BOARD OF HEALTH MEETING VOTED MINUTES
February 1, 2021 at 5:00 p.m.
Town Hall lower level meeting room
59 Town Hall Square, Falmouth, MA 02540
Times indicated for the agenda topics are approximate
In accordance with the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20, relating to the 2020 novel Coronavirus outbreak emergency, the February 1, 2021 public meeting of the Falmouth Board of Health shall be physically closed to the public to avoid group congregation.
Alternative public access to this meeting shall be provided in the following manner:
1. Real-time public comment can be addressed to the Board of Health utilizing the Zoom virtual meeting software for remote access. This application will allow users to view the meeting and send a comment or question to the Chair via the Chat function. Submitted text comments will be read into the record at the appropriate points in the meeting.
   Zoom Login instructions:
   i. Instructions and the meeting link for this specific meeting can be found at the following web address: http://www.falmouthmass.us/BOH
   ii. Please plan on 10-15 minutes of preparation time to log in though it may be less if you have previously used Zoom on the device you will use to access this meeting.
2. Additionally public comments may be sent in advance of the meeting to health@falmouthma.gov at least 5 hours prior to the beginning of the meeting. Documents and audio or video files may also be submitted via email. Submitted email comments and documents will be made a part of the meeting record and may be read into the record, summarized or displayed during the meeting at the discretion of the chair.
3. Applicants, their representatives and individuals with enforcement matters before the Board may appear remotely and are not required to be physically present. Applicants, their representatives and individuals with enforcement matters before the Board may contact the Health Department to arrange an alternative means of real time participation if unable to use the Zoom virtual meeting software. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to the Health Agent at health@falmouthma.gov so they may be displayed for remote public access viewing.

Present: Diana Molloy, Stephen Rafferty, George Heufelder, Benjamin Van Mooy, Kevin Kroeger
Scott McGann

5:00 - Opening remarks and public comment:
At 5:00 Diana Molloy called the meeting to order.

A roll call attendance was taken.
George Heufelder- present
Stephen Rafferty- present
Kevin Kroeger- present
Benjamin Van Mooy- present
Diana Molloy- present
Diana Molloy read regulations regarding open meeting law and remote meetings.

Stephen Rafferty read the mission statement: 
The mission of the Falmouth Board of Health is to protect and promote the health, safety and well-being of residents and visitors of the Town of Falmouth. The primary functions of the Board of Health to achieve our mission are to: prevent and control disease, enforce state and local regulations, promulgate local health regulations, identify and protect from environmental hazards, and advocate for a healthy community.

STABLE

5:03-809 Sandwich Road –Smithfield Farms continued from January 19, 2021
Update of recent events that have occurred since last on the agenda on December 21, 2019. Janice foster, Smithfield owner, reported that she had consulted with veterinarians and fence specialists regarding the best kind of fencing for horses and the agreement was a combination wood and electric fence. The plan is to add electric fencing to the wooden fencing along the frontage. The gate will be moved back 14’ and an electronic gate will be installed in front of that. This will allow people to enter the electronic gate first, have it close behind them and then they could enter by the second gate.
A discussion included the following:
- Diana Molloy asked when the installation could occur.
- Ms. Foster said tomorrow, weather permitting.
- Diana Molloy noted that the Board of Health has received correspondence and comments expressing concerns about the farm and the management.
- The number of horses permitted was determined to be 26.
- Ms. Foster said that there are now 26 horses at the farm.
- Diana Molloy said that the correspondence said there were 29.
- No, Ms. Foster said, there are 26.
- Diana Molloy said that the correspondence said that there were two pregnant horses at the farm.
- Ms. Foster said that all horses at the farm were for sale. She is continuing to downsize. The mares are due to foal on May 5th and May 20th.
- Diana Molloy reported that she has reached out to Julian Suso and Greg Frazer of Marine and Environmental Services for guidance and assistance. It may be possible that Environmental Services could help with assessing whether the allegations of the correspondents were accurate.
- Diana Molloy invited attendees to submit communication via chat. No one did.
- Benjamin Van Mooy said that the Board of Health was looking for the standard operating procedures of the farm to have been articulated in writing. It was looking for
George Heufelder-aye
Stephen Rafferty-aye
Benjamin Van Mooy-aye
Kevin Kroeger-aye
Diana Molloy-aye
Motion passed.
Kevin Kroeger moved to request help from the town to investigate new complaints and to continue to the next meeting. George Heufelder seconded.
A roll call vote was taken.
George Heufelder-aye
Stephen Rafferty-aye
Benjamin Van Mooy-aye
Kevin Kroeger-aye
Diana Molloy-aye
Motion passed.

