

TOWN OF FALMOUTH
SELECT BOARD
Meeting Minutes
SATURDAY, APRIL 1, 2023 – 9:00 A.M.
SELECT BOARD MEETING ROOM
TOWN HALL
59 TOWN HALL SQUARE, FALMOUTH, MA 02540

THIS IS A WORKSHOP MEETING – THERE WILL BE NO PUBLIC COMMENT.

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

Staff Present: Peter Johnson-Staub, Interim Town Manager; Attorney Maura O’Keefe, Town Counsel; Brian Tobin, Associate Town Counsel.

OPEN SESSION

1. Call to Order at 9:00 a.m. by Chair Taylor.

BUSINESS

1. Policies Discussions:

- a. Embarkation fund usage

Mr. Johnson-Staub explained the Embarkation Fund is a revenue source for port towns that host certain ferry services, including the Woods Hole Steamship Authority (SSA). They are required to treat the revenue as special revenue--it is earmarked and tracked separately from the General Fund and there are limited purposes for which the funds can be used. The Town has complied by depositing to a dedicated account and appropriating \$350,500 in funds and allocating them to police and fire since it began in 2004.

The Select Board asked for the discussions. The Transportation Management Committee policy draft is in the Select Board packet. Mr. Johnson-Staub does not support the recommendation for a policy on the use of the fund. Compliance is fine, the MA Office of the Inspector General (IG) looked at it and provided a response under the prior Town management to the IG and the IG is not looking further at this time. There is revenue in this account beyond what has been allocate each year, the fund is now about \$1.3 million, the Town will pull out \$350.000 at Town Meeting. The Transportation Management Committee asked about using the funds for Complete Streets, smart signs, and the DPW needs an increase in budget to maintain the signs and was unable to be funded. The fund could be sued for that purpose. Mr. Johnson-Staub suggested not adopting a policy and plan for as they have future discussions about budget.

Mr. Brown noted a complaint by a member of the Transportation Management Committee regarding Falmouth inappropriately using the funds. The Inspector General made the determination that there wasn’t sufficient indication that he needed to take action, and he declined to take action but in his opinion it would be wise for the Select Board to make a policy. Mr. Brown received this response in a phone call from Philip Mantyla of the Inspector General’s Office. Mr. Mantyla said he was not going to put this response in a letter and that Mr. Brown could relay this response to the Board. Funding is going to potentially triple with the new fee rate, the policy should say a certain portion will be saved to do improvements on the corridor.

Mr. Johnson-Staub said that Nantucket does not have a formal policy, there is a separate article each year for which they appropriate money for parking enforcement. Yarmouth does not have a formal policy, they allocate for public safety.

Ms. Scott Price asked what authority they have to do some things on the State road they do not own, such as lights and monitoring.

Mr. Johnson-Staub said the transportation corridor is not limited to that one road, Woods Hole Road, The Police Department has authority to enforce traffic on every road including State highways. Can do Transportation enhancements that relate to the Woods Hole area, parking lots on Palmer Ave the Island Queen and Pied Piper, and the downtown area are also covered by the embarkation fee.

Chair Taylor does not see or hear a reason to actually have a policy if the Select Board can discuss how the money is spent. Why isn't the account spent each year?

Mr. Johnson-Staub said that is the part of the pattern of fiscal conservatism that can go too far; they reached a point to discuss what to do with the million dollars in the account. Mr. Johnson-Staub can craft a policy if it is the will of the Select Board. The town wants to leave things flexible. Tension is between having a plan and allowing flexibility so it can be adjusted as circumstances change. They should assume no tripling of the fee until it actually occurs.

Mr. Zylinski feels a policy would be appropriate, the Town should stop being ambiguous how the money is spent.

Chair Taylor supports Mr. Johnson-Staub's recommendation.

Mr. Brown said there is a need for policy that dedicates what type of actions/items might be included in funding requests. Various community members had various ideas. He feels a lack of a policy was the roadblock.

Mr. Johnson-Staub said the financial management of the Town, includes engagement and dialogue on those processes and policy discussion and strategic planning feed those processes.

Mr. Brown motioned to ask Mr. Johnson-Staub to craft a policy that would be broad and flexible and include parameters for how to access the fund. Mr. Zylinski seconded the motion. Vote: Yes-3 (Mr. Zylinski, Mr. Brown, Mr. Patterson). No-2. (Chair Taylor and Ms. Scott Price.)

