

TOWN OF FALMOUTH
SELECT BOARD
REVISED AGENDA
MONDAY, JULY 27, 2020 – 7:00 P.M.
SELECT BOARD MEETING ROOM
TOWN HALL
59 TOWN HALL SQUARE, FALMOUTH, MA 02540

In accordance with the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20, relating to the 2020 novel Coronavirus outbreak emergency, the July 27, 2020 public meeting of the Falmouth Select Board shall be physically closed to the public to avoid group congregation.

Alternative public access to this meeting shall be provided in the following manner:

1. *The meeting will be televised via Falmouth Community Television.*
2. *Real-time public comment can be addressed to the Select Board utilizing the Zoom virtual meeting software for remote access. This application will allow users to view the meeting and send a comment or question to the Chair via the Chat function. Submitted text comments will be read into the record at the appropriate points in the meeting.*
 - a. *Zoom Login instructions:*
 - i. *Instructions and the meeting link for this specific meeting can be found at the following web address: <http://www.falmouthmass.us/BOS>.*
 - ii. *Please plan on 10-15 minutes of preparation time to log in though it may be less if you have previously used Zoom on the device you will use to access this meeting.*
3. *Additionally public comments may be sent in advance of the meeting to selectboard@falmouthma.gov at least 5 hours prior to the beginning of the meeting. Documents and audio or video files may also be submitted via email. Submitted email comments and documents will be made a part of the meeting record and may be read into the record, summarized or displayed during the meeting at the discretion of the chair.*
4. *Applicants, their representatives and individuals with enforcement matters before the Board may appear remotely and are not required to be physically present. Applicants, their representatives and individuals with enforcement matters before the Board may contact the Town Manager/Select Board's Office to arrange an alternative means of real time participation if unable to use the Zoom virtual meeting software. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting to the Town Manager's Office at townmanager@falmouthma.gov so they may be displayed for remote public access viewing.*

REVISED AGENDA

7:00 p.m. OPEN SESSION

1. Call to Order
2. Pledge of Allegiance
3. Recognition
4. Announcements
5. Public Comment

7:15 p.m. SUMMARY OF ACTIONS

1. Administrative Orders
 - a. Approve extension of Steamship Authority parking lot lease
 - b. Approve request for license to install landscape curbing within the layout of a public way at 19 Ocean Avenue
 - c. Approve letter in support of the application of 197 Palmer Ave., LLC dba Falmouth Sharespace for a grant from the Collaborative Workspace Program through the Massachusetts Development Finance Agency
 - d. Approve letter in support of grant funding application from Woods Hole Oceanographic Institution (WHOI) to the U.S. Commerce Department, Economic Development Administration (EDA) Disaster Recovery Program for pre-design work on the waterfront project

- e. Approve Solar Alternative On-Bill Credit Agreement by and between the Town of Falmouth and Falmouth Landfill Solar II, LLC and authorize the Town Manager to sign on behalf of the town
- f. Review and approve Inter-Governmental Agreement between Town of Falmouth and Falmouth EDIC for development of Phase 2 solar array at closed landfill on Thomas Landers Road by Falmouth Landfill Solar II, LLC (subsidiary of Citizens Energy)
- g. Approve Certificate of Betterment or Special Assessments for roadway betterment taking – final completion of roadway upgrades and cost assessment for Captain Davis Lane
- h. Approve Certificate of Betterment or Special Assessments for roadway betterment taking – final completion of roadway upgrades and cost assessment for Winthrop Drive (west side)

7:30 p.m. PUBLIC HEARINGS

- 1. Wetland/Dock Hearing – Nikolas J., John S., Anthony P. Pentikis/James N. Pentikis Trust UDT for permission to license, retain and maintain existing two (2) 4' x 20' floats in and over the waters of Eel Pond Canal, located at 5 Canapitsit Drive, East Falmouth. Continued from March 9, 2020; April 27, 2020 and June 15, 2020

7:45 p.m. BUSINESS

- 1. Discussion/update on COVID-19 issues
- 2. Request for temporary water use restrictions
- 3. Discussion on request to change polling place location for Precinct 5
- 4. Status discussion of Town Meetings
- 5. Update from Woods Hole Oceanographic Institution (WHOI) on their proposed Woods Hole Iselin Dock and related areas proposed redevelopment project (also known as “CWATER”)
- 6. Approve request for variance to sign code – Cumberland Farms Inc., located at 8 Old Meeting House Road and 400 East Falmouth Highway
- 7. Vote to approve an extension of the term ending date for the Edward Marks Building Advisory Committee
- 8. Status update from EDIC on Solar Phase 2 project and proposed small business loan program
- 9. Initial discussion of periodic departmental reports
- 10. Status update on Town CDBG-COVID State Grant Program application
- 11. Annual town committee reappointments
- 12. Minutes of Meetings:
 - a. Public Session: June 4, 2020; June 15, 2020 (joint meeting with Finance Committee); July 13, 2020
 - b. Executive Session: July 13, 2020 (sessions 1 and 2); vote to release/not to release
- 13. Individual Select Board member’s reports
- 14. Town Manager’s report

Megan English Braga, Chair
 Select Board

**SECOND AMENDMENT
AND
EXTENSION OF LEASE AGREEMENT**

The Town of Falmouth, a municipal corporation of the Commonwealth of Massachusetts (the "Town"), and the Woods Hole, Martha's Vineyard & Nantucket Steamship Authority, a public instrumentality of the Commonwealth of Massachusetts (the "SSA"), having previously on October 27, 2015, entered into a certain Lease Agreement of a certain parcel of land owned by the Town in the Woods Hole Village of the Town and currently used by the SSA as a parking lot, all as more fully described in said Lease Agreement, now jointly intend to amend said Lease Agreement and extend the term thereof for their mutual benefit.

Said Lease Agreement was previously amended by a First Amendment dated September 12, 2016.

Said Lease Agreement as amended is hereby further amended so that paragraph 2, Term of the Lease Agreement, shall read as follows:

2. Upon the expiration of this Lease Agreement at midnight on December 31, 2020, an additional year shall be added to the term expiring at midnight on December 31, 2021.

All other terms and conditions of said Lease Agreement are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals this _____ day of July, 2020 by duly authorized authorities.

Woods Hole, Martha's Vineyard & Nantucket Steamship Authority

By

Robert Davis
General Manager

Town of Falmouth
By its Board of Selectmen

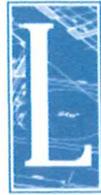
Megan English Braga, Chairman

Douglas C. Brown, Vice Chairman

Doug H. Jones

Samuel H. Patterson

Nancy R. Taylor



LONGFELLOW
DESIGN • BUILD



James Bustamante
Longfellow Design Build
367 Main St
Falmouth, MA 02540
781-718-8580

Attn: Diane Davidson/ Board of Selectman's Office
RE: 19 Ocean Ave Landscape Curbing

Hello Diane,

I'm writing to you today in regards to a project we are working on at 19 Ocean Ave in Falmouth. The home owners would like to do a granite type landscape curbing at the front of their property. The surrounding neighborhood has these types of curbing including both granite and wooden railroad. We are asking to be granted permission by both the selectman's office, as well as the Engineering Department. I've already spoken to the DPW and they were "ok" with the project pending your approval.

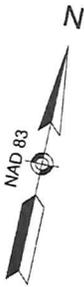
Please let me know if you have any questions regarding this project. I'd be happy to answer them.

Regards,

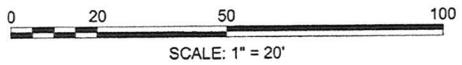
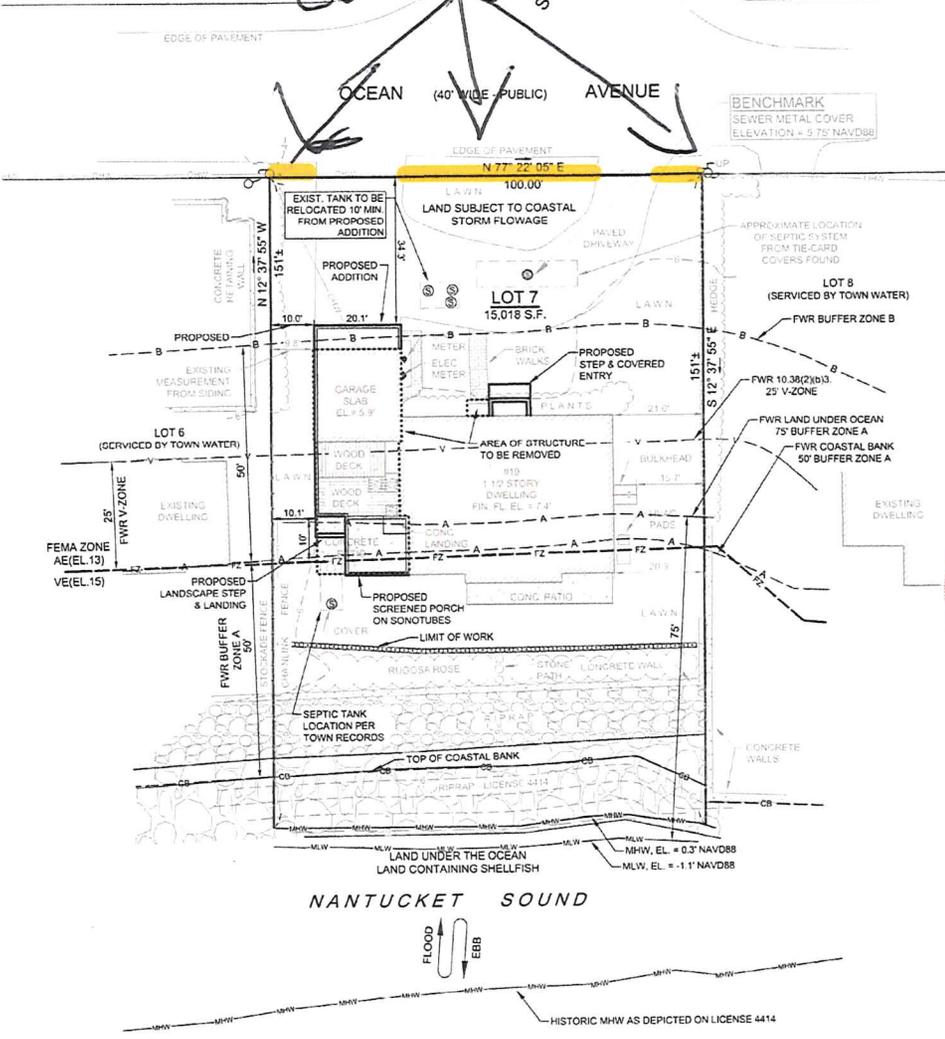
James Bustamante



LOCUS MAP NOT TO SCALE



Curbing Areas
BRIDGE STREET



GENERAL NOTES

LOCATIONS ARE BASED ON AN "ON THE GROUND" INSTRUMENT SURVEY AND ELEVATIONS BASED ON THE NAVD 1988 DATUM. COORDINATE SYSTEM USED IS THE MA-MAINLAND COORDINATE SYSTEM, DATUM: NAD 83, UNITS: U.S. SURVEY FEET.

THE FINISHED FLOOR ELEVATION (FIN. FL. EL.) SHOWN HEREON IS BASED ON AN ASSUMED 1" LOWER THAN THE SURVEYED THRESHOLD ELEVATION. AN INTERIOR INSPECTION OF BUILDINGS WAS NOT PERFORMED.

ZONING DISTRICT: RB

PROPERTY IS LOCATED WITHIN AN AREA HAVING A ZONE DESIGNATION OF AE (ELEV 13) & VE (ELEV 15) BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), ON FLOOD INSURANCE RATE MAP NO. 25001C0737J, WITH A MAP EFFECTIVE DATE OF JULY 16, 2014.

THIS LOT IS WITHIN THE WINDBORNE DEBRIS REGION (ONE MILE FROM SHORELINE) AS SHOWN ON THE FALMOUTH HIGH WIND DISTRICT MAP.

THIS LOT IS NOT LOCATED WITHIN A DEP APPROVED ZONE II WELLHEAD PROTECTION AREA.

THIS LOT IS NOT MAPPED WITHIN A MESA NATURAL HERITAGE AND ENDANGERED SPECIES AREA.

WIND EXPOSURE CATEGORY: ZONE C

LOT COVERAGE
LOT AREA = 15,018 S.F.

EXISTING STRUCTURES: HOUSE, GARAGE & DECKS = 2,644 S.F. (17.6%)
EXISTING LOT COVERAGE BY PARKING & PAVING = 2,813 S.F. (18.7%)
TOTAL LOT COVERAGE BY STRUCTURES, PARKING & PAVING = 5,457 S.F. (36.3%)
EXISTING STRUCTURE TO BE REMOVED = 23 S.F.
PROPOSED ADDITIONS = 382 S.F.
PROPOSED TOTAL COVERAGE BY STRUCTURES = 2,973 S.F. (19.9%)
PROPOSED TOTAL COVERAGE BY STRUCTURES, PAVING & PARKING = 5,891 S.F. (39.2%)

DEED REFERENCE: CERTIFICATE OF TITLE 210649
PLAN REFERENCE: LC PLAN 314-C



NOTICE
THIS PLAN MAY NOT BE ADDED TO, DELETED FROM, OR ALTERED IN ANY WAY BY ANYONE OTHER THAN CAPE & ISLANDS ENGINEERING, INC.
UNLESS AND UNTIL, SUCH TIME AS AN ORIGINAL (RED) STAMP APPEARS ON THIS PLAN, NO PERSON OR PERSONS, MUNICIPAL OR PUBLIC OFFICIAL MAY RELY UPON THE INFORMATION CONTAINED HEREIN, AND THIS PLAN REMAINS THE PROPERTY OF CAPE AND ISLANDS ENGINEERING, INC.

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12/4/19	ADD NOTE TO RELOCATE EXISTING TANK IN DRIVEWAY	JVB	MC
11/28/18	REVISE SEPTIC TANK NOTE, ADD SEPTIC TANK SETBACK	RLR	MC
11/8/18	REVISE ADDITIONS	JVB	MC
DATE	DESCRIPTION	BY	CHK

OWNER OF RECORD:
GERARD J. & MAR-CIA M. TESTA
THE MAR-CIA M. TESTA REVOCABLE LIVING TRUST
8 WHITNEY STREET
SHERBORN, MA 01770

APPLICANT:
GERARD J. & MAR-CIA M. TESTA
THE MAR-CIA M. TESTA REVOCABLE LIVING TRUST
8 WHITNEY STREET
SHERBORN, MA 01770

PROJECT:
19 OCEAN AVENUE
IN
EAST FALMOUTH, MASSACHUSETTS

SHEET NO.: 1 OF 1
DATE: OCTOBER 18, 2018
DRAWING FILE NAME: OCEAN_19_TESTA_ECP
DRAWN BY: JVB
CHECKED BY: MC

PREPARED BY:
CAPE & ISLANDS ENGINEERING
INCORPORATED
CIVIL ENGINEERING - LAND SURVEYING - ENVIRONMENTAL PERMITTING

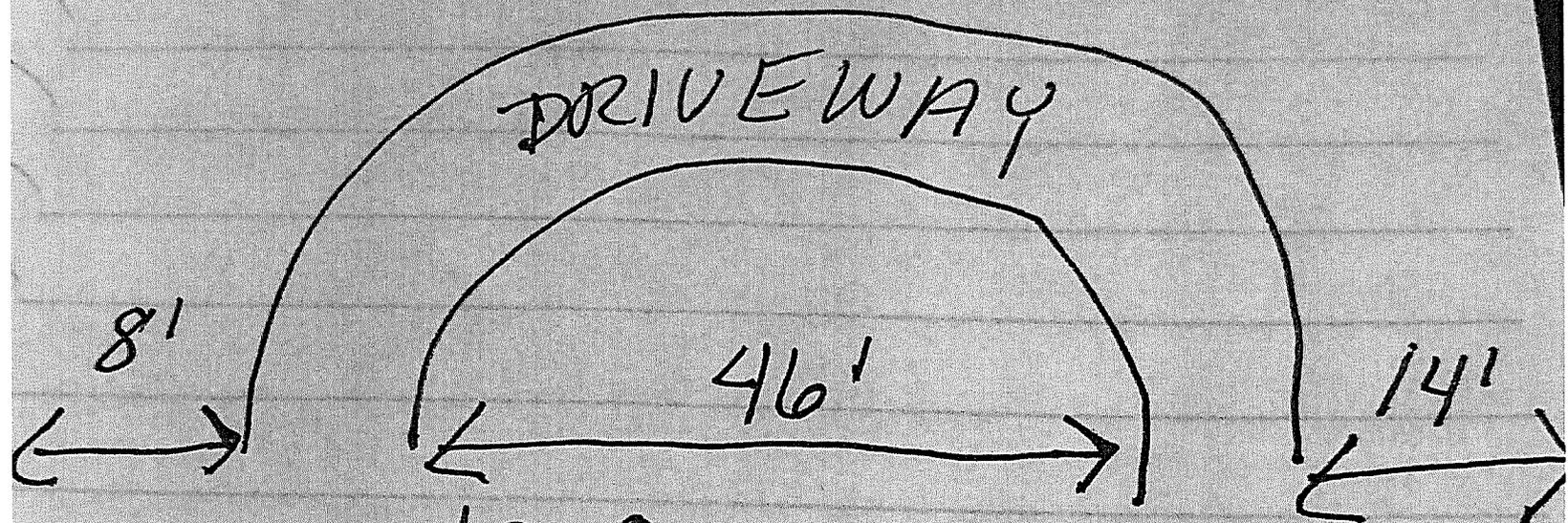
SUMMERFIELD PARK
800 FALMOUTH ROAD SUITE 301C
MASHPEE, MA 02649
508.477.7272 PHONE
508.477.9072 FAX
info@CapeEng.com
www.CapeEng.com

DRAWING TITLE:
PROPOSED ADDITIONS PLAN

ASSESSORS INFORMATION: MAP 45-01-000-007

LEGEND

- CB CONCRETE BOUND
- SB STONE BOUND
- RC ROD CAP
- IP IRON PIPE FOUND
- HY HYDRANT
- WS WATER SHUTOFF
- CBS CATCH BASIN SQUARE
- UP UTILITY POLE
- GP GUY POLE
- GW GUY WIRE
- LP LIGHT POLE
- SIGN
- CT CONIFEROUS TREE
- DT DECIDUOUS TREE
- TS TREE STUMP
- SH SHRUB
- CS CONIFEROUS SHRUB
- TL TREE LINE
- OW OVERHEAD WIRES
- SW STONE WALL
- PR POST & RAIL FENCE
- SF STOCKADE FENCE
- XR PICKET ROW
- CL CHAINLINK FENCE
- AS AREA OF STRUCTURE INCLUDED IN EXISTING LOT COVERAGE



19 Ocean Ave.
Curbing dimensions.



Diane Davidson

From: Diane Davidson
Sent: Tuesday, July 21, 2020 2:53 PM
To: Frank Duffy
Subject: RE: 19 Ocean Avenue - Request to Install Landscape Curbing
Attachments: 19 Ocean Ave Curbing

Hi Frank,

The applicant has provided me with a copy of the sketch plan and the owner's deed (attached). Please let me know if there is anything else you need to prepare the license. We have scheduled this for review/approval by the Board on Monday, July 27.

Thank you,

Diane

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

From: Frank Duffy
Sent: Friday, June 26, 2020 1:27 PM
To: Diane Davidson <diane.davidson@falmouthma.gov>
Subject: RE: 19 Ocean Avenue - Request to Install Landscape Curbing

A sketch plan and a copy of the owner's deed.

Frank K. Duffy, Town Counsel
Town of Falmouth
157 Locust Street
Falmouth, MA 02540
(508) 548-8800 fax (508) 540-0881

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. Moreover, any such inadvertent disclosure shall not compromise or waive the attorney-client privilege as to this communication or otherwise. 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.

From: Diane Davidson
Sent: Friday, June 26, 2020 12:31 PM
To: Frank Duffy
Cc: Jim McLoughlin
Subject: FW: 19 Ocean Avenue - Request to Install Landscape Curbing

Hi Frank,

Yes, the curbing is in the right of way. What do you need us to provide you to prepare a license?

Thank you,

Diane

From: Jim McLoughlin
Sent: Friday, June 26, 2020 12:08 PM
To: Diane Davidson <diane.davidson@falmouthma.gov>
Subject: RE: 19 Ocean Avenue - Request to Install Landscape Curbing

Hi Diane,
Yes, it is proposed within the Right of Way.
We have notified contractor that a license is needed.
Jim

From: Diane Davidson <diane.davidson@falmouthma.gov>
Sent: Friday, June 26, 2020 11:50 AM
To: Jim McLoughlin <james.mcloughlin@falmouthma.gov>
Subject: FW: 19 Ocean Avenue - Request to Install Landscape Curbing

Hi Jim,

Do you know if this curbing will be within the layout of Ocean Avenue? If yes, then the Select Board will have to issue a license.

Thank you,

Diane

From: Frank Duffy
Sent: Thursday, June 25, 2020 8:52 AM
To: Jim McLoughlin <james.mcloughlin@falmouthma.gov>; Diane Davidson <diane.davidson@falmouthma.gov>; Peter McConarty <peter.mcconarty@falmouthma.gov>
Cc: Thomas Bott <thomas.bott@falmouthma.gov>; Noreen Stockman <noreen.stockman@falmouthma.gov>; Rod Palmer <rod.palmer@falmouthma.gov>; Christopher Bennett <christopher.bennett@falmouthma.gov>
Subject: RE: 19 Ocean Avenue - Request to Install Landscape Curbing

The street opening permit may be necessary, but if the curbing will be within the layout of Ocean Ave., a public way, a license from the SB is also necessary.

Frank K. Duffy, Town Counsel

Town of Falmouth
157 Locust Street
Falmouth, MA 02540
(508) 548-8800 fax (508) 540-0881

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From: Jim McLoughlin
Sent: Wednesday, June 24, 2020 8:47 AM
To: Diane Davidson; Peter McConarty; Frank Duffy
Cc: Thomas Bott; Noreen Stockman; Rod Palmer; Christopher Bennett
Subject: RE: 19 Ocean Avenue - Request to Install Landscape Curbing

Hi Diane,

This can be handled with a street opening permit. We will require that all DPW specifications are followed and that the work is inspected. We will contact Longfellow to follow up.

Thanks,
Jim

From: Diane Davidson <diane.davidson@falmouthma.gov>
Sent: Monday, June 22, 2020 3:33 PM
To: Peter McConarty <peter.mcconarty@falmouthma.gov>; Jim McLoughlin <james.mcloughlin@falmouthma.gov>; Frank Duffy <frank.duffy@falmouthma.gov>
Cc: Thomas Bott <thomas.bott@falmouthma.gov>; Noreen Stockman <noreen.stockman@falmouthma.gov>; Rod Palmer <rod.palmer@falmouthma.gov>
Subject: 19 Ocean Avenue - Request to Install Landscape Curbing

To all,

Attached please find a letter from Longfellow Design Build to install granite-type landscape curbing at the front of the property located at 19 Ocean Avenue. Please review and provide your recommendations and comments.

Thank you,

Diane

*Diane S. Davidson
Office Manager/Licensing
Office of the Town Manager and Select Board
Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540
diane.davidson@falmouthma.gov*

Diane Davidson

From: James Bustamante <james@longfellowdb.com>
Sent: Wednesday, July 8, 2020 3:04 PM
To: Diane Davidson
Cc: Christopher Bennett
Subject: 19 Ocean Ave Curbing
Attachments: 19 Ocean Letter to Selectmans Office.docx; curb dimensions.jpg; Driveway curbing plan 19 ocean.pdf; Testa Deed Ocean Ave_.pdf

Hello Diane and Chris. I appreciate your patience and working with me on this project at 19 Ocean Ave. Please see all attached documents I think you'll need in order to approve. Diane, per our phone call today, if and once approved by the Selectman's office July 27th meeting, please let Chris and I know so that we may proceed with the application.

If either of you have any questions, please don't hesitate to call me on my cell below.

Thank you!

James Bustamante
Longfellow Design Build
Operations Manager/ Scheduling Coordinator
781.718.8580 (cell)
774.255.1709 x205 (office)

Diane Davidson

From: Rod Palmer
Sent: Monday, June 22, 2020 4:05 PM
To: Diane Davidson
Subject: RE: 19 Ocean Avenue - Request to Install Landscape Curbing

Diane,

We have no recommendations or comments.

Thanks,

Rod

From: Diane Davidson
Sent: Monday, June 22, 2020 3:33 PM
To: Peter McConarty <peter.mcconarty@falmouthma.gov>; Jim McLoughlin <james.mcloughlin@falmouthma.gov>; Frank Duffy <frank.duffy@falmouthma.gov>
Cc: Thomas Bott <thomas.bott@falmouthma.gov>; Noreen Stockman <noreen.stockman@falmouthma.gov>; Rod Palmer <rod.palmer@falmouthma.gov>
Subject: 19 Ocean Avenue - Request to Install Landscape Curbing

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Thank you,

Diane

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

Diane Davidson

From: Noreen Stockman
Sent: Tuesday, June 23, 2020 4:45 PM
To: Diane Davidson
Subject: RE: 19 Ocean Avenue - Request to Install Landscape Curbing

No comment ZBA.
Noreen

Noreen H. Stockman
Zoning Administrator
Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540
508-495-7462

From: Diane Davidson <diane.davidson@falmouthma.gov>
Sent: Monday, June 22, 2020 3:33 PM
To: Peter McConarty <peter.mcconarty@falmouthma.gov>; Jim McLoughlin <james.mcloughlin@falmouthma.gov>; Frank Duffy <frank.duffy@falmouthma.gov>
Cc: Thomas Bott <thomas.bott@falmouthma.gov>; Noreen Stockman <noreen.stockman@falmouthma.gov>; Rod Palmer <rod.palmer@falmouthma.gov>
Subject: 19 Ocean Avenue - Request to Install Landscape Curbing

To all,

Attached please find a letter from Longfellow Design Build to install granite-type landscape curbing at the front of the property located at 19 Ocean Avenue. Please review and provide your recommendations and comments.

Thank you,

Diane

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



TOWN OF FALMOUTH

Office of the Town Manager & Selectmen

59 Town Hall Square, Falmouth, Massachusetts 02540

Telephone (508) 495-7320

Fax (508) 457-2573

July 17, 2020

Massachusetts Development Finance Agency
South Region Office – 275 Martine Street
Fall River, Massachusetts

Dear Agency Representatives,

The Town of Falmouth is supportive of the application of 197 Palmer Ave, LLC dba Falmouth Sharespace for a grant from the Collaborative Workspace Program through the Massachusetts Development Finance Agency. I understand that Falmouth Sharespace plans to utilize this grant to make space improvements including air quality/ventilation and refitting to support social distancing guidelines. This coworking space, intended to provide working space for startups, freelancers and working professionals, is consistent with the Falmouth Local Comprehensive Plan's Economic Development Strategies which call for:

- Policy #1 – Falmouth shall foster a supportive climate for businesses, institutions and the arts to thrive.
- Policy #2 - Falmouth, working in partnership with Barnstable County, the Commonwealth and the federal government, shall provide the necessary infrastructure to meet the needs of the local and regional economy.

There is a clear understanding of the challenges that the COVID-19 pandemic presents, including the growing need for a safe, clean and comfortable work place for businesses to continue to thrive. We welcome this important workplace initiative and encourage the favorable consideration of the Massachusetts Development Finance Agency.

Sincerely,

Julian M. Suso

Falmouth Town Manager

Cc Select Board
Planning Department

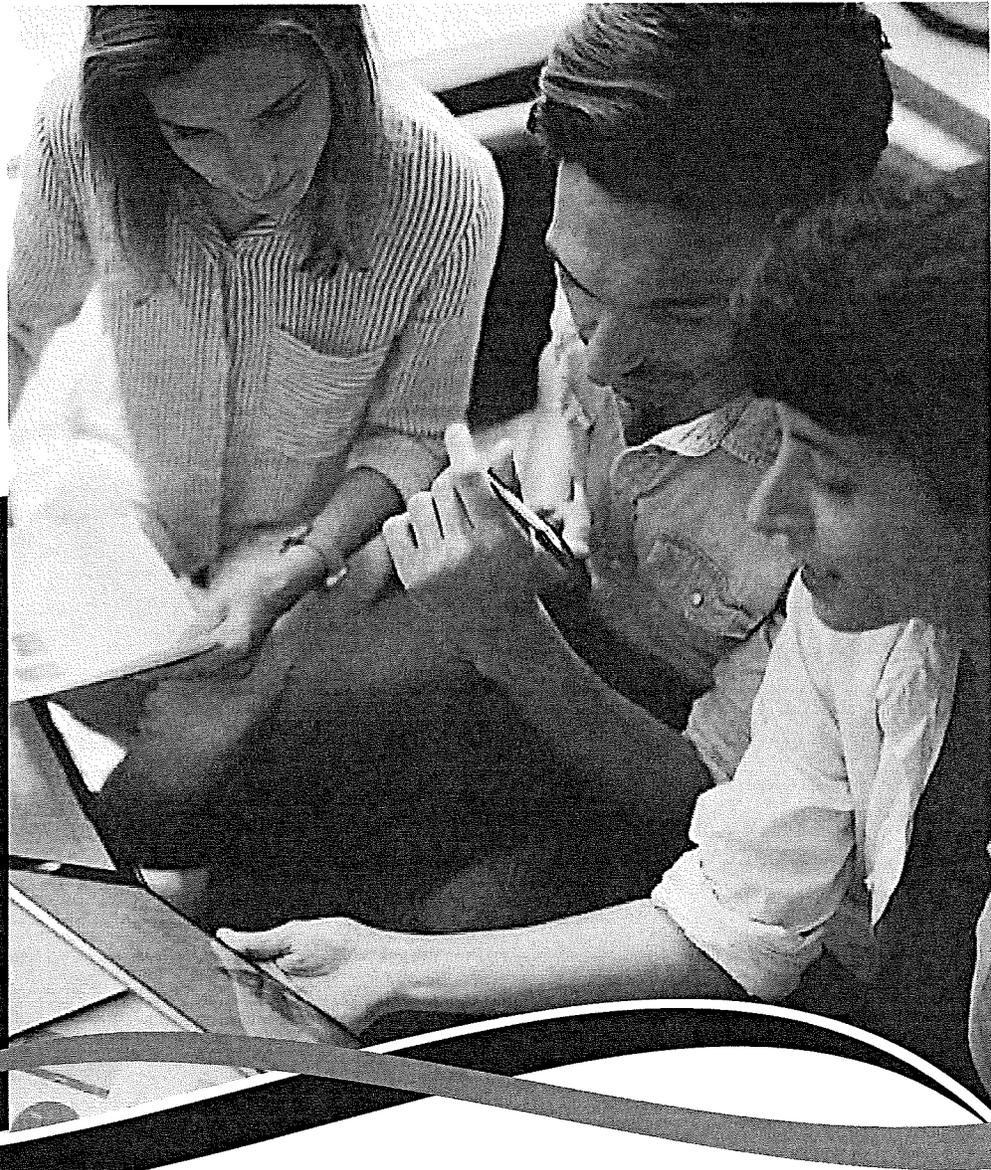
To whom it may concern,

We support 197 Palmer Ave, LLC dba Falmouth Sharespace's decision to apply for a grant from the Collaborative Workspace Program through Massachusetts Development Finance Agency. We support their plans to make space improvements which include better air quality and ventilation and refitting to support social distancing guidelines. We are aware of challenges that COVID-19 presents and understand the growing need for a safe, clean, and comfortable work place. We feel our local coworking space benefits our community and economic development.



FALMOUTH SHARESPACE

Falmouth Sharespace is a shared, professional workspace located in the quaint and historic downtown area of Falmouth, Massachusetts (Cape Cod). We provide a relaxed, comfortable atmosphere for startups, freelancers, and working professionals. Our community events allow members to meet creative people, form new connections, and gain the skills needed to finish projects and launch their business. Our mission is to help build a strong diverse community of entrepreneurs, startups, small businesses, and non-profits.



Private offices offer members with a quiet, secure office while providing the benefits of a shared workspace.



Our newly remodeled conference room comes equipped with audio / video technology, comfortably seats up to 10 people, and is available hourly, daily, or through our monthly membership.



Our virtual mail service allows you to access your physical mail via any computer, tablet, or smartphone. Receive, forward, pick up, shred, or discard mail and packages. Enjoy the benefits of having a Falmouth street address.

Conveniences

- ✓ Free parking
- ✓ Wi-Fi
- ✓ Comfortable private offices
- ✓ Free coffee and tea
- ✓ Mailbox services
- ✓ Wireless printing
- ✓ Conference room
- ✓ Private phone booth
- ✓ Walking distance to ferry parking and Main Street Falmouth

📍 197 Palmer Avenue
Falmouth, MA 02540

🌐 www.falmouthsharespace.com
✉ capeoffices@falmouthsharespace.com

📞 (508) 388 7866



TOWN OF FALMOUTH

Office of the Town Manager & Selectmen

59 Town Hall Square, Falmouth, Massachusetts 02540
Telephone (508) 495-7320
Fax (508) 457-2573

July 22, 2020

Mr. Rob Munier, Vice President
Marine Facilities and Operations
Woods Hole Oceanographic Institution
38 Water Street
Woods Hole, MA 02543

Subject: Economic Development Administration, Disaster Recovery Program

Dear Rob,

I am writing on behalf of the Falmouth Board of Selectmen to affirm the Board's support for this grant funding application from WHOI to the U.S. Commerce Department, Economic Development Administration (EDA). This is for the purpose of supporting pre-design work by WHOI on your waterfront project. We understand and applaud WHOI's efforts to upgrade and enhance your strategic waterfront area to pro-actively address anticipated sea level rise and periodic flooding. WHOI will provide the required cost share.

The Town of Falmouth has enjoyed a partnership with our colleagues at WHOI in regard to pursuing and securing financial support for this important initiative, including collaborating on two Massachusetts Seaport Economic Council grants, which are now complete. We look forward to continuing and expanding this mission-critical marine infrastructure process under the extraordinary leadership of WHOI. We urge the EDA to give this strategically important request every consideration.

Sincerely,

Julian M. Suso
Falmouth Town Manager

Cc Board of Selectmen

**TOWN OF FALMOUTH
OFFICE OF TOWN COUNSEL
MEMORANDUM**

TO: JULIAN SUSO, TOWN MANAGER
FROM: FRANK K. DUFFY, TOWN COUNSEL
SUBJECT: FALMOUTH LANDFILL SOLAR II, LLC (PHASE 2)
DATE: 7/20/2020
CC: PETER JOHNSON STAUB, ASSISTANT TOWN MANAGER
JENNIFER MULLEN, FINANCE DIRECTOR

I enclose herewith 2 execution copies of the Solar Alternative On-Bill Credit Agreement by and between the Town of Falmouth and Falmouth Landfill Solar II, LLC. The Agreement is similar to an agreement previously executed for phase 1.

The Agreement provides for the sale of 50% of the credits generated by the solar panels to the Town of Falmouth and 50% to Low Income Customers according to an approved program of the SMART tariff program, 225 CMR 20.00.

Please ask the Select Board to approve the Agreement and authorize the Town Manager to sign on behalf of the town.

