



Fairhaven Board of Selectmen

April 29, 2013 Meeting Minutes

Present: Chairman Charles Murphy, Vice Chairman Robert Espindola, Clerk Geoffrey Haworth, Executive Secretary Jeffrey Osuch and Administrative Assistant Anne Kakley.

Chairman Charles Murphy called the meeting to order in the Town Hall Banquet Room at 6:35 p.m. The meeting was televised by Cable Access. There were no prepared minutes to approve.

EXECUTIVE SECRETARY'S REPORT

In his report, Mr. Osuch updated the Selectmen on the following meetings:

- Tuesday, **April 30** –
 - 10:00 a.m. – Wood School Job Meeting
- Wednesday, **May 1** –
 - 9:00 a.m. – Fire Negotiations
 - 1:00 p.m. – Meeting with FEMA re: Blizzard Nemo
- Thursday, **May 2** –
 - 7:30 a.m. to 9:00 a.m. – Quest Center Forum group
 - 6:30 p.m. – Precinct Meeting at the Hastings Middle School
- Friday, **May 3** –
 - 9:00 a.m. – Bid opening for audio-visual equipment at New School
- Saturday, **May 4** –
 - 8:00 a.m. – Selectmen Meeting prior to Town Meeting
- Monday, **May 6** –
 - 2:00 p.m. – Wood School Telephone bid opening – Network Switching Bid
- Thursday, **May 9** –
 - 9:00 a.m. – Meeting with New Bedford Voke districts re: financing addition/renovation
 - 12:00 p.m. to 5:30 p.m. – Health Fair for Town employee at Town Hall

CONTRACT AMENDMENTS

Mr. Osuch presented to the Board two contract amendments for consideration.

The first one came from HMFH for the New Wood School project in the amount of \$21,000.00 for technology specifications and bidding. Mr. Espindola motioned to authorize the Chairman to sign the contract amendment (Amendment #4) with HMFH. Mr. Haworth seconded. Vote was unanimous. (3-0).

The second contract amendment was for the Daedalus contract (Amendment #2) in the amount of \$5,000.00 for specifications and bidding for the New Wood School. Mr. Espindola

TOWN MEETING VOTE CHANGES

Mr. Osuch said that the Board had taken a vote at the previous meeting to rescind their prior recommendation of \$3,500 for Shellfish Department Capital Outlay, but had not taken a vote to recommend another figure. Because the Shellfish Department obtained a grant, the amount needed will be zero. Mr. Espindola motioned to recommend \$0 for Shellfish Department Capital Outlay for the Annual Town Meeting. Mr. Haworth seconded. Vote was unanimous. (3-0).

The Board also reviewed a change in the Highway figure for the Annual Town Meeting. After submission of budgets, the BPW realized a \$2,126 error in the calculation of the Highway salary figure. As a result, the new requested total for the Highway department would be \$890,967. The Board took no action on the request.

Mr. Osuch said that the Finance Committee had completed several transfers that would eliminate or reduce some Special Town Meeting requests. Additionally, the BPW unions had ratified at 0.5% for FY13, 1% for FY14, and 1% for FY15.

Mr. Espindola motioned to approve the Highway Union contract and recommend \$2,817 for the Special Town Meeting labor contract article. Mr. Haworth seconded. Vote was unanimous. (3-0).

Mr. Espindola motioned to approve the Parks Union contract and recommend \$309 for the Special Town Meeting labor contract article. Mr. Haworth seconded. Vote was unanimous. (3-0).

Mr. Espindola motioned to approve the Sewer Union contract and recommend \$2,475 for the Special Town Meeting labor contract article. Mr. Haworth seconded. Vote was unanimous. (3-0).

Mr. Espindola motioned to approve the Water Union contract and recommend \$1.00 for the Special Town Meeting labor contract article. Mr. Haworth seconded. Vote was unanimous. (3-0). Mr. Osuch clarified that the negotiations with the Water Union resulted in a reduction to weekend overtime, and actually reduced their budget. But because they needed to ratify the vote at Town Meeting, they would need a figure.

HEALTH INSURANCE RATES

The Board carried over a conversation from the previous week in regards to setting the rate for health insurance payments. Mr. Osuch asked the Board what they would like to do with the health insurance rates, as the Selectmen's Office would soon have to distribute notification to subscribers about the rate increase.

