



**TOWN OF FALMOUTH  
SPECIAL EVENT PERMIT**

**EVENT** Lennonfest

**NAME** The British Beer Company, Rob Loewen

**MAILING ADDRESS** 263 Grand Avenue, Falmouth, MA 02540

**EVENT DAY & DATE** Sunday, October 13, 2019

**RAIN DATE** None.

**EVENT LOCATION** Falmouth Heights Ball Field

**EVENT TYPE** Fundraiser to benefit the (Falmouth Service Center) – Family-friendly event. Food and beverages. Moonwalk and games. Entertainment and music of the Beatles.

**SET-UP/BREAK-DOWN** 10:00 am/6:00 pm **EVENT HOURS** 11:00 a.m. – 6:00 p.m.

**NUMBER OF ATTENDEES** 200 - 300 **# OF VEHICLES** \_\_\_\_\_

**CONDITIONS:**

1. Contact the Police Department Detail Sergeants as soon as possible to make arrangements for proper safety and security measures.
2. No vehicles to be parked on Falmouth Heights Field or around field.
3. Parking is limited, alternative parking areas need to be publicized for event.
4. Provide additional porta-potties.
5. Delivery of porta-potties must be after 3:00 p.m. on Friday, 10/11/19 or on Saturday, 10/12/19.
6. No alcohol to be consumed on Falmouth Heights Ball Field.
7. Trash to be removed after event.
8. Submission of General Liability Insurance to Selectmen's Office.
9. Compliance with Field & Facility Permit Policy of Recreation Dept.

**PERMIT FEE** \$200.00 **FILING FEE** \$10.00

**DEPOSIT** \$300.00 (Refundable at conclusion of event provided that no litter or damage has occurred)

**BOARD OF SELECTMEN:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



August 20, 2019

The British Beer Company is planning to host our 14<sup>th</sup> annual Lennonfest event on Sunday, October 13<sup>th</sup> from 12 pm to 6pm. As in years past, we plan on hosting the main part of the event on Falmouth Heights ballfield. Lightly amplified live entertainment will be provided by Beatles tribute band Walrus Gumboot, inflatable activities for all ages (bounce house, obstacle course, etc.), face painting, and food items off the grill (hot dogs, burgers, etc. prepared by BBC kitchen staff). This portion of the festival is a charity event, recipient for the proceeds of this year's Lennonfest has not yet been determined.

\*per phone conversation with Scott McGann on 8/20/19, the Health Department does not require a food service permit to be filed to utilize the charcoal grill on the Heights ballfield. Appropriate food storage and sanitation practices will be followed in accordance with health code regulations\*

We are planning on hosting an adjoining Beer Garden in the Seaside Inn parking lot as we did in 2018 without incident. There will once again be professional security posted at all entrance and exit points of the parking lot, checking IDs and providing wristbands to those over 21. No vehicular traffic will be allowed to enter or exit the parking lot / Beer Garden area during the event (from set up to take down). Beer will be poured from a stationary trailer that will be parked at the Seaside Inn by TIPS certified BBC employees. Parking Lot entrance/ exit will be roped off for security (removable barrier in case of emergency / emergency vehicles would be able to easily access the Seaside Inn parking lot area). No alcoholic beverages will be allowed to leave the Beer Garden area for any reason. Temporary seating will be available in parking spaces for attendees to enjoy their brews while listening to music from the ballfield.

The British Beer Company prides itself on being an upstanding member of the Falmouth community and looks forward to hosting Lennonfest for the 14<sup>th</sup> year running. Please forward any questions or concerns to us here at the pub.

Sincerely,

Rob Loewen, General Manager

**Diane Davidson**

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**From:** Brian Reid  
**Sent:** Friday, August 30, 2019 2:51 PM  
**To:** Diane Davidson  
**Cc:** Phyllis Downey; Edward Dunne; Sean Doyle  
**Subject:** RE: Special Events Applications

Hello Diane,

This department has no objection to the below listed applications.

Respectfully,

**Captain Brian L. Reid**

Operations Division  
Falmouth Police Department  
750 Main Street  
Falmouth, MA 02540  
Office 774-255-4527 Ext. 4502  
Fax 508-457-2566  
brian.reid@falmouthpolicema.gov

**CONFIDENTIALITY NOTICE:** This communication and any accompanying document(s) are confidential and privileged. They are intended for the sole use of the addressee. If you receive this transmission in error, you are advised that any disclosure, copying, distribution, or the taking of any action in reliance upon the communication is strictly prohibited. If you are not the intended recipient and have received this communication in error, please contact the sender immediately and delete the original message. Thank you.

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**From:** Diane Davidson  
**Sent:** Thursday, August 29, 2019 11:49 AM  
**To:** Boyd Demello <boyd.demello@falmouthfirema.gov>; Brian Reid <brian.reid@falmouthpolicema.gov>; Bruce Mogardo <bruce.mogardo@falmouthma.gov>; Diane Davidson <diane.davidson@falmouthma.gov>; Gregg Fraser <gregg.fraser@falmouthma.gov>; Jim Grady <jim.grady@falmouthma.gov>; Jeremiah Pearson <jeremiah.pearson@falmouthma.gov>; Joe Olenick <joe.olenick@falmouthma.gov>; Julian Suso <julian.suso@falmouthma.gov>; Mallory Langler <mallory.langler@falmouthma.gov>; Mel Trott <mel.trott@falmouthfirema.gov>; Melinda Rebelo <melinda.rebelo@falmouthpolicema.gov>; Pamela Marshall <pamela.marshall@falmouthma.gov>; Peter Johnson Staub <peter.johnson-staub@falmouthma.gov>; Peter McConarty <peter.mcconarty@falmouthma.gov>; Rod Palmer <rod.palmer@falmouthma.gov>; Scott McGann <scott.mcgann@falmouthma.gov>; Sean Doyle <sean.doyle@falmouthpolicema.gov>; Timothy Smith <timothy.smith@falmouthfirema.gov>  
**Cc:** Phyllis Downey <phyllis.downey@falmouthma.gov>  
**Subject:** Special Events Applications

To all,

Attached please find three applications for your review and recommendation. Please provide your responses by Friday, September 13, 2019.

1. Lennon Fest – Special Event and Sunday Entertainment applications
  - Applicant: The British Beer Company

- Location: Falmouth Heights Ball Field
  - Date: Sunday, October 13, 2019 from 11:00 a.m. to 6:00 p.m.
2. Outdoor Food & Music Festival – One-Day Wine & Malt Liquor License application
- Applicant: The British Beer Company
  - Location: The parking lot behind BBC and the Seaside Inn, 263 Grand Ave.
  - Date: Sunday, October 13, 2019 from 12:00 p.m. to 6:00 p.m.
3. Wedding Reception at Highfield Hall – One-Day Entertainment license application for outdoor music
- Applicant: Shirley Baker
  - Location: Highfield Hall, under tent on the south lawn
  - Date: Saturday, July 18, 2020 from 7:00 p.m. to 10:30 p.m.

These applications are scheduled for review by the Board of Selectmen on Monday, September 23, 2019.

Thank you,

Diane

*Diane S. Davidson  
Office Manager/Licensing  
Office of the Town Manager and Selectmen  
Town of Falmouth  
59 Town Hall Square  
Falmouth, MA 02540  
[diane.davidson@falmouthma.gov](mailto:diane.davidson@falmouthma.gov)  
(508) 495-7321*

**Diane Davidson**

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**From:** Timothy Smith  
**Sent:** Monday, September 16, 2019 1:55 PM  
**To:** Diane Davidson  
**Cc:** Boyd Demello; Mel Trott  
**Subject:** RE: Special Events Applications

Hi Diane,  
My apologies for missing the 9/13/19 deadline. After review, **no issues noted with the Lennon Fest** or the 7/18/20 wedding.  
Thank you.

**Timothy Smith, Deputy Fire Chief**  
Falmouth Fire Rescue Department  
Work: (508) 495-2514  
Cell: (508) 274-6410

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**To:** Boyd Demello <boyd.demello@falmouthfirema.gov>; Brian Reid <brian.reid@falmouthpolicema.gov>; Bruce Mogardo <bruce.mogardo@falmouthma.gov>; Diane Davidson <diane.davidson@falmouthma.gov>; Gregg Fraser <gregg.fraser@falmouthma.gov>; Jim Grady <jim.grady@falmouthma.gov>; Jeremiah Pearson <jeremiah.pearson@falmouthma.gov>; Joe Olenick <joe.olenick@falmouthma.gov>; Julian Suso <julian.suso@falmouthma.gov>; Mallory Langler <mallory.langler@falmouthma.gov>; Mel Trott <mel.trott@falmouthfirema.gov>; Melinda Rebelo <melinda.rebelo@falmouthpolicema.gov>; Pamela Marshall <pamela.marshall@falmouthma.gov>; Peter Johnson Staub <peter.johnson-staub@falmouthma.gov>; Peter McConarty <peter.mcconarty@falmouthma.gov>; Rod Palmer <rod.palmer@falmouthma.gov>; Scott McGann <scott.mcgann@falmouthma.gov>; Sean Doyle <sean.doyle@falmouthpolicema.gov>; Timothy Smith <timothy.smith@falmouthfirema.gov>  
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[diane.davidson@falmouthma.gov](mailto:diane.davidson@falmouthma.gov)  
(508) 495-7321*

**Diane Davidson**

---

**From:** Joe Olenick  
**Sent:** Thursday, August 29, 2019 1:10 PM  
**To:** Diane Davidson  
**Subject:** RE: Special Events Applications

✓ under Conditions  
on permit

Hi Diane, The Recreation Dept. Is good with these, as long as the BBC knows that the field can not be used for parking.  
Thanks Joe

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(508) 495-7321*

# WHAT'S ON A UTILITY POLE?

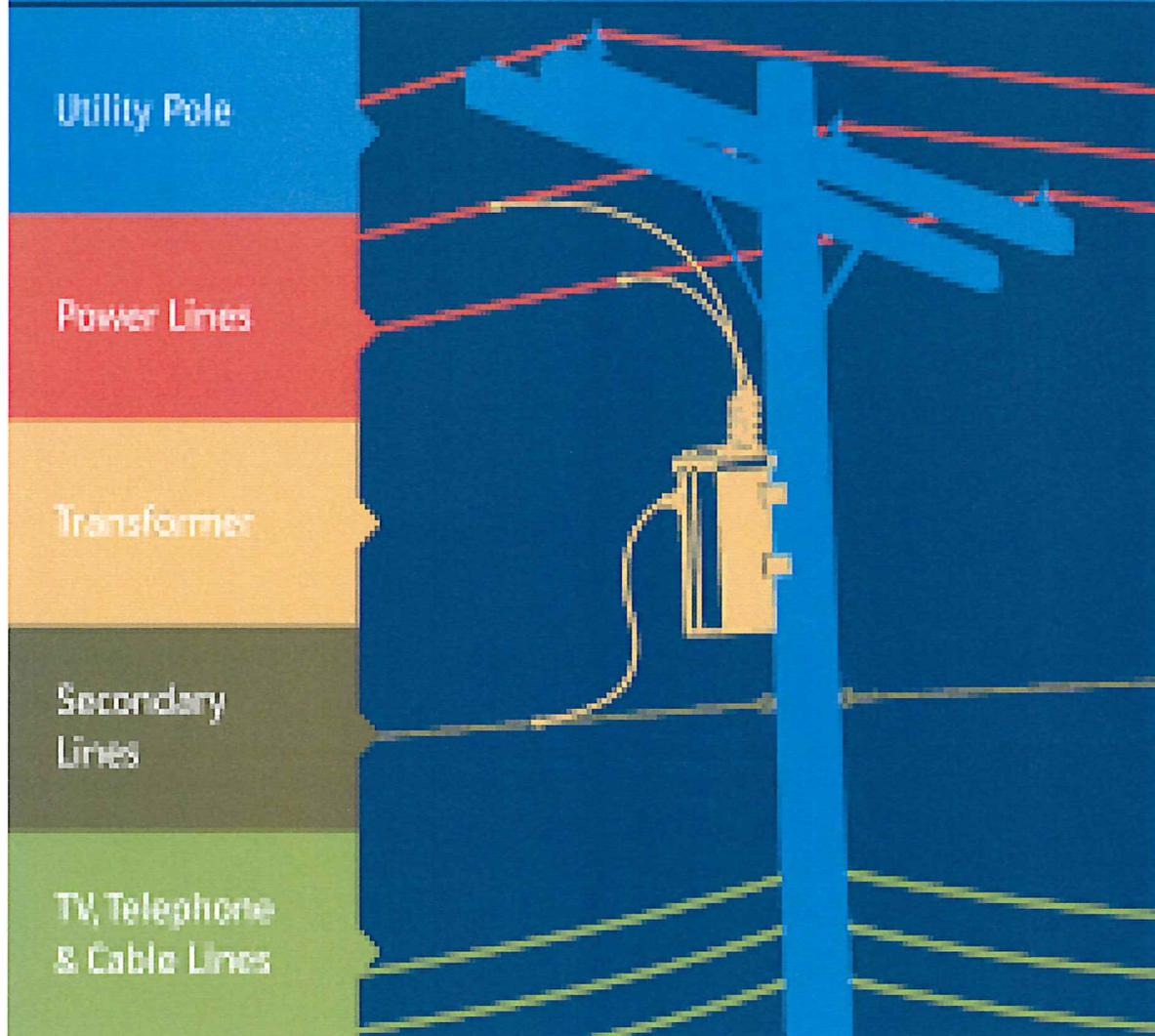
Utility Pole

Power Lines

Transformer

Secondary Lines

TV, Telephone  
& Cable Lines



## **DRAFT ONLY FOR DISCUSSION**

**September 20, 2019**

### **Town of Falmouth E-mail Policy for Public Bodies – Boards, Committees, and Commissions**

The Town of Falmouth has adopted this e-mail policy for public bodies (hereafter referred to as “committee”) in accordance with recent state and federal regulations and recommended best practices. Each committee will receive a single e-mail address (example: [CommitteeName@falmouthma.gov](mailto:CommitteeName@falmouthma.gov)) to receive and send communications on behalf of the committee. Access to this e-mail address will be given only to the committee chair, who shall be responsible for overseeing e-mail correspondence from, and to, the official @falmouthma.gov committee e-mail address. As committee correspondence falls under the jurisdiction of public records and open meeting laws as well as the Town’s e-mail security protocols, we ask that you read in detail the responsibilities for communicating via e-mail (as detailed within this document) and urge you to follow the policies, public and open meeting laws included herein. The Town of Falmouth I.T. department will assist with your committee’s initial e-mail set-up and are available to answer any questions on use or general guidelines.

#### **E-Mail and Electronic Communication Policy**

- To comply with the Open Meeting Law, members of Town committees must take care not to utilize email to engage in deliberation. Email messages among members of public bodies must be avoided except for matters of a purely housekeeping or administrative nature. Note “deliberation” does not require a dialogue among members, it includes the simple expression of an opinion on a matter within the body’s jurisdiction by one member to a quorum of the body.
- Given the Open Meeting Law, personal email addresses of committee members may only be used to schedule meetings and distribute information to be discussed at an open meeting. Email may not be used by committee members to share opinions or deliberate with fellow committee members.
- Email received at the official committee address, can be forwarded to committee members but only via BCC (Blind Carbon Copy). This will help reduce inadvertent deliberation among committee members (and violation of the Open Meeting Law) which occurs when committee members ‘reply-all’ with opinions and reactions to email received by all committee members.
- If an individual member of a committees wishes to comment on committee matters in the context of planning agendas, the member should include only the chair in such email correspondence.
- Email attachments with the following extensions will be blocked: EXE, BAT, COM, PIF, SCR and VBS (these are known extensions to mask viruses and malware). Legitimate files that were blocked can be retrieved by contacting the Falmouth I.T. Department.
- Users must understand that email correspondence related to the activity of a public body or municipal employee is deemed a public record under the law and is subject to disclosure to the

### *Public Records Law*

Pursuant to G.L. c. 4, §7, cl. 26th and G.L. c. 66, §3, records that are created or received by any officer or employee of the Town, including records created or maintained by electronic means, are public records, unless the record falls within the exemptions set forth in G.L. c. 4, §7, cl. 26th or are subject to the common law attorney-client privilege. Electronic records include not just electronic documents and email messages, but also records created or posted to websites and social media as well. All public employees are responsible for maintaining records in their custody and should only dispose of such records in accordance with applicable law and regulations of the Public Records Division.

### *Open Meeting Law*

With certain exceptions, all meetings of a public body must be open to the public. A meeting is generally defined as “a deliberation by a public body with respect to any matter within the body’s jurisdiction.” The Open Meeting Law defines deliberation as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.” Distribution of a meeting agenda, scheduling or procedural information, or reports or documents that may be discussed at a meeting is often helpful to public body members when preparing for upcoming meetings. These types of communications generally will not constitute deliberation, provided that, when these materials are distributed, no member of the public body expresses an opinion on matters within the body’s jurisdiction. A communication among less than a quorum of the members of a public body will not be a deliberation, unless there are multiple communications among the members of the public body that together constitute communication among a quorum of members. Courts have held that the Open Meeting Law applies when members of a public body communicate in a serial manner in order to evade the application of the law. The expression of an opinion on matters within the body’s jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds.

