

TOWN OF FALMOUTH
SELECT BOARD
Meeting Minutes
Open Session
MONDAY, JANUARY 10, 2022
SELECT BOARD MEETING ROOM
TOWN HALL
59 TOWN HALL SQUARE, FALMOUTH, MA 02540

Present: Doug Brown, Chair; Nancy Taylor, Vice Chair; Onjalé Scott Price; Sam Patterson.

Participating Remotely: Megan English Braga.

Staff Present: Julian Suso, Town Manager; Peter Johnson-Staub, Assistant Town Manager; Frank Duffy, Town Counsel; Peter McConarty, DPW Director; Edward Dunne, FPD Chief; Scott McGann, Health Agent; Cathal O'Brien, Water Superintendent.

1. **Chair Brown called the open session to order at approximately 6:30 p.m. and motioned to convene the executive session under 1. M.G.L. c.30A, s.21(a)(1) – To review the draft minutes of executive session of November 8, 2021, because to not go into executive session could prejudice ongoing negotiations. The motion was seconded. It was followed by a unanimous roll call vote in Open Session to go into Executive Session for the purpose of discussing the above-listed items, and to return to Open Session after discussion. Roll Call Vote: English Braga, aye; Chair Brown, aye; Patterson, aye; Taylor, aye; Scott Price, aye.**
2. Chair Brown reconvened the Open Session at 7pm.
3. Pledge of Allegiance
4. Recognition
Patterson attended the 1/2/22 Eagle Scout Court of Honor for Ricky LaRuffa. The Select Board noted the contributions of the Boy Scouts' contribution to improving the Town with their Eagle Scout Projects.
5. Announcements
Chair Brown said there was an article about the opioid litigation in the newspaper and asked Atty. Duffy to provide an update on the litigation. .

Atty. Duffy explained that in 9/2018 the Town joined the MA Opioid Litigation Consortium which filed claim against manufacturers and distributors of Opioids in US District Court for the District of OH. The Attorneys General in several states realized not every community participated in this litigation, so they intervened in the cases that for towns not represented in this litigation. Falmouth did not opt in because we did not have to, we are already in, and have a claim on file. It is unlikely any claims will go to trial, there will be a global settlement, all parties with claim will participate in the settlement. There are proposed settlements, but none have been accepted at this time. It will likely be in the billions of dollars, paid into a fund over 15-20 years by manufacturers and distributors from their operating revenue. It will be distributed in an unknown amount via an unknown formula. Atty. Duffy continues to update Suso.

6. Public Comment-none.

SUMMARY OF ACTIONS

1. Administrative Orders
 - a. Approve Eversource petition to install one (1) 1-3" PVC conduit and cable of approximately 37' feet under town road, Nickerson Street, approximately 901' (feet) east of Maravista Avenue, southerly from handhole 384/H6-A at the base of pole 384/6. This work is to be done to provide electric service to #49 Nickerson Street, Falmouth.

Patterson motion approval. Second Taylor. Roll Call Vote: Taylor, aye; Patterson, aye; Scott Price, aye; English Braga, aye; Chair Brown, aye.

- b. Approve Eversource petition to install approximately 55' feet of conduit and cable under town road near the intersection of Bridge Street and Menauhant Road and to install one (1) new handhole labeled 235/H15 in public ROW on westerly side of road. This work is to be done to provide electric service to #2 Bridge Street, Falmouth.

Patterson motion approval. Second Taylor. Roll Call Vote: Taylor, aye; Patterson, aye; Scott Price, aye; English Braga, aye; Chair Brown, aye.

- c. Vote to approve letter of support of Woods Hole Diversity Advisory Committee's grant proposal for NSF INCLUDES grant.

Scott Price volunteers for the committee but does not receive any financial benefit.

Patterson motion approval. Second Taylor. Roll Call Vote: Taylor, aye; Patterson, aye; Scott Price, aye; English Braga, aye; Chair Brown, aye.

Suso will forward letter of support on behalf of the Select Board.