Mr. Murphy said that, due to the tight timeframe, he was unable to make significant progress in pursuing another insurance avenue.

Mr. Osuch said that the only way the Town could change the health care plan is in conjunction with the Health Insurance Advisory Committee, made up of Town Union representatives. The Town operates a self-funded health plan, said Mr. Osuch, and as such, it could not shop around for lower rates from different companies, unless a different health plan were adopted by the Health Insurance Advisory Committee.

Discussion ensued, regarding the possibility of looking into other health plans in the upcoming fiscal year, including GIC.

Mr. Espindola motioned to approve a six (6) percent health care increase, effective June 1, 2013. Mr. Haworth seconded. Vote was unanimous. (3-0).

Mr. Espindola motioned to approve a six (6) percent dental increase for individual subscribers, and an eight (8) percent increase for family dental subscribers, effective June 1, 2013. Mr. Haworth seconded. Vote was unanimous. (3-0).

DCR LAND INTEREST

At 7:02 p.m., the Board met with Shaun Provincher of the Department of Conservation and Recreation and Town Planner Bill Roth regarding a potential State land purchase of 3.69 acres at the end of Doane Street, near the Fort Phoenix State Reservation.

Mr. Provencher started the discussion by reviewing the history of the land purchase. He said it started five years ago when DCR approached NSTAR to buy the property. NSTAR wanted approximately \$500,000 for the property, and DCR did not proceed with the deal, as the price was too high. Recently, with the help of the Buzzard's Bay Coalition, the DCR got an appraisal done on the land, and supported with the appraisal, secured an agreement for \$150,000 for the land. DCR wants to close on the property by June 30. In order to do so, said Mr. Provincher, the Board of Selectmen would need to sign the 120-day waiver form.

Mr. Roth said that, preliminarily, NSTAR thought the parcel could be sectioned off into three lots, south of Doane Street. After considering the need to blast through ledge and create sewer ties, NSTAR realized that development would be cost prohibitive and reconsidered DCR's offer. Mr. Roth said that the abutters are "keenly aware of this" and supportive of the effort. An initial offer to NSTAR entailed the use of \$100,000 of CPC funds; in this follow-up offer before the Board, DCR would cover the full cost of the land (\$150,000).

Mr. Espindola asked if there was one buildable lot. Mr. Provincher confirmed that there was one buildable lot, but that the lot would be placed under perpetual conservation and would not be developed. He said that there was a possibility that the lot would become a path or trail. Mr. Roth added that the land in question is mostly wetlands.

Mr. Haworth asked if the Town would lose tax revenue in the purchase. Mr. Osuch answered that the Town will still collect a fee on the land, but it will not be as high as taxes would have been.

Mr. Espindola motioned to sign the 120-day waiver. Mr. Haworth seconded. Vote was unanimous. (3-0). The Board thanked Mr. Provincher for coming to the meeting and Ms. Kakley said that she would mail the signed copy of the 120-waiver to Mr. Provincher the next day.

CDBG ENVIRONMENTAL CERTIFYING OFFICER

At 7:12 p.m., Mr. Roth presented to the Board a need for an Environmental Certifying Officer for CDBG efforts. He said that the previous ECO was Brian Bowcock, the previous Select Board Chairman. He asked the Board to designate the current Chairman. Mr. Espindola so motioned to name Mr. Murphy the Environmental Certifying Officer. Mr. Haworth seconded. Vote was unanimous. (3-0).

RESERVE FUND TRANSFER

The Board reviewed a request from the Police Department for a \$10,000 Reserve Fund transfer for Purchase of Services. Mr. Osuch said that the transfer took place in the prior week before. The Board took no action.

SOUTHCOAST ENERGY CHALLENGE

Mr. Espindola said that the representatives of the SouthCoast Energy Challenge had contacted him over the weekend and indicated that they would have to postpone their initial kick-off meeting, previously scheduled for May 1. They are currently trying to set up another date. Mr. Espindola motioned to approve the use of the Banquet Room for the SouthCoast Energy Challenge kick-off event in May. Mr. Haworth seconded. Vote was unanimous. (3-0).

