



# Fairhaven Board of Selectmen

## September 14, 2015 Meeting Minutes

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

Chairman Geoffrey Haworth called the meeting to order in the Town Hall Banquet Room at 6:41 p.m. The meeting was audio recorded by the Selectmen's Office and video recorded by the Government Access channel.

### MINUTES

- Mr. Murphy motioned to approve the minutes of the **August 31, 2015** meeting, **open** session. Mr. Espindola seconded. Vote was unanimous. (3-0).
- Mr. Murphy motioned to approve the minutes of the **August 31, 2015** meeting, **executive** session. Mr. Espindola seconded. Vote was unanimous. (3-0).
- The executive session minutes of the **July 6, 2015** meeting were tabled to Executive Session for edits.

### EXECUTIVE SECRETARY'S REPORT

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

- Wednesday, **September 16**
  - 9:30 a.m. – Union Wharf Job Meeting
  - 6:30 p.m. – Commission on Disability at the COA
- Tuesday, **September 22**
  - 8:00 to 9:30 a.m. – Retirement Board meeting
- Wednesday, **September 23**
  - 9:30 a.m. – Union Wharf job meeting
  - 2:00 p.m. – RFP opening – Rogers and Oxford schools
- Thursday, **September 24**
  - 9:00 a.m. – BBAC meeting in Wareham
- Sunday, **September 27**
  - 1:00 to 5:00 p.m. – Winterfest at Cushman Park

### UNION WHARF

Mr. Osuch informed the Board to the progress at Union Wharf. He said that debris in the vicinity was hampering work.

### **LAL REQUISITION #1**

The Board reviewed Requisition #1 for LAL for the Town Hall Sidewalk Restoration project, in the amount of \$78,900.59. Mr. Murphy motioned to approve the requisition in that amount. Mr. Espindola seconded. Vote was unanimous. (3-0).

### **ROUTE 6 MEDIAN STRIP ACCOUNT**

The Board reviewed the tabled issue of allowing the Beautification Committee to use the Route 6 Median Strip account for other project abutting Huttleston Ave.

Mr. Murphy referenced an opinion from Town Counsel, which indicated that the account was formed for the purposes of the Route 6 median strip and may only be used for that purpose.

Karen Vilandry was recognized. Ms. Vilandry accused the Beautification Committee chairman, Wayne Oliveira, of violating laws pertaining to Conflict of Interest by hiring his son's landscaping company for Beautification Committee work. The Board disagreed with Ms. Vilandry. Mr. Haworth stated that it was the Board of Selectmen who signed off on the bill in question, and Mr. Espindola said that the funds are not distributed by the chairman or any one member of a committee, but the committee as a whole. Mr. Espindola added that they did not know if Mr. Oliveira also recused himself from that vote.

Mr. Murphy motioned to authorize the Beautification Committee to expend the funds from the median strip account. Mr. Espindola seconded. Vote was unanimous. (3-0). Mr. Murphy motioned to name the Beautification Committee signatories to the expenditure of the account. Mr. Espindola seconded. Vote was unanimous. (3-0).

### **EVERSOURCE PERMITS**

Mr. Murphy motioned to approve Eversource gas permit for 13 Fort Street (previously approved by the BPW). Mr. Espindola seconded. Vote was unanimous. (3-0).

### **CLE CONTRACT AMENDMENT #2 – MACLEAN'S**

The Board reviewed CLE contract amendment #2 for the MacLean's Seafood Building demo project at Union Wharf, work order in the amount of \$14,958.75. Mr. Murphy motioned to approve the CLE contract amendment #2. Mr. Espindola seconded. Vote was unanimous. (3-0).

### **UNION WHARF CHANGE ORDER 2a and 2b**

The Board reviewed Change Orders 2a and 2b for the Union Wharf Improvements Phase 1, in the amount of \$24,146.36. Mr. Murphy motioned to approve the change orders. Mr. Espindola seconded. Vote was unanimous. (3-0).

### **CDBG-DR – MACLEAN’S DEMO – JAY MOR**

The Board reviewed a Change Order for Jay Mor in the amount of \$12,900 for additional paving as a part of the MacLean’s Seafood Building demo. Mr. Murphy motioned to approve the change order. Mr. Espindola seconded. Vote was unanimous. (3-0).

### **VETERAN’S DAY PARADE**

The Board reviewed a letter of invitation from Gerry Payette for the Selectmen to walk in the annual Veteran’s Day parade on November 11. The Board said it would be an honor to attend and walk the parade route. Mr. Murphy motioned to accept the invitation. Mr. Espindola seconded. Vote was unanimous. (3-0).

### **911 BOOKS AND COIN**

The Board met with William Kligel upon request of the Chairman, to receive a 911 book *Report from Ground Zero* by Dennis Smith, and a 911 commemorative coin to be kept in the Town Hall. Mr. Kligel said that the gift was offered by him on behalf of the Fairhaven Lions’ Club so that the children of Fairhaven would remember what happened that day on September 11, 2001.

Mr. Kligel donated a second book on 911 to be housed at the Millicent Library.

### **LANCE CPL. MATTHEW RODERIGUEZ 5K**

The Board reviewed a request from Lauren Webber to hold the first Lance Cpl. Matthew Rodriguez “Run to Remember” 5K on November 8, 2015. The Board was supportive of Ms. Webber’s request. Mr. Murphy motioned to approve the 5K for November 8 as requested, to be coordinated with the Police Department. Mr. Espindola seconded. Vote was unanimous. (3-0).

### **GETTY “FIRST HOT LINE AUTO SALES” HEARING**

At 7:07 p.m., Chairman Haworth opened a hearing for Getty, “First Hot Line Auto Sales” for an increase of cars on premises for sale. Mr. Haworth read the hearing notice into record (see Attachment A).

The owner of Getty, Hatem Elrifai, was present with his attorney, Robert Perry. Atty. Perry stated that they were looking to increase the number of cars for sale on the lot and trying to designate a storage area. He said that Bill Roth and Wayne Fostin had both approved the plans as submitted and that the proposal was not “a tremendous increase”.

Mr. Murphy said that he visited the location the previous weekend to do a site visit, and he spoke with the direct abutter about the application for the increase. He said that he met with Mr. Roth and Mr. Fostin about the plan’s revision from the original application. Mr. Murphy thought that the proposal in front of the Board would be a fair increase.

Atty. Perry said that there have been “frivolous complaints” about his client and that the new license requested would result in a net increase of eight vehicles with the removal of three employee spaces. Mr. Espindola asked if there are ever more than two employees on site. Mr. Elrifai said that there are never more than two employees on site.

Mr. Espindola asked about the removal of arborvitae. Mr. Haworth said that they were replacing it with a six-foot fence.

Mr. Osuch contended Atty. Perry’s claim that they were only requesting an eight (8) vehicle increase. Mr. Osuch said that the increase for all permitted vehicles will go from 25 to 41 and that the proposal would eliminate all green space and buffer zones on the premises. He said that the approval would be setting a bad precedent and contended the claim that the business could run with just two employees, as it has three working bays and a gas pump in addition to sales.

Mr. Espindola asked, procedurally, if they should be doing increase hearings as a part of the renewal process. Mr. Haworth said that they would not have time at renewal season to have many hearings, and that having a hearing now is actually better timing for the purposes of the renewal season.

