



Fairhaven Board of Selectmen

November 7, 2017 Meeting Minutes

Present: Chairman Robert Espindola, Vice Chairman Daniel Freitas, Clerk Charles Murphy, Town Administrator Mark Rees, and Administrative Assistant Vicki Paquette

Mr. Espindola called the meeting to order in the Town Hall Banquet Room at 6:35 p.m. The meeting was recorded by Cable Access.

MINUTES

- Mr. Freitas motioned to approve the minutes of the October 30, 2017 meeting, open session. Mr. Murphy seconded. Vote was unanimous. (3-0).

TOWN ADMINISTRATOR REPORT

Mr. Rees updated the Board on several matters:

- Mr. Rees noted that the Board of Health received notice from ABC recycling they wanted to increase the collection rate. Town Counsel said this would be a violation of their contract. Mr. Rees is in the process of working with the Board of Public Works and the Board of Health to reach a resolution.
- On November 2, 2017 Mr. Rees and Town Planner, Bill Roth did a walk through over at the Rogers school to begin the process of “moth balling” the school. They will be looking at two estimates for securing the building. One estimate is for two years and the other is for up to 10 years. This may have to go before Town Meeting pending Selectmen’s approval and the finance committee approval.
- Mr. Rees, will put together a working group of appointed and elected officials with the assistance of Special Counsel William Solomon to negotiate with the cable t.v. franchise for the renewal. This group will report back to the Board of Selectmen and the Cable Advisory Committee.

COMMITTEE LIAISON REPORTS

Under committee liaison reports:

- Mr. Espindola said that the next date for the Economic Development committee will be November 16.
- Mr. Murphy attended the PTO meeting at FHS regarding Opioids.

ADOPT FY 19 POLICIES AND GOALS

Mr. Rees explained that the Selectmen will have to adopt the goals and objectives for FY19. The policy statement is the same as last year but updated for FY19.

Mr. Freitas made a motion to adopt the budget policy statement for FY19. Mr. Murphy seconded. Vote was unanimous. (3-0).

ROUTE 6 TRAFFIC CALMING STUDY

The study will examine safety issues in surrounding communities. Mr. Espindola read a letter from SRPEDD examining the Route 6 corridor from a point roughly starting at Wareham Town Hall through Marion and Mattapoissett to the Fairhaven town line. Mr. Espindola showed a statistics graph from Chief Myers showing the number of accidents on Huttleston Avenue from 2007-2017. Mr. Murphy suggested that he would like to see the study extended from Rte 240 to the New Bedford line at the bridge. Mr. Freitas made a motion to allow the calming study and to see if we can extend it from route 240 to the New Bedford line. Mr. Murphy second. Vote was unanimous. (3-0). (See Attachment).

DEP ACCESS AGREEMENT / ATLAS TACK

Mr. Rees read a letter from Paul Caffey explaining that Mass DEP is going to need permission to access the Atlas tack site through Town property. They will need to gain access to the property to monitor the redemption process and to do testing. Mr. Freitas made a motion to allow the Board Chair to sign the agreement for Atlas Tack. Mr. Murphy seconded. Vote was unanimous. (3-0).

BAYBERRY STREET GIFT

The Riley family has been given as a gift a piece of wet land property on Bayberry Street to the Town of Fairhaven Conservation Commission. Mr. Freitas made a motion to accept the deed for the Bayberry Street property and to authorize the chair to sign. Mr. Murphy seconded. Vote was unanimous. (3-0).

LAVALLEY BUILDING SUPPLY

Mr. Rees read an application from LaValley Building Supply to move a modular house from New Hampshire to Causeway Road. Mr. Freitas made a motion to approve the application to move the building over Town property subject to approval from the BPW and the Tree Warden. Mr. Murphy seconded. Vote was unanimous. (3-0).