SOLAR ALTERNATIVE ON-BILL CREDIT AGREEMENT

This SOLAR ALTERNATIVE ON-BILL CREDIT AGREEMENT is entered into on _____, 2020 (the "Effective Date") by and between:

Buyer:

Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540
Attn: Town Manager
Telephone: 508-495-7320
Email: townmanager@falmouthma.gov

and **Seller:**

Falmouth Landfill Solar II, LLC
88 Black Falcon Avenue
Center Lobby, Suite 342
Boston, MA 02210
Attn: Brian Morrissey
Telephone: 617-951-0405
Email: bmorrissey@citizensenergy.com

Buyer and Seller are referred to individually as a "Party" and collectively as the "Parties".

A. Seller is a developer of photovoltaic solar electric generation systems and is engaged in the business of developing, installing, owning, operating, and maintaining such systems to produce electricity as Alternative On-bill Credit Generation Units pursuant to 225 CMR 20.00 and the Utility's SMART Tariffs. It is the intention of the Parties that such systems qualify as Low Income Community Shared Solar Tariff Generation Units pursuant to 225 CMR 20.00 and the Utility's SMART Tariffs.

B. Seller owns, or will construct, a 2.0 MW (DC) photovoltaic solar electric generation system located on 458 Thomas B Landers Road in Falmouth, MA (the "System") within the Utility's service territory which generates, or will generate on the Commercial Operations Date, Alternative On-bill Credits.

C. Seller will enter into separate agreements with three or more persons, including Buyer as "Customers of Record" for the Solar Energy Facility for purposes of Alternative On-bill Credits under the SMART Rules.

D. Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Seller, as "Customers of Record," a portion of the Alternative On-bill Credits generated by the Solar Energy Facility during the Term, subject to the terms and conditions, and at the prices, set forth in this Agreement.

NOW THEREFORE, for mutual consideration set forth in the attached Exhibit A, the Parties agree as follows:

1. Commercial Terms:

Discount Rate: 20%

Utility: Eversource (NSTAR)

Initial Term: Twenty (20) years after Commercial Operations Date

Estimated Commercial Operations Date: March 30, 2021

2. The following documents, along with this Cover Page, shall be deemed to form the Agreement and are incorporated by reference in their entirety:

Exhibit A General Terms and Conditions
Exhibit B Guaranteed Energy Production

3. This Agreement may be executed by the Parties in one or more counterparts, all of which taken together, will constitute one and the same instrument. Any counterpart may be executed by facsimile signature or any image transmitted by electronic mail (such as a pdf file) and such facsimile signature or image shall be deemed an original.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

Seller:

Falmouth Landfill Solar II, LLC

By: _____

Name: _____

Title: _____

Buyer:

Town of Falmouth

By: _____

Name: _____

Title: _____

Exhibit A General Terms and Conditions

ARTICLE 1 DEFINITIONS AND INTERPRETATION

Definitions. The following terms, when used in the Agreement and initially capitalized, have the following meanings:

“Agreement” means the Cover Page and all Exhibits, Appendices and Schedules attached thereto, including these General Terms and Conditions, each as modified from time to time in accordance with the terms of this Agreement.

“Alternative On-bill Credit” means a bill credit generated by an Alternative On-bill Credit Generation Unit as determined in accordance with 225 CMR 20.08(1)(a)2.

“Alternative On-bill Credit Delivery Shortfall” means, for each Performance Measurement Period, the difference between (i) the Buyer’s Percentage of the Alternative On-bill Credits which would have been generated by the System had the System produced energy in accordance with the Guaranteed Energy Production, and (ii) the Buyer’s Percentage of the actual Alternative On-bill Credits generated by the System and posted by the Utility on the Customer of Record Account.

“Alternative On-bill Credit Generation Unit” has the meaning set forth in 225 CMR 20.02.

“Arbitration Notice” has the meaning set forth in Section 10.2.

“Arbitration Rules” has the meaning set forth in Section 10.2.

“Base Compensation Rate” has the meaning set forth in 225 CMR 20.02.

“Billing Cycle” has the meaning set forth in Section 2.5.

“Buyer” has the meaning set forth on the Cover Page.

“Buyer Event of Default” means an Event of Default by Buyer.

“Buyer Percentage” has the meaning set forth in Section 2.5.

“Change in Law” means, after the Effective Date, any passage, enactment, modification, revision, repeal, addendum, interpretation or other change in any Law affecting the rights or obligations of Seller or Buyer under this Agreement, including without limitation, implementation by the Massachusetts Department of Public Utilities, Massachusetts Department of Energy Resources or other governmental authority of any Law relating to the System, the Utility’s SMART Tariffs, the Alternative On-bill Credits, or otherwise affecting the Parties’ rights and obligations under this Agreement.

“Code” shall mean the United States Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

“Commercial Operations Date” means the day identified by Seller in a notice to Buyer as the date when commercial operation of the System commenced.

“Confidential Information” has the meaning set forth in Section 9.1.

“Compensation Rate Adder” has the meaning set forth in 225 CMR 20.02.

“Cover Page” means the first page of this Agreement.

“Customer of Record” has the meaning set forth in 225 CMR 20.02.

“Customer of Record Account” has the meaning set forth in Section 2.3.

“Defaulting Party” has the meaning set forth in Section 6.1.

“Discount Rate” has the meaning set forth on the Cover Page.

“Dispute” has the meaning set forth in Section 10.1.

“Effective Date” has the meaning set forth on the Cover Page.

“End-use Customer” has the meaning set forth in 225 CMR 20.02.

“Environmental Attributes” means the aggregate amount of credits, set-offs, payments, rights, attributes, or other benefits of all kinds associated with or arising out of or otherwise corresponding to the capacity and associated electricity, or otherwise arising due to the production of electricity by the System, and the sale, transmission and distribution of such electricity by Seller and others (other than payments under this Agreement), ITCs, ITC Grants, and other tax deductions, credits, and incentives. Environmental Attributes shall include (i) environmental air quality credits, off-sets or other benefits related to the generation of electricity by the System in a manner which reduces, displaces or off-sets emissions resulting from fuel combustion at another location pursuant to any Law, and (ii) credits (other than Alternative On-bill Credits), off-sets, green pricing programs, renewable energy credit trading programs, or any similar program or benefits derived from the use, purchase or distribution of renewable energy from the generation of electricity from the System pursuant to any Law.

“Estimated Commercial Operations Date” has the meaning set forth on the Cover Page.

“Event of Default” has the meaning set forth in Section 6.1.

“Force Majeure” means an event or circumstance beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include failure or interruption of the production, delivery or acceptance of electricity due to an act of God; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerrilla action; terrorism or threat of terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition; action of the elements; hurricane; flood; lightning; wind; drought; peril of the sea; pandemic, the binding order of any governmental authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any governmental authority (provided that such action has been timely requested and diligently pursued); unavailability of fuel, electricity from the utility grid, equipment, supplies or products, but not to the extent that any such unavailability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence; and failure of equipment not utilized by or under the control of a Party.

“Guaranteed Energy Production” means for any given year 80% of the System Production in kWh as set forth on Exhibit B.

“Initial Term” has the meaning set forth on the Cover Page.

"Insolvency Proceeding" means any case, action or proceeding with respect to a person before any court or other governmental authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other similar arrangement in respect of its creditors generally or any substantial portion or its creditors.

"ITC" means the tax credit for property described in Section 48(a)(3) of the Code.

"ITC Grant" means a grant received by Seller pursuant to Section 1603 of the American Recovery and Reinvestment Act of 2009.

"kW" means kilowatt.

"kWh" means kilowatt-hour.

"Law" means any law, treaty, code, rule or regulation, or determination of an arbitrator, court or other governmental authority exercising executive, legislative, judicial, regulatory or administrative functions, or any condition or restriction set forth in a governmental permit, certificate, or other authorization.

"Low Income Community Shared Solar Tariff Generation Unit" has the meaning set forth in 225 CMR 20.02.

"Low Income Customer" has the meaning set forth in 225 CMR 20.02.

"Operating Period" means the period commencing on the Commercial Operations Date and ending on termination of this Agreement.

"Party" has the meaning set forth on the Cover Page.

"Performance Measurement Period" means a period of twelve months beginning on the Commercial Operations Date and each subsequent period of twelve months during the Operating Period.

"Renewal Term" has the meaning set forth in Section 5.2.

"Seller" has the meaning set forth on the Cover Page.

"SMART" has the meaning set forth in 225 CMR 20.02.

"SMART Rules" mean the rules set forth in 225 CMR 20.02.

"SMART Tariff" has the meaning set forth in 225 CMR 20.02.

"System Financing" has the meaning set forth in Section 13.1.

"System Lenders" has the meaning set forth in Section 13.1.

"System Owner" has the meaning set forth in Section 13.1.

"System" has the meaning set forth on the Cover Page.

"Taxes" means any and all new or existing ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes or similar charges, and any increases in the same, but "Taxes" does not include income taxes or other similar taxes based on income or net revenues.

"Term" means the period beginning on the Effective Date and ending on the last day prior to the expiration or termination of this Agreement at the end of the Initial Term, the last subsequent Renewal Term, or earlier termination pursuant to the terms hereof, as applicable.

"Utility" has the meaning set forth on the Cover Page.

"Utility's SMART Tariffs" means the Utility's SMART tariffs pursuant to 225 CMR 20.00.

Interpretation. Unless the context otherwise requires, the following general rules of construction shall apply to this Agreement: (a) terms stated in the singular shall include the plural and the masculine shall include the feminine and neuter, and *vice versa*; (b) the words "includes" or "including" shall mean "including with limitation"; (c) references to a Section or Exhibit shall mean a Section or Exhibit, as the case may be, of this Agreement; (d) a reference to an agreement or instrument shall be to the agreement or instrument as modified through the date of which the reference is made; (e) a reference to a Law is to the Law as amended, replaced or restated from time to time; (f) a reference to a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having a separate legal personality and (g) a reference to Buyer or Seller shall include their permitted assigns and successors.

ARTICLE 2 DELIVERY OF ELECTRICITY

2.1 Delivery Obligations. The Operating Period shall commence upon Seller's written notice to Buyer that the Commercial Operations Date has occurred.

2.2 Unit Contingent Sale. Seller's obligation to deliver Alternative On-bill Credits to Buyer is expressly subject to, and contingent on, the availability of the System and the generation of electricity and Alternative On-bill Credits by the System.

2.3 Pricing. For each month of the Operating Period, Buyer shall pay to Seller, in accordance with ARTICLE 7, an amount equal to (i) the Alternative On-bill Credits posted by the Utility on the Customer of Record account established in Buyer's name in accordance with the Utility's SMART Tariffs (hereinafter the "*Customer of Record Account*") times (ii) one (1) minus the Discount Rate.

2.4 Environmental Attributes. Seller's delivery to Buyer of the electricity generated by the System and Buyer's ownership of the Alternative On-bill Credits produced by the System shall not entitle Buyer to Environmental Attributes or any other attributes of ownership of the System, all of which shall be retained by Seller.

2.5 Buyer's Percentage. The Parties agree that Seller shall allocate to Buyer's Customer of Record Account up to fifty percent (50%) of all Alternative On-bill Credits generated by the System (the "*Buyer Percentage*"), as measured on a billing cycle basis (as such billing cycle is established by Eversource) (the "*Billing Cycle*").

2.6 Remaining Percentage. Buyer acknowledges and agrees that Seller will sell to two or more End-use Customers, including Low Income Customers, any Alternative On-bill Credits, other than the Buyer Percentage, that are generated (such remaining Alternative On-bill Credits, the "*Remaining Percentage*"), and that Seller shall be solely responsible for any and all collections for payments due from such third parties for the Remaining Percentage; provided, however, that in no event shall the allocation of Alternative On-bill Credits to Buyer be increased above the Buyer Percentage set forth herein.

2.7 Change in Law

2.7.1. If there is any Change in Law subsequent to the Effective Date that results in a material and adverse change in Seller's ability to provide, or Buyer's ability to receive or use, Alternative On-bill Credits, or results in the disqualification of the System as a Low Income Community Shared Solar Tariff Generation Unit under 225 CMR 20.00, Seller or Buyer, as the case may be, shall promptly

submit to the other a written notice setting forth the citation of the Change in Law, and the manner in which such change has resulted in the effect aforesaid. The Parties shall within ten (10) calendar days commence good faith negotiations and make commercially reasonable efforts to cooperate and assist each other to amend this Agreement to address such Change in Law in order to provide substantially similar benefits to each Party.

2.7.2. If the Parties are not able to agree in good faith on any commercially reasonable amendments necessary to address a Change in Law within ninety (90) days after one Party has submitted notice thereof under Section 2.7.1, or such shorter time as may be required due to the Change in Law, then either Party shall have the right to terminate this Agreement solely as to the Parties' obligation regarding the purchase and sale of Alternative On-bill Credits, in which event Seller shall have no further obligation to sell and deliver Alternative On-bill Credits to Buyer, Buyer shall have no further obligation to purchase Alternative On-bill Credits from Seller, and neither Party shall be obligated to make any further payment under this Agreement, except for payments for obligations arising or accruing prior to the effective date of termination.

ARTICLE 3 GUARANTEED ENERGY

3.1 Guaranteed Energy Production. Seller guarantees that during each Performance Measurement Period the System shall produce Alternative On-bill Credits in direct proportion to the quantity of electricity equal to or greater than the Guaranteed Energy Production.

3.2 Alternative On-bill Credit Delivery Shortfall. If for any Performance Measurement Period Seller fails to deliver Buyer's Percentage of the Alternative On-bill Credits that would be generated by a System producing electricity equal to or greater than the Guaranteed Energy Production, then Seller shall pay to Buyer, as liquidated damages, an amount equal to the product of (i) the Discount Rate, and (ii) the Alternative On-bill Credit Delivery Shortfall, which amount shall be reflected as a credit on the next monthly invoice(s) until fully paid.

ARTICLE 4 TAXES

4.1 Buyer Obligations. Buyer shall reimburse and pay for any documented taxes, fees or charges imposed or authorized by any governmental authority and paid or payable by Seller due to Seller's delivery of electricity to Buyer and Buyer's payment hereunder to Seller (other than income taxes imposed upon Seller). Seller shall notify Buyer in writing with a detailed statement of such amounts, which shall be invoiced by Seller and payable by Buyer. Buyer shall timely report, make filings for, and pay any and all sales, use, income, gross receipts, or other taxes, and any and all franchise fees or similar fees assessed against it arising out of the Alternative On-bill Credits generated by the System. This Section 4.1 excludes taxes specified in Section 4.2.

4.2 Seller Obligations. Subject to Section 4.1 above, Seller shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System.

ARTICLE 5 OPERATIONS

5.1 System Operations. Except as otherwise expressly provided in this Agreement, Seller shall at its sole cost and expense and in accordance with Good Industry Practice (i) operate and maintain the System; (ii) perform all repairs on the System; and (iii) provide, or

arrange for the provision of, all labor, material, and other supplies for the System.

ARTICLE 6 TERM

6.1 Initial Term. This Agreement shall become effective on and as of the Effective Date and shall continue in effect until the end of the Initial Term, unless terminated earlier pursuant to the terms hereof.

6.2 Extension of Term. Provided that this Agreement has not been earlier terminated pursuant to the provisions herein, Seller may, at its sole discretion, offer to extend the Term of this Agreement for up to ten (10) additional consecutive terms of one (1) year upon the expiration of the then Term by giving the Buyer a minimum of two hundred seventy (270) days' prior written notice of its desire to extend the Term along with the proposed pricing terms during such 1-year extension. The Parties will negotiate in good faith the pricing terms for any such extension. Any extension of the Term of this Agreement shall occur only pursuant to a mutual written agreement of the Parties.

6.3 Termination of Utility's SMART Tariffs. If for any reason the System ceases to qualify for the SMART Program under the Utility's SMART Tariffs, whether by reason of a change in Law, the Utility's SMART Tariffs, the configuration of the System, or otherwise, then this Agreement shall automatically terminate.

ARTICLE 7 DEFAULT AND TERMINATION

7.1 Events of Default. An event of default under this Agreement (an "Event of Default") shall be deemed to exist with respect to a Party (the "Defaulting Party") upon the occurrence of any one or more of the following:

7.1.1. Payment Defaults. If the Defaulting Party fails to pay any amount due and payable under this Agreement, other than an amount which is subject to a valid good faith dispute, within ten (10) days of receipt of notice given by the other Party of such non-payment.

7.1.2. Other Defaults Generally. If the Defaulting Party fails to substantially perform any other material obligation under this Agreement, and does not cure such failure within thirty (30) days of the date of receipt of notice from the other Party demanding cure; provided that such thirty (30) day period cure period shall be extended if and to the extent reasonably necessary to accomplish such cure, but only so long as the Defaulting Party diligently pursues such cure and continues such cure to completion, and provided that such extended period of cure shall be allowed only so long as the failure to complete such cure does not materially adversely affect the other Party; and provided further that this Section 7.1.2 shall not apply to any failure to make payments (which is covered by Section 7.1.1).

7.1.3. Failure of Representations and Warranties. If any representation or warranty of the Defaulting Party shall prove at any time to have been incorrect in any material respect when made and shall remain material to the transactions contemplated hereby, if the Defaulting Party does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and correct within thirty (30) days of the date of receipt of notice from the other Party demanding cure or, if it cannot be reasonably cured within such thirty-day period, such longer period of time as is reasonably necessary to accomplish such cure, provided that the Defaulting Party diligently commences such cure in such period and continues such cure to completion, and provided that such extended period of cure shall be allowed only so long as the failure to

complete such cure does not materially adversely affect the other Party.

7.1.4. Insolvency. If the Defaulting Party (i) ceases or fails to be solvent, or generally fails to pay, or admits in writing its inability to pay, its debts as they come due, (ii) voluntarily ceases to conduct its business in the ordinary course, (iii) commences any Insolvency Proceeding with respect to itself, or (iv) takes any action to effectuate or authorize any of the foregoing; or in the event that (a) any involuntary Insolvency Proceeding is commenced or filed against the Defaulting Party, or a writ, judgment, warrant of attachment, execution or similar process is issued or levied against a substantial part of the Defaulting Party's properties, and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within thirty (30) days after commencement, filing or levy; (b) the Defaulting Party admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; or (c) the Defaulting Party acquiesces in this appointment of a receiver, trustee, custodian, liquidator, mortgagee in possession (or agent therefore), or other similar person for itself or a substantial portion of its property or business.

7.2 Remedies.

7.2.1. Generally. Upon the occurrence and during the continuation of an Event of Default, the Party not in default shall have the right to pursue any remedy under this Agreement or now or hereafter existing under applicable Law or in equity, including an action for damages, and including termination of this Agreement upon five (5) days prior written notice to the Defaulting Party. Nothing herein, however, shall limit either Party's right to collect damages upon the occurrence of a breach or default by the other Party that does not become an Event of Default.

7.2.2. Termination Matters. If Seller terminates this Agreement as a result of a Buyer Event of Default, or if Buyer terminates this Agreement for any reason other than an Event of Default by Seller, Buyer shall be liable for, among other things, the present value of an amount equal to (i) one month's average payment for Alternative On-bill Credits during the Operating Period prior to such termination times (ii) the number of months remaining in the Initial Term. The discount rate to be applied to determine the present value of such payments shall be equal to the average prime rate published in the *Wall Street Journal* on the date of termination. Such amount shall be paid from Buyer to Seller within ten (10) days of any such termination. The foregoing shall not limit other remedies available to Seller at law or in equity for a breach or default by Buyer.

7.3 Termination Prior to the Commercial Operations Date.

7.3.1. Termination by Seller. Seller may terminate this Agreement without cause by written notice to Buyer any time prior to the Commercial Operations Date.

7.3.2. Termination by Either Party. Subject to an extension of the Estimated Commercial Operations Date pursuant to Section 8.1, if the Operating Period has not commenced on or before the date that is twelve (12) months after the Estimated Commercial Operations Date, then either Party may terminate this Agreement by written notice to the other Party; provided that neither Party may terminate this Agreement pursuant to this Section 7.3.2 after Seller has notified Buyer of the Commercial Operations Date, notwithstanding that the Commercial Operations Date occurred after the date that is twelve (12) months after the Estimated Commercial Operations Date.

7.3.3. Effect of Termination. Upon a termination pursuant to this Section 7.3 neither Party shall have any further liability or obligation to the other Party hereunder.

ARTICLE 8 BILLING AND PAYMENT

8.1 Monthly Invoices and Payments for Alternative On-bill Credits. Within five (5) business days following the first day of each month, or other billing period as may be determined by Seller, Seller shall provide Buyer with an invoice stating the amounts owing under this Agreement for the previous month pursuant to Section 2.3. Buyer shall pay the amount specified in each invoice to Seller no later than forty-five (45) days after the date of the invoice. Payments shall be made by wire transfer to an account designated in writing by Seller from time to time.

8.2 Invoice Disputes. If a Party, in good faith, disputes an amount owed or paid as provided in this Agreement, the disputing Party shall promptly notify the other Party of the basis for the dispute and pay the undisputed portion of such Invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within thirty (30) days of such resolution. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments with interest accrued at the Interest Rate per annum at the option of the overpaying Party. The Parties shall only be entitled to dispute an amount owed or paid within twelve (12) calendar months from the date of issuance of such Invoice. If the Parties are unable to resolve a payment dispute under this Section, the Parties shall follow the procedure set forth in Article 11 (Dispute Resolution).

ARTICLE 9 FORCE MAJEURE

9.1 Effect of Force Majeure. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:

9.1.1. The Party affected by such Force Majeure, as soon as reasonably practical after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice, fully describing the particulars of the occurrence;

9.1.2. The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and

9.1.3. The Party affected by such Force Majeure uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible.

9.2 Payment Obligations Not Excused. Notwithstanding anything in this Article to the contrary, no payment obligation shall be excused by such event of Force Majeure.

ARTICLE 10 CONFIDENTIALITY

10.1 Confidential Information. This Agreement and all information and materials provided or disclosed by either Party to the other Party pursuant to, or in connection with, this Agreement, whether in visual, oral or written form, and designated as confidential by the disclosing Party shall be "Confidential Information." Confidential Information constitutes a valuable asset and is proprietary to the Party disclosing or originally possessing it. Each Party shall maintain all Confidential Information in trust and strict confidence for the sole benefit of the Parties and, absent the prior written consent of the other Party, shall

not disclose or make available to any third party any Confidential Information. Neither Party shall use any Confidential Information for any purpose other than as expressly set forth in this Agreement. Each Party's Confidential Information shall be and remain the sole property of such Party. Seller acknowledges that Buyer is subject to the Massachusetts Public Records Act, G. L. c. 4, §7, cl. 26 and G. L. c. 66, §10.

10.2 Exceptions. The confidentiality restrictions contained in Section 9.1 shall not apply (i) to information already in the public domain or in the possession of the receiving Party at the time of disclosure; (ii) to information that enters the public domain through no breach hereof by the receiving Party; (iii) to the extent necessary to administer or enforce a Party's rights or obligations under this Agreement; (iv) to the extent that information is required to be disclosed by applicable Law; or (v) to disclosures by a Party to its affiliates, agents, employees, attorneys and consultants, and to its prospective and actual lenders and investors provided that such third parties enter into appropriate confidentiality agreements with respect to the same. In the event of a required disclosure, the Party that is required to make such disclosure shall inform the other Party promptly and take such steps as are reasonably necessary to minimize the disclosure and protect the confidentiality of any Confidential Information. Additionally, either Party may disclose the existence and general purpose of this Agreement to third parties, provided that such right shall not extend to the disclosure of pricing or other specific details of this Agreement.

10.3 Equitable Relief. The Parties acknowledge and agree that there can be no adequate remedy at law to compensate the Parties for a breach of this ARTICLE 9, and therefore, that upon any such breach or threat thereof, either Party shall be entitled to injunctive relief and other appropriate equitable relief (without the necessity of providing actual damages or the posting of any bond), in addition to whatever remedies may be available at law or in equity.

ARTICLE 11 DISPUTE RESOLUTION

11.1 Referral to Senior Management. Any and all disputes arising out of or relating to this Agreement (a "Dispute") shall be resolved exclusively in accordance with this ARTICLE 10. The Parties agree to make a diligent, good faith attempt to resolve any such dispute through negotiation by senior management members (no less than a Vice President) before either Party commences arbitration or litigation under this ARTICLE 10. Either Party claiming a Dispute shall provide written notice thereof to the other Party setting forth the details of the Dispute.

11.2 Dispute Resolution. The parties may mutually agree, after being unable to resolve a Dispute within a reasonable time under Section 10.1, to mediation and/or arbitration, and, if not able to so agree, may file suit in a court of competent jurisdiction in Barnstable County.

11.3 Intentionally Omitted.

11.4 Continuation of Performance. During the conduct of dispute resolution procedures, (i) the Parties shall continue to perform their respective obligations under this Agreement, and (ii) neither Party shall exercise any other remedies hereunder arising by virtue of the matters in dispute; provided, however, that nothing in this Section shall be construed to prevent Seller from suspending performance in the event that Buyer has not paid amounts due and owing to Seller under this Agreement.

11.5 Effect of Termination. No termination of this Agreement following an Event of Default shall relieve the Defaulting Party of its liability and obligations hereunder, and the non-defaulting Party may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligations under this Agreement.

ARTICLE 12 COMPLIANCE WITH LAWS

Both Parties shall comply with all applicable Laws as they relate to this Agreement and the performance by the Parties hereunder.

ARTICLE 13 ASSIGNMENT

13.1 Generally. Subject to Section 12.2, this Agreement may not be assigned by either Party without the other Party's written consent.

13.2 Permitted Assignments. Notwithstanding Section 12.1, Seller may, without Buyer's consent, but with written notice to Buyer: (i) assign this Agreement to any subsidiary, affiliate or other special purpose company formed by Seller for the purpose of developing and owning the System or (ii) collaterally assign this Agreement as security to the System Lenders or the System Owner in accordance with ARTICLE 13; provided, however, that any assignment of this Agreement by Seller pursuant to the foregoing subclauses (i) or (ii) shall not release Seller from its liabilities under this Agreement. Either Party may assign this Agreement to any entity that acquires all or substantially all of the assets of the Party, provided that as conditions to any such assignment, such Party shall provide the other Party with written notice thereof, and the assignee entity shall execute and deliver to the other Party a document agreeing to be bound by this Agreement and assuming the assigning Party's obligations hereunder.

13.3 Continued Effectiveness; Assignments in Violation. Subject to the foregoing prohibitions against assignment, the agreements, covenants, conditions and provisions contained in this Agreement bind, apply to and inure to the benefit of the Parties their permitted heirs, successors and assigns. Any assignment in violation of this ARTICLE 12 shall be void and of no effect.

ARTICLE 14 SYSTEM FINANCING

14.1 System Owner, System Lenders and Financing. The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from lenders or other third parties (the "System Lenders") in connection with the development and ownership of the System (the "System Financing"), which financing may include the sale of the System to a third party (the "System Owner"). Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the System Lenders in order to support the System Financing. The Parties also agree that, in accordance with this Section 14.1, Seller may assign this Agreement to the System Owner and/or the System Lenders as collateral to support the System and Seller's obligations to the System Owner and/or the System Lenders, as applicable. In connection with any such assignment, Buyer agrees to enter into an agreement directly with the System Owner and/or the System Lenders under which Buyer shall consent to such assignment and will agree to other customary and reasonable provisions for the benefit of the System Owner and/or the System Lenders (including provisions under which the System Owner and/or the System Lenders or their designees (i) may assume the rights of Seller under this Agreement; (ii) shall be entitled to receive copies of certain notices hereunder that Buyer might provide to Seller; (iii) shall have extended cure periods (up to 20 additional days maximum) to cure any defaults by Seller hereunder; and (iv) shall be provided other similar or related

benefits or protections as reasonably requested by the System Owner and/or the System Lenders to support the System Financing.

ARTICLE 15 LIMITATIONS OF LIABILITY

15.1 No Consequential Damages. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, EXCEPT TO THE EXTENT THE DAMAGES IN SECTION 6.2.2 MAY BE SO CONSIDERED, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, STATUTORY LIABILITY, OR OTHERWISE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY LOSS OF PROFITS, LOSS OF PRODUCTION, EARNINGS, REVENUE, USE, DATA, CONTRACT OR GOOD WILL, EVEN IN SITUATIONS WHERE A PARTY HAS KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES.

15.2 Parties' Intent. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, AND IRRESPECTIVE OF WHETHER ANY CLAIM HEREUNDER OR RELATING HERETO IS IN CONTRACT, TORT, STRICT LIABILITY, STATUTORY LIABILITY, OR OTHERWISE.

ARTICLE 16 REPRESENTATIONS AND WARRANTIES

16.1 General. Each Party represents and warrants to the other the following:

16.1.1. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate action, and do not and will not violate any Law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms.

16.1.2. Such Party has obtained all licenses, authorizations, consents and approvals required by any governmental authority and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all Laws that relate to this Agreement in all material respects.

16.1.3. Other Agreements. Neither the execution and delivery of this Agreement by the such Party, nor the performance by such Party of any of its obligations under this Agreement, shall conflict with or result in a default under any of the terms or conditions of any agreement or obligation to which such Party is a party or by which such Party or its assets may be bound.

ARTICLE 17 MISCELLANEOUS

17.1 Notices.

17.1.1. Any notice, invoice, demand, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be served personally, by reputable express courier service, or by e-mail followed with confirmation delivery of hard copy, in each case to the other Party at the address set forth on the Cover Page. All notices shall be effective upon receipt.

17.1.2. Each Party shall have the right to change the place to which notice shall be sent or delivered or to specify one address to which copies of notices may be sent, in either case by similar notice sent or delivered in like manner to the other Party.

17.2 Consents. Any consent that is provided for pursuant to this Agreement shall not be unreasonably withheld or delayed.

17.3 Headings. The titles or headings of the various sections, articles and paragraphs hereof are intended solely for convenience and ease of reference and are not intended, and are not to be deemed for any purpose, to modify or explain or place any interpretation or construction upon any of the provisions of this Agreement.

17.4 Governing Law. This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the Commonwealth of Massachusetts, excluding any choice of law rules that might direct the application of the laws of a different jurisdiction, irrespective of the places of execution or of the order in which signatures of the Parties are affixed or of the place of performance. The parties further agree that the venue for any action or arbitration shall be located in Barnstable County, Massachusetts.

17.5 Integration. This Agreement, together with all Exhibits hereto, embodies the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the Parties, verbal or written, relating to the subject matter hereof.

17.6 Relationship of Parties. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party and none shall be considered the agent of the other.

17.7 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and legal benefit of Buyer and Seller, and their permitted successors and assigns, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement.

17.8 Amendments; Waivers. This Agreement may be modified only by a writing that is signed by both Parties. Any waiver of the provisions of this Agreement must be in writing and will not be implied by any usage of trade, course of dealing or course of performance. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy by Buyer or Seller constitutes a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance hereunder shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

17.9 Construction of Agreement. This Agreement is to be construed so as to effectuate the normal and reasonable expectations of a sophisticated buyer and seller of the products and services covered by this Agreement and shall not be construed either for or against either Party. No provision of this Agreement shall be construed or interpreted for or against either Party because such Party drafted, or caused its legal representative to draft, the provision.

17.10 Severability. If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under applicable Law, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

17.11 Further Actions. Each Party shall do all necessary acts and make, execute, and deliver such written instruments as may from time to time be reasonably required to carry out the terms of this Agreement. Neither Party may take an action that would frustrate the other Party's reasonable expectations concerning the benefits to be enjoyed hereunder.

17.12 Non-Dedication of Facilities. Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any governmental agency. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement.

17.13 Survival. The provisions of Section 7.2 and ARTICLE 6, ARTICLE 9, ARTICLE 10, and ARTICLE 14 shall survive termination of this Agreement to the extent required for their full performance.

Exhibit B
Guaranteed Energy Production

Year	System Production in kWh*
1	2,560,000
2	2,547,200
3	2,534,464
4	2,521,792
5	2,509,183
6	2,496,637
7	2,484,154
8	2,471,733
9	2,459,374
10	2,447,077
11	2,434,842
12	2,422,668
13	2,410,554
14	2,398,502
15	2,386,509
16	2,374,577
17	2,362,704
18	2,350,890
19	2,339,136
20	2,327,440
*annual 0.50% system degradation	



Town of Falmouth

Department of Public Works - Engineering Division

416 Gifford Street, Falmouth, MA 02540
Office: 508-457-2543, Fax: 508-548-1537



Scott Schluter, P.E., Staff Engineer

scott.schluter@falmouthma.gov

July 17, 2020

Julian M. Suso
Town Manager
Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540

Re: Roadway Betterment Taking – Final completion of roadway upgrades and cost assessment for Captain Davis Lane

Mr. Suso,

On April 8, 2019, the Town of Falmouth voted unanimously to approve Article 16 to accept the layout of Captain Davis Lane as a public way, and to assess betterments to the abutting properties for 100% of the costs improving the road to meet current Town Standards.

The reconstruction of Captain Davis Lane is complete and all bills are in for the project. The following table shows a summary of the project costs.

Estimated Construction Costs	\$265,155.00
Actual Construction Costs	\$82,178.50

A Certificate of Betterment or Special Assessments is attached for signature at the next Select Board's Meeting. Also attached are a certified list of abutters to be bettered, and a summary of assessments per property.

Thank you,

Scott Schluter, P.E.
Staff Engineer
DPW Engineering Division

Cc: Peter M. McConarty, P.E., P.L.S., Director of Public Works
James E. McLoughlin, P.E., Town Engineer
James F. Grady Jr., Superintendent of Highways

**Certificate of Betterment
or Special Assessments to
the Board of Assessors**

**THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF FALMOUTH
SELECT BOARD**

Date: July 17, 2020

Sheet #: 1 of 4

**Order for Improvement Under M.G.L. Chapters 80 & 83
Order or Statement Recorded on May 3, 2019**

TO THE BOARD OF ASSESSORS OF THE TOWN OF FALMOUTH:

The Select Board hereby certifies to you for commitment the list of assessments made by it upon the hereinafter described parcels of land situated within the area receiving benefit by reason of abutting Captain Davis Lane, provided for in Article 16 of the annual town meeting held on April 8, 2019, and recorded at the Barnstable County Registry of Deeds in Book 31995, Page 276, on May 3, 2019.

Each parcel of land described in Attachment A is listed in the Order of Taking on file in the Office of the Barnstable Registry of Deeds, Book 31995, Page 276.

The per parcel assessment to be assessed to each of the abutters for which these documents are recorded is summarized in Attachment B.