- d. Vote to approve request from The 300 Committee for a Conservation Restriction for the Florence Sylvia Woodland, 0 Millstone Street, Falmouth, MA 02556

Taylor motion approval. Second Patterson. Roll Call Vote: Taylor, aye; Patterson, aye; Scott Price, aye; English Braga, aye; Chair Brown, aye.

- e. Vote to waive fees for Conservation Commission 'Request for Determination' applications for eleven osprey pole installations by the Osprey Project and Together We Can at various locations

Taylor motion approval. Second Scott Price. Roll Call Vote: Taylor, aye; Patterson, aye; Scott Price, aye; English Braga, aye; Chair Brown, aye.

- f. Vote to approve application to MA Department of Housing and Community Development for Local Initiative Program for Local Action Units and related documents consistent with Special Permit approved by the Zoning Board of Appeals for 533-539 Woods Hole Road

Taylor motion approval. Second Patterson. Roll Call Vote: Taylor, aye; Patterson, aye; Scott Price, aye; English Braga, aye; Chair Brown, aye.

- g. Vote to increase the spending limit for the Senior Services revolving account to \$250,000 for FY2022

Taylor motion approval. Second Scott Price. Roll Call Vote: Taylor, aye; Patterson, aye; Scott Price, aye; English Braga, aye; Chair Brown, aye.

Increase from \$60k to \$250k. Johnson-Staub explained the revolving accounts mean they can only spend the money they bring in, so there is a limit to what can be expended. Here they were cautious about what the café and programs would be, so in order to buy the supplies needed, the limit needs to be increased.

- h. Vote to sign Petition to the General Court to effectuate the vote on Art. 18 of the November 2021 Annual Town Meeting to remove the Falmouth Police Department from Civil Service

Taylor motion approval. Second Patterson. Roll Call Vote: Taylor, aye; Patterson, aye; Scott Price, aye; English Braga, aye; Chair Brown, aye.

- i. Authorize the Town Manager to transmit a letter of support for a grant for the Friends of Nobska Light from the Massachusetts Cultural Commission

Patterson motion approval. Second Taylor. Roll Call Vote: Taylor, aye; Patterson, aye; Scott Price, aye; English Braga, aye; Chair Brown, aye.

PUBLIC HEARINGS

1. Wetlands/Dock Hearing – Nina’s Marina Realty Trust – Install new vinyl sheet pile bulkhead adjacent to and landward of existing licensed timber bulkheads, and removal of existing tongue and groove timber sheathing, located at 306 Scranton Avenue, in the waters of Falmouth Inner Harbor, continued from December 6, 2021

The applicant requested an extension to 1/31/22.

Patterson motion to continue to 7:30 pm on 1/31/22. Second Taylor. Roll Call Vote: Taylor, aye; Patterson, aye; Scott Price, aye; English Braga, aye; Chair Brown, aye.

BUSINESS

1. COVID-19 update and recommendation – Scott McGann (10 minutes)

McGann reviewed the PCR testing weekly case trend. Case count pushing 400 for one week, this does not count home tests. Moving towards more home testing. Reviewed Barnstable County 3-day average, about 12% positivity rate; this is 3-4 times more cases we have ever seen. Any one individual’s risk of being hospitalized and risk of death for vaccinated individuals is trending lower. Reviewed the types of Covid 19; Delta, Omicron. Omicron has taken over, appears to be more transferable; more upper respiratory, less deeper lung symptoms. Vaccination rates: 94% of all Falmouth residents have had one dose, about 84% are fully vaccinated. Encouraged all looking for boosters to get one. Vaccine availability and testing is being done by local pharmacies, homebound folks may contact his office. The Health Dept. will begin hosting booster clinics. Testing continues at pharmacies, Falmouth Hospital, ConvenientMD, Community Health Center, Barnstable Fairgrounds, home tests, and the Melody Tent. More likely to contract Covid-19 now, but your outcome will be a slightly lower risk.

