



Fairhaven Board of Selectmen

May 21, 2012 Meeting Minutes

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

Also Present: Theodore Lorentzen, Cathy Melanson, Debra Perrin, Mali Lim of the *Neighborhood News*, Peggy Aulisio of the *Advocate*, Arielle Wittenberg of the *Standard-Times*.

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

MINUTES

- The Board voted to accept the minutes of the **April 11**, 2012 meeting, **open** session. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).
- The Board voted to accept the minutes of the **April 30**, 2012 meeting, **open** session. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).
- The Board voted to accept the minutes of the **May 5**, 2012 meeting, **open** session. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).
- The Board voted to accept the minutes of the **May 7**, 2012 meeting, **open** session. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).
- The Board voted to accept the minutes of the **April 30**, 2012 meeting, **executive** session. Mr. Murphy motioned. Mr. Espindola 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:

- Tuesday, May 22 –
 - 8:30 a.m. – Retirement Board meeting
 - 10:00 a.m. – Meeting with Scanlon at the BPW
- Wednesday, May 23 –
 - 9:00 a.m. – Buzzard's Bay Action Committee in Wareham
 - 12:00 p.m. – Manager's Meeting at the Fairhaven Town Hall
- Thursday, May 24 –
 - 5:30 p.m. – New School meeting at Hastings
- Friday, May 25 –
 - 9:00 a.m. – WES Job meeting at the BPW

- Monday, May 28 –
 - Memorial Day holiday

Mr. Osuch said that site clearing on the Wood School site had just begun. Upcoming site clearing work will include stump removal. On May 30, bids will begin for subcontractor work. On June 8, bids will begin for general contractor work on the school.

LALIBERTY BID OFFER – TOWN HALL MASONRY

Mr. Osuch said that bids were opened for masonry work on the Town Hall lower courtyards. The work will improve drainage and grading of brick in the courtyards. Of the three bidders, the lowest bid came from LaLiberty Construction, Inc., in the amount of \$53,323. The Board voted to award the bid to LaLiberty Construction, Inc. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).

CHPS PROGRAM ATTACHMENT F

The Board reviewed a proposed contract Attachment F Contract for Designer Services Amendment No. 2. With HMFH Architects, Inc for the New Fairhaven Elementary School. The amendment denoted a MA-CHPS Design Phase Fee in the amount of \$2,640.00. Mr. Murphy motioned to authorize the chairman to sign the Attachment F Contract for Designer Services Amendment No. 2. Mr. Espindola seconded. Vote was unanimous. (3-0).

GETTY CONDITIONS MET

The Board reviewed revised plans for an increase of cars at Getty, located at 371 Huttleston Avenue. Applicant Hatem M. El Rifai requested to amend the Class II Car Dealer’s License he currently holds to increase his vehicle limit to 14 spaces (11 for sale, 3 for reserve) for used cars. At a previous meeting, the Board had voted to approve 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. Mr. Osuch said that as of May 8, the Building Commissioner had signed off on the project, and the business owner had complied with the conditions set by the Board of Selectmen. Mr. Murphy motioned to approve the increase to the Class II Car Dealer’s License. Mr. Espindola seconded. Vote was unanimous. (3-0).

AMBULANCE REIMBURSEMENT RATES

The Board read a letter submitted from Fire Chief Timothy Francis, regarding House Bill 3917, which petitions the House and Senate to stop cutting reimbursement rates to municipalities for emergency 911 ambulance services. Dr. Bowcock read the letter into record. (See Attachment A). The Board was in support of the House Bill, and voted to sign it. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).

FBA MEETING

The Board met with two members of the Fairhaven Business Association at 7:00 p.m. The two representing members were FBA President Debra Perrin and FBA member/business owner Cathy Melanson. Ms. Perrin delivered a brief overview of the FBA, its role and goals. She said that the FBA has 28 members in Town, 15 organizations are involved, and they look to support tourism in Fairhaven. Past accomplishments include a beach clean-up and Farmers' Market antiques appraisal day. She said that the FBA would like to look into increasing signage to draw visitors into the village to patronize shops and businesses there. They would like to install a sign on the east border of Town, and would like to look into placing a sign on Route 240, which is a state road.

Mr. Osuch said that the Town could appeal to the state senator or representative to get a sign on Route 240.

