



Fairhaven Board of Selectmen

March 19, 2012 Meeting Minutes

Present: Selectman Chairman Michael Silvia, Selectman Vice Chairman Dr. Brian Bowcock, Selectman Clerk Charles Murphy, Executive Secretary Jeffrey Osuch and Administrative Assistant Anne Kakley.

Also Present: Phil Washko, Bob Espindola, Bill Roth, Jaime DeSousa, John Nunes, Kenneth Howe, Carol Murchie, Wayne Hayward

Chairman Silvia called the meeting to order in the Town Hall Banquet Room at 6:32 p.m.

MINUTES:

- Board voted to approve the minutes of the **March 5**, 2012 meeting, open session. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).
- Board voted to approve the minutes of the **March 5**, 2012 meeting, executive session. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

EXECUTIVE SECRETARY'S REPORT

In his report, Mr. Osuch updated the Board on some important upcoming meetings:

- Tuesday, March 20 –
 - 9:00 a.m. – Wind Turbine visit for the press
 - 10:00 a.m. – Meeting with Scanlon at BPW building
 - 1:00 p.m. – Negotiations with the Clerical Union
 - 7:00 p.m. – Finance Committee (FinCom) at the BPW
- Wednesday, March 21 –
 - 2:30 – New School meeting at the High School Library
- Thursday, March 22 –
 - 10:00 a.m. – Recreation Center Punch List Walkthrough
 - 7:00 p.m. – FinCom meeting
- Friday, March 23 –
 - 10:00 a.m. – Meeting with WES Construction and Steve Rafferty
- Monday, March 26 –
 - 10:30 a.m. – Medicare Meeting for Seniors
- Tuesday, March 27 –

- 1:30 p.m. – Economic Study Committee
- Wednesday, March 28 –
 - 9:00 a.m. – Buzzard’s Bay Action Committee in Wareham

BIKE PATH COMMITTEE APPOINTMENTS

The Board recognized 11 letters from residents expressing interest in being appointed to the Bike Path Committee, which was re-established in October 2011. The Board appointed Ken Pottel, Bob Espindola, Julianne Kelly, Rene Fleurent, Mat Coes, Jane Bettencourt, Mark Badwey, Kathleen Sturtevant, Nancy Greene, Gregory Bettencourt and Peter De Terra to the Bike Path Committee. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

The Board expressed support for the newly incarnated Bike Path Committee, and hoped that they would be able to address issues of upkeep and investigate the possibility of extending the Bike Path from North Fairhaven to West Island.

Additionally, the Board said that the Bike Path Committee would need a Chairperson in its formation stage. As such, the Board voted to appoint Greg Bettencourt to the role of Chairperson. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

HIGH SCHOOL HISTORICAL RESTRICTION

The Board received correspondence from School Business Administrator Paul Kitchen, asking the Board to accept a Historical Restriction on the High School in accordance to the Massachusetts Historical Commission Agreement for funding. Restrictions associated with the acceptance of the grant include major work to windows, exterior, walls/petitions, and air conditioning/ventilation systems. (See Attachment A for Restriction Guidelines).

At first, the Board expressed hesitation about granting the Historical Restriction without the knowledge and consent of alumni and the School Committee. However, further conversation with Town Planner Bill Roth indicated that the Agreement was similar to previous historical restrictions placed on the Millicent Library and Fort Phoenix. Additionally, the Board learned that the School Committee would have to individually sign off on the Restriction as well. With this knowledge, the Board was more comfortable with the Restriction. The Board voted to place the Historical Restriction on the High School for the purpose of obtaining the grant. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

REQUEST FOR CUSHMAN PARK EASEMENT

The Board met with Brad Souza, a resident of Green Street and an abutter to Cushman Park. Mr. Souza has had an ongoing problem with having a “dirty deed”, because his front steps and walkway are thought to be on park land, which is deeded to the Town.

Mr. Souza is frustrated and concerned for his finances, because he cannot refinance or sell his house with a dirty deed, and he cannot afford to alter the entrance/egress to bring the steps/walkway off town-owned land.

However, discussions with Town Counsel Tom Crotty have indicated that an easement over the small strip of park land would not be easy. Atty. Crotty said that Town Meeting would not have the authority to grant the easement, which means that the state legislature would have to be petitioned by Town Meeting to grant the easement. Moreover, the whole process could prove fruitless if the state legislature did not grant the easement after being petitioned.

Mr. Souza said he felt that he was being singled out because he is the tenth owner of the property, which is over 100 years old. He questioned why previous owners were able to sell the property without issue. Mr. Souza, who is retired, said that he may need to rely on a reverse mortgage for an income, and needs to have the issue resolved as soon as possible.

Chairman Silvia gave a brief history of Cushman Park, which was a gift from Town benefactor Henry Huttleston Rogers. The park, which was a filled wetland deeded to the Town in 1908, was once fed by inlets. One of those inlets might have crossed over town land in front of Mr. Souza's lot at one point, hence the existence of a small, irregular strip of Cushman Park land in front of his walkway.

A letter from Henry Huttleston Rogers' great-grandson Michael Coe, indicated that the heirs to Mr. Rogers were not in favor of granting any easements of the park land.

Mr. Souza disputed Atty. Crotty's assertion that the easement would require state legislation. Mr. Souza cited a 1995 Special Town Meeting when the Town granted an easement to Verizon (then New England Telephone and Telegraph) on Cushman Park for a utility hut.

Dr. Bowcock asked Mr. Souza if he had contacted the quitclaim company he had hired at the closing of his home. Mr. Souza said no, because he had assumed that the deed was clean because it had been sold nine times prior. Dr. Bowcock said that he should contact the quitclaim company for recourse, as they may pay to have the property reassessed or compensate him for the mistake.