## **TOWN HALL ACCESS CONTROL AND SECURITY**

To BOS 9-20-19

As we have discussed in the past, the Town has been working to update and modernize the Town Hall security and access control system. We are nearing completion of this process and will be preparing for an anticipated implementation cutover in the month of October. The access security system will include a fully automated locking/unlocking system for Town Hall to facilitate access during all times of normal Town Hall operation. Primary, routine employee and visitor access will therefore not require the utilization of keys. For appropriate security purposes, a limited number of persons will be issued digital “key cards” which will allow after-hours access. Given the age of Town Hall and past utilization of keys, we will need to re-key the manual locks. We will give careful consideration to ensure that those who must access the building outside of regular business operating hours are afforded access, but there may be some persons who may be temporarily inconvenienced during this coming transition process.

Video security on the Town Hall ingress/egress points is also part of this overall system. This will include only the access doors to Town Hall and not internal areas of the building.



TOWN OF FALMOUTH

BOARD, COMMITTEE OR COMMISSION  
APPLICATION FORM

If you are interested in serving the Town of Falmouth in any capacity, please fill out this form and mail it to: The Board of Selectmen, Falmouth Town Hall, 59 Town Hall Square, Falmouth, MA 02540. Information received will be available to all Town Boards and Officials, although the filling out of this form does not assure appointment. If selected for an interview, you may wish to submit a resume or additional information. This form and a listing of all boards and committees can be found on the Falmouth website: www.falmouthmass.us.

Name: Michael Eder

Address: 6 Elgin Ave Village: \_\_\_\_\_ ZIP: 02540

Mailing Address: \_\_\_\_\_ Village: \_\_\_\_\_ ZIP: \_\_\_\_\_

Telephone: [REDACTED] Email: [REDACTED]

How long have you been a Resident \_\_\_\_\_ (date: 2006) / Taxpayer 1994 (date: \_\_\_\_\_)

Amount of time you are available to give: 4 Evenings a month plus side work

Town Committee, Board or Commission you are interested in serving on:

1. Falmouth Cable Advisory Committee
2. \_\_\_\_\_
3. \_\_\_\_\_

Seeking: Permanent Position  Alternate Position

Have you attended any meetings of the committee for which you are applying? Former Chair

Relevant affiliation and work and personal experiences Former chair for previous ascertainment

Work in technology/communications

Town offices held in Falmouth or elsewhere and dates of years served: \_\_\_\_\_

Chair FCAC ca. 2009-2017

Briefly describe the particular skills you feel you will add to the committee or board: \_\_\_\_\_  
Experience, Interest in regulations and process.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

List three (3) references:

	<u>Name</u>	<u>Title</u>	<u>Phone</u>
1.	Susan Moran	BoS	
2.	Douglas Jones	BoS	
3.	Deb Rogers	FCTV Dir.	508 457 0800

I hereby certify that I have been provided a summary of Massachusetts General Law 268A, the Conflict of Interest of Law, I have read the material provided, and to the best of my understanding have no potential or actual conflict of interest.

I have received a copy of the Board of Selectmen's Appointment Policy and read the material provided.

July 22, 2019  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
APPLICANT'S SIGNATURE

In the event the applicant cannot sign this statement, you should provide an explanation of the reason (s) why if you still wish consideration for appointment.



## NOVEMBER 2019 ANNUAL TOWN MEETING

Selectmen Announce Annual Town Meeting.....	Monday, July 22, 2019
Close Warrant.....	Friday, September 6, 2019
Selectmen Vote Articles & Execute Warrant .....	Monday, September 16, 2019
Publish Articles Only .....	Friday, September 20, 2019
<u>Petition Article Presentations</u> .....	<u>Monday, September 23, 2019</u>
Selectmen Vote Article Recommendations .....	Monday, October 7, 2019
Publish Warrant with Recommendations .....	Friday, October 25, 2019
Town Meeting.....	Tuesday, November 12, 2019

**WARRANT FOR THE NOVEMBER ANNUAL TOWN MEETING  
 Tuesday, November 12, 2019 AT 7:00 p.m.  
 For action on articles in the Warrant  
 COMMONWEALTH OF MASSACHUSETTS**

Barnstable, SS To either of the constables of the Town of Falmouth, in said county:  
 In the name of the Commonwealth of Massachusetts you are directed to notify and summon the inhabitants of the Town of Falmouth qualified to vote in Town Affairs to meet at the Memorial Auditorium, Lawrence School, 113 Lakeview Avenue, Falmouth, Tuesday, November 12, 2019 at 7:00 p.m. for the purpose of acting on the articles contained in the following warrant:

**ARTICLE 1:** To Hear Reports of Committees and Town Officers and act thereon.

**ARTICLE 2:** To see if the Town will vote to appropriate a sum of money for the purpose of funding Capital Improvements, to determine how the same shall be raised and by whom expended. Or do or take any other action on the matter. On request of the Board of Selectmen.

**ARTICLE 3:** To see if the Town will vote to appropriate a sum of money for the purpose of funding Non-Capital projects, to determine how the same shall be raised and by whom expended. Or do or take any other action on the matter. On request of the Board of Selectmen.

**ARTICLE 4:** To see if the Town will vote to authorize continued use of the following Revolving Funds for certain town departments under MGL Chapter 44, Sec. 53E½ for the fiscal year beginning July 1, 2019, with the specific receipts credited to each fund, the purposes for which each fund may be spent and the maximum amount that may be spent from each fund for the fiscal year as follows:

Revolving Fund	Authorized to Spend	Revenue Source	Use of Fund	FY20 Spending Limit	Disposition of FY19 Fund Balance
Emerald House	Town Manager	Payments in Lieu of Rent	Maintenance of Building	\$28,000	Available for expenditure
Recreation Department	Recreation Director	Participation Fees	Departmental Special Activities	\$7,000	Available for expenditure
Historical Commission	Historical Commission	Sale of Books	Administer Book Program	\$7,500	Available for expenditure
Shellfish Propagation	Conservation Commission	Mitigation and Donations	Purchase Shellfish Seed	\$13,000	Available for expenditure
Shellfish and Aquaculture	Marine and Environ Svcs	Rental Equipment	Propagation and Aquaculture	\$35,000	Available for expenditure
TOTAL SPENDING				\$90,500	

Or do or take any other action on the matter. On request of the Board of Selectmen.

**ARTICLE 5:** To see if the Town will vote to amend the Zoning Bylaw Article XLVI Business Redevelopment - by amending § 240-240 H.(5) under "Dimensional requirements" by adding the words "2 1/2 stories, not to exceed thirty-five (35) feet, The upper half story may be expanded by Special Permit of the Planning Board in conjunction with the established Design Guidelines for Large-scale Development." in order to clarify the maximum number of stories allowed as noted elsewhere in the bylaw including § 240-70 Maximum building height. Or do or take any other action on this matter. On behalf of the Planning Board.

**ARTICLE 6:** To see if the town will vote to amend the Official Zoning Map by adding an additional Large-Scale Ground-Mounted Solar Overlay District along Nathan Ellis Highway on parcels: 18 02 002 180, 18 02 002 181, 18 02 002 182, 18 02 002 183, 18 02 002 184, 18 02 002 185, 18 02 002A 359, 02 002A 360, 18 02 002A 361, 18 02 003 000, 18 02 004 000, 18 02 005 001, 18 02 006 002, 18 and 18 03 001 001, currently used as parking and fairground event space where tree cover and land forms have previously been impacted, as shown in a Map entitled Additional Large-Scale Solar Overlay District

On Petition of Jay Zavala

**ARTICLE 7:** Rezone 64 Technology Park Drive from Public Use to Light Industrial C. On Petition of Michael DiGiano.

**ARTICLE 8:** To see if the Town will vote to appropriate a sum of money to the Health Insurance Stabilization Fund for further appropriation and to determine how the same shall be raised, or do or take any other action on the matter. On request of the Board of Selectmen.

**ARTICLE 9:** To see if the Town will vote to authorize the Board of Selectmen to acquire an Option to Purchase a parcel of land in the northwest section of the Town suitable for the construction of a new Northwest Fire Station, to appropriate a sum of money for this purpose, to determine how the same shall be raised and by whom expended. On do or take any other action on the matter. On request of the Board of Selectmen.

**ARTICLE 10:** To see if the Town will vote to appropriate a sum of money for the purpose of funding costs related to Government Access Programming, and to determine how the same shall be raised and by whom expended. Or do or take any other action on the matter. On request of the Board of Selectmen.

**ARTICLE 11:** To see if the Town will vote to authorize the Board of Selectmen to LEASE, PURCHASE OR TAKE BY EMINENT DOMAIN a portion of land at 84 Main St. in Falmouth Village, for municipal purposes, now or formerly owned by Bank of America, N.A., assessors' parcel 38A 09 018 000, and being a portion of the present rear parking lot with approximately 237 feet of frontage on Katherine Lee Bates Road and containing .49 acres by estimate, to appropriate a sum of money for this purpose, to determine how the same shall be raised including borrowing and by whom expended. Or do or take any other action on the matter. On request of the Board of Selectmen.

**ARTICLE 12:** To see if the Town will vote to authorize the Board of Selectmen to LEASE, PURCHASE OR TAKE BY EMINENT DOMAIN the parcel of land at the intersection of Worcester Court and Spring Bars Road in Falmouth, assessors' parcel 39 15 048 001B, containing .95 acres and now or formerly owned by Wilbur and Sharon Muller, for municipal purposes, to appropriate a sum of money for this purpose, to determine how the same shall be raised including borrowing and by whom expended. Or do or take any other action on the matter. On request of the Board of Selectmen.

**ARTICLE 13:** To see if the Town will vote to appropriate a sum of money to supplement the operation of the new Senior Center, and to determine how the same shall be raised and by whom expended. Or do or take any other action on the matter. On request of the Board of Selectmen.

**ARTICLE 14:** To see if the Town will vote to appropriate a sum of money to initiate the process of disposition of the Wind Turbines which includes dismantling, relocation, engineering, permitting and other related costs, and to determine how the same shall be raised and by whom expended. Or do or take any other action on the matter. On request of the Board of Selectmen.

**ARTICLE 15:** To see if the Town will vote to reduce the Excluded Debt FY 2020 budget approved by Article 6, of the April 8, 2019 Annual town Meeting. Or do or take any other action on the matter. On Request of the Board of Selectmen.

**ARTICLE 16:** To see if the Town will vote to amend Ch. 140, s. 3 of the Code of Falmouth relative to Licenses and Permits by deleting the words "for not less than a twelve month period" so the section will read as follows:

S. 140- 3. Furnishing of list by Tax Collector.

The Tax Collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges (hereinafter referred to as the "Tax Collector") shall annually

furnish to each department, board, commission or division (hereinafter referred to as the "Licensing Authority") that issues licenses and permits including renewals and transfers, a list of any person, corporation or business enterprise (hereinafter referred to as the "party") that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the Appellate Tax Board.

Or do or take any other action on the matter. On request of the Town Collector and the Board of Selectmen.

**ARTICLE 17:** To see if the Town will vote to amend the Code of Falmouth, Chapter 235, Wetlands Protection, as follows: To Section 235-3, Exceptions, add:

"E. No isolated freshwater wetland (i.e. freshwater wetland not bordering on a water body) shall be protected under this bylaw unless it has an area of at least 10,000 square feet."

Or do or take any other action on this matter. On Petition of Nathan A. Holcomb.

**ARTICLE 18:** To see if the Town will vote to adopt 780 CMR 115 AA of the Massachusetts State Building Code, known as the Stretch Energy Code, for the purpose of regulating the design and construction of buildings for the effective use of energy, including any future editions, amendments and modifications thereto, to be effective July 1, 2020, a copy of which is on file with the Town Clerk, or do or take any other action on the matter. On petition of C. Grant Walker and others.

**ARTICLE 19:** To see if the Town will vote to authorize the Board of Selectmen to sell or convey a portion of the Town's land at 50 Twin Oaks Drive with a structure thereon, assessors' parcel 16-03-007-001, being a 88.487 acres parcel acquired in 1988 for municipal purposes and/or future water resource protection, subject to the following terms and conditions: 1) the land sold or conveyed shall be restricted for the use of a single unit of affordable housing in perpetuity; 2) the land sold or conveyed shall be the minimum amount necessary for a single family residence on the property, but not greater than 80,000 sq. ft. in area; 3) the location of the land sold or conveyed and its boundaries shall be shown on a plan to be approved by the Planning Board; 4) the sale or conveyance of the land shall not impair the use of the remainder of the Town's land for municipal water well purposes; and 5) the sale or conveyance of the land shall be subject to competitive proposals as required by G.L. Ch. 30B, the Uniform Procurement Act and such other terms and conditions as the Board of Selectmen deem appropriate to effectuate the purposes of this article.

Or do or take any other action on the matter. On request of the Board of Selectmen.

**ARTICLE 20:** To see if the town will vote to authorize the Board of Selectmen, acting upon a recommendation by the Planning Board, to grant a non-exclusive easement and right of way across a portion of land owned by the Town of Falmouth to Lawrence Lynch Realty Corp., its successors, assigns and lessees as follows: an easement and right-of-way to use a certain roadway or right-of-way presently existing on Lot 1 and Parcel 2 on Locustfield Road (assessors map 23 02 010 001) owned by the town of Falmouth and shown on a plan recorded in the Barnstable registry of deeds in plan book 389 page 21 for the benefit of abutting land owned by Lawrence Lynch Realty Corp. being (!)Parcel A containing 65.89 acres (assessors map 22 02 009 000) and shown on a plan recorded in said Registry in plan book 531 page 37; and (2) Parcel 3 as shown on plan recorded at Barnstable registry in plan book 389 page 21, containing 3.6 acres (assessors map 22 02 01 to 003) said easement for the purpose of providing pedestrian, vehicle, equipment and utility access to the above described Lawrence Lynch Realty Corp. parcels from Locustfield Road, together with a right to improve, repair and maintain the easement and right-of-way, with the town reserving to itself the right to use the easement and right-of-way for all purposes for the benefit of its land, said easement and right of way to be upon such terms and conditions as the Board of Selectmen deem appropriate.

Or do or take any other action on the matter. On Petition of Gerald Lynch.

**ARTICLE 21:** Whereas the elevated national climate of hostility toward immigrants, refugees, asylum-seekers, and many other residents and visitors, including African Americans, Latino/as, persons of color

generally, LGBTQ individuals, and religious groups, particularly Jews and Muslims, has brought increased levels of hostility and violence toward members of these groups;

And Whereas the Falmouth Police Department, in its published *Mission, Core Values and Vision Statement*, states that they "will provide professional police service to all Falmouth residents and visitors, while respecting individual rights and human dignity;"

And Whereas the Falmouth Police Department has affirmed in *A Message from the Police Chief Regarding the DHS-TCE Secure Communities Program* as follows (emphasis in original):

that they "protect the public that we serve by enforcing existing state laws in a fair and impartial manner to our entire community;" and  
that "local law enforcement agencies, including the Falmouth Police, have no authority to enforce federal immigration laws;" and  
that "race, religion, gender, sexual orientation, age, occupation, immigration status or any other arbitrary characteristic pertaining to any specific individual have absolutely no bearing on any decision for a Falmouth Police Officer to effect an arrest;" and

Whereas the Supreme Judicial Court of Massachusetts has stated that the Tenth Amendment to the United States Constitution prohibits the Federal government from compelling States to employ their resources to administer and enforce Federal programs; and ruled "Conspicuously absent from our common law is any authority (in the absence of a statute) for police officers to arrest generally for civil matters, let alone authority to arrest specifically for Federal civil immigration matters;"

Therefore,

It Is Resolved and the Falmouth Town Meeting is petitioned to affirm its endorsement of the Falmouth Police Department commitments and policies cited herein;

And it is further Resolved and the Town Meeting is petitioned to require that all individuals questioned or detained by Falmouth law enforcement regardless of their immigration status be informed of and be given their full due process rights;

And it is further resolved and the Town Meeting is petitioned, in keeping with current practice, to forbid all officials in Falmouth from participating in or cooperating with any inquiry, investigation, surveillance or detention having to do with immigration matters falling under the jurisdiction of the Federal government in the absence of probable cause of criminal activity and then only to the extent legally permissible;

And it is further resolved and the Town Meeting is petitioned, in keeping with current practice, to forbid all officials in Falmouth from using Town funds and/or other Town resources to enforce Federal Immigration law unless presented with a criminal warrant or other evidence of probable cause as required by the Fourth Amendment of the United States Constitution;

And it is further resolved and the Town Meeting is petitioned to forbid all officials in Falmouth, in keeping with current practice, from:

1. Asking residents and visitors about their immigration status;
2. Enforcing immigration matters;
3. Profiling based on race, ethnicity, citizenship, nationality, religion, age, immigration status, or political values, or any other arbitrary characteristic pertaining to any particular individual;
4. Violating the civil liberties and human rights of all residents and visitors on the basis of race, ethnicity, religion, disability, sexual and gender identity, national origin, citizenship and immigration status, or any other arbitrary characteristic.

On petition of Sandra Faiman-Silva

**ARTICLE 22:** To see if the Town will vote to adopt the following as a general by-law and to insert it into the Code of the Town of Falmouth, Massachusetts as Chapter 135§ 135-1: The purchase by the Town of Falmouth of either water or any other beverage in single-use plastic bottles of any size is prohibited and the sale of water or any beverage in single-use plastic containers is prohibited on town

property. Any Town department when engaged in public health and safety operations shall be exempt from this Bylaw.

Effective date: As soon as practicable but no later than September 1, 2020

In the event of a declaration (by Emergency Management Director, or other duly-authorized Town, Commonwealth, or United States official) of an emergency affecting the availability and/or quality of drinking water for Falmouth residents the Town shall be exempt from this Bylaw until seven (7) calendar days after such declaration has ended. On petition of Christine Kircun.