Ms. Perrin and Ms. Melanson both said that the FBA has expressed frustration with permitting processes in Fairhaven. They said that the process of obtaining a permit is often unclear and as a result, it takes a long time for a business to get started. They urged the Board to consider a more streamlined process and to consider making one contact person in Town Hall to facilitate all aspects of permit applications. The Board considered this and thought the contact person could be either the Town Planner or the Building Commissioner.

The Board and the representatives of the FBA both agreed to continue dialogue at future meetings.

PLANNING INTERN APPOINTMENT

Upon request from Town Planner William Roth, the Board voted to appoint Antoinette O'Leary to Intern for the Planning and Economic Development department, with her internship being paid through the Community Block Development Grant. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).

CON COM SECRETARY APPOINTMENT

Dr. Bowcock said that Conservation Agent Wayne Fostin had asked the Board to appoint Patricia Pacella to the position of Secretary for the Conservation Commission. The Board voted to make the appointment with a pay rate of Level 3, Step 1, \$11.60/hour. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).

MUSIC IN THE CENTER

The Board read a request from the Fairhaven Improvement Association for the "Music in the Center" summer concert series. The group requested the use of the Town Hall facilities for five evenings in the summer: July 12, July 19, July 26, August 2 and August 9, all Thursday evenings, from 7:00 to 9:00 p.m. The Board voted to grant the annual request. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous.

BROWN AND CALDWELL AMENDMENT

The Board read and reviewed Amendment No. 5 to the Brown and Caldwell Amendment for the Digester. (See Attachment B).

Mr. Osuch said that the project would hopefully be completed by June. He said that the project was a year overdue and over a million dollars over budget.

Mr. Murphy said that the Board and residents were eager to see the project complete. Mr. Murphy motioned to sign the Amendment No. 5. Mr. Espindola seconded. Vote was unanimous. (3-0).

POLICE SEPARATIONS

In an act of “housekeeping”, the Board voted to accept the resignation of two officers who have not been on the Fairhaven Police Department in years. Dr. Bowcock said that in order to get the Civil Service list from Boston, they had to separate both Michael Lemaire and Timothy Rock from the Police Department. The Board voted to accept their voluntary resignations. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).

EXECUTIVE SESSION

The Board entered Executive Session at 7:30 p.m. to discuss a neighborhood dispute and issues with the police department responding to said dispute. Attending Executive Session was representing attorney Kenneth Littman. Dr. Bowcock said that the meeting would reconvene into Open Session after the discussion.

Roll call vote: Mr. Murphy in favor. Dr. Bowcock in favor. Mr. Espindola in favor. (3-0).

OPEN SESSION

The meeting continued into Open Session at 8:11 p.m.

USE OF TOWN COUNSEL

The Board continued a tabled discussion from a previous meeting regarding use of Town Counsel for Mr. Espindola, a former litigant against the Town. Mr. Espindola had expressed interest in using Kopelman and Paige for his own Town Counsel at a previous meeting.

Dr. Bowcock read a letter from Town Counsel Thomas Crotty regarding the issue. See Attachment C. In his letter, Atty. Crotty said that Mr. Espindola would likely not be able to vote in the matter of hiring different Town Counsel for his own use, and that Mr. Espindola should contact the State Ethics Commission.

Mr. Espindola said that he wanted time to review the letter from Atty. Crotty. Mr. Murphy motioned to table the discussion to a later meeting. Dr. Bowcock seconded. Vote passed with one abstention from Mr. Espindola.

PROCEDURES AND POLICIES

Mr. Espindola requested an agenda item to discuss the process for entering Executive Session. He said that the Board should always explain how an Executive Session agenda item qualifies for not being discussed in Open Session.

Dr. Bowcock said that the Board does identify the reason for going into executive session. He said that the Board does not always know where dialogue is going to go, but that every effort is made to comply with Open Meeting laws, and that effort will continue.

EMAIL POLICY

Upon request from Mr. Espindola, the Board considered their current email policy. As of now, the Board uses personal emails to be contacted by the public. Mr. Espindola said that he thought the Board should consider adopting emails through the Town website server, for example: respindola@Fairhaven-MA.gov. He cited Dartmouth and New Bedford as being two towns that offer email to their Select Board/City Council.

Currently, the emails go to the Selectmen's Office and the Selectmen's secretary distributes the emails as needed.

Dr. Bowcock expressed concern about the ramifications of starting to offer "official" email addresses to Selectmen and possibly other boards. He said that he was concerned about an official responding from an official email with incorrect information, or without consulting other board members.