The Board said that they would support a placeholder for the May 5, 2012 Special Town Meeting for Mr. Souza's easement request. They voted to approve a placeholder for Mr. Souza. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

In the meantime, Dr. Bowcock encouraged Mr. Souza to contact the quitclaim company involved in the closing on his house.

GETTY CAR DEALERSHIP INCREASE HEARING

The Board continued a Public Hearing for an increase of cars at Getty, located at 371 Huttleston Avenue. Applicant Hatem M. El Rifai was represented by Attorney Robert Perry. The applicant requested to amend the Class II Car Dealer's License he currently holds to increase his vehicle limit to 14 spaces for used cars.

At a previous hearing, the Board hesitated to grant the increase, saying that they wanted to first speak with Building Commissioner Wayne Fostin regarding the feasibility of the car increase, which exceeded current bylaws but the location had a history of being grandfathered past the bylaw car limit.

According to correspondence, Mr. Fostin indicated that the location could comfortably fit 10 spaces. After speaking with Mr. Fostin, Dr. Bowcock felt that he stood behind that figure.

Bill Roth was present in the audience and the Board asked him to provide feedback on the application. Mr. Roth said that reviewing a history of use and setbacks was under the purview of Mr. Fostin, but as far as current regulations go, the location would require a special permit.

Atty. Perry said that the applicant was willing to cut the number of requested employee spaces for the sake of increasing spaces for cars to sell. He appealed to the Board, saying that his client needed additional spaces to compete with an abutting car dealership.

Mr. Roth said that decreasing employee spaces would encourage parking along public ways. He said that he thought the location should be limited to the 10 spaces Mr. Fostin suggested.

The Board voted to grant a scaled back increase to the applicant, allowing 11 used car spots, three cars unregistered, and a reduction of employee parking in the plan from six spaces to five. The Board's vote was conditional on the premises that the applicant would "stripe" all of the parking spaces for clarity. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0). Mr. Osuch told the applicant to submit revised plans showing the changes to the Selectmen's Office as soon as possible.

TREE REMOVAL PUBLIC HEARING

The Board met with Town Planner Bill Roth and Tree Warden Antone Medeiros to conduct a Tree Removal Public Hearing for five trees located along Spring Street. The tree removal was necessary to the completion of the Spring Street Road Reconstruction project, Mr. Roth said. He said that saving the old trees would be impossible, because they are deeply rooted under the street and growing up into sidewalk and curbing. Construction on the road would damage the roots and make the trees unstable in a storm, Mr. Medeiros added.

Moreover, Mr. Medeiros said that part of the project would include the planting of new trees in the vicinity of the trees removed. Mr. Roth said that four Public Hearings had been conducted with abutting residents and there had been no objections to the project. For every tree removed, four more will be planted to create a thorough treescape, Mr. Medeiros said. Therefore, Mr. Medeiros had no issue with the project because it would actually create more trees for Fairhaven.

No abutters were present to object to the project. One resident, Carol Murchie, asked to speak on the subject. Ms. Murchie of 14 William Street said that the Public Hearing was only advertised one week in a publication. She cited a portion of Massachusetts General Law, which indicated that the Public Hearing should have been advertised two weeks.

Mr. Roth said he would advertise another week and said that he hoped it would not be a costly delay in the project.

The Board voted to continue the hearing to April 2, at 6:45 p.m. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

EMA CAPITAL NEEDS

The Board met with John Rogers of the Emergency Management Agency (EMA) to hear more about a request for cots for the EMA shelter on Sconticut Neck. Mr. Rogers said that he had submitted an article for 2012 Annual Town Meeting, requesting \$1,100 for the purchase of 21 cots. He said that the previous cots had been sold at auction and there were no cots in the event of an emergency now. The previous cots were World War II era, he said, but the ones he hoped to buy were “state-of-the-art”, resistant to mold and mildew, and easily cleaned. He said he wanted to purchase approximately 63 cots over the course of three years to ease the burden of the cot acquisition.

With the Fiscal Year 2013 budget being tight, the Board of Selectmen and Finance Committee had voted against funding the purchase this year, but Mr. Murphy had asked Mr. Rogers to come before the Board to appeals to civic organizations for help in the purchase. Mr. Rogers said that he hoped a group like the Rotary Club or the Fairhaven Lions would be able to make the purchase, and the cots could have plaques on them recognizing the donation. The cots could also be used for those needing medical attention at the Father’s Day Road Race and similar running events.

The Board thanked Mr. Rogers for his presentation.

SPECIAL TOWN MEETING ARTICLE DEADLINE

The Board voted to set March 30 at 4:00 p.m. as the deadline for the submittal of Special Town Meeting articles. The Special Town Meeting is scheduled for May 5, 2012. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

POLL WORKERS FOR APRIL 2 ELECTION

The Board approved the following list of Poll Workers for the April 2 Town Election:

Precinct 1: Mary Lizotte (Warden, U); Jan Lopes (Clerk, U); Vivian Lewis (Worker, U);
Dorothy Gammans (Worker, U)

Precinct 2: Amy Ryle (Warden, U); Mary Cunha (Clerk, D); Lorraine Bachand (Worker, D);
Sandra Melanphy (Worker, D)

Precinct 3: Doris Francis (Warden, D); Elizabeth Monk (Clerk, R); Mary Grace (Worker, D); Janice Sylvia (Worker, U)

Precinct 4: Donald Brazil (Warden, D); Margaret Rogers (Clerk, U); Nancy Perry (Worker, D); Pamela Greene (Worker, R)

Precinct 5: Ilene Rego (Warden, D); Eleanor Brazil (Clerk D); Vivian Graham (Worker, U); Martha Berg (Worker, U)

Precinct 6: Norma Markey (Warden, U); Lillian Horsley (Clerk, D); Joan Mello (Worker, D); William Markey (Worker, U)

Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

BICENTENNIAL CANCELLATION STAMP

The Board received a request from the Bicentennial Committee to have a “First Day of Issue” cancellation stamp done on Bicentennial envelopes for the Homecoming Fair in June. As a part of the application process, the Committee needed the approval of the Selectmen to authorize the use of the envelope.