AUDITORIUM USE APPLICATION – SCHOOL REUNION

The Board reviewed a request for Town Hall Auditorium use for a Fairhaven High School 50th reunion, scheduled for June 29, 2013. Mr. Osuch noted that this was the same day as Homecoming, but the reunion was scheduled to start at 7:00 p.m., shortly after Homecoming. He noted that there was some concern about the tight turn-around between Homecoming clean-up and the reunion, but he said the applicant was aware of the situation and was willing to work with the Town and the custodian to make sure everything ran smoothly. He said that the applicants were also requesting a waiver of rental fees. The reunion was scheduled to occur

from 7:00 p.m. to midnight, and the applicant was also requesting a special one-day all-alcohol license as well. Mr. Osuch said that the alcohol license would require proof of insurance.

Discussion ensued regarding waiving fees. The Board determined that it would like to know if the event was going to benefit a scholarship or group before they made a decision to waive the rental fee.

Mr. Espindola motioned to grant the request for the Fairhaven High School 50th Reunion to use the Town Hall Auditorium on June 29, 2013, and to grant a one-day, all-alcohol license, as long as the group can produce proof of insurance. Mr. Haworth seconded. Vote was unanimous. (3-0). The Board took no action on the request to waive fees, but said that the Selectmen's Office would follow up with questions to see if the applicant could qualify for a rental fee waiver.

HARBORMASTER AND SHELLFISH WARDEN MEETING

At 7:30 p.m., the Board met with the Harbormaster, Dave Darmofal, and Shellfish Warden Tim Cox to discuss several items.

Union Wharf Collections – Mr. Darmofal said that he did not think that increasing Union Wharf fees would be the answer to the Town's collection problem. Mr. Osuch said that the Board needed to solve the ongoing issue of individuals skipping out on their bills and leaving town with no leverage in collecting outstanding fees.

Mr. Darmofal said that this has been a long-standing problem in the Harbormaster's office. He said that part of the problem was that the billing method was not sophisticated enough. He added that as a Harbormaster, he is limited in his authority – he cannot order the moving of a boat unless it is a navigational hazard. Mr. Darmofal said that he recommended an “interdepartmental” effort, with the involvement of the Town Accountant, to figure out a more sophisticated collection method. He recommended a meeting with the Harbormaster, Mr. Osuch, Town Counsel, the Town Accountant, the Treasurer, and a representative of the Board of Selectmen. Mr. Espindola recommended that Mr. Haworth be the Board representative for the matter, as he sits on the Shellfish Committee.

Mr. Osuch said that he still supported the idea of raising fees, as the increase in fees would increase an up-front payment and alleviate the problem.

Mr. Murphy asked Mr. Darmofal what other communities do. Mr. Darmofal answered that New Bedford fees are much lower than Fairhaven's, and they have fewer collection issues.

It was resolved that Mr. Darmofal would conduct a follow-up meeting with Mr. Haworth to approach the issue of Union Wharf collections.

Houseboat Regulations – Mr. Darmofal said that he had spoken to Mr. Haworth earlier in the day regarding some of Mr. Haworth's concerns about the Harbormaster's proposed houseboat regulation that would ban houseboats in Fairhaven waters. Mr. Darmofal said that he has been receiving quite a few requests for houseboats and he thinks that the issue needs to be addressed

by the Board of Selectmen. He said that other towns have regretted allowing houseboats. He said that houseboats result in human waste pollution in the harbor. The Harbormaster's department has a pump-out boat for recreational vehicles, but not for houseboats, he said. He said that houseboats stand the potential to create a lot of waste, and the Harbormaster's department has no way to monitor that waste. He cited the matter as an "environmental issue".

Mr. Espindola said that he supported the intent of the regulation, but he thought the language in the regulation regarding notification of houseboat owners should be made more specific in regards to timeframe.

Mr. Haworth recommended placing a sticker on the vessel and giving the houseboat owner three days to vacate. Mr. Espindola moved to add this language to the regulation, allowing the Harbormaster to place a sticker on the houseboat and give three days notice to vacate. Mr. Haworth seconded. Vote was unanimous. (3-0).