Dr. Bowcock and Mr. Murphy said that they are comfortable with the current policy of using personal emails. No action was taken.

MEMORIAL DAY PARADE

The Board read an invitation to the Fairhaven Memorial Day Parade for Monday, May 28. The parade will assemble at Fairhaven Center at 8:00 a.m. and begin at 8:30 a.m. to proceed to a flag raising at the High School and a ceremony at Riverside Cemetery. Mr. Murphy said that a flag will also be raised in the memory of Katie Brienzo at Fort Phoenix and then the flag would be given to Ms. Brienzo's mother.

ST. JOSEPH'S PROCLAMATION

The Board signed a proclamation commending the student at St. Joseph's School for their work in helping the homeless.

SOUTHCOAST BIKE CHALLENGE

The Board received a letter from Mattapoissett resident and President of the “Friends of the Mattapoissett Bicycle and Recreational Path”, Bonne DeSousa. Ms. DeSousa also attended the meeting to discuss a proposed Southcoast Bike Challenge, which will utilize Route 6, the Fairhaven Bike Path and part of Scoticut Neck on June 24, 2012. She said the proposed bike ride would use the south side of Route 6 so no bikers would have to attempt to cross Route 6. The route would go from the Bike Path to Little Bay Overlook to Orchard Street, cross Scoticut Neck to West Island, and back. The route is about 17 miles, she said, and she hoped that the event would draw about 200 people. The event would also be a fundraiser for the Bike Path, with participants being able to specify which Town receives their allocated donation. Ms. DeSousa asked for a vote of support from the Board.

The Board gave their support to the event and said that they would have the Selectmen’s Office proceed with approval from the Police Department. The event approval was granted. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).

NOTARY REIMBURSEMENT

The Board read a letter from Selectmen’s Secretary Anne Kakley, asking for reimbursement for costs incurred in her recent appointment to Notary Public. Mr. Murphy motioned to grant the reimbursement in the amount of \$115.96. Mr. Espindola seconded. Vote was unanimous. (3-0).

OTHER CORRESPONDENCE

In other correspondence, the Board read:

- A letter from the Division of Marine Fisheries granting permission to transplant quahogs from May 4 to June 15.
- A letter from the Department of Revenue saying that the Town of Fairhaven had been placed on a list for consideration for a Financial Management Review.
- Correspondence from the Acushnet Board of Selectmen saying that they will attend the July 8, 2012 Bicentennial Parade.
- A letter from Steven Remen saying that he will be unable to serve on the Conservation Commission.

FITNESS IN THE PARK

Dr. Bowcock said that “Fitness in the Park” would continue at Cushman Park this summer on Thursdays. Mr. Murphy motioned to approve the use of Cushman Park for the “Fitness in the Park” event. Mr. Espindola seconded. Vote was unanimous. (3-0). The Board said that the organizer of the event should contact the Police Department to see if any accommodations will be needed.

CHERRY TREES

Dr. Bowcock said that there had been a posted Selectmen meeting on May 17 because the Selectmen had been invited to attend a meeting at the Manjiro/Whitfield house on Cherry Street to discuss a gift of cherry trees from Japanese benefactor Dr. Hinohara. Dr. Hinohara will turn 100 this year and plans to visit Fairhaven in August, said Dr. Bowcock. He said that the Tree Warden had indicated that cherry trees need to get planted by July 1 for ideal health. Gerry Rooney of the Manjiro/Whitfield Friendship Society said that he would like direction in where to plant the donated cherry trees. So far, it is likely that the trees will be planted at the park on the corner of Pilgrim and Cherry Street(s), at Riverside Cemetery, and the west side of the Town Hall.

Mr. Murphy motioned to accept the donation of the cherry trees. Mr. Espindola seconded. Vote was unanimous. (3-0).

OTHER ANNOUNCEMENTS

In other announcements:

- Dr. Bowcock recognized the passing of John Nunes' father and he offered the Board's condolences.
- Mr. Espindola said that the Town had received an up-to-\$10,000 grant to evaluate the feasibility of photovoltaic arrays on the Wood School.
- Mr. Murphy said that a BPW Big Truck Day held at the Recreation Center on May 12 was success.
- The Board recognized Harbormaster David Darmofal for completing courses to become a licensed Captain for the Coast Guard.
- The graduation for Bristol Agricultural High School will take place on June 7, and Dr. Bowcock will try to attend.
- A letter from the Division of Marine Fisheries stated that portions of West Island North were closed to shellfishing due to contaminated quahogs from the Taunton River.