Total number of sheets attached: 3

**TOWN OF FALMOUTH
By its SELECT BOARD**

Megan E. English Braga, Chair

Douglas C. Brown, Vice Chair

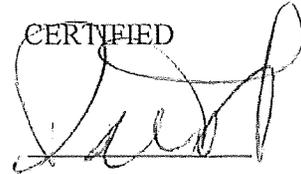
Douglas H. Jones

Samuel H. Patterson

Nancy R. Taylor

Attachment A
List of Abutters to be Assessed the Betterment

CAPTAIN DAVIS LN

CERTIFIED


Patricia A Favulli
Director of Assessing
Town of Falmouth
July 16, 2020

37 CAPTAIN DAVIS LN ANDERSON CHRISTIN A 37 CAPTAIN DAVIS LN EAST FALMOUTH, MA 02536	40 12 020 014 LUC: 101	50 CAPTAIN DAVIS LN LOHNES FRANK G 50 CAPTAIN DAVIS LN E FALMOUTH, MA 02536-7011	40 12 020 011 LUC: 101
27 CAPTAIN DAVIS LN BARR LAWRENCE D 27 CAPTAIN DAVIS LN E FALMOUTH, MA 02536-7011	40 12 020 016 LUC: 101	17 CAPTAIN DAVIS LN MARAGNI MARK LESHO LYNNE 61 BABCOCK ST UNIT 3B BROOKLINE, MA 02446	40 12 020 018 LUC: 101
11 CAPTAIN DAVIS LN CHASE TAMI A 15 KATIE CT BRIDGEWATER, MA 02324	40 12 020 019 LUC: 104	45 CAPTAIN DAVIS LN MARCO TRUSTEE LINDA LINDA MARCO REVOC LIV TRUST 45 CAPTAIN DAVIS LN EAST FALMOUTH, MA 02536	40 12 020 013 LUC: 101
21 CAPTAIN DAVIS LN COGSWELL PHYLLIS V 21 CAPTAIN DAVIS LN E FALMOUTH, MA 02536-7011	40 12 020 017 LUC: 101	34 CAPTAIN DAVIS LN MCVAY ANN S PO BOX 186 FALMOUTH, MA 02541-0186	40 12 020 007 LUC: 101
49 CAPTAIN DAVIS LN COLMAN JR FREDERICK W COLMAN GLENS ELLEN 345 BAY SHORE BLVD UNIT 1603 TAMPA, FL 33606	40 12 020 012 LUC: 101	14 CAPTAIN DAVIS LN QUINN JOHN D QUINN ELIZABETH A 14 CAPTAIN DAVIS LN E FALMOUTH, MA 02536	40 12 020 003 LUC: 101
31 CAPTAIN DAVIS LN CONLON JEFFREY J CONLON ELIZABETH M 31 CAPTAIN DAVIS LN E FALMOUTH, MA 02536	40 12 020 015 LUC: 101	46 CAPTAIN DAVIS LN SHAW JOHANNA PO BOX 835 OSTERVILLE, MA 02655	40 12 020 010 LUC: 101
28 CAPTAIN DAVIS LN DUNN JR JOHN J DUNN HELEN F 28 CAPTAIN DAVIS LN EAST FALMOUTH, MA 02536-7011	40 12 020 006 LUC: 101	36 CAPTAIN DAVIS LN VOGEL TRUSTEE WENDY L WENDY L VOGEL FAMILY TRUST 36 CAPTAIN DAVIS LN EAST FALMOUTH, MA 02536	40 12 020 008 LUC: 101
8 CAPTAIN DAVIS LN HOFFER DONALD L HOFFER PATRICIA 8 CAPTAIN DAVIS LN EAST FALMOUTH, MA 02536-7011	40 12 020 002 LUC: 101	40 CAPTAIN DAVIS LN WOODCOME LAWRENCE A WOODCOME KAHLEEN M 40 CAPTAIN DAVIS LN EAST FALMOUTH, MA 02536	40 12 020 009 LUC: 101
18 CAPTAIN DAVIS LN KELLY THOMAS P KELLY SHEILA A 18 CAPTAIN DAVIS LN EAST FALMOUTH, MA 02536	40 12 020 004 LUC: 101		
24 CAPTAIN DAVIS LN KELLY THOMAS P KELLY SHEILA A 18 CAPTAIN DAVIS LN EAST FALMOUTH, MA 02536	40 12 020 005 LUC: 101		

Attachment B
List of Betterments

Actual cost: \$82,178.50
Lots eligible for betterment: 18
Actual cost per lot: \$4,565.47

Address	Parcel ID	Owner	Amount to be Assessed
27 Captain Davis Ln	40 12 020 016	BARR, LAWRENCE D	\$4,565.47
21 Captain Davis Ln	40 12 020 017	COGSWELL, PHYLLIS V	\$4,565.47
49 Captain Davis Ln	40 12 020 012	COLMAN JR, FREDERICK W COLMAN, GLENS ELLEN	\$4,565.47
31 Captain Davis Ln	40 12 020 015	CONLON, JEFFREY J CONLON, ELIZABETH M	\$4,565.47
28 Captain Davis Ln	40 12 020 006	DUNN JR, JOHN J DUNN, HELEN F	\$4,565.47
8 Captain Davis Ln	40 12 020 002	HOFFER, DONALD L HOFFER, PATRICIA	\$4,565.47
18 Captain Davis Ln	40 12 020 004	KELLY, THOMAS P KELLY, SHEILA A	\$4,565.47
24 Captain Davis Ln	40 12 020 005	KELLY, THOMAS P KELLY, SHEILA A	\$4,565.47
50 Captain Davis Ln	40 12 020 011	LOHNES, FRANK G	\$4,565.47
17 Captain Davis Ln	40 12 020 018	MARAGNI, MARK LESHO, LYNNE	\$4,565.47
45 Captain Davis Ln	40 12 020 013	MARCO, TRUSTEE LINDA LINDA MARCO REVOC LIV TRUST	\$4,565.47
34 Captain Davis Ln	40 12 020 007	MCVAY, ANN S	\$4,565.47
37 Captain Davis Ln	40 12 020 014	ANDERSON, CHRISTINA	\$4,565.47
14 Captain Davis Ln	40 12 020 003	QUINN, JOHN D QUINN, ELIZABETH A	\$4,565.47
46 Captain Davis Ln	40 12 020 010	SHAW, JOHANNA	\$4,565.47
11 Captain Davis Ln	40 12 020 019	CHASE, TAMI A	\$4,565.47
36 Captain Davis Ln	40 12 020 008	VOGEL, TRUSTEE WENDY L WENDY L VOGEL FAMILY TRUST	\$4,565.47
40 Captain Davis Ln	40 12 020 009	WOODCOME, LAWRENCE A WOODCOME, KAHLEEN M	\$4,565.47

Total to be Assessed: \$82,178.50



Town of Falmouth

Department of Public Works - Engineering Division

416 Gifford Street, Falmouth, MA 02540
Office: 508-457-2543, Fax: 508-548-1537



Scott Schluter, P.E., Staff Engineer

scott.schluter@falmouthma.gov

July 17, 2020

Julian M. Suso
Town Manager
Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540

Re: Roadway Betterment Taking – Final completion of roadway upgrades and cost assessment for Winthrop Drive (west side)

Mr. Suso,

On April 8, 2019, the Town of Falmouth voted unanimously to approve Article 16 to accept the layout of Winthrop Drive (west side) as a public way, and to assess betterments to the abutting properties for 100% of the costs improving the road to meet current Town Standards.

The reconstruction of Winthrop Drive is complete and all bills are in for the project. The following table shows a summary of the project costs.

Estimated Construction Costs	\$253,296.00
Actual Construction Costs	\$99,839.26

A Certificate of Betterment or Special Assessments is attached for signature at the next Select Board's Meeting. Also attached are a certified list of abutters to be bettered, and a summary of assessments per property.

Thank you,

Scott Schluter, P.E.
Staff Engineer
DPW Engineering Division

Cc: Peter M. McConarty, P.E., P.L.S., Director of Public Works
James E. McLoughlin, P.E., Town Engineer
James F. Grady Jr., Superintendent of Highways

**Certificate of Betterment
or Special Assessments to
the Board of Assessors**

**THE COMMONWEALTH OF MASSACHUSETTS
TOWN OF FALMOUTH
SELECT BOARD**

Date: July 17, 2020

Sheet #: 1 of 4

**Order for Improvement Under M.G.L. Chapters 80 & 83
Order or Statement Recorded on May 3, 2019**

TO THE BOARD OF ASSESSORS OF THE TOWN OF FALMOUTH:

The Select Board hereby certifies to you for commitment the list of assessments made by it upon the hereinafter described parcels of land situated within the area receiving benefit by reason of abutting Winthrop Drive (west side), provided for in Article 16 of the annual town meeting held on April 8, 2019, and recorded at the Barnstable County Registry of Deeds in Book 31995, Page 284, on May 3, 2019.

Each parcel of land described in Attachment A is listed in the Order of Taking on file in the Office of the Barnstable Registry of Deeds, Book 31995, Page 284.

The per parcel assessment to be assessed to each of the abutters for which these documents are recorded is summarized in Attachment B.

Total number of sheets attached: 3

**TOWN OF FALMOUTH
By its SELECT BOARD**

Megan E. English Braga, Chair

Douglas C. Brown, Vice Chair

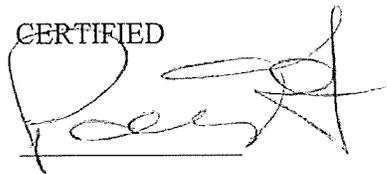
Douglas H. Jones

Samuel H. Patterson

Nancy R. Taylor

Attachment A
List of Abutters to be Assessed the Betterment

WINTHROP DR

CERTIFIED


Patricia A Favulli
Director of Assessing
Town of Falmouth
July 16, 2020

24 WINTHROP DR AKINS THOMAS J AKINS KAREN S 38 CARDINAL CT BRAintree. MA 02184	41 02 000J 031 LUC: 101	26 WINTHROP DR PIERCE COLLEEN E PIERCE ADAM F 26 WINTHROP DR EAST FALMOUTH. MA 02536	41 02 000J 030 LUC: 101
8 WINTHROP DR ANDERSON SANDRA L 8 WINTHROP DR E FALMOUTH. MA 02536-6655	41 02 000J 035 LUC: 101	20 WINTHROP DR SCHOULER DUANE L 15 PROVIDENCE ST TEATICKET. MA 02536-7542	41 02 000J 032 LUC: 101
12 WINTHROP DR DEGABRIELE DENNIS M DEGABRIELE ROSE V 12 WINTHROP DR E FALMOUTH. MA 02536-6655	41 02 000J 034 LUC: 101	16 WINTHROP DR TEIXEIRA MARY L 21 BAYSIDE DR EAST FALMOUTH. MA 02536	41 02 000J 033 LUC: 101
32 WINTHROP DR DEWAR PATRICIA A PO BOX 772 E FALMOUTH. MA 02536-0772	41 02 000J 028 LUC: 101	7 WINTHROP DR THEIRRIEN ALFRED G THEIRRIEN JEAN F 7 WINTHROP DR EAST FALMOUTH. MA 02536-6654	41 02 000J 039 LUC: 101
23 WINTHROP DR FITZGERALD DENNIS C FITZGERALD ROBERTA 78 ROCK GLEN RD MEDFORD. MA 02155	41 02 000J 043 LUC: 101	11 WINTHROP DR TURNER JOHN S TURNER KIMBERLY S 11 WINTHROP DR E FALMOUTH. MA 02536-6654	41 02 000J 040 LUC: 101
29 WINTHROP DR HOLCOMB TRUSTEE PHYLLIS HOLCOMB TRUSTEE ROBERT L 29 WINTHROP DR E FALMOUTH. MA 02536	41 02 000J 045 LUC: 101	261 SEACOAST SHORES BLVD VOLPE GLENN D VOLPE SHAILEEN D 16 TIMBERLINE RD MILLIS. MA 02054	41 02 000J 047 LUC: 101
17 WINTHROP DR LAURORA MASSIMO LAURORA CYNTHIA 11 WINTER LN FRAMINGHAM. MA 01702	41 02 000J 041 LUC: 101	25 WINTHROP DR WILLWERTH TRUSTEE ROBERT F WILLWERTH TRUSTEE LINDA A 25 WINTHROP DR E FALMOUTH. MA 02536	41 02 000J 044 LUC: 101
30 WINTHROP DR MCHUGH ROBERT F MCHUGH CAROL F 29 WHEELER CIR CANTON. MA 02021	41 02 000J 029 LUC: 101		
255 SEACOAST SHORES BLVD ONEILL JOHN J ESTATE OF 180 WOODLAND RD C/O J G & MARJORY ONEIL ADMN SOUTHBOROUGH. MA 01772-2036	41 02 000J 027 LUC: 101		
33 WINTHROP DR PERINI TY J PERINI JENNIFER L 33 WINTHROP DR E FALMOUTH. MA 02536-6654	41 02 000J 046 LUC: 101		

Attachment B
List of Betterments

Actual cost: \$99,839.26
Frontage eligible for betterment: 1,305 linear feet
Actual cost per linear foot: \$76.51

Address	Parcel ID	Owner	Linear Feet of Frontage	Amount to be Assessed
24 Winthrop Dr	41 02 000J 031	AKINS, THOMAS J AKINS, KAREN S	72.5	\$5,546.63
8 Winthrop Dr	41 02 000J 035	ANDERSON, SANDRA L	72.5	\$5,546.63
12 Winthrop Dr	41 02 000J 034	DEGABRIELE, DENNIS M DEGABRIELE, ROSE V	72.5	\$5,546.63
32 Winthrop Dr	41 02 000J 028	DEWAR, PATRICIA A	72.5	\$5,546.63
23 Winthrop Dr	41 02 000J 043	FITZGERALD, DENNIS C FITZGERALD, ROBERTA	72.5	\$5,546.63
29 Winthrop Dr	41 02 000J 045	HOLCOMB, ROBERT L HOLCOMB, PHYLLIS	72.5	\$5,546.63
17 Winthrop Dr	41 02 000J 041	LAURORA, MASSIMO LAURORA, CYNTHIA	145	\$11,093.25
30 Winthrop Dr	41 02 000J 029	MCHUGH, ROBERT F MUHUGH, CAROL F	72.5	\$5,546.63
255 Seacoast Shores Blvd	41 02 000J 027	ONEIL, JOHN J ESTATE OF	72.5	\$5,546.63
33 Winthrop Dr	41 02 000J 046	PERINI, TY J PERINI, JENNIFER L	72.5	\$5,546.63
26 Winthrop Dr	41 02 000J 030	PIERCE, COLLEEN E PIERCE, ADAM F	72.5	\$5,546.63
20 Winthrop Dr	41 02 000J 032	SCHOULER, DUANE L	72.5	\$5,546.63
16 Winthrop Dr	41 02 000J 033	TEIXEIRA, MARY L	72.5	\$5,546.63
7 Winthrop Dr	41 02 000J 039	THEIRRIEN, ALFRED G THEIRRIEN, JEAN F	72.5	\$5,546.63
11 Winthrop Dr	41 02 000J 040	TURNER, JOHN S TURNER, KIMBERLY S	72.5	\$5,546.63
261 Seacoast Shores Blvd	41 02 000J 047	VOLPE, GLENN D VOLPE, SHAILEEN D	72.5	\$5,546.63
25 Winthrop Dr	41 02 000J 044	WILLWERTH, TRUSTEE ROBERT F WILLWERTH, TRUSTEE LINDA A	72.5	\$5,546.63

Total to be Assessed: \$99,839.26

PUBLIC HEARING NOTICE

The Falmouth Board of Selectmen will hold a public hearing under Section 240-77 (Wetland Regulations) of the Zoning Bylaws of the Town of Falmouth on Monday, March 9, 2020 at 7:30 p.m. in the Selectmen's Meeting Room, Falmouth Town Hall, on the application of Nikolas J., John S., Anthony P. Pentikis/James N. Pentikis Trust, UDT for permission to license, retain and maintain two (2) existing 4' x 20' floats in and over the waters of Eel Pond Canal. There is an existing Waterways License for the bulkhead, No. 4471, at 5 Canapitsit Drive, East Falmouth, MA. Area affected is Eel Pond. Interested parties may review the file on this hearing at the Selectmen's Office.

Per Order of the
Board of Selectmen

Publication dates: Friday, February 14, 2020 and Friday, February 21, 2020; Falmouth Enterprise.

Hearing continued to Monday, April 27, 2020.

Hearing continued to Monday, June 15, 2020.

Hearing continued to Monday, July 27, 2020.



CAPE & ISLANDS ENGINEERING

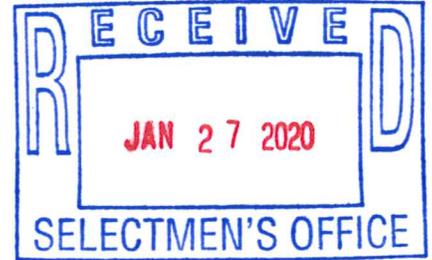
CIVIL ENGINEERING - LAND SURVEYING - ENVIRONMENTAL PERMITTING

INCORPORATED

SUMMERFIELD PARK
800 FALMOUTH ROAD, SUITE 301C
MASHPEE, MA 02649
(508) 477-7272 FAX (508) 477-9072
email: info@CapeEng.com

PAID
\$75.00

CK # 1014 Anthony Pentikis



January 27, 2020

Falmouth Board of Selectmen
Town Hall Square
Falmouth, MA 02540

RE: Permit for 5 Canapitsit Drive, East Falmouth, MA, 32 04 008 078 ~
Nikolas J., John S. and Anthony P. Pentikis/James N. Pentikis Trust udt.

Dear Chairman and Members of the Board:

Enclosed, please find the application as required under Section 240-77 of the Zoning Bylaw, for permission to License, retain and maintain existing two (2) 4'x20' floats in and over the waters of Eel Pond Canal, according to the Existing Float Plans, revised January 21, 2020. There is an existing Waterways License for the bulkhead, No. 4471, at 5 Canapitsit Drive, East Falmouth, MA.

If you have any questions or concerns, please feel free to contact me.

Sincerely,

Matthew C. Costa, P.L.S., R.S.
President

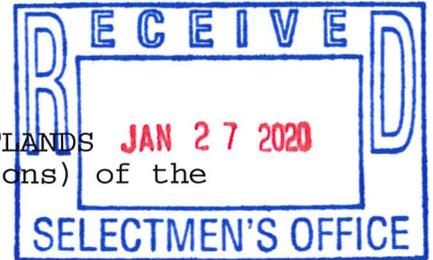
Encl. Board of Selectmen Application
Determination of Applicability
Filing Fee

Cc: Nikolas J., John S. and Anthony P. Pentikis/James N. Pentikis Trust udt

Town Of Falmouth
BOARD OF SELECTMEN

APPLICATION FOR PERMIT TO DREDGE, FILL OR ALTER WETLANDS
(As required under Section 240-77 (Wetland Regulations) of the
Zoning Bylaw

JAN 27 2020



To the Board of Selectmen
Falmouth, Mass.

FALMOUTH TOWN CLERK

Date: January 27, 2020

The undersigned hereby applies to the Board of Selectmen as required by Section 240-77 of the Zoning Bylaw, for a permit to alter, as indicated below, the following described premises:

Owner: Nikolas J., John S. and Anthony P. Pentikis/James N. Pentikis Trust udt
(Full name) (Address) P.O. Box 901, E. Falmouth, MA 02536

Agent: Matthew C. Costa, P.L.S., R.S., 800 Falmouth Rd., Mashpee, MA 02649
(Full name) (address) 02109

Applicant: SAME AS ABOVE
(full name) (address)

1. **Location of Property:** Map 32 Section 04 Parcel 008 Lot 078

Street Name and House Number: 5 Canapitsit Drive, East Falmouth

2. **Body of water, marsh or stream affected:** Eel Pond

3. **Description of property and project site:** The project site is located at 5 Canapitsit Drive, East Falmouth, MA, a private residential waterfront property with frontage on Eel Pond Canal, a tidal coastal embayment that flows into the waters of Vineyard Sound. The subject parcel consists of 13,767 (+/-) sq. ft. upland area and is on the eastern shore of Eel Pond Canal. The property has been a lot on record since on or about April 28, 1971 and has been developed as a legal single-family residence as of 1974, per the Town Assessors records. The property includes a single-family dwelling deck with stairs, septic system, timber steps, landscape steps, stepping stones, stone wall, post and rail fence, manicured lawn and landscape areas, concrete walkway, concrete bulkhead (License #4471) and floats in Eel Pond Canal. The two 4'x20' floats were approved by Falmouth Conservation 06-13-12 (see attached approval)

a. **Dimensions, Acreage of total parcel:** 13,767 +/- sq. ft.

b. **Length of water marsh frontage:** N/A

c. **Dimensions of area to be dredged:** N/A **Depth:** N/A

d. **Dimensions of area to be filled:** N/A

e. **Volume of dredging spoil to be moved:** N/A

Disposition of Spoil: N/A

APPLICATION FOR PERMIT TO DREDGE
SECTION 4300, FILL OR OTHERWISE ALTER WETLANDS

f. Describe proposed riprap or bulkheading, if any: NONE

Other (docks, piers and etc.): License, retain and maintain two (2) existing 4'x20' floats in and over the waters of Eel Pond Canal. Floats previously approved by Falmouth Conservation Commission on 06-13-12. There is an existing Waterways License for the bulkhead, No. 4471, at 5 Canapitsit Drive, East Falmouth, MA.

h. Method (equipment to be used) for proposed work: Barge and most work to be done by hand

4. Purpose of proposed work: PRIVATE FLOAT SYSTEM

5. Zoning which governs area: RESIDENTIAL

6. Date of application for permit to dredge or fill from the Commonwealth of Mass: N/A Army Engineers: N/A

7. Has a permit ever been approved or refused for this location by State, Federal or Local Authority: Yes

8. Remarks: Chapter 91 License No. 4471

9. Project Summary for legal notice:

For permission to License, retain and maintain two (2) existing 4'x20' floats in and over the waters of Eel Pond Canal. There is an existing Waterways License for the bulkhead, No. 4471 at 5 Canapitsit Drive, East Falmouth, MA.

Owner: Nikolas J., John S. and Anthony P. Pentikis/James N. Pentikis Trust udt

Agent: Matthew C. Costa, P.L.S., R.S. Cape & Islands Engineering

P.O. Box 901

800 Falmouth Rd., Suite 301C

East Falmouth, MA 02536

Mashpee, MA 02649

Applicant: Nikolas J., John S. and Anthony P. Pentikis/James N. Pentikis Trust u/d/t


(applicant/signature/date) Cape & Islands Engineering, Inc.

DO NOT WRITE BELOW THIS SPACE, FOR SELECTMEN'S OFFICE USE ONLY

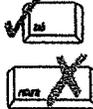
Falmouth Conservation Commission Determination of Applicability



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 2 - Determination of Applicability
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
Falmouth Wetlands Protection Bylaw Chapter 235 and FWR 10.00

A. General Information

Important: When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



From: Falmouth Conservation Commission

To: Applicant James Pentikis, P.O. Box 901, East Falmouth MA 02536
Property Owner (if different from applicant):

- 1. Title and Date (or Revised Date if applicable) of Final Plans and Other Documents:
2. Date Request Filed: 5/25/2012

B. Determination

Pursuant to the authority of M.G.L. c. 131, § 40, the Conservation Commission considered your Request for Determination of Applicability, with its supporting documentation, and made the following Determination.

Project Description (if applicable):
Proposed to install two 4 x 20 ft floats to be secured parallel to existing bulkhead

Project Location:
5 Canapitsit Drive, East Falmouth
33 04, 008 078
Assessors Map/Plat Number, Parcel/Lot Number



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 2 – Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
Falmouth Wetlands Protection Bylaw Chapter 235 and FWR 10.00

B. Determination (cont.)

6. The following area and/or work, if any, is subject to a municipal ordinance or bylaw but not subject to the Massachusetts Wetlands Protection Act:
-

7. If a Notice of Intent is filed for the work in the Riverfront Area described on referenced plan(s) and document(s), which includes all or part of the work described in the Request, the applicant must consider the following alternatives. (Refer to the wetland regulations at 10.58(4)c. for more information about the scope of alternatives requirements):

- Alternatives limited to the lot on which the project is located.
- Alternatives limited to the lot on which the project is located, the subdivided lots, and any adjacent lots formerly or presently owned by the same owner.
- Alternatives limited to the original parcel on which the project is located, the subdivided parcels, any adjacent parcels, and any other land which can reasonably be obtained within the municipality.
- Alternatives extend to any sites which can reasonably be obtained within the appropriate region of the state.

Negative Determination

Note: No further action under the Wetlands Protection Act is required by the applicant. However, if the Department is requested to issue a Superseding Determination of Applicability, work may not proceed on this project unless the Department fails to act on such request within 35 days of the date the request is post-marked for certified mail or hand delivered to the Department. Work may then proceed at the owner's risk only upon notice to the Department and to the Conservation Commission. Requirements for requests for Superseding Determinations are listed at the end of this document.

1. The area described in the Request is not an area subject to protection under the Act or the Buffer Zone.
2. The work described in the Request is within an area subject to protection under the Act, but will not remove, fill, dredge, or alter that area. Therefore, said work does not require the filing of a Notice of Intent. **Under the State and bylaw, as proposed.**
3. The work described in the Request is within the Buffer Zone, as defined in the regulations, but will not alter an Area subject to protection under the Act. Therefore, said work does not require the filing of a Notice of Intent, subject to the following conditions (if any).
-

4. The work described in the Request is not within an Area subject to protection under the Act (including the Buffer Zone). Therefore, said work does not require the filing of a Notice of Intent, unless and until said work alters an Area subject to protection under the Act.
-



**Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands**

WPA Form 2 – Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
Falmouth Wetlands Protection Bylaw Chapter 235 and FWR 10.00

B. Determination (cont.)

The following Determination(s) is/are applicable to the proposed site and/or project relative to the Wetlands Protection Act and regulations:

Positive Determination

Note: No work within the jurisdiction of the Wetlands Protection Act may proceed until a final Order of Conditions (issued following submittal of a Notice of Intent or Abbreviated Notice of Intent) or Order of Resource Area Delineation (issued following submittal of Simplified Review ANRAD) has been received from the issuing authority (i.e., Conservation Commission or the Department of Environmental Protection).

1. The area described on the referenced plan(s) is an area subject to protection under the Act. Removing, filling, dredging, or altering of the area requires the filing of a Notice of Intent.

2a. The boundary delineations of the following resource areas described on the referenced plan(s) are confirmed as accurate. Therefore, the resource area boundaries confirmed in this Determination are binding as to all decisions rendered pursuant to the Wetlands Protection Act and its regulations regarding such boundaries for as long as this Determination is valid.

2b. The boundaries of resource areas listed below are not confirmed by this Determination, regardless of whether such boundaries are contained on the plans attached to this Determination or to the Request for Determination.

3. The work described on referenced plan(s) and document(s) is within an area subject to protection under the Act and will remove, fill, dredge, or alter that area. Therefore, said work requires the filing of a Notice of Intent.

4. The work described on referenced plan(s) and document(s) is within the Buffer Zone and will alter an Area subject to protection under the Act. Therefore, said work requires the filing of a Notice of Intent or ANRAD Simplified Review (if work is limited to the Buffer Zone).

5. The area and/or work described on referenced plan(s) and document(s) is subject to review and approval by:

Falmouth

Name of Municipality

Pursuant to the following municipal wetland ordinance or bylaw:

Falmouth Conservation Commission

Name

Ordinance or Bylaw Citation

The Commonwealth of Massachusetts



No. 4471

Whereas, James Pentikis

of Falmouth, in the County of Barnstable and Commonwealth aforesaid, has applied to the Department of Environmental Protection for license to maintain an existing seawall-----

and has submitted plans of the same; and whereas due notice of said application, ~~and of the time and place fixed for a hearing thereon,~~ has been given, as required by law, to the Board of Selectmen of the Town of Falmouth.-----

NOW, said Department, having heard all parties desiring to be heard, and having fully considered said application, hereby, ~~subject to the approval of the Governor,~~ authorizes and licenses the said-----

James Pentikis, subject to the provisions of the ninety-first chapter of the General Laws, and of all laws which are or may be in force applicable thereto, to maintain an existing seawall-----

in and over the waters of the Eel Pond Canal in the Town of Falmouth and in accordance with the locations shown and details indicated on the accompanying DEP License Plan No. 4471, (2 sheets).

*See ...
5 Casapitait Drive Falmouth*

PRINTED ON RECYCLED PAPER

4

License No. 4471

Page 2

The structures hereby authorized shall be limited to the following use: shoreline stabilization for the protection of existing structures.

In accordance with any license condition, easement, or other public right of lateral passage that exists in the area of the subject property lying between the high and low water marks, the Licensee shall allow the public in the exercise of such rights to pass freely around all structures within such intertidal area.

Accordingly, the Licensee shall place and maintain, in good repair, a public access sign along the Mean High Water shoreline at each property line. The signs shall include any statement and/or logo specified by the Department and shall otherwise conform to the "Signage Specifications of the Waterways Regulation Program", as may be amended hereafter. A Licensee's copy of such written specifications is provided with this license, and an additional copy shall be kept in the Department's permanent license file (No. 4471). Nothing in this condition shall be construed as preventing the Licensee from excluding the public from portions of said structure(s) or property not intended for lateral passage.

This license is valid for ninety-nine (99) years from the date of license issuance.

The project authorized herein has been completed in conformance with the accompanying License Plan. The issuance of this License, therefore, fulfills the Licensee's obligation to obtain a Certificate of Compliance pursuant to 310 CMR 9.19.

Please see page three for additional conditions to this license.-----

Duplicate of said plan, number 4471 is on file in the office of said Department, and original of said plan accompanies this License, and is to be referred to as a part hereof.

STANDARD WATERWAYS LICENSE CONDITIONS

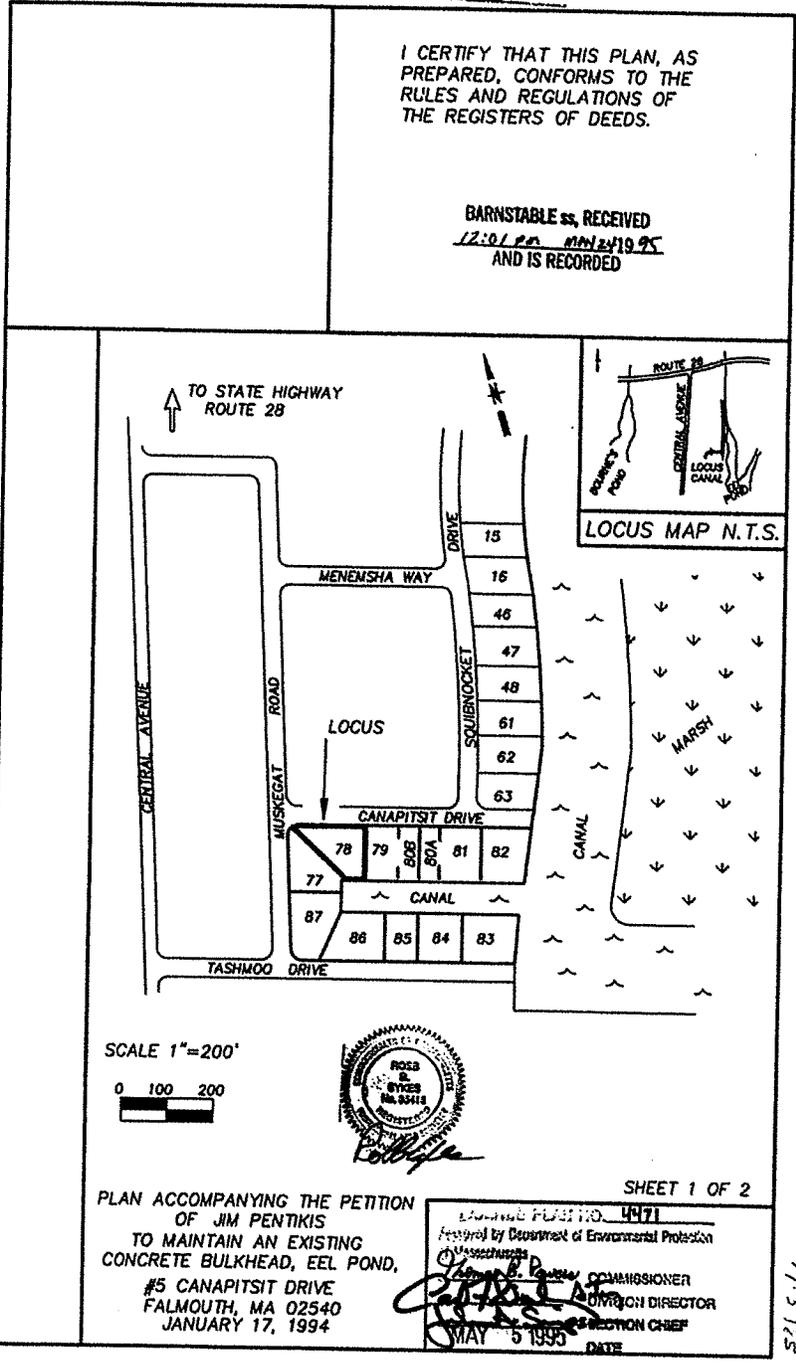
1. Acceptance of this Waterways License shall constitute an agreement by the Licensee to conform with all terms and conditions stated herein.
2. This License is granted upon the express condition that any and all other applicable authorizations necessitated due to the provisions hereof shall be secured by the Licensee prior to the commencement of any activity or use authorized pursuant to this License.
3. Any change in use or any substantial structural alteration of any structure or fill authorized herein shall require the issuance by the Department of a new Waterways License in accordance with the provisions and procedures established in Chapter 91 of the Massachusetts General Laws. Any unauthorized substantial change in use or unauthorized substantial structural alteration of any structure or fill authorized herein shall render this Waterways License void.
4. This Waterways License shall be revocable by the Department for noncompliance with the terms and conditions set forth herein. This license may be revoked after the Department has given written notice of the alleged noncompliance to the Licensee and those persons who have filed a written request for such notice with the Department and afforded them a reasonable opportunity to correct said noncompliance. Failure to correct said noncompliance after the issuance of a written notice by the Department shall render this Waterways License void and the Commonwealth may proceed to remove or cause removal of any structure or fill authorized herein at the expense of the Licensee, its successors and assigns as an unauthorized and unlawful structure and/or fill.
5. The structures and/or fill authorized herein shall be maintained in good repair and in accordance with the terms and conditions stated herein and the details indicated on the accompanying license plans.
6. Nothing in this Waterways License shall be construed as authorizing encroachment in, on or over property not owned or controlled by the Licensee, except with the written consent of the owner or owners thereof.
7. This Waterways License is granted subject to all applicable Federal, State, County, and Municipal laws, ordinances and regulations including but not limited to a valid final Order of Conditions issued pursuant to the Wetlands Protection Act, G.L. Chapter 131, s.40.
8. This Waterways License is granted upon the express condition that the use of the structures and/or fill authorized hereby shall be in strict conformance with all applicable requirements and authorizations of the DEP, Division of Water Pollution Control.
9. This License authorizes structure(s) and/or fill on:
 - x Private Tidelands. In accordance with the public easement that exists by law on private tidelands, the licensee shall allow the public to use and to pass freely upon the area of the subject property lying between the high and low water marks, for the purposes of fishing, fowling, navigation, and the natural derivatives thereof.
 - ___ Commonwealth Tidelands. The Licensee shall not restrict the public's right to use and to pass freely, for any lawful purpose, upon lands lying seaward of the low water mark. Said lands are held in trust by the Commonwealth for the benefit of the public.
 - ___ a Great Pond of the Commonwealth. The Licensee shall not restrict the public's right to use and to pass freely upon lands lying seaward of the high water mark for any lawful purpose.

No restriction on the exercise of these public rights shall be imposed unless otherwise expressly provided in this license.
10. Unless otherwise expressly provided by this license, the licensee shall not limit the hours of availability of any areas of the subject property designated for public passage, nor place any gates, fences, or other structures on such areas in a manner that would impede or discourage the free flow of pedestrian movement thereon.