**ARTICLE 23:** The undersigned do hereby request that the Town of Falmouth designate the former John DeMello Senior Center to the Falmouth Veterans of Foreign Wars, Post #2569, as outlined in Chapter 40 Section 9 of the Massachusetts General Laws for a five (5) year lease at \$1.00 per year. Transfer to take place when the move to the new Senior center has been completed at which time the building will be the Falmouth Veterans Service Center. On petition of Ahmed Mustafa.

**ARTICLE 24:** To see if the Town will vote to adopt the following proposed amendments to the Falmouth Home Rule Charter.

#### General

To amend certain words, phrases, terminology and definitions therein as follows:

- a) Wherever the words "committee", "council" and "board" and any other word or phrase used as a common noun appear in reference to a multimember body, they shall be referred to as a "governmental body or governmental bodies".
- b) Wherever the phrase "Master Plan" appears in reference to the Town's principal planning document, it shall be referred to as the "Local Comprehensive Plan".
- c) Wherever the phrase "Long Range Plan" appears in reference to the plan annually adopted by the Board of Selectmen for important areas of concern, it shall be referred to as the "Strategic Plan".
- d) Wherever the word "Representative" appears before the words Town Meeting [except in Article I, Sec. C1-3, Form of Government and in the caption to Article II, The Representative Town Meeting], it shall be deleted and the town's legislative body shall be referred to as Town Meeting.
- e) Wherever the phrase "Registrars of Voters" appears in reference to the board responsible for voter registration, it shall be referred to as the "Board of Registrars".

#### Form of Government

To amend section C1-3, Form of Government so as to read:

##### Sec. C1-3. Form of Government.

This Charter provides for the Representative Town Meeting/Selectmen/Town Manager form of government and it shall be known by the title "Falmouth Home Rule Charter." Governmental bodies, both elected and appointed, may be used to perform a public purpose.

#### Definitions

To Transfer Article IX, General and Transitional Provisions, section C9-12, Definitions, in its entirety to Article I, Incorporation, to be a new section C1-6, Definitions, and to amend certain defined terms as follows:

##### Governmental Body

Any multi-member body or subcommittee thereof within the Town, whether elected, appointed or otherwise constituted, and established to serve a public purpose, and whether or not specifically mentioned in this Charter, with the exception of Town Meeting. The provisions of this Charter apply to all Governmental Bodies within the Town unless specifically exempted herein.

##### Master Plan

The definition of Master Plan is deleted.

##### Local Comprehensive Plan

The Local Comprehensive Plan is the community vision of the future of the Town, including issues of growth, economic and community development, historic community character, civic improvements and resource conservation.

B. Word usage

(1) He/His.

This section is deleted.

Watchman of the Warrant

To amend section C2-14, Watchman of the Warrant, so as to read:

Sec. C2-14. Watcher of the Warrant.

The Moderator, or a person designated by the Moderator, shall act as Watcher of the Warrant and shall present a written progress report on each passed action article of Town Meeting to be printed in the Annual Town Report.

Board of Selectmen

To adopt the following proposed general amendment:

By striking out the words "Board of Selectmen" and "Selectman" or "Selectmen" wherever they appear and inserting in place thereof, in each instance, the words "Select Board" where the reference is to the body and "member" where the reference is to an individual; and to insert a new sub-section C3-2E to read as follows:

C3-2E. The Select Board shall have all the powers and authority of a Board of Selectmen, and its members and officers shall have all the powers and authority of members and officers of a Board of Selectmen, under any general or special law of the Commonwealth of Massachusetts, any bylaw, rule or regulation of the Town or any contract or agreement of the Town.

Or do or take any other action on the matter. On request of the Board of Selectmen and the Charter Review Committee.

**ARTICLE 25:** To see if the Town will vote to adopt the following proposed amendment to Article II, The Representative Town Meeting, of the Falmouth Home Rule Charter by amending section C2-1A, Composition, membership and eligibility (of the Representative Town Meeting), so as to read:  
Sec. C2-1A. A Representative Town Meeting of not more than two hundred and fifty two (252) members shall be elected for three year overlapping terms as determined by Chapter 349 of the Acts of 1935 and any amendments thereto.

Or do or take any other action on the matter. On request of the Board of Selectmen and the Charter Review Committee.

**ARTICLE 26:** To see if the Town will vote to adopt the following proposed amendment to Article II, Representative Town Meeting, of the Falmouth Home Rule Charter, by adding a new section C2-15 so as to read:

C2-15. Finance Committee.

- A. The Finance Committee shall consist of fifteen (15) members, who shall be nominated by the Town Moderator and from the floor of Town Meeting, and elected by Town Meeting for three year overlapping terms at the Annual Town Meeting in the spring of each year. Current members of the Finance Committee shall continue to serve until their terms expire.
- B. No member of the Finance Committee shall be an employee of the town or hold any other elected or appointed town office, except the office of Town Meeting member. Members of the Finance Committee may serve on advisory boards in a non-voting capacity.
- C. Any vacancy in the membership of the Finance Committee shall be filled as follows: replacement members shall be nominated by the Town Moderator and from the floor of Town Meeting and elected by Town Meeting to complete the term of the departed member at any Annual or Special Town Meeting.
- D. The Finance Committee shall review and make recommendations to Town Meeting on 1) the town budget and any amendments thereto and 2) articles requesting an appropriation of money or having financial consequences for the Town. It shall further have the authority to approve any transfers from the reserve fund. For this purpose, the Finance Committee may request the attendance of any department head or other town official and take public comment.

And further, upon the approval of this amendment to the Falmouth Home Rule Charter, sections C8-2A and C8-2B shall be deleted.  
Or do or take any other action on the matter. On request of the Board of Selectmen and the Charter Review Committee.

**ARTICLE 27:** To see if the Town will vote to adopt the following amendment to Article III, Board of Selectmen, of the Falmouth Home Rule Charter by amending section C3-3B, Policy Leadership, so as to read:

B. The Board shall schedule public meetings with such other governmental bodies as it deems necessary, and shall hold them jointly, for the consideration of the town's Master Plan and other planning and policy initiatives.

Or do or take any other action on the matter. On request of the Board of Selectmen and the Charter Review Committee.

**ARTICLE 28:** To see if the Town will vote to adopt the following proposed amendment to Article III, Board of Selectmen, of the Falmouth Home Rule Charter, by adding a new subsection H to section C3-7, Specific Powers, so as to read:

H. The Board shall have the power and authority, after public hearing and publication, to adopt rules and regulations for the conducting of town business, the use of town real and personal property and other matters within its jurisdiction and set the penalties for violations thereof.

Or do or take any other action on the matter. On request of the Board of Selectmen and the Charter Review Committee.

**ARTICLE 29:** To see if the Town will vote to adopt the following proposed amendment to Article IV, Other Elected Town Boards and Officers, of the Falmouth Home Rule Charter, by amending section C4-6D, Planning Board, so as to read:

D. The Planning Board shall recommend proposed amendments to the Zoning Bylaw and shall provide detailed written explanation of its recommendations and the extent to which such recommendations are consistent with the Local Comprehensive Plan.

Or do or take any other action on the matter. On request of the Board of Selectmen and the Charter Review Committee.

**ARTICLE 30:** To see if the Town will vote to adopt the following proposed amendment to Article IV, Other Elected Boards and Officers of the Falmouth Home Rule Charter by amending section C4-7, Housing Authority, so as to read:

C4-7. Housing Authority

A Housing Authority shall be established consisting of five (5) members to be selected in accordance with the laws of the Commonwealth. All members shall serve five year overlapping terms.

Or do or take any other action on the matter. On request of the Board of Selectmen and the Charter Review Committee.

**ARTICLE 31:** To see if the Town will vote to adopt the following proposed amendments to Article VII, Appointed Town Boards, of the Falmouth Home Rule Charter by amending subsection A of section C7-2, General Provisions, so as to read:

- A. Governmental bodies established in this Article shall possess and exercise all powers given to them under the Constitution and laws of the Commonwealth and shall possess and exercise such additional powers and duties as may be authorized by this Charter, by-law or vote of Town Meeting. This Charter names those governmental bodies which 1) are mandated or authorized by the laws of the Commonwealth and 2) exercise regulatory or other authority.

and by adding new sections 16 and 17, so as to read:

C7-16. Community Preservation Committee.

A Community Preservation Committee shall be appointed as provided by the provisions of Massachusetts General Laws Chapter 44B and applicable Town by-law.

C7-17. Economic Development and Industrial Corporation.

An Economic Development and Industrial Corporation shall be appointed as provided by the provisions of Massachusetts General Laws, Chapter 121C and applicable vote of Town Meeting.

Or do or take any other action on the matter. On request of the Board of Selectmen and the Charter Review Committee.

**ARTICLE 32:** To see if the Town will vote to adopt the following proposed amendment to Article VII, Appointed Town Boards, of the Falmouth Home Rule Charter by deleting section C7-10 relative to the Recreation Committee, section C7-11 relative to the Waterways Committee, section C7-12 relative to the Beach Committee and section C7-13 relative to the Human Services Committee.

Or do or take any other action on the matter. On request of the Board of Selectmen and the Charter Review Committee.

**ARTICLE 33:** To see if the Town will vote to adopt the following proposed amendment to Article VII, Appointed Town Boards, of the Falmouth Home Rule Charter, by amending section C7-5, Board of Assessors, so as to read:

C7-5. A Board of Assessors of three (3) members shall be appointed whose appointment shall be exempt from the provisions of section C7-2H relative to term limits.

Or do or take any other action on the matter. On request of the Board of Selectmen and the Charter Review Committee.

**ARTICLE 34:** To see if the Town will vote to adopt the following proposed amendment to Article IX, General and Transitional Provisions, of the Falmouth Home Rule Charter by amending section C9-9, Revision of Bylaws, so as to read:

C9-9. Revision of Bylaws.

The Board of Selectmen shall ensure that the town bylaws are reviewed periodically, in whole or in part, and prepare any appropriate or necessary revisions or amendments.

Or do or take any other action on the matter. On request of the Board of Selectmen and the Charter Review Committee.

**ARTICLE 35:** To see if the Town will vote to appropriate or transfer from the Community Preservation Fund a sum of money to the Open Space Reserve Account; and to determine how the same shall be raised, or do or take any other action on the matter. On the request of the Community Preservation Committee.

**ARTICLE 36:** To see if the Town will vote to appropriate or transfer from the Community Preservation Fund a sum of money to the Falmouth Affordable Housing Fund, and to determine how the same shall be raised and by whom expended, or do or take any other action on the matter. On the request of the Community Preservation Committee.

Hereof fail not and make due return of this warrant with your doings thereon to the Town Clerk at the time and place of holding said meeting.

Given under our hand this 16th day of September in the year of our Lord Two Thousand Nineteen.

Megan English Braga, Chairman  
Douglas C. Brown, Vice Chairman  
Douglas H. Jones  
Susan L. Moran  
Samuel H. Patterson

## ARTICLE 17

To see if the Town will vote to amend the Code of Falmouth, Chapter 235, Wetlands Protection, as follows: To Section 235-3, Exceptions, add:

**“E. No isolated freshwater wetland (i.e. freshwater wetland not bordering on a water body) shall be protected under this bylaw unless it has an area of at least 10,000 square feet.”**

Or do or take any other action on this matter.

Do you have a puddle in your yard?  
Does your neighbor?



**The Wetlands Bylaw:  
Town Code § 235-2, Jurisdiction**

**“Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall remove, fill, dredge, build upon, degrade or otherwise alter the following resource areas:** any freshwater or coastal wetland; marshes; wet meadows; bogs; swamps; vernal pools; banks; reservoirs; lakes; ponds; streams; creeks; beaches; dunes; estuaries; oceans; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; lands subject to tidal action, coastal storm flowage or flooding; lands within one hundred (100) feet of any of the aforesaid resource areas; . . . These resource areas are, collectively, the resource areas protected by this bylaw.”

**The Proposed Amendment:  
Town Code § 235-3, Exceptions**

**“E. No isolated freshwater wetland (i.e. freshwater wetland not bordering on a water body) shall be protected under this bylaw unless it has an area of at least 10,000 square feet.”**

## The Proposed Amendment Will Not Affect Protection of:

- Bordering freshwater wetlands
- Coastal wetlands
- Vernal pools
- Banks
- Reservoirs
- Lakes
- Ponds
- Streams
- Creeks
- Beaches
- Dunes
- Estuaries
- Oceans
- Lands under water bodies
- Lands subject to flooding or inundation by groundwater or surface water
- Lands subject to tidal action, coastal storm flowage or flooding

## Benefit #1

- ✓ Prevent the Waste of Tax Dollars



## Great Sippewissett Marsh



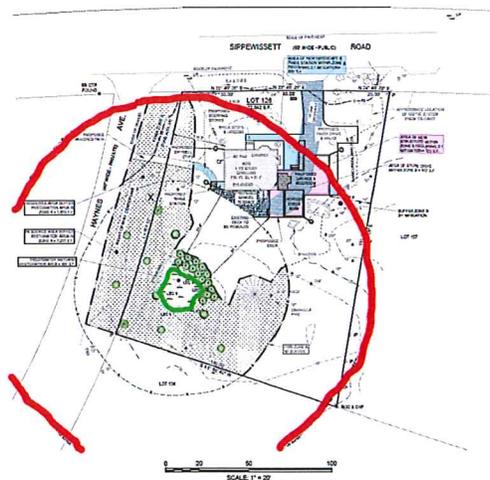
## Waquoit Bay



## My Family's Back Yard



## Disproportionate Buffer Zone



## Benefit #2

- ✓ Prevent Arbitrary and Inconsistent Enforcement of the Bylaw



## Is Your Puddle a “Wetland”?

“There is no such thing as an official town ‘wetlands’ map. The only absolute way to determine the existence of wetlands on your lot is to have a certified botanist ‘flag’ your lot as to whether wetland vegetation exists. The Conservation Commission will review the work of the botanist and make a final determination.”

(<http://www.falmouthmass.us/Faq.aspx?QID=149>)

### Benefit #3

- ✓ **Overrule an Inconsistency in the Falmouth Wetlands Regulations (FWR)**

### Inconsistency in the FWR

**An Isolated Land Subject to Flooding (ILSF) may be significant to:**

- **Flood control**
- **Storm damage prevention**
- **Public or private water supply**
- **Groundwater**
- **Water pollution control**

(FWR 10.57(1)(b)(1))

**An Isolated Freshwater Vegetated Wetland (IFVW) may be significant to:**

- **Flood control**
- **Storm damage prevention**
- **Public or private water supply**
- **Groundwater**
- **Water pollution control**
- **Fisheries**
- **Erosion and sediment control**
- **Shellfish and Wildlife habitat (FWR 10.55(1))**

## Inconsistency in the FWR (cont'd)

### **An Isolated Land Subject to Flooding (ILSF) has a minimum size requirement:**

“Isolated land subject to flooding is an isolated depression or closed basin without an inlet or an outlet. It is an area which at least once a year confines standing water to **a volume of at least 5,000 cubic feet and to an average depth of at least six inches.**”  
(FWR 10.57(2)(b)(1))

### **An Isolated Freshwater Vegetated Freshwater Wetland (IFVW) does not:**

“The types of Freshwater wetlands include Wet meadows, Marshes, Swamps and Bogs. Freshwater wetlands are areas where the soils are saturated and/or inundated such that they support under normal Conditions a predominance of wetland indicator plants.”  
(FWR 10.55(2)(a))

## Eliminate the Inconsistency

- Under the FWR, if an Isolated Land Subject to Flooding (ILSF) is the minimum average depth throughout (6 inches), to meet the minimum required volume of 5,000 cubic feet it must have a minimum area of 10,000 square feet
- A required minimum area of 10,000 square feet for an Isolated Freshwater Vegetated Wetland (IFVW) makes the definition of an IFVW consistent with the definition of an ILSF

### Benefit #4

#### ✓ Ensure Proportionality with the Regulated Buffer Zone

- Under the current FWR, the minimum area of a buffer zone around an IFVW is 31,400 square feet (i.e. the area of a circle with a 100-foot radius), or about **three-quarters of an acre**
- The proposed amendment would mean that a regulated IFVW has to be at least about **one-quarter acre** (or one-third of the current minimum area of a buffer zone)
- This ensures some proportionality between an IFVW and the regulated buffer zone

### Benefit #5

#### ✓ Prevent the Waste of Landowners' Resources

\$ for Wetland Scientists  
+\$ for Engineers  
+\$ for Lawyers  
= \$\$\$ Tens of Thousands



## Benefit #6

- ✓ Protect Property Values in Falmouth



## Benefits

- ✓ Prevent the Waste of Tax Dollars
- ✓ Prevent Arbitrary and Inconsistent Enforcement of the Bylaw
- ✓ Overrule an Inconsistency in the FWR
- ✓ Ensure Proportionality With the Regulated Buffer Zone
- ✓ Prevent the Waste of Landowners' Resources
- ✓ Protect Property Values in Falmouth

## CHOOSING THE RIGHT PRIORITIES:

***This?***



***Or This?***



270 Sippewissett Rd.  
Falmouth, MA 02540

September 17, 2019

Falmouth Board of Selectmen  
Falmouth Town Hall  
59 Town Hall Square  
Falmouth, MA 02540

**RE: Article 17 for the November 2019 Town Meeting – Amend Wetlands Bylaw**

Dear Board of Selectmen:

I write in support of Article 17 on the Warrant to amend the Falmouth Wetlands Bylaw to specify that areas less than 10,000 square feet in size are not regulated as isolated freshwater wetlands (the “Amendment”). The Amendment addresses the fact that, as interpreted and applied by the Falmouth Conservation Commission, the Bylaw’s scope has expanded to regulate mere puddles. Puddles are not the valuable natural resources the Bylaw was intended to protect. The Article would create a new Section 235-3(E), as follows:

***“E. No isolated freshwater wetland (i.e. freshwater wetland not bordering on a water body) shall be protected under this bylaw unless it has an area of at least 10,000 square feet.”***

The Amendment is narrow and targeted. It affects *only* the definition of an isolated freshwater wetland and not any other provisions of the Bylaw.