Mr. Haworth said that, as a part of all renewals, he wants to see engineered plans as a part of every application.

Ed Gonet III of 31 Grinnell Street was recognized. He said that he harbored no bad feelings against the applicant but said that he did not think the 25 to 41 increase in cars was conducive to the safety of the neighborhood. He said that the increase would push vehicles to the boundaries of the site and block visibility for people going on and off Route 6. Mr. Gonet cited several Town bylaws that he said he thought Mr. Elrifai would be violating with the increase, including the increase of eight cars to be shipped, and the zoning of the lot, which is currently business but would have industrial use with the increase. Additional concerns cited by Mr. Gonet were snow removal, the “jockeying” of cars in and out of spaces on the lot and the test driving of vehicles for sale on Grinnell and Rivet streets.

Ryan Belcher was recognized. Mr. Belcher spoke favorably of Getty Auto Sales and said that his family frequents the location. He said that he is always treated well there.

James Gonet of 26 Rivet Street was recognized. Mr. Gonet said that there was too many cars proposed in the license increase application. He agreed that there was already a safety issue with visibility and test driving that would get worse with the approval of a vehicle increase.

Craig Crawford was recognized. Mr. Crawford said that he did not necessarily think that the traffic issues on Grinnell and Rivet were test driving issues, but how the streets were engineered for entrance and egress.

Thomas Olival of 17 Mangham Way was recognized. Mr. Olival said that the turn onto Grinnell was tight and that the storm drain has been broken there. He added that everyone pulls out of

Rivet Street because it has better visibility. He said the increase would only make the situation worse.

Karen Vilandry was recognized. Ms. Vilandry said that she had a concern about the safety issues associated with the increase and the removal of the arborvitae. She said that if the applicant was in need of more space, then he should consider moving the location.

Kaisa Holloway Cripps was recognized. Ms. Holloway Cripps said that she was speaking as a member of the Planning Board but not on behalf of the Planning Board. She said that the Planning Board is in the process of creating an Auto Dealership Zoning Bylaw for Town Meeting approval. She added that the plan presented would likely not pass the requirements of the Planning Board's proposed bylaw. As a Planning Board member and a mother, Ms. Holloway Cripps said that she would not support the increase.

Alison Gonet of 31 Grinnell Street was recognized. Ms. Gonet said that her children cannot walk to the bus stop at the end of the street because of the safety hazards presented by the Getty lot. She added that there is a safety hazard presented to that area of Route 6 because of the way the tanker truck has to navigate the cars on the lot for fuel deliveries.

Mr. Haworth proposed the possibility of writing a test driving restriction into the license going forward.

Louis Baptiste of RRR Auto was recognized. Mr. Baptiste submitted to the Board a series of photos that he claimed showed Mr. Elrifai was in violation of his current license. See Attachment B for the exhibited photos.

Terry Szala was recognized. Ms. Szala said the only way he could increase the auto storage as proposed would be to eliminate the back drive.

Ed Gonet II was recognized. Mr. Gonet reiterated that the area of Route 6 was already difficult to navigate.

At 8:16 p.m, the Chairman closed the public comment portion of the meeting for deliberation.

Mr. Murphy said that he heard the abutters' concerns about safety and wanted to see the applicant work with the neighborhood to create a proposal that would be acceptable to everyone. He said that he did not have a concern with the proposal of eight (8) vehicles at the back of the lot. Additionally, he wants to see the plan include a place for lighting and dumpster. He said that the Board should address the Grinnell Street entrance issue.

Mr. Espindola said that it was important not to rush the application, especially if the Planning Board was trying to put together a bylaw that would oversee this kind of application.

Mr. Haworth said that he would favor a plan that includes the 15 feet in the rear of the lot. He agreed that a dumpster should be included in the plan and said that he would like to see how many feet exists between the corner of Grinnell Street and the first car.

The Building Inspector/Zoning Officer and Town Counsel will review the zoning of the property and its impact on the application. Mr. Espindola requested that the updated application include a “flow plan” for the cars on the lot.

Mr. Murphy motioned to continue the hearing to October 14 at 7:00 p.m. Mr. Espindola seconded. Vote was unanimous. (3-0).

### **CABLE PROPOSAL**

At 8:36 p.m., the Board met with Atty. William Solomon and Ronnie Medina of the Cable Advisory Committee regarding Atty. Solomon’s proposal to represent the Town in a contract renewal with Comcast in 2018 as a consultant.

Atty. Solomon said that he has capped his proposal at \$12,500, and would not exceed that figure unless the process became “adversarial” – he added that he may not even reach the full amount, depending on the work needed.

Mr. Espindola said that the Cable Advisory Committee supported Atty. Solomon’s proposal and that he personally also supported it. The renewal date is approximately 36 months away.

Mr. Haworth said that one of the common things he hears from his constituents is that they miss having the Comcast service center located in Fairhaven.

Mr. Murphy motioned to approve the proposal and sign the contract with Atty. Solomon for services not to exceed \$12,500. Mr. Espindola seconded. Vote was unanimous. (3-0).

### **ANIMAL SHELTER POLICIES**

At 8:47 p.m., the Board met with Kelly Massey, Animal Control Officer. Ms. Massey asked the Board to authorize her to attend a professional development course that would certify her to be able to humanely euthanize injured and suffering animals off hours. Ms. Massey said that the current protocol for injured and suffering wildlife found “off hours” (i.e. when the animal hospital is closed) is to call a police officer and have the animal shot. The course would give her the certification she needs to end the animal’s suffering off hours with an intravenous fluid instead. The course costs \$125 and Ms. Massey said that she would need to use the Animal Gift Account to pay for the course.

The Board was supportive to Ms. Massey’s request. Mr. Murphy motioned to approve the request and expenditure. Mr. Espindola seconded. Vote was unanimous. (3-0).

Ms. Massey added that she had 12 puppies in the animal shelter. She said it was rare for her to have puppies, but that she was concerned that the low dog adoption fee of \$250 would result in people adopting puppies to resell for profit. Moreover, she said the puppies cost more in medical expenses. She recommended raising the puppy fee to \$350.

The Board was supportive to the request. Mr. Murphy motioned to raise the puppy fee to \$350 per puppy. Mr. Espindola seconded. Vote was unanimous. (3-0).

### **DOWN THE HATCH CONTINUED HEARING**

At 9:00 p.m. the Chairman continued a hearing for zoning compliance (parking) and noise complaints at Down the Hatch/Earl's Marina. Owner Matthew Hebert was present

Mr. Hebert said that since the previous meeting, he has stayed in contact with the party complaining about noise, and has worked with that person to make sure noise levels are acceptable. Further, he said that the location is in full compliance for parking and that boats taking up parking spaces have been relocated. The Board was able to concur that the parking issue has been resolved.

Maryann Crane was recognized. She said that the residents of Cottonwood Street have not found Down the Hatch to present noise issues.

The Board thanked Mr. Hebert for his actions that resulted in compliance.

Mr. Murphy motioned to close the hearing with no action. Mr. Espindola seconded. Vote was unanimous. (3-0).

### **AGRICULTURAL COMMISSION**

At 9:10 p.m., the Board met with Kaisa Holloway-Cripps to discuss the appointment of a five-member Agricultural Commission, previously created by vote of Town Meeting in 2009. (See Attachment C). Also present was interested party Peter DeTerra.

