note: This text field has a maximum of 3000 characters.

The Fairhaven Board of Selectmen violated the open meeting laws follows:

- 1. Did not accept or adopt the meeting minutes from their June 20, 2023 meeting in a timely manner. (3 meetings or 30 days whichever is longer, June 20th needed to be accepted on or before July 15, 2023 or the 3rd meeting following June 20th which was held on August 7, 2023.) This public body has been found in violation for this same type of violation in 2023-129, yet violated the open meeting law once again. This being a recurring violation is an intentional violation and this public body needs to be fined the \$1000 penalty as provided for by the open meeting law.

See video of meeting at <https://livestream.com/fairhavenlive/events/7191980/videos/237316277>

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

Learn and fully comply with the open meeting law  
 Make acceptance of meeting minutes a priority of the board  
 All member MUST attend a formal open meeting law webinar without delay, schedule can be viewed at <https://www.mass.gov/info-details/open-meeting-law-trainings>

**Review, sign, and submit your complaint**

**I. Disclosure of Your Complaint.**

**Public Record.** Under most circumstances, your complaint, and any documents submitted with your complaint, is considered a public record and will be available to any member of the public upon request.

**Publication to Website.** As part of the Open Data Initiative, the AGO will publish to its website certain information regarding your complaint, including your name and the name of the public body. The AGO will not publish your contact information.

**II. Consulting With a Private Attorney.**

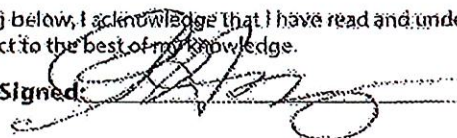
The AGO cannot give you legal advice and is not able to be your private attorney, but represents the public interest. If you have any questions concerning your individual legal rights or responsibilities you should contact a private attorney.

**III. Submit Your Complaint to the Public Body.**

This complaint must be filed first with the public body. If you have any questions, please contact the Division of Open Government by calling (617) 963-2540 or by email to [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).

By signing below, I acknowledge that I have read and understood the provisions above and certify that the information I have provided is true and correct to the best of my knowledge.

Signed: \_\_\_\_\_

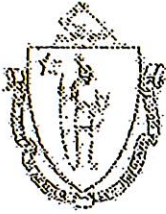


Date: 8/28/23

For Use By Public Body  
Date Received by Public Body

For Use By AGO  
Date Received by AGO





THE COMMONWEALTH OF MASSACHUSETTS  
 OFFICE OF THE ATTORNEY GENERAL  
 ONE ASHBURTON PLACE  
 BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL  
 ATTORNEY GENERAL

(617) 727-2200  
[www.mass.gov/agp](http://www.mass.gov/agp)

August 8, 2023

OML 2023 – 129

Leon E. Correy III  
 Select Board Chair  
 40 Center Street  
 Fairhaven, MA 02719

By email only: [selectboard@Fairhaven-MA.gov](mailto:selectboard@Fairhaven-MA.gov)

**RE: Open Meeting Law Complaint**

Dear Mr. Correy:

This office received a complaint from Patrick Higgins on June 21, 2023, alleging that the Fairhaven Select Board (the "Board") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Board on June 8, 2023, and you responded to the complaint, on behalf of the Board, by letter dated June 21, 2023.<sup>1</sup> The complaint alleges that the Commission failed to accept minutes for the meeting held on April 18 in a timely manner.

We resolve this matter by **informal action**, in accordance with 940 CMR 29.07(2)(a), after reviewing the original complaint, the Board's response to the complaint, the complaint filed with our office requesting further review, and the notices, minutes, and video recordings of the Board meetings held on April 18, May 1, May 6, May 15, May 31, and June 5.<sup>2</sup> We find that the Board violated the Open Meeting Law in the way alleged.

The Open Meeting Law requires that a public body "create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made, and the actions taken at each meeting, including the record of all votes." G.L. c. 30A, § 22(a). The meeting minutes must be reviewed and approved in a timely manner. G.L. c. 30A, § 22(c). "Timely manner" means "within the next three public body meetings or within 30 days, whichever is later, unless the public body can show good cause for further delay." See 940 CMR 29.11; OML 2018-48.<sup>3</sup> Whenever possible,

<sup>1</sup> Unless otherwise noted, all dates in this letter refer to 2023.

<sup>2</sup> Video recordings of these meetings may be found at: <https://livesteam.com/fairhavenlive/events/7191980>

<sup>3</sup> Open Meeting Law determinations may be found at the Attorney General's website, <https://www.mass.gov/the-open-meeting-law>.



we recommend that minutes of a meeting be approved at the next meeting. See OML 2018-67; OML 2017-133.