The Board reviewed a design submitted by the Bicentennial Committee and voted to approve it. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

FIRE APPARATUS COMMITTEE APPOINTMENT

The Board appointed David Gordon to a Union vacancy on the Fire Apparatus Committee. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

DIGESTER PAYMENT REQUISITION

The Board voted to authorize Chairman Silvia to sign a payment requisition for the Digester in the amount of \$119,765.70. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

HMFH NEW SCHOOL CONTRACT

The Board then voted to sign the HMFH New School contract in the amount of \$1,371,872. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0). According to Mr. Osuch, the figure included the schematic phase of the project, the out-to-bid process, drawings, etc.

GASB ACTUARIAL

The Board reviewed copies of the GASB Actuarial given to them by John Nunes, Town Finance Director. (See Attachment B, available in the Selectmen's Office and Town Clerk's Office).

According to Mr. Osuch, the Town's bond rating and money borrowing is dependent on stabilization funds and Town stability. Most towns do not currently have money set aside for unfunded liabilities, he said, and the Town can only increase its income by 2.5% annually. Sooner or later, something is going to have to be done about healthcare costs, especially for retired Town employees.

MCGUIRK LAND OFFER

The Board received an update on a land offer from Francis McGuirk. The two parcels being offered by Mr. McGuirk and his sister are Parcels 28B-523 and 28B-510, both located on Sconticut Neck.

The Board reviewed input from the Assessor's Office, the Building Commissioner and the Tax Collector's Office, and found that the lots were wetlands and unbuildable. They also discovered that the current owners have not yet paid 2012 real estate taxes for the lots.

The Board agreed that the lots would be good for conservation land and voted to accept the donation, conditional on the terms that the current owners pay the real estate taxes up to date. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

TOWN COUNSEL'S OPINION OF PETITIONED ARTICLES

The Board then read a letter from Town Counsel Tom Crotty regarding five petitioned Articles for Annual Town Meeting on May 5, 2012. (See Attachment C). At a previous meeting, the Board of Selectmen had voted to recommend Indefinite Postponement on the petitioned Articles: Ethics Commission, Impeachment, Public Meeting Minutes (48 Hours), Elected Appeals Board and Cushman Park Rescindment.

REQUEST TO USE UNION ST PARKING LOT

The Board received a request from the New England Marine Renewable Energy Center (NEMREC) to use the parking lot on the Union Street wharf next to the Kelly Shipyard for a public display of ocean renewable energy technology. The Board expressed support for the event and voted to grant NEWREC permission to use the parking lot. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

Mr. Murphy recused himself at 8:14 p.m. so the Board could read a request from MOLIFE for a memorial walk/run.

KATIE BRIENZO MEMORIAL WALK/RUN

The Board read a letter from Joshua Lentini from the Committee for the Katie Brienzo Memorial 5K Run/Walk, requesting permission to conduct the first annual 5K on September 29, 2012. The race will begin and end on Jesse St. In his letter, Mr. Lentini said that the Committee would also request permission from the Fairhaven Police Chief for the event. The Board voted to support the 5K. Dr. Bowcock motioned, Chairman Silvia seconded. Vote carried with one abstention (2-0-1).

Mr. Murphy joined the meeting again at 8:17 p.m.

MASS DOT TO BEGIN SWEEPING

In a letter from Massachusetts Department of Transportation (MassDOT), the Board learned that the MassDOT Highway Division would begin street sweeping operations along State Highways, weather permitting, on or about March 19.

ASSESSORS OVERLAY TO SURPLUS

As a correspondence item, the Board read a note from the Assessor's Office on this year's Overlay to Surplus total. (See Attachment D).

SURPLUS VAN AVAILABLE

Chairman Silvia read a letter from COA director Anne Sylvia saying that there is a surplus van available at the COA as the result of a gifted vehicle from Southeastern Regional Transit Authority (SRTA). Mr. Osuch said that Town departments interested in the surplus 2003 Ford Cutvan would have until April 2 at 4:00 p.m. to submit their interest to the Selectmen's Office.

BPW SIGNS BROWN AND CALDWELL CONTRACT

The Board received a letter from BPW Superintendent Vinnie Furtado. In his letter, Mr. Furtado said that the Board of Public Works signed the most recent version of Brown and Caldwell's Amendment 4 for the Anaerobic Digester, in the amount of \$145,140 (not to exceed that total without permission from the Board).

ZBA re: TOWN COUNSEL

The Board read a letter from Zoning Board of Appeals Chairman Peter De Terra saying that the ZBA, at a March 7 hearing, made a unanimous vote to seek independent counsel due to a possible conflict of interest of Town Counsel Thomas Crotty representing the Board of Selectmen and the Building Commissioner in a lawsuit brought on by Fairhaven Windwise. Mr. De Terra requested a response by April 3, 2012.

The Board voted to have Mr. Osuch seek the opinion of the State Ethics Commission on whether or not there is, indeed, a conflict of interest, and respond to the ZBA with their findings. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

PLANNING BOARD re: WIND TURBINE SETBACKS

The Board also read a letter from Planning Board Chairman Wayne Hayward requesting that a place be reserved on the May 5, 2012 Special Town Meeting for a Zoning Bylaw text Amendment (see Attachment D).

Dr. Bowcock said that the issue presented the Board with a dilemma. Referencing an email from Atty. Crotty, Dr. Bowcock said that the Planning Board did not follow proper legal protocol in their Zoning amendment procedure. At the time of the Selectmen meeting, the Planning Board had already advertised a Public Hearing for the Zoning amendment, which should not have been done until after the Selectmen had had time to review the proposed amendment. After submittal of the amendment, the Board of Selectmen would have 14 days to review and return the amendment, and the Planning Board would then have 5 days to place a legal ad, which would have to run for 14 days.

