

TOWN OF FALMOUTH
SELECT BOARD
AGENDA
MONDAY, AUGUST 10, 2020 – 6:45 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 August 10, 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.*

AGENDA

6:45 p.m. OPEN SESSION

6:45 p.m. EXECUTIVE SESSION

1. M.G.L. c.30A s.21(a)(3) – Collective bargaining – vote to affirm ratification of one-year contract with Library Union

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 Warrant for 2020 State Primary on Tuesday, September 1, 2020
 - b. Vote to accept donation from Marilyn Yee in the amount of \$500.00 to the Marine and Environmental Services donation account

- c. Vote to approve consent to mortgage – application by Locustfield, LLC for 40B project at 0 Locustfield Road

7:30 p.m. PUBLIC HEARINGS

1. Application for a New All Alcoholic Common Victualler License – The Tea Room, 196 Crystal Avenue, North Falmouth
2. 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; July 27, 2020

7:45 p.m. BUSINESS

1. Discussion/update on COVID-19 issues
 - Discussion of suggested “mandatory mask zone”
 - Discussion of Cape Cod Times August 6, 2020 Lifeguard Article
2. Status/update on automatic sprinkler ban
3. Approve request for variance to sign code – Cumberland Farms Inc., located at 8 Old Meeting House Road and 400 East Falmouth Highway, continued from July 27, 2020
4. Announce November 2020 Town Meeting schedule
5. Presentation from Charter Review Committee on proposed articles
6. Vote to change polling place location for Precinct 5
7. Annual town committee reappointments
8. Discussion of special events scheduled from September through December and follow-up actions
9. Discussion on future reopening of town hall/town buildings
10. Minutes of Meetings:
 - Public Session – June 4, 2020; June 15, 2020 (regular and joint meeting)
11. Individual Select Board Member’s reports
12. Town Manager’s report

Megan English Braga, Chair
Select Board

1. Administrative Orders

- a. Approve Warrant for 2020 State Primary on Tuesday, September 1, 2020

COMMONWEALTH OF MASSACHUSETTS

**WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH**

WARRANT FOR 2020 STATE PRIMARY

SS.

To the Constables of the Town of FALMOUTH

GREETINGS:

In the name of the Commonwealth, you are hereby required to notify and warn the inhabitants of said city or town who are qualified to vote in Primaries to vote at:

- Precinct 1: Town Hall
- Precinct 2: John DeMello (old) Senior Center
- Precinct 3: Falmouth High School Gymnasium
- Precinct 4: St Anthony's Lodge
- Precinct 5: Saint Elizabeth Seton Church Hall
- Precinct 6: Falmouth High School Gymnasium
- Precinct 7: Waquoit Congregational Church Hall
- Precinct 8: Navigator Club
- Precinct 9: Jewish Congregation Community Center

on **TUESDAY, THE FIRST DAY OF SEPTEMBER, 2020**, from 7:00 A.M. to 8:00 P.M. for the following purpose:

To cast their votes in the State Primaries for the candidates of political parties for the following offices:

- | | |
|---------------------------------|--|
| SENATOR IN CONGRESS | STATE WIDE |
| REPRESENTATIVE IN CONGRESS | NINTH DISTRICT |
| COUNCILLOR | FIRST DISTRICT |
| SENATOR IN GENERAL COURT | PLYMOUTH & BARNSTABLE DISTRICT |
| REPRESENTATIVE IN GENERAL COURT | BARNSTABLE, DUKES & NANTUCKET DISTRICT |
| REPRESENTATIVE IN GENERAL COURT | THIRD BARNSTABLE DISTRICT |
| REGISTER OF PROBATE | BARNSTABLE COUNTY |
| COUNTY COMMISSIONER | BARNSTABLE COUNTY |

Hereof fail not and make return of this warrant with your doings thereon at the time and place of said voting.

Given under our hands this _____ day of AUGUST, 2020

- Megan E. English Braga, Chairman _____
- Douglas C. Brown, Vice Chairman _____
- Samuel H. Patterson _____
- Douglas H. Jones _____
- Nancy R. Taylor _____

FALMOUTH SELECT BOARD

By the virtue of this warrant, I have this day notified and summoned the inhabitants of the Town Of Falmouth qualified to vote, as said Warrant directs by posting an attested copy thereof in Town Hall and Every Precinct in the town.

Constable, Town of Falmouth

Date

- b. Vote to accept donation from Marilyn Yee in the amount of \$500.00 to the Marine and Environmental Services donation account



MARINE & ENVIRONMENTAL SERVICES
TOWN OF FALMOUTH
180 SCRANTON AVENUE, FALMOUTH, MA 02540
TEL: (508) 457-2550 • FAX: (508) 457-2525
TOWN MARINA TEL: (508) 457-2551

July 24, 2020

Mrs. Marilyn Yee
500 Atherton St
Milton, MA 01286

RE: Donation

Dear Mrs. Yee:

On behalf of the Town of Falmouth and the MES Animal Control I would like to personally thank you for your very generous donation to the Animal Control Division.

Mattie Long reported to me the successful return of your Iguana. I'm very happy your pet has been reunited with your family.

Again, thank you very much for your donation it is much appreciated.

Sincerely,

Gregg Fraser
MES Director

Cc: Diane Davidson

David Yee 03-00
 Marilyn G. Yee
 500 Atherton St
 Milton, MA 02186

LOOK FOR:
 3D hologram (fell across top)
 Heat-reactive circle in upper-right corner

July 23 2020 Date

Pay to the Order of MES Donation Account \$ 500.00 Dollars

Five hundred and 00/100

Citizens Bank
 Boston, MA

For Marilyn G. Yee MP

Security Features: Hologram, Heat-reactive circle, Microprint

Diane Davidson

From: Gregg Fraser
Sent: Friday, July 24, 2020 8:10 AM
To: Diane Davidson
Cc: Gregg Fraser; Paula Cushman
Subject: FW: Message from "MES-SAVIN-MP2555"
Attachments: 20200724080500375.pdf

Hello Diane,

I'm depositing a \$500 donation into the MES donation account. I didn't know if the BOS has to formally accept this given the amount so I'm sending it to you just in case.

Thank you,
Gregg

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

From: Falmouth Scans <scan@falmouthma.gov>
Sent: Friday, July 24, 2020 8:05 AM
To: Gregg Fraser <gregg.fraser@falmouthma.gov>
Subject: Message from "MES-SAVIN-MP2555"

This E-mail was sent from "MES-SAVIN-MP2555" (MP 2555).

Scan Date: 07.24.2020 08:05:00 (-0400)
Queries to: scan@falmouthma.gov

- c. Vote to approve consent to mortgage – application by Locustfield, LLC for 40B project at 0 Locustfield Road

Diane Davidson

From: Julian Suso
Sent: Friday, July 31, 2020 4:38 PM
To: Diane Davidson
Subject: FW: revised consent to mortgage
Attachments: Consent To Mortgage-Locustfield, LLC revised 7-31-20.pdf

August 10 agenda item. Thanks.
Julian

From: Frank Duffy <frank.duffy@falmouthma.gov>
Sent: Friday, July 31, 2020 3:17 PM
To: Julian Suso <julian.suso@falmouthma.gov>; Peter Johnson-Staub <peter.johnson-staub@falmouthma.gov>; Diane Davidson <diane.davidson@falmouthma.gov>
Cc: Kim Fish <kimberly.fish@falmouthma.gov>; Frederick C. Grosser <fcg@grosserlaw.com>
Subject: FW: revised consent to mortgage

Julian: This document is submitted for Select Board review and approval. It relates to a mortgage application by LOCUSTFIELD, LLC which is developing the Ch 40b project between Locustfield Rd. and Gifford St. The project Regulatory Agreement is unusual and requires DHCD and the municipality to consent to mortgages and other encumbrances. The mortgage loan is for construction purposes and will be paid back upon sale of the units to first time buyers.

Please present this for action at the Aug. 10 meeting of the board.

Because this document will be recorded in the Registry of Deeds, it must bear original signatures.

Thank you.

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: Kim Fish
Sent: Friday, July 31, 2020 3:00 PM

To: Frank Duffy
Subject: revised consent to mortgage

Kimberly Fish, Town Paralegal
Office of Falmouth Town Counsel
157 Locust Street, Falmouth, MA 02540
(508) 548-8800 ~ Fax (508) 540-0881
kimberly.fish@falmouthma.gov

CONFIDENTIALITY NOTICE: This communication and any accompanying document(s) are confidential and privileged. They are intended for the sole use of the addressee. If you receive this transmission in error, you are advised that any disclosure, copying, distribution, or the taking of any action in reliance upon the communication is strictly prohibited. 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.

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

Town of Falmouth
Select Board

CONSENT TO MORTGAGE

BE IT RESOLVED:

That the Select Board of the Town of Falmouth, Massachusetts, acting in accordance with the terms and conditions of a certain document dated December 30, 2019 as may be amended and entitled "Local Initiative Project, Regulatory Agreement and Declaration of Restrictive Covenants for Project Ownership" by and between the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development ("DHCD"), the Town of Falmouth ("the Municipality") and LOCUSTFIELD, LLC ("Project Sponsor") and particularly Section 10 thereof, does hereby authorize and consent to a certain construction loan(s) and mortgage (s) from LOCUSTFIELD, LLC to Martha's Vineyard Savings Bank in the original principal sum of One Million Two Hundred Seventy Three Thousand and no/100 Dollars (\$1,273,000.00).

Said document is recorded in the Barnstable Registry of Deeds in Book 32871, Page 73.

Voted this 10th day of August, 2020.

Town of Falmouth
By its Board of Selectmen

Megan English Braga, Chairman

Douglas C. Brown, Vice Chairman

Douglas H. Jones

Samuel H. Patterson

Nancy R. Taylor

Property Address: 0 Locustfield Road (now Beach Plum Path), Falmouth, MA

Commonwealth of Massachusetts

County of Barnstable

On _____, before me, the undersigned notary public

personally appeared

name(s) of signer(s)

personally known to me

proved to me on the basis of satisfactory evidence of identification which was

to be the person(s) whose name(s) is/are subscribed to the within instrument and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of (his)(her) knowledge and belief.

WITNESS my hand and official seal.

Signature of Notary Public

7:30 p.m. PUBLIC HEARINGS

1. Application for a New All Alcoholic Common Victualler License – The Tea Room, 196 Crystal Avenue, North Falmouth

Diane Davidson

From: Matthew Terry <matt@amentklauer.com>
Sent: Wednesday, August 5, 2020 4:21 PM
To: Falmouth Selectboard
Cc: Gabriele Bruce
Subject: Tea Room Liquor License Application

Dear Members of the Board of Selectmen:

My client, The Tea Room, LLC, has requested that their pending seasonal liquor license application due to be heard by you on Monday, August 10th, be withdrawn. Please consider the applicant's request at your meeting on the 10th and let me know if you need any additional information.

Sincerely,

Matt Terry

Matthew M. Terry, Esq.
Ament Klauer LLP
39 Town Hall Square
Falmouth, MA 02540
Telephone: (508) 540-6555
Fax: (508) 457-1293
Email: matt@amentklauer.com

*****Be aware that online banking fraud is on the rise. If you receive an email containing wire transfer instructions from Ament Klauer LLP please call our office at 508-540-6555 to verify the information prior to sending funds.*****

Feel free to visit our website at www.amentklauer.com

This Electronic Message contains information from the law firm of Ament Klauer LLP that may be privileged. The information is intended to be for the use of the addressee only. If you are not the addressee, note that any disclosure, copy, distribution or use of the contents of this message is prohibited.

Any documents attached hereto are transmitted for discussion purposes only and create no binding obligation. The parties will be bound only if and when copies are signed by and delivered to all parties.



TOWN OF FALMOUTH

Office of the Town Manager & Selectmen

59 Town Hall Square, Falmouth, Massachusetts 02540

Telephone (508) 495-7320

Fax (508) 457-2573

LIQUOR LICENSE HEARING

Notice is hereby given under Chapter 138 of the General Laws, as amended, that The Tea Room, LLC d/b/a The Tea Room has applied for a NEW All Alcoholic Common Victualler License to be exercised at 196 Crystal Avenue, North Falmouth, MA.

A hearing will be held in the Selectboard Meeting Room, Falmouth Town Hall on Monday, August 10, 2020 at 7:30 p.m. on the above application.