The complaint alleges that the Board did not approve the minutes of the meeting held on April 18 within the later of 30 days or three meetings as required by the Open Meeting Law. Here, the Board held meetings on April 18, May 1, May 6, May 15, and June 5. The Board also held a joint meeting with the Finance Committee on May 31. The Board approved the April 18 minutes during the meeting held on June 5. The Board asserts that this approval was timely because the June 5 meeting was its third regular meeting after April 18. The Open Meeting Law defines "meeting" as "a deliberation by a public body with respect to any matter within the body's jurisdiction." G.L. c. 30A, § 18. The Open Meeting Law does not include an exception to the definition of "meeting," for purposes of calculating timely approval of meeting minutes, for meetings that are held jointly by two or more public bodies. See OML 2021-177, n. 4 (finding a public body's joint meeting with other town public bodies was a meeting of the public body for the purpose of calculating timely approval of meeting minutes); see also OML 2019-115 ("single topic" meetings and meetings not "normally scheduled" constitute "meetings" for purposes of calculating timely approval of meeting minutes); OML 2021-169. As such, the Board's approval of the minutes of its April 18 meeting on June 5, which was its fifth meeting and more than 30 days thereafter, was untimely.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with the Board or with our office. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Carrie Benedon  
Assistant Attorney General  
Division of Open Government

*Assisted by Bethany Salah, Legal Intern*

cc: Patrick Higgins -- By email only: [REDACTED]  
Town Clerk -- By email only: [churley@fairhaven-ma.gov](mailto:churley@fairhaven-ma.gov)

**This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.**



FAIRHAVEN TOWN CLERK  
RCUD-2023 AUG 17 AM 9:23



## FAIRHAVEN SELECT BOARD AGENDA

August 21, 2023, 6:30 p.m.

Town Hall – 40 Center Street – Fairhaven

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

*On March 24, 2023, the bill to extend Open Meeting Law regulations governing remote participation has passed MA legislation and been signed by the Governor. This bill will allow remote and hybrid meeting options for public bodies through March 31, 2025.*

*Pursuant to an amendment to Town Bylaw Chapter 50 § 13, all government meetings are available through web/video conference and are recorded.*

### A. EXECUTIVE SESSION – JOINT WITH BOARD OF HEALTH – 6:30 p.m.

Pursuant to G.L. c. 30A, § 21(a)(3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares (6 Evergreen Street)

### B. MINUTES

1. Approve the minutes of June 20, July 10, July 17 and August 7, 2023 – Open Session
2. Approve the minutes of July 10, July 17 and August 7, 2023 -- Executive Session
3. Approve Select Board Retreat Minutes of July 15, 2023

### C. PUBLIC HEARING – 7:30 P.M.

1. Fairhaven Meadows, LLC d/b/a Nasketucket Bay Vineyard: application for a Farmers Series Pouring License Permit

### D. TOWN ADMINISTRATOR

1. Staffing Updates: New Planning/Economic Development Director, Building Department Recognition, Finance Department restructuring
2. Board of Health (BOH) resignation: Heidi Hacking
3. Zoning Board of Appeals resignation: Alberto Silva
4. Alliance for Community Media Award presentation: David Fauteux
5. Enhancing Digital Literacy for Older Adults Grant Program: Council on Aging
6. Municipal Vulnerability Preparedness (MVP) FY24-25 Pilot Program Grant Award, \$95,000
7. Temporary Street Closure: Block Party Laurel Street, Saturday, September 30, 2023
8. Town of Fairhaven and Massachusetts Broadband Institute Residential Internet Survey
9. Zoning Board of Appeals: alleged Open Meeting Law violation
10. Select Board Retreat Summary
11. International City/County Management Association (ICMA) Scholarship
12. Rogers School: National Registry application update
13. Halloween Costume Swap/Exchange-Sustainability Committee

### E. ACTION / DISCUSSION

1. Draft Decision: Gary Lavalette
2. Appointment of Planning and Economic Development Director: Paul DiGiuseppe
3. Recognition: Firefighter Jesse Laocorda
4. Transfer of Liquor License: From Elisabeth's Restaurant to OEA Restaurant Group, Corp. d/b/a Olivia's Restaurant
5. Proclamation: Deirdre Healy
6. Proposed changes to name and charge for Bikeways Committee
7. Event Request/Use of Town Hall Auditorium: The Shepherd Center for Performing Arts Film Festival, Friday, August 25, 2023 6:00-9:00 p.m.
8. Declare surplus items for Town Auction on September 16, 2023 at Department of Public Works
9. Revisit the Select Board email process management

*Subject matter listed in the agenda consists of items reasonably 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.*



10. SRPEDD Technical assistant hours for Broadband buildout at Housing Authority
11. Bylaw change: Chapter 50 Meetings § 10-11.