Deputy Application – The Board revisited the application of George Hubert for the position of Shellfish Deputy/Assistant Harbormaster. Mr. Darmofal said that the position does not pay a lot and that the deputies are never placed in a dangerous situation. The Board said that they would like to post any job opportunities available in the Natural Resources department. Mr. Darmofal said that the department is accepting applications.

Mr. Espindola motioned to appoint George Hubert to Shellfish Deputy/Assistant Harbormaster. Mr. Haworth seconded. Vote was unanimous. (3-0).

Round Cove – Mr. Cox informed the Board that testing in the Round Cove area has come back with poor results and as a result, Round Cove will be closed this season to shellfishing. He said that the good news was that the contamination did not appear to originate from human waste or animal waste. The Division of Marine Fisheries came out the prior week, said Mr. Cox, and determined that the causeway water level is not as deep as it should be for proper shellfish bed flushing. The mean depth of the causeway should be sustained at four feet for proper circulation.

Because this limits shellfishing beds for permit holders, Mr. Darmofal and Mr. Cox recommended opening up Senior Cove to non-commercial permit holders for three weekends in the summer.

In the meantime, the section under the causeway will need to be dredged by the owner of Bella Vista Island to maintain proper depth. Signs will be placed around Round Cove indicating its closure.

The Board took no action, but said that they would like to wait and see if they get feedback from the public regarding the opening of Senior Cove to general shellfishing for three weekends. Mr. Cox will follow up at an upcoming meeting.

Causeway Fishing Platforms – Mr. Cox said that he knew there had been some concerns raised from West Island residents regarding proposed fishing platforms at the Causeway. He said that there was no new information to share, as the project is still in infancy stage.

DISCRIMINATION POLICY

At 8:12 p.m., the Board met with Cora Peirce, upon her request, to hear her suggestions for improving the Town's Discrimination Policy, accepted by vote of the Board of Selectmen on March 4, 2013.

Ms. Peirce said that she has worked for years in the community for "people who are underserved". She is familiar with family crisis and rape prevention. She said she reviewed policies for surrounding towns – Wareham, Westport, New Bedford and Dartmouth. She gave the Board a copy of the New Bedford's "Anti-Discriminatory Harassment Policy". She cited it as an example of a good anti-harassment policy, calling it "simple". She said that the Fairhaven policy repeated itself a lot. Specifically, she said that the complaint process outlined in Fairhaven's policy could be improved. Currently, harassment claims must be reported to the employee's department head. If the complaint is against the department head, it must be filed with the Executive Secretary or the Chairman of the Board of Selectmen. Ms. Peirce thought that the Board should set up a committee to execute the complaint process.

Mr. Murphy clarified that the Personnel Board has not yet been dissolved and that he would bring the matter of the Discrimination Policy before the Personnel Board at their May 2, 2013 meeting.

Mr. Espindola said that if the Personnel Board was not the logical choice for dealing with harassment complaints, then perhaps the Board of Selectmen could create a committee or board to deal with these issues. Ms. Peirce said that she would forward additional information to the Board of Selectmen to aid in their decision making process in regards to the Discrimination Policy.

TOWN MEETING REQUEST RE: TOWN HALL REPAIRS

The Board read a letter from Town Curator Al Benac, asking the Board to recommend \$9,000 instead of \$7,500 at Annual Town Meeting to fund the restoration of a table in Town Hall storage, that Mr. Benac claims is original to the Town Hall and should be displayed in the Auditorium.

Mr. Osuch noted that it was late to change recommendations to Town Meeting, and it was uncertain if the Town Hall repairs money could even be used to repair the table. The Board agreed that Mr. Benac would have better luck pursuing CPC money to repair the table.

INSPECTIONS AT 194 HUTTLESTON AVE

The Board read a letter from Joseph Chicco regarding inspections and operations out of 194 Huttleston Ave. Mr. Chicco alleged that an insurance company was operating illegally out of the location, and that the building had not been inspected in ten years.

Building Commissioner Wayne Fostin was present and refuted the claims. He said that the building was inspected in 2012 and that the building is zoned business and can therefore lease space to an insurance company.

BIKEWAY REVOLVING ACCOUNT REQUEST

The Board read a letter from Ken Pottel, Chairman of the Fairhaven Bikeways Committee, asking to establish a revolving account for the Fairhaven Bikeway Committee. Mr. Osuch said that a revolving account can only be established by a vote of Town Meeting. Deadline for Annual Town Meeting articles has passed, so the request will be considered for the Special Town Meeting warrant in fall.