LICENSING BOARD

Megan English Braga, Chair
Douglas C. Brown, Vice Chair
Douglas H. Jones
Samuel H. Patterson
Nancy R. Taylor

Publication Date: Friday, July 24, 2020; Falmouth Enterprise



TOWN OF FALMOUTH

Office of the Town Manager & Selectmen

59 Town Hall Square, Falmouth, Massachusetts 02540

Telephone (508) 495-7320

Fax (508) 457-2573

PRESS RELEASE

Subject: Tea Room Request for New All Alcoholic License

August 6, 2020

As per standard procedure, the Falmouth Select Board has scheduled a public hearing on the request of the Tea Room, LLC for a New All Alcoholic Common Victualler License at the premises at 196 Crystal Avenue, North Falmouth. This public hearing has been set for the Board's virtual meeting at 7:30PM on Monday, August 10.

Yesterday, the Town received a request from Attorney Matthew Terry, representing the Tea Room, LLC that this pending liquor license application be withdrawn.

Julian M. Suso

Falmouth Town Manager

2. 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; July 27, 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' 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.

Hearing continued to Monday, August 10, 2020 (final continuance).



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

Application

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,

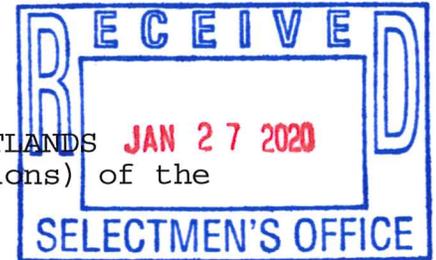
Matthew C. Costa, P.L.S., R.S.
President

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

P.O. Box 901
East Falmouth, MA 02536

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

800 Falmouth Rd., Suite 301C
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



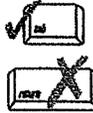
Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

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
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.)

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 map
5 Capitait Dewe Falm*

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:
 - 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.

License No. 4471

The amount of tide-water displaced by the work hereby authorized has been ascertained by said Department, and compensation thereof has been made by the said --James Pentikis----- by paying into the treasury of the Commonwealth two dollars and zero cents (\$2.00) for each cubic yard so displaced, being the amount hereby assessed by said Department. (2 cy = \$4.00)

Nothing in this License shall be so construed as to impair the legal rights of any person.

This License shall be void unless the same and the accompanying plan are recorded within 60 days from the date hereof, in the Registry of Deeds for the County of Barnstable.

IN WITNESS WHEREAS, said Department of Environmental Protection have hereunto set their hands this *fifth* day of *May* in the year nineteen hundred and *ninety-five*

Commissioner	<u>Thomas B. Powers</u>	Department of Environmental Protection
<i>Admiral</i> Director	<u>Carl F. [Signature]</u>	
Section Chief	<u>John A. [Signature]</u>	

THE COMMONWEALTH OF MASSACHUSETTS

~~This license is approved in consideration of the payment into the treasury of the Commonwealth by the said~~

of the further sum of

the amount determined by the Governor as a just and equitable charge for rights and privileges hereby granted in the land of the Commonwealth.

BOSTON,

~~Approved by the Governor.~~

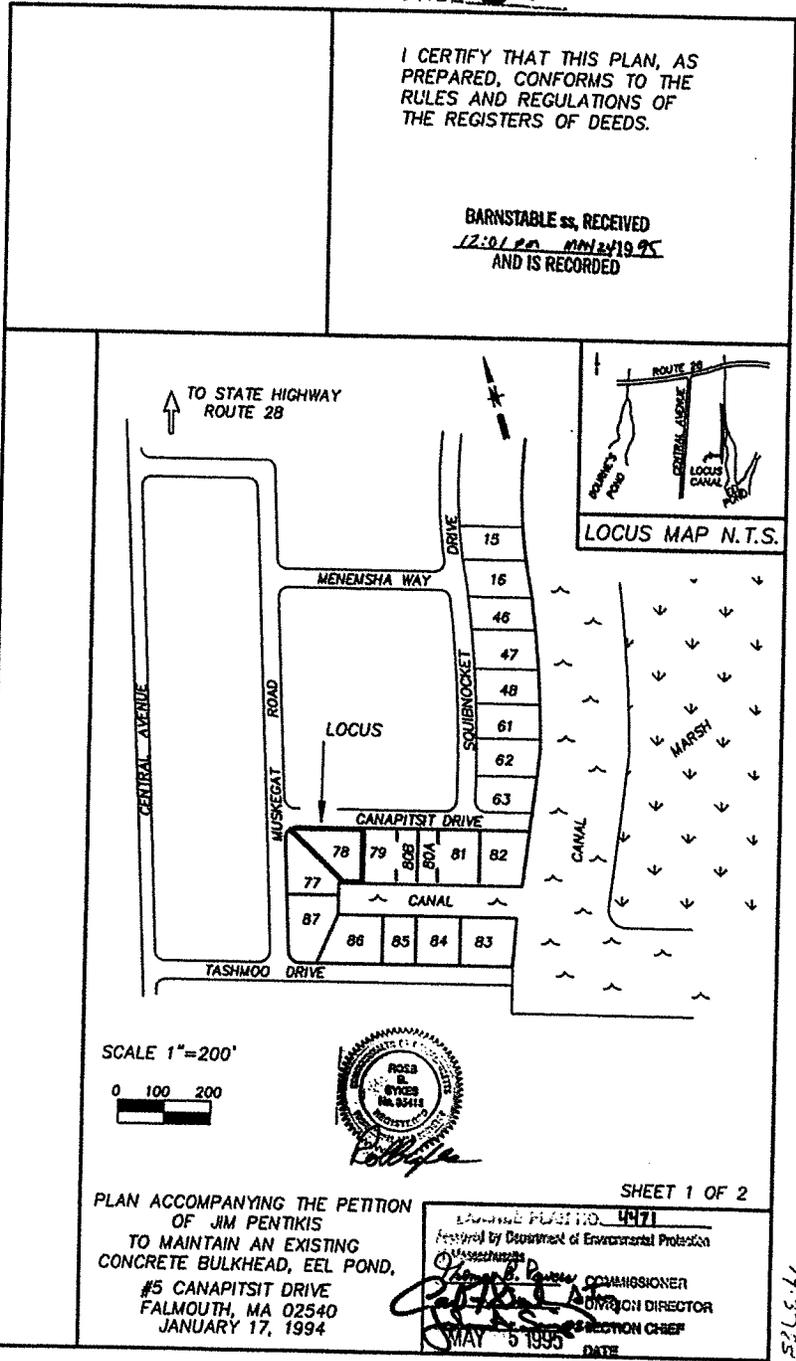
Governor

BARNSTABLE REGISTRY OF DEEDS

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

BARNSTABLE ss, RECEIVED
12:01 PM APR 19 95
AND IS RECORDED

513-67

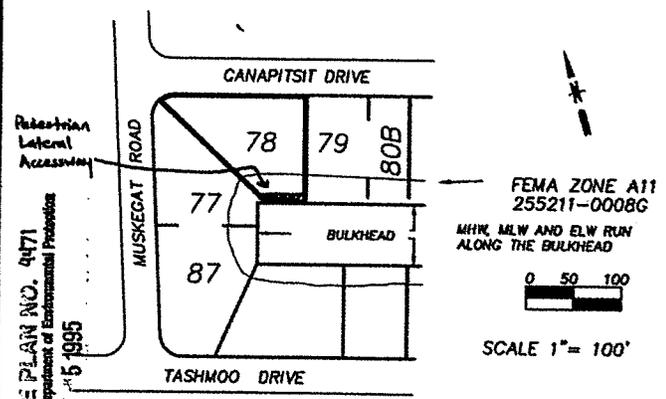


520576
11.4.71

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

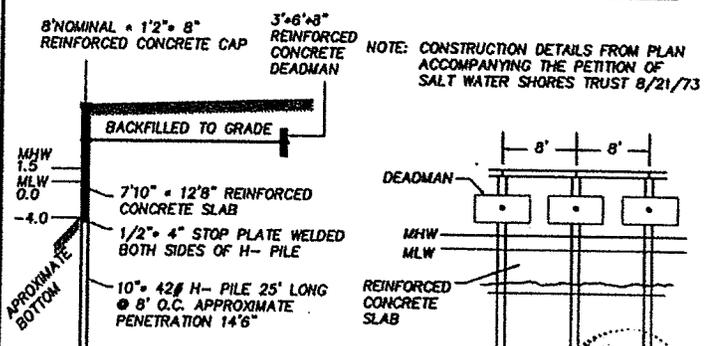
BARNSTABLE ss, RECEIVED
 12:06 PM MAY 24 1995
 AND IS RECORDED

513-68

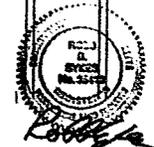
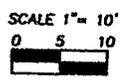


ENVIRONMENTAL PLAN NO. 9471
 Approved by Department of Environmental Protection
 Date: MAY 15 1995

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 PENTKIS TO MAINTAIN AN EXISTING CONCRETE BULKHEAD, EEL POND, #5 CANAPITSIT DRIVE FALMOUTH, MA 02540 JANUARY 7, 1994



SHEET 2 OF 2

5126-16

Deed

Bk 26691 Pg 166 #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*

1

SPKLEH

7

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. Mello, 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

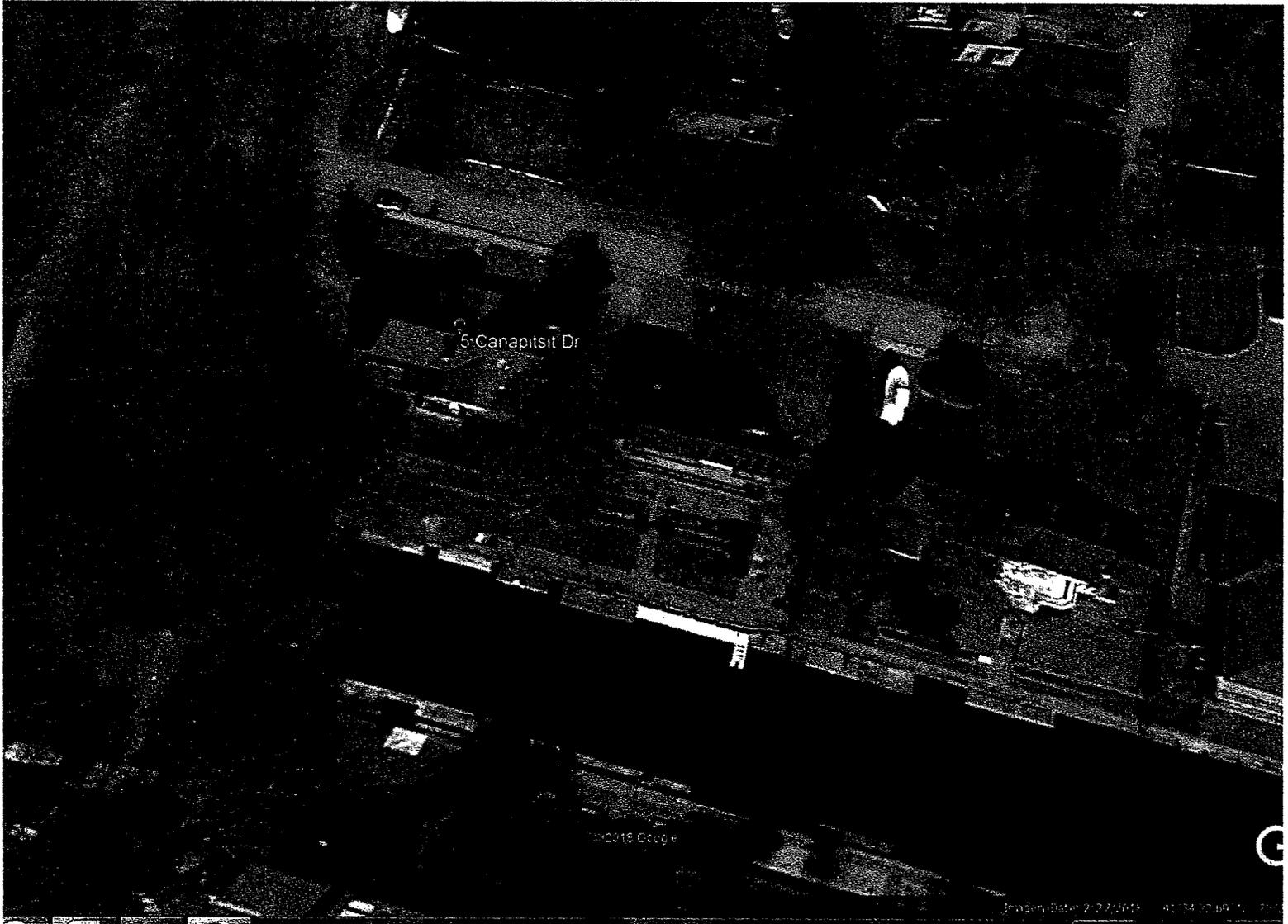


Prepared by the Law Office of Patricia J. Mello, P.C.
766 Falmouth Road, Mashpee, MA 02649
508-477-0267

