



Fairhaven Board of Selectmen

April 30, 2012 Meeting Minutes

Present: Selectman Brian Bowcock, Selectman Charles Murphy, Selectman Bob Espindola, Executive Secretary Jeffrey Osuch and Administrative Assistant Anne Kakley.

Also Present: John Nunes, Richard Ferreira, Mali Lim of the *Neighborhood News*, Peggy Aulisio of *The Advocate*.

Chairman Brian Bowcock called the meeting to order in the Town Hall Banquet Room at 6:35 p.m.

MINUTES:

- The Board voted to approve the minutes of the **April 23**, 2012 meeting, **open** session. Dr. Bowcock motioned, Mr. Murphy seconded. Vote was unanimous. (3-0).

Dr. Bowcock said that he was in favor of approving the minutes of the April 11 meeting as presented at the April 23 meeting. Mr. Espindola said that he wanted to amend the minutes to reflect that Dr. Bowcock initiated a discussion regarding a purchase of services for the Assessors' Office. He also wanted more detail in the minutes regarding the discussion that ensued. Dr. Bowcock said that he was amenable to adding wording that indicated he initiated the conversation, but he said he did not think that the minutes had to be too detailed because no decision was made and no action was taken at the April 11 meeting. Both Mr. Espindola and Dr. Bowcock agreed to re-draft the minutes together for approval at a future meeting.

EXECUTIVE SECRETARY'S REPORT

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

- Tuesday, May 1 –
 - 1:30 p.m. – Meeting at the SEMASS plant in Rochester
 - 6:30 p.m. – Meeting for employees with representatives from Blue Cross/Blue Shield and Cook and Company
- Wednesday, May 2 –
 - 10:00 a.m. – Pre-construction Meeting at Wood School with Zilioli
 - 11:30 a.m. – Meeting with Scanlon at BPW
 - 3:00 p.m. – Town Hall Masonry Bid Opening

- 4:30 p.m. – New School Meeting at Hastings Middle School
 - 6:30 p.m. – Precinct Meeting and Selectmen Meeting at Hastings
- Thursday, May 3 –
 - 7:30-9:00 a.m. – Forum at Quest Center in New Bedford
 - 7:00 p.m. – Finance Committee
- Saturday, May 5 –
 - 8:15 a.m. – Scheduled Selectmen meeting
 - 9:00 a.m. – Town Meeting

CONSERVATION COMMISSION APPOINTMENTS

The Board read letters of interest from Janine Peccini and Stephen Remen regarding openings on the Conservation Commission (ConCom). The Board asked if there were two openings on ConCom. Because it was not completely certain at the time of the meeting how many vacancies ConCom had, the Board made a conditional vote, appointing Ms. Peccini with preference and Mr. Remen if there was a second opening on ConCom. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).

NATURAL RESOURCES DEPUTY APPOINTMENT

The Board reviewed an application from Edward Normand for Natural Resources Deputy. The Board voted to appoint Mr. Normand to Deputy pending a CORI check. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0). Mr. Murphy, the authorized CORI representative, signed the CORI form.

CONSTABLE APPOINTMENT

The Board met with Richard Ferreira to discuss his request to be appointed Constable. At a previous meeting, the Board had agreed that there were probably more than enough constables in Fairhaven and that the Board may stop appointing new constables. Mr. Ferreira came before the Board to explain that the constable appointment was needed to complete various aspects of his job as a private investigator, and that he was not interested in “taking business” from other constables who regularly serve papers.

Mr. Ferreira said that he has worked in the District Attorney’s office and that he was on the New Bedford police force as an officer for over 30 years. He said he was also an honorably discharged veteran. The Board appointed Mr. Ferreira to Constable. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).

STANDING RULE – CONSTABLES

Upon suggestion from Dr. Bowcock, the Board created a Standing Rule that all future constable appointments will warrant an interview and meeting with the Police Chief. The Board was

receptive to this idea and decided to create the Standing Rule as described. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).

BICENTENNIAL UPDATE

The Board reviewed met with Bicentennial Committee Chairman Wayne Oliveira to hear plans for upcoming Bicentennial events, and reports from recent Bicentennial activities.

He said that the Committee completed a photo shoot on April 28, 2012, at the High School. About 600 attendees spelled out “Fairhaven 200”. Mr. Oliveira said that he had hoped more people could have turned out, but he understood that the date conflicted with other events and he was still pleased with the outcome of the aerial photos. He thanked Nancy Parent for coordinating the effort from fundraising to completion.

Mr. Oliveira spoke about various upcoming Bicentennial events (see Attachment A). In addition to scheduled upcoming events, he said that the Bicentennial was thinking about extending the celebration beyond the summer, with a possible Oktoberfest and New Years’ celebration. He said around November, the new time capsule will be sealed in granite from Fort Phoenix and will be opened at the 250th birthday of the Town in 2062.