**OVERVIEW**

Do you have a low spot somewhere in your yard that collects some water during heavy rains, or does your neighbor? This puddle may entail severe restrictions on the use of your property under the current Bylaw as interpreted and applied by the Conservation Commission. You may be subject to an enforcement action based on any gardening, landscaping, or construction within 100 feet of the puddle. To avoid the risk of an enforcement action, you may need to pay thousands or tens of thousands of dollars to wetland consultants, engineers, and lawyers in order to navigate the process of seeking approval for any gardening, landscaping, or construction project. That’s not reasonable.

The State of Massachusetts has decided that puddles are not worth regulating under its Wetland Protection Act. While the Town is permitted to regulate more restrictively than the State, regulation that severely restricts the use of private property in order to protect puddles has gone too far. In my case, the Conservation Commission placed unacceptable conditions on approval for

a proposal to control invasive vines on my family's property, replace them with native grasses, flowers, shrubs, and trees, and build a one-car garage. The Commission then refused to participate in mediation or engage in any discussion of settlement at all, forcing me to bring a lawsuit against the Town.

Distinct from the specific legal issues in my case is a more general issue of policy that I respectfully request the Board of Selectmen to consider: Should the Town of Falmouth use its limited resources to regulate puddles and spend tax dollars to litigate over them? I submit that the answer is "no."

A simple amendment to the Falmouth Wetlands Bylaw to specify a modest minimum size requirement for regulated isolated freshwater wetlands will have the following benefits:

1. The Amendment will prevent the waste of tax dollars.
2. The Amendment will prevent the arbitrary and inconsistent enforcement of the Bylaw.
3. The Amendment will overrule an inconsistency in the Commission's regulations.
4. The Amendment will ensure proportionality between an isolated freshwater wetland and the regulated buffer zone surrounding it.
5. The Amendment will prevent the waste of private landowners' resources.
6. The Amendment will protect property values in Falmouth.

### **BACKGROUND**

The Amendment addresses the definition of an "isolated freshwater vegetated wetland," or "IFVW." This is an area that is isolated from any body of water, but where the soil is at times water-logged, and which is as a result hospitable to water-loving plants rather than drought-tolerant plants. State law does not protect such areas unless they meet the independent definition of an "isolated land subject to flooding," or "ILSF." The definition of an ILSF has a minimum size requirement. Falmouth's Conservation Commission followed State law in this regard for decades. Then, in 1998-99, the Commission made a decision to depart from State law and provide independent protection for an IFVW. When the Commission did so, it neglected to include any minimum size requirement for an IFVW. This left us with the situation we have today, where a mere puddle can qualify, even if it falls far short of Falmouth's minimum size requirement for an ILSF. This legal background is explained in greater detail below.

The Massachusetts Wetlands Protection Act ("WPA")<sup>1</sup> protects wetlands in the State. The Massachusetts Department of Environmental Protection ("DEP") promulgates regulations implementing the WPA. The WPA and its implementing regulations distinguish between "bordering" wetlands and "isolated" wetlands. "Bordering" wetlands border a body of water;

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<sup>1</sup> M.G.L. c. 131, § 40.

“isolated” wetlands do not. “Freshwater wetlands” are defined by soil characteristics related to water saturation and the vegetation they support. Such wetlands are frequently referred to as “freshwater vegetated wetlands.” They are protected under State law only if they are “bordering” wetlands.<sup>2</sup> The only kind of “isolated” wetland protected under State law is an Isolated Land Subject to Flooding or ILSF, defined as “an isolated depression or closed basin without an inlet or an outlet” that “at least once a year confines standing water to a volume of at least ¼ acre-feet and to an average depth of at least six inches.” (310 CMR 10.57(2)(b)(1).) Thus State law sensibly limits regulation to wetlands that have some minimal indication of significance, either because they border a body of water or because they are of sufficient size. State law restricts activity within a 100-foot “Buffer Zone” surrounding a bordering freshwater wetland. (310 CMR 10.02(2)(b).)

Towns have the authority under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes to enact regulations that are more stringent than the WPA. Falmouth first enacted its Bylaw in 1979. In 1989, the Commission codified the Falmouth Wetland Regulations or “FWR” (the “1989 FWR”). The 1989 FWR incorporated by reference the definitions of “Resource Areas” provided for in the “state wetland regulations” where those definitions were not “contained in other sections of these regulations.” (1989 FWR 10.04, definition of “Resource Areas.”) They mirrored the WPA and its implementing regulations by providing jurisdiction over freshwater wetlands only if they were either “bordering” or “subject to flooding.” (1989 FWR 10.02(1) (a), (f), (g).) They offered no definition of a “Land Subject to Flooding” other than that under the state regulations; they accordingly incorporated the State definition. (1989 FWR 10.57.) While the 1989 FWR deviated in some respects from the State regulations, they continued to focus on areas that satisfied a minimal threshold for environmental significance.

In 1998 and 1999, the Commission enacted revisions to the FWR (the “1998-99 FWR”) that were significantly more restrictive than the 1989 version. These revisions eliminated the limitation on protection for freshwater wetlands to those bordering water bodies. (1998-99 FWR 10.02(1)(a).) The 1998-99 FWR defined “Freshwater Wetlands” as “areas where the soils are saturated and/or inundated such that they support under normal conditions a predominance of wetland indicator plants.” (1998-99 FWR 10.55(2)(a).) They neglected to include any minimum size for a protected “Freshwater Wetland.” In contrast, the 1998-99 FWR did set a minimum size for an “Isolated Land Subject to Flooding,” defining it as “an isolated depression or closed basin without an inlet or an outlet” that “at least once a year confines standing water to a volume of at least 5000 cubic

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<sup>2</sup> The WPA defines “freshwater wetlands” as “wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent plant communities in inland waters; that portion of any bank which touches any inland waters.” (M.G.L. c. 131, § 40.) DEP regulations provide that a “freshwater wetland,” “marsh,” or “swamp” is subject to protection under the WPA only if it borders the ocean or an estuary, creek, river, stream, pond, or lake. (310 CMR 10.02(1).)

feet and to an average depth of at least six inches.” (1998-99 FWR 10.57(2)(b)(1).) This minimum size threshold was less than half of the State law threshold: the State threshold of ¼ acre-feet is equal to 10,890 cubic feet.<sup>3</sup>

These definitions of a “Freshwater Wetland” and an “Isolated Land Subject to Flooding” remain in the current version of the FWR. The result is that an IFVW is regulated under Town law even if comes nowhere near the Town’s minimum size requirement for an ILSF—which is in turn less than half the required size for an ILSF under State law.

In sum, Falmouth’s regulatory regime has evolved over time to a point where it is now completely out of step with State regulation of wetlands, and where a mere puddle can trigger onerous regulation.

### PROPOSED AMENDMENT

The FWR’s minimum volume requirement for an “Isolated Land Subject to Flooding” implies an appropriate size requirement for a “Freshwater Wetland.” If an “Isolated Land Subject to Flooding” is the minimum average depth of six inches throughout, then it must have an area of at least 10,000 square feet to be regulated. This indicates that for isolated wetlands with relatively shallow water depths, an area of 10,000 square feet is, under a policy determination already incorporated into the FWR, an appropriate minimum threshold for the level of environmental significance that warrants regulation in order to protect resource area values. Accordingly, I propose that the Bylaw be amended to add, in the Section for “Exceptions,” a Section 235-3(E), as follows:

***“E. No isolated freshwater wetland (i.e. freshwater wetland not bordering on a water body) shall be protected under this bylaw unless it has an area of at least 10,000 square feet.”***

The proposed amendment is narrow and targeted. It affects *only* the definition of an isolated freshwater wetland. It does *not* affect regulation of other kinds of wetlands that are protected under the Bylaw, such as bordering freshwater wetlands, coastal wetlands, vernal pools, banks, reservoirs, lakes, ponds, streams, creeks, beaches, dunes, estuaries, oceans, lands under water bodies, lands subject to flooding or inundation by groundwater or surface water, or lands subject to tidal action, coastal storm flowage or flooding.

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<sup>3</sup> (0.25 acre-feet)(43,560 cubic feet/acre-foot) = 10,890 cubic feet.

## **BENEFITS OF THE PROPOSED AMENDMENT**

### **1. The Amendment Will Prevent the Waste of Tax Dollars.**

Now more than ever, protecting the environment is a vital public policy priority. Falmouth is blessed with valuable natural resources that we should do everything we can to protect. Great Sippewissett Marsh. Little Sippewissett Marsh. Black Beach. Beebe Woods. The Coonamessett River. Waquoit Bay. The list goes on.

But the Town's resources are limited. The Conservation Commission's resources are limited. The Conservation Commission staff's resources are limited. The Town Counsel's resources are limited. Diverting efforts toward protecting areas of little to no environmental import necessarily reduces the time and effort that can be devoted to protecting areas of greater value. The proposed amendment will direct tax dollars toward protecting the more valuable resources the Bylaw was meant to protect, as well as other priorities such as Falmouth's schools, roads, and public parks. Not puddles.

### **2. The Amendment Will Prevent the Arbitrary and Inconsistent Enforcement of the Bylaw.**

The absence of any minimum size requirement for a "Freshwater Wetland" means that it is not clear what constitutes a "Freshwater Wetland" and what does not. Any small depression in a yard that sometimes collects some water may qualify. As stated on the Town's website (the relevant excerpt of which is attached as Exhibit 1): "There is no such thing as an official town 'wetlands' map. The only absolute way to determine the existence of wetlands on your lot is to have a certified botanist 'flag' your lot as to whether wetland vegetation exists. The Conservation Commission will review the work of the botanist and make a final determination." This process costs thousands of dollars. Even this may not provide certainty, because conditions can change over time, meaning that repeated testing may be necessary.

Of course, not all Falmouth property owners who have puddles in their yards pay thousands of dollars in order to hire wetland scientists and apply to the Commission for review of the wetland scientists' work. A property owner may not be aware of a puddle on a neighbor's property, and even if she were, she would not have the right to have a wetland scientist perform a delineation on another person's property. Nor does the Conservation Commission have the ability or right to canvass every square foot of land in Falmouth to look for tiny isolated freshwater "wetlands." In the absence of any systematic survey of Falmouth's puddles, it is inevitable that many such small "wetlands" go wholly unnoticed. It is also inevitable that many activities within the 100-foot buffer zones surrounding these "wetlands" that are violations of the Bylaw as interpreted and applied by the Commission go undetected. Indeed, given the ubiquity of puddles, most of the Town maybe may in fact be within 100 feet of a "wetland," and therefore subject to the Commission's asserted jurisdiction.

The burden of the FWR's restrictions falls on those that the Conversation Commission singles out for enforcement. I have no idea how the Commission first learned of the puddle on my property. When I requested any public records indicating how this happened, I was informed that no such records existed. I did obtain a copy of a letter (attached as Exhibit 2) that the Commission staff sent to a previous owner of the property threatening an enforcement action if she did not replace an area that she had maintained as lawn for almost 60 years with shrubbery. Not only was this threat unjustified, it was wholly out of proportion to any environmental interest served by a small, moist depression in a backyard.

Inconsistent application of the Bylaw is unfair. It also legally unsound.<sup>4</sup> By limiting the Bylaw's scope to freshwater wetlands that are sufficiently large that their existence is reasonably evident and their significance to the Bylaw's values more probable, the Amendment will promote consistent application of the Bylaw and reduce the risk of legal challenge based on inconsistent enforcement.

### **3. The Amendment Will Overrule an Inconsistency in the FWR.**

The Amendment will fix the inconsistency that exists in the FWR due to the fact that there is a minimum size requirement for an "Isolated Land Subject to Flooding" (ILSF) but no minimum size requirement for a "Freshwater Wetland" (IFVW). Under the FWR, any area that meets the definition of a "Freshwater Wetland" as a result of its soil characteristics and vegetation, no matter how small, is presumed to be significant to the following resource area values: "public or private water supply, Groundwater, flood control, storm damage prevention, Water pollution control, fisheries, Erosion and sediment control, shellfish and Wildlife habitat." (FWR 10.55(1).) An Isolated Land Subject to Flooding, in contrast, is presumed to be significant to largely overlapping resource area values *only* if it meets the minimum size requirement. (FWR 10.57(1)(b)(1).)

It is arbitrary and irrational that, for example, an area subject to flooding *is not* presumed significant for flood control if it fills with only 4,000 cubic feet of water, but an area with water-logged soil and water-loving vegetation *is* presumed significant for flood control if it is only 4,000 square feet in size—or 400 square feet, or 40, or even *four*.

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<sup>4</sup> See *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) ("Our cases have recognized successful equal protection claims brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment."); *Fafard v. Conservation Comm'n of Reading*, 41 Mass. App. Ct. 565, 568 (1996) ("If the agency has acted for reasons that are extraneous to the prescriptions of the regulatory scheme, but are related, rather, to an ad hoc agenda, then that agency has acted arbitrarily because the basis for action is not uniform, and, it follows, is not predictable.").

A minimum size requirement is needed to support the presumption in the FWR that isolated freshwater vegetated wetlands are significant for resource area values protected by the Bylaw. The proposed minimum size requirement is a relatively modest one. Even if it were enacted, the Falmouth's Bylaw and regulations would remain much more restrictive than State law. They would, however, at least have a sensible minimum threshold to ensure that small puddles do not trigger onerous restrictions.

#### **4. The Amendment Will Ensure Proportionality Between an Isolated Freshwater Vegetated Wetland and the Regulated Buffer Zone Surrounding It.**

Under the Bylaw, the Commission's jurisdiction extends to a 100-foot "Buffer Zone" surrounding any "wetland," whether "bordering" or "isolated." (Bylaw, § 235-2.) The primary purpose of the Buffer Zone is to protect the adjacent wetland resource area.

Due to the absence of any minimum size requirement for an isolated "Freshwater Wetland," the size of a Buffer Zone can be vastly disproportionate to the size of the "wetland" it is intended to protect. For example, an isolated freshwater "wetland" that is circular in shape with a diameter of thirty feet across has an area of approximately 700 square feet. The total area of the surrounding 100-foot buffer zone is approximately 40,000 square feet, *almost 60 times larger than the "wetland" itself.*<sup>5</sup> Any activity within this massively disproportionate Buffer Zone is severely restricted. (Attached as Exhibit 3 is a survey of my family's property that illustrates how, under the Commission's regulations, a small "wetland" is surrounded by a much larger regulated buffer zone, which covers most of the property as well as large portions of the neighbors' properties.)

The current *minimum* area for a buffer zone is approximately 31,400 square feet, or about three-quarters of an acre.<sup>6</sup> This is larger than the minimum lot sizes of 7,500 square feet, 10,000 square feet, and 20,000 square feet that apply in various zoning districts across the Town. (Town Code § 240-66(C)(2).) The result is that a puddle like the one in my family's backyard can render multiple lots effectively unusable. A purchaser of an undeveloped lot has *no* effective means of determining whether that lot is unusable due to an inconspicuous puddle on a nearby lot. While the Falmouth community has made laudable efforts to preserve conservation land, the result of regulating puddles as "wetlands" and at the same time restricting development in massively disproportionate Buffer Zones surrounding such trivial "wetlands" is to create conservation land by lottery. That is unfair and legally unsound.<sup>7</sup>

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<sup>5</sup> The area of a circular wetland thirty feet across is equal to  $\pi r^2 = (3.14)(15^2) = 707$  square feet. The area of the buffer zone surrounding such a wetland is equal to  $(3.14)(115^2) - 707 = 41,457$  square feet.

<sup>6</sup>  $\pi r^2 = (3.14)(100^2) = 31,400$  square feet.

<sup>7</sup> See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992) ("[W]hen the owner of real property has been called upon to sacrifice *all* economically beneficial uses in the

A modest minimum size requirement for an isolated freshwater wetland will ensure some proportionality between an isolated freshwater wetland and the protected Buffer Zone surrounding it. The proposed amendment would require that an isolated freshwater wetland be about one-quarter of an acre, or only one-third of the current minimum size for a regulated Buffer Zone.<sup>8</sup>

#### **5. The Amendment Will Prevent the Waste of Landowners' Resources.**

The regulatory regime created by the Bylaw and FWR places a significant burden on the resources of Falmouth's businesses and homeowners. A notice of intent application for even a small project requires the input of at least a wetland consultant and an engineer, which costs many thousands of dollars on top of the hundreds of dollars in filing fees. If legal issues arise, the input of a lawyer is needed, costing many thousands of dollars more. The Commission's hearings regularly extend over at least two nights. The Commission and its staff frequently request additional information and multiple revisions to project plans, which requires more work by wetland consultants and engineers, yet again costing thousands of dollars. A property owner can spend tens of thousands of dollars to navigate this process even for a modest project, only to have an application rejected, or approved subject to unacceptable conditions. An appeal in court may then cost tens of thousands of dollars more.<sup>9</sup>

Requiring property owners to incur such expenditures might be justified for large projects that implicate sensitive natural resources. The Amendment will ensure that Falmouth property owners do not incur such expenditures for routine home improvement projects for the sake of protecting puddles.

#### **6. The Amendment Will Protect Property Values in Falmouth.**

The current regulatory regime threatens Falmouth's property values. As described above, the expansive definition of an isolated Freshwater Wetland creates uncertainty about where the

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name of the common good, that is, to leave his property economically idle, he has suffered a taking.”).

