BOARD OF HEALTH MEETING VOTED MINUTES
February 5, 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 5, 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. She requested that since there were many
attendees, that the chat function be used.
Diana Molloy read regulations regarding open meeting law and remote meetings.

A roll call attendance was taken.
George Heufelder- present
Stephen Rafferty-present
Kevin Kroeger- present
Benjamin Van Mooy- present
Diana Molloy- present
Scott McGann-present
Maureen McIver-present

Benjamin Van Mooy 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, February 1, 2021
Continued discussion between the Board and Smithfield Farms regarding their operation. Deliberate on whether to pursue enforcement action on their 2021 stable license.
Documents: -
•Numerous email complaints since February 1, 2021
•Smithfield Farms documentation on their operation as previously requested by the Board.

Diana Molloy reviewed:
At the Board of Health meeting 4 days prior, Janice Foster, owner of Smithfield Farms and Nancy Ross told the Board of Health of plans to install an electric gate and move the existing gate back 14’ to allow for better security. Nancy Ross had assured that the project was ready to go and could be installed the next day, Tuesday, weather permitting.
Diana Molloy had been in touch with Natural Resources on Tuesday and was informed that the MSPCA was due to visit at noontime that day. Diana Molloy asked that they count the horses. The MSPCA counted 30 horses though at the Board of Health meeting on Monday, the evening before, Ms. Foster had assured that there were 26.
When Diana Molloy and Benjamin Van Mooy visited the farm on Tuesday afternoon, the gate was found swinging in the wind.
Benjamin Van Mooy affirmed that he and Diana Molloy visited the property and found the gate unsecured and swinging in the breeze. They had looked for posted protocols for supervision of children but found none. There were some signs but nothing that would address what had caused the two incidents of great concern: the ponies escaping the property and two horses escaping the property.
A discussion included the following:
• Diana Molloy noted that many pieces of information had been received and were being received. The fencing and open gate were within the purview of the Board of Health as well as the manure management. She said that Ms. Foster had said previously that all horses were for sale but a correspondent said that they had tried to buy back a horse from Smithfield and was told the horse was not for sale. Another correspondent said
that a goat was hit on the road. Diana Molloy said that she had visited that morning, Friday, and the gate was secured this time, though not well reinforced. She saw no activity regarding moving the gate 14’ back.

- George Heufelder sought clarification: the gate was swinging open when you visited the day after the meeting? After all we were told about securing the gate at the meeting?
- Yes, Diana Molloy said, the gate swung open when she pulled up. Initially she thought that an electronic gate had been installed but this was not the case. Benjamin Van Mooy secured the gate that day.
- Nancy Ross, via chat said ‘someone hit the gate’
- Kevin Kroeger noted that many correspondences, pictures and videos had been received but it is hard to do an evaluation with these. If correspondents are willing to give testimony, this may be more helpful.
- It was reiterated that 30 horses were counted by the MSPCA the day after Ms. Foster had assured that there were 26 horses at Smithfield. Could Ms. Foster explain?
- Ms. Foster offered a detailed explanation including that they had brought 4 additional horses to the property at some point and concluded with the statement “I miscounted”. Regarding the gate, Ms. Foster said that they had been monitoring the gate but a client came to get his children and he must not have secured it.
- Kevin Kroeger observed that Nancy Ross said that someone had hit the gate but Ms. Foster said it must have been left unsecured. Which is it?
- Talk ensued but no determination was made about the discrepancy.
- Diana Molloy asked why the electronic gate had not been installed. Smithfield had said it would be installed the next day, weather permitting. The weather has been fine. Why has the gate not been installed?
- Ms. Foster said that they had been working on the roof. They had made good progress on a third of the roof. They had a lot to do in the 12-18 hours available in a day.
- Diana Molloy said that on Monday night Smithfield had said they were ready to install the gate. Why had the gate not been installed?
- Ms. Foster said they also had to order materials.
- George Heufelder said that the situation was unfortunate. The count to 30 is not that high. The gate was not secured on Tuesday afternoon. How many other times was it not secured? There is a clear indication that securing of the horses is not occurring. We know that there is a violation of the permit because of the number of horses at Smithfield. We have fixing of the roof when we were told that the roof was structurally fine; this before fixing of the gates and fences that would secure the animals. The Board of Health must do something about the permit before someone gets hurt. The Board of Health has emphasized fences, gates and security and was told that everything was secured. There is not enough staff or oversight. Something is wrong here.
- Ethan Schaff requested to speak using Ms. Foster’s device.
- The Board of Health permitted Mr. Schaff to speak if he could limit himself to two very specific issues; firstly, addressing why the gate was open after the Board of Health was told, exactly, repeatedly, how and when this gate would be secured and secondly, an explanation of why Smithfield was not able to give an accurate count of the number of
animals at the farm. Would a reasonable person not think that the people running the farm were overwhelmed? Something was wrong?