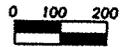
I CERTIFY THAT THIS PLAN, AS PREPARED, CONFORMS TO THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.

BARNSTABLE ss, RECEIVED
12:01 PM MAY 19 1995
AND IS RECORDED

513-67



SCALE 1"=200'



SHEET 1 OF 2

PLAN ACCOMPANYING THE PETITION
OF JIM PENTIKIS
TO MAINTAIN AN EXISTING
CONCRETE BULKHEAD, EEL POND,
#5 CANAPITSIT DRIVE
FALMOUTH, MA 02540
JANUARY 17, 1994

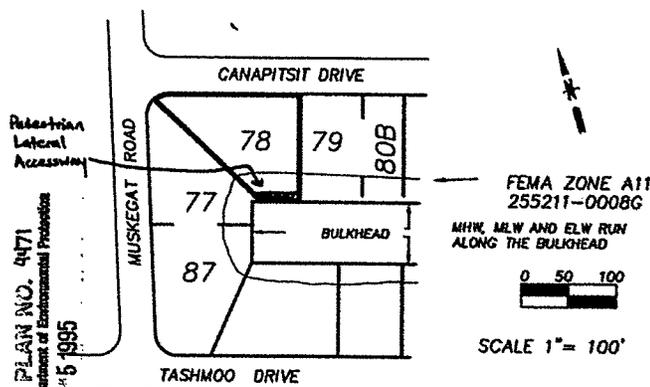
APPROVED FOR THE
COMMISSIONER
OF ENVIRONMENTAL PROTECTION
MAY 5 1995
DATE

5265-16
11.477

I CERTIFY THAT THIS PLAN, AS PREPARED, CONFORMS TO THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.

BARNSTABLE ss, RECEIVED
12:06pm MAY 24 1995
AND IS RECORDED

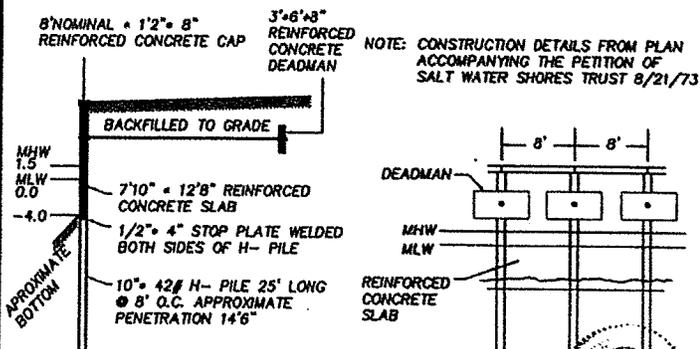
513-68



ENCLOSURE PLAN NO. 9471
Approved by Department of Environmental Protection
Date: MAY 15 1995

LOT/ ABUTTORS NAMES, ADDRESSES

87, 77/ LORRAINE KOHOUT, #64 MUSKEGET ROAD, FALMOUTH, MA 02536
79, 80-B/ EDWARD AND SHIRLEY MATTA, TRS., L.J. REALTY TRUST,
#311 NORTH WARREN AVE., BROCKTON, MA 02401



PLAN ACCOMPANYING THE PETITION
OF JIM PENTIKIS
TO MAINTAIN AN EXISTING
CONCRETE BULKHEAD, EEL POND,
#5 CANAPITSIT DRIVE
FALMOUTH, MA 02540
JANUARY 7, 1994

SCALE 1" = 10'
0 5 10



SHEET 2 OF 2

513-68

Bk 26491 Pg166 #54628

09-21-2012 @ 09:24a

Property Location: 5 Canapitsit Drive, East Falmouth, Barnstable County, Massachusetts
Title not examined

QUITCLAIM DEED

I, James N. Pentikis with a mailing address of P.O. Box 901, East Falmouth, Barnstable County, Massachusetts, 02536,

for consideration of less than Ten (\$10.00) Dollars,

grant all of my right, title and interest to Nickolas J. Pentikis of Franklin, Massachusetts, John S. Pentikis of Timonium, Maryland, and Anthony P. Pentikis of East Falmouth, Massachusetts, co-Trustees of the James N. Pentikis Trust w/d/t August 9, 2012, with a mailing address of P.O. Box 901, East Falmouth, Barnstable County, Massachusetts, 02536,

with **QUITCLAIM COVENANTS**, that certain lot or parcel of land, together with the buildings thereon, situated in East Falmouth, Barnstable County, Massachusetts, bounded and described as follows:

- NORTHERLY by Canapitsit Drive, 161.86 feet;
- EASTERLY by Lot 79, 113.58 feet;
- SOUTHERLY by a canal as shown on hereinafter mentioned plan, 53 feet;
- WESTERLY by Lot 77, 165.33 feet; and

Prepared by the Law Office of Patricia J. Mello, P.C.
766 Falmouth Road, Mashpee, MA 02649
508-477-0267

SPKLEH

3

NORTHWESTERLY by Canapitsit Drive, 21.32 feet.

Containing 13,670 square feet more or less and being shown as LOT 78 on a plan of land entitled "Revised Subdivision Plan of Land in Falmouth - Mass. For Robert B. Pacheco, scale 1" = 30', March 26, 1974, John P. Doyle, R.L.S."

James N. Pentikis reserves a life estate in the above referenced property.

The Grantor reserves the power to appoint the premises, or any portion thereof, outright or upon trusts, conditions, or limitations, to any one or more of the children of the Grantor or the spouses or surviving spouse of any of the foregoing persons or to a charitable organization other than governmental entities, by specifying either via power of appointment deed, executed and acknowledged during the Grantor's lifetime and delivered to the Barnstable County Registry of Deeds, or if the Grantor specifies in a duly probated Last Will and Testament. Failure to record notice of any such exercise of this power in the Barnstable Probate Court within ninety (90) days of the Grantor's death shall be conclusively treated as exercise of the power. The Grantor shall not exercise this power in favor of himself or his spouse. This power shall be exercisable during the lifetime of the Grantor by deed making express reference to this power and executed and recorded prior to the death of the Grantor. A release of the power reserved and granted hereunder, in whole or in part, shall be effective when registered with the Barnstable County Registry of Deeds. Any lifetime exercise or release of the foregoing power may be made by an attorney in fact acting under a durable power of attorney. No exercise of this appointment shall be deemed to release a Grantor's life estate unless such a release is explicitly made. The exercise of this power shall not exhaust it and the deed recorded last shall control as to any ambiguities or inconsistencies. No notice to, or assent by, the Grantees herein or their assigns shall be necessary in connection with any exercise of the rights retained by the Grantor herein.

Subject to any and all existing restrictions and encumbrances still in force and effect.

For Grantor's title see Deed to James N. Pentikis and Elizabeth L. Pentikis, recorded with said Registry of Deeds in 26495, Page 121.

Prepared by the Law Office of Patricia J. Melo, P.C.
766 Falmouth Road, Mashpee, MA 02649
508-477-0267

WITNESS my hand and seal this 9th day of August, 2012.

James N. Pentikis
James N. Pentikis

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

On this 9th day of August 2012, before me, the undersigned notary public, personally appeared James N. Pentikis, proved to me through satisfactory evidence of identification, which was X personal knowledge of identity or _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Amy Barao Kullar



Prepared by the Law Office of Patricia J. Mello, P.C.
766 Falmouth Road, Mashpee, MA 02649
508-477-0267

SPKLEH

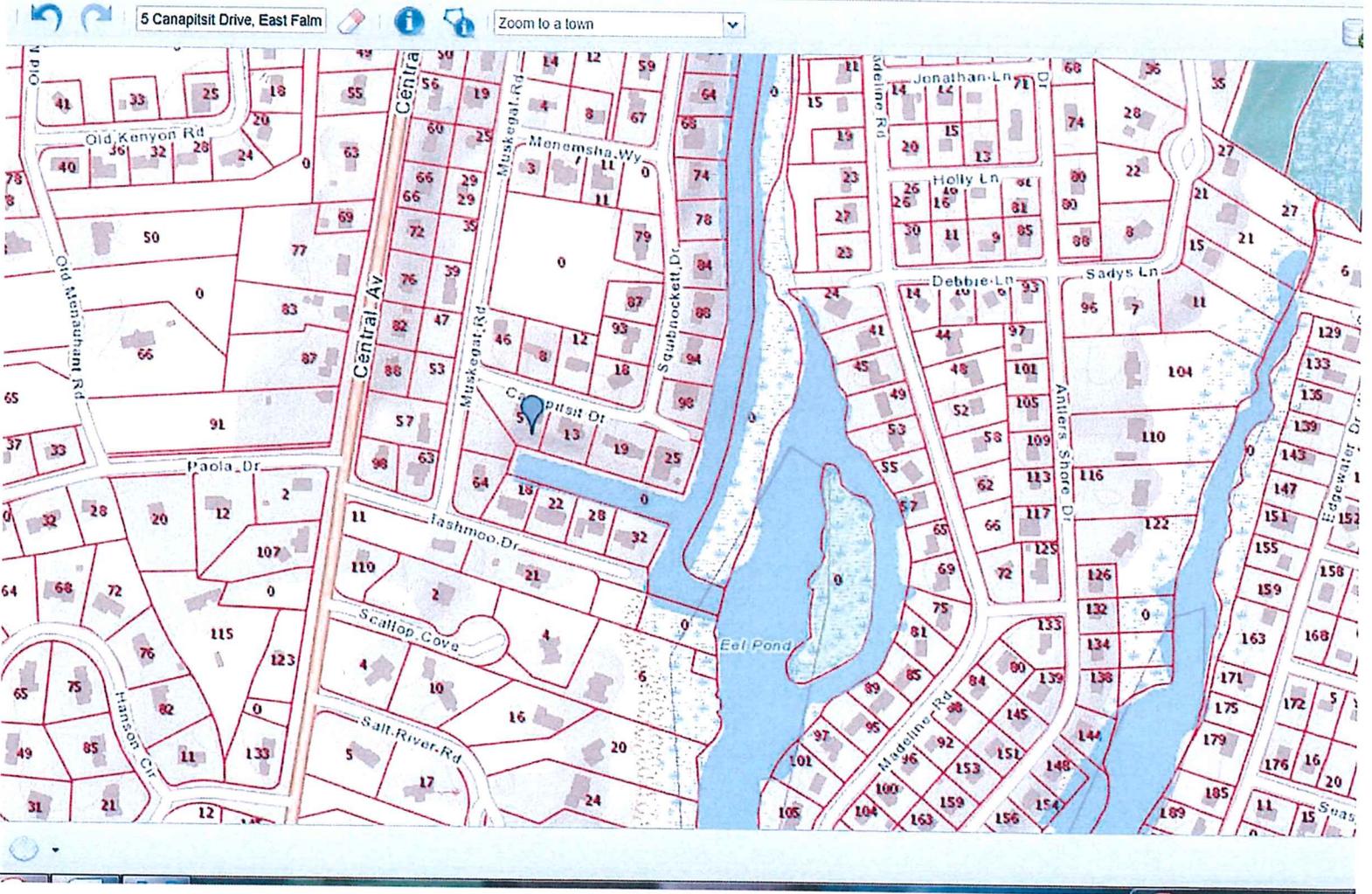
BARNSTABLE REGISTRY OF DEEDS

ACEC and Natural Heritage Endangered Species Map

s.massgis.state.ma.us/map_ol/oliver.php

CA - Mail CA- Calendar OLIVER MassGIS BRP WW 24, General DEP File Number Loc B/ BCRD Transmittal Form anc MassDEP Natural Heritage (ME

s Online Mapping Tool [OLIVER Updates](#)



Google Earth Imagery



Directions to Site

**Nickolas J. John S. and Anthony P. Pentikis
James N. Pentikis Trust u/d/t
5 Canapitsit Drive
East Falmouth, MA**

**Starting at Falmouth Town Hall
59 Town Hall Square
Falmouth, MA 02540**

**15 min (5.3 miles)
via MA-28 S**

**Take Scranton Ave to Main St
4 min (1.0 mi)**

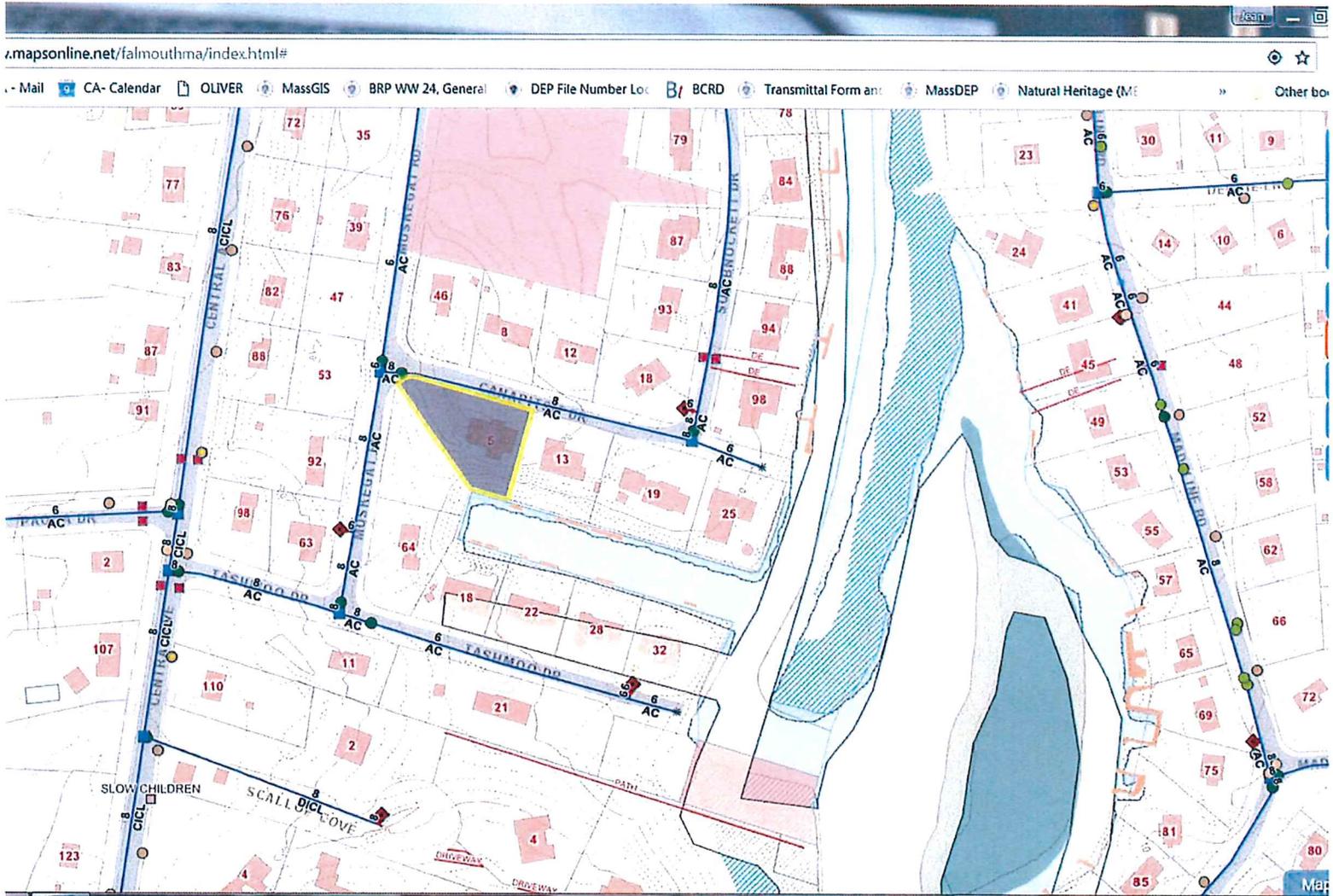
**Follow MA-28 S to Central Ave
10 min (3.9 mi)**

**Follow Central Ave and Muskeget Rd to Canapitsit Dr
2 min (0.4 mi)**

**5 Canapitsit Dr
East Falmouth, MA 02536**

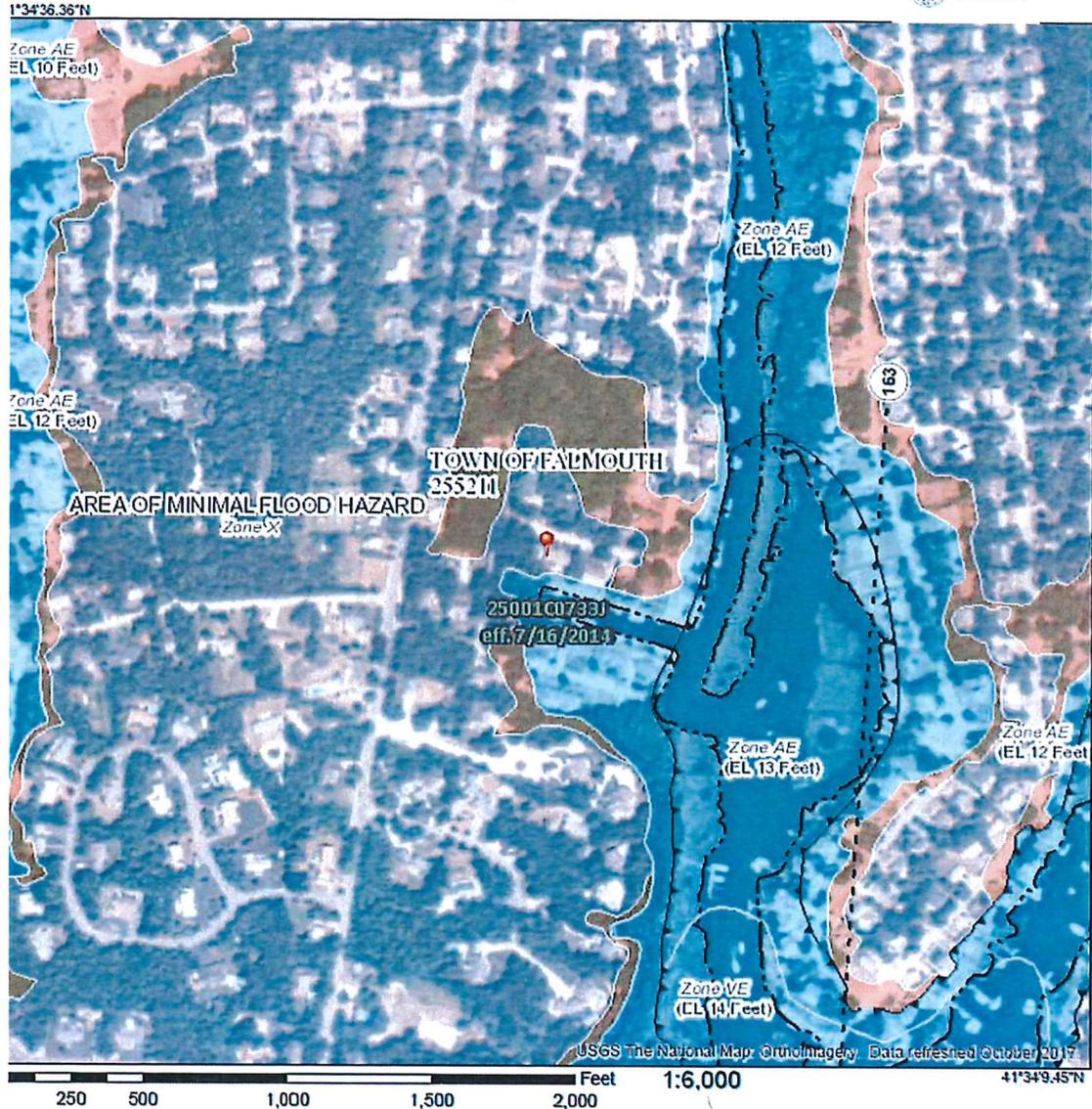


Falmouth GIS



FEMA Flood Map

National Flood Hazard Layer FIRMette



Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

- | | |
|------------------------------------|---|
| SPECIAL FLOOD HAZARD AREAS | <ul style="list-style-type: none"> Without Base Flood Elevation (BFE) Zone A, V, A99 With BFE or Depth Zone AE, AO, AH, VE, AR Regulatory Floodway |
| OTHER AREAS OF FLOOD HAZARD | <ul style="list-style-type: none"> 0.2% Annual Chance Flood Hazard, Area of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X Future Conditions 1% Annual Chance Flood Hazard Zone X Area with Reduced Flood Risk due to Levee. See Notes. Zone X Area with Flood Risk due to Levee Zone D |
| OTHER AREAS | <ul style="list-style-type: none"> Area of Minimal Flood Hazard Zone X Effective LOMRs Area of Undetermined Flood Hazard Zone X |
| GENERAL STRUCTURES | <ul style="list-style-type: none"> Channel, Culvert, or Storm Sewer Levee, Dike, or Floodwall |
| OTHER FEATURES | <ul style="list-style-type: none"> Cross Sections with 1% Annual Chance Water Surface Elevation Coastal Transect Base Flood Elevation Line (BFE) Limit of Study Jurisdiction Boundary Coastal Transect Baseline Profile Baseline Hydrographic Feature |
| MAP PANELS | <ul style="list-style-type: none"> <input type="checkbox"/> Digital Data Available <input type="checkbox"/> No Digital Data Available <input type="checkbox"/> Unmapped |

The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards.

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 8/22/2018 at 2:15:41 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

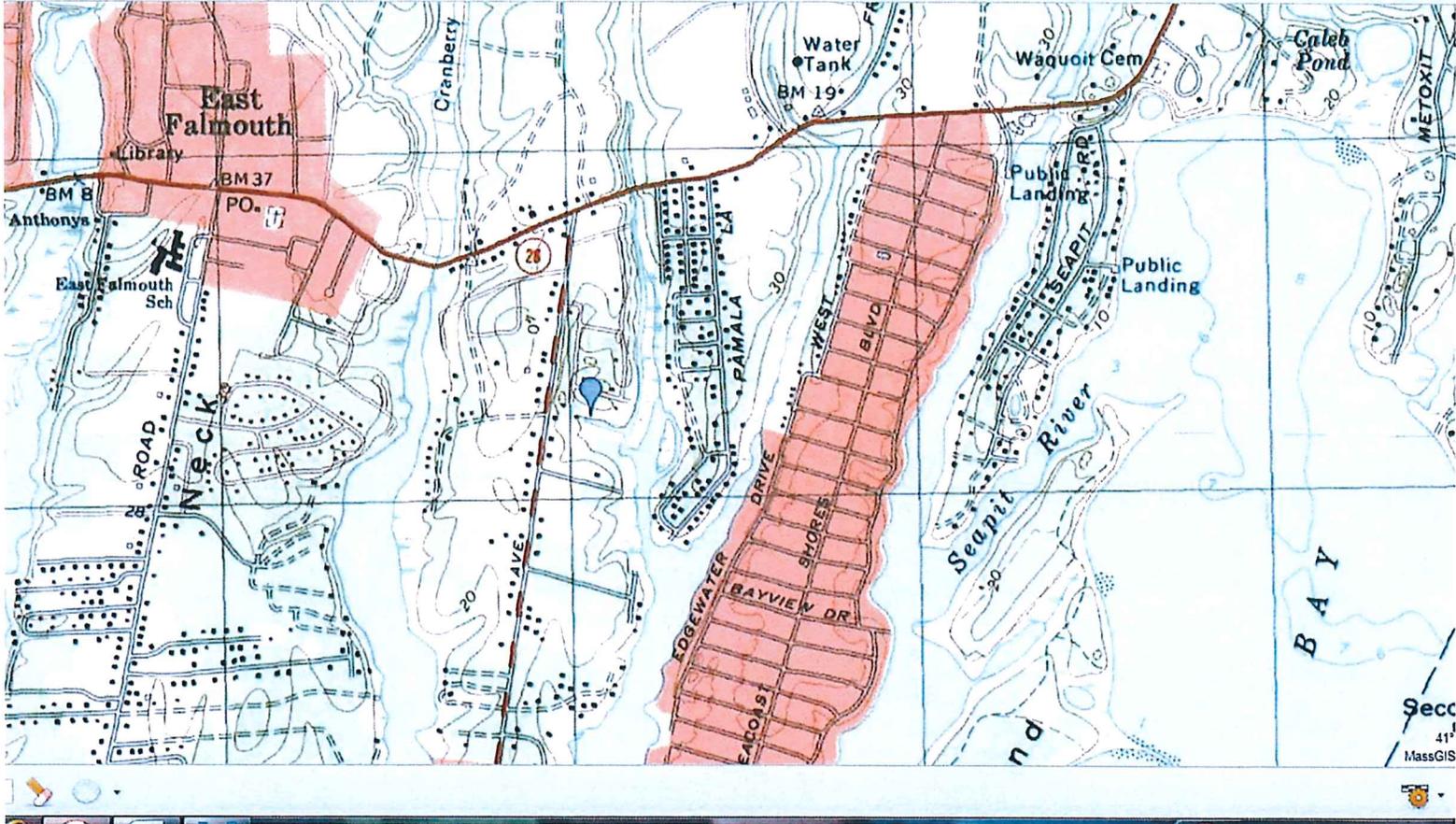
Mass GIS Topo Map

maps.massgis.state.ma.us/map_ol/oliver.php

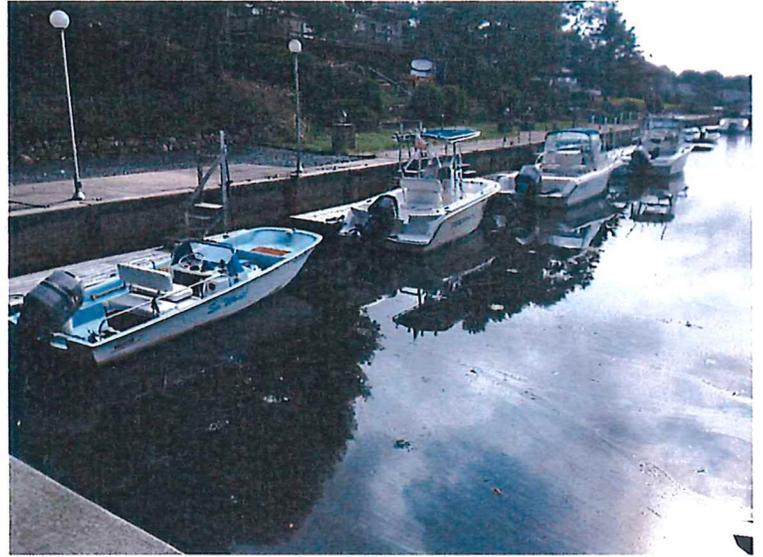
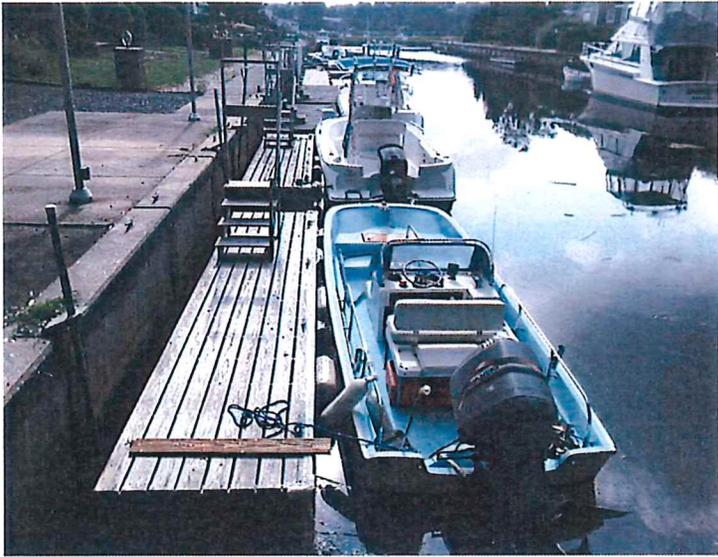
CA - Mail CA - Calendar OLIVER MassGIS BRP WW 24, General DEP File Number Loc B1 BCRD Transmittal Form anc MassDEP Natural Heritage (ME

MassGIS's Online Mapping Tool [OLIVER Updates](#)

5 Canapitsit Drive, East Falm Zoom to a town



Photographs



Phyllis Downey

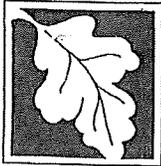
From: Amy Coughlin
Sent: Friday, February 14, 2020 11:06 AM
To: Phyllis Downey
Cc: Jennifer Lincoln
Subject: 5 Canapisit Dr- Dock/Pier document
Attachments: Canapitsit Dr 5 (Pentikis) RDA Determination 07 25 12.pdf

Good morning,
Attached please find the most current RDA we have on file for Pentikis Trust at 5 Canapisit Drive.
We do not have any orders of condition on this property. If you have any other questions, please let me know.

Have a nice long weekend!

Amy Coughlin
Conservation Administrative Assistant

Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540
(508) 495-7444



**Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands**

WPA Form 2 – Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
Falmouth Wetlands Protection Bylaw Chapter 235 and FWR 10.00

A. General Information

Important:
When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



From:

Falmouth
Conservation Commission

To: Applicant

James Pentikis
Name
P.O. Box 901
Mailing Address
East Falmouth MA 02536
City/Town State Zip Code

Property Owner (if different from applicant):

Name

Mailing Address

City/Town State Zip Code

1. Title and Date (or Revised Date if applicable) of Final Plans and Other Documents:

_____ Title	_____ Date
_____ Title	_____ Date
_____ Title	_____ Date

2. Date Request Filed: 5/25/2012

B. Determination

Pursuant to the authority of M.G.L. c. 131, § 40, the Conservation Commission considered your Request for Determination of Applicability, with its supporting documentation, and made the following Determination.

Project Description (if applicable):

Proposed to install two 4 x 20 ft floats to be secured parallel to existing bulkhead

Project Location:

5 Canapitsit Drive
Street Address
33 04
Assessors Map/Plat Number

East Falmouth
City/Town
008 078
Parcel/Lot Number



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 2 – Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
Falmouth Wetlands Protection Bylaw Chapter 235 and FWR 10.00

B. Determination (cont.)

The following Determination(s) is/are applicable to the proposed site and/or project relative to the Wetlands Protection Act and regulations:

Positive Determination

Note: No work within the jurisdiction of the Wetlands Protection Act may proceed until a final Order of Conditions (issued following submittal of a Notice of Intent or Abbreviated Notice of Intent) or Order of Resource Area Delineation (issued following submittal of Simplified Review ANRAD) has been received from the issuing authority (i.e., Conservation Commission or the Department of Environmental Protection).

1. The area described on the referenced plan(s) is an area subject to protection under the Act. Removing, filling, dredging, or altering of the area requires the filing of a Notice of Intent.

2a. The boundary delineations of the following resource areas described on the referenced plan(s) are confirmed as accurate. Therefore, the resource area boundaries confirmed in this Determination are binding as to all decisions rendered pursuant to the Wetlands Protection Act and its regulations regarding such boundaries for as long as this Determination is valid.

2b. The boundaries of resource areas listed below are not confirmed by this Determination, regardless of whether such boundaries are contained on the plans attached to this Determination or to the Request for Determination.

3. The work described on referenced plan(s) and document(s) is within an area subject to protection under the Act and will remove, fill, dredge, or alter that area. Therefore, said work requires the filing of a Notice of Intent.

4. The work described on referenced plan(s) and document(s) is within the Buffer Zone and will alter an Area subject to protection under the Act. Therefore, said work requires the filing of a Notice of Intent or ANRAD Simplified Review (if work is limited to the Buffer Zone).

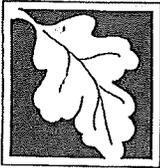
5. The area and/or work described on referenced plan(s) and document(s) is subject to review and approval by:

Falmouth
Name of Municipality

Pursuant to the following municipal wetland ordinance or bylaw:

Falmouth Conservation Commission
Name

Ordinance or Bylaw Citation



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 2 – Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
Falmouth Wetlands Protection Bylaw Chapter 235 and FWR 10.00

B. Determination (cont.)

6. The following area and/or work, if any, is subject to a municipal ordinance or bylaw but not subject to the Massachusetts Wetlands Protection Act:
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-

7. If a Notice of Intent is filed for the work in the Riverfront Area described on referenced plan(s) and document(s), which includes all or part of the work described in the Request, the applicant must consider the following alternatives. (Refer to the wetland regulations at 10.58(4)c. for more information about the scope of alternatives requirements):

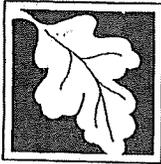
- Alternatives limited to the lot on which the project is located.
- Alternatives limited to the lot on which the project is located, the subdivided lots, and any adjacent lots formerly or presently owned by the same owner.
- Alternatives limited to the original parcel on which the project is located, the subdivided parcels, any adjacent parcels, and any other land which can reasonably be obtained within the municipality.
- Alternatives extend to any sites which can reasonably be obtained within the appropriate region of the state.

Negative Determination

Note: No further action under the Wetlands Protection Act is required by the applicant. However, if the Department is requested to issue a Superseding Determination of Applicability, work may not proceed on this project unless the Department fails to act on such request within 35 days of the date the request is post-marked for certified mail or hand delivered to the Department. Work may then proceed at the owner's risk only upon notice to the Department and to the Conservation Commission. Requirements for requests for Superseding Determinations are listed at the end of this document.

1. The area described in the Request is not an area subject to protection under the Act or the Buffer Zone.
2. The work described in the Request is within an area subject to protection under the Act, but will not remove, fill, dredge, or alter that area. Therefore, said work does not require the filing of a Notice of Intent. **Under the State and bylaw, as proposed.**
3. The work described in the Request is within the Buffer Zone, as defined in the regulations, but will not alter an Area subject to protection under the Act. Therefore, said work does not require the filing of a Notice of Intent, subject to the following conditions (if any).
-
-

4. The work described in the Request is not within an Area subject to protection under the Act (including the Buffer Zone). Therefore, said work does not require the filing of a Notice of Intent, unless and until said work alters an Area subject to protection under the Act.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 2 – Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
Falmouth Wetlands Protection Bylaw Chapter 235 and FWR 10.00

B. Determination (cont.)

5. The area described in the Request is subject to protection under the Act. Since the work described therein meets the requirements for the following exemption, as specified in the Act and the regulations, no Notice of Intent is required:

Exempt Activity (site applicable statutory/regulatory provisions)

6. The area and/or work described in the Request is not subject to review and approval by:

Falmouth

Name of Municipality

Pursuant to a municipal wetlands ordinance or bylaw.

Falmouth Conservation Commission

Name

Ordinance or Bylaw Citation

C. Authorization

This Determination is issued to the applicant and delivered as follows:

- by hand delivery on

7/25/12 James M. Pontikis

Date

- by certified mail, return receipt requested on

Date

This Determination is valid for **three years** from the date of issuance (except Determinations for Vegetation Management Plans which are valid for the duration of the Plan). This Determination does not relieve the applicant from complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.

This Determination must be signed by a majority of the Conservation Commission. A copy must be sent to the appropriate DEP Regional Office (see <http://www.mass.gov/dep/about/region.findyour.htm>) and the property owner (if different from the applicant).