Mr. Johnson-Staub stated his view and is happy to craft a policy that says how it will be treated and potential uses, he is hesitant to talk about how the funds are accessed. There is a Town Charter and structure for how these decisions are made.

b. Fiscal policy update

Mr. Johnson-Staub noted this addresses the discrete issue of how to treat room excise taxes. The Select Board agreed to language in the fiscal year 2024 operating budget policy and discussion putting similar language in the fiscal policy. The rooms excise tax is applied to hotels and motels, then several years ago it broadened to include short-term rentals. Base rate of the room excise tax was changed twice, from 4%, raised to 5%, then raised to 6% effective July 1, 2022. The Select Board has had many discussions, the most recent agreement was that we would take \$1 million of new revenue and split it between affordable housing and schools, each would receive \$500,000. Base rate increase to 6% was initiated by the Affordable Housing Committee, approved at Town Meeting with language that the additional revenue goes to Affordable Housing. The Fiscal Year 2024 operating policy said that funding is to go towards the Falmouth Affordable Housing Fund and the School Department operating budget, each receiving \$500,000. Mr. Johnson-Staub proposes to use that as a baseline and allow the Select Board flexibility going forward. Mr. Johnson-Staub drafted the language in the Select Board packet.

Mr. Johnson-Staub read the proposed language for a long-range plan: “Town Manager’s proposed budget shall allocate to affordable housing the greater of: 1/6th of estimated rooms excise tax revenue consistent with the explanation provided to Town Meeting for article 15 of the November Town Meeting of 2021; or \$850,000”.

Mr. Brown motion approval of the adjustment to the fiscal policy. Mr. Patterson seconded the motion. Vote: Yes-5. No-0.

- c. Short-term rental regulation
Maura O’Keefe, Town Counsel, with Jed Cornock, Town Planner; and the Associate Town Counsel, Brian Tobin, made a PowerPoint presentation.

They discussed where the Select Board wants the Town to go in regard to short-term rentals, the law now and where it can go.

Specific regulations are not on the books but it is practical that they address the differences between short and long term rentals and the effect on the community.

Mr. Brown is concerned about seeing the same corporation renting many short term rentals. Is there a way to allow residents or voters to retain these rights going forward, but put a commercial accommodation restriction on corporations?

Brian Tobin, Associate Town Counsel, said that there is, Section 14 MGL 64G, allows a Town to define who the operator can or cannot be. The Attorney General’s Office (AGO) said that an outright ban on corporations is okay and restrictions on limited liability companies to require they are individuals.

Ms. Scott Price is concerned with people who have someone who lives, works, has kids attend school and their landlord kicks them out in May and allows them to return in September so the landlord can rent in the more expensive summer market. Is there a way to manage that? Chair Taylor noted they need a definition of what is a short term rental.

Mr. Brown asked if action would be taken by the Select Board or another entity to authorize controls as used in Great Barrington, they may need to be put through a Town Meeting Vote.

Mr. Brown motion to authorize the Town Manager to work with staff to develop that preparation for Town Meeting and return to the Select Board for modification prior to closing of the warrant.

Attorney O’Keefe said this is just part of the bylaw, there needs to be significant policy development and more conversation needs to take place before anything is drafted.

Attorney O’Keefe asked, do you want to limit to certain districts for the purpose of regulating them at all? We do not have enough information, but that corporate concern will be part of the draft.

Chair Taylor suggested defining the goals first, then bring the Building Department and Board of Health into the conversation. Mr. Patterson suggested including the Cape Cod Commission.

Ms. Scott Price would like a backwards timeline provided to the Select Board, she would like to see something on the November 2023 Warrant. When is the bylaw needed to be completed? How to have iterations back and forth? It is critical to have the Building Department and Board of Health on board. We have to figure out where the money will come from to develop this with staff. She would like another workshop on this policy and what it would look like.

Chair Taylor would like to see other Towns’ policies as well.

Mr. Zylinski said that they should go to the community to determine what is important to them, have key points so they are not overlapping among the Select Board. Chair Taylor feels that is a way to structure it. The Select Board needs to establish goals and then come up with a plan to develop the goals.

Mr. Brown would like to prevent housing stock from becoming a corporate source of income.

Mr. Johnson-Staub said the Select Board has given direction for next steps. Attorney O'Keefe said this is just the beginning and would like to get the Select Board thinking about where they want to be.

Chair Taylor would like a Saturday workshop to dive into this and likes the seeds because it gives them a place to jump from.

Ms. Scott Price feels it's important to think about the people who want to live here year round, many are kicked out for the summer because landlords make a lot of money. She knows people who have left the Cape and will not come back, it is important to move on this and do something.

Chair Taylor would like to work with Ms. Scott Price on a design and try to come up with a date for the next workshop, so they can put together a timeline.

Mr. Brown asked if they get bogged down and are not prepared for November 2023, is there a temporary moratorium on these until some regulations are in place. Attorney O'Keefe does not know how that would be enforceable, she can look at it, but we do not know how to enforce what is existing.

Mr. Brown asked if all rental platforms require tax identification? Mr. Johnson-Staub said all owners of short term rentals need to register with the State. Mr. Johnson-Staub said that there are resources to ensure those renting are complying with excise tax by: 1) the State provides the Town with a list of properties that have registered as short term rentals and, 2) the Town has budgeted money for a service to look at who is advertising short term rentals and be able to compare that to the State list.

Ms. Scott Price motioned to adjourn at approximately 10:12 a.m. Mr. Brown seconded the motion. Vote: Yes-5. No-0.

Respectfully Submitted,

Jennifer Chaves
Recording Secretary