Mr. Hayward disagreed with Dr. Bowcock's and Atty. Crotty's assessment of the proceedings and said that when it has been a Planning Board-initiated process, there has never been a requirement to bring a bylaw amendment before the Selectmen. He said that the Public Hearing had been properly noticed and advertised. Mr. Hayward said that the Planning Board would be proceeding with the hearings and that the Attorney General's Office would catch errors if anything had been done incorrectly, so the Selectmen did not have to be the ones to catch procedural error.

BUDGET

Mr. Osuch informed the Board that there would be Articles on the Special Town Meeting Warrant for Water, Sewer, Highway and Clerical Union contracts and for Legal Expenses that have escalated between November 2011 to present.

The Board voted to recommend the following Annual Town Meeting Article 4 amounts (by line): 2e (\$4,300), 4 (\$52,000), 5a (\$101,613), 5b (\$8,000), 5c (\$5,000), 6a (\$167,485), 6d (\$2,370), 11a (\$146,036), 11d (\$2,900), 12a (\$42,683), 22a (\$11,583), 22b (\$2,154), 22c (\$750), 22d (\$300), 29b (\$30,773), 31a (\$39,816), 35b (\$87,574), 35c (\$8,850), 35d (\$3,600), 35f (\$1,850), 36a (\$21,174), 38a (\$852,892), 38b1 (\$17,000), 39a (\$846,532), 39b (\$181,500), 39c

(\$139,050), 39d (\$0), 40a (\$47,0924), 40b (\$24,8300), 40c (\$40,400), 40d (\$1,500), 46a (\$142,651), 46d (\$700), 60 (\$50,000). (See Attachment E). Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

In a discussion on the budget and possible cuts, Dr. Bowcock said that he would like to see the Office of Tourism remain staffed by a full-time director, as there is preparation to do in the winter season for the business summer season. The Board agreed that the Tourism Director should come into the Board of Selectmen meeting on March 27 to discuss his budget.

Mr. Osuch said the Board should sit down with Police Chief Michael Myers, Fire Chief Tim Francis and School Superintendent Robert Baldwin to see how a level-funded budget would impact the various operations.

The Board also voted to make the following recommendations for Annual Town Meeting Articles, including amounts:

Article 28, Wastewater Management, \$75,000 from Sewer Retained Earnings;

Article 32, Wastewater Treatment Plant Rehab, \$541,000 from Sewer Retained Earnings;

Article 34, Sewer Pump Station Rehab, \$757,000 from Sewer Retained Earnings

(See Attachment F)

Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

Dr. Bowcock offered his congratulations to the Fairhaven High School Girls' Basketball team for a great season. He also reminded residents to consider lighting up their porches with blue light bulbs on April 2 as a part of a national autism awareness day.

Mr. Murphy congratulated Francis and Geraldine Cox for their recent marriage celebration at St. Joseph's Church.

The Board voted to enter Executive Session at 9:48 p.m. to discuss Health Insurance, Clerical Union, Unemployment Claims and Tax Title, not to reconvene into Open Session. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. Roll call vote: Mr. Silvia in favor. Dr. Bowcock in favor. Mr. Murphy in favor. (3-0).

Respectfully,



Anne Kakley

Selectmen's Secretary

(Minutes approved 3/27/2012)

PRESERVATION RESTRICTION AGREEMENT
between the COMMONWEALTH OF MASSACHUSETTS
by and through the MASSACHUSETTS HISTORICAL COMMISSION
and the TOWN OF FAIRHAVEN

The parties to this Agreement are the Commonwealth of Massachusetts, by and through the Massachusetts Historical Commission located at the Massachusetts Archives Building, 220 Morrissey Boulevard, Boston, Massachusetts 02125, hereinafter referred to as the Commission, and the Town of Fairhaven, 40 Centre Street, Fairhaven, Massachusetts 02719, hereinafter referred to as the Grantor.

WHEREAS, the Grantor is the owner in fee simple of certain real property with improvements known as the Fairhaven High School and Academy, thereon as described in a deed dated December 30, 1907, from Henry Huttleston Rogers to the Town of Fairhaven, recorded with the Bristol County (S.D.) Registry of Deeds, Book 301 Page 521, and which is located at 12 Huttleston Avenue, hereinafter referred to as the Premises. The Premises is also shown and described in attachments Exhibit A and Exhibit B hereto and incorporated herein by reference.

WHEREAS, the Grantor wishes to impose certain restrictions, obligations and duties upon it as the owner of the Premises and on the successors to its right, title and interest therein, with respect to maintenance, protection, and preservation of the Premises in order to protect the architectural, archaeological and historical integrity thereof; and

WHEREAS, the preservation of the Premises is important to the public for the enjoyment and appreciation of its architectural, archaeological and historical heritage and will serve the public interest in a manner consistent with the purposes of M.G.L. chapter 184, section 32, hereinafter referred to as the Act; and

WHEREAS, the Premises is individually listed in the National Register of Historic Places and is thereby included as an individual listing in the State Register of Historic Places; and

WHEREAS, the Commission is a government body organized under the laws of the Commonwealth of Massachusetts and is authorized to accept these preservation restrictions under the Act;

NOW, THEREFORE, for good and valuable consideration, the Grantor conveys to the Commission the following preservation restrictions, which shall apply in perpetuity to the Premises.

These preservation restrictions are set forth so as to ensure the preservation of those characteristics, which contribute to the architectural, archaeological and historical integrity of the Premises which have been listed

in the National and/or State Registers of Historic Places, under applicable state and federal legislation. Characteristics which contribute to the architectural, archaeological and historical integrity of the Premises include, but are not limited to, the artifacts, features, materials, appearance, and workmanship of the Premises, including those characteristics which originally qualified the Premises for listing in the National and/or State Registers of Historic Places.