HOUSING

5:34-1174 East Falmouth Highway—continued from December 21, 2020, January 4, 2021 and January 19, 2021 Failure to comply with previous Health Department orders and Board decision from December 16, 2019

Documents: December 16, 2019 BoH agenda, minutes and materials from that hearing, Health Department letter to property owner dated November 24, 2020

Chris Lebherz, representative for Julio Fernandes, homeowner, reported that at the court date on 1/25, Steve Antone asked for lots of time to move his stuff. The judge ordered his belongings off of Mr. Fernandes property by 3/15 or he would be fined. So, the issue is not resolved but there has been progress.
If Mr. Antone fails to move his things, Mr. Lebherz would seek an execution whereby someone, a constable, is engaged to make it happen.
Benjamin Van Mooy moved to continue until the first meeting after 3/15. Stephen Rafferty seconded.
A roll call vote was taken.
George Heufelder-aye
Stephen Rafferty-aye
Benjamin Van Mooy-aye
Kevin Kroeger-aye
Diana Molloy-aye
Motion passed.

5:48-8 Trotting Lane—Failure to comply with orders issued by the Falmouth Health Department acting under the authority of the Falmouth Board of Health.
what responsibilities’ children can assume and whether rules are posted at the farm, among other things. It did not find these things in the document submitted by Ms. Foster.

- Mr. Foster said that rules, acquired through the state, are posted. An adult is on staff at all times and children are always supervised.
- Nancy Ross stated that she has been giving a helping hand at the farm and has been doing lots of fencing. All materials are on hand to install the electric fence.
- Stephen Rafferty said that at the last meeting the Board of Health was looking for clarity about how the horses would be kept out of the road and the standard operating procedures of the farm to be explicated. It was looking for how the farm was managed and for what people can and cannot do on the farm.
- George Heufelder said that the Board of Health was looking for a staffing plan and a supervision ratio for when children were present.
- These things that the Board of Health was looking for were not present in the communication that Ms. Foster sent to the Board of Health.
- Ms. Foster said that April 1st was the soonest she could apply for a license from the state.
- Kevin Kroeger said that it was hard to absorb all that has occurred. He noted that at the last meeting Ashley Sylvia had said that she and Kaitlin would each take care of half of the 24 horses and now she is not employed by the farm. Does this create a staffing shortage?
- Ms. Foster said that Kaitlin has stepped up and the vet volunteers are on the job as well so they are over staffed.
- Diana Molloy said that the farm is short staffed from the last time it reported at the last meeting.
- Ms. Foster said that she works from 4 or 5 a.m. to noon. Kaitlin works from noon to the evening. More people are there now than were there 2 weeks ago. She said she would provide the Board of Health with names.
- Diana Molloy asked that the schedule include the weekends as well.
- Benjamin Van Mooy noted that the manure management, number of horses and fencing are all clear cut issues and outlined in the regulations. If these are found to be out of compliance, the stable permit could be revoked, especially given the history of violations and noncompliance.
- Scott McGann noted that complaints must be validated.
- Diana Molloy noted that help is being sought from other town entities and the Board of Health would do its due diligence.
- Additionally, concerns could be made known to the MSPCA if anyone had direct knowledge of abuse.

Kevin Kroeger moved to require a standard operating procedure document which included staffing and supervision plans for the number of children present as well as a plan for maintaining the health of the horses. George Heufelder seconded.

A roll call vote was taken.
Orders issued under the State Housing Code (410.602 Maintenance of Areas Free from Garbage and Rubbish)

Documents –
• Health department orders from September 29, 2020 and January 20, 2021.
• Health Department orders from May 4, 2015 and Falmouth District Court records
• Photos of property

Scott McGann reviewed the history:
In 2015 the Health Department was involved with the property and homeowner, Donna Hathaway and her husband, Bruce Hathaway. There was trash and debris at the exterior of the house and overflowing into the street. The courts and Falmouth Human Services were involved. Improvement occurred after interventions by the agencies.
In 2018 the situation appeared to get worse. The Assistant Health Agent has been working with the residents but compliance has been lacking, especially since September.

Donna Hathaway said that yes, they have been working with Sheri Bedau, erstwhile assistant health agent, and they are continuing to work on doing what Sheri asked. 2 boats have been removed as well as stuff that was leaning on the boats.

A discussion included the following:
• Diana Molloy sought clarification: is there still garbage and rubbish around?
• Scott McGann clarified that it was more properly defined as ‘stuff’. There are things that are detailed in the regulations such as boats and other materials in the road and the pace of cleanup is not fast enough.
• Stephen Rafferty noted that he collected stuff but his neighbors did not think he ran a junk yard. He said that the Board of Health could issue an order and fines would accrue.
• Scott McGann has done a lot of work at this property over the years and the property owners needed to clean this up.
• Kevin Kroeger said that the photos indicated that the situation at the property looked really bad.
• Mr. Hathaway said that the neighbors feed rats.
• Benjamin Van Mooy reported that in the fall he had been at the property taking photos. In the 5 minutes he was on location 2 neighbors came out to speak with him, hoping he was there from the town to do something to help the situation. The neighbors have a lot of emotion and concern about the situation. He emphasized the focus was not on appearances but on harborage for vermin.
• Scott McGann said that if there is feeding of rats, this is a neighborhood problem. The homeowner appears to need guidance on what stuff can stay and what has to go.
• Ms. Hathaway said yes, help would be good and that some of the stuff is work materials but some is junk.
• George Heufelder said the problem is that definitions in the code are not clear. Rat harborage is clearly not acceptable but striking an agreement on what that is is difficult.
From the pictures, it is pretty clear that the stuff has created harborage. Unless someone is willing to go to the property and mark stuff with paint or a marker, there is no objective way to identify what is junk.