**F. CORRESPONDENCE**

1. Invitation to recognition ceremony for the Fairhaven Acushnet Youth Baseball team
2. Community Preservation Committee FY24 CPA Project Funding Appropriation and Grants  
Awarded: Fairhaven Housing Authority and Town Hall Facilities
3. Open Meeting Law Complaint Response 2023 – 129 from Attorney General's Office
4. KIZUNA Magazine: Summer edition

**G. COMMITTEE LIAISON REPORTS**

**H. PUBLIC COMMENT**

**I. BOARD MEMBER ITEMS**

**J. NEWS AND ANNOUNCEMENTS**

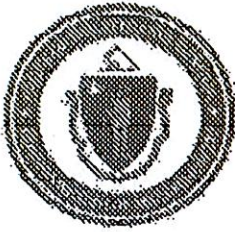
1. The next regularly scheduled Select Board meeting is *Monday, September 18, 2023* at 6:30 p.m.,  
Town Hall Banquet Room

**ADJOURNMENT**

<https://us06web.zoom.us/j/89485993911?pwd=OFd5MzJxVnBxQkxLzdQcFRlbVM0QT09>

**Log on or call 1-929-205-6099, Meeting ID: 894 8599 3911, Passcode: 330130**





The Commonwealth of Massachusetts  
 Office of the Attorney General  
 One Ashburton Place  
 Boston, Massachusetts 02108

## OPEN MEETING LAW COMPLAINT FORM

### Instructions for completing the Open Meeting Law Complaint Form

The Attorney General's Division of Open Government interprets and enforces the Open Meeting Law, Chapter 30A of the Massachusetts General Laws, Sections 18-25. Below is the procedure for filing and responding to an Open Meeting Law complaint.

#### Instructions for filing a complaint:

- o Fill out the attached two-page form completely. Sign and date the second page. File the complaint with the public body within 30 days of the alleged violation. If the violation was not reasonably discoverable at the time it occurred, you must file the complaint within 30 days of the date the violation was reasonably discoverable. A violation that occurs during an open session of a meeting is reasonably discoverable on the date of the meeting.
- o To file the complaint:
  - o For a local or municipal public body, you must submit a copy of the complaint to the chair of the public body AND to the municipal clerk.
  - o For all other public bodies, you must submit a copy of the complaint to the chair of the public body.
  - o Complaints may be filed by mail, by email, or by hand. Please retain a copy for your records.
- o If the public body does not respond within 14 business days and does not request an extension to respond, contact the Division for further assistance.

#### Instructions for a public body that receives a complaint:

- o The chair must disseminate the complaint to the members of the public body.
- o The public body must meet to review the complaint within 14 business days (usually 20-22 calendar days).
- o After review, but within 14 business days, the public body must respond to the complaint in writing and must send the complainant a response and a description of any action the public body has taken to address the allegations in the complaint. At the same time, the body must send the Attorney General a copy of the complaint and a copy of the response. The public body may delegate this responsibility to an individual member of the public body, its counsel, or a staff member, but only after the public body has met to review the complaint.
- o If a public body requires more time to review the complaint and respond, it may request an extension of time for good cause by contacting the Division of Open Government.

#### Once the public body has responded to the complaint:

- o If you are not satisfied with the public body's response to your complaint, you may file a copy of the complaint with the Division by mail, by email, or by hand, but only once you have waited for 30 days after filing the complaint with the public body. Mail may be sent to: The Division of Open Government, Office of the Attorney General, One Ashburton Place - 20<sup>th</sup> Floor, Boston, MA 02108. Emails may be sent to: [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).
- o When you file your complaint with the Division, please include the complaint form and all documentation relevant to the alleged violation. You may wish to attach a cover letter explaining why the public body's response does not adequately address your complaint.
- o The Division will not review complaints filed with us more than 90 days after the violation, unless we granted an extension to the public body or you can demonstrate good cause for the delay.

If you have questions concerning the Open Meeting Law complaint process, we encourage you to contact the Division of Open Government by phone at (617) 963-2540 or by email at [openmeeting@state.ma.us](mailto:openmeeting@state.ma.us).