COMCAST FEE INCREASE

The Board read a notice from Comcast regarding fee increases, effective July 2013. See Attachment B.

The Board expressed concern that limited basic cable was included in the rate hike, which is typically used by those on a limited income. Mr. Haworth said that he was concerned and said that he thought Comcast had the monopoly in Fairhaven. He said that he wanted the Cable Access Advisory Board to look into the matter, and to look into the possibility of getting Verizon Fios in Fairhaven.

Mr. Espindola said that the Town is in the middle of a ten-year contract with Comcast, but that the Cable Access Advisory Committee still intended to research options until contract renewal time. Mr. Osuch said that the Town had already tried to get Fios for Fairhaven, and was told it was not available. "It never hurts to ask again," Mr. Haworth said.

BPW REQUEST FOR TOWN COUNSEL

The Board read a request form from the Board of Public Works asking the Selectmen to approve the use of Town Counsel for a member of the BPW, in a matter related to a resident conflict. Mr. Espindola motioned to approve the use of Town Counsel for the BPW member. Mr. Haworth seconded. Vote was unanimous. (3-0).

OTHER BUSINESS

In Other Business:

- Mr. Espindola congratulated all those involved in the West Island 5K Road Race. All proceeds go to the High School track club
- Mr. Haworth said that the Acushnet/Fairhaven Little League opening day was a success and that he was enjoying all the spring activities in Town

- Mr. Murphy said that all three Selectmen were able to attend the Cherry Blossom Festival at the Whitfield-Manjiro Friendship House on April 28. A peace pole was unveiled in Japanese, English, Portuguese and Spanish
- Mr. Murphy praised the volunteers of the Council on Aging. The Selectmen recently attended a COA volunteer luncheon. COA director Anne Sylvia presented the Selectmen with a \$150,000 oversized “check” to represent the wages that would have been spent if the Town paid their volunteers minimum wage for their services

At 8:48 p.m. Mr. Espindola motioned to enter Executive Session to discuss Clerical, Fire, Police, Dispatchers Union negotiations, litigation strategies relative to the Seaport Inn, and discussion of threatened litigation related to the April 1, 2013 Board of Health election (See Attachment C). Mr. Haworth seconded. Vote was unanimous. (3-0). Roll call vote: Mr. Espindola in favor. Mr. Murphy in favor. Mr. Haworth in favor.

Respectfully,

Anne Kakley

Selectmen’s Secretary
Minutes approved 5/06/2013

IMPORTANT PRICE ADJUSTMENT INFORMATION for Fairhaven, MA

Dear Valued Customer:

May, 2013

All of us at Comcast are committed to improving your entertainment and communications experience, and we continue to invest in making your services even better. While we continue to make these and other investments, we periodically need to adjust prices due to changes we incur in programming and other business costs. Starting July 1, 2013, or with your next bill thereafter, new prices will apply to certain video services, equipment and installation fees as indicated in this notice.

We'd welcome the opportunity to help you find the perfect package that meets your needs. Visit us at xfinity.com or call us at 1-800-XFINITY to learn more.

Thank you for being a Comcast customer. We look forward to continuing to serve you.

Prices shown are for residential service only and do not include federal, state and local taxes, FCC user and franchise fees or Regulatory Recovery fees or other related costs. If you are currently receiving services on a promotional basis, under a minimum term agreement associated with a specific rate, or in the guaranteed period of one of our SurePrice™ plans, the prices for those specific services will not be affected during the applicable promotion, minimum term or SurePrice™ period. After a notice of an increase in rates, you may change your level of service at no additional charge for a period of 30 days from the effective date of the change. Please refer to your billing statement for your Local Franchising Authority's name and address. Prices, services and features are subject to change. Not all services are available in all areas.

