



Fairhaven Board of Selectmen

March 27, 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: Jaime DeSousa, John Nunes, Christopher Richard, Ted Lorentzen, Mali Lim of the *Neighborhood News* and Peggy Aulisio of *The Advocate*.

Chairman Silvia called the meeting to order in the Town Hall Banquet Room at 6:33 p.m.

MINUTES:

- Board voted to approve the minutes of the **March 19**, 2012 meeting, open session. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).
- Board voted to approve the minutes of the **March 19**, 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 and events:

- Wednesday, March 28 –
 - 9:00 a.m. – Buzzard's Bay Action Committee – Wareham
 - 2:00 p.m. – Stephenson and Brook – Department head training
 - 5:00 p.m. – New School Building Committee meeting
- Friday, March 30 –
 - 10:00 a.m. – WES Construction Job Meeting
 - 1:00 – 4:00 p.m. – HMFH/Daedalus – pre-bid review
- Monday, April 2 –
 - Town Election from 10:00 a.m. to 8:00 p.m. with the results being televised live around 8:15 p.m.
 - Selectmen's meeting at 6:30 p.m. – must adjourn by 8:00 p.m.

Mr. Osuch also informed the Board that there were several articles already received for the May 5, 2012 Special Town Meeting. Received articles include: legal expenses, Highway, Clerical, Sewer and Water contracts, an article for a Cushman Park easement and an article by the Board of Public Works (BPW) for Digester funding.

NORTH STREET SURVEY PROJECT

The Board received a memorandum from Planning and Economic Development Director Bill Roth informing them that bids had been received for the North Street Survey Project. At a previous meeting, the Board of Selectmen had authorized the BPW to use \$2,000 in Engineering Funds to combine with other funds to conduct a survey layout of North Street. As such, the BPW requested approval from the Board to grant a bid in the amount of \$3,100 to Kenneth R. Ferreira Engineering, with BPW committing to the \$1,100 balance.

The Board voted to approve the bid. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

REQUEST TO WITHDRAW FROM GRANT

In a second request from Mr. Roth, the Board was asked to authorize the Town to withdraw from a municipal mini-grant for the Nasketucket Fields conservation restriction. According to Mr. Roth, the conservation restriction is part of a larger project and Buzzard's Bay Coalition would not be able to secure the rest of the funding in time for the June 30, 2012 deadline. Mr. Roth made the request to allow the Buzzard's Bay Project National Estuary Program time to roll the funds into their next granting round.

The Board voted to withdraw from the mini-grant. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

ENVIRONMENTAL CERTIFYING OFFICER

In correspondence with Bill Roth, the Board read that Environmental Certifying Officer Michael Silvia would have to be replaced, as his Selectman term would be up on April 2. To fill his vacancy, the Board voted to appoint Brian Bowcock as the Environmental Certifying Officer. Mr. Murphy motioned, Mr. Silvia seconded. Vote was unanimous. (3-0)

CONSERVATION COMMISSION RESIGNATION

The Board read a letter of resignation from Logan Wood from the Conservation Commission. The Board thanked Mr. Wood for putting time and effort into the position. Mr. Silvia said that anyone interested in serving on the Conservation Commission, they should contact ConCom Chairman Andy Jones to learn about what the commitment entails.

DOG PARK COMMITTEE APPOINTMENTS

The Board received requests from Anne and John Jorgensen asking to be appointed to the Dog Park Committee. Although the deadline for applications had passed, the Board realized that there were still vacancies on the Dog Park Committee, so they voted to appoint Anne and John Jorgensen as requested. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

OFFICE OF TOURISM – BUDGET DISCUSSION

At 6:49 p.m., the Board met with Christopher Richard, Director of the Office of Tourism, to discuss the Tourism budget for FY13.

Before delving into the discussion, Chairman Silvia said that some difficult decisions would have to be made to balance the FY13 Town budget. Some possibilities that had been considered for the Visitor's Center (i.e., the Tourism office), located at 43 Center Street, was to move the office to a Town-owned building like the Town Hall or the Academy Building or reduce the Director's hours to part-time or seasonal.

