

PLANNING BOARD MEETING of November 27, 2012: Town Hall Banquet Room

## **I. ADMINISTRATIVE BUSINESS**

Chairman Wayne Hayward – Opened the meeting at 6:30pm

### Quorum/Attendance

Members Present – Chairman, Wayne Hayward, Francis Budryk, Rene Fleurent Jr., Jeffrey Lucas, Peter Nopper and Gary Staffon

Members Absent -- Joseph Morra

Planning Director William Roth was also in attendance.

### Acceptance of Minutes November 13, 2012

Gary Staffon made a motion to approve the minutes of November 13, 2012, and it was seconded by Wayne Hayward. The motion passed by unanimous vote.

### 1. Elections: Clerk

Wayne Hayward explained that at the last meeting, after 52 years of service on Town boards, Albert Borges resigned. “He’s fine,” Mr. Hayward said. “He’s moved out of town.” Mr. Hayward said that Mr. Borges was the SRPEDD Commissioner, so he has appointed Rene Fleurent, Jr. to take that position and has appointed Jeffrey Lucas as the Planning Board representative for the CPC Committee, and that Mr. Lucas is already the Chairperson on that Committee. Mr. Hayward explained that because it is mid-year, the Chairperson makes appointments for these roles, that’s why he has done so.

Wayne Hayward also explained that Mr. Borges was the Clerk for the Planning Board, thus a new Clerk had to be established. Wayne Hayward nominated Peter Nopper as Clerk, Peter Nopper accepted the position. Jeffrey Lucas made a motion to close the elections and was seconded by Gary Staffon. The motion passed by unanimous vote.

Francis Budryk asked what the Clerk position entailed?

‘Most importantly,’ Mr. Hayward explained, ‘that the Clerk establishes whether the Board has a quorum or not to hold the meeting.’ Mr. Hayward said there are other duties that the Clerk does, and they can be discussed at another time.

Wayne Hayward asked Mr. Nopper if there was a quorum tonight, to which Mr. Nopper replied, yes there was.

### 2. Planning Board Vacancy: Joe Morra

Wayne Hayward explained that there was a Public Hearing held by the Registrars and Joseph Morra didn’t show up; therefore, they made him a non registered voter in Fairhaven; so this allows his position on the Planning Board to be freed up.

Jeffrey Lucas made a motion to declare that there is a seat vacant, and was seconded by Gary Staffon. The motion passed unanimously.

Before continuing with the agenda, William Roth told the Board that he had been in front of the Board of Selectmen the previous night and advised them that there were actually going to be two seats up for vacancy within the Planning Board. He told the Board that the scheduled meeting with the Board of Selectmen is December 17<sup>th</sup>, and there would be nine votes (6 Planning Board members, and 3

Selectboard members); and it takes 5 out of 9 for the person to be voted in. Mr. Roth addressed the public by saying if they would like to be considered to be on Planning Board, they would need to submit a letter by December 7<sup>th</sup>, to the Board of Selectmen.

Wayne Hayward advised there was a Town Meeting on December 4, 2012.

Planning Board Bills:

1. Staples – Supplies - \$60.04. Gary Staffon made a motion to pay the Staples bill of \$60.04, and was seconded by Peter Nopper. The motion passed unanimously.
2. Fairhaven Neighborhood News – Ad for Pharmahealth for two weeks - \$120.00. Gary Staffon made a motion to pay the Fairhaven Neighborhood News bill for \$120.00, and was seconded by Jeffrey Lucas. The motion passed unanimously.

**II. CURRENT PLANNING:**

Receipt of Plans: None

Approval of Plans:

1. Welcome Street Subdivision – Lot Release Request

William Roth began by explaining it's a nine house lot subdivision, Lot 4 has been built on. He explained that two meetings ago the Board revised the covenant, and there is a covenant on seven lots; now he says the owner of the subdivision has found a builder who wants to build on 4 lots, so Mr. Roth is recommending a cash posting surety for the road, from the owner for \$40,000; in order to get the lots released.