The terms of the Preservation Restriction are as follows:

1. Maintenance of Premises: The Grantor agrees to assume the total cost of continued maintenance, repair and administration of the Premises so as to preserve the characteristics which contribute to the architectural, archaeological and historical integrity of the Premises in a manner satisfactory to the Commission according to the Secretary of the Interior's "Standards for the Treatment of Historic Properties." The Grantor may seek financial assistance from any source available to it. The Commission does not assume any obligation for maintaining, repairing or administering the Premises.

2. Inspection: The Grantor agrees that the Commission may inspect the Premises from time to time upon reasonable notice to determine whether the Grantor is in compliance with the terms of this Agreement.

3. Alterations: The Grantor agrees that no alterations shall be made to the Premises, including the alteration of any interior, unless (a) clearly of minor nature and not affecting the characteristics which contribute to the architectural, archaeological or historical integrity of the Premises, or (b) the Commission has previously determined that it will not impair such characteristics after reviewing plans and specifications submitted by the Grantor, or (c) required by casualty or other emergency promptly reported to the Commission. Ordinary maintenance and repair of the Premises may be made without the written permission of the Commission. For purposes of this section, interpretation of what constitutes alterations of a minor nature and ordinary maintenance and repair is governed by the Restriction Guidelines which are attached to this Agreement and hereby incorporated by reference.

4. Notice and Approval: Whenever approval by the Commission is required under this restriction, Grantor shall request specific approval by the Commission not less than (30) days prior to the date Grantor intends to undertake the activity in question. A request for such approval by the grantor shall be reasonably sufficient as a basis for the Commission to approve or disapprove the request. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Commission to make an informed judgment as to its consistency with the purposes of this Preservation Restriction. Within (30) days of receipt of Grantor's reasonably sufficient

request for said approval, the Commission shall, in writing, grant or withhold its approval, or request additional information relevant to the request and necessary to provide a basis for its decision. However, should the Commission determine that additional time is necessary in order to make its decision the Commission shall notify the Grantor. The Commission's approval shall not be unreasonably withheld, and shall be granted upon a reasonable showing that the proposed activity shall not materially impair the purpose of this Preservation Restriction. Failure of the Commission to make a decision within sixty (60) days from the date on which the request is accepted by the Commission or notice of a time extension is received by the Grantor shall be deemed to constitute approval of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time.

5. Assignment: The Commission may assign this Agreement to another governmental body or to any charitable corporation or trust among the purposes of which is the maintenance and preservation of historic properties only in the event that the Commission should cease to function in its present capacity.

6. Validity and Severability: The invalidity of M.G.L. c. 184 or any part thereof shall not affect the validity and enforceability of this Agreement according to its terms. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

7. Recording: The Grantor agrees to record this Agreement with the appropriate Registry of Deeds and file a copy of such recorded instrument with the Commission.

8. Other Provisions: None applicable.

The burden of these restrictions enumerated in paragraphs 1 through 8, inclusive, shall run with the land and is binding upon future owners of an interest therein.

RESTRICTION GUIDELINES

The purpose of the Restriction Guidelines is to clarify paragraph three of the terms of the preservation restriction, which deals with alterations to the premises. Under this section permission from the Massachusetts Historical Commission is required for any major alteration. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require MHC review.

In an effort to explain what constitutes a minor alteration and what constitutes a major change, which must be reviewed by the MHC, the following list has been developed. By no means is this list comprehensive: it is only a sampling of some of the more common alterations, which may be contemplated by building owners.

PAINT

Minor - Exterior or interior hand scraping and repainting of non-decorative and non-significant surfaces as part of periodic maintenance.

Major - Painting or fully stripping decorative surfaces or distinctive stylistic features including murals, stenciling, wallpaper, ornamental woodwork, stone, decorative or significant original plaster.

WINDOWS AND DOORS

Minor - Regular maintenance including caulking, painting and necessary reglazing. Repair or in-kind replacement of existing individual decayed window parts.

Major - Wholesale replacement of units; change in fenestration or materials; alteration of profile or setback of windows. The addition of storm windows is also considered a major change; however, with notification it is commonly acceptable.

EXTERIOR

Minor - Spot repair of existing cladding and roofing including in-kind replacement of clapboards, shingles, slates, etc.

Major - Large-scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e. removal of chimneys or cornice detailing; installation of architectural detail which does not have a historical basis); altering or demolishing building additions; spot repointing of masonry. Structural stabilization of the property is also considered a major alteration.

LANDSCAPE/OUTBUILDINGS

Minor - Routine maintenance of outbuildings and landscape including lawn mowing, pruning, planting, painting, and repair.

Major - Moving or subdividing buildings or property; altering of property; altering or removing significant landscape features such as gardens, vistas, walks, plantings; ground disturbance affecting archaeological resources.

WALLS/PARTITIONS

Minor - Making fully reversible changes (i.e. sealing off doors in situ, leaving doors and door openings fully exposed) to the spatial arrangement of a non-significant portion of the building.

Major - Creating new openings in walls or permanently sealing off existing openings; adding permanent partitions which obscure significant original room arrangement; demolishing existing walls; removing or altering stylistic features; altering primary staircases.

HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS

Minor - Repair of existing systems.

Major - Installing or upgrading systems which will result in major appearance changes (i.e. dropped ceilings, disfigured walls or floors, exposed wiring, ducts, and piping); the removal of substantial quantities of original plaster or other materials in the course of construction.

Changes classified as major alterations are not necessarily unacceptable. Under the preservation restriction, such changes must be reviewed by the MHC and their impact on the historic integrity of the premise assessed.

It is the responsibility of the property owner to notify the MHC in writing when any major alterations are contemplated. Substantial alterations may necessitate review of plans and specifications.