BASIC SERVICES	Current Price	New Price Eff. 07/01/13	INSTALLATION FEES (per occurrence unless noted) ³	Current Price	New Price Eff. 07/01/13
Fairhaven, MA			Installation of each Additional Outlet		
Limited Basic	\$12.92	\$14.00	after initial installation of service	\$31.50	\$32.15
Expanded Basic ¹	\$57.03	\$55.95	Activation of each Additional Outlet		
Includes standard definition digital converter and remote for primary outlet			after initial installation of service	\$21.75	\$22.05
Franchise Related Cost ²	\$ 0.17	\$ 0.18	Relocate Additional Outlet		
			after initial installation of service	\$13.60	\$28.55
			Upgrade Standard Definition DVR or HD DVR Service	\$20.05	\$26.30
			Upgrade of Service (in-home visit required)	\$20.05	\$26.30
DIGITAL SERVICES	Current Price	New Price Eff. 07/01/13			
Digital Starter	\$69.95	No Change			
Includes Limited Basic, Expanded Basic, Digital Starter channels, MoviePlex, access to Pay-Per-View and On Demand programming and Music Choice®					
VIDEO EQUIPMENT	Current Price	New Price Eff. 07/01/13			
Limited Basic Only Converter	\$ 0.60	\$ 1.00			
Digital Converter	\$ 2.15	\$ 2.50			
HD Digtal Converter (Limited Basic Only)	\$ 2.15	\$ 2.20			

¹ Requires purchase of Limited Basic.

² Franchise Related Costs are costs associated with providing public, educational and/or government access facilities and equipment and/or other related costs in your community.

³ Does not include Extreme 305 or Extreme 105 Internet Service Installation charge, wireless networking, professional internet installation, Voice installation fees or activation fees.

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April 26, 2013

Chairman Charles Murphy
Mr. Robert Espindola
Mr. Geoff Haworth
Fairhaven Selectboard
40 Center Street
Fairhaven, MA 02719

RE: Election dated April 1, 2013

Dear Selectboard Members:

I am writing on behalf of Mr. John Wethington, candidate for the office of Board of Health for the Town of Fairhaven. Mr. Wethington is seeking your redress of serious legal improprieties and irregularities with the conduct of the election for the Board of Health in the Town of Fairhaven. It is Mr. Wethington's position that these concerns and legal irregularities can only be rectified by a determination of the Superior Court, ordering a new election in the Town of Fairhaven for this office. Your intervention on behalf of the Town of Fairhaven is respectfully requested by filing an action with the Superior Court to resolve the election errors going forward, and to resolve the issues implicit within the Town election of April 1, 2013. The irregularities and failures of the Town Clerk to implement an election which is required under Massachusetts General Laws, has denied the voting rights of the residents of the Town of Fairhaven guaranteed them under the United States Constitution and its Amendments, the Voting Rights Act and the Massachusetts Declaration of Rights. In particular the following failures were determined as a result of the election in the Town of Fairhaven on April 1, 2013, which are deemed to be a violation of law. These irregularities were confirmed as a result of the recount for the office of the Board of Health conducted on April 23 and April 24, 2013.

- 1) It was determined in the recount that 2503 ballots were tallied by the six precinct ballot box registers for the April 1, 2013 election. The total ballots actually counted in the Recount were 2500. There is a three vote difference between the ballots that went through the machines, on April 1, 2013 and the ballots that were counted at the recount on April 23, 2013. These two figures should equal. A difference of 3 ballots is significant, when the recount determined that a candidate won by a single vote. Where are the missing three ballots that should have been counted at the recount? Why is there a difference? This question cannot be answered with reliability.

- 2) The total Voter Check Ins at the precincts do not equal the Voter Check outs at the various precincts and do not match either the ballot box register totals or the total number of ballots which were hand counted in the recount. These numbers should all be equal.
 - a) Voter Check Ins = 2496
 - b) Voter Check Outs = 2485
 - c) Ballot Box Tally = 2503
 - d) Ballot Recount total = 2500