Signatures:

Marissa Harlow

Elizabeth H. Gaudette

Michelle J. Curt

[Signature]

Shepherd L. Poirer

The Falmouth

Date

6/13/2012



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 2 – Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Falmouth Wetlands Protection Bylaw Chapter 235 and FWR 10.00

D. Appeals

The applicant, owner, any person aggrieved by this Determination, any owner of land abutting the land upon which the proposed work is to be done, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate Department of Environmental Protection Regional Office (see <http://www.mass.gov/dep/about/region.findyour.htm>) to issue a Superseding Determination of Applicability. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and Fee Transmittal Form (see Request for Departmental Action Fee Transmittal Form) as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Determination. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant if he/she is not the appellant. The request shall state clearly and concisely the objections to the Determination which is being appealed. To the extent that the Determination is based on a municipal ordinance or bylaw and not on the Massachusetts Wetlands Protection Act or regulations, the Department of Environmental Protection has no appellate jurisdiction.

a public hearing under Massachusetts General Law Chapter 40C section 11, and Town bylaw section 7.4 as Amended on Wednesday, March 4, 2020 at 6:00PM in the Civil Defense Room, Falmouth Town Hall.

Requests for Certificates of Appropriateness:

20.14 Martha's Vineyard Savings Bank - 397 Palmer Avenue, Wall Mounted and Freestanding Sign

20.15 Martha's Vineyard Savings Bank - 2 Water Street, Wall Mounted and Blade Signs

20.04 Daniel Sollen - 160 Palmer Avenue, Remove mudroom, add new enclosed porch

20.12 James L. Ware Jr. - 192 Gansett Road, Construct new residence

Demolition Delay Review per Town of Falmouth Code Chapter 107 (comments from the public will be heard)

100 Dillingham Avenue: Advisory review for request of waiver of 12 month demolition delay
Applicant: Lionel C Pinsonneault Trustee (Dillingham Realty Trust)

On behalf of the Falmouth Historical Commission
February 14, 2020

**Falmouth Zoning Board of Appeals
Notice of Public Hearing for
March 5, 2020**

Notice is hereby given of the following **Public Hearing @ 6:30pm** and Open Meeting in the Selectmen's Meeting Room, Town Hall on **Thursday March 5, 2020**

Continuation(s):

#063-19 Kachadoorian / Balas, 18 Tashmoo Drive, East Falmouth - appealing inaction of Building Commissioner and requesting zoning enforcement regarding placement of two floats
#087-19 Kachadoorian / Balas, 18 Tashmoo Drive, East Falmouth - appealing the Building Commissioner's decision of November 20, 2019
#078-19 Buzzards Bay Development LLC, 40 Shore Street, Falmouth - comprehensive permit to renovate existing single family dwelling and construct seven (7) single-family dwellings; two (2) units will be affordable

Application #001-20 Charles G. Chevalier: Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to construct a pool; increasing lot coverage by structures on subject property known as 428 Menauhant Road, East Falmouth, Ma.

Application #003-20 Falmouth Housing Trust, Inc. Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-3 of the Code of Falmouth to modify the December 8, 2004 Planning Board decision regarding affordable housing requirements. The subject properties are lots 9 and 10 Pam's Way, East Falmouth, Ma.

Application #004-20 Michael R. Garfield, Trustee: Applied to the Zoning Board of Appeals for a modification of special permit #33-07 pursuant to section(s) 240-3 A. and 240-3 C. of the Code of Falmouth to construct 1st and 2nd floor additions, creating habitable space to the pre-existing non-conforming cottage on subject property known as 85 Fay Road, Woods Hole, Ma.

Files are available in the Board of Appeals Office at Town Hall for review by interested parties.

February 7, 14, 2020

**Falmouth Public Schools
Invitation to Bid
February 14, 2020**

For the Morse Pond School located at 323 Jones Rd. Falmouth, Massachusetts: Removal and proper disposal of: ACM containing ceiling tile, ACM fittings within the plenum above the

bidders. Filled sub trade categories: Acoustical Tile & Electrical. Prevailing Wage rates must be paid. Bid Documents will be available on or after 2/12/2020 at 2PM at www.projectdog.com. Bid Deposit is 5% of the value of the total bid or sub-bid. Sub bids due 2/27/20 by 2PM, General Bids due 3/6/20 by 4PM. Bid will be submitted electronically through Project Dog. Email questions to sburke@pmaconsultants.com.

By: Patrick Murphy, Director of Finance and Operations
Falmouth Public Schools

February 14, 2020

**PUBLIC NOTICE
TOWN OF FALMOUTH
SITE LEASE AND/OR LEASE WITH
OPTION TO PURCHASE
FOR MUNICIPAL PARKING**

REQUEST FOR PROPOSALS

The Town of Falmouth invites property owners and their authorized agents to submit proposals for consideration of site lease and/or lease with option to purchase for municipal parking purposes. The outcome is to lease and/or lease with option to purchase an appropriate site for the purpose of providing year-round municipal parking in close proximity to the downtown Village area of Falmouth, Massachusetts.

Copies of the Request for Proposal (RFP) may be obtained by contacting Melanie Bush, Assistant Assessor/Treasurer at melanie.bush@falmouthma.gov or (508) 495-7362 beginning at 8:00 A.M. on February 7, 2020.

Hardcopies of the Proposals must be received at the Town of Falmouth, Town Manager's Office, 59 Town Hall Square Falmouth, MA by 2:00 P.M. on March 13, 2020. Late proposals will not be accepted. The Proposals shall be opened in public at this same time (2:00 PM on March 13, 2020) in Selectmen's Meeting Room of the Falmouth Town Hall, 59 Town Hall Square, Falmouth, MA 02540.

February 7, 14, 2020

**DEPARTMENT OF ENVIRONMENTAL
PROTECTION WATERWAYS REGULATION PROGRAM**

Notice of Permit Application Pursuant to M. G. L. Chapter 91

Waterways Permit Application Number W20-5700

Quissett Harbor Preservation Trust and Salt Pond Areas Bird Sanctuaries, Inc.

Notification Date: 02/14/2020

Public notice is hereby given of the waterways application by Quissett Harbor Preservation Trust and Salt Pond Areas Bird Sanctuaries, Inc. to place temporary fill and perform repairs and reconstruction of the existing stone revetment at 48 Quissett Harbor Road (The Quissett Knob), in the municipality of Falmouth, in flowed tidelands of Quissett Harbor and Buzzards Bay. The proposed project has been determined to be water-dependent.

The Department will consider all written comments on this Waterways application received within fifteen (15) days subsequent to the "Notification Date." Failure of any aggrieved person or group of ten citizens or more, with at least five of the ten residents residing in the municipality(s) in which the license or permitted activity is located, to submit written comments to the Waterways Regulation Program by the Public Comments Deadline will result in the waiver of any right to an adjudicatory hearing in accordance with 310 CMR 9.13(4)(c).

Additional information regarding this application may be obtained by contacting the Waterways Regulation Program at (508) 946-2707. Project

Brendan Mullaney, Environmental Analyst, UEP Waterways Regulation Program, 20 Riverside Drive, Lakeville, MA 02347.

February 14, 2020

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT
Docket No. BA20P2048EA
Estate of: Karen Ann Forziati
Date of Death: 07/12/2019
Barnstable Division
3195 Main Street
PO Box 346
Barnstable, MA 02630
508-375-6710**

CITATION ON PETITION FOR FORMAL ADJUDICATION

To all interested persons:

A Petition for Formal Probate of Will with Appointment of Personal Representative has been filed by: **Julie Ann Forziati of Mashpee MA** requesting that the Court enter a formal Decree and Order and for such other relief as requested in the Petition. **Julie Ann Forziati of Mashpee MA** be appointed as Personal Representative(s) of said estate to serve WITHOUT SURETY on the bond in an unsupervised administration.

IMPORTANT NOTICE

You have the right to obtain a copy of the Petition from the Petitioner or at the Court. You have a right to object to this proceeding. To do so, you or your attorney must file a written appearance and objection at this Court before: 10:00 a.m. on the return day of 02/26/2020.

This is NOT a hearing date, but a deadline by which you must file a written appearance and objection if you object to this proceeding. If you fail to file a timely written appearance and objection followed by an Affidavit of Objections within thirty (30) days of the return day, action may be taken without further notice to you.

UNSUPERVISED ADMINISTRATION UNDER THE MASSACHUSETTS UNIFORM PROBATE CODE (MUPC)

A Personal Representative appointed under the MUPC in an unsupervised administration is not required to file an inventory or annual accounts with the Court. Persons interested in the estate are entitled to notice regarding the administration directly from the Personal Representative and may petition the Court in any matter relating to the estate, including the distribution of assets and expenses of administration.

WITNESS, Hon. Arthur C. Ryley, First Justice of this Court.

Date: January 14, 2020

Anastasia Welsh Perrino
Register of Probate

February 14, 2020

**PUBLIC HEARING NOTICE
REVISED**

You are hereby notified that a hearing will be held at Falmouth Town Hall in the Small Conference Room at 2:00 p.m. on Thursday, March 5, 2020, upon the petition of NSTAR Electric Company d/b/a Eversource Energy and Verizon New England, Inc. for the installation of One (1) Joint Pole and the removal of One (1) Joint Pole on Brick Kiln Road, East of Jamie Lane.

Per Order of the Falmouth Board of Selectmen

February 14, 2020

PUBLIC HEARING NOTICE

The Falmouth Board of Selectmen will hold a public hearing under Section 240-77 (Wetland Regulations) of the Zoning Bylaws of the Town of Falmouth on Monday, **March 9, 2020 at 7:30 p.m.** in the Selectmen's Meeting Room, Falmouth Town Hall, on the application of Nikolas J., John S., Anthony P. Pentikis/James N. Pentikis Trust, UDT for permission to license, retain and maintain two (2) existing 4'x20' floats in and over the waters of Eel Pond Canal. There is an existing Waterways License for the bulkhead, No. 4471, at 5 Canapitsit Drive, East Falmouth MA. Area affected is Eel Pond. Interested parties may review the file on this hearing at the Selectmen's Office.

Per Order of the
Board of Selectmen

February 14, 21, 2020

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By Order of the Planning Board

Paul Dreyer
 Clerk/Secretary

February 21, 28, 2020

PUBLIC HEARING NOTICE

The Falmouth Board of Selectmen will hold a public hearing under Section 240-77 (Wetland Regulations) of the Zoning Bylaws of the Town of Falmouth on Monday, **March 9, 2020 at 7:30 p.m.** in the Selectmen's Meeting Room, Falmouth Town Hall, on the application of Nikolas J., John S., Anthony P. Pentikis/James N. Pentikis Trust, UDT for permission to license, retain and maintain two (2) existing 4'x20' floats in and over the waters of Eel Pond Canal. There is an existing Waterways License for the bulkhead, No. 4471, at 5 Canapitsit Drive, East Falmouth MA. Area affected is Eel Pond. Interested parties may review the file on this hearing at the Selectmen's Office.

Per Order of the
 Board of Selectmen

February 14, 21, 2020

LIQUOR LICENSE HEARING

Notice is hereby given under Chapter 138 of the General Laws, as amended, that Attwood, Inc. d/b/a Clarke's Pub has applied for a NEW All Alcoholic Common Victualer License to be exercised at 444 North Falmouth Highway (Route 28A), North Falmouth, MA.

A hearing will be held in the Selectmen's Meeting Room, Falmouth Town Hall on Monday, March 9, 2020 at 7:30 p.m. on the above application.

LICENSING BOARD
 Megan English Braga
 Douglas C. Brown
 Douglas H. Jones
 Susan L. Moran
 Samuel H. Patterson

February 21, 2020

Wetlands Protection Bylaw on **Wednesday, March 4, 2020 at 7:00 PM** in the **Selectmen's Meeting Room, Falmouth Town Hall.**

Complete applications are available in the Conservation Commission office for review.

REQUESTS FOR DETERMINATION OF APPLICABILITY

Michael Andrews, 233 Nobska Road, Woods Hole, Falmouth, MA: For permission to remediate soil impacted with lead from historic use of lead-based paint at the property

Denisa and Sheldon Wagner, 46 Gosnold Road, Falmouth, MA: For permission to construct a small bay and deck addition and install mitigation plantings

Wiwa Jurczyk Holdings, 55 Whitman Road, Falmouth, MA: For permission to upgrade an existing septic system to Title V regulations

Blake Hunter, 4 Gardiner Road, Woods Hole, Falmouth, MA: For permission to replace two existing decks and stairs with a small increase in footprint and to install mitigation plantings

Salt Pond Areas Bird Sanctuaries Inc., 0 Surf Drive, Parcel # 50 07 031 069, Falmouth, MA: For permission to smooth and regrade the existing gravel parking lot with a bobcat machine to remove potholes

John R. Darack, 32 Hoopole Road, Falmouth, MA: For permission to upgrade an existing subsurface sewage disposal system to Title V regulations

REQUESTS FOR A NOTICE OF INTENT

Falmouth Holdings Corporation, 278 Scranton Avenue, Falmouth, MA: For permission to reconfigure existing timber piers, ramps; floats and tie off pilings, replace and repair the existing travel lift piers, install a boat wash pad and tight tank, relocate the ticket office, construct a boardwalk, and replace the existing timber bulkhead, including all associated excavation, drainage improvements, utility installation and landscaping

Anastasio Parafestas, Trustee, 160 Penance Road, Woods Hole, Falmouth, MA: For permission to install a 12' x 20' pool, stone pool terrace, stone retaining walls, stone steps, pool utilities, lighting, fencing, drainage, and all

**Falmouth Zoning Board
 Notice of Public Hearing for
 March 19, 2020**

Notice is hereby given of the following **Public Hearing @ 6:30pm and Open Meeting** in the Selectmen's Meeting Room, Town Hall on **Thursday March 19, 2020**

Application #005-20 Joseph and Mary Noonan: Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-3 C., 240-68 D. and 240-69 E. of the Code of Falmouth to raze and reconstruct the pre-existing non-conforming single family dwelling; exceeding 20% lot coverage by structures on subject property known as 183 Surf Drive, Falmouth, Ma.

Application #006-20 Arlene Schubert, Trustee: Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-69 E. of the Code of Falmouth to expand existing deck and living space and construct a front porch addition; exceeding 20% lot coverage by structures on subject property known as 23 Ormond Drive, East Falmouth, Ma.

Application #007-20 Thomas L. Marysia F. Messer and Joanna Bennett: Applied to the Zoning Board of Appeals for a modification of special permit #004-18 pursuant to section(s) 240-38 I (5) (b) of the Code of Falmouth to allow changes from previously approved plans which include a retaining wall and addition of a landing and steps on subject property known as 190 Goeletta Drive, Hatchville, Ma.

Application #008-20 Kelly North Arthur: Applied to the Zoning Board of Appeals for a special permit pursuant to section(s) 240-3 C. and 240-69 E. of the Code of Falmouth to replace existing deck with a covered patio and construct an addition to the 2nd floor on subject property known as 40 Loren Road, North Falmouth, Ma.

Files are available in the Board of Appeals Office at Town Hall for review by interested parties.

February 21, 28, 2020

Celebrations
 Gifts, Celebrating Babies
 Soft baby blankets &
 from Bunnies by the Bay
 Cozy chic outfits
 Unique baby gifts
 baby books and more...
 n Street • Falmouth Village
 508-457-0530
 complimentary Gift Wrap

Tides For Points On Vineyard Sound, Buzzards Bay & Cape Cod Bay

	POPPONESSET		FALMOUTH		WOODS HOLE (WHOI) GREAT HARBOR		WEST FALMOUTH		CAPE COD CANAL BUZZARDS BAY		CAPE COD CANAL (EAST)		BARNSTABLE HARBOR	
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	AM 1:40	7:24	11:31	5:23	8:35	2:51	8:15	1:57	9:42	4:27	11:45	5:31	11:58	6:02
Y 24	PM 1:50	7:52	11:57	5:51	8:49	3:42	8:37	2:23	10:01	4:54		5:59		6:30
	AM 2:16	8:03		6:02	9:16	3:21	8:55	2:20	10:21	4:58	12:11	6:12	12:24	6:41
Y 25	PM 2:27	8:28	12:08	6:27	9:33	3:52	9:17	2:37	10:39	5:23	12:24	6:37	12:35	7:06
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**5 CANAPITSIT DR
CERTIFIED**

A handwritten signature in black ink, appearing to read 'mjbush', is written over a horizontal line.

Melanie J. Bush
Asst. Assessor/Treasurer
Town of Falmouth
January 28, 2020

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47 MUSKEGAT RD AUGUSTA RE MGMT LLC 670 TEATICKET HWY E FALMOUTH. MA 02536	32 04 008 072 LUC: 130	76 CENTRAL AVE FORNIER JR ANDREW C CRESSY WENDY 519 HARRISON AVE APT D 312 BOSTON. MA 02118	32 04 008 070 LUC: 101	88 CENTRAL AVE NELSON MARY E 3 CLEMENT PL MERRIMAC. MA 01860	32 04 008 074 LUC: 101
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53 MUSKEGAT RD CHAPMAN SHARON L CHAPMAN KENNETH S 57 MUSKEGAT RD E FALMOUTH. MA 02536-6243	32 04 008 073 LUC: 130	11 TASHMOO DR GOLDMAN TRUSTEE ALAN I GOLDMAN TRUSTEE MARILYNNE A 11 HOLLY WAY FRAMINGHAM. MA 01701-4854	32 04 008B 000A LUC: 101	5 CANAPITSIT DR PENTIKIS ANTHONY P 5 CANAPITSIT DR E FALMOUTH. MA 02536	32 04 008 078 LUC: 101
57 MUSKEGAT RD CHAPMAN SHARON L CHAPMAN KENNETH S 57 MUSKEGAT RD E FALMOUTH. MA 02536-6243	32 04 008 075A LUC: 101	93 SQUIBNOCKETT DR HAUPTMANN JAY M HAUPTMANN SUZANNE K 93 SQUIBNOCKETT DR E FALMOUTH. MA 02536	32 04 008 065 LUC: 101	18 CANAPITSIT DR PHELAN TRUSTEE MARY V PHELAN TRUSTEE PAUL V 1 MURRAY HILL RD C/O DENISE MUISE CHELMSFORD. MA 01824	32 04 008 064 LUC: 101
63 MUSKEGAT RD CHAPMAN STEPHEN CHAPMAN DAWN 63 MUSKEGAT RD EAST FALMOUTH. MA 02536	32 04 008 088 LUC: 101	8 CANAPITSIT DR HYNES JOHN N HYNES JEANNE A 8 CANAPITSIT DR E FALMOUTH. MA 02536	32 04 008 067 LUC: 101	32 TASHMOO DR SAUNDERS TRUSTEE SHIRLEY R GOSNOLD REALTY TRUST 933 CENTRE ST NEWTON. MA 02459-1235	32 04 008 083 LUC: 101
21 TASHMOO DR COLAGIOVANNI MARIO COLAGIOVANNI ELAINE 21 TASHMOO DR EAST FALMOUTH. MA 02536	32 04 008B 000B LUC: 101	22 TASHMOO DR IAPPINI RICHARD D IAPPINI DEBORAH A 22 TASHMOO DR E FALMOUTH. MA 02536-6278	32 04 008 085 LUC: 101	28 TASHMOO DR SAUNDERS TRUSTEE SHIRLEY R 28 TASHMOO NOMINEE TRUST 933 CENTRE ST NEWTON. MA 02459-1235	32 04 008 084 LUC: 101
39 MUSKEGAT RD CURTIS TRUSTEE MICHAEL P CURTIS TRUSTEE PAULINE 19 HALE ST HAVERHILL. MA 01830	32 04 008 069 LUC: 101	50 MUSKEGAT RD KACHADOORIAN S MICHAEL PO BOX 751 E FALMOUTH. MA 02536	32 04 008 077 LUC: 101	25 CANAPITSIT DR SHARP MARK W SHARP MARILYN A 25 CANAPITSIT DR EAST FALMOUTH. MA 02536	32 04 008 082 LUC: 101

98 CENTRAL AVE
SPIVEY GEORGE R
SPIVEY RUTH B
98 CENTRAL AVE
EAST FALMOUTH. MA 02536

32 04 008 089
LUC: 101

19 CANAPITSIT DR
WALKER JAMES R
WALKER SANDRA L
22 VILLAGE GREEN LN
HOLDEN. MA 01520

32 04 008 081
LUC: 101



TOWN OF FALMOUTH

BOARD OF SELECTMEN

AGREEMENT FOR EXTENSION OF STATUTORY HEARING, DECISION AND FILING DEADLINE

The Applicant, Nikolas J., John S. and Anthony P. Pentikis/James N. Pentikis Trust UDT, P.O. Box 901, East Falmouth, MA 02536, hereby agrees to an extension for the statutory hearing, decision and filing deadline for 5 Canapitsit Drive, East Falmouth, MA requesting a Permit to Dredge, Fill or Alter Wetlands under Section 240-77 (Wetland Regulations) of the Zoning Bylaws for permission to license, retain and maintain two (2) existing 4' x 20' floats in and over the waters of Eel Pond Canal, which was filed with the Town Clerk on January 27, 2020. The hearing was scheduled to open on March 9, 2020. At the request of the Applicant, the hearing has been continued to April 27, 2020, and further continued to June 15, 2020 and then to July 27, 2020. The Board's written decision shall be filed with the Falmouth Town Clerk in a timely manner, following the close of the hearing.

The above extension has been agreed to by the Applicant:

Signature of Representative for Applicant

June 22, 2020

Date

The above extension has been agreed to by the Falmouth Board of Selectmen:

Signature of Board of Selectmen Chairman or Clerk

6-15-20

Date

RECEIVED

JUN 25 2020

Filed with the Town Clerk on _____

FALMOUTH TOWN CLERK

Diane Davidson

From: Brian Wall <bjw@troywallassociates.com>
Sent: Saturday, June 13, 2020 2:05 PM
To: Megan English Braga; Falmouth Selectboard
Cc: Michael Palmer; Glenn A. Wood; Matthew Costa
Subject: Re: Application for Special Permit - Pentikis Trust - 5 Canapitsit Drive
Attachments: Board of Selectmen - correspondence to - 06132020.pdf

Dear Chair English-Braga and Members of the Board of Selectmen:

Please find attached a letter which I am respectfully submitting to the Board of Selectmen on behalf of my clients, Steven Balas, of 64 Muskegat Road, and Michael Kachadoorian, of 50 Muskegat Road, regarding the above-referenced matter which is scheduled for hearing on Monday, June 15, 2020.

Eight copies have been transmitted to the Town Hall via FedEx. The Applicant's representatives are copied on this email.

Thank you for your consideration.

Brian J. Wall, Esq.
Troy Wall Associates
90 Route 6A
Sandwich, MA 02563
Office: (508) 888-5700
Cell: (508) 737-3007
bjw@troywallassociates.com

TW TROY WALL ASSOCIATES
ATTORNEYS AND COUNSELLORS AT LAW
A PROFESSIONAL ASSOCIATION OF INDIVIDUAL PRACTITIONERS*
90 ROUTE 6A, SANDWICH, MASSACHUSETTS 02563
TELEPHONE: (508) 888-5700



ROBERT S. TROY
rst@troywallassociates.com

BRIAN J. WALL
bjw@troywallassociates.com

June 13, 2020

Megan English Braga, Chair
Board of Selectmen
Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540

**Re: Application for Special Permit - § 240-77 - § 240-79
Pentikis Trust, 5 Canapitsit Drive, East Falmouth**

Dear Chair Braga and Members of the Board of Selectmen:

Please be advised that I represent Steven Balas ("Balas"), owner of property at 64 Muskeget Road, Falmouth, and Michael Kachadoorian ("Kachadoorian"), owner of property at 50 Muskeget Road, Falmouth. Balas and Kachadoorian are abutters to the site that is the subject of the above-referenced application ("Abutters"). The Abutters are opposed to the Applicant, the Pentikis Trust ("Pentikis"), being approved for two floats to berth two boats; they are not opposed to the Applicant being approved for one float to berth one boat.

The reasons that the Abutters are opposed to two floats include, but are not limited to, the following:

1. If Pentikis receives approval for two floats, it will preclude Kachadoorian from having any float and boat on his waterfront. The canal is a limited resource. In order for each of the owners at the end of the canal to be able to have a float and a boat, each owner must use their waterfront fairly and equitably. Pentikis' proposal for two floats and two boats is not fair or equitable because it will take away from Kachadoorian the ability to have one float and one boat.
2. The floats that the Pentikis describes as "existing" do not have required permits and are unlawful. The Abutters requested zoning enforcement against Pentikis and the Zoning Board of Appeals determined that the floats are illegal because they lack a Special Permit from the Board of Selectmen and ordered Pentikis to obtain a Special Permit or remove the floats. The floats also lack a Chapter 91 Waterways Permit from the Department of Environmental Protection.

June 13, 2020

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3. The proposed floats will occupy more the 80% of Pentikis' 53 feet of waterfront. The two floats together are 40 feet long, plus there is 3 feet of space in between the floats. That leaves only 13 feet of space to Kachadoorian's bulkhead. Further, Pentikis' floats and boats extend outward into the canal by 13 feet. This configuration cuts off approach space and leaves Kachadoorian about 17 feet of useable space on his 30 feet of canal frontage -- only 56% -- which is inadequate to have a reasonably sized float and a reasonably sized boat. It is inequitable for Pentikis to have 43 feet of mooring space and Kachadoorian to have only 17 feet. It is unfair for Pentikis to deprive Kachadoorian 44% of his waterfront.
4. The second float sought by the Pentikis is not for Pentikis; it is for a neighbor who does not have property on the canal. The neighbor has been maintaining two boats in the canal -- one on the Pentikis' second float, and one on the second float of Mr. and Mrs. Dundulis. This neighbor also has two moorings nearby in Eel Pond. Kachadoorian, a waterfront property owner and taxpayer, should not be precluded from having a float and a boat at his property so that the person who lives across the street from Pentikis can have two boats in the canal.

POSITION STATEMENT

The properties owned by Balas, Kachadoorian, and Pentikis each front upon a man-made canal that is connected to the waters of Eel Pond. The canal is approximately 68 feet wide and 400 feet long. Four properties front on each side of the canal, and two properties are located on the end of the canal. Balas and Kachadoorian each own a property on the end of the canal.

Pentikis owns property on the northern side of the canal, abutting the property of Kachadoorian. Without obtaining proper permits, Pentikis put two floats in the water in front of his property that are each 4' x 20' (160 square feet total). Two boats have been tied to the two floats during the boating season -- one belonging to Pentikis and one to Jack Hynes, owner of the property across the street from Pentikis. *See, **Exhibit 1***.

The float closest to Kachadoorian's bulkhead is only several feet away. *See, **Exhibit 2***. When a boat is tied to the float, and the outboard motor is in tilted "up" position, the prop and the skeg are only a few feet away from Kachadoorian's bulkhead. *See, **Exhibit 3***. This precludes Kachadoorian from having his own float and boat. If the Board of Selectmen legitimizes the illegal floats with a Special Permit, the Board will be permanently precluding Kachadoorian from having a float and a boat of his own.

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Kachadoorian and Balas each have approximately 30 feet of frontage on the canal they each seek to have one float and one boat. If the Board were to approve Pentikis' application for two floats, it will legitimize Pentikis' illegal floats and it would permanently preclude Kachadoorian from reasonable use of his waterfront.

The standard beam of a boat with lengths of 18 to 24 feet is 8'6". When properly "bumpered" and tied to a 4' float, a boat will extend approximately 13 feet outward from the bulkhead. If Pentikis is allowed two boats and two floats, the boats will extend outward into the canal and laterally towards Kachadoorian's bulkhead in such a manner as to leave Kachadoorian insufficient space for his own float and boat and insufficient space to safely navigate to his bulkhead.

There is sufficient space for Pentikis to have one float and one boat, and for Kachadoorian to have one float and one boat. This is the fair and equitable solution.

It is noteworthy that Balas and Kachadoorian attempted to construct a dock at their common property boundary that would have extended perpendicularly into the canal from their bulkheads which they intended to share. They proposed this configuration because they thought Pentikis' floats were lawful and fully permitted and the perpendicular configuration was the only one that would enable them to have boats. They obtained wetlands permits and a zoning Special Permit for the dock. Ironically, Pentikis opposed issuance of the permits on the grounds that the perpendicular dock would interfere with the use of his two *illegal* floats. Pentikis, and the neighbors across the canal, Mr. and Mrs. Dundulis, also appealed the grant of the Special Permit to Superior Court.

Balas and Kachadoorian were able to resolve the dispute with Mr. and Mrs. Dundulis. The resolution involves Mr. and Mrs. Dundulis relocating their float that is closest to Balas' property so that it is seventeen (17) feet away from Balas' bulkhead and so that Balas has 17 feet of free and unoccupied space to have a float and a boat. In consideration of this, Balas and Kachadoorian agreed to pursue permits for floats parallel to their bulkheads instead of their perpendicular dock.

Pentikis is trying to have everything his way. He benefits from the settlement with Mr. and Mrs. Dundulis because the perpendicular dock, which he objected to, is no longer being pursued, but he also seeks to keep his two floats and two boats even though it will deprive Kachadoorian reasonable use of his waterfront. Balas and Kachadoorian hope that the Board of Selectmen see this and will impose an equitable solution in the form of one float and one boat for Pentikis. This will preserve the possibility of Kachadoorian being able to have one boat and one float when he appears before the Board of Selectmen in the near future to request a Special Permit for one float and one boat.

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A. Falmouth Zoning Protects Waterfront Property Owner's Fair and Equitable Access to the Water.

Pentikis has applied for a Special Permit under § 240-77 through § 240-79 of the Falmouth Zoning Code. These provisions of the Zoning Code protect the aquatic resources of the Town of Falmouth for the benefit and welfare of the present and future inhabitants of the Town. The protection of aquatic resources includes protecting fair and equitable access to the waterways for recreation and boating.

The Board should approve Pentikis' application but only to extent of one float and one boat. The Board should also condition its approval by requiring at least 20 feet of free and unoccupied space extending from Kachadoorian's bulkhead easterly along Pentikis' bulkhead so as to preserve Kachadoorian's ability to have a boat and a float.

The requirement to preserve free and unoccupied space near Kachadoorian's bulkhead is critically important. Pentikis has told Kachadoorian that, if he does not obtain a Special Permit for two floats, he intends to simply tie two boats to his bulkhead. This will preclude Kachadoorian from the fair and equitable use of his bulkhead. A condition precluding this is necessary to ensure fair and equitable use of the canal.

B. DEP Waterways Regulations Seek To Have 25 Feet of Space For Navigation.

The DEP Waterways Division administers M.G.L. c. 91 ("Chapter 91"), and the Waterways Regulations set forth in 310 CMR 9.00 *et seq.* Chapter 91 preserves and protects the rights of the public to use the waters of the Commonwealth and ensures that private use of tidelands and waterways does not interfere with the public rights in the waterways. Chapter 91 also recognizes and protects the interests of waterfront property owners to access the water from their properties. *See, e.g.,* M.G.L. c. 91, § 17.

When a structure is proposed below the mean highwater mark, the rights of access of waterfront property owners are protected by 310 CMR 9.36(2). This Regulation provides:

Private Access to Littoral or Riparian Property. The project shall not significantly interfere with littoral or riparian property owners' right to approach their property from a waterway, and to approach the waterway from said property, as provided in M.G.L. c. 91, § 17. In evaluating whether such interference is caused by a proposed structure, the Department may consider

June 13, 2020

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the proximity of the structure to abutting littoral or riparian property and the density of existing structures. *In the case of a proposed structure which extends perpendicular to the shore, the Department shall require its placement at least 25 feet away from such abutting property lines, where feasible.* (Emphasis added).

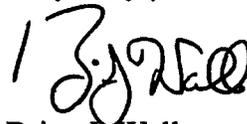
The DEP implements this Regulation by requiring proposed structures to be at least 25 feet from abutting property lines where it is feasible to do so. When a structure is proposed less than 25 feet of an abutting property line, the DEP has a policy of requesting the applicant to obtain a "letter of no objection" from the abutter.

The DEP regulations and policy suggest that the Board of Selectmen should grant Pentikis a single float for a single boat and condition the approval of the float on a requirement that Pentikis keep the portion of his bulkhead within 20 feet of Kachadoorian's bulkhead unoccupied and free of any float or boats so that Kachadoorian can have a boat and a float and room to navigate safely to and from his float. Kachadoorian is willing to provide the DEP a letter of "no objection" if he is ensured 20 feet of free and unoccupied space along the 20 feet of Pentikis' bulkhead closest to his (Kachadoorian's) bulkhead. If Pentikis is required to leave 20 feet of his bulkhead open, he can still have a 33' float.

CONCLUSION

The canal is a limited resource. If it is utilized fairly and equitably by all the property owners on the canal, there is adequate room for safe and enjoyable boating for all. Apportioning more than a fair share to Pentikis will preclude fair and equitable use by Kachadoorian. Accordingly, Balas and Kachadoorian respectfully request the Board of Selectmen to approve one float and one boat for Pentikis, and condition the approval on a requirement that Pentikis maintain the 20 feet of his bulkhead closest to Kachadoorian free and clear of any boat and any float. Thank you.

Very truly yours,



Brian J. Wall

Enclosures

Cc: Clients

Glenn Wood, Esq.

Matt Costa, P.E., P.L.S.

EXHIBIT 1



EXHIBIT 2



EXHIBIT 3





TOWN of FALMOUTH

DEPARTMENT OF PUBLIC WORKS, WATER DIVISION

416 GIFFORD ST., FALMOUTH, MASSACHUSETTS 02540

TELEPHONE (508) 457-2543

FAX (508) 548-1537

DATE: July 22, 2020

SUBJECT: Request for a declaration by the Board of Selectman in accordance with Chapter 223, Article 1, Section 4 and 5 for a prohibition on automatic sprinkler systems in order to ensure the safe and adequate supply of water to all water customers.

FROM: Stephen Rafferty, Water Department Superintendent 

TO: Board of Selectman
Town Manager, Julian Suso
DPW Director, Peter McConarty

Rational and need are as follows:

We are several weeks into a drought, and the weather forecast is more of the same. I think that with COVID, more folks are staying put and tending to their yards. We have enough supply to meet daily demand, however there is a peak demand on the system every morning from 3 to 6 AM due to automatic irrigation systems. Even though we ask that folks voluntarily water even odd days that has not, and is not happening. Many folks have irrigation systems that are programmed to the day of the week. Since just before July 4th weekend we have struggled to maintain sufficient water in the storage tanks during the early morning hours, particularly on Monday, Wednesday and Friday.

Since just before Memorial day weekend we have been seeing the expected increase in demand. However, this year we are averaging 20% greater demand than the same period last year. We are utilizing all of our available sources. For the last two weeks we have been pumping all sources and have not been able to meet the early morning demands on the system.

Telegraph Hill is the canary in the coal mine. For the last week the water pressure on the upper portion of Telegraph Hill has been inadequate. We are in a situation that if we lost the use of any of our sources – we would not be able to maintain operating pressures at both Telegraph Hill as well as at the Hospital. Last year we were able to meet demand by utilizing water from the storage tanks.

The system is operating as follows:

- The elevated tank that services Ballymeade drops rapidly in the AM as does the low service tank at tech park.
- The Mares and Hayway tanks also drop several feet in elevation.

- we turn on the spare finished water pump at the LPWTP to pump down the finished clear well as part of our early morning effort to meet demand.
- During the early morning there is roughly 1.5 million gallons drawn out of the storage tanks and clear well to meet the demand.
- With the third finished water pump we are pumping in the early morning at a rate of 14.2 MGD. The water that comes out of the storage tanks is at a rate of 16.9 MGD. The early morning demand on the system is at a rate of 31.1MGD.
- Pumping at full capacity of 11.5 million gallons per day, it now takes until the evening to fill the tanks back up. Last year we were typically able to re-fill by late morning or early afternoon.

