BOARD OF HEALTH VOTED MINUTES
March 15, 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 March 15, 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.

5:03 - Opening remarks and public comment:
At 5:03 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

Scott McGann - present
Maureen McIver - present

Diana Molloy read regulations regarding open meeting law and remote meetings.

Kevin Kroeger 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.

TOBACCO

5:05 – Vote to approve Falmouth’s proposed tobacco—continued from March 1, 2021
The Board has revised the two local tobacco regulations regarding exposure and sales with the intent of replacing the existing Falmouth tobacco regulations. Comments from the public and an open discussion regarding these regulations did occur on March 1 prior to a vote by the Board. Regulations: Regulation of the Falmouth Board of Health Restricting the Sale of Tobacco Products and Nicotine Delivery Products and the Regulation Prohibiting Smoking in Workplace and Public Places (currently known as Exposure to Environmental Tobacco Smoke and Nicotine Vapors)
Documents: Existing and proposed local and current tobacco regulations

In a discussion prior to voting, a question arose about language regarding flavored tobacco and delivery products.
DJ Wilson of the Massachusetts Municipal Association clarified that the language, including definitions, came straight from State Law and could be a little confusing. At his suggestion, the Board of Health made changes to language to capture a broader range of products and delivery systems in the regulations.

Kevin Kroeger moved to adopt the regulations restricting the sale of tobacco products as discussed. Benjamin Van Mooy seconded.
A roll call vote was taken.
George Heufelder-aye
Kevin Kroeger-aye
Benjamin Van Mooy-aye
Stephen Rafferty-aye
Diana Molloy-aye
Motion passed.

George Heufelder moved to adopt the regulations regulating the use of tobacco products in the workplace and public places as written. Benjamin Van Mooy seconded.
A roll call vote was taken.
George Heufelder-aye
Kevin Kroeger-aye
Benjamin Van Mooy-aye
Stephen Rafferty-aye
Diana Molloy-aye
Motion passed.

SEPTIC SYSTEMS

5:33-327 Gifford Street –local upgrade approval request/ variance
Seeking reduction in setbacks required in 310 CMR 15.211
• Septic tank to a property line from 10’required down to 8’
• Septic tank to a foundation from 10’required down to 8’
• Soil absorption system to a property line from the required 10’down to 2’
• Soil absorption system to a foundation from the required 20’down to 5’
Seeking a soil absorption system sizing reduction -3,115 gallons/day required to 2,788 gallons/day (11% reduction)

Documents:
Cover letter outlining the project and a plan from Holmes and McGrath dated Feb 9, 2021

Tim Santos explained that Jack’s Restaurant was seeking a permit to upgrade their existing septic system.
A question arose about the number of seats; 84 are on record but the proposal indicates 89.
George Heufelder noted that when seeking to reduce the size of the leach field more information is typically provided about the restaurant and the loading. In the interest of full disclosure, he said that he had tested the proposed technology and it had a good history in Connecticut; the main question is whether the requirement should be reduced.
Mr. Santos asked for a continuance.

**Stephen Rafferty moved to continue to March 29. Benjamin Van Mooy seconded.**

A roll call vote was taken.

George Heufelder-aye
Kevin Kroeger-aye
Benjamin Van Mooy-aye
Stephen Rafferty-aye
Diana Molloy-aye

Motion passed.

5:52–533 Woods Hole Road - I/A Microfast System and Presby Enviro Septic approval request
Applicant seeking to install a denitrifying septic system and a Presby Enviro leaching facility

Documents:
- Cover letter outlining the project and a plan from Cape and Islands Eng. dated 10/5/2018, revised 2/1/21

Raul Lizardi explained that 6 residential units are proposed for this former restaurant. The flow is under 10,000 gallons per day. The property is not in Zone 2. Denitrification is not required but the Conservation Commission, Planning Board, and ZBA could find the secondary treatment beneficial. No setback variances are required.

A discussion included the following:

- George Heufelder observed that approval is not for nitrogen removal but for secondary treatment. He said that this is a complicated plan and he had not had enough time to look at it in depth. Nothing seemed wrong but he would like to continue to have more time to review the plan.
- Benjamin Van Mooy agreed that there was a lot to go through.
- Benjamin Van Mooy noted that the cover letter implies that the systems are for denitrification; that that is the purpose of the systems.
- Mr. Lizardi said that the systems do not require denitrification; as presented to the Conservation Commission, Planning Board and ZBA the plan can’t just have another leaching field.
- George Heufelder thought that the proposal was slightly misleading since ‘additional treatment’ could mean anything.
- Stephen Rafferty concurred; the Board of Health would be approving secondary treatment not nitrogen removal.
- The findings should state this.
- Proposed flow was 9,927 gallons per day.

**George Heufelder moved to continue to March 29th. Stephen Rafferty seconded.**
A roll call vote was taken.
George Heufelder-aye
Kevin Kroeger-aye
Benjamin Van Mooy-aye
Stephen Rafferty-aye
Diana Molloy-aye
Motion passed.

HOUSING
6:24-8 Trotting Lane—continued from 2/1/21 and 3/1/21
Failure to comply with orders issued by the Falmouth Health Department issued under the State Housing Code (410.602 Maintenance of Areas Free from Garbage and Rubbish)
Diana Molloy reported that there was no site visit from the Board of Health since the last meeting.
Scott McGann reported that the Fire Department had visited that site after complaints of burning.
Homeowner Donna Hathaway explained that it was just fire wood. She noted that she had medical concerns and would be rehabilitating for several weeks but that her husband, Bruce would continue with cleanup efforts.
The Board of Health was satisfied with efforts and results so far and would revisit the issue in a month.