Del Martin was present to speak on behalf of the subdivision, as he is President of Island Associates who owns the subdivision. He explained that one lot is sold and there is a house built on it. He stated that he just sold another lot, and is dealing with the contractor, who is considering purchasing four or five lots. He said that he has made a commitment to the Town, has been a good neighbor for the past five years; maintained the road, paid their taxes. He said the contractor for the road has already done a great job with the base for the road. After talking to the builder, Mr. Martin wanted to propose \$40,000. In cash in an escrow account, as they finish construction on the other houses, we can draw from that money to get the road finished. "You'll have the money up front to finish the road up," Mr. Martin said.

Wayne Hayward asked Mr. Martin, "So you're asking for four lots to be released?"

Mr. Martin responded, "I would like to see all the lots released."

Wayne Hayward said, "We don't want the money either, we want the road to be finished." He explained that the Board's goal was to only see that the road is completed. He explained that having a covenant on the lots doesn't mean the Town owns them. He said he was willing to go a little to work with Mr. Martin, but not to the full extent.

Mr. Martin asked if it was possible to release six vs. seven?

Wayne Hayward said that some people have just kept one lot as their own investment, so that would not be enough of a surety for him personally.

Gary Staffon said that on the same lines as Mr. Hayward, about the \$40,000; but maybe with \$50,000, we can release all the lots. "I'm not worried about you, because you're dealing with a subcontractor," Mr. Staffon said. "But I think \$50,000 in a bank account should be adequate."

Wayne Hayward said that Mr. Martin was asking for a declining balance here.

William Roth stated that the inspecting engineer they have used in the past, they are no longer using. He said that three lots under covenant and \$40,000 seems okay; and if there's some unanswered question, they could work with BPW on that. He said Mr. Martin could always come back to release the three lots with more money for the release of those lots.

Wayne Hayward said, 'we could keep the \$40,000 for three lots'

William Roth asked, what if you looked at a declining balance of not more than fifty percent.

Engineer, Ken Ferreira was present on another matter and asked to share his opinion. He said that a lot of other towns take those estimates (for the road to be completed) and release the lots only when it's completed.

William Roth recommended to the Board that they approve three lots under covenant and the \$40,000 escrow account with a declining balance of no more than half.

Wayne Hayward said if the economy takes a turn for the worse, they'll have people from the subdivision in front of them asking them for help to get the garbage picked up, or to be plowed out. He explained they've been in that situation before and he wasn't going to get into that again.

Jeffrey Lucas said, 'You're plan indicates \$20,000 for 3 lots, why have a surety of \$40,000?'

William Roth said he wouldn't recommend paying back the money until the asphalt is down.

"Who knows what the cost will be at that time," asked Jeffrey Lucas.

Rene Fleurent, Jr. asked, "Are we making the assumption that it's going to cost \$40,000 to put in the road"

Wayne Hayward said, "Yes."

Rene Fleurent, Jr. said, "Then take a surety of \$60,000."

Gary Staffon said he thought Mr. Roth's idea was best, he just wasn't sure if holding three lots is best. "My big thing is getting a bank check of \$40,000 or \$45,000; drawing down maximum of \$20,000 to help pay for paving is okay."

Continued General discussion occurred on what the surety should be vs. how many lots should be released.

Wayne Hayward made a motion to allow Island Association to release four lots, with a \$40,000 surety in escrow with no withdrawals; with a covenant on three lots. Rene Fleurent seconded the motion. Wayne Hayward asked Mr. Martin if he understood the motion; there would be no draw on money, until he appears before the Board again.

Jeffrey Lucas said, 'he'd have to pave the road before any money is drawn.'

The motion passed unanimously.

William Roth said he would work with the Accountant and Mr. Martin to get the paperwork done.

Del Martin asked, "Can I understand, if my responsibility is one, \$40,000 in hand by the next meeting, the lots would be released at that meeting?"