For a more permanent solution to the Telegraph Hill area we have been designing a small booster pump station that would be sited roughly ½ of the way up the hill. We have a location and a piping plan. Our engineer, Tata and Howard, has been talking with a couple of vendors and I hope to shortly have a specification that I can put out to bid. This is an in process project that will take a couple of months or more to implement. Not available this year but should be in place for the future.

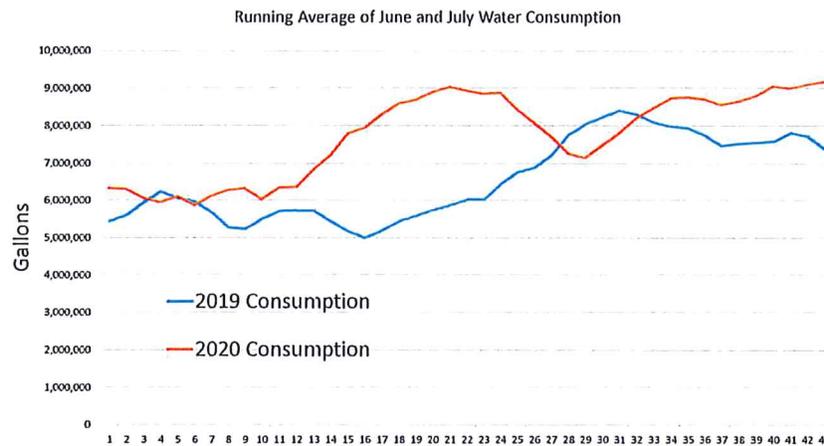
Request per section 223-4 of
Falmouth Town Code for a

Declaration of State of
Water Supply Conservation

Requesting that the use of
automatic sprinkler systems is
prohibited

This conservation measure is
appropriate to ensure the safe and
adequate supply of water to all
consumers

Demand for water this year is up 20%



Current operation does not provide adequate water pressure to Telegraph Hill

- Maximum supply of water is 11.5 MGD.
- Demand for water is variable during the day.
- Currently daily demand is 9 MGD
- From 4 AM to 5:30 AM we pump at a peak demand rate of 16.9MGD
- 1.5 MG gets drawn down from storage during that period
- Peak system demand in AM is 31.1 MGD
- Demand during daytime hours is about 11 MGD
- Tanks do not start filling until mid to late afternoon.
- Finished water pumps are running 22-23 hours a day.

Automatic Sprinkler System Usage

- Irrigation is considered effective if done from 3AM to 6AM
- Plethora of Irrigation is active 3 – 6 AM
- Irrigation controllers are typically set for days of the week, not odd/even
- We notice peak usage on Monday, Wednesday, Friday AM.

Tonight's action and next steps

- Request that the Selectman vote a State of Water Conservation by prohibiting the use of automatic sprinkler systems until the order is lifted.
- Publish notice in Enterprise.
- Inform news outlets and neighborhood associations.
- Create door hangers to warn homeowners for first offense and warn of possible shut off of water for second offense.
- Monitor demand and drought conditions and lift restrictions when appropriate.

Town of Falmouth, MA
Wednesday, July 22, 2020

Chapter 223. Water

Article I. Water Emergency

§ 223-4. Declaration of state of water supply conservation.

The Town, through its Board of Selectmen, may declare a state of water supply conservation upon a determination by a majority vote of the Board that a shortage of water exists, or may reasonably be determined to be imminent, and conservation measures are appropriate to ensure the safe and adequate supply of water to all water consumers. Restrictions shall be applicable to all public and private users of the Town's public water supply system, regardless of any person's responsibility for paying water bills for water used at any particular facility. However, if the Board of Selectmen makes a specific finding that the shortage of water exists because of a clear and imminent threat to the sole source aquifer underlying Falmouth, such threats to include severe drought, environmental pollution or salt water intrusion, the restrictions adopted pursuant to § 223-5 shall apply to all citizens, water users and consumers regardless of the source of water supply. Public notice of a state of water supply conservation shall be given under § 223-6 of this article before it may be enforced.

§ 223-5. Restricted water uses.

A declaration of a state of water supply conservation shall include, but not be limited to, one or more of the following restrictions, conditions, or requirements limiting the use of water as necessary to protect the public supply. The applicable restrictions, conditions or requirements shall be included in the public notice required under § 223-6.

- A. Odd/Even day outdoor watering. Outdoor watering by water users with odd-numbered addresses is restricted to odd-numbered days. Outdoor watering by water users with even-numbered addresses is restricted to even-numbered days.
- B. Outdoor watering hours. Outdoor watering is permitted only during daily periods of low demand, to be specified in the declaration of a state of water supply conservation and public notice thereof.
- C. Washing of sidewalks, driveways and patios is prohibited.
- D. The use of automatic sprinkler systems is prohibited.
- E. The filling of swimming pools is prohibited.
- F. Outdoor watering is prohibited.
- G. Restaurants may not serve water unless requested by patrons.
- H. Pistol-grip-type nozzles are required for all hoses used for outside watering, car washing or boat washing.
- I. Restrictions imposed on commercial car washes.

- J. Mandatory water use reductions by commercial/industrial users.
- K. Restricting private water supply use.
- L. Termination of water service for failure to comply.

Operational snapshot during peak early morning demands

Tank					19-Jul-20				
	diameter	area	gallons/foot		4:00 AM	5:30 AM	delta	outflow in gallons	gall/90 = gpm
Tech Park	98	7543.0	56,425	water depth in tank	54	45.3	8.7	490,900	5,454
Hayway	98.5	7620.1	57,003	water depth in tank	37.4	34.9	2.5	142,506	1,583
Mares	98.5	7620.1	57,003	water depth in tank	38.3	33.3	5	285,013	3,167
High Service	72.25	4099.8	30,669	water depth in tank	32.2	27.7	4.5	138,010	1,533
total volume out of tanks								1,056,429	
outflow rate								gpm	11,738
outflow rate in MGD								mgd	16.9

Pumping into system		
Source	peak flow gpm	max pump rate
LPWTP	7800	5900
CPWTP	1300	1300
Upper Cape	550	550
Mares	200	200
gpm	9850	7950
MGD rate	14.2	11.5
Early AM tank drawdown	16.9	
Total early AM demand	31.1	

Diane Davidson

From: Julian Suso
Sent: Thursday, July 23, 2020 3:43 PM
To: Diane Davidson
Subject: FW: Changing Polling Place, Precinct 5
Attachments: POLLING PLACE AND REGISTRATION SITE ACCESS.docx

Diane,
FYI.
Julian

From: Michael Palmer <michael.palmer@falmouthma.gov>
Sent: Thursday, July 23, 2020 3:20 PM
To: Megan English Braga <megan.english-braga@falmouthma.gov>; Julian Suso <julian.suso@falmouthma.gov>
Cc: Frank Duffy <frank.duffy@falmouthma.gov>; Irie Mullin <irie.mullin@falmouthma.gov>
Subject: RE: Changing Polling Place, Precinct 5

Good Afternoon,

I have attached a "Polling Place And Registration Site Access" form required by SOC to change voting location.

I believe this may also serve to meet the requirement of the BOS under section 11 of Chapter 115 of the Acts of 2020, there are new procedures required when moving polling locations after July 6, 2020.
"The Select Board shall evaluate and report on whether such change would have a disparate adverse impact on access to the polls on the basis of race, national origin, disability, income or age, and not later than 3 days prior to changing a polling place. **August 11th**"

Regards,

Michael

Michael Palmer, CMC/CMMC
Falmouth Town Clerk
NEW EMAIL ADDRESS
michael.palmer@falmouthma.gov
508-495-7353



From: Michael Palmer
Sent: Tuesday, July 21, 2020 2:30 PM
To: Megan English Braga <megan.english-braga@falmouthma.gov>; Julian Suso <julian.suso@falmouthma.gov>
Cc: Frank Duffy <frank.duffy@falmouthma.gov>; Irie Mullin <irie.mullin@falmouthma.gov>
Subject: Changing Polling Place, Precinct 5

Good Afternoon,

Precinct 5 presently votes at the North Falmouth Congregational Church in North Falmouth. The YMCA day care at the Congregational Church has new restrictions of what else can take place in the same building. So, I need to move the precinct. I have looked at Saint Elizabeth Seaton. It has a big room in the basement. There are steps going down but there is also a handicap ramp that runs along the outside of the building to the lower level. It has plenty of parking and handicap spot. I believe it would meet the requirements of a polling place.

Under section 11 of Chapter 115 of the Acts of 2020, there are new procedures required when moving polling locations after July 6, 2020

The Select Board may, by recorded and public vote, change any polling place 20 days prior to primary election or general election. **August 14th**

The Select Board shall evaluate and report on whether such change would have a disparate adverse impact on access to the polls on the basis of race, national origin, disability, income or age, and not later than 3 days prior to changing a polling place. **August 11th**

Although it does not require notification to each household, shall notify voters by using an electronic means, to the extent available, such as via email or reverse 911 call, I think a postcard to all households would be most effective.

Chapter 115 of the Acts of 2020

AN ACT RELATIVE TO VOTING OPTIONS IN RESPONSE TO COVID-19.

SECTION 11. Notwithstanding section 24 of chapter 54 of the General Laws or any other general or special law to the contrary, the select board, board of selectmen, town council or city council may, by recorded and public vote, change any polling place to be used at the primary election or the general election at **least 20 days prior to the date of the primary election or general election** if it is determined that the public convenience or public health would be better served.

If the select board, board of selectmen or town council determines that the public convenience or public health would be better served, they may house all polling places in a single building within the municipality, if such building is suitably equipped; provided, however, that alcoholic beverages shall not be served or consumed in that portion of a building used as a polling place, during voting hours or while ballots are being counted therein.

In cities, the city council may designate polling places in non-adjacent precincts if they determine the public convenience or public health would be better served.

In making a decision to change a polling place, the select board, board of selectmen, town council or city council shall evaluate and report on whether such change would have a disparate adverse impact on access to the polls on the basis of race, national origin, disability, income or age, and **not later than 3 days prior to changing a polling place**, shall make publicly available on its website and at the office of the town or city clerk a report on its evaluation.

When the polling places have been designated pursuant to this section, the board of registrars shall post on the municipal website and at other such places as it may determine, a description of the polling places **and shall notify voters by using an electronic means, to the extent available, such as via email or reverse 911 call.**

Regards,

Michael

Michael Palmer, CMC/CMMC

Falmouth Town Clerk

NEW EMAIL ADDRESS

michael.palmer@falmouthma.gov

508-495-7353



POLLING PLACE AND REGISTRATION SITE ACCESS

Present polling location has a YMCA Day Care with restrictions to other uses of the building. The proposed polling location is centrally located in the same precinct, less than a mile away. The proposed location would have no impact on present public convenience or public health. The proposed location would not have a disparate adverse impact on access to the polls on the basis of race, national origin, disability, income or age. No other locations in the Precinct are available meeting therequirements for a polling location.

Entrance to Hall is on lower level in the rear of the church. Only one spot has a sign and is not stripped but curb cut exist. Handicapped parking for Church is in front of building. Three handicapped parking spots will be created using traffic cones and temporary signs.

Accessible entrance has a rise of greater than ½ inch. Rubberized threshold will be added.

LOCATION: St Elizabeth Seton, North Falmouth MA DATE: July 23, 2020

WARD: 0 PRECINCT: 5

SURVEYOR Michael Palmer SURVEYOR: _____
TITLE Town Clerk TITLE: _____

This checklist is based on the Secretary of the Commonwealth's regulations for polling place accessibility 950 CMR 51:00. To complete this survey, you will need a level and a tape measure. Please specify in the "Comments" section, below, any issues that need further clarification.

1. Site access (Path of Travel):

(a) The paths of travel to the polling place from the parking lot and from the street are clear, reasonably lit, and unobstructed.

(b) The paths have continuous common surfaces, not interrupted by steps or abrupt changes in level greater than 1/2 inch.

(c) The path of travel is the same or a substantially similar distance for all persons entering the polling place

2. Parking:

____ (a) The required number of handicapped parking spaces is provided as follows:
total no. of parking spaces no. of handicapped spaces required

1 - 25	1
26 - 50	2
51 - 75	3
76 - 100	4
101 - 150	5
151 - 200	6
201 - 300	7
301 - 400	8
401 - 500	9
501 -1,000	2% of total
1,001 and over	20 plus 1 for each 100 over
1,000	

(b) for parking lots striped prior to 9/1/96:

Entrance to Hall is on lower level in the rear of the church. Only one spot has a sign and is not stropped. Handicapped parking for Church is in front of. Three handicapped parking spots will be created using traffic cones and temporary signs.

N/A (1) The handicapped parking spaces are 8 feet wide and have an adjacent 4 foot access aisle which is painted or striped yellow. The parking lot is reasonably lit.

N/A (2) The handicapped parking spaces are identified by a sign at each space or pair of spaces containing the International Symbol of Accessibility, with the top of the sign between 5 and 8 feet high above the ground.

(c) for parking lots striped after 9/1/96:

N/A (1) The handicapped parking spaces are 8 feet wide and have an adjacent 5 foot access aisle which is marked by high contrast painted lines or other high contrast delineation. The parking lot is reasonably lit.

N/A (2) Is there at least one "van accessible" space. (one in every eight accessible spaces must be van accessible, but no less than one) This space is 8 feet wide and has an adjacent 8-foot wide access aisle which is marked by high contrast painted lines or other high contrast delineation. The parking lot is reasonable lit.

N/A (3) Each handicapped parking space is identified by a sign containing the International Symbol of Accessibility, with the top of the sign between 5 and 8 feet high above the ground. Van accessible spaces shall include the words "Van Accessible."

X (d) Any sidewalk provided at the handicapped parking spaces has a curb cut (sidewalk ramp), with a slope no greater than 1:12, at each space or pair of spaces.

N/A (e) If no parking lot is available, there is at least one on-street parking space which is at least temporarily designated as a handicapped parking space during the election in front of the polling place

3. Entrance

X (a) At least one entrance to the building is accessible.

X (b) The approach to the accessible entrance is a paved walk or ramp with a non-slip surface uninterrupted by steps or changes in level greater than 1/2 inch. There is a level space 60 inches from the door on both the exterior and interior sides.

X (c) Lever handles or other accessible hardware are provided on doors, so that they may be operated with a closed fist.

X (d) Doorways are at least 32 inches clear width. Door thresholds are no higher than 1/2 inch above the floor.

Accessible entrance has a rise of greater than ½ inch. Rubberized threshold will be added

X (e) If the main entrance is not accessible, signs direct people to the accessible entrance.

X (f) If the accessible entrance is not the main entrance, it is unlocked and able to be used without assistance during the same hours as the main entrance

4. Ramps

X (a) If the entrance has stairs, there is either a permanent or portable ramp. If permanent, the ramp has a slope no steeper than 1:12.

X (b) The ramp is at least 48 inches wide.

X (c) The ramp has two pairs of handrails along both sides that are round or oval in shape and are set in pairs, one at a height between 34 and 38 inches and a lower one at a height between 18 and 20 inches.

N/A (d) If the ramp is portable, it is as close to 1:12 as possible, and either handrails or wheel guards at least two inches high on both sides are provided.

5. Building Interior

X (a) All interior doors, approaches, and ramps necessary to obtain access to the polling place comply with 3 and 4 above.

X (b) An accessible route which provides a continuous unobstructed path at least 36 inches wide is maintained inside the polling place and shall coincide with the route for the general public

6. Voting Equipment

X (a) All Polls - A sample ballot will be posted on the wall no higher than 48 inches above the floor.

N/A (b) Paper or Datavote ballots - At least one marking shelf (one for each party in a primary for Datavote) provides a clear space under it at least 30 inches wide, at least 27 inches clear to the underside, and no more than 32 inches high to the top. Any Datavote stylus handle is at least 1 ¼ inches thick and at least 3 inches long.

N/A (c) Voting machines - At least one machine has a sample ballot posted inside, not higher than 48 inches.

N/A Voting levers are no higher than 48 inches above the floor, or a "reacher" is available for the upper levels.

PLEASE SEND THE COMPLETED SURVEY TO:

**OFFICE OF THE SECRETARY OF THE COMMONWEALTH
ATTN: Bridget Simmons Murphy
Office of the Secretary of the Commonwealth
Elections Division
1 Ashburton Place, 17th floor
Boston, MA 02108**

Julian Suso

From: Vieira, David - Rep. (HOU) <David.Vieira@mahouse.gov>
Sent: Thursday, July 23, 2020 11:50 AM
To: Mary Gans
Cc: Patrick Murphy; Julian Suso; Lori Duerr; Megan English Braga; Peter Johnson-Staub; Frank Duffy; Sharon Reid; Greg Kennedy; Marcel Sanchez
Subject: Re: [External]: Re: Inquiry on Potential Upcoming Town Meeting Dates/Venue

Awesome. Thank you!

David T. Vieira
State Representative
Third Barnstable District

From: Mary Gans <mgans@falmouth.k12.ma.us>
Sent: Thursday, July 23, 2020 11:47:51 AM
To: Vieira, David - Rep. (HOU) <david.vieira@mahouse.gov>
Cc: Patrick Murphy <pmurphy@falmouth.k12.ma.us>; Julian Suso <julian.suso@falmouthma.gov>; Lori Duerr <lduerr@falmouth.k12.ma.us>; Megan English Braga <megan.english-braga@falmouthma.gov>; Peter Johnson-Staub <peter.johnson-staub@falmouthma.gov>; Frank Duffy <frank.duffy@falmouthma.gov>; Sharon Reid <sreid@falmouth.k12.ma.us>; Greg Kennedy <gkennedy@falmouth.k12.ma.us>; Marcel Sanchez <msanchez@falmouth.k12.ma.us>
Subject: Re: [External]: Re: Inquiry on Potential Upcoming Town Meeting Dates/Venue

Hi David -- The FHS Field House is available, so we will reserve both the Field House and the Auditorium for Town Meeting on 9/14 and 9/15 for Town Meeting.

Thanks,
Mary

On Wed, Jul 22, 2020 at 2:58 PM Vieira, David - Rep. (HOU) <David.Vieira@mahouse.gov> wrote:

Thanks Patrick. Does that mean the FHS Field House would not be available for Sept. 14 and 15? Our discussions were around spacing depending on the community cases reported closer to the date of the meeting and we know we can space better in the field house than the auditorium if the need arises.

David T. Vieira
State Representative
Third Barnstable District
State House, Rm. 167
Boston, MA 02133
Boston Office: 617-722-2230
District Office: 508-548-VOTE (8683)

COMMITTEES:

House Committee on Bonding, Capital Expenditures and State Assets; Ranking Member

Joint Committee on Public Safety & Homeland Security; Ranking House Member

House Committee on Rules; Assistant Ranking Member

Joint Committee on Tourism, Arts and Cultural Development

From: Patrick Murphy [pmurphy@falmouth.k12.ma.us]

Sent: Wednesday, July 22, 2020 2:49 PM

To: Julian Suso

Cc: Lori Duerr; Vieira, David - Rep. (HOU); Megan English Braga; Peter Johnson-Staub; Frank Duffy; Mary Gans; Sharon Reid; Greg Kennedy; Marcel Sanchez

Subject: [External]: Re: Inquiry on Potential Upcoming Town Meeting Dates/Venue

Hello all,

This is a response from FHS regarding the request to use FHS space for a September town meeting.

We checked with athletics and FHS schedules so they can work around this:

Monday and Tuesday, September 14 and 15 at 7 pm in the FHS auditorium

Saturday, September 26 at 10:00 am on the Turf Field (if there's band practice - they will have to move practice to a grass field)

I included Marcel in this email so he's in the loop.

I've penciled these dates in for now.

Would you please let us know when you know if you'll go ahead with these dates and locations?

Thank you,

On Tue, Jul 21, 2020 at 4:49 PM Julian Suso <julian.suso@falmouthma.gov> wrote:

Hello Lori and Patrick,

We have had a conversation regarding re-convening the spring Town Meeting potentially on the dates of Monday and Tuesday, September 14 and 15 at 7PM. I am writing to inquire whether either the High School Auditorium or the High School Field House would be available for an evening meeting on those two dates to allow consideration for the continuation of spring Town Meeting?

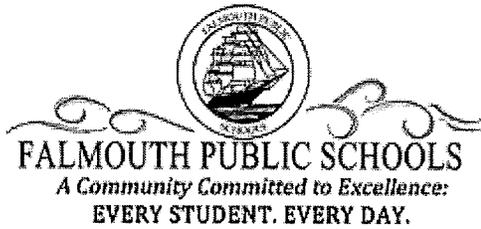
I am also inquiring as to the potential availability of the High School Turf Field (as a fall-back) for continuation of spring Town Meeting at 10AM on Saturday, September 26?

I recognize that much is underway with your review/analysis of start-of-school issues, and that you are certainly busy. Any thoughts/guidance you can give us on these possibilities would be most helpful. Thank you.

Julian

--

Patrick Murphy
Falmouth Public Schools, Director of Finance and Operations
508-548-0151 ext. 123
Fax: 508-457-5435



The contents of this e-mail, and any attachments, are the property of the Falmouth Public School District, and are subject to the Public Records Law, M.G.L. c. 66, Sec. 10.

--

Mary Whalen Gans
Principal
Falmouth High School
874 Gifford Street
Falmouth, MA 02540
508-540-2200 (ext. 3035)

The contents of this e-mail, and any attachments, are the property of the Falmouth Public School District, and are subject to the Public Records Law, M.G.L. c. 66, Sec. 10.



DRAFT

NOVEMBER 2020 ANNUAL TOWN MEETING

Selectmen Announce Annual Town Meeting Monday, August 10, 2020

Close Warrant Friday, September 11, 2020

Selectmen Vote Articles & Execute Warrant Monday, September 21, 2020

Publish Articles Only Friday, September 25, 2020

Petition Article Presentations Monday, September 28, 2020

Selectmen Vote Article Recommendations Monday, October 5, 2020

Publish Warrant with Recommendations Friday, October 23, 2020

Town Meeting Monday, **November 9, 2020?**



MORIARTY TROYER & MALLOY LLC
ATTORNEYS AT LAW

COPY



Douglas A. Troyer
Direct Dial: (781) 817-4605
dtroyer@lawmtm.com
Admitted in MA & ME

June 9, 2020

VIA FEDERAL-EXPRESS MAIL
AND EMAIL phyllis.downey@falmouthma.gov

Town of Falmouth Board of Selectmen
Office of the Town Manager & Selectmen
Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540
Attn : Phyllis Downey

Re: Cumberland Farms Inc.'s Application for Sign Permits and Variance.

Subject Property: 8 Old Meeting House Road (Map 33, Section 12, Parcel 7)
400 East Falmouth Highway (Map 33, Section 12, Parcel 8)

Dear Sir/Madam:

Please be advised that this firm represents Cumberland Farms, Inc. ("CFI") in connection with its project to rebuild and continue operations of an existing gasoline station and convenience store on property located at 400 East Falmouth Highway and 8 Old Meeting House Road (hereinafter referred to as "Project"). To date, CFI has obtained all necessary permits and relief for their project from the Town of Falmouth Planning Board and Zoning Board of Appeals. Additionally, the Town of Falmouth Board of Selectmen ("Board") approved CFI's request for Underground Storage Tank License on March 9, 2020. In furtherance of its Project, enclosed for filing please find the following in connection with CFI's application for sign permit and request for Variance pursuant to § 184-20 of the Town of Falmouth General Code ("Code") relating to above-referenced properties:

1. May 19, 2020 Application for Design Review and/or Building Inspector Comments;
2. CFI's Sign Permit Application dated May 19, 2020;
3. Copy of CFI's Plans in Support of its Sign Application, which provide the requested information as provided for in the Town of Falmouth Sign Permit Process & Required Submittal Informational Sheet;

4. June 3, 2020 response from Johnathan Dickinson, Assistant Zoning Compliance Agent Inspectional Services for Town of Falmouth to CFI's sign plan application and request for comments; and
5. June 9, 2020 response from Johnathan Dickinson, Assistant Zoning Compliance Agent Inspectional Services for Town of Falmouth concerning to CFI's proposed wall sign plan; and
6. Owner's Authorization;¹

Sign Applications

In connection with its Project, CFI seeks to install two (2) Freestanding Signs - one located on 400 East Falmouth Highway, and one located on 8 Old Meeting House Road.² Additionally, CFI further seeks to install a wall sign over the front entrance of the store facing East Falmouth Highway.³ (See CFI's Sign Application and Inserts A, B-1, B-2, and C-2 along with CFI's plans submitted in support therewith).

Request for Variances

Pursuant to § 184-20 of the Code, the Board "shall only be permitted [to grant a variance] when it is determined that the architecture of the building(s), the location of the building(s) with reference to a street or the nature of the use being made of the building(s), is such that a variance would be in the public interest. In granting such variance, the Board of Selectmen shall specify the size and location of the sign(s) and impose such other terms and restrictions as deemed to be in the public interest."

1. Freestanding Signs

Pursuant to Mr. Dickinson's June 3, 2020 comments about CFI's proposed freestanding signs, he determined that the signs meet the linear feet of frontage on two streets (300 ft). However, pursuant to § 184-25, the maximum square feet of a freestanding sign in the B2 district is 16 square feet. CFI's proposes to install a total area of 21.11 sq. ft. requiring a variance of 2.11 sq. ft. for both freestanding signs. (See CFI's Sign Application and Inserts A, B-1 and B2, and CFI's plans submitted in support therewith).

¹ Please be advised that CFI has entered into a P&S agreement with the owner of 8 Old Meeting House property, which is contingent upon CFI being able to obtain all necessary permitting to raze the existing buildings and construct a convenience store with self-service gasoline sales on the Subject Property. Thus, submitted with this application is the Owner's Authorization letter authorizing CFI to seek the relief requested in this instant Application.

² § 184-25(B)(3) permits CFI to seek 2 freestanding signs as it has frontage on two (2) streets and complies with the requirements of such section.

³ In CFI's May 19, 2020 application, CFI further sought to install a Canopy Sign, but pursuant to Mr. Dickinson's June 3, 2020 comments, CFI has removed that sign from its application is no longer seeking any relief.

The site is located in a Business 2 (B2) zone and has historically been used as a gasoline and convenience store operation. In order to be competitive in its industry, such freestanding signs are the norm and provide the customer with information about the gas prices available at the site so that a customer can make an informed decision before entering the site. It is CFI's position that given that the location of the proposed freestanding signs are within a B2 zone and that CFI is seeking a minor 2.11 sq. ft. area variance in order to provide the information in a size that is safe and easy to read, such a variance will not have any adverse effects on the neighboring area or community at large. Furthermore, it is CFI's position that granting of the variance will serve the public interest so that a customer will clearly be notified of the existence of a CFI operation at the site and the current price for regular gas so as to be able to make an informed decision before pulling into the site.

Additionally, in Mr. Dickinson's June 3, 2020 response to CFI's proposed freestanding signs, he required verification that the setbacks of both signs are 10 feet from the street. Please see the Site Plan CFG 4.0 which is provided in connection with this application which verifies that the setback are 10 feet from the relevant streets.

2. Wall Sign (on store)

Pursuant to Mr. Dickinson's June 3, 2020 response to CFI's sign plan application, he provided that pursuant to § 184-18(C) for a sign consisting of individual letters or symbols attached to a surface, the maximum height of such a wall sign is 3 feet. CFI's proposed wall sign includes CFI's corporate logo symbol and the words "Cumberland Farms" over the entrance of the store which measures 4' 10 ½" in height. Thus, CFI is seeking a variance of 1' 10 ½"

It is CFI's position that architecturally the proposed wall sign is appropriate for the proposed building in this location and that the variance will not have any adverse effects on the neighboring area or community at large and will serve the public interest so that a customer will clearly be notified of the existence of a CFI operation at the site.

Additionally, in response to Mr. Dickinson's June 3, 2020 comment about the depth of the letters and icon on the Wall sign, CFI informed Mr. Dickinson that the depth would be 5". On June 9, 2020, Mr. Dickinson responded that the 5" depth meets § 184-27(a) and that the wall sign meets § 184-37(a), except for the 3' height requirement provided for in § 184-18(C). (See Mr. Dickinson's response dated June 9, 2020).

Conclusion

Wherefore, based on the above, CFI respectfully request that the Board grant CFI's request for the minor variances to the proposed freestanding signs and the wall sign, as such request is reasonable given the type of business use being conducted on the site, and make a finding that strict adherence to Chapter 184 of the Code would be impractical for CFI given such use and that the requested minor variances will not have any adverse effects on the neighboring area or community at large, and will serve the public interest.

Should you need any additional information or documentation in order to process this Application, please do not hesitate to contact me. Additionally, by making this Application, we

June 9, 2020

Page 4

are requesting to be placed on the next available meeting before the Board of Selectmen in connection with this request.

Finally, enclosed please find a self-addressed stamped envelope and a copy of the first page of this letter. Please date stamp the copy of this letter as to the filing of CFI's application and forward the date stamped copy to my attention. I have also sent digital copies of this application and plans via email for your convenience.

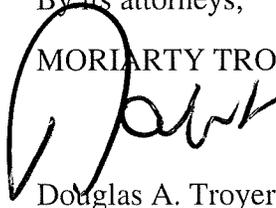
Thank you for your attention to this matter.

Respectfully submitted,

CUMBERLAND FARMS, INC.,

By its attorneys,

MORIARTY TROYER & MALLOY LLC



Douglas A. Troyer

Enclosures:

cc: Project Team (via email only)
Jonathan Dickinson (via email only jonathan.dickinson@falmouthma.gov).



Town of Falmouth
DESIGN REVIEW COMMITTEE
 59 Town Hall Square
 Falmouth, MA 02540-2761

Application for Design Review and Comments

This application (items #1-8) is to be completed by Applicant and submitted with plans.

1. Date of Submission May 19, 2020
 Type of project Reconstruction of 3. gas station/convenience store Referred by: N/A
2. New Construction Planning Board
 Alteration/Addition Zoning Board of Appeals
 Sign Building Department
 Other _____

4. Applicant's Name Cumberland Farms, Inc. Douglas A. Troyer, Esq.
 Phone (781) 817-4900
 Address: 30 Braintree Hill Office Park, Suite 205
Braintree, MA 02184

5. Project Name: Cumberland Farms, Inc.

6. Project Location 400 East Falmouth Highway/8 Old Meeting House Road

7. Architect/Designer HFA 8. Sign Company Pro Signs
 Name Meghan Vincent Name Jessica Davis
 Phone (508) 528-0770 x423 Phone (610) 518-5881 x116

 DESIGN REVIEW COMMENTS:

Town of Falmouth Sign Permit Application (rev. 9/10)

(508) 495-7470 Fax (508) 548-4290

For office use only:

BD Permit#: _____ Fee*: _____ HDC App. #: _____ DRC App. #: _____

*The Sign Permit Fee is \$25.00 per sign, payable to the Town of Falmouth (special event and promotional signs under §184-30 are no charge) – please submit the required fee to the Building Department along with the completed sign permit application.

DATE: _____
STREET ADDRESS FOR PROPOSED SIGN(S): SEE ATTACHED INSERT A
APPLICANT NAME: _____ PHONE: _____
MAILING ADDRESS: _____ TOWN/STATE/ZIP: _____
BUSINESS NAME: _____
BUSINESS OWNER: _____ ADDRESS/PHONE: _____
PROPERTY OWNER: _____ ADDRESS/PHONE: _____
CONTRACTOR / SIGN COMPANY: _____
ASSESSOR'S PARCEL ID: _____ ZONING DISTRICT: _____

IS THE PROPOSED SIGN LOCATED WITHIN A LOCAL HISTORIC DISTRICT? Y / N

If YES, the applicant must first submit this application to the Historic District Commission (HDC) for their approval. See attached 'Town of Falmouth Sign Permit Process and Required Submittals' for a detailed description of the HDC requirements.

FREESTANDING SIGN(s) § 184-25; Projecting sign(s) § 184-35

List number and sizes of each sign that presently exist for each street frontage: SEE ATTACHED INSERTS B-1/B-2
Area of proposed standing sign is: _____ x _____ = _____ square feet.
Do the frames, borders, etc. exceed 8 square feet in area? Y / N
The proposed standing sign will be set back from _____ street line _____ feet.

WALL SIGN(s) § 184-37; Awning(s) § 184-22

List number and sizes of each wall and roof sign that presently exist on building: SEE ATTACHED INSERTS C-1/C-2
Size of proposed wall sign is: _____ x _____ = _____ square feet.
The lineal frontage of the wall supporting the sign is: _____ lineal feet.
The proposed sign will face _____ street/parking lot

ROOF SIGN(s) § 184-37

List number and sizes of each wall and roof sign that presently exist on building: _____
Size of proposed roof sign is: _____ x _____ = _____ square feet.
The wall that the sign will be above is: _____ lineal feet.

PROMOTIONAL/SPECIAL EVENT SIGN(s) § 184-30

Size of proposed sign is: _____ x _____ = _____ square feet.
Start date: _____; End date: _____ Total number of days that the sign will be displayed: _____

If the sign is eight (8) square feet or greater, this application must be submitted the Design Review Committee (DRC) for approval. See attached 'Town of Falmouth Sign Permit Process and Required Submittals' for a description of the DRC requirements.

OFF-PREMISES SIGN(s) § 184-32; VARIANCE § 184-20

The Board of Selectmen must approve all off-premise signs.

Proposed location: _____ Size: _____ square feet.

Board of Selectmen License No.: _____ (Note: A copy must be attached)

INSTRUCTIONS TO APPLICANT: (1) Attach a separate sheet with a site plan showing the location of the proposed sign on the lot as well as a sketch of the proposed sign with dimensions and the approximate appearance. (2) All signs in local Historic Districts must receive approval from the Historic District Commission (HDC) before the sign permit application is filed with the building department. (3) All applications for signs at a size of eight (8) square feet or greater that are located outside of local historic districts must be submitted to the Design Review Committee (DRC) for approval.

Signature of Applicant: [Signature]
Date: 5/19/12
Douglas A. Troyer

Douglas A. Troyer, Moriarty Troyer & Malloy LLC
Counsel for Cumberland Farms, Inc.