SPKLEH

BARNSTABLE REGISTRY OF DEEDS

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**

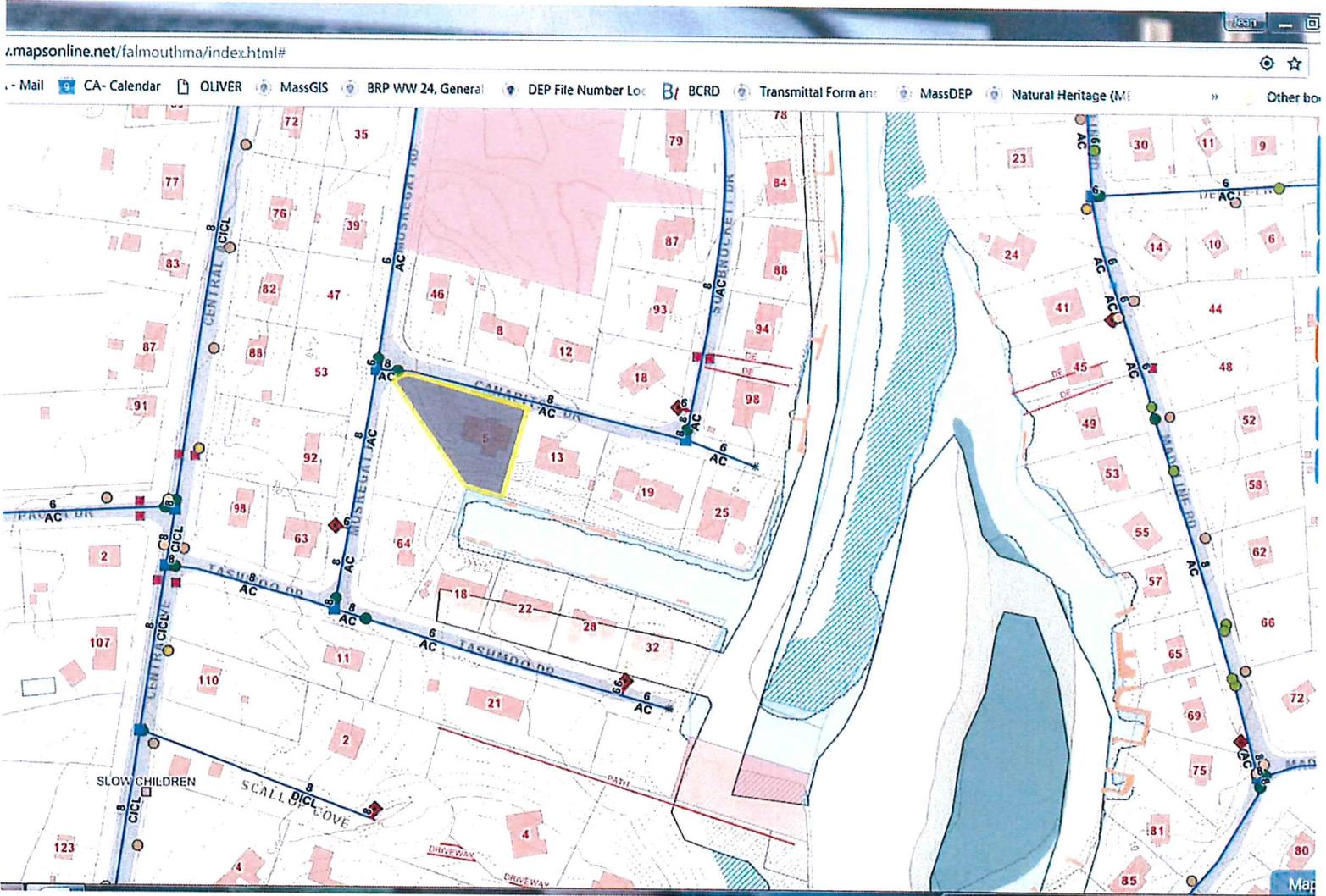
**Take Scranton Ave to Main St
4 min (1.0 mi)**

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

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

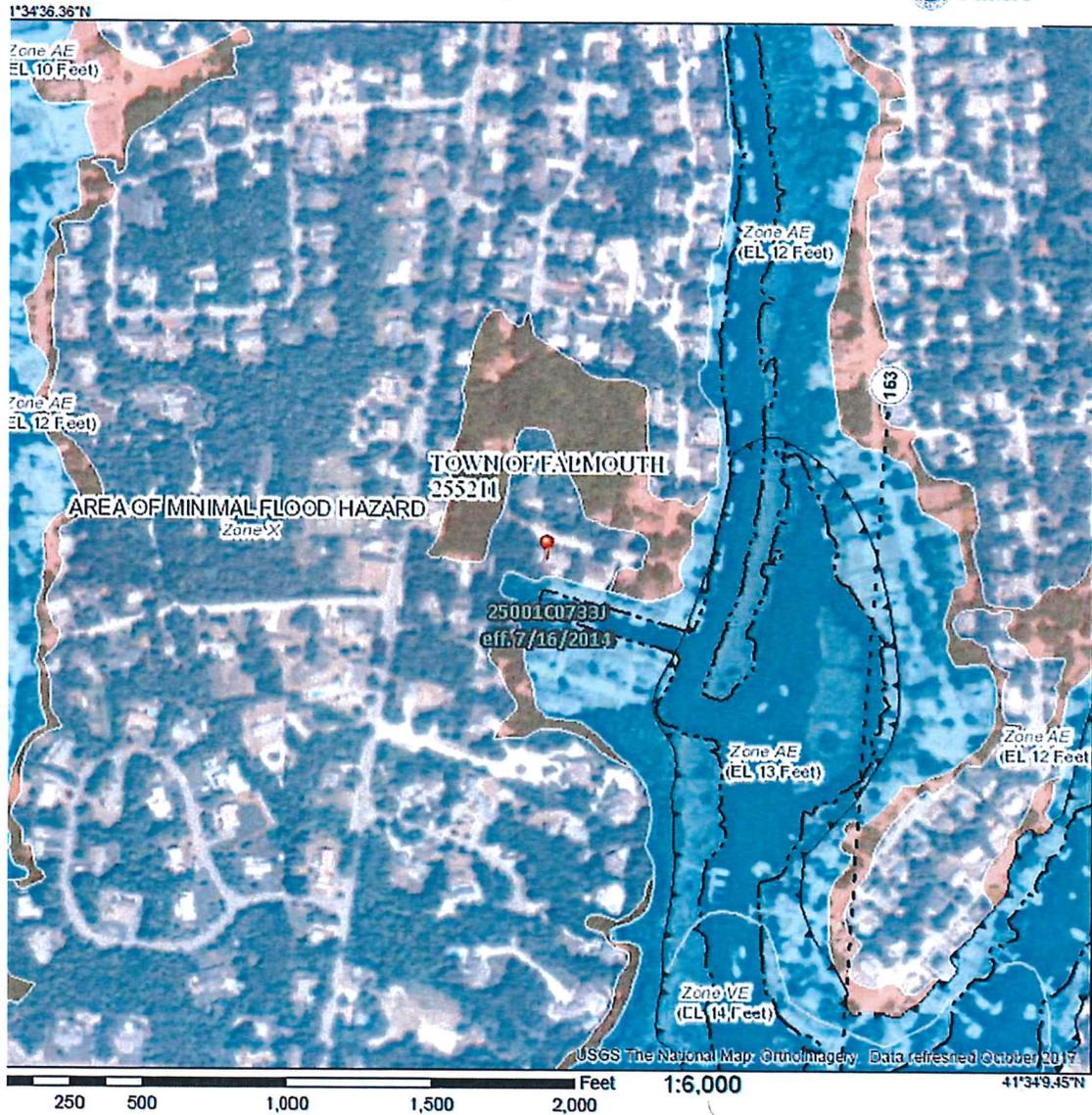
**5 Canapitsit Dr
East Falmouth, MA 02536**





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 | | 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 | | 0.2% Annual Chance Flood Hazard, Area of 1% annual chance flood with average depth less than one foot or with draining areas of less than one square mile Zone |
| | | 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 | | Area of Minimal Flood Hazard Zone X |
| | | Effective LOMRs |
| | | Area of Undetermined Flood Hazard Zone |
| GENERAL STRUCTURES | | Channel, Culvert, or Storm Sewer |
| | | Levee, Dike, or Floodwall |
| OTHER FEATURES | | Cross Sections with 1% Annual Chance Water Surface Elevation |
| | | Coastal Transect |
| | | Base Flood Elevation Line (BFE) |
| | | Limit of Study |
| | | Jurisdiction Boundary |
| | | Coastal Transect Baseline |
| MAP PANELS | | Digital Data Available |
| | | No Digital Data Available |
| | | 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.

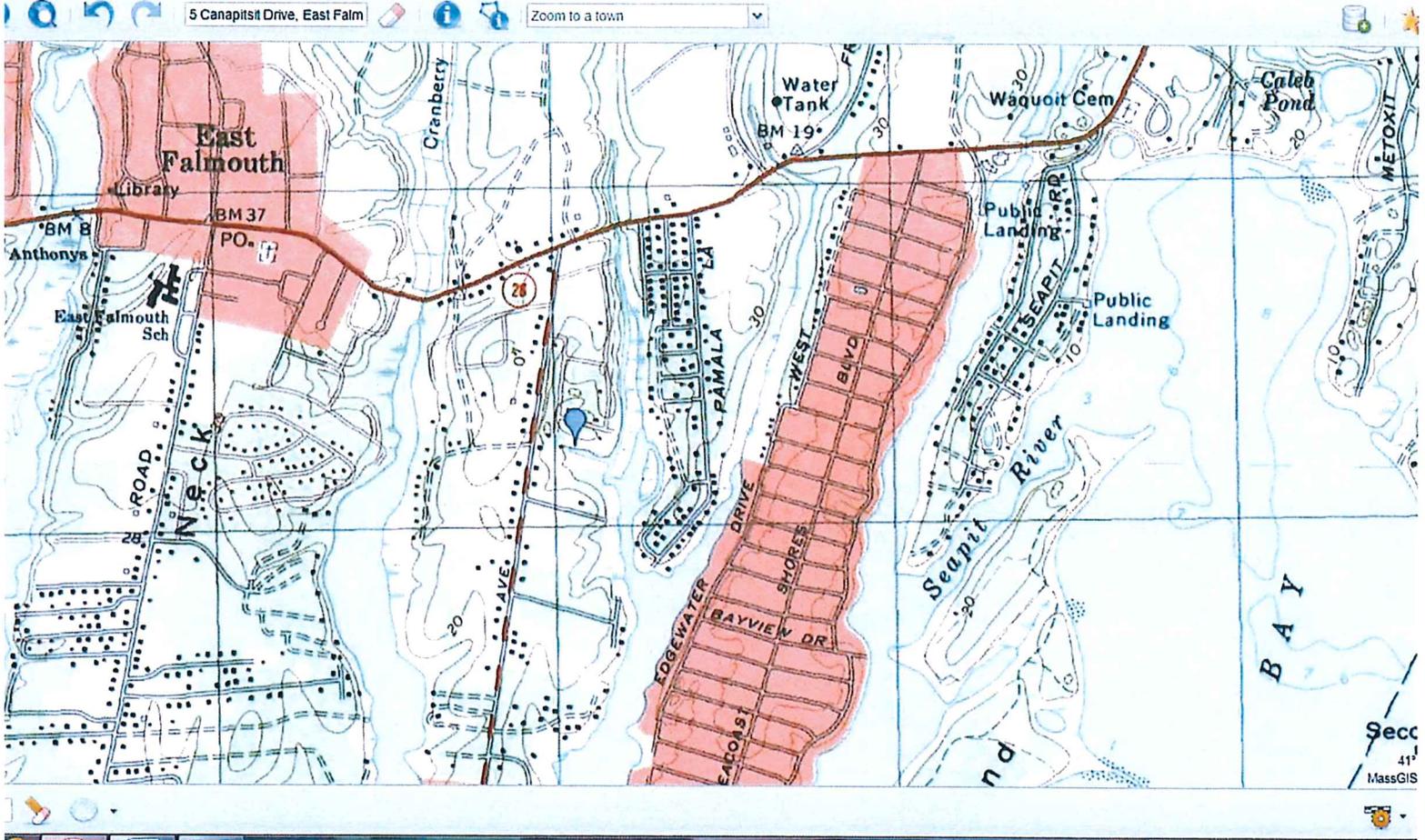
This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory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