- Mr. Schaff said "I can address the gate; but first, with all due respect, sir, you are 100% wrong to say the roof is the reason you are thinking about pulling the permit. The roof has nothing to do with."
- Mr. Schaff was interrupted by the Board of Health who corrected Mr. Schaff’s notion that it was requiring work on the roof. Instead, the Board of Health clarified, the focus on the roof by Smithfield when the gate was left unsecured indicated a misplacement of priorities that calls into question the judgement and competence of those running the farm. Safety, via the gate and fencing was what the Board of Health was concerned with.
- Kaitlin Morris spoke next and said there was a delay in getting materials. She said that tomorrow they would have the gate installed. On Tuesday, the gate was mislatched. She also said that the goat was not hit by a vehicle but was bitten by a dog. She saw puncture wounds on the goat but not the goat being bitten by a dog. Ms. Morris read the schedule for volunteers at Smithfield.
- Scott McGann asked how many of those were adults.
- It appeared that Ms. Morris indicated that 4 or 5 were adults.
- Stephen Rafferty clarified that what the Board of Health was doing was gathering information. If the permit was to be revoked a hearing would need to be held and a vote taken. The Board of Health may not revoke the permit today but can vote to hold a hearing to determine whether or not to revoke.
- Scott McGann read from an email sent by Associate town counsel Irie Mullen:

Scott,

The only thing that the Board can do tonight is vote to hold a future hearing on the question of whether the license should be suspended or revoked under Section 83-12 of the Falmouth Stable Regulations. Jan has a constitutional due process rights to prior notice that a hearing (not just a discussion) will be held, and that revocation is possible. Further, the public has a right under Open Meeting Law to know that that is what will be specifically happening at a public meeting, should they want to comment, versus merely a discussion. Even if Jan/Smithfield shows up tonight, the board can’t proceed with an immediate ‘hearing’/vote to suspend the license, because it would violate both of the above rights (due process and OML).

If the Board votes to hold a hearing on Smithfield’s stable license, there must be at least 7 days between when she is receives a letter notifying her of the hearing, and the date of the hearing itself. You can have a constable serve her the letter directly (quicker) or send it certified mail (you have to build in enough time for it be delivered when setting the hearing date). The letter should state that the hearing will be held on a specific date and time, through Zoom, with details of how to sign on, and to call the Health Department beforehand if there are concerns about being able to sign into Zoom to appear. The letter should also state that the hearing is about her stable license, and that it may result in the suspension or revocation of the license.

On the date of the hearing, the Board must allow Smithfield/Jan to present any information/arguments in favor of maintaining the license without penalty, and may allow public comment for or against the license. As has been policy throughout the last 9 months, public comment should be received through the chat box on Zoom and read by the chair at the appropriate time, or through email submissions ahead of time. Smithfield/Jan, as an entity subject to enforcement action, may appear on live camera/audio if they/she are able to. Once the hearing is closed, the Board may vote to suspend or revoke the license under Section 83-12, and should set out its reasons/findings that form the basis for its decision to suspend/revoke.
Benjamin Van Mooy moved to hold a future hearing under Falmouth Stable Regulations 83-12 to determine whether to revoke or suspend the Smithfield Farm stable permit. Kevin Kroeger seconded.