LAND AUCTION

The Board recognized a letter from Town Planner William Roth regarding a Town Auction planned for June 2, 2012. Mr. Roth said that he did not support the auction of: 124 Alden Road, 12 Diamond Street, 2 Causeway Road or 6 Arsene Way without further research. He said that he

thought an auction would not yield market value for the commercial property at 124 Alden Road, and he noted the following concerns:

- 12 Diamond Street could be used as a donation to Habitat for Humanity. Community Preservation funds could be used in a Habitat for Humanity project and the resulting house would be used towards the Town's 10% 40B requirement.
- 2 Causeway Road is irreplaceable as public access to water.
- 6 Arsene Way should be considered by other Town departments to see if it has any use before being auctioned.

Moreover, Mr. Roth proposed the establishment of a property "vetting committee" for future land and property Town auctions. Such a committee would ensure auctions were the result of careful planning and consideration, he said.

The Board voted to halt the scheduled June 2 auction. Dr. Bowcock motioned. Mr. Murphy seconded. Vote was unanimous. The Board then voted to form a property vetting committee to be comprised of: a representative Selectman member, the Finance Director, the Executive Secretary, the Planning Director, and the Building Commissioner/Conservation Agent. Mr. Murphy motioned. Mr. Espindola seconded. Vote was unanimous. (3-0).

FRAN COX

The Board met with Fran Cox in an unscheduled appointment. Mr. Cox, owner of Dorothy Cox Chocolates, came before the Board to say that he was upset about the May 13 Selectmen's meeting, at which he said that Dr. Bowcock made an erroneous statement regarding Dorothy Cox's use of alcohol in gift baskets. Dr. Bowcock apologized for the misconstrued statement. Mr. Cox accepted the apology and extended an invitation for the Board to visit Dorothy Cox's new candy-making facilities in Wareham.

BLUE SKY POWER

At 9:17 p.m., the Board met with Jack Egelston of Blue Sky Power to discuss an ongoing solar power project scheduled for the landfill. At the time of the meeting, the solar project was behind schedule.

Mr. Egelston opened the conversation with an update on the solar project. He said that he had a pending building permit and was working on getting an interconnection from NSTAR so the project can proceed. He extended an apology to the Board for the project being off schedule.

Mr. Espindola had several questions for Mr. Egelston, regarding net metering, energy production, solar panel degradation and Schedule Z use. When the conversation approached the Blue Sky Power contract, it was decided that the Board would have to enter Executive Session to continue the discussion.

The Board entered Executive Session at 9:32 p.m. to discuss the Contract with Blue Sky Power, Worker's Compensation for David Hopwood, the Town Planner's Contract, NSTAR Land Acquisition, and Seaport Inn Docking Fees.

Mr. Murphy motioned to enter into Executive Session, not to reconvene into open session. Mr. Espindola seconded. Vote was unanimous. Roll call vote: Mr. Murphy in favor. Dr. Bowcock in favor. Mr. Espindola in favor. (3-0).

Respectfully,

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

Anne Kakley

Selectmen's Secretary

(Minutes approved 6/04/2012)

Attachment A



Town of Fairhaven
Massachusetts
Office of the Selectmen

40 Center Street
Fairhaven, MA 02719

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

May 21, 2012

Representative William Straus
State House
Room 134
Boston, MA 02133

Dear Representative Straus:

As local officials, we urge you to take action to prevent insurance companies from cost-shifting to cities and towns by slashing reimbursement rates for emergency 911 services.

When our residents pick up the phone and dial 911 in an emergency, key to a patient's outcome is the response time to get to them, stabilize them and get them where they need to be in the shortest amount of time possible. Well-trained, staffed and modernized emergency/911 services are critical to this. When insurers cut reimbursement rates, these services and our residents are impacted.

This issue has had much debate recently and several proposals have been put forth to address this matter. H.1179/H.1180 (now H. 3917) prevents insurers from unilaterally slashing reimbursements for emergency medical services and gives local communities authority to control rates for services. Other amendments have tried to address this issue. It is important to note that this measure only impacts emergency/911 calls. Regular non-emergency transports will be completed through and paid within a network. But in an emergency, a resident doesn't have the time to figure out what ambulance is in what insurer network when their loved one needs immediate and urgent care.