Upon request from Mr. Espindola, Mr. Oliveira spoke about a possible litter clean up day to beautify the Town for its Bicentennial. Mr. Espindola said that he just wanted feedback from the Bicentennial Committee on what areas should be cleaned and when. Mr. Espindola said he would contact Town committees, like the Sustainability Committee and civic groups like the Lions and Rotary Club to see if he could coordinate a litter pick-up day. Mr. Oliveira said that he would speak with the Bicentennial Committee about the idea and would report back to Mr. Espindola.

POLE HEARING #1 – COTTONWOOD STREET

At 7:14 p.m., Dr. Bowcock opened a public hearing for an underground conduit for Cottonwood Street. The Board reviewed the application from NSTAR and felt satisfied with the plans. Dr. Bowcock opened the hearing to public comment. An abutter wanted reassurance that the conduit would be underground. The Board said the plans reflected an underground conduit. The abutter was satisfied with the plans. The Board voted to approve the application. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).

POLE HEARING #2 – FORT STREET

At 7:18 p.m., Dr. Bowcock opened a public hearing for an underground conduit for Fort Street. The Board reviewed the application from NSTAR and felt satisfied with the plans. Dr. Bowcock opened the hearing to public comment. There was no comment. The Board voted to approve the application. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).

POLE HEARING #3 – MAIN STREET

At 7:20 p.m., Dr. Bowcock opened a public hearing for a pole replacement for Main Street. The Board reviewed the application from NSTAR and felt satisfied with the plans. Dr. Bowcock opened the hearing to public comment. There was no comment. The Board voted to approve the application. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).

HIGHWAY UNION SETTLEMENT

Mr. Osuch said that the BPW had settled the FY13 contract with Highway and Park last week, and the settlement reflected a one percent increase for the upcoming year, in the amount of \$7,415.00 for Highway and \$468.00 for Park. The Board agreed to recommend the increase at Town Meeting. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).

ALCOHOL LICENSE ARTICLE AMENDMENT

Dr. Bowcock said that a petition to amend a Special Town Meeting Article for Total Confections, LLC (Emma Jean's) had been received by the Selectmen's Office with the required 100 signatures. The amendment would change the Article on the warrant to ask for an "All Alcohol – Package Store" license instead of the originally petitioned "All Alcohol – Restaurant" license.

Mr. Murphy said that he was not comfortable with a new application when Mac's Soda Bar has petitioned the State twice for a beer and wine license and has not yet received it. He said that the Town is already over its limit for liquor licenses in some categories. After speaking with State Representative William Straus, Mr. Murphy said that it seems a lot of state petitioned alcohol permits stall out at the Senate. He suspected that because Fairhaven is over its limit, the petitions are not a high priority in Senate.

Mr. Espindola said that he would like to investigate why the Mac's Soda Bar petitioned alcohol license was ignored by the Senate.

Dr. Bowcock said that when the Board first received the petition from Total Confections LLC for the Special Town Meeting warrant, they had unanimously voted to recommend it on Town Meeting floor. He said that the new petition was an amendment to what they already voted. Dr. Bowcock motioned to recommend the Article as amended by petition. He did not receive a second and the motion failed.

FINAL RECOMMENDATIONS FOR TOWN MEETING

The Board reviewed final recommendations for Town Meeting, and the differences between Selectmen recommendations and the Finance Committee recommendations. Dr. Bowcock asked the Board if they wanted to stand firm on their recommendation for the Office of Tourism's rent for the upcoming year. Both Mr. Murphy and Mr. Espindola said that they wanted to keep their recommendation for a full year of rent for the Office of Tourism to stay at 43 Center Street. The Board was still in favor of keeping all of their other previously made Town Meeting recommendations as well. (See Attachment B).

GOVERNOR AND SENATOR DECLINE PARADE

In Correspondence, Dr. Bowcock read notes from Governor Deval Patrick and Senator Scott Brown's offices, saying that they will not be able to attend the Town's Bicentennial Parade on July 8.

FAIRHAVEN BUSINESS ASSOCIATION

The Board read a letter of invitation from the Fairhaven Business Association (FBA), asking the Board to attend its meeting on May 1 at 10:30 a.m. in the Town Hall Banquet Room.

A discussion ensued regarding the FBA and signage bylaws that the FBA would like to discuss with the Selectmen. Since the FBA did not give adequate time to the Selectmen to plan on attending their May 1 meeting, Mr. Espindola said that perhaps the Board could invite the FBA to attend a future Selectmen meeting to discuss issues ranging from signage bylaws to economic development. The Board was receptive to having a meeting with the FBA in the future.

SHELLFISH BEDS REOPENED

After a boat sunk last week and spilled fuel into Little Bay, the Board read a letter from the Division of Marine Fisheries that the area of Little Bay and Nasketucket was now re-opened to shellfishing.