English Braga asked about appointments being made at a pharmacy and upon arriving there for their appointment, the pharmacy told some people they were out of the booster vaccine. McGann said he has no involvement with the pharmacies, they are tied into the State or the federal government.

McGann put a link to sign up for the VNA clinics and noted that clinics are being done at the schools.

McGann noted on 1/3/22 meeting, the Board of Health voted to encourage the Select Board to adopt an indoor mask requirement in Town-controlled facilities and encourage private entities to consider requiring it in their locations as well.

Patterson motion approval to require masks be worn indoors at all Town-controlled facilities. Second Taylor. Roll Call Vote: Taylor, aye; Patterson, aye; Scott Price, aye; English Braga, aye; Chair Brown, aye.

Taylor motion to encourage private entities to consider having masks worn inside their buildings. Second Scott Price. Roll Call Vote: Taylor, aye; Patterson, aye; Scott Price, aye; English Braga, aye; Chair Brown, aye.

Comment:

Mark Finneran, Grand Ave., read from a document he prepared regarding wearing of masks; facemasks had no effect as personal protective equipment or spreading to others. Several trials were noted that facemasks did not seem to be effective against lab confirmed respiratory or clinical respiratory infections. He learned the other day that the home test kits, the reagent used is sodium azide, which is highly toxic, and he encouraged those using the home test kits make sure to read the instructions and be careful using them.

Patterson questioned the sources Finneran was citing.

English Braga noted that doctors, nurses, and first responders are begging people to get vaccinated and take every precaution because they are exposed to the enormous number of fatalities over the last couple years. They are asking for a simple thing to be done; to get a vaccine and wear a mask, these are frontline workers doing the work; they get paid a fraction of the value of their work over the last couple years. There is no reason not to honor that and make their work a little easier. This is a work environment that could not be much worse than it is right now.

Johnson-Staub noted anyone looking for studies to demonstrate efficacy of masks, can go to the Centers for Disease Control website.

McGann has noticed there has not been as much transmission in the schools as there should have been with as many people close together in classrooms without masks. There are many studies that say whether masks work or not, a doctor is not operating without a mask for a reason. Masks were effective in the 1918 pandemic. A study can show a lot of different things, it does not increase transmission, would generally decrease because it keeps droplets closer to your face.

Barbara Schneider said today the State released a vaccination site where your vaccine records would be available to you. She looked, her booster from November 2021 was not listed, she called the store and was referred to an 800#, the 800# sent her back to the store. She also got something from a travel company to make sure in the future you will need that QR code in order to travel. She just returned from a place where masks are required everywhere.

McGann said the Town has no control over what the pharmacies do.

2. Vote to adopt FY2023 budget and submit it to the Finance Committee

Chair Brown asked how Beach position advertisement will reflect the flexibility in hiring in regarding pay? Suso noted they will note a bonus system in the lifeguard position advertising and range of pay available.

**Taylor motion to adopt the FY2023 budget and submit it to the Finance Committee.
Second Patterson. Roll Call Vote: Taylor, aye; Patterson, aye; Scott Price, aye; English Braga, aye; Chair Brown, aye.**

3. Status Report/Update on Fresh Pond Well and PFAS issues

Cathal O'Brien, Water Superintendent, noted the project is on schedule, bids open 1/14/22. There are 4 homes with wells, they will be tied into Town water by end of the project. At Fresh Pond they will do a temporary system to filter out the PFAS. The Town was able to collaborate with the Airforce and Army Corps of Engineers because the Town has a permit. Airforce will pay all equipment, consultant engineer, give payment for operations and maintenance. Up to a five-year commitment. The Airforce has not given details regarding tracking the plume, however they are committed to close out any issues with plumes, they expect the monitoring to continue. They are spending significant money and will keep the wells running and putting respectable amount of money into the Town.

Atty. Duffy reminded the public the Select Board authorized joining the multi-district litigation pending in the US Federal Court for South Carolina. Claim was filed in December 2021 and pursuing the PFAS problem on several levels.

Brown thanked Congressman Bill Keating for assisting the Town in having the Airforce take over something they did not really have to take over.