Wayne Hayward said, "Yes. We will sign that night."

Street Acceptance:

1. North Street (between Cherry & Adams Streets) – (con't from 11/13/12)

William Roth said he researched this and it started six years ago with John Charbonneau. There's public access maintained to the water, we've only discussed Cherry to Adams Street, it's really just never been on the radar.

Jeffrey Lucas asked if there was ever any intention of accepting the street

William Roth said that 'the Town maintains public access; they don't maintain an 18' driveway.'

Wayne Hayward said, 'there was no further action they needed to take.'

Gary Staffon made a motion to recommend North Street (between Cherry & Adams Streets) to get on the Town Meeting Warrant for Street Acceptance, and was seconded by Wayne Hayward. The motion passed unanimously.

Francis Budryk asked what was the difference between what we discussed prior to this street acceptance?

Wayne Hayward explained that this is existing and just hasn't been formally recognized in Town. He explained that the previous is a private subdivision; it's just a formality.

**III. PUBLIC HEARING:**

1. Special Permit - **Pharmahealth Specialty** – 132 Alden Road

Wayne Hayward called the Public Hearing to open.

William Roth - read the advertisement.

Wayne Hayward said there was an addition being proposed on the back of existing property.

William Roth advised the Board to his memo dated November 20, 2012. He advised that there were no concerns of issues from other Boards in Town. Mr. Roth advised the Board he would recommend they approve with the twelve conditions as stated in his report.

Engineer, Ken Ferreira was present on behalf of the applicant. He gave a small presentation of the project, stating there were no proposed changes to the detention area; a one way fire lane in back; was proposing a dumpster enclosure and landscape islands. He also went over the plants/shrubs they were going to put in.

Wayne Hayward asked what the width of the one way lane was?

Mr. Ferreira said it was 16'.

Wayne Hayward asked if it was curb? To which Mr. Ferreira stated, "No."

Wayne Hayward stated his only concern was the only access to the site was thru a locked gate; he said he would recommend they remove the gate, because it makes no sense to have them there.

Francis Budryk asked why the gates were there?

Rosemary Rebello, Director of Administration for Pharmahealth was present and answered. "No specific reasons," she said. "It was there when we moved in, and we can leave them open."

Wayne Hayward said he would like to see the gates taken down.

Mr. Ferreira said they wouldn't be opposed to adding it as a special condition, to remove them.

Wayne Hayward asked Ms. Rebello if she knew what the towers to her right were near the property?

Ms. Rebello said, "Not really."

Francis Budryk said there were no abutters in the audience; and that everyone near them got a notice?

William Roth responded everyone within 300' of the property.

Wayne Hayward then asked if there were any abutters, to which there were none.

Francis Budryk asked what kind of business they were?

Ms. Rebello replied, they were a closed door pharmacy. She said at this facility they package and ship medication.

Mr. Budryk asked, 'How many employees?'

Ms. Rebello said, 'In total of all their facilities approximately 80; however there were 50 at this facility.'

William Roth explained that this location was not a retail location. And then he explained the little pouches they make for daily pills for their customers. "Extremely specialized," he said.

Mr. Budryk asked if there was any production on-site.

Ms. Rebello said, 'Yes, as they package the medication; the pharmacist checks it, and we ship it. We get inspected regularly by the Board of Pharmacy.'

William Roth at the request of the Board, added special condition #13 to remove both gates from property.

Gary Staffon made a motion to approve with 12 conditions plus 1 additional condition as William Roth stated, and Wayne Hayward requested; and was seconded by Jeffrey Lucas. The motion passed unanimously.

Francis Budryk invited Ms. Rebello to be a Fairhaven Business Associate member.

Wayne Hayward closed the Public Hearing.

#### **IV. LONG RANGE PLANNING:**

##### **1. Chapter 316 Procedural Rules: Street Acceptance Procedure Flow Charts**

William Roth stated that he had a discussion with Jeff Osuch and he is going to do one more spell check; and his intention was to have it on the website by the end of the week and taken off the agenda for the next meeting.