TOWN AUDIT REPORT

The Board reviewed a Town Audit Report that had been given to them from Town Treasurer/Finance Director John Nunes. Mr. Nunes said that the report is received on an annual basis and it identifies where the Town needs fiscal strengthening. The report reflects some trends that the Town should address, like spending more than its revenue. Mr. Nunes said that he had called the Department of Revenue (DOR) regarding a Town-wide state financial review that Mr. Espindola had suggested and he said that if the DOR does grant the request, the financial review would not begin until fall. The financial review would take about 10 weeks to complete, he said. He said that the DOR would need a letter from the Board to consider their request for an financial review. He said he would draft a letter and present it to the Selectmen's Office to put on letterhead.

UNION WHARF USE DATE CHANGE

The Board read a request from John Miller to change the date of the New England Marine Renewable Energy Center demonstration (NEMREC) on the Union Street Wharf from June 22 to July 10. The request was previously approved at March 19 meeting and Mr. Miller requested a simple date change. The Board voted to approve the request. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).

VACATION CARRY OVER

The Board voted to grant a request from Recreation Department Program Coordinator Rachel Martin to carry over 3.5 vacation days into the upcoming year. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).

LETTER TO TOWN COUNSEL RE: ZBA

The Board received a letter from Town Counsel Attorney Thomas Crotty regarding his opinion on the Board of Appeals' (ZBA) request to authorize their use of funds from the Town's legal budget to hire an attorney to advise the ZBA on an appeal from resident Donna McKenna regarding the Fairhaven Wind LLC building permits.

In his letter, Atty. Crotty said that he believed the conflict of interest allegation to be an "overly broad reading of the [G.L.C.268A§19] statute since that would give rise to a conflict of interest every time an attorney gave advice to a government agency."

Ultimately, he said it was up to the Board of Selectmen to decide if the ZBA could use alternate counsel. He said that if it was the Board's wish to keep him as counsel for the ZBA, they should submit a letter to Atty. Crotty's office, outlining the Board's decision and stating that Atty. Crotty's interest is not so substantial as to prevent him from being able to advise the ZBA.

Mr. Espindola said that he had not had enough time to consider the letter, because it had just been received by the Selectmen's Office that day. He was not comfortable acting on the letter right away. He said that he wanted to look into whether the Board could invoke the Rule of Necessity.

Dr. Bowcock said that the Rule of Necessity would not apply in this circumstance. He explained that the Rule of Necessity was a State Ethics rule that required a board to divulge its interests and vote when a quorum cannot be met if the majority of members cited conflict of interest. He said that this did not apply to the Board because the only member of the Board who may need to recuse himself on the issue of the wind turbine lawsuit was Mr. Espindola.

Mr. Espindola recused himself at 8:22 p.m.

Dr. Bowcock read Atty. Crotty's letter into record. He motioned to sign it.

Mr. Murphy wanted clarification on the Rule of Necessity. Dr. Bowcock explained the Rule of Necessity and said that it did not apply to the situation. He said that the ZBA would be meeting the next night, on May 1.

Mr. Murphy seconded Dr. Bowcock's motion to sign the letter to Atty. Crotty. (See Attachment C). Vote was passed, two in favor, one abstention.

Mr. Espindola rejoined the meeting at 8:29 p.m.

ICE CHEST – BLESSING OF THE BIKES

The Board read an annual request from the Ice Chest for a One-Day All-Alcohol license for the “Blessing of the Bikes” on May 6, 2012 from 12:00 to 9:00 p.m. The Board said that it is a fun annual event and close to a thousand attendees are expected. They approved the One-Day All-Alcohol license for the May 6 event, which has a rain date of May 20. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).

OTHER BUSINESS

- Mr. Murphy said that on Saturday, June 9, the Commission on Disability would be sponsoring the first Disability Awareness Day from 10:00 a.m. to 2:00 p.m. at the Senior Center.
- Mr. Espindola asked to discuss the use of Town Counsel. It was decided that the discussion would occur in Executive Session.
- Dr. Bowcock congratulated the Fairhaven/Acushnet Little League on starting a new season and wished them success. He also praised the first annual West Island 5K, which occurred on April 29.
- Dr. Bowcock offered condolences from the Board to the family of Kathleen Kalife. Ms. Kalife passed away recently after a long illness.

The Board voted to enter Executive Session at 8:43 p.m. to discuss the Blue Sky Power Contract and to discuss Town Counsel use, not to reconvene into Open Session. Mr. Murphy motioned, Mr. Espindola seconded. Vote was unanimous. Roll call vote: Dr. Bowcock in favor. Mr. Murphy in favor. Mr. Espindola in favor. (3-0).