Mr. DeTerra said that he was a third generation farmer and would like to represent other farmers in Town.

Ms. Holloway-Cripps said that there was USDA funding for new farmers looking to come into Town. This is just one of the ways an AgCom could assist in Town endeavors. She said that Fairhaven was already a "Right to Farm" community and that the AgCom would seek information and training from local, more seasoned AgComs.

Mr. Murphy motioned to reestablish the Agricultural Commission. Mr. Espindola seconded. Vote was unanimous. (3-0).

Mr. Murphy motioned to appoint Kaisa Holloway-Cripps to the Agricultural Commission (three year term). Mr. Espindola seconded. Vote was unanimous. (3-0).

Mr. Murphy motioned to appoint Peter DeTerra to the Agricultural Commission (three year term). Mr. Espindola seconded. Vote was unanimous. (3-0).

Mr. Murphy motioned to set a deadline for letters of interest for the Agricultural Commission for October 8 at 4:00 p.m. Mr. Espindola seconded. Vote was unanimous. (3-0).

### **OXFORD SCHOOL BELL AND CUPOLA**

At 9:16 p.m. the Board met with Nils Isaksen, Doug Brady, Bob Cormier, Al Benac and John Medeiros to discuss the removal of the Oxford School bell and cupola.

Mr. Brady said that the scheduled date of removal of the items from the school will be October 10. A1 Crane company will facilitate the removal at no cost to the Town. Keith Silvia will make a crate for the bell. The group would like a photo of the Selectmen with the bell and a photo of the Rogers-Oxford Study Committee with the bell. The group requested the Board consider signing an agreement that would commit the Town to maintaining permanent possession of the bell.

The Board was supportive of the idea of the agreement, but was not sure it could be legally binding. The Board will request an opinion from Town Counsel. An opinion will also be sought from Town Counsel on whether the Town may grant indemnification to the crane company for the removal of the bell and cupola.

Per request of Doug Brady and Nils Isaksen, the Board discussed the formation of a Bell Committee to oversee the process of removing and re-homing the Oxford bell, which is believed to be a Paul Revere bell. The Rogers-Oxford Committee voted to have a separate committee formed for the purposes of the bell. Mr. Murphy motioned to create the Bell Committee of Fairhaven. Mr. Espindola seconded. Vote was unanimous. (3-0). Mr. Murphy motioned to appoint Nils Isaksen, Al Benac, John Medeiros, Bob Cormier and Doug Brady to said committee. Mr. Espindola seconded. Vote was unanimous. (3-0).

### **TOWN HALL SIDEWALK PROJECT**

At 9:46 p.m., the Board met with Al Benac, Nils Isaksen and Cathy Delano to address their concerns about the legality of the use of Community Preservation Act monies for the restoration of the Town Hall brick sidewalks. See Attachment D.

Mr. Osuch told the Board that Town Counsel had responded to the claims in a letter. See Attachment E. Mr. Murphy motioned to make the letter public. Mr. Espindola seconded. Vote was unanimous. (3-0).

Ms. Delano said that the CPA funds were inappropriately used and that the narrowing of the sidewalks was a predetermined decision made by Town officials. She claimed that the sidewalk narrowing was not adequately depicted in plans to Town Meeting. Mr. Benac added that he did not think that the appropriate department heads were consulted prior to the project.

Mr. Benac asked the Board what it planned to do to remedy the project. Ms. Delano said that it was not too late to attempt a full width renovation of the sidewalks. Mr. Osuch said that the Board had the vote of two separate Town Meetings, approving the project as it currently stands.



Mr. Espindola motioned to have Town Council review the use of CPA funds for the sidewalk from the perspective of federal law. Mr. Murphy seconded. Vote was unanimous. (3-0).

### **TOWN ADMINISTRATOR SCREENING COMMITTEE**

The Board reviewed letters of interest from 14 candidates for the Town Administrator Screening Committee. The TASC will work with the Collins Center in making recommendations to the Board of Selectmen for the appointment of a Town Administrator.

Per recommendation of the Chairman, each Board member gave their top two candidates for appointment to the TASC. Mr. Murphy's top two candidates were: Kathy Lopes and Mark Sylvia. Mr. Espindola's top two candidates were: Phil Washko and Kevin McLaughlin. Mr. Haworth's top two candidates were: David Darmofal and Henry Pietryzowski. The Board agreed to a seven member committee, which left room for one more appointment. After brief deliberation, the Board agreed that Robert Baldwin would be their selection for the seventh member.

Mr. Murphy motioned to appoint Kathy Lopes, Mark Sylvia, Phil Washko, Kevin McLaughlin, David Darmofal, Henry Pietryzowski, and Robert Baldwin to the Town Administrator Screening Committee. Mr. Espindola seconded. Vote was unanimous. (3-0).

### **ADDITIONAL MEETINGS**

The Board discussed the possibility of a third meeting per month. Meetings have been running late due to an overflow of actionable items and appointments. The Board agreed to call additional meetings on an "as needed" basis and will call a meeting on October 7 to help with overflow.

### **ROGER MARCOUX – CPC INTEREST**

The Board reviewed a letter of interest from Roger Marcoux for the Community Preservation Committee. There is currently no space on the CPC but Mr. Marcoux's letter will be kept on file.

### **FRANK FOSTIN – EARLY RETIREMENT INCENTIVE**

The Board read a letter from Town Hall custodian Frank Fostin, giving a retirement date of September 30, 2018, and requesting the Early Retirement incentive. Mr. Osuch said that the request came too late for the FY16 budget, and was not included for this year's payroll. Mr. Haworth asked if Early Retirement incentives had to be in by a deadline. Mr. Osuch said that he did think there was a deadline but the deadline was not known at the time of the meeting. The topic was tabled to the next meeting.

### **ZBA – AUTHORIZATION OF TOWN COUNSEL**

The Board tabled two requests for use of Town Counsel, both from the Zoning Board of Appeals, to Executive Session.

### **ALMOND STREET PARKING PETITION**

The Board reviewed a letter from Safety Officer Laurie Cannon regarding a petitioned request to limit parking on Almond Street to one side. In her letter, Officer Cannon agreed that there was a congestion issue on the street that would be resolved by limiting parking to one side of the street. See Attachment F.

Mr. Murphy motioned to place the No Parking signs on one side of Almond Street as recommended by the Safety Officer. Mr. Espindola seconded. Vote was unanimous. (3-0).

### **BBAC REQUEST TO USE TOWN HALL SPACE**

The Board reviewed a letter from the Buzzard's Bay Action Committee, requesting use of the Town Hall for its office. The office space would be in the southwest corner of the building that the Seaport Council once occupied. Mr. Murphy asked how much the Seaport Council paid in rent. Mr. Osuch said it was \$650/month. The Board said it would meet with the BBAC in regards to their request at the next meeting and in the meantime, open the office space up to any group interested in applying, with a deadline of September 25.

### **OTHER BUSINESS**

Under Other Business:

- Mr. Murphy thanked everyone who came out to support the Our Lady of Angels Feast
- Mr. Murphy thanked the Lopes family for organizing the Fort Phoenix 5K
- Mr. Espindola thanked everyone who participated in the SouthCoast Bike Challenge
- Mr. Haworth reminded the public that the annual MOLIFE Katie Brienzo Memorial Walk would take place on September 19.
- Mr. Haworth read a letter of interest from MOLIFE for the procurement of certain furnishings declared surplus and housed in the Rogers and Oxford Schools. (Mr. Murphy recused himself from this discussion). In exchange for the furnishings, MOLIFE offered to make a donation to the Town. Mr. Espindola asked if there was an auction planned for the items. Mr. Osuch said that none of the area auctioneers were interested in doing an auction for the items. Ms. Kakley will send an inventory listing to the Board.