In presenting his budget, Mr. Richard said that the annual rent total for his office is \$6,300. He noted that the Finance Committee, at a recent meeting, had voted to recommend his \$81,000± budget, minus the rent figure of \$6,300. He said that in nine years of renting at that location, the Town had always had a good relationship with the landlord, but he realized that eliminating rent from his budget would be a good way to prepare for an even tougher FY14.

Mr. Richard did not dispute moving to the Academy Building or the Town Hall, but he said that the timing FinCom suggested – making him move in July in the middle of his busy season – would be detrimental to his year. Instead, he proposed a compromise, to reduce his FY13 budget by \$3,150, which represented half of his annual rent cost, with the expectation that he would move in late September/early October, after his busy season.

The Board was receptive to this proposal. Mr. Richard reminded the Board that the last time he proposed moving the Visitor's Center into the Academy Building, the Fairhaven Historical Society resisted the move, as they use the building with the Town's permission for their exhibits. Otherwise, he said, the Academy Building had most everything he would need – including parking and utilities – to conduct his office business.

Ted Lorentzen, a citizen in the audience, asked to speak. He said that Town Meeting voted to dedicate a Hotel Tax to fund the Office of Tourism, and that if there was enough money being generated by the Hotel Tax, then the Tourism budget should not be as dependent on the General Fund budget.

Mr. Richard said that recent figures have shown that tourism revenue is up in Massachusetts by 8.5 percent, with Hotel taxes being up about 7 percent.

Dr. Bowcock motioned the following budget recommendation for the Office of Tourism, line 23: a. Salary & Wages, \$50,798; b. Purchase of Services, \$24,650; b1. Utilities, \$1,900; c. Supplies, \$800; and d. Other Charges, \$100. Mr. Murphy seconded. Vote was unanimous. (3-0)

To continue the discussion on moving the Visitor's Center, the Board resolved to invite the Historical Society to come to a meeting in April to discuss the possibility.

PLANNING BOARD BYLAW AMENDMENT

The Board read the opinion of Town Counsel regarding a bylaw amendment that had been proposed by the Planning Board at the March 19 meeting. The bylaw amendment would establish setback requirements for wind turbines. Chairman Silvia read the opinion of Town Counsel Attorney Thomas Crotty. (See Attachment A). Atty. Crotty pointed to Massachusetts General Law that indicated the Planning Board had to have presented an article to the Selectmen before having scheduled any public hearings regarding their proposed bylaw amendment. The letter regarding the bylaw amendment, which was received by the Selectmen's Office on March 16, did not qualify as adequate notice, Atty. Crotty said, because it only noted parts of the existing bylaw that would be subject to change, but not an actual proposed article.

Dr. Bowcock said that the Town would have to follow the counsel of Atty. Crotty and he motioned to send a letter to the Planning Board regarding Atty. Crotty's response. Mr. Murphy seconded. Vote was unanimous. (3-0).

WOODCHIPPER BID

In correspondence, the Board received a letter from Tree Warden Antone Medeiros saying that a bid for a 15-inch woodchipper was awarded to Cleaves Co., Inc in the amount of \$40,968.30. In addition to the contract, he purchased a hydraulic drum opener control to be installed for \$940.

BOATYARD NOISE COMPLAINT

The Board received a letter from Fay Bartling, a Middle Street resident. Ms. Bartling said that the noise created by the Fairhaven Shipyard was interfering with her peace. The Board noted that there had been several complaints in this area and decided to inquire about the matter with the Enforcement Agent (Wayne Fostin) and the Board of Health.

SHELLFISH GUEST POLICY

The Board read a letter from Matt Loo requesting a guest policy to allow shellfish license holders the ability to bring guests along with them. Dr. Bowcock said that it was too late in the season to change the current policy, and he thought that license holders were already permitted to have guests along to help. The Board decided to forward the communication to the Shellfish Warden.