PRIZEAPALOOZA FUNDRAISER

At 7:06pm the Board met with Kristen Lancaster and Erin Borges to discuss the next Prize-a-palooza event at the Seaport Inn on December 3, 2017. . In 2016 the event raised more than \$25,000 for underprivileged children and their families in Greater New Bedford. She asked if the Selectmen would like to volunteer their time as “celebrity bartenders” for the event. Selectmen all agreed this was a worthy cause.

REVIEW EXISTING WATERWAY REGULATIONS

Harbormaster Tim Cox came before the Board to discuss the Waterways regulations. Also in attendance were Frank Coelho, Chairman of the Marine Resources Committee (MRC), Robert Hobson, MRC committee member, and members of the fishing community. Chairman Espindola handed out his recommendations in regards to this issue. Mr. Espindola feels that the rules and regulations should be looked at and possibly re-drafted. Mr. Freitas said he would like to work on this issue as the ex-officio. Mr., Freitas handed out what he would like to see added for new rules to the Lobster Basin. Mr. Coelho stated that he would be in favor of adding rules. Discussion ensued regarding two boats that were placed on temporary spots, one on Union Wharf and the other on a mooring off of Fort Street. Mr. Freitas along with the Harbormaster and the Marine Resourced Committee will meet to discuss ideas to consolidate the rules and regulations.

Mr. Coelho and other fishermen are upset because they feel other boaters were waiting for many years for a slip in Union Wharf and it was given away to the Northeast Maritime Institute (NMI). In accordance with Town By-Law Chapter 225 Section J the Board has delegated the Harbormaster to make such decisions. Mr. Cox explained that the vessel on the mooring, The Fritha, is set to leave Fairhaven waters on Thursday or Friday for the season. Mr. Freitas explained that The Navigator, who is tied up at Union Wharf on the North side, is not there permanently. Mr. Rees explained that the permission was granted to NMI to help an existing business from Town who bring in a lot of revenue through employment and their students and to help promote a positive economic growth.

Mr. Cox also added he felt it was a good idea because the school helps students to become part of the maritime community .Mr. Freitas was asked why the two ships were asked to leave the city of New Bedford. Mr. Freitas said he would like to see Fairhaven maintain a friendly relationship with the city.

Mr. Coelho feels the Selectboard doesn't understand the waterfront and how the rules work because they aren't out on the water like the boaters. Resident Charlie Mitchell is in favor of the Harbormaster and the Selectboard but feels that more consideration should have been given in the situation. (the mooring off Fort Street) he would like to see if everyone can work together on these issues. Vincent Manfredi (MRC member) feels there needs to be more organization with the rules and regulations and likes Mr. Espindola's ideas. Michael Botelho, a recreational charter boat owner sympathizes with the boat owners and would like to see the Town look at the future

to see how the Town could utilize what we have for charters, commercial and recreational fishing. (See Attachment)

Mr. Freitas made a motion that Mr. Rees continue negotiations with NMI regarding the Navigator and Union Wharf, that decisions on the mooring of the Fritha be put on hold pending review of regulations and Mr. Rees get in contact with the city of New Bedford. Mr. Murphy seconded. Vote was unanimous. (3-0).

LOO AQUACULTURE LICENSE APPLICATION

Mr. Matthew Loo came before the Board to discuss his application for aquaculture. The Board noted that this is the first application since the new rules and regulations have been adopted. There are still steps that need to be taken before this can be completed. MRC has already made their recommendations for approval. Mr. Loo is requesting 1.8 acres. Town Counsel noted that the Board of Selectmen are the only ones who can place a moratorium and there is no moratorium at this time. There would still need to be a public hearing before the application can be granted. Mr. Freitas made a motion to accept the application. Mr. Murphy seconded. Vote was unanimous. (3-0).

ATLAS TACK

Mr. Rees told the Board that sometime around 2004-2005 that there was an agreement with Atlas Tack for the cleanup project. Currently the Town owes money to the EPA for cleaning up hazardous materials placed on Town property by Atlas Tack. The EPA agrees that the Town can keep the first \$80,000 plus interest and any additional amount collected by the Town would then be paid to EPA to reimburse EPA for its cleanup costs.