4. Interview, vote and appoint committee members
 - a. Human Services Committee – Tanya Kohli
Director of Prevention and Screening at AIDS Support Group of Cape Cod, since last year, oversees the harm reduction program, which does outreach to the community. She worked for a local substance use treatment center, lived in Falmouth since 2017, originally from Vancouver.

Taylor motion appointment to term ending 6/30/24. Second Patterson. Roll Call Vote: Taylor, aye; Patterson, aye; Scott Price, aye; English Braga, aye; Chair Brown, aye.

- b. Steamship Authority Board of Governors – Peter James Jeffrey (**5 minutes**)
Jeffrey, a Washington, DC licensed federal employment law attorney, he lives in Falmouth with his family. Neighborhood member of the Resilient Woods Hole Steering Committee, living in maritime town relying on the working ports.

Scott Price motion appointment to term ending 6/30/22. Second Taylor. Roll Call Vote: Taylor, aye; Patterson, aye; Scott Price, aye; English Braga, aye; Chair Brown, aye.

5. Discussion on disposition of Police Department weapons

Richard Duby, Blacksmith Shop Rd., said this is disposal of property, but unique and the Select Board needs to understand the property is an AR15 weapon. Provided background of the AR15; it was never designed for civilian use. That is the gun we are considering turning back to the private market; a gun originally designed for the military. He would like the Town to find another way to dispose of these weapons. There are 21 rifles, each valued at about \$500 each. We have placed a \$500 value on these 20 year old rifles; you can buy a new one for \$850; more than likely these will go to private individuals. The fact the weapons cannot be destroyed is something he hopes the Select Board can find a way around. We are basically distributing the firearms. Unless we act to prevent them from ending up in private hands, that is what will happen.

Atty. Duffy has been in touch with the Attorney General's Office (AGO), the Town has limited options under the law that is set at the State level. There is no particular transaction scheduled at this time. There was a Town Meeting Action that appropriated \$86,000 for new weapons, no contracts at this time, no requirement to trade in. He is guided by the Uniform Procurement Act, covers purchase of new rifles and disposal of old rifles. Under 30B, disposal of surplus property is controlled by the Uniform Procurement Act. Three methods of disposing of property pending value: 1. If valued at \$10,000 or less, the Town may determine by policy by the Select Board. 2. If valued at \$10,000-\$50,000, 3 quotes are needed by companies in the business of selling. If more than \$50,000, it's subject to new bids. Second part is disposal of the surplus, there is no special provision for firearms and value is determined by aggregating all property together in the transaction at its market price. Chief determined aggregate value of all to be disposed of is more than \$10,000. If greater than 10k, either 1. Sealed bids, 2. Auction, but these do not work because the FPD is not a licensed dealer. 3. Trade in. Trade ins are allowed as part of the sealed bid or auction. According to the AGO and a former counsel from the Chiefs of Police Association, most police departments trade in their surplus weapons because they are not licensed to sell these; they could be traded in and the dealer would follow the applicable choice. Trade in has been determined to be most appropriate. Private sale with another police department, municipal town can have deal with other municipal, but the Town is not a licensed

firearms dealer.

Chief Dunne said the AGO several years ago did an act of law, it is illegal for residents of MA to buy assault rifles.

English Braga asked if the Town has ever had a policy and is there an objection or reason why we would not hold onto the guns?

Atty. Duffy's understanding is that the Town has not adopted a policy for disposal of property valued below \$10,000.

Chief Dunne said they would need to maintain and store these weapons, they have followed procurement laws for all the firearms they have disposed of over the years. They would need to have a vendor that could determine the value of the firearms; which are 20 years old and could fail; however, the FPD maintain their equipment very well. The actual value will not be known until we have the process go through.

Sgt. Benjamin Guthrie, FPD, explained that the State defines the assault rifle, and it is prevented from being bought by private citizen. In 2016 the AGO put out a notice they cannot do that anymore, there are many copies of other assault weapons, she put criteria out that set forth what the federal licensed dealers can and cannot sell. State legislature has taken this on, the citizen cannot possess these guns. This is regarding the 1994 pre ban law. The AR15's that were prebanned, private citizens cannot purchase after 2016 unless the dealer had it in possession before 2016.