We are concerned that communities across the state are seeing this problem continue to grow and become more significant. This is undoubtedly a core service of local government – basic public emergency safety. In cities and towns across Massachusetts, the people who know emergency/911 ambulance services best are the fire chiefs and municipal officials who bear the ultimate responsibility for providing and paying for the services, and we strongly oppose the insurer's attempts to shift the cost of those services onto municipalities and local taxpayers.

Local officials know the volume of service that's needed in their towns, the local demographics, geography, the distance to local hospitals and what it costs to maintain the necessary vehicles and equipment. Because of that knowledge, they know that slashing reimbursements for emergency medical transportation will shift the costs onto communities, and

that the longer response times that would result would ultimately increase the cost of emergency medical services by requiring far more extensive treatment.

Citizens rely on E911 services that can get them or their loved ones to urgent medical care. We cannot stand by while insurance companies try to cut their own costs and undermine public safety. We are trying to prevent a situation where people who call 911 for emergency medical care have to wait longer for that ambulance to arrive.

Sincerely,

The Fairhaven Board of Selectmen

Brian Bowcock, Chairman

Charles K. Murphy, Vice Chairman

Robert Espindola, Clerk



Town of Fairhaven
Massachusetts
Office of the Selectmen
40 Center Street
Fairhaven, MA 02719

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

May 21, 2012

Senator Mark Montigny
State House
Room 312A
Boston, MA 02133

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Sincerely,

The Fairhaven Board of Selectmen

Brian Bowcock, Chairman

Charles K. Murphy, Vice Chairman

Robert Espindola, Clerk

Attachment B

AMENDMENT NO. 5
TO
AGREEMENT BETWEEN
TOWN OF FAIRHAVEN
AND
BROWN AND CALDWELL
FOR
PROFESSIONAL SERVICES RELATED TO WWTP IMPROVEMENTS AND
ENGINEERING SERVICES DURING CONSTRUCTION

This Amendment made the 21st day of May, 2012, by and between the Town of Fairhaven (hereinafter called "Owner" or "Client"), and Brown and Caldwell (hereinafter called "Engineer").

WHEREAS, Owner and Engineer entered into an agreement for professional services dated January 13th, 2010 (hereinafter referred to as the "Agreement");

WHEREAS, Owner wishes to extend the engagement of the Engineer until June 30, 2012 to perform Construction Phase Services during the construction of the anaerobic digestion and combined heat and power facility (the "Project");

NOW, THEREFORE, for the consideration set forth in the Agreement and other good and valuable consideration, it is hereby agreed and acknowledged by and between Owner and Engineer to amend the Agreement as follows:

I. SCOPE OF CONSTRUCTION SERVICES

The Scope of Services in the Agreement is amended and supplemented to provide additional services below.

Phase 5 – Resident Engineering Services

- Task 001 – Resident Engineer: Provide Resident Engineer on-site full-time (40 hours per week) for 13 weeks between April 1, 2012 and June 30, 2012.

II. SCHEDULE

The modified Scope of Services shall be completed by June 30, 2012.

III. COMPENSATION

Compensation for the services provided under Article I, "Scope of Engineer Services," of this Amendment shall be charged on a Cost Plus Fixed Fee (CPFF) basis in accordance with the SRF-90-1 form, which is attached to this Agreement as Exhibit A. Engineer shall submit monthly invoices for services performed.

Total compensation for services performed under this Amendment is \$40,000. This includes:

Phase 5 – Resident Engineering Services

- Task 001 – Resident Engineer \$40,000.

IV. MASSACHUSETTS CLEAN WATER STATE REVOLVING FUND REQUIRED PROVISIONS

If and to the extent required by law, the following provisions taken from 310 CMR 41.64, shall be a part of the Agreement.

(1) The owner and the contractor agree that the following provisions apply to the eligible work to be performed under this agreement and that such provisions supersede any conflicting provisions of this agreement.

(2) The work under this agreement is funded in part by the water pollution abatement fund. Neither the Commonwealth of Massachusetts nor the Massachusetts Department of Environmental Protection (MassDEP) or the Water Pollution Abatement Trust is a party to this agreement. As used in these clauses, the words "the date of execution of this agreement" means the date of execution of this agreement and any subsequent modification of the terms, compensation or scope of services pertinent to unperformed work.

(3) The owner's rights and remedies provided in these clauses are in addition to any other rights and remedies provided by law or this agreement.