<sup>8</sup> Even after enactment of the Amendment, buffer zones surrounding smaller-sized isolated freshwater wetlands will generally have larger areas than the wetlands themselves. For example, a circular-shaped wetland right at the minimum threshold of 10,000 square feet would have a radius of about 56.4 feet. The 100-foot buffer zone surrounding that 10,000 square foot wetland would have an area of about 67,000 square feet, almost seven times the area of the wetland. ( $\pi r^2 - 10,000 = (3.14)(156.4)^2 - 10,000 = 66,807$  square feet.) The proportionality requirement imposed by the proposed amendment is thus a relatively modest one, but it avoids the extreme disproportionality of the current regime.

<sup>9</sup> See generally *Matheson v. Town of Falmouth*, 77 Mass. App. Ct. 116 (2010) (describing process of hearings and judicial review).

Conservation Commission will assert its jurisdiction. As also described above, navigating the regulatory regime is expensive. In addition, the FWR severely restrict the use of property under the Commission's jurisdiction. Among other restrictions, any increase in impervious surface area in the buffer zone must be mitigated in at least a 2:1 ratio by "mitigation" plantings. (FWR 10.18(7)(e)(3).)

This means that the owner of a small or medium-sized residential lot that contains a puddle, or that neighbors another lot containing a puddle, can quickly reach a limit on any potential for improvements to the property, including minor improvements such as patios or decks. The regulations create a strong incentive for a property owner to seek approval for all improvements that he or she might ever want to make to a property at once, so that any improvements that increase impervious surface area can be approved together with corresponding mitigation planting.<sup>10</sup> This imposes a financial burden; most property owners cannot easily afford to make all of the improvements they would ever like all at once. It also means that a property subject to the Commission's jurisdiction is less easily marketable if a prospective purchaser contemplates future improvements to the property.

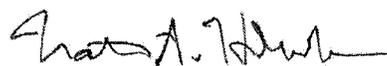
The Conservation Commission's assertion of jurisdiction over puddles means that any property owner in the Town—not just a property owner who enjoys a prime coastal property, but *any* property owner—is potentially subject to regulation that severely restricts use of private property and imposes high costs. This risk makes it less desirable to own property in Falmouth as compared to other towns with regulatory regimes that are sufficient to protect valuable natural resources without excessive intrusion on private property rights.

Puddles should not threaten the value of property in Falmouth. The Amendment will remove this threat.

### CONCLUSION

I respectfully submit that the Board of Selectmen should recommend that the Town Meeting enact Article 17 on the Warrant to clarify that the Falmouth Wetlands Bylaw is intended to protect valuable natural resources, not puddles.

Sincerely,



Nathan A. Holcomb

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<sup>10</sup> Perversely, they also incentivize designing projects so as to maximize the increase in impervious surface area (because if you don't increase the impervious area when you can, you might not be able to later) and to minimize the area of mitigation plantings (because if you populate an area with native plantings now, that area may not be available for you to use to meet mitigation requirements for future projects).

# EXHIBIT 1

### **Are there wetlands on the property?**

There is no such thing as an official town "wetlands" map. The only absolute way to determine the existence of wetlands on your lot is to have a certified botanist "flag" your lot as to whether wetland vegetation exists. The Conservation Commission will review the work of the botanist and make a final determination. Contact the Conservation Commission Administrator for further details.

## **▼ Developing Property**

[Show All Answers](#)

1. **Is this lot a buildable lot?**
2. **Is this a grandfathered lot?**
3. **Can I subdivide this property to create another lot?**
4. **What kind of access is necessary to build on a lot, if I don't want to subdivide?**
5. **Are there wetlands on the property?**
6. **Is the property in a floodplain?**
7. **What uses are allowed on my property?**
8. **What is my property worth?**
9. **Should I buy this property?**

### **Categories**

- [All Categories](#)
- [Beach Parking Stickers](#)
- [Building & Zoning](#)
- [Commission on Disabilities](#)
- [Community Preservation](#)
- [Conservation Commission](#)
- [Developing Property](#)
- [Director of Assessing](#)
- [Emergency Preparedness](#)
- [Employment](#)
- [Engineering Division](#)
- [Facilities Maintenance](#)
- [Falmouth Retirement System](#)
- [Harbormaster](#)
- [Highway Division](#)
- [Historical Commission- Historic Districts Commission and Historical Commission Merger](#)
- [Marine & Environmental Services](#)
- [Natural Resources](#)
- [Planning Department](#)
- [Plot Plans](#)

# EXHIBIT 2



# Falmouth Conservation Commission

59 TOWN HALL SQUARE, FALMOUTH, MASSACHUSETTS 02540  
(508) 495-7445 • FAX (508) 495-7449

October 9, 2009

Barbara Welch  
270 Sippewissett Road  
Falmouth, MA 02540-1869

RE: 270 Sippewissett Road, Falmouth, MA  
Septic approval and wetland violation

Dear Ms. Welch,

Enclosed please find a copy of the Request for Determination of Applicability (RDA) for the Title 5 sewage disposal upgrade. The location of the leach field was approved since this was over 100-ft from the wetland resource area.

As you are aware from your representative, an isolated freshwater wetland was identified in the backyard and depicted on the plot plan by Carmen Shay dated 8/7/09. Aerial photographs show this area was more extensively vegetated in the past twenty years, functioning as a more viable wetland. This represents a wetland violation under the Falmouth wetland bylaw regulations.

Rather than pursuing enforcement action, we would like you to consider working with your representative to come up with a solution that shall restore function to the wetland and surrounding buffer. One option would be to remove the grass/loam layer over the isolated wetland, and install native shrubs around the wetland, to create a vegetated buffer – the buffer should be at least 25 ft. in width. The plantings would have to be watered and maintained, and the area allowed to grow back into naturally vegetated buffer to the wetland.

Please let us know how you wish to proceed in this matter within 21 days after receipt. We look forward to your cooperation and please contact me at 508-495-7447 if you have any questions.

Sincerely,

Mark Kasprzyk, Conservation Agent  
Falmouth Conservation Commission

CC: Mark Manganello, LEC Environmental  
Jennifer L. McKay, Conservation Administrator



# EXHIBIT 3



Diane Davidson

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**From:** GRANT WALKER [REDACTED]  
**Sent:** Wednesday, September 18, 2019 8:02 AM  
**To:** Megan English Braga; Falmouth Selectmen; dougbrown@falmouthma.gov; sampatterson@falmouthma.gov; dougjones@falmouthma.gov; smoran@falmouthma.gov; Falmouth Town Manager; [REDACTED] Diane Davidson; Megan Amsler; megan@a3architectsinc.com; abocconcelli@whoi.edu; Rosemary Dreger Carey; Matthew Patrick  
**Cc:** Charles Rader; Grant Walker  
**Subject:** Article 18--Adoption of the Stretch Energy Code--November 2019 Town Meeting  
**Attachments:** Article 18 Stretch Code Presentation Board of Selectmen September 23 2019.docx

Dear Selectmen, Mr. Duffy, Mr. Suso, Mr. Johnson-Staub, Ms. Amsler and Members of the Energy Committee

At the Board of Selectmen's meeting on September 23, 2019, I will present information regarding adoption of the Massachusetts Stretch Energy Code, Article 18 for Falmouth's November 2019 Town Meeting.

Attached please find a file containing the information I will draw upon. My presentation will be a brief summary of that information.

Thank you.

Charles Grant Walker  
71 Philadelphia Street  
Teaticket, MA 02536

[REDACTED]

**Adoption of the Massachusetts Stretch Energy Code  
For Falmouth Annual Town Meeting, November 2019**

Charles Grant Walker  
71 Philadelphia Street  
Teaticket, MA 02536



**ARTICLE 18**

**To see if the Town will vote to adopt 780 CMR 115 AA of the Massachusetts State Building Code, known as the Stretch Energy Code, for the purpose of regulating the design and construction of buildings for the effective use of energy, including any future editions, amendments and modifications thereto, to be effective July 1, 2020, a copy of which is on file with the Town Clerk, or do or take any other action on the matter. On petition of C. Grant Walker and others.**

**GENERAL INTRODUCTION**

The Stretch Energy Code is the option which any Massachusetts municipality may choose if it wants to require greater energy efficiency than called for by the standard Massachusetts Base Energy Code. The Stretch Code emphasizes demonstration of the overall combined energy efficiency performance of a structure, rather than prescribing specific design and installation components. It applies to residential and commercial construction, but only to new construction. There is much less difference now between the Stretch Code and the Base code in terms of requirements than in the past.

Adoption of the Stretch Energy Code is one of the requirements for designation as a Massachusetts Green Community. The Green Communities Program provides grants, technical assistance, and support to help reduce energy use and costs in municipal buildings, operations, and schools. Grants have funded heating, cooling, and ventilation system upgrades, weatherization and insulation, refrigeration controls, many other energy conservation measures and energy efficiency purchases, as well as grant-administration costs.

**SPECIFIC INFORMATION**

**1. The STRETCH ENERGY CODE**

- The optional energy code which any Massachusetts city or town may choose if it wants to assure greater energy efficiency in new construction.
- Involves Designing, Building, Testing, and Verifying superior energy efficiency.
- Emphasizes overall energy efficiency performance, rather than specific design or installation components
- Applies to NEW CONSTRUCTION only
- Additions, renovations, alterations are EXEMPT
- If chosen, the Stretch Energy Code replaces the Base Energy Code and becomes required in that city or town.
- On January 1, 2017 Massachusetts updated both the Base Energy Code and the Stretch Energy Code. The Base Code requirements went up more sharply, however, so that the difference between the two codes is much smaller now than in the past.

## 2. The **BASE ENERGY CODE**

- Spells out the minimum energy efficiency requirements mandated for all buildings in Massachusetts.
- The Base Energy Code has a Prescriptive Path and a Performance Path.
  - The Base Code Prescriptive Path requires installation of specific components on a check list.
  - The Base Code Performance Path may be chosen voluntarily by a builder in any city or town.
  - **The Base Code Performance Path is the same as the Stretch Energy Code.**

## 3. The **STRETCH ENERGY CODE APPLIES TO:**

- **new residential construction** of 4 stories or less above grade plane, with one or more units.
- **new construction of commercial buildings** over 100,000 square feet
- **new construction of supermarkets**
- **new construction of laboratory buildings**
- **new construction of conditioned warehouses** over 40,000 square feet
- **Reference:** Massachusetts. 780 CMR. State Board of Building Regulations and Standards. Appendix AA Stretch Energy Code.  
<https://www.mass.gov/files/documents/2018/06/08/Appendix%20AA%20Stretch%20Energy%20Code.pdf>

## 4. **HOME BUYERS IN FALMOUTH: LIMITED IMPACT OF THE STRETCH CODE**

- **Only a few** home buyers will be directly affected: those buying newly constructed homes.
- Newly constructed homes in Falmouth can be expensive. Redfin Real Estate reported 24 new homes for sale in Falmouth on September 16, 2019. Those homes ranged from \$419,900 to \$4,290,000 in purchase price, with a median of \$599,000 and an average of almost \$1,099,000.
- **Reference:** Redfin Corporation. 2019. "New Homes in Falmouth." September 16.  
<https://www.redfin.com/city/29632/MA/Falmouth/new-homes>
- Only a small fraction of the homes purchased in Falmouth during a given year are newly constructed homes.
- Only a small fraction of building permits issued in Falmouth during a given year are for new construction.

## 5. **AFFORDABLE HOUSING: LIMITED IMPACT PLUS POSITIVE BENEFITS**

- Without extraordinary financial and/or other support, those looking for Affordable Housing generally do not opt for new construction.
- The superior energy efficiency of Stretch Code construction results in savings on utility bills, making it easier for those who have found affordable housing to continue living in that housing, be they owners or renters.
- This could be a factor in making residence in Falmouth more affordable for millennials and young adults.
- According to a study by the University of North Carolina at Chapel Hill (UNC) Center for Community Capital and the Institute for Market Transformation (IMT), "borrowers living in energy efficient homes have a lower loan default rate than those living in conventional homes." For each point on the Home Energy Rating System index of efficiency, the risk of mortgage default on a home drops."  
**Reference:** Weeks, Katie. 2013. "Owners of Energy-Efficient Homes Less Likely to Default on Mortgages." *The Journal of the American Institute of Architects*. March 20.  
[https://www.architectmagazine.com/technology/owners-of-energy-efficient-homes-less-likely-to-default-on-mortgages\\_o](https://www.architectmagazine.com/technology/owners-of-energy-efficient-homes-less-likely-to-default-on-mortgages_o)

## 6. **BUSINESS OWNERS: LIMITED IMPACT PLUS POSITIVE BENEFITS**

- The only business owners who will be directly affected will be those constructing large new buildings as specified in # 3 above.
- Those building large commercial buildings are in for the long term. The benefits of lower utility bills go on for the long term.
- Lower utility bills make the bottom line more attractive and the business more successful and sustainable.

## 7. TRAINING OF BUILDING INSPECTORS: FREE

- The Training is offered by the Mass Save statewide energy efficiency program in coordination with the Board of Building Regulations and Standards (BBRS) and the Department of Energy Resources (DOER).
- Continuing education credits are available for the training: Building Official Certification (BOCC), Construction Supervisor License (CSL), American Institute of Architects (AIA), and Building Performance Institute (BPI).

## 8. TIME DEMANDS ON BUILDING INSPECTORS: LIMITED

- Building inspectors are already familiar with the Stretch Energy Code
- Insofar as the Stretch Code uses the HERS rater to certify the energy efficiency of a building, some burden of inspection is lifted off town building departments, freeing them up for other matters.

## 9. ADVANTAGES FOR BUILDERS.

- The Stretch Energy Code is a code that most builders are already familiar with.
- The Stretch Energy Code offers builders additional verification to ensure systems are installed properly.
- The Stretch Energy Code levels the field for builders who want to reduce greenhouse gas emissions and offer buildings that minimize operational energy costs for residential and commercial buyers.
- Reduced operational energy costs make a builder's projects more attractive to residential and commercial buyers who are committed to remaining in place for the long term.
- Adoption of the Stretch Code brings more uniformity in codes for builders across the Cape and the Commonwealth.
  - As of September 10, 2019, 273 of the 351 cities and towns in Massachusetts have already adopted the Stretch Energy Code.
  - Those 273 cities and towns house 84.5 % of the Massachusetts Population of 6,794,422 persons.
  - 10 of the 15 towns on Cape Cod have already adopted the Stretch Code: Mashpee, Yarmouth, Dennis, Brewster, Harwich, Chatham, Orleans, Wellfleet, Truro, and Provincetown.
  - On Martha's Vineyard, 4 of the 8 Municipalities have adopted the Stretch Code: Aquinnah, Chilmark, Tisbury, and West Tisbury.
  - Nantucket has adopted the Stretch Energy Code.
  - **Reference:** Massachusetts Department of Energy Resources. 2019. "Stretch Code Adoption, By Community." September 11.  
<https://www.mass.gov/files/documents/2019/09/11/stretch-code-towns-adoption-by-community-map-and-list.pdf>

## 10. STRETCH CODE CHOICES FOR BUILDERS: 3 OPTIONS FOR COMPLIANCE, EACH WITH OPTIONS OF ITS OWN:

1. THE ENERGY RATING INDEX (ERI) AND the Home Energy Rating System (HERS).
2. ENERGY STAR version 3.1
3. PASSIVE HOUSE CERTIFICATION

## 11. The ENERGY RATING INDEX (ERI) and the Home Energy Rating System (HERS)

- The ERI compliance path evaluates the energy efficiency of a building by calculating a numerical integer value based on a linear scale constructed such that the reference design that a residential building is compared to has an Index value of 100, and a residential building that uses no net purchased energy has an Index value of zero (0).
- Each integer value on the scale represents a one (1) percent change in the total energy use of the rated design relative to the total energy use of the ERI reference design.
- The ERI evaluates all energy used in the residential building.
- In Massachusetts, the Home Energy Rating System (HERS) index is the approved ERI approach. It is the easiest option to comply with and is chosen most often. The lower the score the better. The maximum score under HERS must be no greater than 55.
- **Reference:** "State of Massachusetts Adopts Energy Rating Index Compliance Option to State Energy Code." RESNET. Oct 25, 2016. <https://www.resnet.us/articles/state-of-massachusetts-adopts-energy-rating-index-compliance-option-to-state-energy-code/>

## 12. ENERGY STAR, version 3.1

- The Energy Star version 3.1 compliance path provides flexibility to select a custom combination of measures for each home that is equivalent in performance to the minimum requirements of the ENERGY STAR Reference Design Home, with equivalent performance assessed through energy modeling.
- A HERS Index score is calculated in the same way as under the ERI path. But ENERGY STAR projects are not held to a maximum HERS score of 55 as in the ERI path. ENERGY STAR uses other verifications of energy efficiency.
- **Reference:** ENERGY STAR. "ENERGY STAR Certified Homes, Version 3.1 (Rev. 05) National Program Requirements." Accessed September 16, 2019.  
[https://www.energystar.gov/ia/partners/bldrs\\_lenders\\_raters/downloads/ES\\_Combined\\_Path\\_v3.1.pdf](https://www.energystar.gov/ia/partners/bldrs_lenders_raters/downloads/ES_Combined_Path_v3.1.pdf)

## 13. PASSIVE HOUSE CERTIFICATION

- Passive building comprises a set of design principles used to attain a quantifiable level of energy efficiency within a specific comfort level. A passive building is designed and built in accordance with the following five building-science principles:
- Continuous insulation throughout the entire envelope without any thermal bridging.
- An airtight building envelope, preventing infiltration of outside air and loss of conditioned air.
- High-performance windows and doors.
- Solar gain managed so as to exploit the sun's energy for heating purposes in the heating season and to minimize overheating during the cooling season.
- Balanced heat-and-moisture-recovery ventilation.
- Minimal space conditioning.
- **Reference:** Passive House Alliance. "Passive House Principles." Accessed September 17, 2019.  
<https://www.phius.org/what-is-passive-building/passive-house-principles>
- The specific heat demand, as modeled by a Passive House certified consultant using Passive House Institute US ("PHIUS") or Passive House Institute ((PHI") approved software, must be less than 10 kBtu/ft<sup>2</sup>/yr.  
**Reference:** Energy Code and Standards Specialist. Massachusetts Energy Code Technical Support. Mass Save. 855-757-5717 [www.MassSave.com/EnergyCode](http://www.MassSave.com/EnergyCode)

## 14. THE STRETCH ENERGY CODE: TESTING AND INSPECTING

- The **performance** of the house or other building is **tested** to make sure that it does not waste energy.
- Testing is conducted **during construction** to allow the builder to make corrections before it's too late.
- For example, small air gaps can reduce insulation effectiveness by 50% or more.
- Tests are conducted to ensure that things have been installed correctly and operate efficiently.
- A HERS Rater does multiple site visits to inspect the quality of the insulation installation and confirm the installation of energy efficient mechanical equipment and lighting.
- The testing produces a numerical score that indicates the level of energy efficiency: **the HERS Index score** (Not applicable to Passive House).