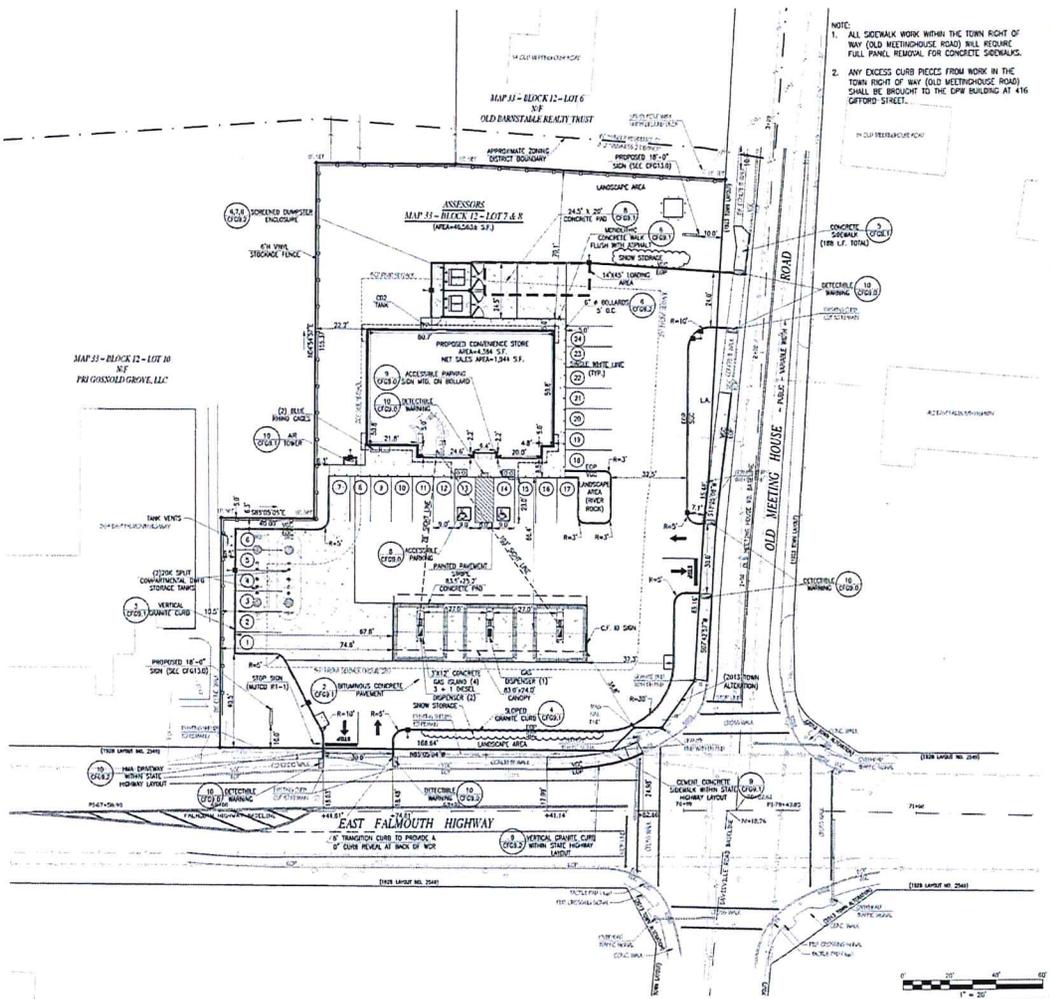
Historic District Commission Date or Design Review Committee Date
With the following conditions: _____

Building Commissioner/Inspector Date
With the following conditions: _____

- ZONING DATA TABLE -

PROJECT DATA			
TOTAL SITE AREA	1.1± ACRES		
BUILDING FOOTPRINT	4,384 S.F. CUMBERLAND FARMS		
TOTAL PARKING REQUIRED	RETAIL: 1 SPACE/200 S.F. LEASABLE FLOOR AREA		
	4,384/200 = 22 SPACES		
TOTAL PARKING PROVIDED	24		
LAND INFORMATION			
ASSESSORS MAP	MAP 33		
BLOCK/LOT NUMBER	BLOCK 12 / LOT 7 & 8		
ZONING INFORMATION			
ZONING DISTRICT	BUSINESS 2 (B2)		
MIN. LOT AREA	REQUIRED	EXISTING	PROMISED
	40,000 S.F.	48,563.9 S.F.	48,563.9 S.F.
MIN. FRONTAGE	REQUIRED	EXISTING	PROMISED
	200	438.88	438.88
BUILDING HEIGHT LIMIT	REQUIRED	EXISTING	PROMISED
	3 STORES OR 45 FT	1.5 STORES	32.83 FT
MAX. LOT COVERAGE	REQUIRED	EXISTING	PROMISED
	12% (STRUCTURES)	16.7% (STRUCTURES)	13.7% (STRUCTURES)
	70% (LOT)	87.4% (LOT)	68.9% (LOT)
STRUCTURE SETBACKS	REQUIRED	EXISTING	PROMISED
FRONT YARD	25 FT (25 FT FROM ROUTE 28)	6.03 FT	38.8 FT (42.3 FT FROM ROUTE 28)
SIDE YARD	20	10.3 FT	22.2 FT
REAR YARD	20	1.3 FT	70.1 FT
LANDSCAPING/OPEN SPACE	N/A	N/A	N/A
DOT INFORMATION			
CURB CUT PERMIT	REQUIRED		
MAJOR ROAD JURISDICTION	EAST FALMOUTH HIGHWAY (ROUTE 28) - STATE HIGHWAY LAYOUT		
MINOR ROAD JURISDICTION	OLD MEETINGHOUSE ROAD		

- PROJECT NOTES**
- SITE DOES NOT CONTAIN BORDERING VEGETATED WETLAND, SPECIAL FLOOD HAZARD AREAS, OR INTERFRONT AREA.
 - A SPECIAL PERMIT FROM THE ZONING BOARD OF APPEALS PURSUANT TO SEC. 240-3 FOR A PRE-EXISTING NON-CONFORMING PARKING WILL BE REQUIRED TO ALLOW:
 - PARKING SPACES TO BE LOCATED WITHIN THE FRONT YARD AREA AS DEFINED TO INCLUDE THE AREA BETWEEN THE FRONT WALLS OF THE PRINCIPAL BUILDING AND THE LOT FRONTAGE.
 - GREATER THAN 10% BUILDING LOT COVERAGE.



- NOTE:**
- ALL SIDEWALK WORK WITHIN THE TOWN RIGHT OF WAY (OLD MEETINGHOUSE ROAD) WILL REQUIRE FULL PANEL REPAIRS FOR CONCRETE SIDEWALKS.
 - ANY EXCESS CURB PIECES FROM WORK IN THE TOWN RIGHT OF WAY (OLD MEETINGHOUSE ROAD) SHALL BE BROUGHT TO THE EPW BUILDING AT 416 GIFFORD STREET.

REVISIONS

3/11/2019	REVISED PER COMMENTS
3/11/2019	ADD PROP. BEING DMS
4/23/2019	DOT SUBMITTAL
5/1/2019	DOT PERIOD
5/1/2019	LOADING AREA



www.FarlandCorp.com
 401 COUNTY STREET
 NEW BEDFORD, MA 02748
 P.508.717.3479
 OFFICES IN:
 •TAUNTON
 •MARLBOROUGH
 •WARWICK, RI

DRAWN BY: JMW
 DESIGNED BY: CDF
 CHECKED BY: CDF

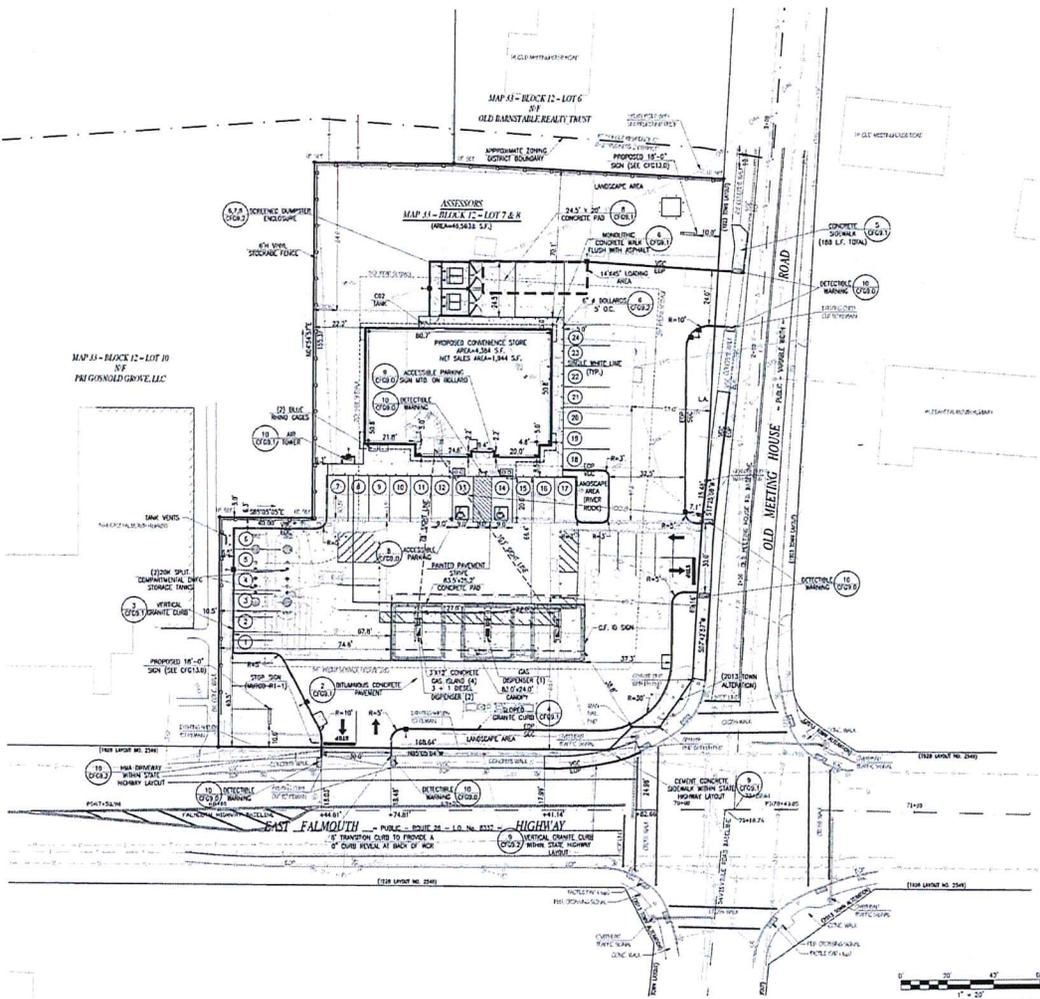
SITE PLAN
 400 EAST FALMOUTH HIGHWAY
 ASSESSORS MAP 33 BLOCK 12 LOT 7 & 8
 EAST FALMOUTH, MASSACHUSETTS
 PREPARED BY: AER (2/24/20), LLC
 501 PANDORFINA PARKWAY, SUITE 100
 WASHINGTON, MA 01890

SEPTEMBER 10, 2019
 SCALE: 1"=20'
 JOB NO. 18-782
 LATEST REVISION:
 030420
 SITE LAYOUT PLAN
 CFG04.0

- ZONING DATA TABLE -

PROJECT DATA			
TOTAL SITE AREA	1.14 ACRES		
BUILDING FOOTPRINT	4,384 S.F. CAMBERLAND FARMS		
TOTAL PARKING REQUIRED	RETAIL 1 SPACE/200 S.F. LEASABLE FLOOR AREA 4,384/200 = 22 SPACES		
TOTAL PARKING PROVIDED	24		
LAND INFORMATION			
ASSESSORS MAP	MAP 33		
BLOCK/LOT NUMBER	BLOCK 12 / LOT 7 & 8		
ZONING INFORMATION			
ZONING DISTRICT	BUSINESS 2 (B2)		
MIN. LOT AREA	REQUIRED	EXISTING	PROPOSED
	43,009 S.F.	46,563 S.F.	46,563 S.F.
MIN. FRONTAGE	REQUIRED	EXISTING	PROPOSED
	200	438.88	438.88
BUILDING HEIGHT LIMIT	REQUIRED	EXISTING	PROPOSED
	3 STORES OR 45 FT	1.5 STORES	32.83 FT
MAX. LOT COVERAGE	REQUIRED	EXISTING	PROPOSED
	12% (STRUCTURE), 70% (LOT)	16.7% (STRUCTURE), 67.4% (LOT)	13.7% (STRUCTURE), 68.9% (LOT)
STRUCTURE SETBACKS	REQUIRED	EXISTING	PROPOSED
FRONT YARD	25 FT (50 FT FROM ROUTE 28)	6.03 FT	38.8 FT (42.3 FT FROM ROUTE 28)
SIDE YARD	20	10.3 FT	22.2 FT
REAR YARD	20	1.3 FT	70.1 FT
LANDSCAPING/OPEN SPACE	N/A	N/A	N/A
NOT INFORMATION			
CURB CUT PERMIT	REQUIRED		
MAJOR ROAD JURISDICTION	EAST FALMOUTH HIGHWAY (ROUTE 28) - STATE HIGHWAY LAYOUT		
MINOR ROAD JURISDICTION	OLD MEETINGHOUSE ROAD		

- PROJECT NOTES**
- SITE DOES NOT CONTAIN BORDERING VEGETATED WETLAND, SPECIAL FLOOD HAZARD AREAS, OR RIVERFRONT AREA.
 - SPECIAL PERMIT FROM THE ZONING BOARD OF APPEALS PURSUANT TO SEC. 24B-2 FOR A PRE-EXISTING NON-CONFORMING FINDING WILL BE REQUIRED TO ALLOW:
 - PARKING SPACES TO BE LOCATED WITHIN THE FRONT YARD AREA AS DEFINED TO INCLUDE THE AREA BETWEEN THE FRONT WALLS OF THE PRINCIPAL BUILDING AND THE LOT FRONTAGE.
 - GREATER THAN 10% BUILDING LOT COVERAGE.



REVISIONS

1	11/18/19	REV. P.L. COMMENTS
2	12/24/19	ADD PROJ. BLOC. DMS
3	02/03/20	ADD SITE PLAN
4	02/12/20	REV. REVISION
5	03/24/20	ADDING AREA

FARLAND CORP.

www.FarlandCorp.com

401 COUNTY STREET
NEW BEDFORD, MA 02740
P.508.717.3470

OFFICES IN:
•TAUNTON
•MARLBOROUGH
•WARWICK, RI

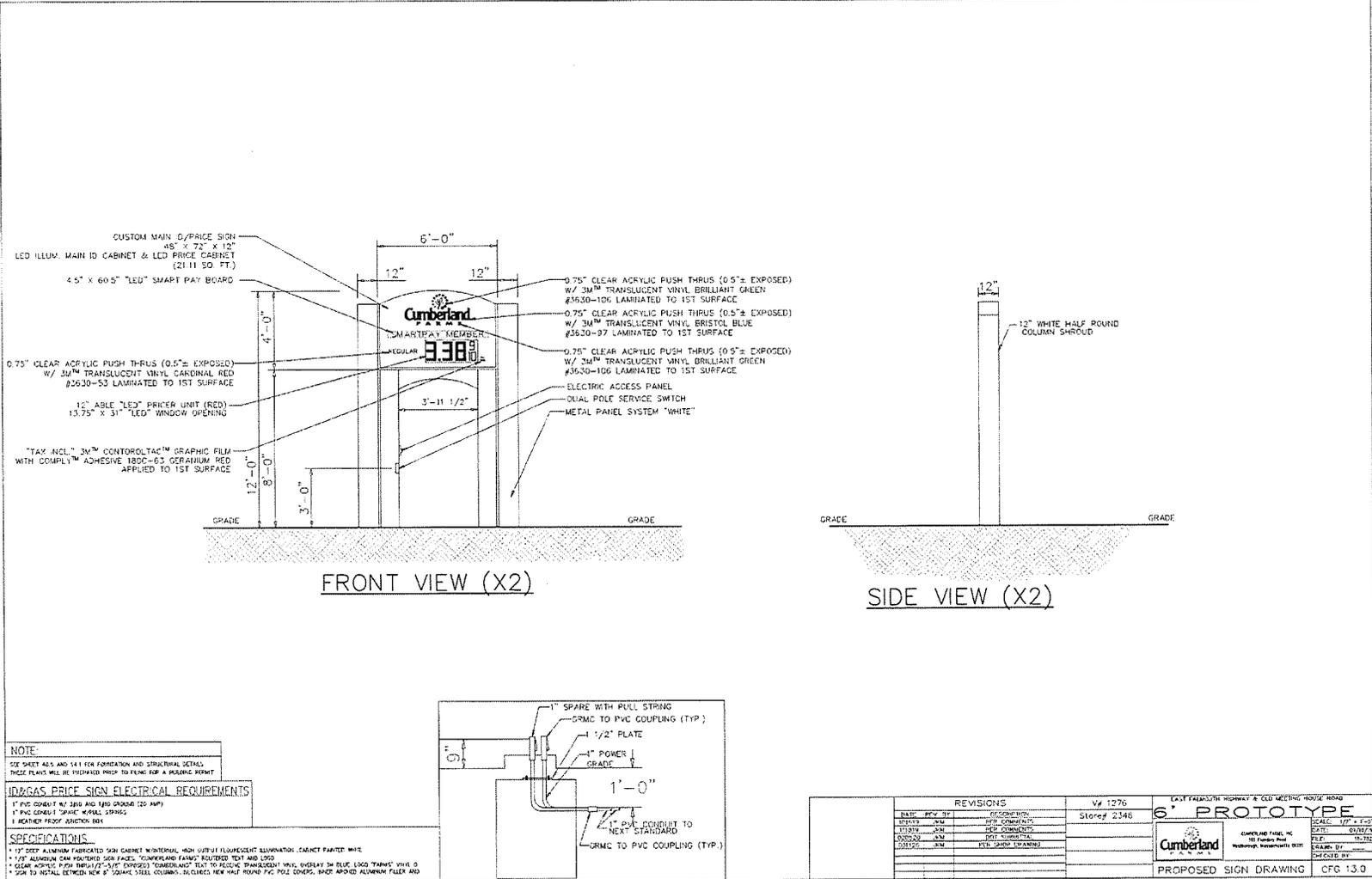
DRAWN BY: JON
DESIGNED BY: CAC
CHECKED BY: CAC

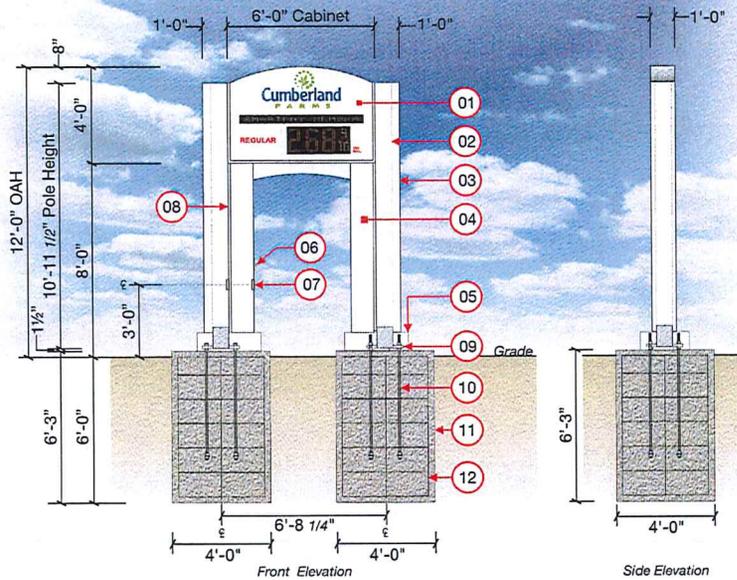
SITE PLAN

400 EAST FALMOUTH HIGHWAY
ASSESSORS MAP 33 BLOCK 12 LOT 7 & 8
EAST FALMOUTH, MASSACHUSETTS

DESIGNED BY: JON
DRAWN BY: JON
DATE: 09/10/2019

SEPTEMBER 10, 2019
SCALE: 1"=20'
JOB NO. 18-782
LATEST REVISION:
030420
SITE PLAN / EXISTING
CONDITIONS OVERLAY PLAN
CFG04.1

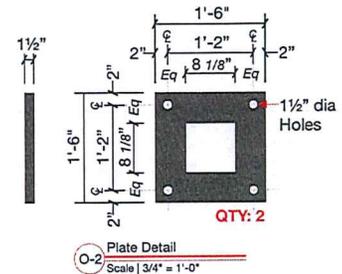




0-1 Main ID Overview
Scale | 1/4" = 1'-0"

- 01 CUSTOM MAIN ID/ PRICE SIGN
4'-0" h x 6'-0" w x 1'-0"
LED Illum. Main ID Cabinet & LED Price Cabinet
21.11 Sq Ft
(12" LED's Pricer Units Supplied By Customer)
- 02 Dotted Lines Represent
10'-11 1/2" h x 8" x 8" x 5/16"
Steel Posts
- 03 CF-MID-GP-8FT-SYS-POCO
Pole Covers & Mounting
- 04 11" w x 1'-0" Deep
Inner Column Shroud
- 05 CF-MID-GP-PLT-CVR
.080 aluminum Plate Cover in two halves
painted white to match pole cover
(Cumberland Farms White)
- 06 Electrical Access Panel
- 07 Dual pole service switch
- 08 Reveal to Remain Consistent 1 1/4" Throughout Sign
- 09 1'-6" x 1'-6" x 1 1/2" thk base plates (see plate detail)
- 10 1 1/4" Dia Anchor Bolts 54" Embedment
- 11 4'-0" x 4'-0" x 6'-3" (6'-0" below grade)
3000 psi Concrete Footings Installed by others
- 12 #6 Vertical Rebar (8) per footing
#3 horizontals and ties 12" O.C.

Templates &
anchor bolts
for MID signs
to be supplied
by material
supplier.



0-2 Plate Detail
Scale | 3/4" = 1'-0"



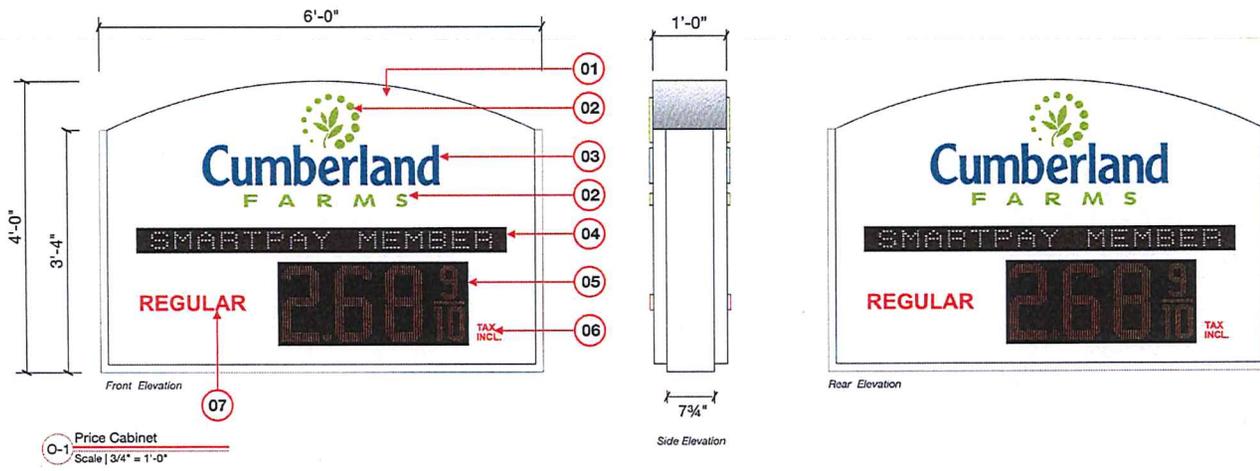
400 E. Falmouth Hwy
East Falmouth MA 02536
ACCT #: 12364

PRESENTATION

Color Palette | Pantone - Paint - Vinyl

C1	Pantone Color: 391C Cypress Vinyl: 3M Weld Blue 186C-17 Transparent Vinyl: 3M Pralox Blue 3355-97
C2	Pantone Color: 376C Cypress Vinyl: 3M Apple Green 180C-146 Transparent Vinyl: 3M Brilliant Green 3030-196 Green ACM: Alois Reppelbrand Duraglass 3600 Outpost Green
C3	Paint Color: Cumberland Farms White matches Alois Blue White 2900 5-15, 1g 5-48
C4	Pantone Color: 186C Cypress Vinyl: 3M German Red 180C-43 Transparent Vinyl: 3M Certified Red 3009-43





Cumberland FARM S
400 E. Falmouth Hwy
East Falmouth MA 02536
ACCT #: 12364

PRESENTATION

Typography
Arial
Bold | 0 Kerning | 0 Spacing
ABCDEFGHIJKLMNPQRSTUWXYZ
abcdefghijklmnopqrstuvwxyz
0123456789#&@

Color Palette | Pantone - Paint - Vinyl

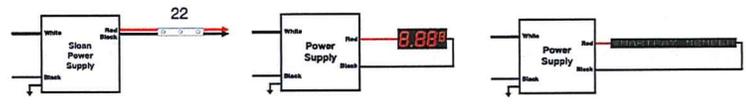
C1 Pantone Color: 301C
Opaque Vinyl: 3M Vinyl Blue 182C-17
Translucent Vinyl: 3M Bristol Blue 360-97

C2 Pantone Color: 379C
Opaque Vinyl: 3M Apple Green 190C-198
Translucent Vinyl: 3M Bristol Green 363-198
Green AC2: Alike Translucent Orange
3000 Orange/Orange Green

C3 Paint Color: Cumberland Farms White
Autohex: Alike Steel White
PMS: D-16, 19 5-4

C4 Pantone Color: 180C
Opaque Vinyl: 3M Geranium Red 180C-43
Translucent Vinyl: 3M Cardinal Red 362-43

- 01 D/F illuminated fabricated aluminum cabinet w/ 1/8" faces painted Cumberland Farms White Formula (300G B-10, .1g B-44)
- 02 3/4" Clear Acrylic Push Thrus (1/2"± Exposed) w/ 3M™ Translucent vinyl Brilliant Green #3630-106 laminated to 1st surface
- 03 3/4" Clear Acrylic Push Thrus (1/2"± Exposed) w/ 3M™ Translucent vinyl Bristol Blue #3630-97 laminated to 1st surface
- 04 4 1/4" h x 5'-0 1/2" w LED Smart Pay Board (4 1/4" H x 60 1/4" W Window Opening)
- 05 12" h Able LED Pricer Unit (Red) Supplied By Cumberland Farms (1'-1 3/4" h x 2'-7" w LED Window Opening)
- 06 3M™ Controllac™ Graphic Film with Comply™ Adhesive 180C-63 Geranium Red applied to 1st Surface
- 07 3/4" Clear Acrylic Push Thrus (1/2"± Exposed) w/ 3M™ Translucent vinyl Cardinal Red #3630-53 laminated to 1st surface)



 251 Boot Road Downingtown, PA 19335 (610) 518-2881 (610) 518-2244 info@prosign.net	CUSTOM MAIN ID / PRICER SIGN SPECS	REVISIONS:	PM: JD/AKS DESIGNER: DK	Copyright, Pro Sign Company, 2018 This document includes data that is proprietary information of the Sign Company. It shall not be used, copied, or disseminated in any form without the written consent of the Sign Company. All rights reserved. The information contained herein is provided for informational purposes only. It is not intended to be used as a substitute for professional advice. The user of this information shall make the user's own determination of the accuracy and completeness of the information provided.	Job File Location DWG: W:\Cumberland Farms\Site\MA\East Falmouth\12364\Design\12364-1_PRS-CF_EAST_FALMOUTH_MA.ccd	Page 2
	QTY : ONE (1) D/F MAIN ID / PRICE CABINET		DATE: 3/22/2018			

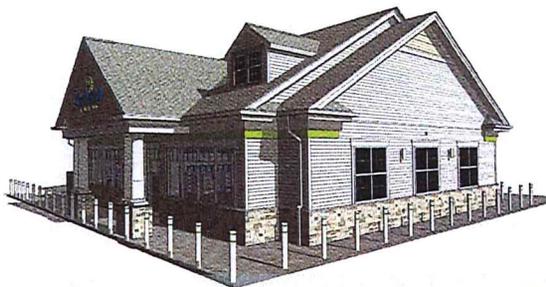
WALL SIGNAGE SPECIFICATION



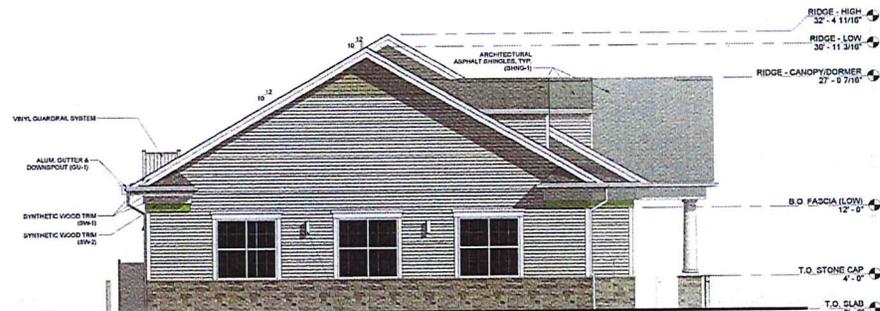
CUSTOM FABRICATED INTERNALLY
ILLUMINATED SIGN THAT IS SUPPLIED
BY OWNER AND INSTALLED BY SIGN VENDOR
SIGN AREA = 23'12"

EXTERIOR FINISH SCHEDULE

MARK	DESCRIP.	MANUF.	MODEL	COLOR	NOTES
TS-1	CULTURED STONE	ROMA	COLONIAL LEDESTONE	ESCHMOKE	INSTALL DRYSTACK ONLY
TS-2	HIGHLAND COLLIER SHIELD	PACIFIC COASTLINE		WHITE	1/2\"/>
SH-1	ARCHITECTURAL ASPHALT SHINGLES	CENTARTELED	LANDMARK	CONCRETE/STONE GRAY	30 YEAR WARRANTY
GS-1	ALUMINUM GUTTER SYSTEM	ATLAS	032	WHITE	PROVIDE ALL ACCESSORIES NEEDED FOR A COMPLETE INSTALLATION. INSTALL PER MANUF. INSTRUCTIONS. ENSURE SEALED. WATER-TIGHT CONNECTIONS. FLASHING SEAL TO DOWNSPOUTS AS NEEDED. PROVIDE SUPPORT STIFFENER AT 12\"/>
SW-1	SYNTHETIC WOOD TRIM	CUSTOMIZED		WHITE	PROVIDE SCREW JOISTS ON ALL EXTERIOR SYNTHETIC WOOD TRIM G.C. TO PUTTY ALL NAIL HOLES & PAINT ALL SYNTHETIC WOOD TRIM & PANELS.
SW-2	SYNTHETIC WOOD TRIM	CUSTOMIZED		GREEN	PROVIDE SCREW JOISTS ON ALL EXTERIOR SYNTHETIC WOOD TRIM G.C. TO PUTTY ALL NAIL HOLES & PAINT ALL SYNTHETIC WOOD TRIM & PANELS.
VS-1	VINYL SIDING	CUSTOMIZED	NOVOCORAM XL DOUBLE 2	HEMPHRESCOPE	ROUGH-CUT FRAMES PROVIDE ALL RECESSED CORNERS & TRIM FOR A COMPLETE INSTALLATION.
VS-2	VINYL SIDING	CUSTOMIZED	NIGHTWOOD	LAVANNOY WOODER	ROUGH-CUT FRAMES PROVIDE ALL RECESSED CORNERS & TRIM FOR A COMPLETE INSTALLATION.



3 FRONT PERSPECTIVE - SD
3/16\"/>



2 RIGHT SIDE ELEVATION - SD
3/16\"/>



1 FRONT ELEVATION - SD
3/16\"/>



11 Howard Street
Falls Church, VA 22044
www.hfa.com



SD/PT BLOCK

SD	06/02/19
SD Rev	5/28/22

CHECKED BY: JED
DRAWN BY: LT
DOCUMENT DATE: 09/18/19

NOT FOR CONSTRUCTION

EXTERIOR ELEVATIONS

SHEET: A-200

INSERT A

DATE: May 17, 2020

STREET ADDRESS FOR PROPOSED SIGN(S): 400 East Falmouth Hwy & 8 Old Meeting House Rd.

APPLICANT NAME: Cumberland Farms, Inc.

PHONE: 508-270-1431

MAILING ADDRESS: 165 Flanders Road TOWN/STATE/ZIP: Westborough, MA 01581

BUSINESS NAME: Cumberland Farms, Inc.

BUSINESS OWNER: Cumberland Farms, Inc. ADDRESS/PHONE: SAME AS ABOVE

Property Owner: Cumberland Farms, Inc. (400 East Falmouth Hwy) ADDRESS/PHONE: SAME AS ABOVE

Property Owner: The Old Barnstable Realty Trust ADDRESS/PHONE: 8 Old Meeting House Road, East Falmouth, MA 02536 (See attached Owner's Authorization Form)

CONTRACTOR / SIGN COMPANY: Prosigns, Jessica Davis

ASSESSOR'S PARCEL ID: Map 33, Section 12 Parcel 7 (8 Old Meeting House Rd.)

Map 33, Section 12, Parcel 8 (400 East Falmouth Hwy).

ZONING DISTRICT: Business 2 (B2)

INSERT B-1
(Freestanding Sign Located at 8 Old Meeting House Rd.)

FREESTANDING SIGN(s) § 184-25; Projecting sign(s) § 184-35:

List number and sizes of each sign that presently exist for each street frontage:

Area of proposed standing sign is: 4' (max) x 6' = 21.11 square feet.

Do the frames, borders, etc. exceed 8 square feet in area? Yes

The proposed standing sign will be set back from 8 Old Meeting House Rd. street line 10.0 feet.

INSERT B-2

(Freestanding Sign Located at 400 East Falmouth Hwy)

FREESTANDING SIGN(s) § 184-25; Projecting sign(s) § 184-35:

List number and sizes of each sign that presently exist for each street frontage:

Area of proposed standing sign is: 4' (max) x 6' = 21.11 square feet.

Do the frames, borders, etc. exceed 8 square feet in area? Yes

The proposed standing sign will be set back from 400 East Falmouth Hwy street line 10.0 feet.

INSERT C-2
(Wall Sign on Store)

WALL SIGN(s) § 184-37; Awning(s) § 184-22

List number and sizes of each wall and roof sign that presently exist on building:

Size of proposed wall sign is: 4-10 ½" x 9-11" = 29 square feet.

The lineal frontage of the wall supporting the sign is: 80.67 lineal feet.

The proposed sign will face 400 East Falmouth Hwy. street/parking lot

Please note that the above-dimensions are maximum height and width.

Douglas A. Troyer

From: Jonathan Dickinson <jonathan.dickinson@falmouthma.gov>
Sent: Wednesday, June 3, 2020 10:29 AM
To: Douglas A. Troyer
Cc: Tracey Roll
Subject: 400 East Falmouth Hwy and 8 Old Meeting House Rd Sign

Good Morning Doug,

Below is my review of the signs, broken down by type, for what needs to change to become compliant with the Town Code of Falmouth.

Freestanding Signs

1. The signs meet the linear feet of frontage on two streets (300 ft). However, the maximum square feet of a freestanding sign in the Business District is **16** square feet.
2. The setbacks listed are 10 feet from the street. Verification is needed via survey to ensure signs are not on town property.

Wall Sign (on store)

1. What is the depth of the letters and icon?
2. The maximum height of a wall sign is 3 feet. The proposed is over 4 feet.

Canopy Sign

1. These signs are no allowable in the Town of Falmouth without a variance. Below is the code to apply for a variance.
§ 184-20 Variances.
A. In those rare and particular instances where the strict application of this chapter would be impractical, impossible or create undue hardship, a majority of the Board of Selectmen may permit variances from this chapter. Such variances shall only be permitted when it is determined that the architecture of the building(s), the location of the building(s) with reference to a street or the nature of the use being made of the building(s), is such that a variance would be in the public interest. In granting such variance, the Board of Selectmen shall specify the size and location of the sign(s) and impose such other terms and restrictions as deemed to be in the public interest.
B. Applicants seeking a variance from these regulations shall provide the Board of Selectmen with information in the form of perspectives, renderings, photographs, models or other representations sufficient to show the nature of the proposed sign and its effect on the immediate surroundings in addition to the material specified for application under § 184-13.
C. The Board of Selectmen shall hold a public hearing within thirty (30) days of receipt of the written variance request. It shall make a written decision within thirty (30) days of the close of the hearing and file said decision with the Town Clerk. Any person aggrieved by a decision of the Board of Selectmen, whether or not previously a party to the proceeding, may appeal to a court of competent jurisdiction within twenty-one (21) days after the entry of the decision with the Town Clerk.