At 11:11 p.m. Mr. Murphy motioned to enter Executive Session, pursuant to MGL 30A § 21:

1. Town Hall – personnel
2. ZBA request for use of Town Counsel
3. Discussion on edits to July 6, 2015 Executive Session minutes

Mr. Espindola seconded the motion to enter Executive Session for the aforementioned reason, not to reconvene into open session afterward. Vote was unanimous. (3-0)

Respectfully,

Anne O'Brien-Kakley  
Administrative Assistant  
Minutes approved 09/28/2015

# Attachment A

## **TOWN OF FAIRHAVEN**

The Fairhaven Board of Selectmen will hold a Public Hearing on Wednesday, August 19, 2015 at 7:30 PM in the Banquet Room, Town Hall, 40 Center Street, Fairhaven, MA. Purpose for this hearing is for consideration on an application submitted, requesting to amend their Class II, Car Dealer's License by increasing the vehicle limit on the Car Dealer's License. Applicant: FIRST HOT LINE AUTO SALES, INC., D/B/A FAIRHAVEN GETTY AUTO SALES, 371 Huttleston Avenue, Fairhaven, MA, Hatem M. Elrifai, President.

## **BOARD OF SELECTMEN**

Geoffrey A. Haworth, II, Chairman  
Charles K. Murphy, Sr.  
Robert J. Espindola



MAR 13 2015



photo submission  
Louis Baptiste  
9114115  
Getty hearing

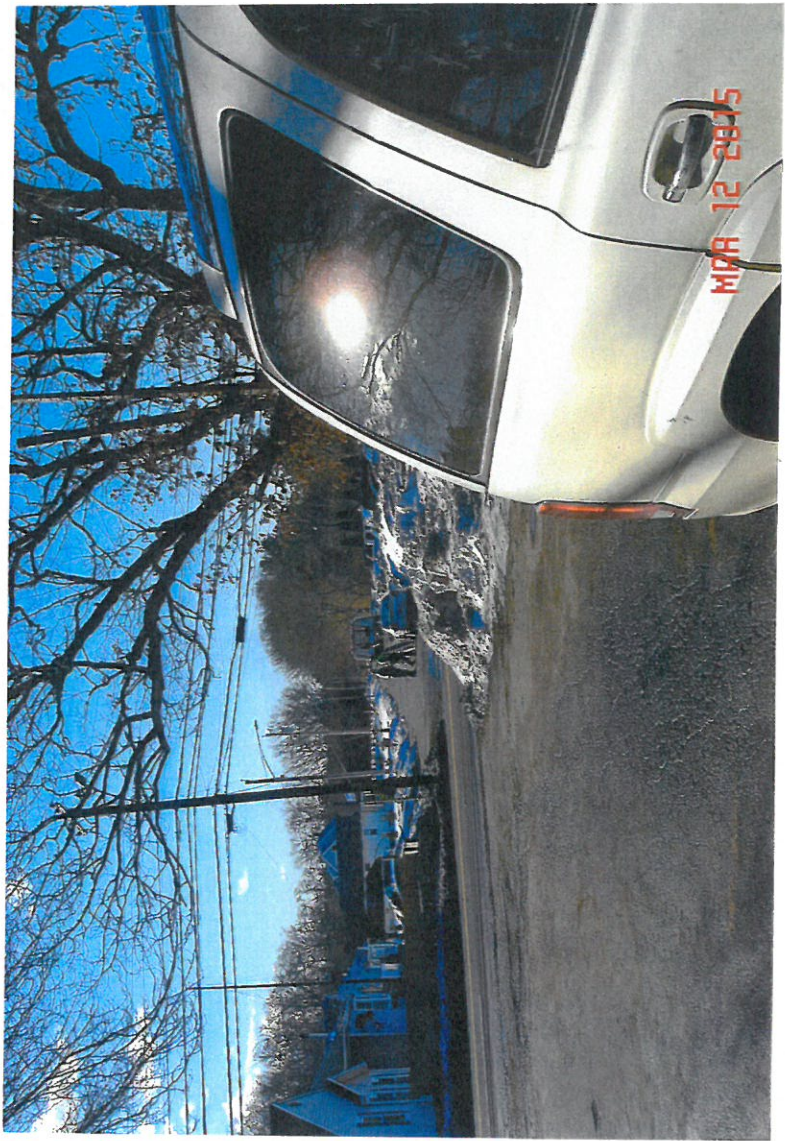
Attachment B

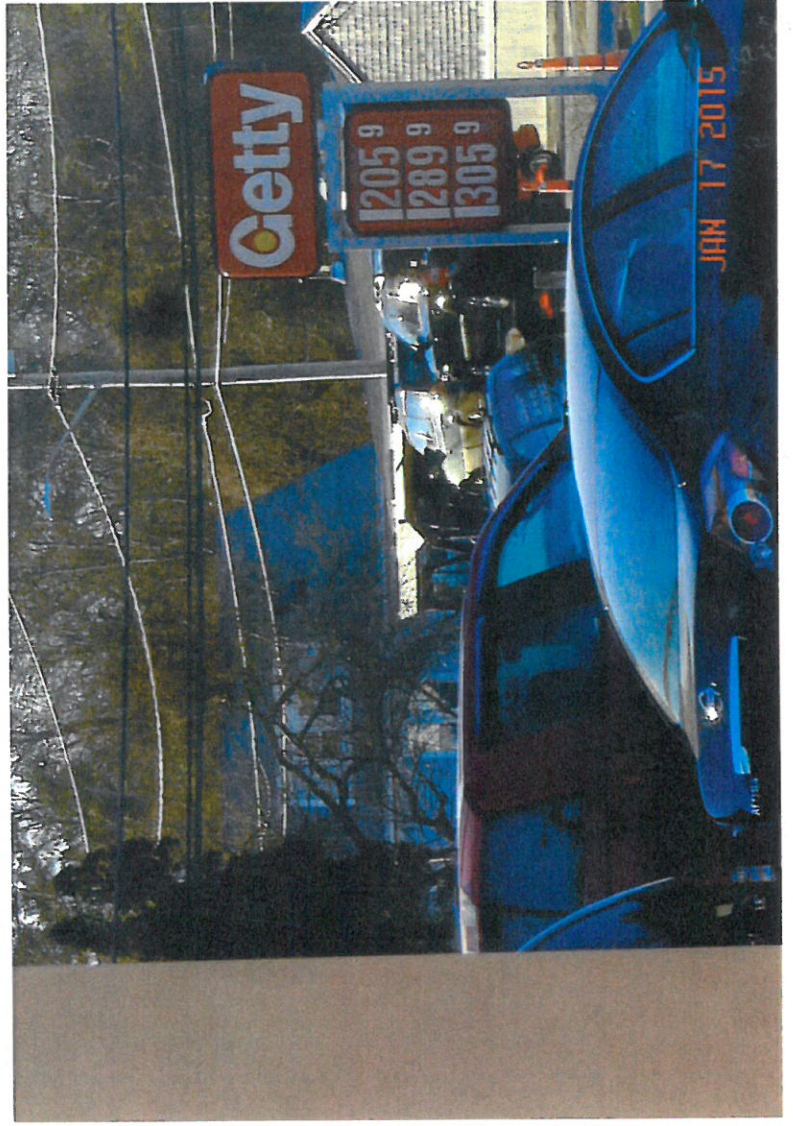
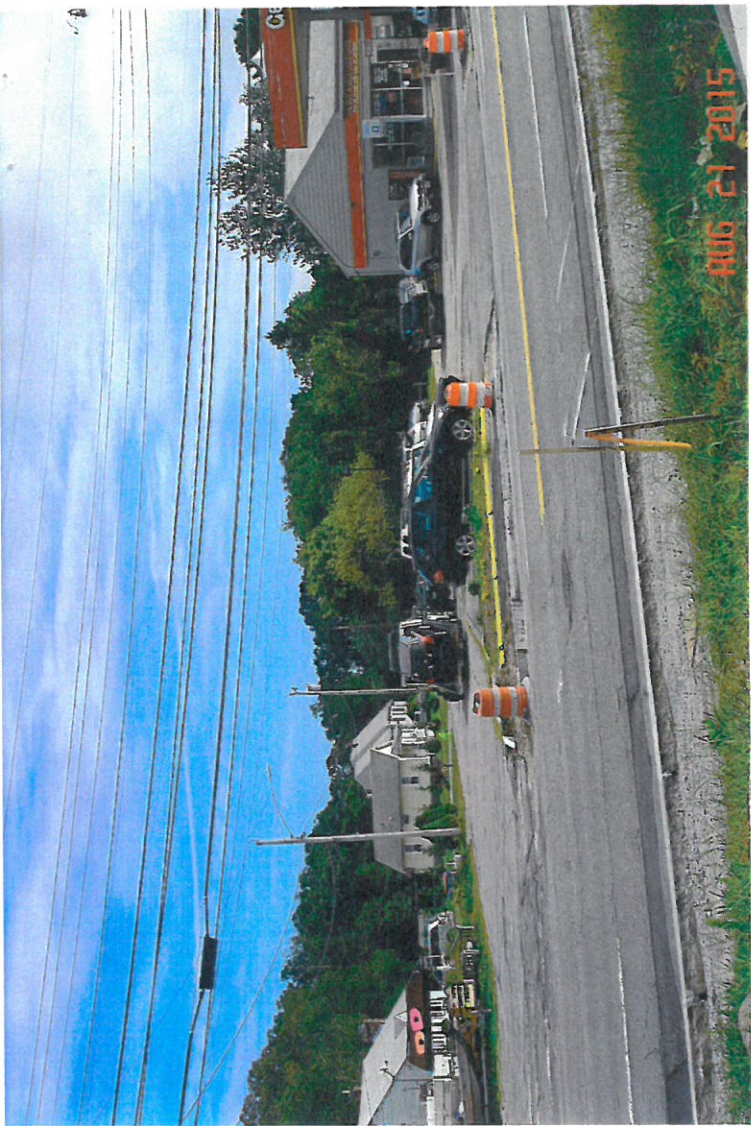














## Attachment C

Town of Fairhaven, MA  
Tuesday, September 29, 2015

### Chapter 3. AGRICULTURAL COMMISSION

[HISTORY: Adopted by the Annual Town Meeting of the Town of Fairhaven 5-2-2009 by Art. 32. Amendments noted where applicable.]

#### **GENERAL REFERENCES**

Right to farm — See Ch. **155**.

#### **§ 3-1. Establishment; members; terms.**

- A. There is hereby established an Agricultural Commission consisting of five members appointed by the Board of Selectmen. The initial term of two members shall be three years, of two members shall be two years, and of one member shall be one year.
- B. After the initial term, the term of a member shall be three years.
- C. One associate member may be appointed by the Board of Selectmen. The term of the associate member shall be one year.
- D. Members and the associate member must be residents of the Town of Fairhaven.
- E. The Board of Selectmen shall fill a vacancy based on the unexpired term of the vacancy in order to maintain the cycle of appointments.
- F. Members and the associate member should: represent the Town geographically, represent the diversity and scale of agricultural businesses, represent the diversity of the Town's population, and encourage next-generation farmers. The overall intent is to be inclusive not exclusive.
- G. The Board of Selectmen may remove a member for cause.

#### **§ 3-2. Duties.**

The Agricultural Commission shall serve as a facilitator and advocate for encouraging the pursuit of farming and agriculture in the Town of Fairhaven, shall promote agricultural-based economic opportunities in the Town, shall provide dispute-resolution services, shall work with Town officials and boards to promote and protect agricultural interests and enforce the Right to Farm Bylaw, Chapter **155**.

#### **§ 3-3. Quorum required; majority vote.**

- A. The Agricultural Commission shall not meet or conduct business without the presence of a quorum. A majority of the members of the Agricultural Commission shall constitute quorum.