English Braga said that we will have a difficult choice to make, she would like to have that information in front of them. Need a value that comes from the actual procurement process and then they will know what options are available to them. We should have a disposal policy and it is not that difficult to come up with a policy.

Chief Dunne will continue with the procurement process and value of what they would receive if they traded them in.

7. Status report on Woods Hole Oceanographic Institution (WHOI) CWATER Project

Request for support of this project, wanted the Select Board to send a letter. Suso noted the Select Board has already voted support of this project; this is question regarding the Conservation Commission review of permit to go forward under the local flood plain regulations.

Jennifer Lincoln, Conservation Administrator, explained that at this time the project is before the Conservation Commission. Includes Maintenance dredging, demolition of several buildings, and construction of the new waterfront building on the facility. This is a working waterfront and there are complex issues that affect this project. Peer review of the issues, additional hearing will be held, and a continuance date of 1/19/22.

There are some issues the Conservation Commission is going to have to deliberate on, including the construction of a new waterfront building within Falmouth's velocity zone. The project is a vast improvement from what is there, the size in the velocity zone will be reduced by about 2500 sq. feet. Community rating system is a system through FEMA to provide percentages off federal flood insurance, list of criteria the Town will be provided credits for; Falmouth's wetland regulations require that they have the 25 foot offset, the board has consistently applied velocity zone offset of 25%.

Chair Brown asked if there is any way of knowing if the Town will be injured by the approval of the rating system? Lincoln said it remains to be seen; regardless of this project, there will be some issues that will need to be worked through with FEMA, FEMA is willing to work with communities to address these types of issues to correct practices and incentive is that communities work with FEMA for percentages off federal flood insurance. FEMA will look at

building records, survey the coastline, and buildings in the velocity zones.

Patterson said every property owner who needs flood insurance in the flood plain area will benefit with lower cost insurance.

Lincoln said this is a nationwide program, 2 communities nationwide that meet the 45%, Falmouth will never get there. Average savings in MA is 10% based on many different factors outside of the Town's control. FEMA may begin their review in Falmouth within a year or so.

8. Status Report on Woods Hole Oceanographic Institution CWATER Project
Leslie-Anne McGee, WHOI Program Manager, read a statement describing the initiatives, contribution, and importance of a new, modern pier. The Conservation Commission is one of the boards that will require review for this project. This will come back to the Select Board for a special permit. CWATER, this is important to the institution. Current waterfront has been in place for 52 years. The dock must be replaced, will be modern and adaptable technology. WHOI is dedicated to the understanding of the ocean. The pier is both a port for vessels and a research platform. \$50 million contributed to the local economy from activities just on the pier. They are 18 months into permitting and regulatory process at this time. Ask for patience and trust that they will deliver a high quality redevelopment project.

Catherine Bumpus, Woods Hole resident, property owner, and pays for flood insurance. It would be a real benefit for her to save 10% on her flood insurance.

9. Eversource status update (10 minutes)

Ronit Goldstein, Community Relations for Eversource Energy; Katie Cook, Terri Feuersenger, Alexis Ane, and Andrew Burton all of Eversource were present. Providing an update on the work they have done with the Bike path.

Terry Feuersenger, meeting with 1/5/22 with Bike/Pedestrian Committee. The meeting was very productive, was the third meeting, shared visuals of redesign using the feedback from the previous meetings. That collaboration resulted in a better project for the bike path users and Eversource. They will continue, future meetings with the Committee and other members of the Town. Advancing their survey, then engineering will overlay design, then work with Town officials with refining and will have scalable plans.

Cook noted meeting last week with Town officials to discuss mitigation items that could be part of this project and benefit the Town. Suso, Johnson-Staub, and McConarty were all present to assist with the discussion, most important item brought up the utility poles along Palmer Ave. in middle of sidewalk causing accessibility issues, they will look at those, bring back to the team, work with their leadership team, and see what Eversource can do. They will work to address the double poles.