Gary Staffon asked if it has to go into the Town Code?

William Roth stated it does not have to go into the Town Code, it's just to facilitate the public.

##### **2. Chapter 198-29.5 Wind Energy Facilities: Bylaw Review**

William Roth handed out the "Draft" and then he reviewed the changes, additions with Board Members page by page.

Wayne Hayward asked about the Operation & Maintenance Report, should it be an appendix?

William Roth said, he would prefer to wait until we get to that portion of the bylaw to discuss it.

General discussion on the changes of each page and the appendix.

Wayne Hayward said that this document, Appendix A should not be part of the code.

William Roth referenced p. 5 & p. 7, stating it should say 'on a yearly basis to be submitted on the O&M report on file at the Planning Board office.' he said he would review the language and make the necessary changes.

Wayne Hayward said, 'I know there are outstanding issues with every member, but you're not going to get a perfect document.' He explained the document would go to the Board of Selectmen from them to get their opinion, if needed.

William Roth advised the Board to take the clean copy, and if they have any additional issues they'd like the rest of the members to consider, then email him them and he'll have them prepared for the 12/11 meeting.

Rene Fleurent, Jr. mentioned he had two questions. He asked Mr. Roth about looking into reviewing the waterways jurisdiction?

William Roth stated he spoke to a Chapter 91 Waterways Specialist and they said it would be multiple jurisdictions. He said the by-law would apply, not zoning per se on water, it would also require the Board of Selectman's approval. It may or may not have to go through Town Meeting, it would require Ch. 91 license from DEP, CZM (Coastal Zone Management), MEPA, ConCom approval and possibly a 404 Water Certification from the Army Corps of Engineers. He said, "it would be a very big filing."

Rene Fleurent, Jr. said that brings up concerns for wind farms, do we define wind farms and how many turbines can be built.

Wayne Hayward said that he has done a lot of research on that topic, and doesn't see anything in code for more than one. "You make a good point," he said. He is of the understanding, when not addressed, not prohibited.

"That's my concern," Mr. Fleurent said. "Do we want to limit how many turbines someone can put up?"

William Roth said there would be so many agencies involved, plus Town Meeting.

Mr. Fleurent said, "Do we want to look at limited number of Wind Turbines, if not, let's move on."

Gary Staffon asked, 'Do we really want that terminology used with industrial?'

Mr. Fleurent responded, 'I'm looking at restriction of Wind Turbines, not definition.'

Wayne Hayward said, 'You would have to define what a wind farm is.'

"No more than "x" on someone's property," Rene Fleurent said.

"As soon as people see the word "wind farm" they're going to say ugh oh, Planning Board is encouraging Wind Farms, and I don't think we are," Wayne Hayward said.

Jeffrey Lucas said he didn't think you can limit the number without thinking of the square footage.

Rene Fleurent, Jr. said he was of the opinion that he'd like to have a little more teeth in it.

General discussion occurred on the number of turbines.

Francis Budryk asked about the design of the Wind Turbines.

Wayne Hayward said they don't regulate design.

Resident, Gary Loveatt from the audience said they make blades smaller, if you measure by blades or by hub it's all the same.

Mr. Loveatt asked if someone was to lease an adjacent property to build a Wind Turbine if that would require a zoning change.

Wayne Hayward said it would require a special permit, they would have to see the 30 year lease agreement on the property.

William Roth stated it wouldn't change the zone.

William Roth again told the Board if they had any changes, to please email him within a week, so he could include the suggestions in the packet he sends out a few days before the meeting.

Wayne Hayward said that they theoretically, they were looking at the first Public Hearings being in late January.

The next meeting is December 11, 2012.

Gary Staffon made a motion to adjourn at 9:00 p.m., and was seconded by Rene Fleurent, Jr. The motion passed unanimously.

Respectively submitted,

Patricia A. Pacella  
Secretary