(4) The contractor shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the contractor under this agreement. The contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his designs, drawings, specifications, reports, and other services.

(5) The contractor shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and applicable MassDEP requirements in effect on the date of execution of this agreement.

(6) The owner's or MassDEP's approval of drawings, designs, specifications, reports, and

in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on services not performed or other work, and (2) any payment due to the contractor at the time of termination may be adjusted to the extent of any additional costs the owner incurs because of the contractor's default. If the contractor terminates for default or if the owner terminates for convenience, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the contractor for services tendered and expenses incurred before the termination, in addition to termination settlement costs the contractor reasonably incurs relating to commitments which had become firm before the termination.

(15) Upon receipt of a termination action under paragraphs (13) or (14), the contractor shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the owner all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as the contractor may have accumulated in performing this agreement, whether completed or in process.

(16) Upon termination under paragraph (13) or (14), the owner may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work the owner takes over for completion will be completed at the owner's risk, and the owner will hold harmless the contractor from all claims and damages arising out of improper use of the contractor's work.

(17) If, after termination for failure of the contractor to fulfill contractual obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the owner. In such event, adjustment of the price provided for in this agreement shall be made as paragraph (14) provides.

(18) Except as this agreement otherwise provides, all claims, counter-claims, disputes, and other matters in question between the owner and the contractor arising out of or relating to this agreement or the breach of it will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction pursuant to the laws of Massachusetts.

(19) The Contractor shall maintain books, records, documents, and other evidence directly pertinent to performance on eligible work under this agreement in accordance with generally accepted accounting principles and practices consistently applied. The contractor shall also maintain the financial information and data used by the contractor in the preparation or support of the cost submission and a copy of the cost summary submitted to the owner. The Governor, the Secretary of Administration and Finance, MassDEP and State Auditor's Office or any of their duly authorized representatives, shall have access to such books, records, documents, and other evidence for inspection, audit, and copying. The contractor will provide proper facilities for such access and inspection.

(20) The contractor agrees to include paragraphs (19)-(23) in all his contracts and all subcontracts directly related to project performance that are in excess of \$25,000.

(21) Audits conducted under this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

(22) The contractor agrees to the disclosure of all information and reports resulting from access to records under paragraphs (19) or (20), to any of the agencies referred to in paragraph (19), provided that the contractor is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the contractor.

(23) The contractor shall maintain and make available records under paragraph (19) and (20) during performance on eligible work under this agreement and until 7 years from the date of final payment for the project. In addition, those records which relate to any "Dispute", appeal under an assistance agreement, to litigation, to the settlement of claims arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until 3 years after the date of resolution of such appeal, litigation, claim, or exception if such date is later than seven years from the date of final payment.

(24) (This clause is applicable if the amount of this agreement exceeds \$100,000). If the owner or MassDEP determine that any price, including fee, negotiated in connection with this agreement of any cost reimbursable under this agreement was increased by any sums because the contractor or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data, then such price, cost, or fee shall be reduced accordingly and the agreement shall be modified in writing to reflect such reduction.

(25) Any subcontractors and outside associates or consultants required by the contractor in connection with services under this agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as the owner specifically authorizes in writing during the performance of this agreement. The owner must give prior approval for any substitutions in or additions to such subcontractors, associates, or consultants.

(26) The contractor agrees that he will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap status or national origin.

(27) The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty the owner shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

(28) If it is found, after notice and hearing, by the owner that the contractor, or any of the contractor's agents or representatives, offered or gave gratuities (in form of entertainment, gifts, or otherwise), to any official, employee or agent of the owner, or of the state, in an attempt to secure a contract or favorable treatment in awarding, amending, or making any determination related to the performance of this agreement, the owner may, by written notice to the contractor, terminate the right of the contractor to proceed under this agreement. The owner may also pursue other rights and remedies that the law or this agreement provides. However, the existence of the facts upon which the owner bases such findings shall be in issue and may be reviewed in proceedings under the remedies clause of this agreement.

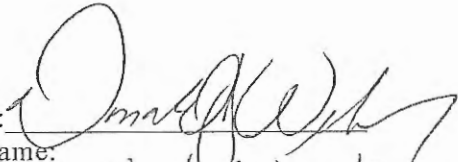
(29) In the event this agreement is terminated as provided in paragraph (28), the owner shall be entitled: (1) To pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor, and (2) as penalty, in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the owner) which shall be not less than three nor more than ten times the costs the contractor incurs in providing any such gratuities to any such officer or employee.