VOKE GRADUATION

The Board received an invitation from Linda Enos for a member of the Board to be a guest speaker at the Greater New Bedford Regional Vocational Technical High School graduation on Wednesday, June 6, 2012. Dr. Bowcock agreed to speak at the graduation.

ALLEGED TOWN COUNSEL CONFLICT

The Board read outgoing correspondence to the Zoning Board of Appeals regarding the ZBA’s request to look into a potential conflict of interest with Atty. Thomas Crotty providing counsel to the Town. (See Attachment B). Mr. Osuch issued a letter to the ZBA saying that the Board contacted the State Ethics Commission and was awaiting a response from Attorney Wilson.

FY13 BUDGET

The Board voted to make the following recommendations on the Police, Fire, and School department budgets:

Department	Recommended
25. Police	
a. Salary (25a)	\$2,544,600.00
b. Purchase of Services (25b)	\$107,618.00
c. Supplies (25c)	\$60,800.00
d. Other Charges (25d)	\$2,766.00
e. Capital Outlay (25e)	\$67,650.00
26. Fire	
a. Salary (26a)	\$1,707,000.00
b. Purchase of Services (26b)	\$79,190.00
c. Supplies (26c)	\$48,148.00
d. Other Charges (26d)	\$6,000.00
42. Schools (42)	\$17,655,049.00

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

ATM ARTICLE RECOMMENDATIONS

The Board voted to recommend Indefinite Postponement on Annual Town Meeting Article 9 (Collective Bargaining). On the Indefinite Postponement recommendation, Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

The Board also voted to recommend Adoption for Article 35 (Mattapoisett River Valley Water Protection). Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0). It was noted that FinCom voted against recommendation on Article 35.

The Board learned that Article 12, 13, and 14 had been withdrawn by the Retirement Board.

The Board voted to enter Executive Session at 8:28 p.m. to discuss Union Negotiations, Healthcare Change Agreement, Clerical Union, Tax Title, Contracts, and Litigation, 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,

A handwritten signature in cursive script that reads "Anne Kakley".

Anne Kakley

Selectmen's Secretary

(Minutes approved 4/2/2012)



Town of Fairhaven
Massachusetts
Office of the Selectmen

40 Center Street
Fairhaven, MA 02719

Tel: (508) 979-4023
Fax: (508) 979-4079

March 28, 2012

To: Chairman Wayne Hayward and Planning Board members

From: The Board of Selectmen

Re: March 14, 2012 Memorandum

Mr. Hayward and members of the Planning Board:

The Board of Selectmen have reviewed the March 14, 2012 Memorandum (received on March 16, 2012) requesting a place on the May 5, 2012 Special Town Meeting agenda for a proposed bylaw amendment (198.29.5). The Board finds that the memorandum does not provide the information requested by General Laws Chapter 40A Section 5. The memorandum (as explained in the attached email from Attorney Thomas Crotty, dated March 21, 2012), does not provide sufficient information or a specific proposal for a change to the zoning bylaw. In addition, the Planning Board has not followed the proper procedure for amending a zoning bylaw under Chapter 40A Section 5. Please review Atty. Crotty's email (attached).

For the above stated reasons, the Board of Selectmen will not hold a place on the May 5, 2012 Special Town Meeting for a Planning Board article.

If you have any questions, please contact the Board.

Yours truly,

Michael Silvia
Chairman
Fairhaven Board of Selectmen

Jeff Osuch

From: Brian K. Bowcock [drbowcock@fcoweb.com]
Sent: Wednesday, March 14, 2012 9:21 AM
To: Jeff Osuch
Subject: Fwd: FW: various subjects

----- Original Message -----

Subject:FW: various subjects
Date:Tue, 13 Mar 2012 15:44:58 -0400
From:Tom Crotty <tomcrotty@tcrottylaw.com>
Reply-To:<tomcrotty@tcrottylaw.com>
To:<drbowcock@fcoweb.com>

Brian

This is the process for amending a zoning by-law under C. 40A sec. 5. The important language is highlighted in red.

Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the city council or board of selectmen of a proposed zoning ordinance or by-law by a city council, a board of selectmen, a board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter. The board of selectmen or city council shall within fourteen days of receipt of such zoning ordinance or by-law submit it to the planning board for review.

No **zoning** ordinance or **by-law** or **amendment** thereto shall be adopted until after the planning board in a city or town, and the city council or a committee designated or appointed for the purpose by said council has each held a public hearing thereon, together or separately, at which interested persons shall be given an opportunity to be heard. Said public hearing shall be held within sixty-five days after the proposed **zoning** ordinance or **by-law** is submitted to the planning board by the city council or selectmen or if there is none, within sixty-five days after the proposed **zoning** ordinance or **by-law** is submitted to the city council or selectmen. Notice of the time and place of such public hearing, of the subject matter, sufficient for identification, and of the place where texts and maps thereof may be inspected shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing, and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of said hearing.

Did the planning board ever send the proposed zoning article to the board of Selectmen? That has to be done before the planning board can hold its public hearing.

Mass. Gen. Laws Ann. ch. 40A, § 5 (West)

-----Original Message-----

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Anne Kakley

From: Jeff Osuch
Sent: Wednesday, March 21, 2012 4:31 PM
To: 'msilvia19@comcast.net'; 'molife@aol.com'; Dr. Brian Bowcock
Cc: Anne Kakley
Subject: FW: Wind Facilites / Bylaw Amendment / 2012 Special Town Meeting

Please read Tom Crotty's comment on the Planning Bd/ Wayne Hayward issue.
Jeff

From: Tom Crotty [<mailto:tomcrotty@tcrottylaw.com>]
Sent: Wednesday, March 21, 2012 3:05 PM
To: Jeff Osuch
Subject: Wind Facilites / Bylaw Amendment / 2012 Special Town Meeting

Jeff

I have been requested to review the Memorandum dated March 14, 2012, and received by the Board on March 16, 2012 from Wayne Hayward, Chairman of the Planning Board, and to give my opinion as to whether it complies with the requirements of General Laws C40A sec 5.

That statute requires that before a planning board holds a public hearing on a proposed change in the zoning bylaw, the proposal must first be submitted to the board of selectmen. The memorandum from Mr. Hayward contains no specific proposal for a change to the zoning by-law, but merely identifies those portions of the by-law which would be the subject of a public hearing.

Because the memorandum fails to state a proposal for amendment to the zoning bylaw I do not believe it satisfies the submission requirement of sec. 5. (The memorandum certainly does not provide sufficient information upon which to word an article that would satisfy the notice requirements for a town meeting warrant.)

The matters that the memorandum addresses are already the subject of litigation. The rights of the parties in that litigation, including the rights of the town itself, may be impacted by an amendment of the zoning by-law. Among other concerns, the Town is contractually obligated with the project developer not to interfere with the project except to the extent specifically authorized by law. For that reason it is imperative that the Town make its best effort to see that all legally required procedural steps are followed.

I would suggest that the board of selectmen notify the planning board that the memorandum is not adequate for the purposes of c. 40A sec.5.

Let me know if you have any further questions in this regard.

Tom

Thomas P. Crotty
Thomas P Crotty & Associates, PLLC
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tomcrotty@tcrottylaw.com

Attachment B



Town of Fairhaven
Massachusetts
Office of the Selectmen

40 Center Street
Fairhaven, MA 02719

Tel: (508) 979-4023
Fax: (508) 979-4079

March 23, 2012

To: Peter De Terra
Chairman of the Board of Appeals

From: The Board of Selectmen

Re: Issue of Conflict of Interest – Town Counsel

Dear Mr. De Terra:

As requested by the Board of Selectmen, the State Ethics Commission has been contacted regarding the issue raised by the Board of Appeals, concerning a possible conflict of interest by Town Counsel, Thomas Crotty.

Attorney David Wilson of the State Ethics Commission will be reviewing the conflict issue. No time frame was given as to when he would make a decision.

If you have any questions, please contact me at 508-979-4023.

Sincerely,

Jeffrey W. Osuch