## 15. VERIFYING AND ADVISING

- A certified Home Energy Rating System (HERS) professional conducts a series of diagnostic tests, using the Residential Energy Services Network (RESNET) Accredited Rating Software to calculate the HERS score.
- The ENERGY STAR Homes v3.1 option also requires testing and verification by a certified HERS Rater.
- For the Passive House option, testing and verification are performed by a Certified Passive House Consultant
- The rater/consultant advises the builder how to achieve the desired score, and tests and informs the builder what the score is in real time, so that things don't have to be taken apart and done over later.
- The HERS Rater produces a report showing a cost/benefit analysis for the recommended improvements along with the expected return on investment.
- **Reference:** "What is an Energy Rating?" RESNET HERS INDEX. April 28, 2019.  
<https://www.hersindex.com/articles/what-is-an-energy-rating/>

## 16. HERS SCORES:

- The HERS score is a measure of a building's total expected energy use and overall efficiency.
- The HERS scoring system is like the game of golf: the lower the score, the better the performance.
- A home built to the 2006 International Energy Conservation Code (IECC) has a HERS score of 100.
- Every point on the HERS Index below 100 is a 1% improvement in energy efficiency.
- A score of zero would represent a home that uses zero net fossil-fuel energy.
- A home with a HERS score of 55 is 45% more efficient than a home built per the 2006 IECC.
- A HERS score no higher than 55 is required for the ERI HERS Stretch Code compliance option.

17. **STRETCH CODE OFF-SETS or TRADE-OFFS:** With the HERS Stretch Code compliance option, there are choices that allow a builder to use less efficient (and less expensive) components in part of the design and yet still achieve the low required HERS Index Score by installing more efficient components in other parts.

**Some examples of systems/features the builder can work with in this way:**

- More efficient systems for heating cooling, and domestic hot water.
- Orientation of the house.
- On-site renewable energy systems, such as solar photovoltaic arrays and solar thermal DHW systems.
- Insulation R-values
- Prevention of Duct leakage

## 18. TESTS REQUIRED IN STRETCH CODE CONSTRUCTION

- BLOWER DOOR TEST **(also required in Base Code Prescriptive Path construction)**
  - identifies amount and location of air leaks in the building envelope (including exterior walls, above and below grade)
  - determines the volume of air moving through the building envelope. The results are used to determine how many air changes per hour (ACH50) occur. Massachusetts requires a maximum of 3 ACH50 for all homes
- DUCT LEAKAGE TEST: **(also required in Base Code Prescriptive Path construction)**
  - Total duct leakage: identifies the amount of leakage from HVAC distribution ducts
- WHOLE-HOUSE MECHANICAL VENTILATION TEST **(also required in Base Code Prescriptive Path construction)**
- TEST OF TOTAL DUCT LEAKAGE TO THE OUTDOORS **(NOT required in the Base Code Prescriptive Path)**
- **Reference:** "What is an Energy Rating?" RESNET HERS INDEX. April 28, 2019.  
<https://www.hersindex.com/articles/what-is-an-energy-rating/>
- **Reference:** Energy Code and Standards Specialist. Massachusetts Energy Code Technical Support. Mass Save. 855-757-5717 [www.MassSave.com/EnergyCode](http://www.MassSave.com/EnergyCode)

## 19. SEALING THE BUILDING ENVELOPE: CAN BE IDENTICAL TO THE BASE CODE PRESCRIPTIVE PATH

- The ERI (HERS) option and the ENERGY STAR option are NO DIFFERENT THAN THE BASE CODED PRESCRIPTIVE PATH: The maximum allowable air changes per hour at 50 pascals (Pa) pressure differential are 3 (3 ACH50).
- The Stretch Code Passive House requirement is different. The Passive House must be tighter.
- ADVANTAGES OF SEALING A BUILDING TIGHT (Stretch Code, Base Code, or Prescriptive Path)
  - prevents waste of energy used for heating and cooling
  - Increases comfort inside (fewer drafts, less noise)
  - reduces infiltration of outdoor air pollutants (allergens, dust, radon)
  - reduces temperature differences between rooms
  - prevents outside moisture from getting into wall cavities
  - prevents condensation due to leakage of warm indoor air into cold, unheated wall cavities and attics
  - prevents buildup of mold and mildew that can damage framing and insulation
  - lowers utility bills: (1) less waste of energy purchased for heating and cooling and (2) greater energy efficiency of other systems such as HVAC, Windows, and Insulation due to consistency of temperature and air quality from room to room
  - better health and fewer health care expenditures due to reduction in mold, mildew, and other allergens

## 20. VENTILATION

- The ERI (HERS) option and ENERGY STAR option are **NO DIFFERENT THAN THE BASE CODED PRESCRIPTIVE PATH.** The Massachusetts residential energy code requires that a mechanical ventilation system be installed in **every new home** to ensure that the inside air is replaced with outside air on a regular basis.
- Every ventilation system must move enough air to meet either the ENERGY STAR Certified Homes Version 3.1 requirements, ASHRAE 62.2-2013 requirements, or a formula provided in the Massachusetts amendments. The required airflow is based on the square footage of the house and the number of bedrooms.
- The Stretch Code Passive House compliance option is somewhat different. It requires one of the “Balanced” mechanical ventilation systems (see # 21 below)

## 21. TYPES OF MECHANICAL VENTILATION SYSTEMS.

- **Exhaust only:** fans remove air, and air is drawn in through cracks and leaks in the building’s exterior.
- **Supply only:** fans pull air in, and the system relies on cracks and leaks to exhaust stale air out.
- **Balanced systems:** fans pull air from outside and exhaust air from inside at the same time.
  - Heat Recovery Ventilators (HRVs) transfer heat from one airstream to another.
  - Energy Recovery Ventilators (ERV) transfer heat and moisture from one airstream to another.
- **Reference:** Masssave. “Residential Ventilation System Requirements.” Energy Code Technical Support. [https://www.masssave.com/-/media/Files/PDFs/Partners/Residential-Ventilation-System-Requirements-\(3\).pdf?la=en&hash=7BB7307F70188743A101EC74F88089CDA8719ED0](https://www.masssave.com/-/media/Files/PDFs/Partners/Residential-Ventilation-System-Requirements-(3).pdf?la=en&hash=7BB7307F70188743A101EC74F88089CDA8719ED0)

## 22. WEIGHING THE COSTS OF MORE ENERGY EFFICIENT CONSTRUCTION:

- “A 2016 study conducted by the EPA compared the cost of houses built according to the 2009 ICC codes with Energy Star–certified homes (version 3). The houses were 2,400 sq. ft. and spread over 7 climate zones. The additional cost of the Energy Star homes ranged from \$1,463 to \$2,117. (The corresponding monthly energy savings ranged from \$23 to \$86.)  
**Reference:** Ireton, Kevin. 2017. “Why Don’t We Build Better Houses?” *Fine Home Building*. Issue 267. Spring/Summer. Pages 70 – 75.
- Buildings matter. “Buildings have a big impact on greenhouse gas emissions, in two ways: (1) their operating energy, the total impact of the energy needed to heat, cool, and ventilate a home or other building, and to power its lights, outlets, and appliances; and (2) their embodied energy, which includes everything needed to create and install a material or product and, some argue, to recycle it as well.” [Therefore] “Energy improvements with a return on investment of 5% or higher are a safe place to put any extra money, and even lower returns can represent an affordable donation toward environmental stewardship, with better returns than bank savings accounts.”  
**Reference:** Maines, Michael. 2018. “Climate Change for Builders: The Biggest Opportunity.” *Fine Home Building*. November 2. <https://www.finehomebuilding.com/2018/11/02/climate-change-builders-biggest-opportunity>

## 23. COSTS OF STRETCH CODE CONSTRUCTION OVER BASE CODE PRESCRIPTIVE PATH CONSTRUCTION

- Additional costs depend on what the builder chooses.
- The Department of Energy Resources (DOER) “Stretch Code Residential Cash Flow Analysis” (updated 2017) estimated differences in costs when a builder chose the Stretch Energy Code ERI HERS option for compliance.
- That Analysis showed that, for both a detached single-family 3-bedroom house (2,550 sq.ft.) and an attached 3-bedroom Townhome (2,000 sq.ft.), a builder could build a Stretch Code house that was identical to the same type and size Base Code Prescriptive Path house, in terms of requirements for lighting, prevention of air infiltration, and insulation (of floors, walls, basement, and ceilings flat), and still achieve the required low HERS index score for energy efficiency, with the installation of more efficient window, heating, cooling, and domestic hot water systems, and with better prevention of duct leakage to the outside.
- For the detached single-family house, with \$500 for the HERS raster, \$500 for more energy efficient windows, and \$200 for superior prevention of duct leakage to the outside added into the total, the total added cost of

construction over and above the Base Code Prescriptive Path, was estimated to range between about \$2,400 to about \$4,000, depending on the cost the builder incurred from his/her choices among the factors specified above.

- For the attached Townhome, with \$500 for the HERS rater and \$200 for superior prevention of duct leakage to the outside added into the total, the total added cost of construction over and above the Base Code was estimated to range between \$2,600 and \$3,900, depending on the cost the builder incurred from his/her choices among the factors specified above.
- **REBATES:** According to that Cash Flow Analysis, rebates of approximately \$1,400 - \$4,500, depending on systems installed, were available from the Mass Save Residential New Construction Program.
- **SAVINGS ON UTILITY BILLS:** The superior efficiency of the Stretch Code building reduces costs for heating, cooling, and powering, resulting in a positive cash-flow in the first year and the years thereafter, with the exception of the Townhome with natural gas heat where the positive cash flow was estimated to begin in the second year. Savings were estimated to range from \$213 to \$704 per year, depending on the systems installed, and were expected to begin in the first year.
- The DOER Cash Flow analysis facilitates calculations that suggest that, on average, after the rebates, the additional costs of the Stretch Code over the Base code, if amortized, would have added about \$148 to the down payment and \$81 to the annual mortgage payment (assumes 30-year mortgage, 10 % down payment, at 4 % APR).
- **Reference:** Massachusetts Green Communities Division. Department of Energy Resources. "Stretch Code Residential Cash Flow Analysis." 2016, updated in 2017. <https://www.mass.gov/service-details/stretch-code-residential-cash-flow-analysis>

#### 24. CAMBRIDGE MASSACHUSETTS: STATEMENTS REGARDING COSTS OF THE STRETCH CODE (2017)

- **NEW RESIDENTIAL CONSTRUCTION: SAVINGS EXCEED THE COSTS:** "in almost all cases, expected energy savings from complying with the stretch energy code will exceed the cost. Projects that are designed to meet the HERS rating targets can do so cost effectively, as many builders have already demonstrated through the voluntary Energy Star Homes program."  
**Reference:** Cambridge Massachusetts. "Stretch Energy Code Residential Buildings FAQ." Accessed September 16, 2019.  
[https://www.cambridgema.gov/~media/Files/CDD/ZoningDevel/GreenBuildings/StretchCode/Residential\\_FAQ.pdf?la=en](https://www.cambridgema.gov/~media/Files/CDD/ZoningDevel/GreenBuildings/StretchCode/Residential_FAQ.pdf?la=en)
- **NEW COMMERCIAL CONSTRUCTION: SLIGHTLY HIGHER INITIAL COSTS:** "Initial adoption of a higher performance standard for buildings is likely to result in slightly higher first costs for construction, estimated to be approximately in the 1% to 3% range for commercial buildings. However, after energy cost savings on heating and electricity are included, these higher performance standards save money. In addition, the electric and gas utilities in the state provide financial incentives [rebates] that further reduce the upfront costs of high performance buildings, and allow for faster returns on the investment in energy saving measures. Case studies of commercial buildings following the energy efficiency recommendations on which the commercial code changes are based have shown paybacks of 1 to 2 years, when standard incentives from electric utilities are included on the benefits side."  
**Reference:** Cambridge Massachusetts. "Stretch Energy Code Commercial Buildings FAQ." Accessed September 16, 2019.  
[https://www.cambridgema.gov/~media/Files/CDD/ZoningDevel/GreenBuildings/StretchCode/Commercial\\_FAQ.pdf?la=en](https://www.cambridgema.gov/~media/Files/CDD/ZoningDevel/GreenBuildings/StretchCode/Commercial_FAQ.pdf?la=en)

#### 25. ENERGY EFFICIENCY: A WORTHWHILE INVESTMENT

- "Energy efficient houses are healthier and more comfortable to live in."
- "They are also significantly less expensive than a house built to standard code," once you factor in operating costs.
- "Economies of scale allow production builders to reduce the costs of high-performance building more easily."
- **Reference:** Ireton, Kevin. 2017. "Why Don't We Build Better Houses?" *Fine Home Building*. Issue 267. Spring/Summer. Pages 70 – 75.
- Energy efficiency reduces operating costs for businesses, improving the bottom line.

26. **OTHER GENERAL BENEFITS** of the Stretch Energy Code.

- Stimulates innovation, business expansion, and jobs in energy efficiency and renewable energy.
- Puts downward pressure on energy prices for everyone, as conservation and efficiency lower demand.
- Assures some reduction of greenhouse gas emissions.
- Is a positive, proactive step. It can signal that people believe that they can make a difference in the struggle against global warming and climate disruption, and that they can keep their community sustainable.

27. **BENEFITS FOR FALMOUTH:**

- Minimizing dependence on carbon-based fuels and promoting energy conservation and efficiency technologies and practices in line with Falmouth's Local Comprehensive Plan (2016).
- Reducing greenhouse gases in line with Falmouth's Climate Protection Action Plan (2005).
- Reducing energy costs for owners and occupants of residential structures and commercial buildings to be constructed in Falmouth.
- Attracting and keeping Millennials/Young adults in Falmouth by responding to recent manifestations of their support for strong action to combat global warming and climate disruption.

**Reference:** "Memo: U.S. Voters Strongly Support Climate Solutions." Data For Progress. March 19, 2019.

<https://www.dataforprogress.org/the-green-new-deal-is-popular>

- Earning **Designation as a Massachusetts Green Community** which will make Falmouth eligible for grants to pay for energy equipment upgrades and energy efficiency programs, in its municipal buildings, operations, and schools.

28. What does Falmouth have to do to earn designation as a Massachusetts Green Community?

- Adopt the Stretch Energy Code
- Update its Energy Reduction Plan—Falmouth has a grant to have Cape Light Compact assist with this update.

29. **The MASSACHUSETTS GREEN COMMUNITIES PROGRAM?**

- The Green Communities Program provides grants, technical assistance, and support to help municipalities reduce energy use and reduce costs in municipal buildings, operations, and schools.
- Grants are offered once a year.
- The first-year grant is \$125,000 plus an additional amount based on a formula that considers a town's per capita income and population.
- In subsequent years, competitive grants are available up to \$250,000.