Notice will be sent to the owners of Atlas Tack. They will then need to decide if they will pay back their taxes or put the property up for sale. (See Attachment)

OTHER BUSINESS


In other business:

- Mr. Freitas mentioned that he received a phone call from a resident on Main Street who is upset because there are trucks from P.J. Keating in Acushnet driving over town roads late at night and it is disturbing his sleep.
- Mr. Murphy spoke to the Board about an event at FHS called “Hidden in Plain Sight.” It is a mock interactive teenager’s bedroom designed to help parents recognize the signs of Opioid abuse.
- Mr. Murphy read a proclamation for Carousel Family Fun Center and thanked them for 25 years of business.

- Mr. Espindola mentioned that the annual Turkey Trot that takes place on Thanksgiving morning is looking for volunteers.
- Mr. Espindola played a video showing the solar panels on the roof at Oxford Terrace.
.Mr. Espindola thank the Housing Authority for their efforts in saving energy.

At 9:05 p.m. Mr. Freitas motioned to adjourn. Mr. Murphy seconded. Vote was unanimous. (3-0).

Respectfully,

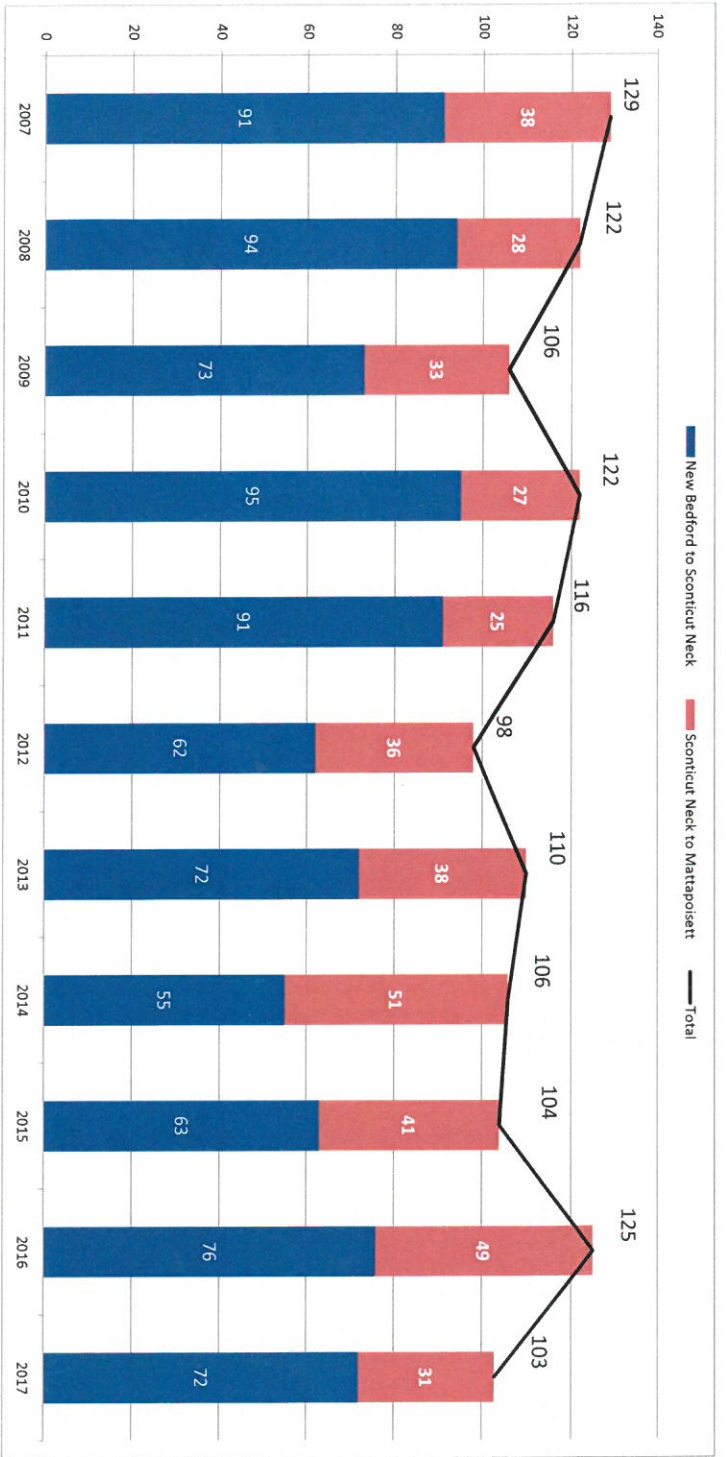


Vicki L. Paquette
Administrative Assistant

Minutes approved 11/20/2017

Documents appended:

- A. Traffic accident graph
- B. Statement by Chairman Espindola
- C. New (proposed) Rules for Lobster Basin
- D. Letter from Town Counsel regarding Union Wharf decision
- E. Atlas Tack correspondence



YEAR	Accidents on Huttleston Avenue			Average		
	New Bedford to Sconticut Neck	Sconticut Neck to Mattapoisett	Total	New Bedford to Sconticut Neck	Sconticut Neck to Mattapoisett	Total
2007	91	38	129			
2008	94	28	122			
2009	73	33	106			
2010	95	27	122			
2011	91	25	116			
2012	62	36	98			
2013	72	38	110			
2014	55	51	106			
2015	63	41	104			
2016	76	49	125			
2017	72	31	103			
Totals	844	397	1241	Decrease	Increase	
				84.3	31.2	115.5
				67.6	42.0	109.6

Agenda item F. Review existing Waterway Regulations.

I'd like to start this agenda discussion by acknowledging that there have been conduct / respect issues at MRC meetings and that the Town has not been present at MRC meetings recently.

Having said that, I would like to think that we can use this time on this agenda tonight to work together in a positive manner, looking forward, rather than looking back, to do what is in the best interest of the community on the whole.