Mass GIS Topo Map

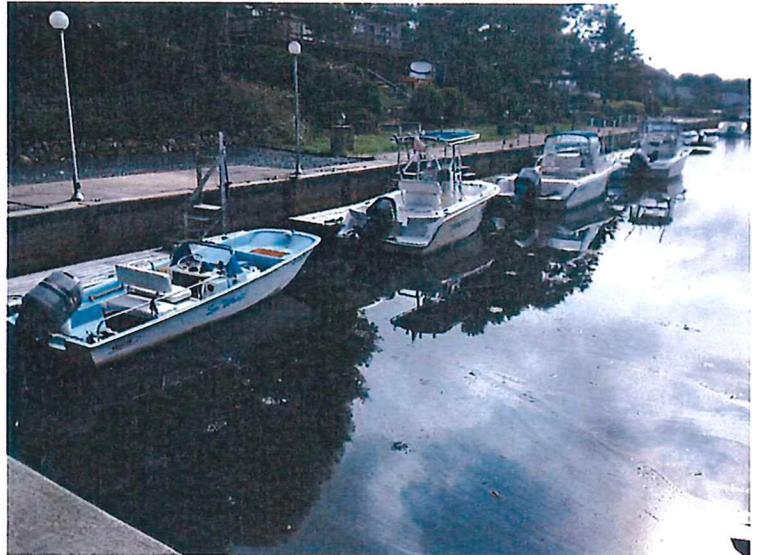
maps.massgis.state.ma.us/map_ol/oliver.php

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](#)



Photographs

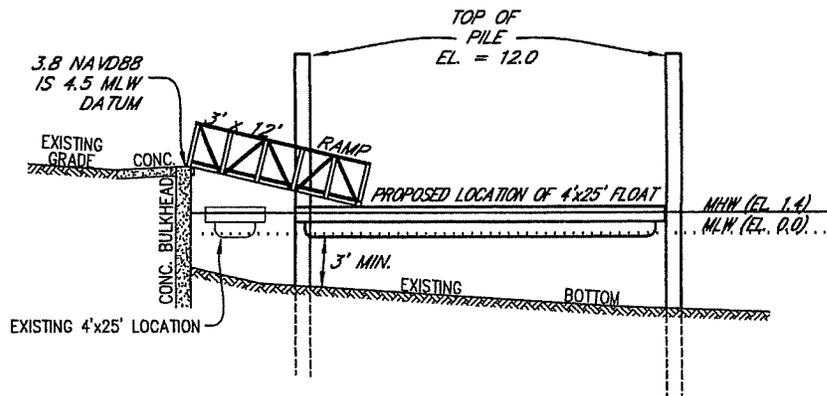


I CERTIFY THAT THIS PLAN WAS MADE IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.

9-26-19

DATE


REGISTERED PROFESSIONAL ENGINEER



PROFILE

SCALE: 1/8" = 1' - 0"



SCALE: 1/8 INCH = 1 FEET



PURPOSE: PRIVATE RECREATIONAL USE
PLAN ACCOMPANYING PETITION OF
STEVEN BALAS & MICHAEL KACHAROORIAN
#64 & LOT 77 MUSKEGAT ROAD
PLAN OF PROPOSED RAMP & FLOAT
IN EEL POND (MAN-MADE POND)
FALMOUTH, BARNSTABLE COUNTY, MA

DATUM:

BASED ON MLW = 0.0
ELEV. ABOVE MHW BASED ON NAVD88

PLAN BY:



17 ACADEMY LANE, SUITE 200
FALMOUTH, MA 02540
508.495.1225

DATE: SEPTEMBER 20, 2019 SHEET: 2 OF 2

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edical engineering;

ERS

cept sealed bids for:
NT REPAIR 2020

ublic Works, 416 Gifford
ite: 2:00 p.m. on Friday,
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Wednesday, February 19,
Road in Falmouth, MA.

the bid deposit shall be
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ful bidder has executed
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company licensed to do

per M.G.L. Chapter 149,

s of M.G.L. Chapter 30,

nd all Bids, or to accept

C WORKS

ks

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 Solten - 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 (Dill-
ingham 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 426 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 pur-
suant 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-ex-
isting non-conforming cottage on subject prop-
erty 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. Filed 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 ques-
tions to sburke@pmacpnconsultants.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 pur-
poses. The outcome is to lease and/or lease with
option to purchase an appropriate site for the pur-
pose 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, As-
sistant 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 REGULA-
TION PROGRAM**

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

Waterways Permit Application Number W20-
5700

Quisset 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 Quisset Harbor Preservation
Trust and Salt Pond Areas Bird Sanctuaries,
Inc. to place temporary fill and perform repairs
and reconstruction of the existing stone revet-
ment at 48 Quisset Harbor Road (The Quisset
Knob), in the municipality of Falmouth, in flowed
tidelands of Quisset Harbor and Buzzards Bay.
The proposed project has been determined to
be water-dependent.

The Department will consider all written com-
ments on this Waterways application received
within fifteen (15) days subsequent to the "Noti-
fication 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, DEP
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 ADJUDI-
CATION**

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 Or-
der 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. Pen-
tikis 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

...t moving forward.”
 Letter from the
 sets delegation noted
 test for bridge replace-
 ment had been suggested
 letter addressed to
 Secretary James. The
 ted that allocating, at
 initial funds in the
 ear, “would have rep-
 a significant down pay-
 a responsible long-term
 it.”
 available funding, the
 ther stated, would en-
 the replacement proj-
 begin immediately
 al decision on the fate

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

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 Penzance 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 of Appeals
 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 Ariens 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. Marysla 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

Tables 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	
	HIGH TIDE	LOW TIDE	HIGH TIDE	LOW TIDE	HIGH TIDE	LOW TIDE	HIGH TIDE	LOW TIDE	HIGH TIDE	LOW TIDE	HIGH TIDE	LOW TIDE	HIGH TIDE	LOW TIDE
DAY 21	AM 11:45	5:13	9:26	3:12	6:30	1:47	6:12	12:35	7:33	2:23	9:37	3:14	9:53	3:51
	PM	5:56	10:04	3:55	6:36	2:32	6:34	1:31	7:51	2:59	10:13	3:54	10:31	4:34
DAY 22	AM 12:23	6:01	10:11	4:00	7:12	2:24	6:53	1:16	8:18	3:11	10:23	4:03	10:38	4:39
	PM 12:30	6:38	10:44	4:37	7:21	3:07	7:15	2:06	8:35	3:43	10:55	4:39	11:11	5:16
DAY 23	AM 1:03	6:44	10:52	4:43	7:54	2:45	7:34	1:42	9:01	3:52	11:05	4:48	11:19	5:22
	PM 1:11	7:16	11:21	5:15	8:05	3:33	7:57	2:24	9:19	4:20	11:34	5:20	11:48	5:54
DAY 24	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
	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
DAY 25	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
	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
DAY 26	AM 2:50	8:42	12:31	6:41	9:58	4:01	9:35	2:48	10:57	4:17	12:47	6:53	12:58	7:20
	PM 3:04	9:04	12:45	7:03	10:16	4:19	9:57	3:00	11:16	4:21	1:02	7:16	1:12	7:42



TOWN OF FALMOUTH

Office of the Town Manager & Selectmen

59 Town Hall Square, Falmouth, Massachusetts 02540

Telephone (508) 495-7320

Fax (508) 457-2573

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

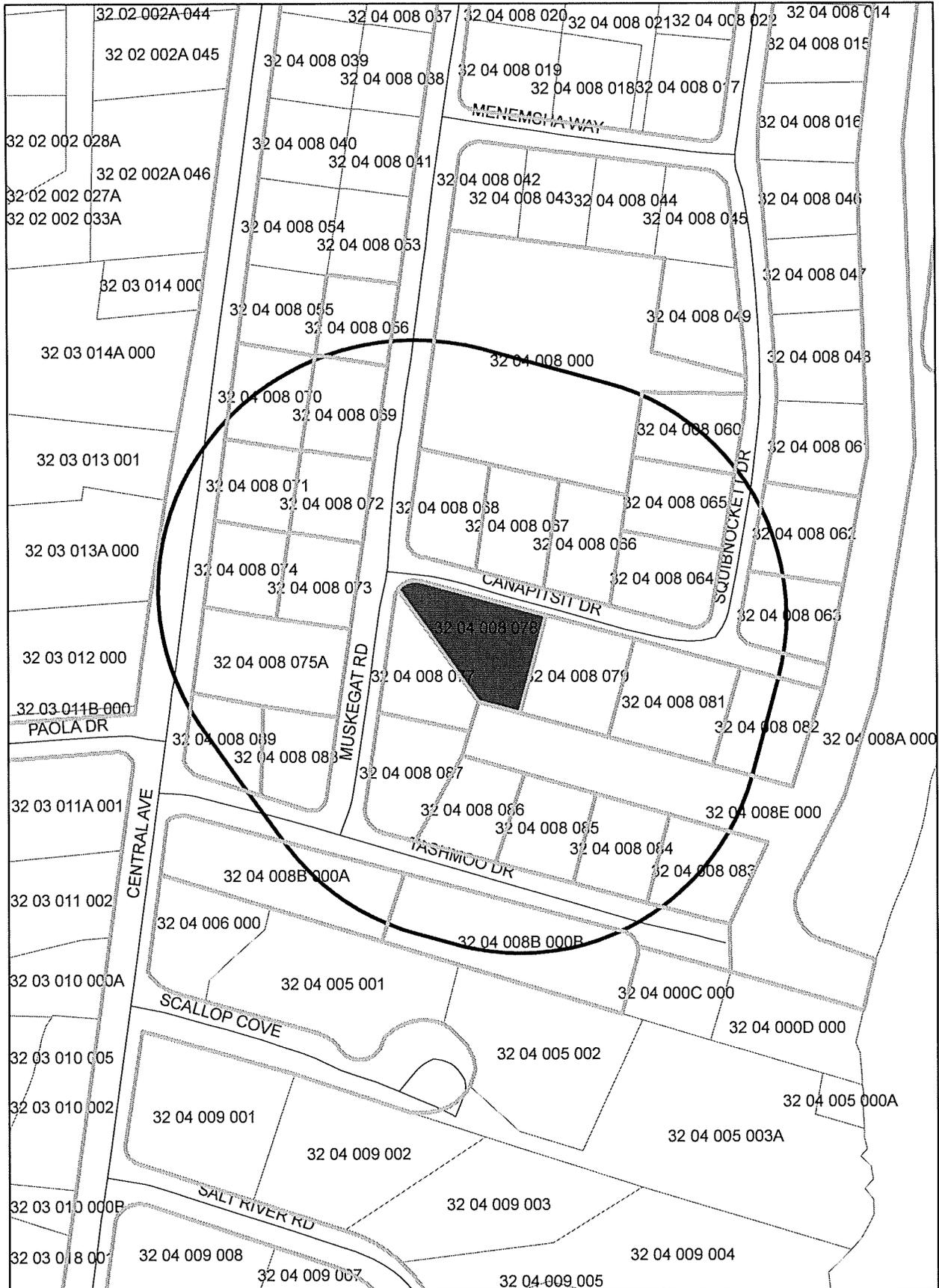
Publication dates: Friday, February 14, 2020, and Friday, February 21, 2020. Falmouth Enterprise.