- B. The Agricultural Commission shall approve its actions by majority vote.

### **§ 3-4. Amendments.**

This chapter may be amended from time to time by a majority vote of the Town Meeting, provided that the amendments are not in conflict with the Massachusetts General Laws.

### **§ 3-5. Severability.**

In case any section, paragraph or part of this chapter is for any reason declared invalid or unconstitutional by any court of last resort, every other section, paragraph or part shall continue in full force and effect.

Catherine Delano  
44 William Street  
Fairhaven, MA 02719

## Attachment D

Thomas P. Crotty & Associates, PLLC  
Fairhaven Town Counsel  
388 County Street  
New Bedford, MA 02740

September 1, 2015

### RE Fairhaven Sidewalk Reconstruction

Dear Mr. Crotty:

I read your legal opinion dated August 14, 2015 (**Attachment A1,2**) re the Fairhaven sidewalks and wish to point out several incorrect items upon which you based your conclusion as well as additional information that should be considered.

1. You say that it is your understanding that "there is no alternative source for the type of bricks originally used." This is incorrect. In fact, in a letter to Mr. Osuch from Joseph M. Booth, AIA (the firm that is overseeing the work) dated October 28, 2013 re: CPC Funding Application 2013 Recommendations, states that "This type of brick paver is still available." (**Attachment B**)
2. You reference Section 2 of the Community Preservation Act incorrectly. Section 2 of the CPA is a 'definition of terms' used in the act. I think you meant to reference Section 2 of the Secretary of the Interior Guidelines (which you reference later in your letter/and attachment).
3. When you state that, "It is a judgment call whether the more important historic aspect of the sidewalks is in their size, or in the original materials used to build them" you present a false choice. The answer is BOTH. The full width and the original shape and design of the bricks is integral to preserve the historical integrity of the sidewalks. It need not be an either/or decision. Both can be preserved if areas that require repair are addressed without a total redesign. In fact, other experienced bricklayers have said repairing the sidewalks could be done within code without a total redesign AND this approach would save the town taxpayers significant money.

Furthermore,

4. In section 5 (b)(1) the CPA stipulates that:

The community preservation committee shall study the needs, possibilities, and resources of the city or town regarding community preservation, including the consideration of regional projects for community preservation. The committee shall consult with existing municipal boards, including the conservation committee, the historical commission, the planning board, the board of park commissioners and the housing authority, or persons acting in these capacities or performing like duties, in conducting such studies. As part of the study, the committee shall hold one or more public hearings on the needs, possibilities and resources of the city or town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the city or town.