**Reference:** Massachusetts Green Communities Division.

<https://www.mass.gov/orgs/green-communities-division>

30. **EXAMPLES** of what other towns have used Green Communities Grant money for:

- |   |  |
|---|--|
| • Administrative Costs                                  | • Building Weatherization                      |
| • Energy Management Services Contracts                  | • New Roofs and Roof Insulation                |
| • Energy Manager/Energy Coordinator positions           | • Insulated Bay Door at DPW                    |
| • Energy modeling analytics software for buildings      | • Storm Windows                                |
| • HVAC Energy Management Systems                        | • Energy controller systems at town well pumps |
| • Replacement of classroom unit ventilators             | • Solar Hot Water System at a Fire Station     |
| • Cooling System Upgrades                               | • Roof mounted solar PV system for new library |
| • Conversion from Oil to Natural Gas Condensing Boilers | • Purchase of Electric Vehicles                |
| • Boilers at Police Department Headquarters             | • Electric Vehicle Charging Stations           |
| • Wireless Thermostats                                  | • Walk-in refrigeration controls               |
| • High Efficiency (LED) Interior Lighting Upgrades      | • Energy Education Outreach in Schools         |
| • BigBelly Solar Powered Garbage Compactors             | • Energy Saving Campaign for residents         |

**Reference:** Green Communities Division. 2018. "Green Community Designations Reach 240." Massachusetts Department of Energy Resources. December 27. <https://www.mass.gov/files/documents/2019/08/19/map-summary-green-communities-240.pdf>

### 31. WHERE DOES THE GREEN COMMUNITY MONEY COME FROM?

- The main source is the payments that the big electricity utility companies make to the Regional Greenhouse Gas Initiative (RGGI) that Massachusetts participates in with other Northeastern and Mid-Atlantic states. That Initiative requires the utilities to pay for CO<sub>2</sub> “allowances” based on the amount of their emissions.  
**Reference:** [“The Regional Greenhouse Gas Initiative. 2019.”](#)  
<https://www.rggi.org/program-overview-and-design/elements>
- In addition, in Massachusetts, some Green Community money comes from the Alternative Compliance Payments that the electricity suppliers make under the Massachusetts Renewable Energy Portfolio Standard (RPS) and Alternative Energy Portfolio Standard (APS) regulations. A payment is based on the extent to which a supplier falls short of meeting its obligations through the production or purchase of renewable energy.  
**Reference:** Massachusetts Department of Energy Resources. “Alternative Compliance Payments (ACP) Rates and Information.”  
<https://www.mass.gov/service-details/alternative-compliance-payments-acp-rates-and-information>  
**Reference:** Massachusetts Office of Energy and Environmental Affairs. Press Release. “Baker-Polito Administration Designates 25 Cities and Towns as Green Communities.” December 28, 2017.  
<https://www.mass.gov/news/baker-polito-administration-designates-25-cities-and-towns-as-green-communities>
- For more information regarding the sources of Green Community money and the programs and services Massachusetts has used that money for, see:  
**Reference:** Massachusetts Department of Energy Resources. “RGGI Auction Proceeds & Investments.”  
<https://www.mass.gov/service-details/rggi-auction-proceeds-investments>

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<https://www.nantucket-ma.gov/DocumentCenter/View/27347/Town-of-Nantucket-Green-Communities-and-Stretch-Code-Presentation---June-3-2019>

Diane Davidson

#20

**From:** [REDACTED] Lynch / Kirk  
**Sent:** Friday, September 20, 2019 6:58 AM  
**To:** Diane Davidson  
**Cc:** clynch@lawrencelynch.com; dchristiani@lawrencelynch.com; zfarkes@borregosolar.com; [REDACTED]  
**Subject:** Re: Petition Article Presentation

Hi Diane:

This will confirm that I will attend the meeting at 7:45 p.m. on Monday, September 23, 2019.

Thanks.

Ed Kirk

-----Original Message-----

From: Diane Davidson <diane.davidson@falmouthma.gov>

To: [REDACTED]

Cc: clynch@lawrencelynch.com <clynch@lawrencelynch.com>; dchristiani@lawrencelynch.com <dchristiani@lawrencelynch.com>

Sent: Thu, Sep 19, 2019 11:46 am

Subject: Petition Article Presentation

Dear Mr. Kirk,

The Board of Selectmen invites you to give a 5-minute presentation of your November 2019 Town Meeting petition Article #20 at the Board of Selectmen's meeting on Monday, September 23, 2019 under the Business portion of the meeting, which begins at 7:45 p.m., in the Selectmen's Meeting Room, Town Hall.

Please confirm that you, or a representative, are available to attend and make the presentation.

Thank you.

*Diane S. Davidson  
Office Manager/Licensing  
Office of the Town Manager and Selectmen  
Town of Falmouth  
59 Town Hall Square  
Falmouth, MA 02540  
[diane.davidson@falmouthma.gov](mailto:diane.davidson@falmouthma.gov)  
(508) 495-7321*

**Diane Davidson**

# 21

**From:** Sandy Faiman-Silva [REDACTED]  
**Sent:** Tuesday, September 17, 2019 7:42 AM  
**To:** Diane Davidson  
**Subject:** Re: Petition Article Presentation

Dear Diane,

Yes, I will attend Monday's meeting to present on the Petition Article.

Thank you.

Sandra

Sandy Faiman-Silva, Ph.D.  
508-274-1131  
sfaiman@aol.com

-----Original Message-----

**From:** Diane Davidson <diane.davidson@falmouthma.gov>  
**To:** Sandy Faiman-Silva [REDACTED]  
**Sent:** Mon, Sep 16, 2019 4:07 pm  
**Subject:** Petition Article Presentation

Dear Ms. Faiman-Silva,

The Board of Selectmen invites you to give a 5-minute presentation of your November 2019 Town Meeting petition Article #21 at the Board of Selectmen's meeting on Monday, September 23, 2019 under the Business portion of the meeting, which begins at 7:45 p.m., in the Selectmen's Meeting Room, Town Hall.

Please confirm that you, or a representative, are available to attend and make the presentation.

Thank you.

*Diane S. Davidson  
Office Manager/Licensing  
Office of the Town Manager and Selectmen  
Town of Falmouth  
59 Town Hall Square  
Falmouth, MA 02540  
[diane.davidson@falmouthma.gov](mailto:diane.davidson@falmouthma.gov)  
(508) 495-7321*

Diane Davidson

# 22

**From:** Christine Kircun [REDACTED]  
**Sent:** Wednesday, September 18, 2019 7:38 PM  
**To:** Diane Davidson  
**Subject:** Re: FW: Petition Article Presentation

Hello Diane,

I will be giving the main presentation, and Madhavi Venkatesan is the representative who will help with the presentation and any technical questions that may come up. I plan on emailing you the presentation sometime during the weekend.

Thanks,  
~Christine Kircun

On Wed, Sep 18, 2019 at 5:22 PM Diane Davidson <[diane.davidson@falmouthma.gov](mailto:diane.davidson@falmouthma.gov)> wrote:

Dear Christine,

Just a follow-up from our phone conversation: would you mind forwarding the name of the person who will be giving the presentation to the Board of Selectmen on Monday, September 23? (I will be publishing the Selectmen's agenda tomorrow afternoon and will need to list the presenter's name.)

Thank you very much,

Diane

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**From:** Diane Davidson  
**Sent:** Monday, September 16, 2019 4:09 PM  
**To:** [REDACTED]  
**Subject:** Petition Article Presentation

Dear Ms. Kircun,

The Board of Selectmen invites you to give a 5-minute presentation of your November 2019 Town Meeting petition Article #22 at the Board of Selectmen's meeting on Monday, September 23, 2019 under the Business portion of the meeting, which begins at 7:45 p.m., in the Selectmen's Meeting Room, Town Hall.

Please confirm that you, or a representative, are available to attend and make the presentation.

Thank you.

*Diane S. Davidson*

*Office Manager/Licensing*

*Office of the Town Manager and Selectmen*

*Town of Falmouth*

*59 Town Hall Square*

*Falmouth, MA 02540*

*[diane.davidson@falmouthma.gov](mailto:diane.davidson@falmouthma.gov)*

*(508) 495-7321*

**From:** Allan Wilson [REDACTED]  
**Sent:** Wednesday, September 18, 2019 7:31 PM  
**To:** Diane Davidson  
**Subject:** Re: Accept Invitation for a presentation about petition article #23

Dear Ms. Davidson, Thank you for your email. We will have members of the Joe Q Veteran Coffee Break will do the presentation. They include: Ahmed Mustafa, Kathleen Jespersen, Lupika Lopes and myself. BWe will make sure that the presentation is no longer than 5 minutes unless there are questions. Also, State Representative David Vieira may attend as well and I will let you if he is attending.

We do look forward to the presentation and will have UBS drive for the presentation.  
 Thank you, Allan Wilson

On Wed, Sep 18, 2019 at 5:16 PM Diane Davidson <diane.davidson@falmouthma.gov> wrote:

Dear Mr. Wilson,

Thank you for confirming that you will be in attendance at the Monday, September 23, 2019 Board of Selectmen's meeting to give a 5-minute presentation on petition article #23. Would you please let me know if you or Ahmed Mustafa will be giving the presentation (as I need to list the presenter on the agenda, which will be posted tomorrow afternoon).

In response to your request to provide an additional presentation to the Board of Selectmen: each petitioner is invited to give a presentation to the Board of Selectmen during one of its meetings before town meeting, in this case scheduled for September 23. Your organization is certainly welcome to give a presentation at town meeting on November 12.

If you will have a PowerPoint presentation for Monday's meeting, you may email it to me, and I will load it onto the computer in the Selectmen's meeting room, or you may bring a USB drive with you.

Best regards,

Diane

*Diane S. Davidson*

*Office Manager/Licensing*

**TOWN OF FALMOUTH**  
**BOARD OF SELECTMEN**

**Meeting Minutes**

**Open Session**

**MONDAY, SEPTEMBER 9, 2019**  
**SELECTMEN'S MEETING ROOM**

**TOWN HALL**

**59 TOWN HALL SQUARE, FALMOUTH, MA 02540**

Present: Megan English Braga, Chair; Doug Brown, Vice Chair; Doug Jones; Sam Patterson.  
Absent: Sue Moran.

Others Present: Julian Suso, Town Manager; Peter Johnson-Staub, Assistant Town Manager; Frank Duffy, Town Counsel.

1. **Chair English Braga called the open session to order at 6:30 p.m. and motioned to convene the executive session under 1. M.G.L. Ch. 30A, s. 21(a)(3) – Discuss response to appeal to U. S. Supreme Court Smythe v. Conservation Commission because to not go into executive session could prejudice ongoing negotiations. Mr. Patterson seconded the motion. 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: Chair English Braga, aye; Mr. Brown, aye; Mr. Patterson, aye; Mr. Jones, aye. Absent: Ms. Moran.**
2. Chair English Braga reconvened the open session at 7:05 p.m.
3. Pledge of Allegiance
4. Proclamations:
  - a. Eagle Scout – Stephen Swenson – Troop 38  
**Mr. Patterson read the proclamation in the packet as a motion. Second Mr. Brown. Vote: Yes-4. No-0. Absent-1.**  
  
Mr. Swenson described his project, cleaned and restored gravestones at the Oak Grove Cemetery. About 11-12 people helped with about 40 hours work. The focus was on the Kathleen Lee Bates grave.
  - b. National Recovery Month – September 2019  
**Chair English Braga read the proclamation in the packet as a motion. Second Mr. Brown. Vote: Yes-4. No-0. Absent-1.**  
  
The Co-Chair Falmouth Commission on Substance Use, described local events occurring this month including an installation at the Falmouth Art Center on 9/20/19 and will have several artists who are in recovery with their work on exhibit. Outreach and education workshop for employers 9/25/19 at Falmouth Public Library with Barnstable County Human Services to talk about role of employers. The commission meets 4<sup>th</sup> Thurs monthly at the Recreation Center. Invited the public to come and provide input to the Commission to benefit the community.
5. Recognition  
Mr. Brown attended a wake for former retired Fire Lt. Dock Henry and acknowledged his service to our Town.  
  
Mr. Brown recognized that Chief Dunne rode his bicycle from NYC to Fenway Park to raise money for families of fallen police officers.
6. Announcements  
Mr. Patterson announced this Thursday the wounded soldier bike ride will take place on the bike path and encouraged all to come out and support the soldiers, begins about 9:30 a.m.

Mr. Patterson noted police night out is 10/1/19 and the FPD will host events behind the FPD station.

7. Public Comment-none.

7:15 p.m. SUMMARY OF ACTIONS

1. Licenses

- a. Approve Application for a Change of Manager of a Farmer Brewery License and Common Victualler License – Bad Martha’s Brewery located at 876 East Falmouth Highway, East Falmouth

Attorney Matt Terry, Ament and Klauer, present with the applicant, Josh Flanders.

Mr. Flanders handles front of the house obligations and more suitable for him to be on site and has experience as manager.

Mr. Jones noted Mr. Flanders responsible for all violations even if Mr. Flanders is not present.

**Mr. Jones motion approval. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

- b. Approve Application for a Change of Manager of a Common Victualler License and an Automatic Amusement Device License – The Tea Room located at 196 Crystal Springs Ave., N. Falmouth

Attorney Matt Terry representing the applicant, this stems from the family formalizing their operations in an LLC.

**Mr. Jones motion approval. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

- c. Approve Application for Special One-Day Wine & Malt Liquor License – Samaritans of Cape Cod & the Islands – Bocce Festival – Falmouth Academy, 7 Highfield Dr. – Saturday, 9/14/19

**Mr. Jones motion approval. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

2. Administrative Orders

- a. Vote to accept donation from New England Endurance Events in the amount of \$1,400 to the Beach Department Donation Account

**Mr. Jones motion approval. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

- b. Approve Letter to MassHousing Regarding 40 Shore Street Affordable Housing Site Approval and Project Eligibility

Mr. Suso explained that the BOS has copy of draft letter indicating site approval application.

Michael Galasso asked for site approval from MA Housing, approving location and conceptual design for the project. Met with neighbors to get them involved in the project, got their input on the density and concept, goal was to inform and involve the neighbors before formal application. Initial meeting with MA Housing that encouraged mostly 3 bedroom units. Met with Town staff that encouraged looking at smaller 2 bedroom units. Economics of this project is to develop without any local or state subsidy and is possible due to location and what Mark believes he will profit from the market rate units. Met with Town and MA Housing staff at the site, they expect to meet energy star, which is more stringent than the Stretch Code. Added garages and first floor bedrooms, along with saving some trees on site. He is also working on two other projects including ten units at Clipper Ship and Megansett.

Proposed letter be revised to support the current plan combination of affordable and market rate projects with existing house renovated to 3 bedrooms and affordable unit being 3 bedrooms.

**Mr. Jones motion to have the Town Administrator work on the letter with recommendation and send letter with updated comments including continuing to encourage one and two bedroom home ownership. Second Mr. Patterson. Yes-4. No-0. Absent-1.**

- c. Approve filing of grant application to MassDEP under Electric Vehicle Incentive Program

**Mr. Jones motion approval subject to Finance Committee approval. Second Mr. Brown. Vote: Yes-4. No-0. Absent-1.**

- d. Vote to accept Local Community Grant Funding from Walmart in the amount of \$3,500.00 to the Police Department Donation Account for Bicycle Safety Helmets for Falmouth Youth Bike Safety

**Mr. Patterson motion approval. Second Mr. Jones. Vote: Yes-4. No-0. Absent-1.**

- e. Vote to approve proposed changes in the 2019-2020 Shellfish Regulations

Chuck Martinsen, Shellfish Constable and Deputy Director of MES, presented recommendations for regulations.

Public Comment-none.

**Mr. Patterson motion approval. Second Mr. Brown. Vote: Yes-4. No-0. Absent-1.**

- f. Affirm staff appointment to County Coastal Resources Subcommittee

JS provided BOS with communication from the Cape Cod Commission and recommended Jen McKay, Conservation Commission Administrator and affirmed her appointment for that purpose.

**Mr. Patterson motion to appoint Jen McKay. Second Mr. Brown. Vote: Yes-4. No-0. Absent-1.**

### 3. Special Events

**New – Recommended:**

- a. Woods Hole Centennial Celebration – Woods Hole Community Association – Water Street from drawbridge to Candle House, Woods Hole – Sunday, 9/22/19  
Close Water Street request 2-7 with event 3-6p.m.

**Mr. Jones motion approval. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

- b. Wedding Ceremony – Old Silver Beach – Motta – Saturday, 9/28/19  
Approval from Beach Superintendent.

**Mr. Jones motion approval. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

### 7:30 p.m. PUBLIC HEARINGS

1. Application for Shellfish Aquaculture Permit – Daniel Ward, Ward Aquafarms, LLC – Site identified as Site B in the Falmouth Statement of Qualifications issued 7/5/2019 within a perimeter of approximately 0.5 acre in Eel Pond Approximately 200' west of Washburn Island

Chair English Braga read the hearing notice.

Daniel Ward, North Falmouth, farming in Megansett since 2011 and part of the Town Plan to use shellfish as part of nitrogen mitigation program, on the Shellfish Advisory Committee to the BOS. He would like to partner with Town to clean up the estuaries.

Mr. Jones acknowledged that the individuals applying tonight were invited to do so.

Mr. Johnson-Staub noted they have been engaging public private partnership to promote nitrogen removal through aquaculture along with new business opportunities, wild harvest shellfish opportunities, and this is a first of hearings for aquaculture permits. This is the first time the Town reached out to solicit qualified

farmers, the terms of the licensing agreement is not just accessing the land, it is an agreement the Town has minimum standards the farmers will follow to get as much nitrogen out of the site that they can expect. Committee of 4 individuals with expertise in this area that reviewed the applications and selected the applicants for the three sites.

Charles Martinsen, Shellfish Constable, added it has been a long time to get to this point and although a lot of information has been publicized and there may be questions/concerns, they have arranged to do another presentation at 9 a.m. Sunday 9/15/19 at the Waquoit Bay National Estuarine Reserve.

Mr. Brown noted the applicant said he would work his way up a year ago. Mr. Ward responded that in this case, the goal is nitrogen removal so there is a given size maximum they can do and a building to that given size to make sure it is done sustainably. They want to maximize nitrogen removed. They will rent equipment, amount that is available will dictate the amount they can do; leaning to Spring 2020 deployment to make sure everything is implemented correctly and sustainable for the long term.

Public Comment-none.

**Mr. Jones motion to close the hearing at 7:39 p.m. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

The BOS made the following findings: that this is what the Town has been moving forward and this is a favorable applicant.

**Mr. Jones motion approval. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

2. Application for Shellfish Aquaculture Permit – Mary M. Murphy, Falmouth Shellfish Cooperative – Site identified as Site A in the Falmouth Statement of Qualifications issued 7/5/2019 within a perimeter of approximately 0.5 acre located in Eel Pond approximately 150’ west of Washburn Island

Chair English Braga read the hearing notice.