**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

5 CANAPTISI DR



46 MUSKEGAT RD ANDERSON TRUSTEE CHARLENE V CHARLENE V ANDERSON IVEST TR 122 8 LOTS RD SUTTON. MA 01590-1022	32 04 008 068 LUC: 101	18 TASHMOO DR DUNDULIS FRANK DUNDULIS PATRICIA E 18 TASHMOO DR E FALMOUTH. MA 02536	32 04 008 086 LUC: 101	87 SQUIBNOCKETT DR MADONIA ELLEN B MADONIA CRAIG S 160 OLD FARM RD LEOMINSTER. MA 01453	32 04 008 060 LUC: 101
98 SQUIBNOCKETT DR AUGUSTA SCOTT D 98 SQUIBNOCKETT DR EAST FALMOUTH. MA 02536	32 04 008 063 LUC: 101	12 CANAPITSIT DR FAY III JOHN J 12 CANAPITSIT DR E FALMOUTH. MA 02536-6211	32 04 008 066 LUC: 101	13 CANAPITSIT DR MATTA TRUSTEE EDWARD MATTA TRUSTEE SHIRLEY R 311 N WARREN AVE BROCKTON. MA 02301-2623	32 04 008 079 LUC: 101
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
64 MUSKEGAT RD BALAS STEVEN M 64 MUSKEGAT RD EAST FALMOUTH. MA 02536	32 04 008 087 LUC: 101	82 CENTRAL AVE FROMM GREGORY P 82 CENTRAL AVE EAST FALMOUTH. MA 02536	32 04 008 071 LUC: 101	0 SQUIBNOCKETT DR PACHECO ROBERT B 25 CANAPITSIT DR E FALMOUTH. MA 02536	32 04 008 000 LUC: 201
94 SQUIBNOCKETT DR BROWN TRUSTEE ROBERT G BROWN TRUSTEE IDA M PO BOX 535 E FALMOUTH. MA 02536	32 04 008 062 LUC: 101	35 MUSKEGAT RD GILDEA TRUSTEE MARK C CUNHA TRUSTEE RICHARD C PO BOX 653 SACKETS HARBOR. NY 13685	32 04 008 056 LUC: 130	0 CANAPITSIT DR OFF PACHECO ROBERT B 25 CANAPITSIT DR E FALMOUTH. MA 02536	32 04 008E 000 LUC: 210
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

Phyllis Downey

Conservation

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.

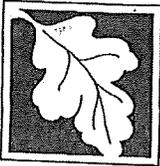
Project Description (if applicable):

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).

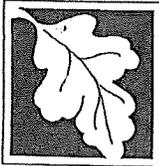
5. The area and/or work described on referenced plan(s) and document(s) is subject to review and approval by:

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:
-

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):

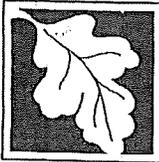
- Alternatives limited to the lot on which the project is located.
- Alternatives limited to the lot on which the project is located, the subdivided lots, and any adjacent lots formerly or presently owned by the same owner.
- Alternatives limited to the original parcel on which the project is located, 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

by certified mail, return receipt requested on

7/25/12

Date

James M. Pentekis

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:

Maureen Haslam Newb

Elizabeth H. Gaudette

Michelle J. Crust

[Signature]

Washedon L. Powers

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.

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.

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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

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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 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 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

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: Noreen Stockman
Sent: Friday, July 24, 2020 3:15 PM
To: Diane Davidson
Subject: RE: Revised Select Board Agenda - 7/27/20
Attachments: 5 Canapitsit.docx; 18 Tashmoo (Wall).docx; 18 Tashmoo (Hoyt).DOCX

Thanks for this.

As a reminder, the ZBA heard applications for 5 Canapitsit, as well as 18 Tashmoo. I am attaching those here so that the Select Board is aware that of the status of those cases, within this same area.

Sincerely,
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: Friday, July 24, 2020 2:51 PM
To: All Department Heads <alldeptheads@falmouthma.gov>
Subject: Revised Select Board Agenda - 7/27/20

Attached is a revised agenda for the Monday, July 27, 2020 Select Board meeting (added item #4 under Business).

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
ZONING BOARD OF APPEALS
DECISION

APPEAL NO: 026-19

OWNER: James N. Pentikis

5 Canapitsit Drive, East Falmouth, Massachusetts

APPLICANT: Michael Kachadoorian, owner of land, Lot 77 Muskegat Road, East Falmouth, Massachusetts, and

Steven Balas, 64 Muskegat Road, East Falmouth, Massachusetts

c/o Brian J. Wall, Esq., Troy Wall Associates, 90 Route 6A, Sandwich, MA

SUBJECT PROPERTY: 5 Canapitsit Drive, East Falmouth, Massachusetts

Assessor's Map: Map 32 Section 04 Parcel 008 Lot 078

DEED/CERTIFICATE: Book 31749 Page 0204

SUMMARY: Appeal upheld

PROCEDURAL HISTORY

1. An application was filed with the Zoning Board of Appeals on April 29, 2019, appealing the *de facto* denial decision of the Building Commissioner, to request enforcement of an alleged zoning violation, regarding two floats in the waters of the Eel Pond Canal, in the Town of Falmouth, Massachusetts, which reportedly lacks the requisite special permit, at 5 Canapitsit Drive, East Falmouth, Massachusetts (the "Premises").
2. Notice was given, as required by M.G.L. Chapter 40 A, Section 9, including notices mailed to all persons deemed to be affected thereby, as they appear on the most recent tax list.

3. There was no previous Zoning Board of Appeals case for the Premises.
4. The advertised public hearing was scheduled to open on June 13, 2019. By letter dated June 13, 2019, Mr. Wall (counsel for the Applicants) requested that the hearing be continued to August 1, 2019, to which consent was unanimously voted by the Board. Notice of the continued hearing was posted at the Town Clerk's office and on the Town's website. The "Agreement for Extension of Statutory Hearing, Decision and filing Deadline" was executed by the Applicant and the Board, and filed with the Town Clerk on June 17, 2019.
5. By letter dated July 25, 2019, Mr. Wall requested that the hearing, scheduled for August 1, 2019, be continued to September 5, 2019, to which consent was unanimously voted by the Board. Notice of the continued hearing was posted at the Town Clerk's office and on the Town's website. The "Agreement for Extension of Statutory Hearing, Decision and filing Deadline" was executed by the Applicant and the Board, and filed with the Town Clerk on August 2, 2019.
6. By e-mail dated September 4, 2019, Mr. Wall requested that the hearing, scheduled for September 5, 2019, be continued to October 17, 2019, to which consent was unanimously voted by the Board. Notice of the continued hearing was posted at the Town Clerk's office and on the Town's website. The "Agreement for Extension of Statutory Hearing, Decision and filing Deadline" was executed by the Applicant and the Board, and filed with the Town Clerk on September 6, 2019.
7. The hearing was held on October 17, 2019. Board members present included Terrence J. Hurrie, Kenneth H. Foreman, Robert B. Dugan, Edward Van Keuren, and Gerald Potamis.
8. The following documents and information are on file in the office of the Zoning Board of Appeals at Town Hall, as set forth below:

Letters/E-mails/Information from Applicant/Representative(s)

- August 3, 1994 letter from the Board of Selectmen, to license an existing 53-foot concrete seawall, at 5 Canapitsit Drive
- "Commonwealth of Massachusetts" license to James Pentikis, to maintain an existing seawall, dated May 5, 1995
- "Commonwealth of Massachusetts", license to John R III, and Susan E. Augusta, to maintain a bulkhead and floats, filed with the Registry of Deeds on 10-07-1997
 - "License Plan No. 6715", prepared for John R. III and Susan Augusta, dated Aug 08, 1997 (Lot 86, 18 Tashmoo Drive, East Falmouth, MA)
 - April 24, 2019 letter from Brian J. Wall, with Exhibits A-E
 - June 7, 2019 letter from Brian J. Wall, with seven attachments
 - June 13, 2019 letter from Brian J. Wall (requesting continuation for hearing)
 - July 25, 2019 letter from Brian J. Wall (requesting continuation for hearing)
 - September 4, 2019 letter from Brian J. Wall (requesting continuation for hearing)

Letters/Referrals/E-mails from Town Departments

- Referral from Conservation Commission, dated 6/3/19 (local approval for two 4-foot by 20-foot (sic), however, no approval from Board of Selectmen, and no record of Ch. 91 license from DEP)
- Referral from Planning Board, no comment, dated 5/1/19
- "Agreement for Extension of Statutory Hearing, Decision and filing Deadline" was executed by the Applicant and the Board, and filed with the Town Clerk on June 17, 2019.
- "Agreement for Extension of Statutory Hearing, Decision and filing Deadline" was executed by the Applicant and the Board, and filed with the Town Clerk on August 2, 2019.
- "Agreement for Extension of Statutory Hearing, Decision and filing Deadline" was executed by the Applicant and the Board, and filed with the Town Clerk on September 6, 2019.
- Copy of "Determination of Applicability" by the Town of Falmouth, Conservation Commission, dated May 11, 1994

Letters/E-mails from Abutters/Interested Parties

- June 13, 2019 letter from Glenn A. Wood, Rubin and Rudman LLP, 99 Willow Street, Yarmouthport, MA (representing Mr. Pentikis)
- October 17, 2019 letter and packet of information, submitted by Drew W. Hoyt, 15 Wall Street, #9, Foxboro, MA

October 17, 2019 Hearing:

The Zoning Board of Appeals opened the hearing, with a request from Mr. Wall, to discuss this case #026-19 for 5 Canapitsit Drive, East Falmouth, Massachusetts (the "Premises"), together with case #063-19 for 18 Tashmoo Drive, East Falmouth, Massachusetts, where there is case similarities and information overlap, and the same applicants for both cases. Following a motion made by Mr. Foreman, and seconded by Mr. Van Keuren, the Board unanimously voted to hear the two cases together. Each case shall be issued a separate Decision.

The notice of hearing and Town referrals were read into record for 5 Canapitsit Drive. The Conservation Commission reported that 5 Canapitsit Drive had Conservation Commission approval for floats in 2012, but that there was no record of a special permit by the Board of Selectmen or DEP Chapter 91 approval; both approvals which are required for the floats, in addition to the approval of the Conservation Commission.

Mr. Wall appeared before the Board, representing both Michael Kachadoorian, owner of an undeveloped lot on Muskegat Road, East Falmouth, MA, (immediately north of 64 Muskegat Road), and Steven Balas, owner of 64 Muskegat Road, East Falmouth, MA, (the "Applicants"), and abutters to 5 Canapitsit Drive. Five Canapitsit Drive lies immediately to the northeast of Muskegat Road, and has direct access to the Eel Pond canal. Mr. Wall explained that there was a man-made canal created off Muskegat Road in the 1970's, prior to the Wetlands Protection Act. Mr. Kachadoorian owns the northerly portion of the west side of the canal. Mr. Balas owns the southeasterly portion of the west side of the canal. Mr. Dundulis, 18 Tashmoo Drive, owns the property abutting Mr. Balas, at the southerly side of the canal.

Mr. Wall stated that Mr. Pentikis has two floats on the northerly side of the canal for boats, and that Mr. Dundulis now has two floats for boats at the southerly side of the canal. Messrs. Kachadoorian and Balas determined that they would install a perpendicular dock for their boats, and have a constructive grant for that dock from the Board of Selectmen. Mr. Wall stated that Mr. Pentikis and Mr. Dundulis complained about their access to their floats with a dock installed.

Mr. Wall stated that according to his research, Mr. Pentikis lacks the required special permit, under By-Law §240-77 through 79, from the Board of Selectmen, and the Mass DEP Ch. 91 license for the floats, rendering the floats unlawful. Mr. Wall reported that Mr. Pentikis' attorney, Glen Wood, of Rubin and Rudman LLP, 99 Willow Street, Yarmouthport, MA agreed that Mr. Pentikis required approval by the Board of Selectmen, under By-Law §240-77 to 240-79 for his floats. Mr. Wall stated that the Applicants support Mr. Pentikis' applying to the Board of Selectmen, and are willing to suspend the request for enforcement of removal of the floats at 5 Canapitsit Drive for 90 days, so that Mr. Pentikis may file for this special permit.

Mr. Pentikis appeared before the Board, and stated that his attorney was not present. Mr. Pentikis stated that his parents pursued the permitting for the floats, and believed that the permit from the Conservation Commission was sufficient. Mr. Pentikis stated that he was unaware that he required further approval from the Board of Selectmen and a Chapter 91 license. He reported that he will pursue those approvals.

Mr. Wall requested that the Zoning Board of Appeals consider a further extension of the hearing for an additional 90 days, in order to provide time for Mr. Pentikis to file for outstanding approvals. Mr. Wall stated that the Applicants would not request enforcement during that 90 day time period.