My recommendation at this time, is that our Board of Selectmen ask Mr. Rees and Harbor Master Tim Cox to thoroughly review all Marine related rules and regulations and make recommendations that will help us avoid any of the confusion / misgivings that have taken place with recent issues regarding dockage and moorings. I would suggest that the Marine Resources Committee do the same thing and that, after reviewing and voting officially as a committee, they would then invite the Harbor Master and Town Administrator to their next meeting, which the Harbor Master and Town Administrator would attend to hear all recommendations.

After consulting with the Harbor Master, the Town Administrator would then make his final recommendation to the Board of Selectmen for adoption of a new set of rules and regulations.

I would specifically recommend that:

1. All documents be consolidated into one, concise document, that will provide more clarity than the several documents we see in our packets tonight.
2. A map or diagram be included for every marine resource covered by these rules and regulations.
3. The document include a single fee table for all uses and that references to any fees in the text elsewhere in the document be removed to avoid any confusion or errors when rates change.
4. Consideration be given in establishing fees, to market rates, to investments that Town has made and continues to make in the Marine Resources and to what future needs might be for the town with respect to these resources.
5. Any forms be included as Exhibit attachments
6. Any typical contract be included as an Exhibit.
7. The Policies and objectives of the Board of Selectmen, as recently adopted for FY '19 be considered in any changes made to the rules and regulations.

New Rules for Lobster Basin

Add 11/7/17

11. Due to recent complaints of non-use of slips. Any slip that is not used by the boats owner for an extended period shall be given a warning by the harbormaster. Upon the second notice of non-use the boat owner shall be notified by the harbormaster that his/her rights to dock at the Fairhaven Lobster Basin will be terminated. The boat owner will have his fee pro-rated and has the right to add his/her name to the harbormasters waiting list.