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# Town of Fairhaven

PRINTED: 9/11/2023  
**DRAFT 1**

## WARRANT

On Tuesday, the fourteenth of November, 2023 at 7:00p.m. in the Walter Silveira Auditorium at the Elizabeth I. Hastings Middle School, then and there, the following articles will be before you for a vote.

The Finance Committee has reviewed and provided their recommendation as customer. Contact the Select Board/Town Administrator’s office for more information.

### Majority Vote needed unless stated otherwise

#### ARTICLE 1: BILLS OF PRIOR YEAR-Paid from **xx** funds unless noted otherwise

To see if the Town will vote to pay the unpaid bills of a prior fiscal year. And others that may be brought forward, or take any other action relative thereto

*Petitioned by: Town Accountant*

<u>Vendor</u>	<u>Amount</u>	<u>Petitioner</u>
Stephenson & Brook	\$ 8,000 from FY2021	Human Resources
Town of Mattapoisett	\$ 6,647 from FY2022	BPW
ASNE	\$ 3,501 from FY2021	BPW

Select Board:

Finance Committee:

**Vote Required: Four-Fifths (4/5) Majority**

**Motion: To approve as listed in the warrant, with funds coming from Surplus Revenue (Free Cash)**

#### ARTICLE 2: FUND SEWER LABOR CONTRACTS-FY23 & FY24

To see if the Town will vote to fund the FY23 and FY24 labor contract for the Sewer Department or take any other action relative thereto.

*Petitioned by: Town Administrator*

Select Board:

Finance Committee:

**Motion: To waive § 50-9 D of the Town Bylaw, Collective Bargaining Agreements Section in accordance with Subsection F**

**Motion: To adopt the sum of \$75,000 to be transferred from Sewer Enterprise Fund Retained Earnings to Sewer Salaries and Wages**

#### ARTICLE 3: FY24 GENERAL FUND OPERATING BUDGET ADJUSTMENTS

To see if the Town will vote to amend Article 7 of the May 6, 2023 Town Meeting “General Fund Operating Budget-FY24” as follows, or take any action relative thereto:

1. Transfer from Surplus Revenue (Free Cash) as follows:



A. \$95,000 be transferred from Surplus Revenue (Free Cash) to Town Insurance

*Petitioned by: Town Accountant*

Select Board:

Finance Committee:

**ARTICLE 4: SEWER TREATMENT PLANT ADDITIONAL FUNDS**

To see if the Town will vote to amend Article 15A of the June 18, 2022 Town Meeting and raise and appropriate, borrow or transfer from available funds the sum of \$20,000 for additional charges to supplement the costs for the sewer treatment plant upgrade, or take any action relative thereto.

*Petitioned by: Board of Public Works*

Select Board:

Finance Committee:

**ARTICLE 5: FY22 SEWER FUND ADJUSTMENTS**

To see if the Town will vote to transfer from the June 30, 2022 Sewer Retained Earnings of Sewer Capital Fee \$295,959.45 which was generated from the Sewer Capital Fee from FY22 and transfer into the Sewer Capital Improvements Stabilization Fund or take any action relative thereto.

*Petitioned by: Board of Public Works*

Select Board:

Finance Committee:

**ARTICLE 6: RECYCLE CENTER RELOCATION COSTS**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds the sum of \$ 470,000 for costs associated with relocating the existing recycle center to a temporary and/or permanent location as well as purchase equipment for on site brush processing and any other necessary components relative thereto.

*Petitioned by: Board of Public Works*

Select Board:

Finance Committee:

**ARTICLE 7: AMENDMENT TO FY22 TOWN MEETING ARTICLE 14B**

To see if the Town will vote to amend Article 14B of the June 18, 2022 Town Meeting for maintenance to the Sconticut Neck Water Tower to reflect that the Town may use RFP for awarding bids.

*Petitioned by: Board of Public Works*

Select Board:

Finance Committee:

**ARTICLE 8: WATER STORAGE TANK MAINTENANCE CONTRACT**

To see if the Town will vote pursuant to G.L. Chapter 40 § 62 to authorize the Chief Procurement Officer, in consultation with the Board of Public Works, to enter into a water storage tank maintenance contract to be awarded in accordance with G.L. Chapter 30B § 6, for a maximum term of fifteen years and in an amount not to exceed one million dollars (\$1,000,000) as appropriated under Article 14 of the June 18, 2022 Annual Town Meeting, or take any other action relative thereto.