Mary Murphy present, been involved in aquaculture for awhile. Same program as the first applicant. Chair English Braga noted this applicant has been vetted. Ms. Murphy plans a Spring 2020 rollout, they will start small and work their way up. There are goals they have to hit for nitrogen removal, requiring a progressive pace.

Public Comment-none.

**Mr. Jones motion to close the hearing at 7:43 p.m. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

The BOS made the following findings: that this is what the Town has been moving forward and this is a favorable applicant.

**Mr. Jones motion approval. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

3. Application for Shellfish Aquaculture Permit – Matthew Weeks – Site identified as Site C in the Falmouth Statement of Qualifications issued 7/25/2019 within a perimeter of approximately 0.5 acre located in Eel Pond approximately 150’ west of Washburn Island

Chair English Braga read the hearing notice.

Matthew Weeks was present, the BOS finds his experience incredible. He will roll it out in the spring and will meet Town targets quickly.

Public Comment-none.

**Mr. Jones motion to close the hearing at 7:46 p.m. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

The BOS made the following findings: that this is what the Town has been moving forward and this is a favorable applicant.

**Mr. Jones motion approval. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

## **BUSINESS**

### 1. Report – Council on Aging

Jim Vieira introduced the members present. Annual Open House will be held at the old Senior Center on 10/16/19 4-6 pm with exhibits. The COA is working on 2020 is to transition into the new building; updating their mission statement; and revamping marketing efforts. Support staff in all they do to help citizens. Produce a newsletter and encouraged all to take a look. Provided a PowerPoint presentation. Final completion of the new Senior Center is expected in December and they intend to open after the holidays. Doors will open around January 2020. Reviewed pictures of the building and described the building, including natural light throughout.

Jill Bishop, Director Senior Center, encouraged community members to come to the center on 10/16/19 to meet municipal partners.

Mr. Suso thanked Mr. Vieira for working through this process for multiple years as the COA Chair and Chair of the Senior Center Building Committee.

### 2. FY2021 Operating Budget Policy, Financial Update and Capital Plan Presentation – Jennifer Mullen, Director of Finance

Jennifer Mullen noted the recommended budget policy in the packet, some minor changes from last year having to do with estimated receipts. New revenue source of the Short Term Rental Tax, but have no estimates at this time. General Stabilization Fund is stable, no need to dip into reserves at this time; this is for an emergency, one time expense that is not usual.

**Mr. Jones motion approval of the budget policy. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

Trust funds invested and Ms. Mullen provided information on long term investing, gain was about \$822,000 on all funds, but have to stop at the date and time. These funds have been invested for years. Significant increase in affordable housing trust fund. This was a good year for funds overall.

Affordable Housing Trust Fund is hard to put an end goal, the money in it comes from the Community Preservation Fund, long term investment. Goal to be at a certain point is a policy discussion, looking at projects the Town has. The money in the Affordable Housing Fund have been spoken for, the CPC meets Thursday night and will look at an article to transfer \$465,000 into the Affordable Housing Fund. This is money already spoken for, all the money set aside for those projects is coming from the AHF.

PowerPoint presentation of the Town Capital Plan. \$11.1 million spending this year. The capital plan keeps reserves in place. Using \$250,000 for overlay surplus and other articles on the books for awhile, projects closed, and reallocate those funds. Ms. Mullen described the process. Initiatives include Menauhant Beach, Chappy Beach Phase 2 Causeway, Water Tank Painting, Road maintenance, Coastal Resiliency, Field Maintenance, and Replace the Gus Canty Gym Floor.

The software package was recommended, the FPD and Consolidated Communications use it, and many MA communities use it. Mr. Jones noted next year the budget is much bigger budget and may need to have other ways for funding given the fire department plan. Ms. Mullen noted that the consolidated funding for a drop off that can fund the fire department plan.

Chair English Braga asked after Fall and further conversation plan for consolidated, the BOS would like to have Ms. Mullen come back to go over the Facilities Capital Plan.

**Mr. Jones motion to send the capital plan to the Finance Committee. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

### 3. Status update from the Department of Public Works on the Palmer Avenue crosswalk at Goodwill Park

Mr. Suso commented that many emails have been received on this proposed crossing and some suggest a question whether this will go forward. The BOS has already voted that this improvement go forward and this will be occurring. Next step is taking it back to MA DOT to sign off and authorize the improvements to be done.

James McLoughlin, Town Engineer, they will submit a full set of construction drawings to MA DOT. They have had several meetings with MA DOT staff. Presented a PowerPoint presentation with pictures and plans reviewed of the area. They are seeking to construct ADA ramp and crossing with access to the park. Path will be 8 feet wide, as is the existing path. Two walk signals facing each way, stop bars, advance warning of the crossing, crossing/pedestrian signal on both sides, both sides have push button signal. Photograph of similar crossing was reviewed. Expect a six month review period.

The cost will be a Town expense. Mr. Jones asked to have a big enough waiting path zone area. The plan will be ADA compliant by maintaining a 5% slope.

Mr. Brown suggested considering an overpass for bicycles. Mr. McLoughlin noted an overpass would be millions as opposed to the approximately \$200,000 for this plan along with being less intrusive to the abutters.

Scott Lyndell, Bikeway and Pedestrian Committee Chair, he believes this makes sense and hopes to move this along.

Elizabeth Seyton thanked the Town for the work done.

**Mr. Jones motion to file the formal construction plans to the MA DOT. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

4. Approve Shellfish Aquaculture License – Great Harbor – Peter Chase and Francis Doohan  
Peter Chase and Francis Doohan present, no changes from previous plan.

**Mr. Jones motion approval. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

5. Presentation of Seacoast Shores Association Beach Plan and Request to file with Conservation Commission

Dan Frawley, Beach Committee Chair, lived in Seacoast Shores since 1965. Presented a PowerPoint presentation. The committee of 12 have been looking at what to do with the beach in the last few years. Discussed, surveyed, and brainstormed a plan, not an engineer plan, but did consult with the engineer. Vetted the plan with Town Manager, Conservation Commission, DPW, Harbormaster, and received positive reaction. The Committee is 100% aligned on this plan. Received unanimous vote of support from about 125 members at the 2018 Seacoast Shores Association Annual Meeting. Spent \$4,000 on engineers in 2018-19 for annual beach profile (measure of sand line on the beach). The sand is likely moving south, ending at Bayside. There are 933 homeowners on Seacoast Shores. Need to request approval to file an NOI with the Conservation Commission for their beach plan, includes a Town easement. Reviewed picture, 300 foot section of the beach. Seacoast Shores Association owns 230 feet, the abutters own to the center line. The Town has an easement, there was a bridge in the 1940's to Washburn Island. The beach gets smaller each year with depletion of the sand.

Problems include erosion, impervious surfaces, access, displacement, and affect property values. Because of the easement, the public has access to the beach. There is no longer a guard working there.

Solutions include adding sand, replace the hardscape with grass, plantings, and sand. Engineer said proposed changes to Bayside Ave., beach will allow natural features to better control surface water run off. Build a new pathway on east end of Bayside Drive East continuing to the waters edge. If they can do that, displacement issue is eliminated. Property values will be maintained and improved. Both abutters are supportive of this plan. Add new signage on beach channel with no swim/no wake. Costs were reviewed, estimated cost for Seacoast Shores Association is \$80,000; not asking for money from the Town. Reviewed current state of the beach and picture of the proposed plan. Front entrance was reviewed, they put \$30,000 into their entrance. They have addressed some rights of ways, they continue to plan for these projects.

Mr. Suso said that this has been addressed with he and Jen McKay, worked through legal questions. The BOS needs to consider whether the BOS will vote to allow it to go to the Conservation Commission, the first step in that proposal and then back to the BOS.

What would be the status of the right of way, the Town maintains the easement over this section of the roadway.

Ed Martitz asked about the viability of the work the DPW did on the road. No one is against rejuvenating the beach, there is an issue about their concern relating to an ongoing legal issue over deeded rights in the neighborhood. Town engineer to address the work the Town did, all of Bayside Drive was reengineered to address erosion. The erosion on the beach is due to water, not the road. Large group he represents is set against this until they are guaranteed that they are not restricted to use like they were on the clubhouse on land deeded to them.

James McLoughlin, Town Engineer, plan developed in 2011, there were 2 catch basins with outfall to the water, outfall abandoned and drainage from basins was redirected to new leaching area and catch basin. Added drainage basins along the road, with intent to contain water and eliminate that outfall that was most likely causing erosion at the end of the road. They have not been involved in discussions to this point on handicap access/erosion, but would be willing to be involved. Some type of license agreement would have to be worked out for maintenance and the Town controlling that right of way. A lot of the streets taken by the Town are in the form of an easement, but they are Town right of ways.

David Smith, 390 Edgewater Dr, East, the beach at south end is gone and it will be gone like that beach if they do not replenish.

Pat MacDonald, Winthrop Drive, he used to be able to walk the beach, this summer it cannot be done. He would like to see it replenished.

Richard Kelleher, 49 Ellsworth Dr., Seacoast is a fragmented neighborhood, bad feelings between the association and large amount of neighborhood. He is not opposed to nourishing the beach, he would like to see what the final plan would be before forming an opinion for what they are proposing. His fear is the loss of the community asset that only 30-40% of the community use and have no access to it. He fears the backdoor is loss of control over the use of the beach. Asked if storm drains take drainage from Bayside to the lower end? What happens with that water?

Mr. McLoughlin explained that the road drains down towards the water, in addition to the area where the work was done, leaching pits were installed in other areas of the road. Intent at the time this was done to pick up all running water and prevent erosion, discharge the surface water into the ground.

Bob Donahue, 405 Seacoast Shores, asked the BOS to let them go in front of the Conservation Commission.

Bob Kowalski, issue of what the BOS needs to vote on tonight is whether there will be work done on the end of Bayside. All are in favor of replenishing the beach, but what the association wants to do is tear up part of the road at Bayside and part of it serves many purposes; bike, walk, wagons there, handicap access presently and better than what they are proposing. He does not think that section needs to be modified at all. They could go to the Conservation Commission to replenish beach and BOS not involved at all.

Jim Lydon, 72 Ellsworth Dr., last 2-3 years his group has put a big cookout there and the way it is set up is great. All at Seacoast Shores is able to come and all are invited. There was a bad experience at the beach a few years ago when not allowed to go use their beach, it came the Town had to do a cease and desist order to allow access to the beach. Most are relying on the BOS in doing the right thing and if not for the BOS standing up for the rest of those on Seacoast Shores they may not have access to the beach.

David Frawley, 398 Edgewater Dr., West, immediate agenda is to improve an asset to the neighborhood disappearing because a force of nature. His mother in law traverses this area and then to sand down to the water with a walker and who is legally blind. He believes the plan that the Association has will be sent to the Conservation Commission.

Mike Sera, 11 Ovington Dr., he supports replenishing the plan and access. The access plan would help his family out. Replenishing the beach for the many children in the neighborhood.

Gordon Smith, support the Association and feels it will better the community, good thing for the whole peninsula.

Janet Demokaoswki, 33 Middle, the second row is all cracked asphalt, she has witnessed a woman with walker getting just to the rocks. There is no handicap access and not good access to get to the beach with beach cart.

Kelly Durfy Cardosa, big attraction is the beach, access is important. She supports this plan.

Steven Cobalt, 79 Seacoast, there is no transfer of the easement. There has been a fight of access, they want to make sure there is no loss of public access, including general public. This is not a private beach, but there are signs that say no use.

Tom Griffen, 30 Edgewater East, not opposed to replenishment of the beach. Asked for absolute commitment that a non seacoast shores member of the clubhouse is not going to be denied access to the beach. They cannot be denied because it is public.

John Gardeneau, Jr. Edgewater Dr, East, supports the improvements. The DPW does not have the time, money, or interest in the solution.

Chair English Braga noted many emails from folks, the BOS has reviewed and read the emails-input on both sides.

Mr. Jones noted improvement through road, leave to the Conservation Commission to make their recommendations. The BOS has no power to break it apart, submit as given or say no. There are improvements that would be better access, he is in favor of going to the Conservation Commission. Access to the beach will not be denied.

**Mr. Jones motion to file with the Conservation Commission. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

6. Request for Sign Variance – Off Premise Promotional Flags on Main Street – Cape Cod Marathon – Falmouth Track Club

Jack Afarian, Race Director, looking to hang banners like they did last year. DPW would help place the pole banners on the light banners, they did half last year, and they did the other half.

JS advised that personnel in the DPW can handle that and for liability he does not want third parties posting or removing the banners. The DPW would install and remove banners after hours. The CC Marathon would put a payment in place to pay for the work. Estimate of \$598. Mr. Jones supported Mr. Suso's suggestion. Mr. Afarian said if they need to do it, they will do it. The flags and banners make the event more festive.

Mr. Jones is concerned that the event was bigger last year. Chair English Braga said that because there are so many more events during the shoulder season, they will address the facts to this case and cannot have individuals who are not Town employees putting things up on Town property.

Mr. Patterson would like a review process and payment in advance. Mr. Suso said that is what will be requested.

**Mr. Patterson motion to approve the banners being up and removed by the DPW, payment to be made for those services. Second Mr. Brown. Vote: Yes-1. No-1. Absent-1.**

The BOS also noted that a sign has been observed on private property, a sign for a special event needs to come before the BOS for approval because it is an off premise sign even if private property.

7. Vote to Form a Subcommittee of Two Selectmen to Review the Request to Name the Emergency Operations Center "The Paul D. Brodeur Emergency Operations Center"

**Mr. Jones motion to have Mr. Jones and Mr. Brown review requests and make recommendations. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

8. Vote to Affirm Appointment of Annie Dean as the Historical Commission Representative to the Community Preservation Committee

Mr. Jones recused himself.

**Mr. Patterson motion to affirm the appointment to a term ending 6/30/21. Second Mr. Brown. Vote: Yes-3. No-0. Absent-1. Recused-1.**

9. Minutes of Meetings:
  - a. Public Session

August 5, 2019

**Mr. Jones motion approval. Second Mr. Brown. Vote: Yes-3. No-0. Absent-1. Abstain-1 (Mr. Patterson).**

August 19, 2019

**Mr. Patterson motion approval with edits. Second Mr. Jones. Vote: Yes-4. No-0. Absent-1.**

- b. Executive Session – August 5, 2019-put over to the next meeting.

10. Individual Selectmen's Reports

Mr. Brown:

Dinner at Waquoit Congregational Church for Safe Plates, well attended.

YMCA legislative lunch, moving forward with signing agreement with land in Falmouth and partnered with Falmouth Aquatics. Childcare program is taking off and lunch program at East Falmouth School.

Falmouth Fund 10 year anniversary.

Coastal Resiliency Action Committee Meeting, designing study for Surf Drive Beach, this study will be on the beach and not Main Street.

Mr. Patterson:

Ribbon cutting for FHS multisport stadium.

Meeting with Friends of Nobska Board Meeting, they have signed a contract with a corporation to begin restoration of the Keeper's house.

Chair English Braga:

Monday 9/16/19 meeting they will hear from Water Quality Management Committee for plan approved by end of this year. Planning will attend as a Board along with other boards to see this initial presentation and make comments/feedback to the WQMC in the Hermann Room at the Falmouth Library at 7 p.m. Another date will be scheduled for the BOS joint meeting with Planning Board.

Mr. Jones:

Asked if we could ask the Steamship Authority representative about the following: 1. Railroad Ave. to load their boat and are blocking the road to load trucks. 2. Will the SSA come back to the BOS with their building design. Mr. Brown noted they are doing some creative ideas. Mr. Suso has invited them to come back to the BOS and hopes to have a date soon.

11. Town Manager's Report

Mr. Suso has met with Chamber of Commerce President Michael Kasparian regarding downtown parking. Requires authorization to enter into lease or purchase of property for these purposes. Potential November Town meeting.

Lorie Duerr, FPS Superintendent, reported a successful start to school. Attended FHS ribbon cutting ceremony.

Reminded all annual 911 ceremony this Wednesday and gather by 9:45 a.m. at FFD HQ at Main St.

12. Review and/or Discuss Correspondence Received

**Mr. Jones motion to adjourn at 10:13 p.m. Second Mr. Patterson. Vote: Yes-4. No-0. Absent-1.**

Respectfully Submitted,

Jennifer Chaves  
Recording Secretary

The minutes of September 16, 2019 are still being finalized.

## REPORT

TO: Board of Selectmen

FROM: Julian M. Suso



DATE: September 20, 2019

- Thank you to members of the Board for your great attention to the initial Report of the Water Quality Management Committee, for which we are seeking public input and which will appear again on the Board's agenda during the months of October and November. Ultimately, Selectmen's action will be required prior to transmitting a proposed Comprehensive Wastewater Management Plan to the State DEP in December.
- I also thank Selectmen for your insightful, critical analysis of the 24, sometimes challenging, proposed Charter Amendments received from the Committee and presented on Monday evening as well. As you know, we have adjusted the Board's edited group of approved Charter Amendment warrant articles for presentation to November Town Meeting and this has been published in today's newspaper as per standard protocol.
- At your upcoming business meeting on Monday, the Board will be considering approving a Notice of Intent to proceed to the Conservation Commission for a proposed vegetation remediation program for Mill Pond which has been discussed with and developed in collaboration with persons in the area, including the East Falmouth Village Association. Selectman Doug Brown has been actively involved in this initiative.
- We will be joined by an EverSource representative on Monday evening for a presentation/update on "double poles," which the Board had requested some time ago.
- We are pleased to be proceeding with replacement of the failing septic system at the West Falmouth Fire Station building and installing a nitrogen-removing septic system given the proximity to West Falmouth Harbor. My compliments to Public Works, the Water Quality Management Committee and others for assisting in this process.