12. Code of conduct. Any person who is said to harass the harbormaster or deputy harbormasters while doing their duties, will be given a verbal warning to end the harassment or risk lose of dockage space. If there is a second act of harassment of the harbormaster or deputies a written statement will be given to the owner, Town Administrator and the selectmen. A hearing can be held to discuss these actions if warranted. If a 3rd act is conducted the Harbormaster will again notify the boat owner, TA and the selectmen and a meeting shall be held to discuss appropriate measures. The selectmen can suspend the boat owner for a period of time or can decide to suspend the rights of the boat owner indefinitely. Again, the boat owner has the right to put his/her name to the waiting list.

13. Anyone charged with a criminal act that has to due with violation of Marine laws, to include violations of catch size and quantity. Shall upon conviction lose the right to use the Union Wharf Lobster Basin.

** Fees

The marine resource held a meeting and the discussion was to raise the rates of dockage down at the union St wharf. The board was unanimous that the fees must be raised but felt that raising them during construction was not the best time. After a lot of deliberation and hearing that some Marinas charge \$500 per month we felt that to be a little steep. I feel that raising the rates to \$4500 per season would be appropriate. The larger ships pay a fee of \$25 per day but considering they only are allowed to fish 39 days out of the year that equals about \$8000 in fees per year.

Also, just to show how low we are in fees I can tell you after to speaking with several boat owners that they feel some get special treatment at the lobster basin. I notified these individuals that everyone pays. But considering some don't use the slip it definitely shows we are way to cheap! "the slip are for working fisherman"

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October 24, 2017

Fairhaven Board of Selectmen
Mark Rees
40 Center Street
Fairhaven, MA 02719

RE: Union Wharf – use by non-fishing vessels

Dear Mark:

You have asked for my opinion as to whether the harbormaster may allow vessels, other than fishing boats, to tie-up on Union Wharf in the areas outside the basin.

In 1926 the state legislature enacted special legislation authorizing the Town to purchase Union Wharf, C.43 of the Acts of 1926. Section 2 of that act provides that the Board of Selectmen shall “have the powers to make rules and regulations governing the use of said wharf, subject, however, to such rules and regulations as the Town may fix by vote.”

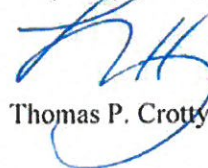
The selectmen have established regulations for the use of Union Wharf which appear at Chapter 225 of the Town Code. The regulations provide that wharf privileges shall be assigned from time to time by the wharfinger (the harbormaster). Nothing in these regulations suggests that the use of Union Wharf is limited to fishing vessels.

The Town has not voted any rules or regulations which would limit the harbormaster’s authority as set out in the Selectmen’s regulations.

It is my opinion that the harbormaster has the authority to allow non-fishing vessels to tie-up at Union Wharf.

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

Very truly yours,



Thomas P. Crotty

TPC/yb

Town of Fairhaven, MA
Thursday, October 19, 2017

Chapter 225. Union Wharf

[HISTORY: Adopted by the Board of Selectmen of the Town of Fairhaven 2-10-1986, effective 3-1-1986. Amendments noted where applicable.]

GENERAL REFERENCES

Harbor pollution control — See Ch. 132.

§ 225-1. Fees.

- A. For active commercial fishing vessels, the wharfage rate will be \$10 per day. "Day" is defined as a twenty-four-hour period or any part thereof.
- B. Transient vessels docked for short periods of time shall be charged a wharfage fee of \$25 per day.

§ 225-2. Rules and regulations.

- A. All wharf privileges shall be assigned from time to time by the Wharfinger, also all spaces on the wharf.
- B. If any person fails to obey orders of the Wharfinger, he/she shall notify the Board of Selectmen, and then the Wharfinger shall notify the offending person that all wharfage rights are suspended.
- C. If any person shall refuse or neglect to move his/her vessel or material on the wharf property when and as directed by the Wharfinger, he/she or the Board of Selectmen may remove same at the expense of such party. Only one boat at any one time is allowed at the south end of the wharf.
- D. Boat owners repairing boats at the wharf shall clean the immediate area at the end of each day.
- E. Vessels to be docked at the wharf for more than five days due to repairs must tie up at the most northerly end of the wharf.
- F. No heavy or long-term repairing, such as removal of engines, construction of drags or removal of winches, etc. The Wharfinger will make the final determination.
- G. Parking in areas where prohibited is cause for a citation. All parking regulations will be strictly enforced by the Police Department.
- H. All bills for wharfage not paid within 30 days of billing will result in loss of wharfage privileges.
- I. No boats over 40 feet in length are allowed to tie in the basin area. The basin area is for use of Fairhaven residents only.