*Petitioned by: Board of Public Works*

Select Board:  
Finance Committee:

**ARTICLE 9: SAFE ROUTES TO SCHOOLS PROPERTY EASEMENT COMPENSATION**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds the sum of \$ 75,000 for costs associated with compensation to property owners for the temporary easements on thirteen parcels on Scoticut Neck Road between David Drown Blvd. and Hiller Ave. that was part of securing a State/Federal Safe Routes to School grant or take any other action relative thereto.

*Petitioned by: Board of Public Works*

Select Board:  
Finance Committee:

**ARTICLE 10: REPLACE TOWN HALL ALARM PANEL**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds the sum of \$ 250,000 for costs associated with replacing the alarm panel in Town Hall and associated costs for the project or take any other action relative thereto.

*Petitioned by: Town Administrator*

Select Board:  
Finance Committee:

**ARTICLE 11: REPLACE MARINE RESOURCE TRAILER**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds the sum of \$ 4,500 for costs associated with replacing the boat trailer for Marine Resources or take any other action relative thereto.

*Petitioned by: Harbor Master*

Select Board:  
Finance Committee:

**ARTICLE 12: ASSESSMENT CENTER EXAM**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds the sum of \$ 5,000 for costs associated with contracting with an exam assessment center to hold Fire Department Captain's and Deputy Chief's exams or take any other action relative thereto.

*Petitioned by: Fire Department*

Select Board:  
Finance Committee:

**ARTICLE 13: TOWN CLERK POLL PADS**

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds the sum of \$ 12,700 to purchase poll pads for elections and Town Meeting efficiency or take any other action relative thereto.

*Petitioned by: Town Clerk's Office*



Select Board:  
Finance Committee:

**ARTICLE 14: SOLAR CANOPY PROJECT: RECREATION CENTER/COUNCIL ON AGING**

To see if the Town will vote to authorize the Select Board or its designee to enter into a lease, power purchase, and any energy storage agreement with Solect Energy Development LLC for solar energy projects located in Town and School properties, through the program created by Power Options or take any other action relative thereto.

*Petitioned by: Town Administrator*

Select Board:  
Finance Committee:

**ARTICLE 15: REVOLVING FUNDS**

To see if the Town will increase the following Revolving Accounts under the provisions of Massachusetts General Law Chapter 44, Section 53 E ½:

<b>Revolving Fund</b>	<b>Authorized to Spend</b>	<b>Revenue Source</b>	<b>FY24 Limit</b>
Mooring Fees	Marine Resources	Mooring fees	\$4,000
Mattress Recycling	Board of Health	Fees from mattress disposal	\$4,000

Or take any other action relative thereto.

*Petitioned by: Town Administrator*

Select Board:  
Finance Committee:

**ARTICLE 16: APPOINTMENT OF TOWN CLERK**

To see if the Town will vote, pursuant to G.L. c. 41, s. 1B, to change the position of Town Clerk from elected to appointed, said change being contingent upon acceptance of such change by the voters at the next Annual Town Election, or take any other action relative thereto.

*Petitioned by: Select Board*

Select Board:  
Finance Committee:

**ARTICLE 17: AMEND BYLAWS CHAPTER 40 § 6**

To see if the Town will vote to amend the language in Bylaws, Chapter 40 § 6 as recommended by Bond Counsel with the following language:

Change the language from:

No appropriation shall be voted for a capital improvement requested by a department, board or commission unless the proposed capital improvement has been considered in the Committee's Capital Improvement Plan, or the Committee has submitted a report to the Select Board explaining the omission of the proposed capital improvement from its Plan.

And update the language to:



Every capital improvement request by a department, board or commission shall be considered in the Committee's Capital Improvement Plan unless the Committee shall have provided a report to the Select Board explaining the omission of the proposed capital improvement from its Plan.

*Petitioned by: Town Administrator, recommended by Bond Counsel*

Select Board:  
Finance Committee:

**ARTICLE 18: CITIZENS PETITION – STREET ACCEPTANCE: ALVES WAY**

To see if the Town will vote to accept as a public street Alves Way, or take any action relative thereto.

*Petitioned by: Antonio Alves*

Select Board:  
Finance Committee:

**ARTICLE 19: OTHER BUSINESS**

To act upon any other business which may legally come before this meeting.

And you are hereby directed to serve this warrant by posting an attested copy thereof on or near the front or main entrance of the polling place for all Precincts at the Fairhaven Recreation Center, 227 Huttleston Avenue, seven days at least prior to the date of the meeting.

*Appendix*