No one further appeared on the application.

Mr. Foreman made a motion to close the hearing, which was seconded by Mr. Dugan, and unanimously voted. The Board proceeded to deliberate.

Mr. Dugan made a motion to grant the appeal, overriding the *de facto* denial of the Building Commissioner, and requiring enforcement of the zoning violation of unpermitted floats, which enforcement shall be stayed for 90 days from the date that this Decision is filed with the Town Clerk, to allow time for Mr. Pentikis to file for requisite approvals. If Mr. Pentikis fails to file with the Board of Selectmen within the 90 days, or files but does not gain approval, the Building Commissioner is directed to enforce the zoning violation at 5 Canapitsit Drive, East Falmouth, MA.

Findings:

The subject site, 5 Canapitsit Drive, East Falmouth, Massachusetts (the "Premises") is sited in the Agricultural B Zoning District, the Waquoit Bay Coastal Pond Overlay District, and the 100-foot State and Town wetland buffer. The Premises comprises approximately 13,669 square feet of area.

There was no previous Zoning Board of Appeals Decision.

1. The Board found that Mr. Pentikis, 5 Canapitsit Drive, East Falmouth, Massachusetts lacked the requisite special permit, under By-Law §240-77-79, to site floats on the Eel Pond canal.
2. Absent the special permit from the Board of Selectmen (and a Chapter 91 license from the Mass DEP), the floats at 5 Canapitsit Drive constitute a zoning violation.
3. Mr. Pentikis and his counsel have requested a 90-day stay from the order for enforcement. Mr. Wall concurred that the Applicants were also supportive of that stay of enforcement, to allow the 90 day period to file with the Board of Selectmen.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals, being of the opinion aforesaid, and acting under Massachusetts General Law, Chapter 40A, §8, following a motion made by Mr. Dugan, and seconded by Mr. Van Keuren, voted 5 to 0, to overturn the *de facto* denial of the Building Commissioner, and to uphold the request for enforcement of floats sited in Eel Pond canal, at 5 Canapitsit Drive, East Falmouth, Massachusetts, and require that Mr. Pentikis, 5 Canapitsit Drive, East Falmouth, Massachusetts, file an application with the Board of Selectmen, under the General Code of Falmouth, By-Law §240-77 through 79, within 90 days of the date of filing this Decision, to request a special permit for floats. Absent this timely filing with the Board of Selectmen, or absent subsequent approval, the Zoning Board of Appeals determined that the Building Commissioner shall commence enforcement for the zoning violation.

Action: The Zoning Board of Appeals, by the signature below, certifies the vote of the Board, for the above hearing:

Robert B. Dugan, Zoning Board of Appeals

Date Filed With Town Clerk



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

CASE NO'S: 063-19 and 087-19

APPLICANT: Steven M. Balas and Michael S. Kachadoorian

C/o Brian J. Wall, 90 Route 6A, Sandwich, Massachusetts

OWNER: Frank and Patricia Dundulis

18 Tashmoo Drive, East Falmouth, Massachusetts

SUBJECT PROPERTY: 18 Tashmoo Drive, East Falmouth, Massachusetts

Assessor's Map: Map 32 Section 04 Parcel 008 Lot 086

DEED/CERTIFICATE: Book 20073 Page 185

SUMMARY: Appeal upheld; Building Commissioner directed to enforce zoning violation

PROCEDURAL HISTORY

1. On September 10, 2019 an application was filed with the Zoning Board of Appeals (#063-19) appealing the (de facto) denial of the Building Commissioner to enforce alleged zoning violations at 18 Tashmoo Drive, East Falmouth, Massachusetts (the "Premises").
2. Notice was given, as required by M.G.L. Chapter 40 A, Section 9, including notices mailed to all persons deemed to be affected thereby, as they appear on the tax list.
3. The advertised public hearing was opened on October 17, 2019. Voting Board members present for hearings included Terrence J. Hurrie, Kenneth H. Foreman, Robert B. Dugan, Edward Van Keuren, and Mary P. Barry. The hearing was continued to November 21, 2019, January 23, 2020, March 5, 2020, April

2, 2020, May 14, 2020 and June 25, 2020. Notice of continuation dates were announced, and posted at the Town Clerk's office, and on the Town's website.

4. Brian J. Wall, Troy Wall Associates, 90 Route 6A, Sandwich, Massachusetts, appeared before the Board, representing the Applicant.

5. Drew W. Hoyt, 15 Wall Street, #9, Foxboro, Massachusetts, appeared before the Board, representing Frank and Patricia Dundulis, 18 Tashmoo Drive, East Falmouth, MA, property owners.

6. On December 12, 2019, a second application was filed with the Town Clerk (#087-19), to appeal the decision of the Building Commissioner's letter, dated November 20, 2019, regarding the Premises. Acknowledging the second filing for the same address and appeal matter, the Zoning Board of Appeals will hear the two applications, #063-19 and #087-19 together.

7. The public hearing was closed on June 25, 2020, following a motion made by Mr. Dugan, seconded by Mr. Foreman, and unanimously voted. Minutes of the hearing(s) are on file with the Town Clerk and the Zoning Board of Appeals.

8. The following documents and information are on file in the office of the Zoning Board of Appeals at Town Hall, as set forth below:

Letters/E-mails/Information from Applicant/Representative(s)

- September 10, 2019 Attorney Brian Wall filed an appeal of the Building Commissioner with supporting documentation:
 - Exhibit 'A' – photo of the canal from the Balas' property
 - Exhibit 'B' – 1995 application to the Board of Selectmen
 - Exhibit 'C' – December 11, 1995 letter regarding Wetland Hearings and on-site inspections signed by Joseph A DelTorto, Deputy Harbormaster
 - Exhibit 'D' – December 15, 1995 letter regarding Wetlands Hearings, signed by George Souza, Shellfish Warden
 - Exhibit 'E' – December 12, 1995 letter regarding 'Applications to License Existing Structure', from the Department of Natural Resources
 - Exhibit 'F' – December 18, 1995 minutes from the Board of Selectmen meeting
 - Exhibit 'G' – December 21, 1995 – Board of Selectmen's filed decision
 - Exhibit 'H' – March 5, 2018 'Site Plan – Proposed Ramp and Float'
 - Exhibit 'I' – October 17, 2018 – Letter from Attorney Wall to Building Commissioner Palmer requesting zoning enforcement
 - Exhibit 'J' – December 12, 2018 – Letter from Attorney Wall to Building Commissioner Palmer; second letter requesting zoning enforcement
- Letter from Attorney Wall with (2) attachments dated November 13, 2019
 - Exhibit '1' – photo of boat tied to float
 - Exhibit '2' – photo to show the distance between the float and when the motor on the boat is raised
- Signed waiver extension, filed with the Town Clerk on November 26, 2019
- December 12, 2019 Attorney Brian Wall filed an appeal of the Building Commissioner with denial letter attached

- Signed waiver extension, filed with the Town Clerk on January 24, 2020
- Signed waiver extension, filed with the Town Clerk on April 2, 2020

Letters/Referrals/E-mails from Town Departments

- Signed letter dated November 20, 2019 from Building Commissioner Rod Palmer denying the request for zoning enforcement
- Referral dated September 12, 2019 from the Planning Department – no comment
- Referral dated October 10, 2019 from Conservation with attached chapter 91 license – signed by Conservation Agent
- Email from Zoning Administrator to Attorney Hoyt dated November 6, 2019 requesting copy of the recorded permit from the Board of Selectmen
- Email dated January 10, 2020 from Conservation Agent, Jennifer Lincoln with attached Chapter 91 License
- No referrals received from Town Departments in file no.087-19

Letters/E-mails from Abutters/Interested Parties

- Letter with attachments, dated August 6, 2018 with a Board date 'received' stamp of October 10, 2019 submitted by Attorney Drew W. Hoyt
- Letter with Exhibits dated October 17, 2019 from Attorney Hoyt
 - Exhibit '1' – December 21, 1995 special permit issued by the Board of Selectmen and plan of record dated December 18, 1995
 - Exhibit '2' – 'Municipal Zoning Certificate' dated September 11, 1996, signed by Building Commissioner Eladio Gore
 - Exhibit '3' - aerial photographs of floats
 - Exhibit '4' – Copy of plan for 'common dock' proposed by Balas and Kachadoorian
 - Exhibits '5' and '6' – Full copies of the Board of Selectmen file and MassDEP file
- Letter from Attorney Drew W. Hoyt dated November 15, 2019
- Recorded decision from the Board of Selectmen dated December 21, 1995, submitted by Attorney Hoyt with a Board date 'received' stamp of November 7, 2019
- Letter with exhibits dated January 21, 2020, submitted by Attorney Hoyt –
 - Exhibit '1' - 'Draft Findings and Decision'
 - Exhibit '2' - 'Municipal Zoning Certificate'
 - Exhibit '3' – photos of floats
 - Exhibit '4' – Waterway License
 - Exhibit '5' – photos of canal with boats
 - Exhibit '6' – aerial photo
 - Exhibit '7' – recorded Board of Selectmen decision
 - Exhibit '8' – 'Existing Conditions Plan'
 - Exhibit '9' – photo of canal with boats
 - Exhibit '10' – 'Acts – 2016' Section 7 of Chapter 40A
 - Exhibit '11' – definitions
 - Exhibit '12' – Section 240-13 of the Code of Falmouth
 - Exhibit '13' – Chapter 40A Section 6

- Exhibit '14' – Appeals Court decision – BOS of Blackstone et al v. Clayton Tellestone
- Exhibit '15' – Application Status Sheet, Waterways License Application with attachments
- Exhibit '16' – License and Amnesty Application Status Sheet with attachments

Hearings:

October 17, 2019

The Notice of Hearing and referrals were read into the record.

Attorney Wall appeared before the Board, representing Steven Balas and Michael Kachadoorian, of Muskegat Road, abutting property owners to the Premises, 18 Tashmoo Drive, East Falmouth, Massachusetts (owned by Frank and Patricia Dundulis). Mr. Wall stated that the filing was a de facto denial of the Building Commissioner, in that they were unable to get the Building Commissioner to issue a letter on the enforcement request.

Mr. Wall stated that there exists a navigation issue within the man-made canal off Eel Pond, terminating at Muskegat Road. Mr. Wall stated that the Dundulises, 18 Tashmoo Drive, East Falmouth, MA lack a special permit from the Board of Selectmen for their floats placed in the canal, rendering those floats unlawful. He asserted that there is only permission for the bulkhead for 18 Tashmoo Drive, and that while floats appear on a plan, there was no specific application for floats to the Board of Selectmen.

Attorney Drew Hoyt reported that the Dundulises have a special permit from the Board of Selectmen from 1995, and that otherwise, they would be grandfathered. He stated that the Dundulis floats do not impede a float and boat for Mr. Balas (southwest corner of the canal). Mr. Hoyt acknowledged that the Dundulises' 1995 special permit from the Board of Selectmen had not yet been recorded at the Barnstable County Registry of Deeds.

Following a motion made by Mr. Foreman, seconded by Mr. Dugan, and unanimously voted, the hearing was continued to November 21, 2019.

November 21, 2019:

Mr. Wall reiterated that while the Dundulises have a Chapter 91 license from Massachusetts Department of Environmental Protection, they lack the permission from the Board of Selectmen, who are the permitting authority for floats. He pointed out that the application to the Board of Selectmen, filed by John Augusta in 1995, made no statement about floats. Similarly, the public notice reflected only licensing and maintaining an existing bulkhead, which aligns with referrals from the Harbormaster, the Natural Resources Department, and the shellfish warden. Mr. Wall asserted that there is no relief request, and no notice of, or approval for any floats. He also noted that the Dundulises have swapped out floats, and therefore the floats have not been unchanged for more than 10 years. Mr. Wall further asserted that floats are not structures. Mr. Wall stated that the canal overcrowding by the Dundulises floats and boats limits the access by Messrs. Balas and Kachadoorian. Mr. Wall also stated he would like to amend his application to reflect the written denial of the Building Commissioner.

Mr. Hoyt stated that there was no appealable event prior to a written decision by the Building Commissioner.

Mr. Balas reported that non-residents are maintaining their boats on floats in the canal, and limit the access to his portion of the canal at 64 Muskegat Road.

Mr. Foreman made a motion to continue the hearing to January 23, 2020, which was seconded by Mr. Potamis, and unanimously voted.