- J. In the event of any matter arising not covered by these rules and regulations, the Board of Selectmen shall decide the question, and the decision shall be binding until the rules are changed or amended.
- K. If the Wharfinger has to tie up a vessel at the wharf, a fee of \$100 will be charged.
[Added 11-13-1989]

Mark Rees

From: Tom Crotty <tomcrotty@tcrottylaw.com>
Sent: Tuesday, October 31, 2017 11:53 AM
To: Mark Rees; Anne O'Brien; Bob Espindola
Subject: Atlas Tack EPA Closeout
Attachments: TPC Tax Foreclosue 20161214.docx

All

Attached is a memo to my file from last year outlining the status of the Atlas Tack cleanup project – and specifically the terms of the consent decree as it relates to the town's obligation to contribute to clean up costs and its ability to recover taxes owed on the property.

The action date for all of this to commence is now pushed out until at least the end of this year as EPA has not yet issued its notice to Atlas Tack that additional payments are due. (The EPA attorneys think that notice will go out by the end of the year.)

In summary, the Town does owe EPA for cleaning up hazardous materials placed on Town property by Atlas Tack. If the Town is able to collect any payments on its tax lien against the Atlas Tack property, EPA agrees that the Town can keep the first \$80,000 plus interest, and any additional amount collected by the Town would then be paid to EPA to reimburse EPA for its cleanup costs. EPA has released the Town from its obligation to pay any additional reimbursement to EPA. Our agreement with EPA is subject to the effect of a lien that DEP also has against Atlas Tack for DEP's costs in the cleanup. That DEP lien may be superior to our tax lien, and as a result it could interfere with our ability to collect any taxes owed on the property. We would have to negotiate with DEP to release its lien so that it does not impede our tax recovery. (It is my understanding that DEP's lien is only against the Atlas Tack property, so DEP is not looking to the Town for payment.)

The bottom line is that the Town may be able to recover up to \$80,000 in taxes from the property without having to pay "out of pocket" for reimbursement of EPA or DEP clean-up costs

Tom.

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MEMO RE: TAX FORECLOSURE

12.14.16

The Town's ability to foreclose on the Atlas Tack property for delinquent taxes is limited by the terms of the consent decree.

The Town cannot foreclose for taxes until EPA issues notice to Atlas Tack that additional payments are due from Atlas Tack to EPA. (EPA's attorneys tell me that notice should be issued this coming spring.) That notice then triggers Atlas Tack's option either to sell the property, or to pay the fair market value of the property, from which the back taxes will be paid. If Atlas Tack fails to sell the property within two years, or fails to pay for the property within 90 days, or fails to make an election of either option, then the town can proceed to foreclose.

There is a DEP lien on the property as a result of an earlier DEP cleanup. That lien has priority over the Town's tax lien. Depending on the amount of that DEP lien, the Town may recover none or only some of its tax lien.

The consent decree requires the Town to make a contribution to the EPA cleanup costs at the Atlas Tack site, but only from the taxes the Town collects.

The amount the Town will pay EPA is the amount collected by the Town for delinquent taxes; less \$80,000, plus interest at the federal CERCLA rate. If the Town recovers none or only some of its tax lien, the Town's obligation to pay EPA would be reduced or eliminated accordingly.

In summary, the earliest the Town can act – assuming EPA issues its notice to Atlas Tack in the spring of 2017 – will be the summer of 2017, and it may be as far off as the summer of 2019.