Feuersenger has been working, she will provide comments if their Atty. has any. By the time to Town Meeting, the items, mitigation, and plans will be ready to move forward.

English Braga noted their Town Meeting will need a high level of detail and certainty of the process and where it will be is important for the success of the project at Town Meeting. Without that detail, Town Meeting is not comfortable supporting projects.

Dan Hubbard, Legal Counsel for Mayflower Wind, they are committed to delivering clean, low cost energy to MA. They have 1200 megawatts and plan to develop the rest of their lease which will be 2,000 megawatts. Described the work they have done to consider potential routes, Mayflower ultimately filed routes at 2 locations. They were informed by Eversource that the routes would negatively impact reliability and security of the project on two locations. Mayflower noted Eversource has been consistent that co-location in the area would be negative, and no co-location could be assumed. He asked that Eversource provide the Town with all information the Town deems necessary to be needed to fully explore that issue.

Johnson-Staub noted if Mayflower wants to comment on the Eversource Project, that is okay; however, the Mayflower project was not on tonight's meeting agenda.

Chair Brown noted they received information from Eversource regarding the conflict. Members of the Disability Commission expressed the need to address the poles.

8. Status update on Old Burying Ground

Peter McConarty reported that over the past year, the DPW has met with Atty. Duffy and Julian Suso. Discussed all burial grounds the DPW maintains in Town since November Town Meeting, had an additional meeting and, as a result, the DPW will move forward with reaching out to a preservation consultant to gather more information. This is a new endeavor, he reached out to original engineering consulting company the Town consulted with in 2005, Fannin/Lehner Preservation Consultants (Fannin). Fannin inventoried the markers, damage of headstones, inventory of grounds/area and came up with spreadsheet of critical areas and priority areas for restoration of headstones and markers. The Town at that time did not move forward with it, he is trying to put it back on track so this project will be under DPW administration portion. Goal is to meet with this company, do another inventory, update the information, and come up with plan to move forward, cost estimate and plan. His understanding is there are not a lot of preservation companies in MA that do this work. A cost estimate will be put together, there are over 700 stones in the burial ground, many are damaged. The Parks Department, when working in that area, if there is a damaged headstone/marker, they will put it on pallets, so it is not sitting on the ground. May take several months to put this information together. Goal is to start with burial ground on Mill Rd. DPW will gather information and put it together and get it started. There is a lot of information out there. Have to be a registered preservation contractor to do this kind of work. The oldest gravestone in that burial ground is about 400 years old.

9. Review and Vote to Approve Minutes of Meetings

a. Public Session – December 20, 2021-none.

b. Executive Session – November 8, 2021

Patterson motion to approve and release as edited. Second English Braga. Roll Call Vote: Taylor, aye; Patterson, aye; Scott Price, aye; English Braga, aye; Chair Brown, aye.

10. Individual Select Board Members' reports

Taylor reminded the Select Board they should look at the tool she sent before the holidays for the evaluation of the Town Manager. Asked for Select Board comments and Suso's self-evaluation.

11. Town Manager's report

Suso reported the Sandwich Road Fire Station Committee met in the last week, anticipate public information meeting date to be determined, likely early February and at the Main Library Branch. Suso joined the Finance Committee meeting as well. West Falmouth Station progress on water heater, there were major electrical items, the generator will also need to be replaced. New boiler had to be replaced as well, working on the plumbing and he understands it will be fired up late this week. Also looking at insurance claim to recover some of the related costs due to the damage. Next meeting for the Select Board will be Saturday at Town Hall.

Taylor requested future agenda item: update on hiring for the open vacancies.

English Braga motion to adjourn at approximately 9:33pm. Second Patterson. Roll Call Vote: Taylor, aye; Patterson, aye; Scott Price, aye; English Braga, aye; Chair Brown, aye.

Respectfully Submitted,

Jennifer Chaves
Recording Secretary