January 23, 2020:

Mr. Wall reported that he filed a new application (#087-19), following the written determination by the Building Commissioner. Where the facts of both cases are the same, the Zoning Board of Appeals will hear both cases together. Mr. Wall reiterated that the special permit issued to the Dundulises was for the bulkhead only, and not for floats. There was never an explicit request to the Board of Selectmen for floats; therefore relief for floats can't be granted. He stated that the Dundulises must specifically apply to the Selectmen for the floats. Mr. Wall also stated that the Dundulises have only owned the property for 8 years, and have changed the floats several times, providing no grandfathered status. He also noted that Messrs. Balas and Kachadoorian have a constructive grant from the Board of Selectmen to build a dock, and that the Dundulises view a potential dock as overcrowding their boats.

Mr. Hoyt stated that the Dundulis floats have been in place for 25 years, expanded, then changed back after a complaint. He stated that the Dundulises are willing to pull their floats back fifteen feet from the Balas bulkhead.

Following a motion made by Mr. Dugan, and seconded by Mr. Van Keuren, the Board unanimously voted to continue the merged cases to March 5, 2020.

March 5, 2020

Mr. Dugan reported that the Board received a letter from Mr. Wall requesting a continuation to April 2, 2020.

Mr. Dugan made a motion to grant the continuation to April 2, 2020, which was seconded by Mr. Van Keuren, and unanimously voted.

April 2, 2020

Mr. Dugan noted a letter was submitted to the file from Mr. Wall requesting a continuation, to allow more time for an agreement to be drafted by all parties.

Mr. Dugan made a motion to grant the continuation to May 14, 2020, and not to allow further continuations, which was seconded by Mr. Foreman, and unanimously voted.

May 14, 2020

Mr. Hoyt today filed an application with the Zoning Board of Appeals for a modification for the special permit (issued by the Board of Selectmen) for 18 Tashmoo Drive, to legalize their pre-existing, nonconforming floats. Mr. Wall therefore requested that his current appeal be continued as part of a settlement agreement between the parties (which includes the Town and the Conservation Commission), to June 25, 2020. The settlement agreement was not disclosed. Following a motion made by Mr. Hurrie, and seconded by Mr. Van Keuren, a majority of the Board members voted to continue the case to June 25, 2020. Mr. Dugan was opposed to the continuance.

June 25, 2020

Following closing remarks, the Board held discussion. Mr. Dugan made a motion to close the hearing for cases #063-19 and #087-19, which was seconded by Mr. Foreman, and unanimously voted.

Findings:

The subject property, 18 Tashmoo Drive, East Falmouth, Massachusetts (Lot 86) (the "Premises") is located in the Agricultural B zoning district. The northerly side of the Premises fronts on a man-made canal connected to Eel Pond, and is the last lot on the southerly side of the canal, abutting the westerly canal terminus.

Immediately to the northwest of the Premises is Lot 87, (Steven M. Balas, 64 Muskegat Road), which property has frontage on the westerly end of the canal. To the north of Lot 87 is Lot 77 (Michael S. Kachadoorian, 50 Muskegat Road), which property also has frontage on the westerly end of the canal.

1. The Applicants filed a request for zoning enforcement regarding the Dundulis floats at 18 Tashmoo Drive, East Falmouth on October 17, 2018 with the Building Commissioner. The Applicants state that the Building Commissioner did not issue a written response, as directed by Massachusetts General Law. No record of a response was provided.
2. Due to the inability to gain a written response from the Building Commissioner, the Applicants filed an appeal with the Zoning Board of Appeals, reporting a de facto denial of the Building Commissioner, on September 10, 2019.
3. The hearing by the Zoning Board of Appeals was opened on October 17, 2019, and continued to November 21, 2019.
4. On November 20, 2019, the Building Commissioner issued a decision stating no action would be taken on the request for enforcement.
5. On December 12, 2019 the Applicant filed a second appeal for the Premises, appealing the November 20, 2019 letter of the Building Commissioner. This application was filed 22 days after the issuance of the decision by the Building Commissioner, constituting a timely filing.
6. At its meeting on January 23, 2020, the Board of Appeals made a determination to hear the initial case #063-19 with the newly filed case # 087-19, as the facts of both cases are the same. The Board further determined that the receipt of the written determination by the Building Commissioner, and timely filing of a new appeal, cured the defect in the initial filing (#063-19), which lacked a written decision by the Building Commissioner.
7. The Board, in reviewing the definition of "Structure", found in By-Law §240-13, observed that it includes the wording "Anything constructed or erected, the use of which requires fixed location on the ground or attachment to something located on the ground...". The Board thereby

determined that floats, which are attached to, and removable from galvanized steel pipes that are attached to the bottom of the canal do not constitute a "structure".

8. The Board found that there was undisputed testimony that while floats have been installed in the canal at 18 Tashmoo since 1994-5, the floats could not be considered grandfathered, as 1) they have been moved, and therefore not remained in a fixed location; 2) the sizes and number of the floats have changed, and 3) the floats have been shared with outside parties.

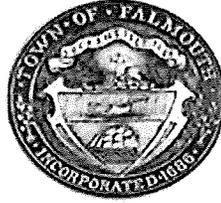
9. The Board of Appeals found that the owner of 18 Tashmoo Drive (Augusta), applied to the Board of Selectmen, dated 7 July 1995, for "Proposed to license under MGL. Chapter 91 Waterways Amnesty Program 80 L.F. of Bulk Head", which did not include a request for floats: The Harbor Master, document dated December 11, 1995, noted "license and maintain existing bulkhead" for 18 Tashmoo Dr., with no notation on floats. The shellfish warden, by document dated December 15, 1995, for 18 Tashmoo Drive, noted "Project O.K. Existing bulkhead.", with no mention of floats. The Falmouth Department of Natural Resources, document dated December 12, 1995, reported no objection to "...Augusta III, a bulkhead at 18 Tashmoo Drive" regarding "applications to license existing structures". Notes from the Selectmen's Meeting December 18, 1995, where the notice of hearing was read, stated "to license and maintain an existing bulkhead, located at 18 Tashmoo Drive, East Falmouth". The Decision by the Board of Selectmen, dated December 21, 1995, reported approval "to license and maintain an existing bulkhead, located at 18 Tashmoo Drive, East Falmouth...". Thereby, the Zoning Board of Appeals found that there was no request, nor approval for floats. Absent a special permit from the Board of Selectmen, the floats at 18 Tashmoo Drive, East Falmouth constitute a zoning violation.

10. The Board found that under By-Law §240-77 through 79, the Board of Selectmen are the permit granting authority regarding specific wetlands regulations, and that the request by 18 Tashmoo Drive, East Falmouth to maintain floats at the Premises, is properly made to the Select Board.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals, being of the opinion aforesaid, and acting under By-Law Section 240-202 of the General Code of Falmouth, and under Massachusetts General Law Ch. 40A 8., following a motion made by Mr. Dugan, and seconded by Mr. Foreman, voted unanimously uphold the appeal, as amended, and directed the Building Commissioner to commence enforcement on the zoning violation of unpermitted floats sited in Eel Pond canal, at 18 Tashmoo Drive, East Falmouth, Massachusetts (the "Premises").

Noreen H. Stockman, Zoning Administrator
Town of Falmouth, Massachusetts

Date Filed With Town Clerk



TOWN OF FALMOUTH
ZONING BOARD OF APPEALS
DECISION

CASE NO: 032-20

APPLICANT/OWNER: Frank and Patricia E. Dundulis

18 Tashmoo Drive, East Falmouth, Massachusetts

SUBJECT PROPERTY: 18 Tashmoo Drive, East Falmouth, Massachusetts

Assessor's Map: Map 32 Section 04 Parcel 008 Lot 086

DEED/CERTIFICATE: Book 20073 Page 185

SUMMARY: Special Permit denied

PROCEDURAL HISTORY

1. On May 14, 2020 an application was filed with the Zoning Board of Appeals requesting a special permit to modify pre-existing nonconforming floats at 18 Tashmoo Drive, East Falmouth, Massachusetts (the "Premises").
2. Notice was given, as required by M.G.L. Chapter 40 A, Section 9, including notices mailed to all persons deemed to be affected thereby, as they appear on the tax list.
3. The advertised public hearing was opened on June 25, 2020. Voting Board members present for hearings included Terrence J. Hurrie, Kenneth H. Foreman, Robert B. Dugan, Edward Van Keuren, and Mary P. Barry.
4. Drew W. Hoyt, 15 Wall Street, #9, Foxboro, Massachusetts, appeared before the Board, representing Frank and Patricia Dundulis, 18 Tashmoo Drive, East Falmouth, MA, property owners.

5. Brian J. Wall, Troy Wall Associates, 90 Route 6A, Sandwich, Massachusetts, appeared before the Board, representing the Steven Balas and Michael Kachadoorian, Muskegat Road, abutters.
6. The public hearing was closed on June 25, 2020, following a motion made by Mr. Dugan, seconded by Mr. Foreman, and unanimously voted. Minutes of the hearing(s) are on file with the Town Clerk and the Zoning Board of Appeals.
7. The following documents and information are on file in the office of the Zoning Board of Appeals at Town Hall, as set forth below:

Letters/E-mails/Information from Applicant/Representative(s)

- Attorney Drew W. Hoyt, Esq. submitted an application for a special permit, filing fee, and supporting documentation; application was filed with the Town Clerk on May 14, 2020
- Affidavit of Frank Dundulis with eighteen (18) exhibits attached, not dated; Board date stamped 'received' June 22, 2020 – submitted by Attorney Hoyt
- 'Proposed Findings and Conditions', not dated; Board date stamped 'received' June 22, 2020 – submitted by Attorney Hoyt
- Letters/Referrals/E-mails from Town Departments
- Referral dated May 18, 2020 from the Assessors – no comment
- Referral dated May 18, 2020 from the Water Department signed by Steve Rafferty, Water Superintendent: No impacts to water department. If water service on dock, it requires vacuum meter/backflow protection
- Referral dated May 18, 2020 from the Fire Department – no comment
- Referral dated May 18, 2020 from the Engineering Department: No site work, no comments
- Referral dated May 19, 2020 from the Planning Department – no comment
- Email dated June 2, 2020 from Conservation from Conservation Agent: *The Conservation Department does not see an issue with the floats being shifted as depicted on the plan. I have attached the Chapter 91 license the department has on record.*

Letters/E-mails from Abutters/Interested Parties

- Letter dated May 13, 2020 from Attorney Brian Wall
- September 10, 2019 letter from Brian Wall with the following exhibits:
 - Exhibit 'A' – photo of the canal from the Balas' property
 - Exhibit 'B' – 1995 application to the Board of Selectmen
 - Exhibit 'C' – December 11, 1995 letter regarding Wetland Hearings and on-site inspections signed by Joseph A DelTorto, Deputy Harbormaster
 - Exhibit 'D' – December 15, 1995 letter regarding Wetlands Hearings, signed by George Souza, Shellfish Warden
 - Exhibit 'E' – December 12, 1995 letter regarding 'Applications to License Existing Structure', from the Department of Natural Resources
 - Exhibit 'F' – December 18, 1995 minutes from the Board of Selectmen meeting
 - Exhibit 'G' – December 21, 1995 – Board of Selectmen's filed decision
 - Exhibit 'H' – March 5, 2018 'Site Plan – Proposed Ramp and Float'

- Exhibit 'I' – October 17, 2018 – Letter from Attorney Wall to Building Commissioner Palmer requesting zoning enforcement
- Exhibit 'J' – December 12, 2018 – Letter from Attorney Wall to Building Commissioner Palmer; second letter requesting zoning enforcement

Plans submitted by Applicant/Applicant's Representative

- 'Proposed Float Layout Plan' sheet 1 of 1, dated May 12, 2020, prepared for Frank and Patricia E. Dundulis; as drawn by Cape and Islands Engineering, 800 Falmouth Road, Suite 301C, Mashpee, MA – plan is stamped and signed by Matthew C. Costa, PLS

Hearing:

June 25, 2020

The 'Notice of Public Hearing' and referrals were read into the record.

Appearing before the Board was Drew Hoyt, attorney for the Applicants. Mr. Hoyt stated that the subject property is bounded on the back by a canal that was dug out in the 1970's, creating a boating community. He reported that the owners installed floats parallel to the seawall, following the practice of the previous owners. Mr. Hoyt asserted that there have been at least 2 floats in place since 1994. He reported that there is a special permit for these floats, issued by the Board of Selectman in 1994-1995, although the neighbors dispute that the special permit authorized floats, in addition to the seawall.