Respectfully,



Anne Kakley

Selectmen’s Secretary

(Minutes approved 5/21/2012)



FAIRHAVEN BICENTENNIAL

1812

Celebrating 200 Years

2012



SAVE THESE DATES;

Saturday, February 4, 2012 Miss Fairhaven Pageant at FHS

Saturday, February 25, 2012 Concert by the Providence Brigade Band, Town Hall 1-3pm

Ceremony of Incorporation, Town Hall 4pm

Lantern Walk to Cushman Park and Ground Fireworks, 6pm (weather permitting)

Sunday, February 26, 2012 All-Faith Ecumenical Afternoon Service- First Congregational Church 2 pm

Saturday, March 10, 2012 Bicentennial Ball & Banquet, Seaport Inn, Fairhaven, 6pm-midnight

Saturday, April 28, 2012 Aerial Picture at FHS. Students to spell out

FAIRHAVEN 200 in the football stadium

Sunday, June 17, 2012 Father's Day/Bicentennial Road Race, Start at Hastings Middle School, 9:00 am

Saturday, June 30, 2012 Homecoming Day Fair, Fairhaven Improvement Association

Sunday, July 1, 2012 Fire Apparatus Parade and Muster (firefighters competition)

Wednesday, July 4, 2012 Car Cruise to Fort Phoenix, 9:00am

Fort Phoenix Ceremony, Cannon Firing, Fairhaven Village Militia, 10:00am

Wednesday through Sunday, July 5-8 Vietnam Veterans Memorial "Moving Wall" at Cushman Park

Thursday, July 5, 2012 History Day, Christopher Richard, chair

Open houses at historical buildings and sites through the day

Saturday, July 7, 2012 Maritime Day, Fairhaven Waterfront

Sunday, July 8, 2012 Bicentennial Parade Kicks off at 1pm, Livesey Park, Fairhaven

Saturday, July 14, 2012 Good Old Family Fun Day, Cushman Park, 10am-4pm

Field Day, Picnic, and Music

Wednesday, July 25, 2012 Acushnet Classic Ensemble Concert- 1pm FHS

July 26 & 27th Acushnet Classic Ensemble Concert- 7pm FHS

For more information about the upcoming 2012 Bicentennial Events check these sites;

<http://fairhaven200.blogspot.com> OR www.fairhaven200.org

Updated December 2011

Vote Differences for the Annual and Special Town Meetings – May 5, 2012

Attachment B

| ANNUAL TOWN MEETING | | | | |
|----------------------|---|--------------|------------------|---------------------|
| Article | Title | FY13 Request | FinCom Final Rec | BOS Final Rec |
| ATM Article 4 | | | | |
| | Line 23b – Purchase of Services – Tourism Dept | \$27,800.00 | \$24,650.00 | \$27,800.00 |
| | Line 29a – Salary – Tree Warden | \$9,000.00 | \$6,500.00 | \$7,000.00 |
| | Line 29e – Other Charges/Expenses – Tree Department | \$0.00 | \$1,000.00 | \$500.00 |
| | Line 51 – Unemployment | \$100,000.00 | \$175,000.00 | \$150,000.00 |
| | Line 60 – Stabilization Fund | \$50,000.00 | \$50,000.00 | \$75,000.00 |
| ATM Article 9 | Collective Bargaining | | Adoption | Yield to Petitioner |
| ATM Art. 15C | Historical Commission – Fire Museum | \$1,500.00 | \$1,000.00 | \$1,000.00 |
| SPECIAL TOWN MEETING | | | | |
| STM Art 3 | Highway | \$7,415.00 | | |
| | Park | \$468.00 | | |

Finance Committee:

1. Stabilization – Add \$25,000.00 – subject to additional state aid
2. Unemployment – Add \$75,000.00 – subject to additional state aid
3. Street lights – Add \$40,000.00 – subject to additional state aid

Selectmen:

1. Stabilization – Add \$25,000.00 – subject to additional state aid
2. Unemployment – Add \$50,000.00 – subject to additional state aid
3. Street lights – Add \$40,000.00 – subject to additional state aid



Town of Fairhaven
Massachusetts
Office of the Selectmen

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April 30, 2012

Thomas P. Crotty, Esq.
Thomas P. Crotty and Associates, PLLC
388 County Street – Third Floor
New Bedford, MA 02740

Re: Determination – G.L.C.268A§19(b)(1)

Dear Attorney Crotty:

Pursuant to G.L.C.268A§19(b)(1), the Board of Selectmen make the following determination.

Your interest in potential litigation which may result from the action of the Zoning Board of Appeals by Donna McKenna of building permits issued to Fairhaven Wind LLC, is not so substantial as to be deemed likely to affect the integrity of the services which the Town of Fairhaven may expect from you in advising the zoning board on that appeal.

Very truly yours,

Brian K. Bowcock
Chairman