(30) MassDEP has the right to use, duplicate, and disclose, in whole or in part, in any manner for any purpose whatsoever, any plans, drawings, designs, specifications, computer programs (which are substantially paid for with Trust funds), technical reports, operating manuals, and other work submitted with an application or which are specified to be delivered under this agreement or which are developed or produced and paid for under this agreement. The owner and MassDEP reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so. The contractor shall include appropriate provisions to achieve the purpose of this condition in all subcontracts expected to produce copyrightable subject data.


(31) All such subject data furnished by the contractor pursuant to this agreement are instruments of his services in respect of the project. It is understood that the contractor does not represent such subject data to be suitable for reuse on any other project or for any other purpose. If the owner reuses the subject data without the contractor's specific written verification or adaptation, such reuse will be at the sole risk of the owner, without liability to the contractor. Any such verification or adaptation will entitle the contractor to further compensation at rates agreed upon by the owner and the contractor.

All other terms and conditions of the Agreement and any amendments thereto remain unchanged.

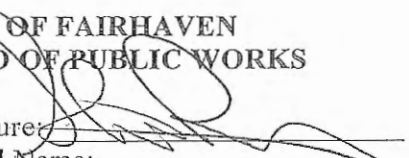
BROWN AND CALDWELL

Signature: 
Printed Name: Donald J. Wuerdeman
Sr. Vice President

**TOWN OF FAIRHAVEN
BOARD OF SELECTMEN**

Signature: 
Printed Name:

**TOWN OF FAIRHAVEN
BOARD OF PUBLIC WORKS**

Signature: 
Printed Name: Steve Ritz

Shire Casseiro 5/15/12

any question arising under [the Conflict of
duties and interest." Such a request is

Attachment C

under G.L. c. 268A§22 he is required to file that

THOMAS P. CROTTY & ASSOCIATES, PLLC

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

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www.tcrottylaw.com

May 21, 2012

Jeffrey Osuch, Executive Secretary
Board of Selectmen
40 Center Street
Fairhaven, MA 02719

under G.L. c. 268A§22 he is required to file that

Re: Potential Conflict of Interest

Dear Mr. Osuch:

You have asked for my advice as to whether Bob Espindola can vote on whether to hire Kopleman & Paige for the purpose of giving him an opinion under the state Conflict of Interest Law. The suggestion is that Mr. Espindola may have a conflict in voting on hiring a law firm for that special purpose.

Pursuant to the terms of the Conflict of Interest Law G.L. c.268A§22, a town official may request an opinion from the town counsel "upon any question arising under [the Conflict of Interest Law] relating to [his] duties, responsibilities and interest." Such a request is confidential.

When the town counsel gives an opinion under G.L. c.268A§22 he is required to file that opinion with the town clerk, and to file a copy with the State Ethics Commission. 930CMR1.03(3) The State Ethics Commission is then required to notify the town counsel of any legal conclusions in the opinion which are inconsistent with Commission conclusions on similar issues, or are otherwise incorrect, incomplete or misleading.

As an alternative to requesting an opinion from the town counsel, a town official may go directly to the Ethics Commission for an opinion. G.L. c. 268A§3(g). Such a request to the Ethics Commission is also confidential.

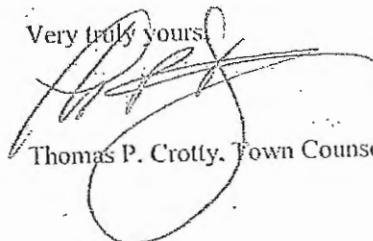
Either way, whether the request is made to town counsel or directly to the State Ethics Commission, the request must be made by the employee, and it is the State Ethics Commission which will render the final opinion. If the State Ethics Commission gives the employee an opinion that he is not in violation of the Conflict of Interest Law, the employee may file that opinion with the Commission, and is a defense to prosecution under that law.

Jeffrey Osuch, Executive Secretary
Board of Selectmen
May 21, 2012
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Because there are significant consequences for violating the Conflict of Interest Law, and because an opinion from the Ethics Commission would effectively protect an employee from the threat of prosecution under that law, I would strongly recommend that you consult with or the State Ethics Commission with regard to this question.

Please do not hesitate to call me if you have any further questions in this regard.

Very truly yours,



Thomas P. Crotty, Town Counsel