- Mr. Hathaway said he would like it if someone could come and mark the stuff.
- Diana Molloy said that the problem has been ongoing since 2015. Counseling has been urged and encouraged so that the situation does not flare up again. She urged the Hathaways to address the things that could come onto their property and stay or go from an emotional standpoint and work through the issues, addressing this problem.
- George Heufelder said that marking items to be disposed of makes sense.
- Stephen Rafferty asked Mr. and Ms. Hathaway if they were willing to agree to a representative of the Board of Health coming to their property to mark things to be disposed of.
- Mr. Hathaway said just in the front yard.
- Ms. Hathaway said that they have disagreements about what stays or goes. She herself was looking for a commitment from Bruce.
- Stephen Rafferty repeated: are you willing?
- Mr. Hathaway said if an item is marked and I have a legal obligation. If we disagree, and you prove it to me legally that it should not be in the front yard then I will remove it. But show it to me in the town regulations, the state regulations where it says I cannot have this pile of bricks.
- Stephen Rafferty said that an order of the Board of Health was a legal document.
- Scott McGann noted that the code calls for ‘clean and sanitary’. This is up to the health agent’s discretion, largely.
- George Heufelder said that it would be sensible for the homeowners to mark things they would remove from the property. The health agent could review and things could be removed within 5 days. If there was agreement, fine. If not, historically many of these situations are handled by the courts with large costs to all involved.
- Benjamin Van Mooy said that that a few rounds of marking may be needed. Not everything is visible.
- George Heufelder said that it is ok to peel away layer after layer. The Board of Health has a clear mandate for public health.

**George Heufelder moved to order the Hathaways to, within 5 days, legibly and visibly mark all things on their property that would be disposed of. If there was agreement about this with the Hathaways and the health agent then materials would be removed within 14 days.**

Benjamin Van Mooy seconded.

It was agreed that 2 health agents would go to the property to review for agreement. Mr. Hathaway said ‘you pick the time and I’ll be here’.

A roll call vote was taken.
George Heufelder-aye
Stephen Rafferty-aye
Benjamin Van Mooy-aye
Kevin Kroeger-aye
Diana Molloy-aye
Motion passed.

COVID-19

6:25-General COVID-19 Discussion
Health Agent and the Board of Health will discuss current state of the pandemic
Scott McGann reported that the vaccine is in short supply and is expected to be so for the next few weeks. Discussion is ongoing about how to vaccinate the homebound and other special populations. The VNA is willing to participate. There are 2,500 calls per day to the County regarding vaccination. The VNA has hired additional contact tracers, freeing up nurses to give inoculations. Partway through the week, the cases have declined slightly from the last few weeks.

TOBACCO
New state tobacco regulations went into effect June 1, 2020. The Board will be reviewing both the current local and new state regulations. The Board will be further discussing revising Falmouth’s local regulations to mesh with the new state regulations.
Documents: Existing and proposed local and current state tobacco regulations
Reviewed, briefly. Scott McGann will send a copy of the proposed regulations to Frank Duffy.

GENERAL BUSINESS

7:11-Board of Health Goals discussion and update Board of Health goals discussion document
Stables will be added to the list.

7:12-Health Agent update
Scott McGann is hoping to hire a second assistant this week.
Bernie is working 4 days per week, mostly on septicss.

7:15–Approval of Meeting Minutes
Approval of Minutes from January 19, 2021
George Heufelder moved to approve with corrections. Kevin Kroeger seconded.
A roll call vote was taken.
George Heufelder-aye
Stephen Rafferty-aye
Benjamin Van Mooy-aye
Kevin Kroeger-aye
Diana Molloy-aye
Motion passed.
January 26, 2021
George Heufelder moved to approve. Kevin Kroeger seconded.
A roll call vote was taken.
George Heufelder-aye
Stephen Rafferty-abstained
Benjamin Van Mooy-aye
Kevin Kroeger-aye
Diana Molloy-aye
Motion passed.

At 7:39 Stephen Rafferty moved to adjourn. George Heufelder seconded.
A roll call vote was taken.
George Heufelder-aye
Stephen Rafferty-aye
Benjamin Van Mooy-aye
Kevin Kroeger-aye
Diana Molloy-aye
Motion passed.

Relevant Documents

Correspondence from Janice Foster including DigSafe communication, regarding 1174 East Falmouth Highway: December 16, 2019 BoH agenda, minutes and materials from that hearing, regarding 8 Trotting Lane, Health Department letter to property owner dated November 24, 2020, Health department orders from September 29, 2020 and January 20, 2021, Health Department orders from May 4, 2015 and Falmouth District Court records, Photos of property, Existing and proposed local and current state tobacco regulations, Board of Health Goals Document