The intent of the preservation restriction is to enable the Commission to review proposed alterations and assess their impact on the integrity of the structure, not to preclude future change. MHC staff will attempt to work with property owners to develop mutually satisfactory solutions, which are in the best interests of the property.

THOMAS P. CROTTY & ASSOCIATES, PLLC

LAW OFFICES

388 COUNTY STREET ~ THIRD FLOOR
NEW BEDFORD, MASSACHUSETTS 02740-4992

THOMAS P. CROTTY

TELEPHONE 508.990.9101

FACSIMILE 508.990.9108

SHELLEY D. COELHO
MICHAEL J. KENNEFICK

March 7, 2012

E-MAIL: info@tcrottylaw.com

Fairhaven Board of Selectmen
Town of Fairhaven
40 Center Street
Fairhaven, MA 02719

RECEIVED
2012 MAR - 8 P 12:00
BOARD OF SELECTMEN
FAIRHAVEN MASS

RE: Warrant – 2012 Annual Town Meeting

Gentlemen:

You have asked me to review the following petitioned articles that appear on the warrant for the 2012 Annual Town Meeting.

Article 17 – Ethics Commission:

This article would establish a three-member ethics committee to serve three year terms. As proposed, the Town’s Ethic Committee would be charged with pursuing complaints of ethics violations and open meeting violations.

Generally, a town is empowered to enact by-laws and to establish the positions of officers or boards so long as that enactment is not prohibited by state law, and so long as the town’s action does not frustrate the intent of state law. See Bloom v. City of Worcester, 363 Mass. 163 (1973).

The legislature has established the State Ethics Commission which has jurisdiction over municipal officers and employees. G.L. c. 268A §§1-29. That statute provides a comprehensive system which defines specific behavior deemed improper, procedures for dealing with violation of those standards, and sanctions for those violations.

In some ways the proposed Town Ethics Committee appears duplicative of the role of the State Ethics Commission. Like the State Ethics Commission, it would be empowered to investigate and determine whether violations have occurred, and to request that sanctions be imposed. But the proposed Town Ethics Committee would be limited to three sanctions, all subject to Town Meeting action – censure, a vote of no confidence and impeachment. None of these actions are provided for in the state law, and they are particularly “local” in nature.

Enforcement of the proposed Town Ethics Committee provisions would not present a sharp conflict with the state conflict of interest law. For that reason, I believe it would be within the Town's authority to establish such an ethics committee. See Mad Maxine's Watersports Inc. v. Harbormaster of Provincetown, 67 Mass. App. Ct. 804 (2006).

Having said that, there are numerous problems in the details of the ethics committee article as petitioned. First, the committee would be authorized to "investigate any conduct which appears to be unethical or illegal". But the committee is not authorized by statute to issue witness subpoenas. See G.L. c. 233 §8; and Bloom v. City of Worcester, 363 Mass at 147. As a result, its ability to hold hearings is limited.

Second, the article does not limit the subjects of these investigations. Is it intended to apply to elected officials, appointed officials, employees of the Town, private individuals?

Third, the article also fails to define the terms "unethical" or "illegal". Compare the State Conflict of Interest statute which provides detailed descriptions of the prohibited acts, particularly relating to municipal employees and officers at M.G.L. c. 268A §§17-21A.

Fourth, the sanctions to be imposed by Town Meeting in the event of a violation are "censure, vote of no confidence and impeachment". The first two – censure and vote of no confidence – are not defined; and impeachment – presumably meaning removal from office – cannot be imposed by Town Meeting. (See discussion of the impeachment proposal, below.)

The Ethics Committee would have the authority to request records from other Town boards; and it would have the authority to address open meeting law complaints to the Attorney General. With respect to requests for records, the committee would have the same rights that any other person has under the Public Records Law. M.G.L. c. 66 §10. With respect to the Open Meeting Law the committee would have the same rights that any other person would have under the Open Meeting Law. M.G.L. c. 30A §§18-25. Note that the committee could not circumvent the Attorney General's regulations under the Open Meeting Law which require complaints to be initiated with the local board, before filing with the Attorney General. 940 CMR 29.00.

You should also keep in mind that under the state law already in effect, any person may make an anonymous complaint of an ethics violation to the State Ethics Commission.

In summary, the Town does have authority under the Home Rule Amendment to establish an ethics committee, but the article as worded is both overly broad in terms of the scope of the committee's authority and vague in terms of the actual workings of the committee. At least with regard to the sanction of impeachment for ethics violation, that is beyond the authority of Town Meeting.

Article 18 – Impeachment:

This article would allow Town Meeting to vote to impeach “any elected official or anyone appointed to serve on a town committee” on a charge of “malfeasance” brought by the Town Ethics Committee.

Those positions which are created by the legislature, whether they are elected or appointed, are subject to state law. And the term of office in that position is determined by the legislature. Town Meeting does not have the legal authority to enact a by-law which would provide for the removal of a person from an office established by the legislature. That authority can only be granted by the legislature by special or general legislation.

To the extent that a town position was created by an act of town meeting, then the town meeting would have the authority to make that position subject to an impeachment process. However, as worded, the article is vague as to the specific procedures to be followed, and as to the grounds for which impeachment may be imposed.

You should also be aware that any action by the Town for removal of an officer would be subject to review by the courts, and could be the basis for an action against the Town for damages.

In summary, as worded the article is beyond Town Meeting’s authority.

Article 20 – Public Meeting Minutes – 48 Hours:

This article would require meeting minutes to be posted within 48 hours approval, and for videos of meetings to be made available for public viewing.

It is within the scope of town meeting authority to enact a by-law requiring such posting or public access.

I do suggest that a by-law in this regard should be more detailed about the manner in which minutes and video documentation will be posted or made available. Such a by-law should designate the town officer or board responsible for performing these tasks; and consideration should be given to the cost of compliance.