Respectfully,

Jonathan Dickinson
Assistant Zoning Compliance Agent
Inspectional Services

Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540
O:508-495-7468
C:774-259-0513
Jonathan.Dickinson@Falmouthma.gov

Douglas A. Troyer

From: Jonathan Dickinson <jonathan.dickinson@falmouthma.gov>
Sent: Tuesday, June 9, 2020 8:17 AM
To: Douglas A. Troyer
Subject: RE: 400 East Falmouth Hwy and 8 Old Meeting House Rd Sign

Good Morning Doug,

Thank you for the depth information and this meets Town Code § 184-27 (a) and the wall sign meets § 184-37 (a). I do not see any other non-compliances with the wall sign excluding the over the 3' height requirement.

Respectfully,

Jonathan Dickinson
Assistant Zoning Compliance Agent
Inspectional Services
Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540
P: 508-495-7468
Jonathan.Dickinson@Falmouthma.gov

From: Douglas A. Troyer <dtroyer@lawmtm.com>
Sent: Monday, June 08, 2020 6:44 PM
To: Jonathan Dickinson <jonathan.dickinson@falmouthma.gov>
Subject: RE: 400 East Falmouth Hwy and 8 Old Meeting House Rd Sign

Hi,

Quick question. With regard to your question on the Wall sign below, please be advised that the depth of the letters and icon is 5". I understand that I need a variance for the max height pursuant to Section 184-18(c) for the additional foot, but is there any other issues with the proposed wall sign?

Tx

Doug T.



MORIARTY
TROYER &
MALLOY LLC

Douglas A. Troyer
Moriarty Troyer & Malloy LLC
30 Braintree Hill Office Park, Suite 205
Braintree, MA 02184
Phone: (781) 817-4900
Direct: (781) 817-4605
Cell: (508) 524-2761
Email: dtroyer@lawmtm.com

Download V-Card: [Link](#)

NOTICE OF CONFIDENTIALITY

This electronic mail transmission may be a privileged and confidential attorney-client communication. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this electronic mail transmission in error, please delete it from your system without copying it, and notify the sender by reply e-mail or by calling sender at 1-781-817-4900 so that our e-mail address records can be corrected. Thank you.

DISCLAIMER REGARDING ELECTRONIC TRANSACTIONS

If this communication concerns negotiation of a contract or agreement, any electronic transaction or electronic signature act does not apply to this communication: contract formation in this matter shall occur only with manually-affixed original signatures on original documents.

From: Jonathan Dickinson <jonathan.dickinson@falmouthma.gov>
Sent: Wednesday, June 3, 2020 10:29 AM
To: Douglas A. Troyer <dtroyer@lawmtm.com>
Cc: Tracey Roll <tjroll@tmcrowley.com>
Subject: 400 East Falmouth Hwy and 8 Old Meeting House Rd Sign

Good Morning Doug,

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B. Applicants seeking a variance from these regulations shall provide the Board of Selectmen with information in the form of perspectives, renderings, photographs, models or other representations sufficient to show the nature of the proposed sign and its effect on the immediate surroundings in addition to the material specified for application under § 184-13.

C. The Board of Selectmen shall hold a public hearing within thirty (30) days of receipt of the written variance request. It shall make a written decision within thirty (30) days of the close of the hearing and file said decision with the Town Clerk. Any person aggrieved by a decision of the Board of Selectmen, whether or not previously a party to the proceeding, may appeal to a court of competent jurisdiction within twenty-one (21) days after the entry of the decision with the Town Clerk.

Respectfully,

Jonathan Dickinson
Assistant Zoning Compliance Agent
Inspectional Services
Town of Falmouth
59 Town Hall Square
Falmouth, MA 02540
O:508-495-7468
C:774-259-0513
Jonathan.Dickinson@Falmouthma.gov

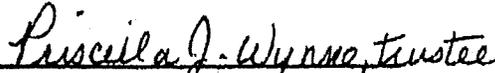
OWNERS' AUTHORIZATION

**Priscilla J. Wynne, Trustee of the Old Barnstable Realty Trust
8 Old Meeting House Road
East Falmouth, MA 02536**

**James S. Hall, Trustee of the Old Barnstable Realty Trust
8 Old Meeting House Road
East Falmouth, MA 02536**

The Old Barnstable Realty Trust is the current owners of the properties referenced above. The undersigned hereby confirm the owners' consent to Moriarty Troyer & Malloy LLC, as attorneys for Cumberland Farms, Inc. (including any attorney of the firm, with full power of substitution) filing and processing of the applications required for the permitting required for the construction of a convenience store and gasoline station by Cumberland Farms, Inc. and its agents on the above referenced property.

Old Barnstable Realty Trust


Priscilla J. Wynne, Trustee


James S. Hall

Dated: September 17th, 2019

May 10, 2019

Edward Marks Building Advisory Committee Charge

The Edward Marks Advisory Committee shall be appointed by the Board of Selectmen in accordance with relevant provisions of the Falmouth Home Rule Charter and Town bylaws. The Committee shall consist of seven (7) members, including one member of the Historical Commission, who shall serve until the Committee is dissolved. In the event that a member resigns prior to the dissolution of the Committee the Board may elect to appoint a new member.

The mission of the Committee is to recommend a preservation plan for the Edward Marks Building, historically known as the Poor House, to restore and preserve the building as a historic resource. In drafting the preservation plan, the Committee will consider:

- Historic preservation of the building exteriors;
- An interior renovation plan that satisfies office needs based on usage/occupancy requirements provided by the Town Manager, complies with the Mass Historic Preservation Restriction, and preserves important historical architectural details.
- Cost of proposed restoration and preservation work;
- The visibility and accessibility of proposed improvements to community members and visitors;
- Use of the first floor as offices for the Falmouth Human Services Department;
- Potential uses of the second floor and attic spaces;
- Community input;
- Potential funding sources in addition to Community Preservation and Falmouth general funds; and,
- Other criteria that the Committee may recommend

The Assistant Town Planner shall serve as the staff liaison to this Committee to provide technical expertise on historic preservation. The Committee members shall be responsible for posting meeting notices through the Town Clerk's Office and taking minutes in compliance with the open meeting law.

The Board respectfully asks the Committee to submit an initial report by December 31, 2019. The Edward Marks Advisory Committee is intended to be a temporary, single-purpose committee to be dissolved on December 31, 2020 or sooner if the Board of Selectmen determines the purposes of the Committee have been achieved. The Board of Selectmen may vote to extend the term of the Committee to a date certain if additional time is required to achieve the purposes of the Committee.

Diane Davidson

From: Julian Suso
Sent: Friday, July 24, 2020 3:42 PM
To: Diane Davidson
Subject: FW: Status report on Phase 2 solar IGA with EDIC and status report on information and next steps for the EDIC proposed small business recovery program
Attachments: EDIC Proposed Phase 2 IGA Rent Provision 7-23-20 Discussion Draft.docx; EDIC Memo to Select Board re Loan Program 7-23-20.docx

Diane,
Supplemental for Select Board packet – Solar and EDIC. Thanks.
Julian

From: Frank Duffy <frank.duffy@falmouthma.gov>
Sent: Friday, July 24, 2020 1:56 PM
To: Julian Suso <julian.suso@falmouthma.gov>
Cc: Diane Davidson <diane.davidson@falmouthma.gov>; Irie Mullin <irie.mullin@falmouthma.gov>
Subject: FW: Status report on Phase 2 solar IGA with EDIC and status report on information and next steps for the EDIC proposed small business recovery program

Julian: There is nothing new here. At its last meeting on this matter, the Select Board voted to approve the Phase 2 Inter-Governmental Agreement with the rent at market rate of one half or the rent the EDIC receives from Falmouth Landfill Solar II, LLC (Citizens Energy). That rent is initially \$177,650.00 annually payable monthly in arrears. The SB vote included a provision that at such time as the Recovery Loan Program is authorized by special legislation and has legal existence, the EDIC may request an adjustment of the rent to help the Recovery Loan Program and that decision will be deferred until such time as details about the Recovery Loan Program are known and evaluated.

The EDIC proposed rent provision set forth in the proposal attached to this email asks for nominal rent of \$10.00 annually to benefit a Loan Fund which presently does not exist with the provision if it never exists or ceases to exist, the rent will revert to market rate rent.

As recently as Wednesday of this week, there was a conference call with you, me and both attorneys for the EDIC (Audrey Eidelman and Mark Reich) and it was represented to us that the EDIC will pursue special legislation to create the Recovery Loan Program. The EDIC likely will ask the SB for a vote of support to forward to the Legislature, but we explained the SB should see a draft of the special legislation before it votes to support it.

As for the town's rent, the first payment of rent to the Town for Phase I was due July 15, 2020, but as of today has not been received. Rent payments for Phase II will not start until there is commercial operation in the spring or summer of 2021.

The following comments are in response to the Recovery Loan Program Memo attached to this email.

- 1) The Town Meeting vote on Art. 12 of the November, 2015 ATM authorized the Board of Selectmen to lease the closed landfill for use as a solar project "on terms and conditions as the Board of Selectmen deem appropriate." The following year the board negotiated an Inter-Governmental Agreement to permit the development of Phase I with a market rate rent. The rent payments are due unconditionally from the EDIC and the first rent payment is due presently. Rent payments due the town for the lease of town property are an asset to the town. The fact that a check has not been delivered does not deprive them of status as town funds.
- 2) G.L. c. 121C, s. 11, of the EDIC enabling statute, permits a town to "raise and appropriate funds in aid of the [EDIC]." An appropriation is the function of town meeting. It has consistently been by opinion of this office that

the diversion of rent payments due the town for Phase I to the EDIC to support the Recovery Loan Program is the functional equivalent of an appropriation and requires town meeting approval. Any transfer of town funds to the EDIC must be supported by a town meeting appropriation. At such time as there is a Recovery Loan Program approved by special legislation and the EDIC requests diversion of Phase II rent payments to support it, that transfer has the same status and must be supported by town meeting appropriation.

- 3) The memo reveals the EDIC does not intend to use town funds for the Recovery Loan Program. Until I saw the memo this morning, I had not heard that representation. Every previous representation has been the EDIC seeks funds to support the program. My best guess is the EDIC believes that if it owes the town no rent then the diverted rent payments are not town funds. This position is based on semantic argument.
- 4) For all the reasons set forth in previous correspondence from this office, the Recovery Loan Program is beyond the scope and authority of Ch. 121C which is the enabling act for EDICs. Special legislation is necessary. This position has been confirmed by the town's bond counsel and the Mass. DOR. Presently we believe the EDIC has agreed to pursue special legislation. The EDIC may ask the Select Board to vote a resolution in support of its efforts to obtain special legislation and the board may do so. The decision should be deferred until such time as the details of the program are disclosed.

Frank K. Duffy, Town Counsel
Town of Falmouth
157 Locust Street
Falmouth, MA 02540
(508) 548-8800 fax (508) 540-0881

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From: Michael DiGiano [<mailto:mdigiano@falmouthedic.org>]
Sent: Thursday, July 23, 2020 4:13 PM
To: Julian Suso; megan.english-braga@falmouth.gov
Cc: Frank Duffy; Diane Davidson; mgalasso@falmouthedic.org; admin@falmouthedic.org; cland@whoi.edu
Subject: RE: Status report on Phase 2 solar IGA with EDIC and status report on information and next steps for the EDIC proposed small business recovery program

Julian and Megan:

Attached please find the material in support of our agenda item that we would distribute to the Select Board in advance of the 7/27 meeting.

Regards
Mike

F. Michael DiGiano
Executive Director
Falmouth EDIC

Cell: 617-592-1472
Office: 508-548-7440
mdigiano@falmouthedic.org



From: Michael DiGiano [<mailto:mdigiano@falmouthedic.org>]
Sent: Thursday, July 23, 2020 3:28 PM
To: 'Julian Suso'; 'megan.english-braga@falmouth.gov'
Cc: 'Frank Duffy'; 'Diane Davidson'; 'mgalasso@falmouthedic.org'; 'admin@falmouthedic.org'; 'cland@whoi.edu'
Subject: RE: Status report on Phase 2 solar IGA with EDIC and status report on information and next steps for the EDIC proposed small business recovery program

Hi Julian:

Thanks Julian. In answer to your question, yes we would request on Monday that the Select Board consider an IGA rent provision that is more keeping with what the Select Board originally voted on May 4th, whereby rent is set at nominal amount and that if the EDIC is not able to initiate the small business program within a certain amount of time or in the event the program ends, then rent will be the \$88,750. For many reasons we believe this type of IGA rent provision or something similar to it is the only reasonable way for the EDIC to continue to pursue putting together the program without running into the timing issues associated with potential Town meeting approval. As stated our counsel's legal analysis (which we will also share) has stated that this course of action is viable. .

Regards
Mike

F. Michael DiGiano
Executive Director
Falmouth EDIC
Cell: 617-592-1472
Office: 508-548-7440
mdigiano@falmouthedic.org



From: Julian Suso [<mailto:julian.suso@falmouthma.gov>]
Sent: Thursday, July 23, 2020 12:59 PM
To: Michael DiGiano; megan.english-braga@falmouth.gov
Cc: Frank Duffy; Diane Davidson; mgalasso@falmouthedic.org; admin@falmouthedic.org; cland@whoi.edu
Subject: RE: Status report on Phase 2 solar IGA with EDIC and status report on information and next steps for the EDIC proposed small business recovery program

Thank you Michael. I am awaiting confirmation from SB Chair Megan given the late agenda change request. With regard to the IGA, am I understanding correctly that you are requesting the opportunity to encourage the Board to move in a direction different from that being recommended by Town Counsel?

Julian

From: Michael DiGiano <mdigiano@falmouthedic.org>
Sent: Thursday, July 23, 2020 12:51 PM
To: Julian Suso <julian.suso@falmouthma.gov>; Michael DiGiano <mdigiano@falmouthedic.org>; megan.english-braga@falmouth.gov
Cc: Frank Duffy <frank.duffy@falmouthma.gov>; Diane Davidson <diane.davidson@falmouthma.gov>;

mgalasso@falmouthedic.org; admin@falmouthedic.org; cland@whoi.edu

Subject: RE: Status report on Phase 2 solar IGA with EDIC and status report on information and next steps for the EDIC proposed small business recovery program

Julian:

Regarding the IGA, we are seeking the opportunity to present to the Board the approach our attorneys have outlined in discussion with Town counsel regarding the rent provision in the IGA that eliminates any question of town funds being utilized either directly or indirectly for the EDIC's proposed small business program.

The problem with the July 10 draft of the rent provision in the IGA that Town Counsel sent our attorneys is that it could be interpreted that such an action was being taken, thereby creating unnecessary steps such as Town meeting approval of a rent change in the IGA and special legislation allowing the Town to "fund" a small business program.

Regarding the business recovery program, we have received feedback both from Town Counsel and from some of the Select Board members that more information was needed on the loan program before moving forward. So we wanted an opportunity to share those additional details with the Board in the hope that by doing so the Board would be comfortable with a rent provision in the IGA that would allow the EDIC, in on-going consultation with the Board, to move forward with laying the ground work for a business recovery program in a timely fashion without the need for Town meeting approvals.

We are prepared to submit brief written material on both these items by end of day today for distribution to the Board.

Regards

Mike

F. Michael DiGiano
Executive Director
Falmouth EDIC
Cell: 617-592-1472
Office: 508-548-7440
mdigiano@falmouthedic.org



From: Julian Suso [<mailto:julian.suso@falmouthma.gov>]

Sent: Thursday, July 23, 2020 10:32 AM

To: Michael DiGiano; megan.english-braga@falmouth.gov

Cc: Frank Duffy; Diane Davidson; mgalasso@falmouthedic.org; admin@falmouthedic.org; cland@whoi.edu

Subject: RE: Status report on Phase 2 solar IGA with EDIC and status report on information and next steps for the EDIC proposed small business recovery program

Thank you Michael. Today is the deadline for agenda posting, making your last-minute request a bit challenging. Are you able to provide any further details of what is being asked? Is this strictly a status report or will EDIC be requesting some type of vote by the Board? I can check with Megan and advise.

Julian

From: Michael DiGiano <mdigiano@falmouthedic.org>

Sent: Thursday, July 23, 2020 10:24 AM

To: Julian Suso <julian.suso@falmouthma.gov>; megan.english-braga@falmouth.gov

Cc: Frank Duffy <frank.duffy@falmouthma.gov>; Diane Davidson <diane.davidson@falmouthma.gov>; mgalasso@falmouthedic.org; admin@falmouthedic.org; cland@whoi.edu

Subject: Status report on Phase 2 solar IGA with EDIC and status report on information and next steps for the EDIC proposed small business recovery program

Hello Julian and Megan:

As you know, our attorneys have been working Town Counsel on finalizing the terms of the IGA for the Phase 2 solar project, in particular the rental provision as well as a discussion of information and steps required for the EDIC to establish a small business recovery program for Falmouth. We would like to have status report discussion with the Select Board on both these topics for the next meeting on July 27. Please let us know if you have any questions. Thank you.

Regards

Mike DiGiano

F. Michael DiGiano
Executive Director
Falmouth EDIC
Cell: 617-592-1472
Office: 508-548-7440
mdigiano@falmouthedic.org



EDIC 7-23-20 Discussion Draft for Section 4.1 (Rent) of the IGA

Rent. Commencing on the Commercial Operation Date, the EDIC shall pay to the Town a nominal annual rental payment in the amount of ten dollars (\$10.00). If the EDIC ceases to operate its Loan Fund, the EDIC shall pay Rent to the Town, commencing in the month in which the Loan Fund ends. For purposes of this Section 4.1: (1) “Loan Fund” means a loan fund to be administered by the EDIC, supported with rent the EDIC receives from the Contractor under the Contract, intended to support small businesses in Falmouth with job retention and expansion; and (2) “Rent” means an annual payment that will be paid monthly in arrears no later than the fifteenth (15th) day following the first day of each month equal to one-half of the rental payment the EDIC receives from the Contractor under the Contract. If the Loan Fund is not operational within eighteen (18) months of the Effective Date of this Agreement, the EDIC shall pay Rent to the Town, which shall be prorated back to the Commercial Operation Date. For purposes of this Section 4.1, the Parties acknowledge and agree that the rent paid by Contractor under the Contract as of the Effective Date is \$177,650 per year (with no escalation), paid in arrears on a monthly basis. In the event that the EDIC purchases the PV System from the Contractor, the EDIC will pay to the Town a nominal annual rental payment of one dollar (\$1.00) for the remainder of the Term.

[This language is intended to capture the intent of the Board of Selectmen to support a payment schedule under the IGA that will help the EDIC implement a small business loan program, as set forth in the May 4, 2020 vote of the Board of Selectmen. This provision will provide the EDIC with a clear path forward to commence the small business loan program and the timing necessary to seek special legislation. Capitalized terms in this provision that are not defined have the meaning given to them in the existing IGA between the EDIC and the Town (e.g., Contractor means the solar developer and Contract means the Sublease between the EDIC and the solar developer).]

MEMORANDUM

To: Falmouth Select Board; Julian Suso, Town Manager
From: F. Michael DiGiano, Executive Director, Falmouth EDIC
CC: Frank Duffy, Town Counsel; Falmouth EDIC Board
Date: July 23, 2020
RE: Additional information relative to the IGA and establishment of the EDIC's proposed business business recovery loan program

The EDIC continues to seek the opportunity to create and operate a small business loan program to assist Falmouth businesses in addressing the impacts of the COVID-19 pandemic and to provide capital to support recovery and expansion during the post pandemic period. Such a program would be consistent with the charter of the EDIC as found in the General Laws as well as the vote of Town Meeting creating the EDIC. The EDIC, through its own counsel, has reached out to and discussed this matter with Town Counsel, and now seeks the support of the Board of Selectmen as it pursues this program. The following is a summary of the discussion points our attorney has had with Town Counsel on the various questions that have been raised during the course of our discussions. It is hoped by that by sharing these points, the Select Board will endorse the approach to the rent provision in the Phase 2 IGA (attached as separate document) that we are advocating so that we can continue progress to establishing the program.

- Q. Do the Selectmen have the authority to modify the existing IGA between the Town and the EDIC regarding payments the EDIC makes to the Town for the use of the former landfill for the solar project?
- A. Town Meeting in November of 2015 voted under Article 12 to authorize the Board of Selectmen to lease the former landfill property for use a solar project under such terms and conditions as the Selectmen deem appropriate. The Board of Selectmen negotiated and entered into an agreement with the EDIC for the leasing of the former landfill for the development of a 6 MW solar project which would create energy to be used by town municipal buildings and to create a community solar development with the energy used to reduce the energy cost of up to 150 low income households. The rent allocation from this project is contained with an intergovernmental agreement (IGA) between the Town and the EDIC. That agreement is governed by the provisions of G.L. c. 40, sec. 4A which allows the Board of Selectmen and the EDIC board to establish the financial terms of the agreement, which is wholly consistent with the leasing authority granted by Town Meeting to the Board of Selectmen. Further referral to Town Meeting is not required for the parties to review and revise the rent allocation. Section 13.3 of the IGA allows for amendment by agreement of the two boards. Thus, as stated above, the funds allocated to the EDIC under the IGA, as amended from time to time, are not funds appropriated or borrowed by the Town, as these are not Town funds. These are rental revenues distributed by agreement of the parties pursuant to the IGA and are

separate and apart from any Town funds which would otherwise be governed by action of Town Meeting.

Q. Will Town Funds be used to fund the EDIC Small Business Loan Program?

A. There is no intention to use Town funds for this program. The EDIC is not seeking an appropriation or borrowing by the Town to support the small business loan program. Funds to support the small business loan program will come from EDIC-generated income from the Bus Station rental income, land lease payments paid to the EDIC by Citizens Energy and other income currently derived from EDIC projects. The EDIC is an independent 501 c 3 corporation which is governed by its Board of Directors.

Q. Does the EDIC have the authority to form and administer a loan program for small business in our community?

A. Yes, we believe the EDIC does have the authority to form and administer a small business loan program that helps to create and preserve employment.
The provisions of G.L. c. 121C, sec. 3 empower the EDIC to address the threat of unemployment and lack of business opportunity within the Town and to economic development projects to alleviate unemployment and the lack of business opportunity.

The provisions of G.L. c. 121C, sec. 5 address the powers of the EDIC, which include the ability to enter into contracts and agreements for the performance of its duties, to loan on mortgages, including purchase money mortgages, on real estate and personal property within economic development areas, and broadly to do all acts and things necessary or convenient to carry out the powers provided to it by statute. Further, the provisions of G.L. c. 121C, sec. 18 state that the provisions of the statute are to be liberally construed in order to effectuate the purposes of the statute.

Consistent with the above, the Falmouth EDIC was created by vote of Town Meeting on April 7, 1981 under Article 39 "due to the existence of unemployment in the Town to alleviate to alleviate further unemployment and encourage business opportunity".

Thus, the EDIC is broadly charged by statute and vote of Town Meeting to address and alleviate unemployment in the Town. The current pandemic is creating unemployment throughout the Commonwealth and within the Town at an unprecedented rate. The EDIC board's authority to create projects and programs that create economic opportunities addresses these concerns. A small business loan program is appropriate and within this authority as to be liberally construed to alleviate unemployment and encourage business.

Q. Is special legislation required for the EDIC to form and fund a small business loan program and if so, is Town Meeting approval required for the EDIC to file special legislation?

A. The EDIC is a body politic and corporate authorized by statute and approved by vote of Town Meeting. We believe that the Town Meeting vote that created the EDIC give the EDIC the authority to create and preserve employment and business in the Town. During the current COVID-19 crisis, we believe that creating the small business loan program will help preserve existing jobs and support the continuation of a number of small businesses which in effect helps to preserve hotel, restaurant, property and other taxes that the Town collects from these businesses while alleviating the impacts of unemployment and lack of business opportunity. The EDIC believes under the Town Meeting vote that created the EDIC and the provisions of G.L. c. 121C the EDIC has broad authority to create programs as described above. However, the EDIC recognizes that the small business loan program is a novel concept and special legislation may be useful to fully define the parameters of the proposed program. For this reason, the EDIC is amenable to seeking special legislation for this program, and asks that the Selectmen endorse its petition to the state legislature in this regard.

Q. What is the intended scope of the proposed special legislation?

A. It is the intent of the EDIC to seek special legislation to permit the EDIC to make loans to any person, corporation, association, or trust located or doing business in the Town or proposing a development project within the Town to promote and develop business, and create or retain employment opportunities and/or affordable housing. Further, the EDIC would request the ability to receive and accept any grants, loans or advances in furtherance of these goals. It is the EDIC's position that such special legislation is consistent with the authority of the EDIC under statute and the authorizing vote of Town Meeting.

Reappointments**Non-Regulatory Boards:**

Committee	Incumbent for Reappointment	Term
Assistant Parking Clerk	Tracey Cecil	6/30/21
Parking Clerk	Patricia O'Connell	6/30/21
Transportation Management Committee	Ralph Herbst	6/30/23

Affirm appointments**Committee Designees:**

Transportation Management Committee:		
Bicycle & Pedestrian Committee	Chris McGuire	6/30/23
Commission on Disabilities	Paul Grunden	6/30/23
Planning Board	Paul Dreyer	6/30/23
Veterans Council Committee		
Falmouth Military Support Group	Carole Kenney	6/30/21
AMVETS	Jim Sawyer	6/30/21
Falmouth Lodge No. 2380 B.P.O. Elks	Col. Edward T. Van Keuren	6/30/21
Disabled American Veterans	Louis J. Souza	6/30/21

REPORT

TO: Board of Selectmen

FROM: Julian M. Suso 

DATE: July 24, 2020

- The Board will convene on Monday at 7PM in virtual session with a fairly large number of both housekeeping, status-update and related items on your docket.
- You will be considering a one-year extension of the Town's parking lease agreement with the Steamship Authority (which is due to expire at year's end). Given the challenges of COVID-19, it was mutually agreed that we are best served with this simple extension.
- I am bringing two letters of support for grant requests to the Board for retroactive approval. As you know, this is not our normal protocol. In both cases, however, the grant deadline was passing and I am confident that the Board will agree that the entities (including WHOI) are worthy.
- Both anticipated agreements relating to the Town and EDIC Solar Phase 2 project are included under Summary of Actions. With the Board packet, you have a copy of both the EDIC "position statements" as well as the relevant information from Town Counsel Frank Duffy. No changes in position here. These two agreements are being brought to the Board for your action, given the voted direction you provided recently for us to do so, and following the mutual discussion between Frank Duffy and the EDIC outside attorney(s). We have been reminded by Citizens Energy that these two agreements are time sensitive. I recommend you proceed as Frank has outlined. Frank will be with us on Monday evening for any questions.
- Under the discussion of COVID-19 issues, upon reflection, I am asking the Board to consider your earlier suggestions that the Old Silver Beach resident parking lot be "expanded" to 100% capacity with an attendant reduction in the capacity of the adjacent non-resident parking. While this will not affect the overall "parking numbers," it is a reasonable gesture to Falmouth residents during this most challenging time.
- I understand that, beginning Sunday evening, the Town's beach parking monitors will be working modestly extended hours at both Old Silver Beach and Chapoquoit Beach. This is intended to assist with the parking "surges" which have been reported to occur shortly after the parking monitors leave

for the day. At this point, given challenges in scheduling and available staff, we are only able to extend this monitoring by one to 1 ½ hours – but it is a start.

- Steve Rafferty will be joining us Monday evening, recommending temporary water use restrictions. As you know, this has been necessary each of the past few years given seasonal demand for water.
- We recently had a discussion with Town Moderator David Vieira regarding potential dates/times for “re-convening” the spring Town Meeting as well as for an anticipated schedule for the upcoming November Town Meeting. We will update/discuss this briefly on Monday evening. Be advised that at your first meeting in August, the Board will be considering adoption of the necessary schedule for moving forward timely with the regular November Town Meeting.
- Rob Munier from WHOI will be giving a status presentation on WHOI’s Iselin Dock redevelopment project.
- As the Board is aware, we were unfortunately not funded for the Town’s proposed application for CDBG – COVID19 assistance due to the Town’s application “not being received” by the State Department of Housing and Community Development. I attach some email information to this Report which is related to this application process.
- I am pleased to confirm that Thursday evening I “hosted” the initial (virtual) meeting of the Transportation Management Committee. Ed DeWitt was appointed as Chair and Alison Leschen as Vice-Chair. They have agreed to meet on the 2nd and 4th Thursdays at 7PM going forward.
- The next regular meeting of the Board is set for Monday, August 10.

Julian Suso

From: Thomas Bott
Sent: Friday, June 12, 2020 3:30 PM
To: Julian Suso
Subject: RE: CBDG NOFA Grant

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Julian:
Will copy you on submittal to DHCD.
TBott

From: Julian Suso
Sent: Friday, June 12, 2020 3:28 PM
To: Thomas Bott <thomas.bott@falmouthma.gov>
Subject: RE: CBDG NOFA Grant

Thank you Tom. Do you need anything else? My understanding is that this is to be emailed to Mark Southard at: DHCDCommunityDevelopmentBlockGrant@mass.gov prior to 5PM TODAY. Kindly confirm (if possible to do so). I welcome a copy of the final package. Much appreciated.
Julian

From: Thomas Bott <thomas.bott@falmouthma.gov>
Sent: Friday, June 12, 2020 2:05 PM
To: Julian Suso <julian.suso@falmouthma.gov>
Cc: Peter Johnson-Staub <peter.johnson-staub@falmouthma.gov>; Diane Davidson <diane.davidson@falmouthma.gov>; Michaela Shoemaker <michaela.shoemaker@falmouthma.gov>
Subject: RE: CBDG NOFA Grant

Dear Julian:
If you would please review, print on letterhead, sign and scan to me. I will get the application out shortly. All the documents are saved in the directory T:\CDBG NOFA Grant
TBott

From: Michael B Galasso [<mailto:mbgalasso@baronegalasso.com>]
Sent: Friday, June 12, 2020 10:07 AM
To: Thomas Bott <thomas.bott@falmouthma.gov>
Cc: Julian Suso <julian.suso@falmouthma.gov>; Peter Johnson-Staub <peter.johnson-staub@falmouthma.gov>; Michaela Shoemaker <michaela.shoemaker@falmouthma.gov>; Mike DiGiano EDIC <mdigiano@falmouthedic.org>
Subject: RE: CBDG NOFA Grant

Great. Thanks Michaela. I'm available too if needed.

Julian Suso

From: Thomas Bott
Sent: Friday, June 12, 2020 3:45 PM
To: DHCDCommunityDevelopmentBlockGrant@mass.gov
Cc: Julian Suso; Michaela Shoemaker
Subject: Community Development Block Grant COVID-19 (CDBG-CV)
Attachments: DHCD NOFA Letter of Intent - CDBG and COVID-19 6-12-2020.pdf; Falmouth Microenterprise Grant Program DHCD Application Final Planning DRAFT 6.11.2020.docx; Exhibit A Falmouth Microenterprise Recovery Grant Program Minimum Eligibility Requirements.docx; Exhibit B Falmouth Business 5 or Less Employees Database 6.5.20 PDF.pdf; EnvironmentalReviewExempt-CENST.docx; DHCD NOFA Application Microenterprise Grant Program Final EDIC Budget 6.12.20.xlsx

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr. Southard:
Attached on behalf of the Town of Falmouth please find our Community Development Block Grant COVID-19 (CDBG-CV).
Please do not hesitate to call if there are any questions.
Be safe and thank you much,
TBott

Thomas Bott
Town Planner
Falmouth, MASS
508-495-7440 o.

Please note new email address thomas.bott@falmouthma.gov



TOWN OF FALMOUTH

Office of the Town Manager & Selectmen

59 Town Hall Square, Falmouth, Massachusetts 02540
Telephone (508) 495-7320
Fax (508) 457-2573

June 12, 2020

Mr. Mark Southard,
Community Development Manager
Massachusetts Department of Housing and Community Development
100 Cambridge Street, Suite 300
Boston, MA 02114

Subject: CDBG COVIC-19 NOFA Letter of Intent
COMMBUYS Document DHCD2020-34

Dear Mr. Southard,

On behalf of the Town of Falmouth, I am pleased to submit our Letter of Intent as required in the Notice of Funding Availability in response to the COVID-19 pandemic. Like many municipalities on Cape Cod, Falmouth has been hard hit by the pandemic. There have been 116 deaths and 1,312 cases of COVID-19 in Barnstable County. Our social service network has been overwhelmed with requests for services and our business economy, which relies heavily on the tourist, hospitality and restaurant industry, has been especially impacted.

The number of clients requesting services at the Falmouth Service Center has increased by 300% from mid-March serving a total of 1,167 households, of which 330 were new to the Service Center. In addition, the need for services at our Senior Center and Meals on Wheels programs have also dramatically increased. Barnstable County has the oldest population in Massachusetts with 30.6% of its population over the age of 65. With such a large percentage of elderly in our community comes the need for additional services at the Falmouth Service Center and Senior Center.

Because of the seasonality of our economy, many of our small businesses were unable to take advantage of the Payroll Protection Program (PPP) offered by the Small Business Administration because they had yet to hire employees for the coming summer season. In addition, many who did apply were denied in the first round as financial institutions favored applications from their larger customers. Those who did receive funding are now having a difficult time meeting the program expenditure requirements and are concerned about the potential consequences.

Our proposed application for funding from the COVID-19 NOFA is intended to assist the Falmouth Service Center and Senior Center provide additional meals and services to their clients. Further, this will assist our small businesses owned by women and minorities that meet the household income requirements as outlined in the NOFA.

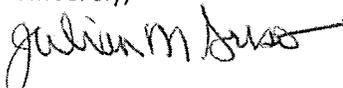
Page Two
Letter of Intent
June 12, 2020

In conformance with the NOFA requirements, listed below is the requested information:

1. Contact Person for the Application: Julian M. Suso, Falmouth Town Manager, 59 Town Hall Square, Falmouth, MA 02540, Julian.suso@falmouthma.gov telephone number: (508) 495-7320.
2. Amount Requested: \$400,000.
3. Activities to be Covered: Public Social Services and Microenterprise Assistance
4. Municipality to be Served: Falmouth
5. Program Partners: Falmouth Service Center, Falmouth Senior Center and Falmouth Economic Development and Industrial Corporation (EDIC)
6. Dates and Times of Public Hearings: June 1 at 7:30PM Falmouth Board of Selectmen Public Meeting (via Zoom teleconference); second Hearing yet to come.

Please feel free to contact me if you have any questions regarding this Letter of Intent. Thank you for this opportunity to apply for CDBG funding which will facilitate Falmouth continuing to serve those most in need in recovering from the COVID-19 pandemic.

Sincerely,



Julian M. Suso
Falmouth Town Manager

Cc Board of Selectmen
Tom Bott
Falmouth Service Center
Falmouth Senior Center
EDIC