With respect to the above Section 5 (b) (1)


- a. It appears that only one source was bid and his recommendations to narrow the sidewalks by a foot (which is now 1-2 feet) determined the path forward (**Attachment C**) The possibility to maintain the full width of the brick sidewalk was never considered contrary to the both the CPA and the Secretary of the Interior Guidelines. It was a foregone conclusion from the start and the possibility of full width restoration was never discussed.

- b. The Historical Commission was not consulted. See email from Mr. Despres dated 8/5/2015 in response to my letter dated 7/24/2015 (Attachment D1,2)
- c. The Planning Board was not consulted. (See email to me from an elected official on the Planning Board dated July 27,2015. (**Attachment E**) which suggests the changes in the sidewalk width should have been submitted to the Planning Board before town meeting votes were taken. As of July 27, 2015 proposed changes in width had not been submitted to the Planning Board in accordance with the town by-laws. What does it say when the town does not respect their own by-laws?
- d. This project should have been presented in a public hearing and possibilities and resources discussed. This requirement suggests a separate meeting for the express purpose of discussing this project exclusively - especially since it estimated to cost close to \$800,000.00. To my knowledge, the Community Preservation Committee did not initiate any meeting with the town for a full discussion of the possibilities of this project as the CPA stipulates. The annual town meetings with their crowded agendas did vote to appropriate funds to fix the sidewalks but there was no mention in the motion of narrowing the sidewalks. See ATM May 3, 2014 re sidewalk Motion on page 6 – Article 6E. (**Attachment F1,2**).

Should this develop into a legal case, work delays and the possible decision to put the sidewalk back to its original width would cost the town much more than amending/revising the existing contract to reconsider the full width. Moreover, pushing this project through as outlined above does not bode well for the town's stewardship of historic resources and could prove detrimental to secure/justify CPA funds for future efforts.

With enduring respect for the magnanimous gifts of Henry Huddleston Rogers, as well as, future philanthropists; the spirit of the MA State Laws and Federal Laws; and, in light of the documentation provided herein, I respectfully ask that you reconsider your legal opinion in the best interests of the town.

Sincerely,



Catherine Delano

✓ Cc: Mr Osuch via mail

Cc: Town Selectmen via email

RECEIVED  
2015 SEP -4 P 3:33  
BOARD OF SELECTMAN  
FAIRHAVEN MASS

THOMAS P. CROTTY & ASSOCIATES, PLLC

(A.I.)

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

RECEIVED

2015 AUG 20 AM 11

BOARD OF SELECTMAN  
FAIRHAVEN MASS

August 17, 2015

TELEPHONE 508.990.9101  
FACSIMILE 508.990.9108  
E-MAIL: info@tcrottylaw.com  
www.tcrottylaw.com

THOMAS P. CROTTY

SHELLEY D. COELHO  
MATTHEW W. SCHUYLER

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

Re: Town Hall sidewalk reconstruction

Dear Mr. Osuch:

You have asked whether there is a restriction on using Community Preservation Act ("CPA") funds to pay for the sidewalk reconstruction project for the streets surrounding Town Hall ("the Project"). In my opinion, the answer is "no".

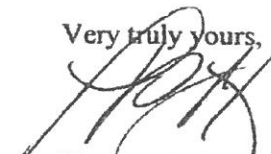
The original herringbone pattern sidewalks contain many bricks that have been destroyed or moved by tree roots. In an effort to preserve the historical integrity of the sidewalks, the Town seeks to use as many of the original bricks as possible. The Project will narrow the sidewalk in different locations by one to two feet, and the relocated bricks will be used to replace the bricks that have been destroyed over time. It is my understanding that there is no alternative source for the type of bricks originally used in this sidewalk.

As you are aware, any work done with CPA funds for historical purposes must be done to a "historical resource." The sidewalks are clearly a "historical resource" as defined by Section 2 of the CPA, as they are an original, integral part of the historic town hall building. It is a judgment call whether the more important historic aspect of the sidewalks is in their size, or in the original materials used to build them. The Community Preservation Committee, which recommended that CPA funds be used for this project, opted to protect the historical integrity of the materials.

CPA work must be done according to the Secretary of the Interior's Standard for Rehabilitation (copy enclosed). I have reviewed these standards and in my opinion the Project is in compliance with these standards as the most economic and technically feasible way to preserve the historic nature of the sidewalk.

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

Very truly yours,



Thomas P. Crotty  
Town Counsel

TPC/mws/mch  
Enclosure



### The Secretary of the Interior's Standards for Rehabilitation

The Standards (Department of Interior regulations, 36 CFR 67) pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior, related landscape features and the building's site and environment as well as attached, adjacent, or related new construction. The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Would cut  
Tree roots  
Causing great  
hazard to  
area



October 28, 2013

Mr. Jeffrey Osuch  
Executive Secretary  
Town of Fairhaven  
40 Center St  
Fairhaven, MA 02719

**TOWN OF FAIRHAVEN SIDEWALK IMPROVEMENTS IN TOWN CENTER**

Dear Jeffrey;

As requested we have prepared preliminary cost estimates for the replacement of the brick sidewalks in the Fairhaven Center. These sidewalks located at the perimeter of the Town Hall, Millicent Library, and Unitarian Church would be completely removed and reinstalled to eliminate the dangerous conditions encountered in the majority of the areas.

**Town Hall**

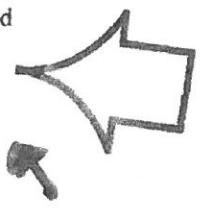
As indicated in the unfunded previous year's request the sidewalk surrounding the Town hall are in a serious state of disrepair. The brick has moved due to subsurface conditions and exceeds the requirements of the MA Architectural Access Board for slope and pitch. At the west side of the building the sidewalks have become badly depressed and are a walking hazard. We propose the following phased completion proposal:

1. **Restore the brick sidewalks.** The brick sidewalks surrounding the Town Hall property are in a state of serious disrepair. Years of frost movement, tree growth and settlement have created a safety hazard around the building. Due to the nature of the work we offer the following three phased option in order to repair these sidewalks. We list the more severe sidewalks first, while all sides of the site require repair, they exceed the pitch requirements of the Massachusetts Architectural Access Board regulations regarding level changes. The regulation requires a sidewalk which does not exceed 2% in pitch along the width of the sidewalk and 5% along the length. It also required that the sidewalks be free from depressions, and potential tripping hazards. New to this proposal is the installation of sidewalk ramps required by the MAAB. In discussions with the Town Building Inspector, these ramps will need to be provided on both sides of the street at each corner. The curbs at the street will also need to be reset as they have considerable movement. A new curb cut will also be installed at the main entrance to the Town Hall and Millicent library to facilitate pedestrian movement from one side of the street to the other.

TRE

mention  
tree  
Removal

The brick sidewalks are historic in nature, original to the construction of the town center. We propose to have the sidewalks carefully removed, a sub-base of concrete installed and the brick re-set in a bed of sand. We recommend that the repairs add a concrete base under the brick sidewalks to limit future movement in the sidewalks. The concrete would be reinforced with a steel reinforcing mesh. At the same time, the granite retainage stones which surround the property would be reset as needed, this work would be limited to the William St side of the property. Our review of the sidewalks found that approximately 10 to 15 percent of the existing brick would require replacement. This type of brick paver is still available.