Article 21 – Elected Appeals Board:

This article would provide that the Zoning Board of Appeals would be elected for three-year terms.

By statute the Zoning Board of Appeals is an appointed board. G.L. c. 40A §12. That can be changed only by special legislation through the home rule process, or by general legislation.

The Town Meeting does not have the authority to establish an elected Zoning Board of Appeals by enactment of a by-law.

Article 50 – Rescind Cushman Park Easement:

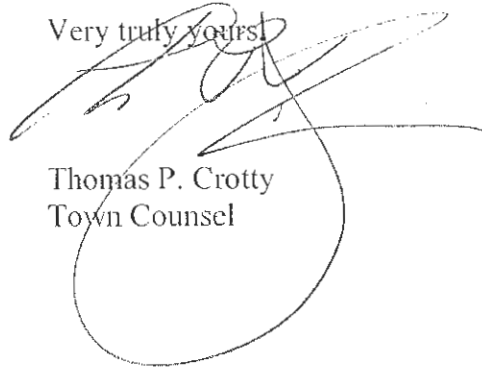
This article would authorize the Board of Selectmen to rescind the 1995 easement of land to Verizon. For the following reasons the article is either unnecessary or ineffectual.

Part C of the article suggests that the land in question is dedicated park land, so that the Town could not have granted the easement without legislative approval. See Massachusetts Constitution, Amendments Art. 97. If that suggestion is correct and the Selectmen sought to rescind that easement, the vote of Town Meeting would add nothing to the legal merits and so is unnecessary. (An effort to rescind that easement may be barred by Verizon's good faith reliance on a deed of easement signed by the Selectmen. See G.L. c. 40 §3A.)

If the suggestion is wrong and the particular parcel is not dedicated park land, then neither the Town Meeting nor the Selectmen can rescind a properly deeded easement, and the Town Meeting vote to do so would be ineffectual.

Please let me know if you have any other questions in this regard.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. P. Crotty', is written over the typed name and title. The signature is fluid and cursive, with a large loop at the end.

Thomas P. Crotty
Town Counsel

TPC/mch


Fairhaven Board of Assessors

Inter-Office Memo

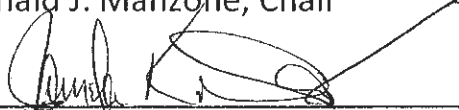
To: Board of Selectmen
From: Board of Assessors
Date: February 28, 2012
Re: Overlay Surplus

The Board of Assessors, after considering outstanding liabilities, is transferring the following amounts from overlay to surplus:


| | |
|--------------|-----------------|
| FY2003 | \$ 200 |
| FY2004 | \$ 200 |
| FY2005 | \$ 10,000 |
| FY2007 | \$ 13,000 |
| FY2008 | \$ 5,400 |
| FY2009 | \$ 19,000 |
| TOTAL | \$47,800 |



Ronald J. Manzone, Chair



Pamela K. Davis, MAA



Ellis B. Withington

Cc: John Nunes, Finance Director
Town Accountant

Annual Town Meeting – May 5, 2012

Article 4 Amounts/Discussion

| Line | FY12 Amount | Requested FY13 | Recommended | |
|---|----------------|----------------|----------------|--------|
| 2. Selectmen – | | | | |
| e. Other Charges (2e) | \$4,300.00 | \$4,300.00 | \$4,300.00 | ✓ |
| 4. Audit Expenses | \$50,000.00 | \$52,000.00 | 52,000.00 ? | ✓ |
| 5. Data Processing | | | | |
| a. Purchase of Services (5a) | \$96,013.00 | \$101,613.00 | 101,613.00 ? | ✓ |
| b. Supplies (5b) | \$9,000.00 | \$9,000.00 | \$8,000.00 | ✓ |
| c. Capital Outlay (5c) | \$20,000.00 | \$5,000.00 | \$5,000.00 | ✓ |
| 6. Treasurer | | | | |
| a. Salary (6a) | \$164,181.00 | \$167,485.00 | \$167,485.00 | ✓ |
| d. Other Charges (6d) | \$2,370.00 | \$2,370.00 | 2,370.00 | ✓ |
| 11. Assessors | | | | |
| a. Salary (11a) | \$140,456.00 | \$146,036.00 | \$146,036.00 | ✓ |
| d. Other Charges (11d) | \$3,180.00 | \$3,180.00 | \$2,900.00 | ✓ |
| 12. Town Hall | | | | |
| a. Salary (12a) | \$42,303.00 | \$42,683.00 | \$42,683.00? | ✓ |
| 22. Conservation Commission (<i>not self-sufficient</i>) | | | | |
| a. Salary (22a) | \$11,588.00 | \$11,583.00 | \$11,583.00? | ✓ |
| b. Purchase of Services (22b) | \$1,750.00 | \$2,154.00 | \$2,154.00 | ✓ |
| c. Supplies (22c) | \$1,000.00 | \$1,000.00 | \$750.00 | ✓ |
| d. Other Charges (22d) | \$300.00 | \$350.00 | \$300.00 | ✓ |
| 23. Office of Tourism | | | | |
| a. Salary (23a) | \$50,945.00 | \$50,798.00 | ? | |
| b. Purchase of Services (23b) | \$27,700.00 | \$27,800.00 | ? | |
| b.1. Utilities (23b1) | \$1,900.00 | \$1,900.00 | ? | |
| c. Supplies (23c) | \$800.00 | \$800.00 | ? | |
| d. Other Charges (23d) | \$200.00 | \$100.00 | ? | |
| <i>(Should the Visitor's Center move? Should the Tourism Director position be full-time?)</i> | | | | |
| 25. Police (<i>Level-fund</i>) | | | | |
| a. Salary (25a) | \$2,565,761.00 | \$2,691,364.00 | \$2,544,600.00 | } HOLD |
| b. Purchase of Services (25b) | \$95,468.00 | \$110,618.00 | \$107,618.00 | |
| c. Supplies (25c) | \$62,325.00 | \$62,000.00 | \$60,800.00 | |
| d. Other Charges (25d) | \$2,514.00 | \$2,766.00 | \$2,766.00 | |
| e. Capital Outlay (25e) | \$57,225.00 | \$67,650.00 | \$67,650.00 | |