- 3) The law requires that the Town Clerk take the following actions for each election, please note that ***none*** of these procedures were followed:
 - A. A record of the total number of ballots delivered to each polling location is to be kept by the Town Clerk. M.G.L. c. 54 sec. 46. *Note when repeatedly asked publicly, the Town Clerk admitted she did not know how many ballots were delivered to each precinct.*
 - B. No person is permitted to vote until his name is checked off the Voting List. M.G.L. c. 54 sec. 67. *The voting check in list differs by 7 from the ballot box tally. Did 7 more people vote than were checked in? Were these people registered voters? Or in the alternative were 7 ballots falsely cast?*
 - C. The Voting List is to be checked off with the name of the person who voted, prior to depositing the ballot into the ballot box. M.G.L. c. 54 sec. 83. *The voting list check outs is 18 less than the ballot box tally. The Voting List check outs is 11 less than the number of Voting List check ins. How many people did vote in the Fairhaven election? The numbers of check ins check outs and ballot box tallies are supposed to be equal.*

- D. Precinct clerks upon close of polls shall record the total ballots received from the clerk, record the number registered on the ballot box of people voted, record the total number of spoiled ballots, total and record the number of names on the voter check in list, total and record the number of names of the voter check out list, the total ballots in the ballot box are to be removed and counted by hand, and publicly announced and recorded, the total number of unused ballots are to be counted and recorded, the counted ballots are to be sealed at the polling place, voting lists are to be sealed in another container or envelope, unused ballots together with spoiled ballots are to be sealed in another container. There shall be no adjournment of proceedings until all proceedings completed. M.G.L.c. 54 sec. 105A. All records of the precinct are to be transferred the town clerk with the sealed ballots and sealed voting lists. *When publicly questioned, Town Clerk Lowney stated that there **were no** precinct records. Nothing was counted at the polls. No ballots were sealed at the polls. Voting lists were not sealed at the polls. There was no count of unused and spoiled ballots and indeed no count of ballots delivered to the polls either. After the adjournment of the proceedings, the Town Clerk privately completed counting ballots after declaring Wethington the winner. Essentially all of the procedures to insure a fair and just election were not followed by the Town Clerk.*
- E. After being counted, all ballots are to be sealed, all voting lists are to be sealed, and all unused and spoiled ballots are to be sealed up together with durable material to avoid tampering, and locked. M.G.L.c. 54 sec. 107. *None of the ballots, whether used, unused, or spoiled were sealed by the town clerk and were not maintained by the clerk in a locked container.*
- F. Town clerks are to retain in their custody the envelopes or containers containing the ballots casts without examining them, or permitting them to be examined by anyone. M.G.L.c. 54 sec. 109. *The Town Clerk repeatedly examined the ballots in violation of law after swearing in John Wethington as the winner of the Board of Health election.*

Despite full knowledge of all of the irregularities determined to have occurred in the April 1, 2013 town election, and with full knowledge that none of the totals from either the ballot box

registers, the hand recount, the voting check ins, or the voting check outs equaled, the Board of Registrars certified that Peter Deterra won the Board of Health election by one vote. It should be noted that at the meeting of the Board of Registrars the Town Counsel Tom Crotty threatened that the Board of Registrars “would get in trouble if they failed to certify the winner.” No legal citation was referenced as to how the Board of Registrars would get “in trouble” by failing to certify the recount that they had no confidence in. It is the opinion of counsel for Mr. Wethington that the Board of Registrars should not have certified the election, due to the vast discrepancies in the numbers and the lack of security in the ballots after the election.

It is respectfully requested that the Selectboard take immediate action in the Superior Court to call for a new election for the Board of Health. Should the Fairhaven Selectboard allow the results of this election to stand, despite the gross irregularities detailed herein, is to effectively sanction this defective process, and its defective results. The effect of the gross irregularities in the Fairhaven election for the Board of Health has been to effectuate a denial of the voting rights guaranteed the residents of Fairhaven under Federal and State laws, and United States Constitution. Without a new election, the residents of the Town of Fairhaven can have no faith in the integrity of the election process in Fairhaven, and no faith in the validity of the candidate sworn in to the Board of Health.

You are reminded that as Selectboard members you have a responsibility to the community to protect and enforce the rights of the residents. On behalf of John Wethington and at least half of the residents who voted in the April 1, 2013 election, we request that you exercise your authority to petition the Superior Court for a declaratory judgment seeking to invalidate the election for the Board of Health, and to request that a new election be conducted forthwith, compelling the town clerk to abide by the laws of Massachusetts, in the conduct of the new election.

Respectfully yours;

Ann Ponichtera DeNardis

Ann Ponichtera DeNardis
Attorney for John Wethington

cc: John Wethington