J.M.Booth & Associates Inc.  
47 N. Second St. 4<sup>th</sup> Floor  
New Bedford, MA 02740

Tel no. 508-999-6220  
Fax no. 508-990-1265  
www.jmba-architects.com

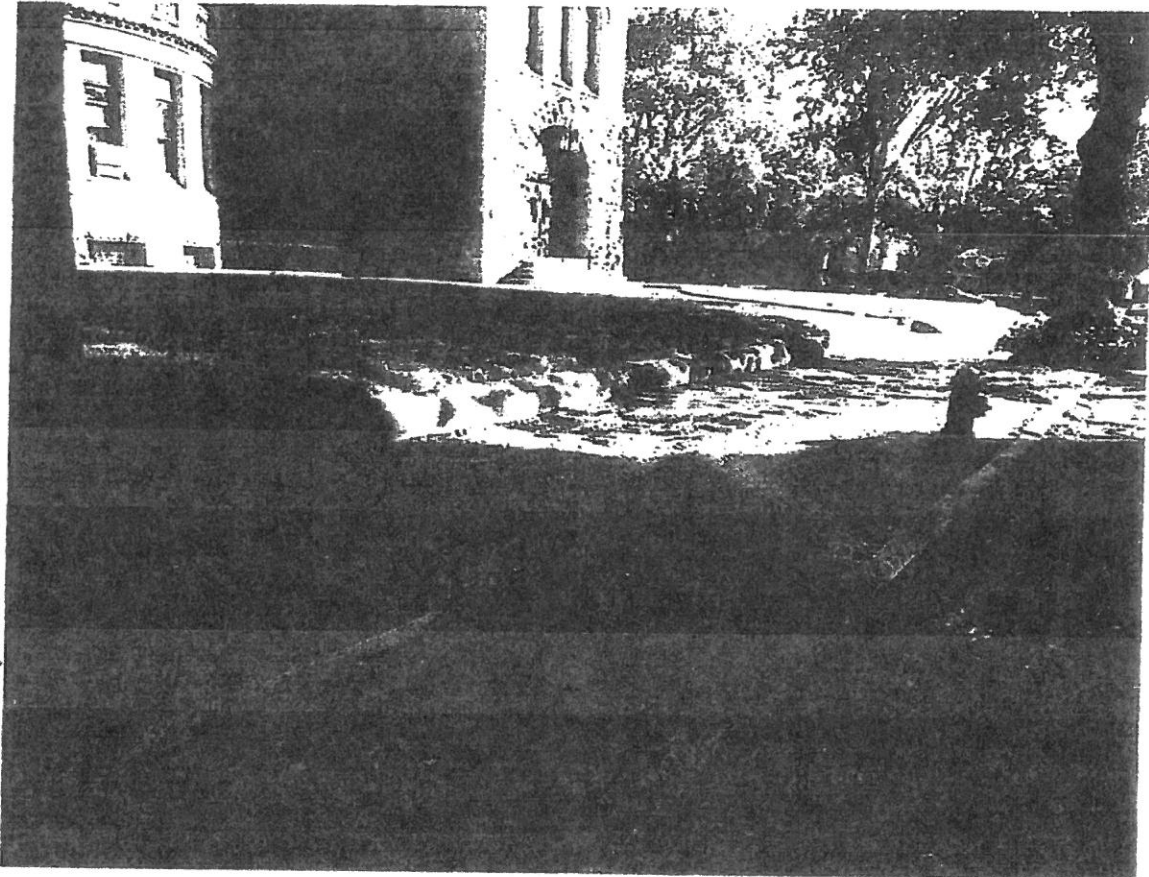
*Tree roots cut  
causes trees to be  
unstable*

NOTE



We further recommend that the width of these sidewalks be reduced by one foot to allow for a wider planting area at the street, this would allow the tree roots to be cut and minimize impact on the sidewalk surface.

Phase 1- William St -- This side walk is in the most severe condition, depressions from settlement, and tree roots have caused a hazardous walking condition on the sidewalk. We propose to remove the sidewalk brick for reuse, resetting the retaining stones which have moved and reinstalling the brick in the method noted above.



*Tree*

*Tree*

Statement of Probable Construction Cost for William St.

\$63,060.00



Subj: **town hall sidewalks**  
Date: 8/5/2015 9:55:05 P.M. Eastern Daylight Time  
From:  
To:  
CC:

Dear Ms. Delano,

I read your letter, regarding the Town Hall sidewalk project, at tonight's Historical Commission board meeting. In answer to your question; the Commission was neither asked for, nor did we offer any recommendations concerning the project. The only time that I can recall the project being discussed was in response to an appearance by Mr. Isaksen and Mr. Benac earlier this year. They appeared before the Commission to present a project involving the installation of period style lighting around the Town Hall. I personally regret not being more informed as to the scope of the project, particularly the removal of the large linden tree on William Street. I thank you for bringing your concerns to the Commissions attention, and if I can be of any further assistance, please do not hesitate to contact me.

Respectfully,

David Despres  
Chairman

Catherine Delano  
44 William Street  
Fairhaven, MA 02719  
[cdelano@fairhavenma.com](mailto:cdelano@fairhavenma.com)

D2.

July 24, 2015

Mr. David Dupres  
Fairhaven Historical Commission Chairman  
40 Center Street  
Fairhaven, MA 02719

RE: Sidewalk Restoration

Dear Mr. Dupres,

I would like to know if the Historical Commission took a position in advising the Board of Selectmen regarding the sidewalk issue – specifically the narrowing of the existing herringbone brick.

I have reviewed all Historical Commission's minutes posted online for the past year and find no reference to the sidewalk issue. I did note your correspondence to the Board of Selectmen dated May 18, 2015 that "the Historical Commission serves as advisors to the Select board on matters of historical significance, including CPC historical projects."

An article in the *New Bedford Standard Times* (dated July 21, 2015) the day after the Board of Selectman Meeting (where sidewalk restoration was on the agenda), reported that the selectmen indicated that "no one from the Historical Commission attended the meeting or contacted the board with any concerns." Is that an accurate statement?

The same article quotes Mr. Osuch as saying that the sidewalks will be reduced by a foot while a subsequent article in the *Advocate* (dated July 23, 2015) reports that Mr. Osuch stated that the sidewalks, which are now about 8 feet wide, will be one and a half foot narrower. Do you know the maximum extent of the narrowing?

Is there anything in writing that you can direct me to regarding your concerns/recommendations to the Board of Selectmen? If nothing is in writing how and what did you communicate to the Board on this issue. I look forward to your reply.

Sincerely,

Cathy Delano  
CC: Jeffery Osuch, Contact for the Board of Selectmen

Subj: **Sidewalks**  
Date: 7/27/2015 4:34:39 P.M. Eastern Daylight Time  
From: [kaisa.hollowaycripps@gmail.com](mailto:kaisa.hollowaycripps@gmail.com)  
To: [delanocath@aol.com](mailto:delanocath@aol.com)



Cathy,

Saw your comments on the sidewalks.