For approval on March 19, 2012 – Recommended Article 4 Amounts

| Line | FY12 Amount | Requested FY13 | Recommended |
|--|----------------|----------------|--------------|
| 26. Fire (<i>Level-fund</i>) | | | |
| a. Salary (26a) | \$1,714,432.00 | \$1,734,363.00 | \$1,707,000 |
| b. Purchase of Services (26b) | \$71,290.00 | \$79,190.00 | \$79,190.00 |
| c. Supplies (26c) | \$48,184.00 | \$48,148.00 | \$48,148.00 |
| d. Other Charges (26d) | \$6,500.00 | \$6,500.00 | \$6,000.00 |
| | | | |
| 29. Tree Warden Department | | | |
| b. Salary – Other (29b) | \$31,458.00 | \$31,773.00 | \$30,773.00 |
| | | | |
| 30. Shellfish (<i>Reduce weeks for Harbormaster?</i>) | | | |
| a. Salary (30a) | \$82,196.00 | \$84,071.00 | \$79,071.00? |
| b. Purchase of Services (30b) | \$8,100.00 | \$8,100.00 | \$7,300.00? |
| c. Supplies (30c) | \$9,400.00 | \$9,400.00 | \$8,500.00? |
| d. Other Charges (30d) | \$400.00 | \$400.00 | \$300.00? |
| | | | |
| 31. Care of Dogs | | | |
| a. Salary (31a) | \$37,849.00 | \$39,816.00 | \$39,816.00? |
| <i>(Should hours be reduced from 40 to 37.5?)</i> | | | |
| | | | |
| 35. Board of Health | | | |
| b. Salary – Others (35b) | \$87,207.00 | \$87,974.00 | \$87,574.00 |
| c. Purchase of Services (35c) | \$9,750.00 | \$9,750.00 | \$8,850.00 |
| d. Supplies (35d) | \$11,580.00 | \$4,100.00 | \$3,600.00 |
| f. Other Charges (35f) | \$2,050.00 | \$2,050.00 | \$1,850.00 |
| | | | |
| 36. Enforcement Agent | | | |
| a. Salary (36a) | \$20,450.00 | \$21,174.00 | \$21,174.00? |
| <i>(Should hours be reduced from 19 to 17?)</i> | | | |
| | | | |
| 38. Highway | | | |
| a. Salary (38a) | \$876,000.00 | \$860,552.00 | \$852,892.00 |
| b1. Utilities (38b1) | \$25,500.00 | \$25,500.00 | \$17,000.00 |
| <i>(Change prior vote because solar panels reduce electricity cost).</i> | | | |
| | | | |
| 39. Sewer | | | |
| a. Salary (39a) | \$843,648.00 | \$846,532.00 | \$846,532.00 |
| b. Purchase of Services (39b) | \$174,500.00 | \$182,500.00 | \$181,500.00 |
| c. Supplies (39c) | \$149,900.00 | \$145,250.00 | \$139,050.00 |
| d. Other Charges (39d) | 0.00 | 0.00 | 0.00 |
| | | | |
| 40. Water | | | |
| a. Salary (40a) | \$479,424.00 | \$470,924.00 | \$470,924.00 |
| b. Purchase of Services (40b) | \$248,701.00 | \$248,701.00 | \$248,300.00 |
| c. Supplies (40c) | \$43,400.00 | \$43,400.00 | \$40,400.00 |

For approval on March 19, 2012 – Recommended Article 4 Amounts

| Line | FY12 Amount | Requested FY13 | Recommended |
|--------------------------|--------------------|-----------------------|--------------------|
| d. Other Charges (40d) | \$1,500.00 | \$1,500.00 | \$1,500.00 |
| 42. Schools (42) | \$17,424,735.00 | \$18,015,357.00 | ? |
| (Level-fund?) | | | |
| 46. Recreation Center | | | |
| a. Salary (46a) | \$146,004.00 | \$145,651.00 | \$142,651.00 |
| d. Other Charges (46d) | \$700.00 | \$700.00 | \$700.00 |
| 49. Group Insurance (49) | \$4,150,000.00 | \$4,250,000.00 | ? |
| 60. Stabilization (60) | \$50,000.00 | \$50,000.00 | \$50,000.00 |

For approval on March 19, 2012 – Recommended Article 4 Amounts

ATTACHMENT F

ARTICLES FOR SELECTMEN APPROVAL

March 19, 2012

| # | Title | Request | Recommend |
|-----|---|-----------------------|------------|
| 9. | Collective Bargaining | Adoption | ? HOLD |
| 12. | Acceptance of Statute – COLA base | Adoption | ? HOLD |
| 13. | Acceptance of Statute – Minimum Allowance | Adoption | ? HOLD |
| 14. | Acceptance of Statute – Surviving Spouse | Adoption | ? HOLD |
| 24. | River Road Discontinuance | Adoption | ? HOLD |
| 26. | I&I Sewer Collection Rehab | \$267,000 | ? — |
| 28. | Wastewater Management Plan | \$75,000 | ? Approved |
| 29. | Boston Hill Water Tank | Borrow \$1,515,000.00 | ? HOLD |
| 32. | Wastewater Treatment Plan Rehab | \$541,000.00 | ? Approved |
| 34. | Sewer Pump Station Rehab | \$757,000.00 | ? Approved |
| 35. | Matt. River Valley Water Protection | Adoption | ? HOLD |

Sewer
rehab
pumping

For approval on March 19, 2012 – Articles for Selectmen to Approve