The discussion continued:

- George Heufelder acknowledged the correct procedure for revoking a permit outlined above but clarified that the Board of Health has emergency powers if there is an impending or imminent threat to public health. He thought that there was probably not enough evidence to justify the emergency revocation but that there were some imminent problems. He thought that the regular process, with announcement of a hearing was probably the best way to proceed. If the Board of Health did find evidence of an immediate threat to public health a different procedure could be utilized.
- Ms. Morris read from the index of the proposed stacked manual of standard operating procedures which will be posted at the farm. She said that the farm was run as a cooperative allowing lower income families to participate and offset costs by doing chores.
- Stephen Rafferty noted a point of etiquette. This was a meeting of the Board of Health and some comments to the chat were not helpful. He urged that communication be less like that on social media and more like a town governmental body.
- George Heufelder noted a point of order: there was a motion and a second on the table. Has there been enough presented for the show cause piece to have a hearing to revoke the permit?
- Diana Molloy thought yes.
- Benjamin Van Mooy thought that it would be helpful for attendees to review the Falmouth Stable Regulations. A link was displayed.

Stephen Rafferty amended the motion to have the hearing about revocation of the Smithfield stable permit be held on 2/22. Benjamin Van Mooy seconded.

A roll call vote was taken on the original motion.

George Heufelder-aye

Stephen Rafferty-aye

Kevin Kroeger-aye

Benjamin Van Mooy-aye
Diana Molloy-aye

Motion passed.

A roll call vote was taken on the amendment.

George Heufelder-aye

Stephen Rafferty-aye

Kevin Kroeger-aye

Benjamin Van Mooy-aye

Diana Molloy-aye

Motion passed.

A question arose about whether there was any way to compel the farm to secure gates and fencing.

Kevin Kroeger moved to impose a fine of $400.00 per day after 2 days if gates remained unimproved or unsecured.

Diana Molloy noted that the regulations allow for $5.00 per day fine.

Kevin Kroeger withdrew his motion.

After more discussion, no legal way was found for the Board of Health to compel compliance with the request to secure the fencing and gate.

Diana Molloy read through the chat for any relevant comments before closing the issue and found from Ms. Foster “I demand to speak” and from someone else asking if limits may be placed on any other animals at the farm.

Jan Foster was promoted again for another opportunity to speak. Instead, Ethan Schaff spoke using her device and said he was concerned that this board had basically voted to revoke the license, it seems like that is what you intend to do and that’s what you’re going to do. You want to revoke this license yet you’re imposing all these conditions on a place that has no incentive to do any of it because you’re going to revoke the license in two or three weeks so what’s the sense in us paying money to fix these things. About the gate, the reason the gate isn’t up-and don’t cut me off, I have a right to speak, do not cut me off. You have to listen to me.
Diana Molloy clarified that public comment was allowed at the discretion of the chair.

Mr. Schaff continued that the reason the gate is not up is that materials have to be delivered. Materials have to be delivered. Why is this board moving so aggressively? We as a nation, as a people are going through the worst time in history. You are going to close down another business. And I want to ask you why? Why?

Diana Molloy said that comments needed to be pertinent to the safety issues. There will be due process by the Board of Health.

Benjamin Van Mooy said that the next step is a hearing.

Mr. Schaff said that the Board of Health has clarified for him. He thought the Board of Health was just dead set on revoking the permit.

George Heufelder expressed concern that Mr. Schaff was not understanding the discussion. As an attorney, retired, he was likely familiar with the concept ‘show cause’ where all are given an opportunity to speak as part of due process. No one said anything about revoking a permit at this time. The discussion was about a hearing where due process would be employed. George Heufelder noted that this was the second time that Mr. Schaff has not really understood what the process was about.

In response to Ms. Morris’ query about what the Board of Health would like for the hearing the Board of Health said that it would like a detailed manure management plan, a staffing plan, a clear plan for how the horses will be managed and sales agreements.

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 clinic to inoculate 600 people went well and future clinics depend on vaccine availability. The VNA has agreed to service the homebound. There were 47 cases this week.

At 6:37 Benjamin Van Mooy moved to adjourn. George Heufelder seconded.

A roll call vote was taken.

George Heufelder-aye

Stephen Rafferty-aye

Kevin Kroeger-aye
Benjamin Van Mooy-aye

Diana Molloy-aye

Motion passed.

Relevant Documents

Numerous email complaints since February 1, 2021, Smithfield Farms documentation on their operation as previously requested by the Board, email from Irie Mullen, Associate Town counsel, schedule of volunteers