6:32–1174 East Falmouth Highway—continued from 12/21/20, 1/4/21, 1/19/21 and 2/1/21
Failure to comply with previous Health Department orders and Board decision from December 16, 2019
Neither the homeowner or a representative was present. A review of the motion revealed that the hearing was continued to the first meeting after the 15th.
Stephen Rafferty moved to continue to March 29th. George Heufelder seconded.
A roll call vote was taken.
George Heufelder-aye
Kevin Kroeger-aye
Benjamin Van Mooy-aye
Stephen Rafferty-aye
Diana Molloy-aye
Motion passed.
Scott McGann will notify the homeowner and his representative.

STABLE
6:42-Smithfield Farms
809 Sandwich Rd—Ongoing discussion on improvements being made at the stable as part of their 2021 Stable Permit approval
Diana Molloy reported that she was at the site about a week ago. She requested of Smithfield: pest control contracts, updated staffing schedules showing adult supervision, the agreement with the horticulturalist, and the landscaping agreement regarding excess manure. She specified that the documents should be sent to the Health Department by Thursday in order to be included in the packets for the meeting on Monday. She said that they were having trouble with the gates and asked for documentation about efforts to resolve the problem. She suggested consultation with pool fencing experts who had grappled with the issue of gates. Scott McGann checked for documents from Smithfield and found none. It was determined after reviewing the draft minutes of February 22 that most of the documents were requested of Smithfield at the February 22 meeting.

George Heufelder moved to have a show cause hearing on March 29 to determine if the stable permit for Smithfield should be revoked, based on their commitment to provide information that was not provided and was germane to the permit. Benjamin Van Mooy seconded.

A roll call vote was taken.

George Heufelder-aye
Kevin Kroeger-aye
Benjamin Van Mooy-aye
Stephen Rafferty-aye
Diana Molloy-aye
Motion passed.

TOBACCO
6:50–Intergas -607 Main St–Permit holder appeal of fine for violating blunt wrap sales (Fronto King).
The Health Department issued violation notices and fines regarding the sale of blunt wraps to several retailers with Intergas appealing. Board may discuss this issue beyond Intergas as other retailers were also fined for the same product.
Documents :Email request from permit holder, Health Department violation notice, emails from retailers, Bob Collette and DJ Wilson regarding the product in question

It was clarified that this was a hearing regarding a fine Intergas incurred as a result of selling Fronto King blunt wraps.
A discussion included the following:

- Diana Molloy read a letter from Aku Patel regarding his lack of understanding of Fronto tobacco leaf as considered a blunt wrap. Manufacturers had assured him that these were not blunt wraps.
- Kevin Kroeger pointed out that Fronto King’s website markets the tobacco leaf as a blunt wrap.
- Stephen Rafferty said if it looks like a duck and walks like a duck, even if the manufacturer says it is not a duck, he would know he was buying a duck.
- DJ Wilson offered some history. Regulators had been finding lots of flavored wraps made mostly of tobacco which youth used to smoke marijuana, mostly. The concern
was that youth were becoming addicted to tobacco. Frono King skirted regulations by producing what was essentially a wrap made in part or wholly of tobacco leaf and labeled as for cigars. New regulations are being developed to deal with this.

George Heufelder moved to reinstate the fine issued for selling wraps; appeal denied. Kevin Kroeger seconded.
A roll call vote was taken.
George Heufelder-aye
Kevin Kroeger-aye
Benjamin Van Mooy-aye
Stephen Rafferty-aye
Diana Molloy-aye
Motion passed.

COVID-19
7:05-Discussion of the current state of the pandemic and vaccination progress

Scott McGann reported that cases have been stable for the past 5 weeks with weekly totals of 25-30 cases. The positivity rate is around 2%. He has been working with Jill Bishop and the Senior Center to make contact with the homebound to make arrangements for vaccination. 82% of those 75 and older have been vaccinated. The state has been making fixes in the vaccination registration system. The systems are convoluted but people are getting vaccinated.

MINUTES
7:33-Review and approve meeting minutes from March 1, 2021
George Heufelder moved to approve as amended. Benjamin Van Mooy seconded.
A roll call vote was taken.
George Heufelder-aye
Kevin Kroeger-aye
Benjamin Van Mooy-aye
Stephen Rafferty-aye
Diana Molloy-aye
Motion passed.

At 7:36 Kevin Kroeger moved to adjourn. George Heufelder seconded.
A roll call vote was taken.
George Heufelder-aye
Kevin Kroeger-aye
Benjamin Van Mooy-aye
Stephen Rafferty-aye
Diana Molloy-aye
Motion passed.

Relevant Documents

Existing and proposed local and current tobacco regulations

Cover letter outlining the project and a plan from Holmes and McGrath dated Feb 9, 2021 for 327 Gifford Street

Cover letter outlining the project and a plan from Cape and Islands Eng .dated 10/5/2018, revised 2/1/21

DEP Standard Conditions for Secondary Treatment Units dated March 20, 2015

Email request from permit holder, Health Department violation notice, emails from retailers, Bob Collette and DJ Wilson regarding the product in question regarding Intergas