Just an FYI, the selectboard may not have had the authority to make those changes. The changes should have been submitted through the Planning Board first (they were not)

Here is the Fairhaven Town Bylaw:

***Fairhaven Town Code***

***§65-4***

*All plans for laying out, extending, discontinuing or changing the limits of any way, street, public park or square and every purchase of land for the site of public buildings, and all plans for the location, erection or alteration of public buildings, shall be submitted to said Board for its opinion. No public way shall be laid out, altered, relocated or discontinued, unless the proposed laying out, alteration, relocation or discontinuance has been referred to the Planning Board and such Board has reported thereon or has allowed 45 days to elapse after such reference without submitting its report (MGL c. 41, § 81-I).*



# Fairhaven Annual Town Meeting

May 3, 2014

## Motions

- ✓ Moderator calls the meeting to order.
- ✓ Honor Guard, then the Pledge of Allegiance.
- ✓ Playing of the National Anthem.
- ✓ Rev. Ann Fox of Unitarian Universalist Church delivers Invocation.
- ✓ Moment of Silence for deceased Town Meeting Members.

Introduction by Moderator of people on the stage. Left to right:

- **Robert Espindola**, Chairman of the Board of Selectman
- **Geoffrey A. Haworth, II**, Selectman
- **Charles K. Murphy, Sr.**, Selectman
- **Anne Kakley**, Administrative Assistant to the Board of Selectmen
- **Jeffrey Osuch**, Executive Secretary to the Board of Selectmen
- **Wendy Graves**, Director of Finance/Treasurer
- **Eileen Lowney**, Town Clerk

Moderator reports that the Warrant has been properly served and there is a quorum present.

Instructions to Town Meeting members.

- / **Mr. Murphy** I move that the reading of the Warrant and the Return of Services thereof be omitted. (*Motion must be seconded*).
- / **Mr. Haworth** I move that the moderator be relieved from reading each article in its entirety and that he be allowed to refer to the Articles by number and title only. (*Motion must be seconded*).
- / **Mr. Espindola** I move that all appropriations voted at this Town Meeting be placed on the Tax Levy for the Fiscal Year from July 1, 2014 through June 30, 2015, unless otherwise specified. (*Motion must be seconded*).

After vote is taken on this last motion, the following motions must be made:

F2.

And that \$219,445.00 of Ambulance Costs appropriated in the General Fund for health insurance, pensions, other employee benefits will be funded from Ambulance Fund Receipts reserved for appropriation.

**Chairman to read:**

Move to adopt all items except those "HELD" as presented in Article 4.

**ARTICLE 5 – PROPAGATION OF SHELLFISH**

Move Adoption and the sum of \$17,500 be appropriated.

**ARTICLE 6 – COMMUNITY PRESERVATION PROGRAM APPROPRIATIONS**

Move that the Town vote to appropriate or reserve from the Community Preservation Fund annual revenues or available funds the amounts recommended by the Community Preservation Committee for community preservation projects, committee's administrative expenses, and other expenses in Fiscal Year 2015, with each item to be considered a separate appropriation.

- A. Reserve for future appropriations \$50,000 from estimated FY15 receipts for acquisition, creation, and preservation of Community Housing, and its rehabilitation and restoration.
- B. Reserve for future appropriations \$30,000 from estimated FY15 receipts for acquisition, creation, and preservation of Open Space, and its rehabilitation and restoration.
- C. Move Adoption and to appropriate \$20,000 from FY15 Estimated Receipts for the Open Space & Recreation Plan Update.
- D. Move Adoption and to appropriate \$50,000 from FY15 Estimated Receipts for the Fairhaven High School – South, East & West Window Restoration Project.
- E. Move Adoption and to appropriate \$136,000 with \$112,400 from FY15 Estimated Receipts and \$23,600 from Undesignated Community Preservation Fund Balance for the Town Hall Sidewalk Restoration Project – William & Center Street Sides.
- F. Move Adoption and to appropriate \$2,000 from FY15 Estimated Receipts for the Historical Commission – Academy Building Restoration Project Phase 3.
- G. Selectmen: Move Adoption and to appropriate \$10,000 from FY15 Estimated Receipts for the Historical Commission – Fire Protection Building Restoration Project Phase 2.  
Finance Committee: Move \$0.00
- H. Move Adoption and to appropriate \$12,000 from FY15 Estimated Receipts for the Bikeway Committee – Sequent Neck Crossing Safety Project.



**From:** [Tom Crotty](#)  
**To:** [Jeff Osuch](#)  
**Cc:** [Anne Kakley](#)  
**Subject:** Town Hall Sidewalks  
**Date:** Friday, September 11, 2015 12:20:01 PM

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Attachment E

Board of Selectmen

You have asked for my response to the letter from Catherine Delano dated September 1, 2015. In that letter she raises four points in her challenge to my opinion letter dated August 17, 2015. I will address each of those points.

1. Alternative source of brick pavers: It is my understanding that there are pavers available that are somewhat similar to those that surround town hall, but that they are not identical, and they would not be historical. That is they would be newly manufactured. This raises the concern that replacing the historical bricks with modern materials would violate the goal of the Secretary of the Interior guidelines that “Deteriorated historic features shall be repaired rather than replaced.” The project as designed preserves the historic integrity of the materials.
2. CPA definition: My reference to the CPA definition of “historic resource” is not mistaken. The town hall is registered as an historic building. The Secretary of the Interior guidelines cover both the historic building and related landscape and site features. For that reason I believe the sidewalks, while not part of the building itself, qualify as part of the historic resource.
3. Whether the sidewalks could have been redesigned: It is not clear how of the area of the sidewalk could have been preserved, without replacing the destroyed bricks, which cover approximately 10% of the area. But that is not a legal issue I can address. Logic suggests that the damaged material would have to be replaced to preserve the coverage area, and that simply gets us back to issue No. 1., above.
4. Procedural issues: Various procedural issues are raised in the letter.
  - a. The primary reference is to Sec. 5(b)(1) of the CPA. That section requires the community preservation committee to generally conduct a review of community needs. I do not read it to require that the committee obtain the advice of all the listed boards on each project, or that it hold public hearings on each project.
  - b. Reference is also made to the town by-law requiring that the town submit plans for the laying out of public ways to the planning board. The by-law is based on GL c 41 sec. 81I. That law, and the by-law, apply to the laying out, that is the designing of, and the taking of land for, new roads and highways. It does not apply to sidewalk repairs.

Based on the above it remains my opinion, as stated in my August 17, 2015 letter, that the project is in compliance with the CPA and the Secretary of the Interior guidelines.

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

Tom

-  
-

Thomas P. Crotty  
Thomas P Crotty & Associates, PLLC  
388 County Street, Third Floor

New Bedford, MA 02740

tel 508.990.9101

fax 508.990.9108

[tomcrotty@tcrottylaw.com](mailto:tomcrotty@tcrottylaw.com)

## Attachment F

To whom it may concern;

September 2, 2015

I have looked at the Almond St. parking issue. The roadway measures 20'-2". Given that a vehicle width averages about 7'-0", this would mean that if a vehicle parked on both sides, it would only leave clearance of about 6'-0", which is not enough for an 8'-0" wide fire truck or ambulance.

Making this roadway parking on one side only is a reasonable request. No Parking This Side signs could be placed on the odd numbered side of the street, and would not interfere with the snow ban. The No Parking Here To Corner sign could be removed and replaced with a No Parking This Side sign.

Respectfully submitted,



Officer Laurie A. Cannon/059  
Fairhaven Police Department