Mr. Hoyt reported that disputes arose when Messrs. Balas and Kachadoorian received a constructive grant to install a dock perpendicular to the end of the canal for their boats. Mr. Hoyt stated that installation of that dock would negatively impact the Dundulises ability to access their floats and boats.

Mr. Hoyt reported that his client was recently able to reach a resolution with neighbors Balas and Kachadoorian, regarding use of floats in the canal. As part of this resolution, the Dudulises would relocate their floats further away from the west end of the canal, to provide access for Balas and Kachadoorian, parallel to the end of the canal.

In order for the Dundulises to relocate their floats, Mr. Hoyt requested that the Zoning Board of Appeals (the "Board") first issue a special permit grandfathering the Dundulis floats, which he asserts have been in place year-round for a period of time exceeding 10 years (which is why they are before the Zoning Board as opposed to the Select Board). Mr. Hoyt then sought to have the Zoning Board authorize a modification to the special permit to allow the Dundulises to relocate their floats. Mr. Hoyt expected that if the Board issued a special permit for the Dundulises, they would then go to MA DEP to amend the Chapter 91 license. Following that process, the floats would be fully permitted in the location as shown on the site plan.

Brian Wall, attorney for Kachadoorian and Balas, appeared before the Board, and noted that canal access disputes have been on-going for a number of years, and that they are hopeful that it can be resolved. Mr. Wall confirmed the progress on a settlement agreement, and expressed support for the Dundulis floats to be moved 17 feet away from the Balas' floats.

The Board held discussion on the testimony. Mr. Hoyt stated that galvanized steel pipes are attached to the bottom of the canal, and that the floats are attached to those pipes, creating a structure in a fixed location. He also reported that the Conservation Commission did not have an issue with the floats.

Mr. Dugan made a motion to briefly suspend this case to a later point in the meeting, in order to complete the hearing on the open related matter, for applications (#063-19 and #087-19), which was seconded by Ms. Barry, and voted 4-1, with Mr. Foreman in opposition.

Upon completion of Cases #063-19 and #087-19, the Board announced the resumption of the hearing for case #032-20.

Mr. Foreman made a motion to close the hearing, which was seconded by Mr. Van Keuren, and unanimously voted.

Findings:

The subject property, 18 Tashmoo Drive, East Falmouth, Massachusetts (Lot 86), (the "Premises") is located in the Agricultural B zoning district. The northerly side of the Premises fronts on a man-made canal connected to Eel Pond, and is the last lot on the southerly side of the canal, abutting the westerly canal terminus.

1. The Board, in reviewing the definition of "Structure", found in By-Law §240-13, that it includes the wording "Anything constructed or erected, the use of which requires fixed location on the ground or attachment to something located on the ground...". The Board thereby determined that floats, which are attached to, and removable from the galvanized steel pipes that are attached to the bottom of the canal, do not constitute a "structure".
2. The Board found that there was undisputed testimony (referencing Cases 063-19 and 087-19 for the same Premises) that while floats have been installed in the canal at 18 Tashmoo since 1994-5, the floats could not be considered grandfathered, as 1) they have been moved, and therefore not remained in a fixed location; 2) the sizes and number of the floats have changed, and 3) the floats have been shared with outside parties.
3. The Board of Appeals found (referencing Cases 063-19 and 087-19 for the same Premises) that the former owner of 18 Tashmoo Drive (Augusta), applied to the Board of Selectmen, dated 7 July 1995, for "Proposed to license under MGL. Chapter 91 Waterways Amnesty Program 80 L.F. of Bulk Head", which did not include a request for floats: The Harbor Master, document dated December 11, 1995, noted "license and maintain existing bulkhead" for 18 Tashmoo Dr., with no notation on floats. The shellfish warden, by document dated December 15, 1995, for 18 Tashmoo Drive, noted "Project O.K. Existing bulkhead.", with no mention of floats. The Falmouth Department of Natural Resources, document dated December 12, 1995, reported no objection to "...Augusta III, a bulkhead at 18 Tashmoo Drive" regarding "applications to license existing structures". Notes from the Selectmen's Meeting, December 18, 1995, where the notice of hearing was read, stated "to license and maintain an existing bulkhead, located at 18 Tashmoo Drive, East Falmouth". The Decision by the Board of Selectmen, dated December 21, 1995, reported approval "to license and maintain an existing bulkhead, located at 18 Tashmoo Drive, East Falmouth...". Thereby, the Zoning Board of Appeals found that there was no request, nor permitted approval for floats.

4. The Board found that under By-Law §240-77 through 79, and §240-36, that the Board of Selectmen are the permit granting authority regarding specific wetlands regulations, as well as floats and docks, and that the request by 18 Tashmoo Drive, East Falmouth to maintain floats at the Premises, is properly made to the Select Board, in conjunction with the Conservation Commission.

NOW THEREFORE, BE IT RESOLVED, that the Zoning Board of Appeals, being of the opinion aforesaid, and acting under By-Law Section 240-3 C. of the General Code of Falmouth, following a motion made by Mr. Foreman, and seconded by Mr. Dugan, voted unanimously to deny the requested special permit for floats sited in Eel Pond canal, at 18 Tashmoo Drive, East Falmouth, Massachusetts (the "Premises").

True Copy attest:

Noreen H. Stockman, Zoning Administrator

Date Filed With Town Clerk

Diane Davidson

1 attachment (45 pages)

From: Tyler M. Franklin <TFranklin@rubinrudman.com>
Sent: Friday, August 7, 2020 1:12 PM
To: Diane Davidson; Michael Palmer
Cc: Glenn A. Wood
Subject: Pentikis - Special Permit - Supplemental Filings
Attachments: Ltr. to Falmouth BOS with Exs - 8.7.2020.PDF



Hello Mr. Palmer and Ms. Davidson,

Attached please find supplemental filings for the Board's review prior to the Monday evening hearing on Nikolas J., John S. and Anthony P. Pentikis/James N. Pentikis Trust udt ("Pentikis") application for a Special Permit regarding existing floating docks in the Eel Pond Canal. A hard copy of these materials will be delivered in-hand Monday morning by Matt Costa of Coastal Engineering. We respectfully request that these materials be forward to the Board members for their review prior to the hearing.

Regards,

Tyler M. Franklin, Esq.
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F: 617-330-7550
C: 774-836-8657
tfranklin@rubinrudman.com

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Glenn A. Wood
Direct Dial: 617-330-7016
E-mail: GWood@rubinrudman.com



August 7, 2020

By Email and Hand Delivery

Megan English Braga
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 Braga and Members of the Board:

Please be advised that our office represents the applicants Nikolas J., John S. and Anthony P. Pentikis/James N. Pentikis Trust udt (collectively the “Applicant” or “Pentikis”) in the above-referenced application submitted to the Board of Selectmen (the “Board”) pursuant to Section 240-77 of the Zoning Bylaw on January 22, 2020 for permission to license, retain, and maintain his existing 4 foot by 40 foot floating dockage in and over the waters of Eel Pond Canal, according to the Existing Float Plans, revised January 21, 2020, adjacent to the Applicant’s property located at 5 Canapitsit Drive, Falmouth (the “Special Permit Application”). This letter is in addition to the report from Pentikis’ navigation and boating expert, Charlie Agro, E.I.T., of Coastal Engineering, Co., dated August 7, 2020 (“Coastal Report”) attached hereto as Exhibit 1.

I. Background.

Eel Pond Canal (the “canal”) is a man-made canal with a concrete bulkhead around its perimeter. *See* Eel Pond Canal Construction Documents attached hereto as Exhibit 2. In 1971, a subdivision plan was created for the properties around the canal. *See* Eel Pond Canal Subdivision Plan and Revised Subdivision Plan attached hereto as Exhibit 3. Notably, there are no restrictions on the number or size of floats or vessels to be kept on the frontage of the various property lots in the original subdivision plan. *Id.* Currently, many of the properties abutting the canal have their own floating docks with a vessel or two berthed along the dock.

Megan English Braga
 August 7, 2020
 Page 2

Pentikis owns property at 5 Canapitsit Drive with approximately 53 feet of frontage on the canal. In 2012, after receiving a Negative Determination of Applicability (“NDA”) from the Falmouth Conservation Commission (“FCC”) and confirming placement of floats with Falmouth Conservation Commission Administrator Jennifer McKay, Pentikis put two floating docks both 4 feet wide by 20 feet long, with an approximate 3 foot gap between them, parallel to and abutting the concrete bulkhead. *See* NDA attached as Exhibit 4. Pentikis owns a 19 foot Center Console vessel which is currently berthed along the floating docks with the bow (front) of the boat facing east. Pentikis also owns a smaller boat which he sometimes ties up behind the 19 foot vessel.¹

There have been no navigational issues in the canal caused by Pentikis’ floating docks since they were put into the canal in 2012. In fact, it was not until 2017, when Michael Kachadoorian (“Kachadoorian”) purchased a vacant lot on the western terminus of the canal that was commonly thought of as unbuildable and put great effort from conservation to construct a home, did anyone raise an issue with Pentikis’ docks. Shortly thereafter, Steven Balas (“Balas”) (owner of 64 Muskeget Road, which currently has an unlicensed floating dock) and Kachadoorian requested a zoning enforcement action against Pentikis because his floats did not have a Special Permit and/or a Chapter 91 License. Up till that point, Pentikis was under the mistaken belief that he had all the necessary permits to maintain the floats. Once he retained counsel and consultants to evaluate this issue and he recognized he needed additional permitting and promptly applied for a Chapter 91 License and submitted the Special Permit Application before the Board.²

II. Pentikis’ Existing Floats Have No Adverse Impact on the Aquatic Resources of Eel Pond Canal,

Pursuant to § 240-77 through § 240-79 of the Falmouth Zoning Code, the Board must review Pentikis’ Special Permit Application to assess whether the existing floats have an adverse impact on the aquatic resources of the canal “for the benefit and welfare of the present or future inhabitants of the Town.” § 240-77. Part of this review is an evaluation of the existing floats impact on navigability in the canal. Notably, Pentikis is not aware of the Harbormaster having any negative comments about the existing floats impact on navigation in the canal. In fact, Falmouth Harbormaster Gregg Fraser has testified under oath, in a litigation concerning a joint dock project proposed by Balas and Kachadoorian, that because the canal is principally used by private property owners with frontage on the canal that he did not believe floats in the canal would have an adverse impact on general navigation. *See* Deposition of Gregg Fraser (excerpts) at pp. 47-52 attached as Exhibit 5. This conclusion is supported by the Coastal Report wherein Mr. Agro details his professional opinion that Pentikis’ existing 40 feet of floating dockage has no adverse impact on navigation in the canal.

¹ On occasion, Pentikis has also allowed his neighbor to tie up a small vessel to his floating docks as a courtesy.

² Pentikis Chapter 91 License application is currently pending, and it expected to be approved.

Megan English Braga
 August 7, 2020
 Page 3

Additionally, Pentikis is not aware of any comments from the Falmouth Shellfish Constable that the existing floats have an adverse impact on shellfish or other aquatic resources in the canal. Notably, the floats have been reviewed and approved by the FCC under a NDA. Additionally, the fact that this is a man-made canal made for boating and that Pentikis' bulkhead has already been approved by the Board and has a Chapter 91 License is further proof that the aquatic resources issue in the canal has been reviewed and approved by the Town. *See* Bulkhead Special Permit attached hereto as Exhibit 6; *see also* Bulkhead Ch. 91 License attached hereto as Exhibit 7. In fact, according to Harbormaster Fraser, who has discussed the impact of floats upon shellfish in the canal with Falmouth's Shellfish Constable, Chuck Martinsen, floats in the canal have no impact on shellfish because the canal is never open for shell fishing. *See* Exhibit 5 at pp. 59-60; *see also* Shellfish Constable No Comment Letter attached hereto as Exhibit 8.

III. Pentikis' Existing Floats do not Adversely Impact Navigation or Preclude Kachadoorian from Having a Float and Boat in Eel Pond Canal.

Pentikis feels it necessary to address several allegations in Brian Wall's June 13, 2020 letter to the Board in opposition to Pentikis' Special Permit Application submitted on behalf of Kachadoorian. Kachadoorian's claim that Pentikis' two floating docks violate his fair and equitable access to the canal, as detailed in § 240-77 through § 240-79 of the Falmouth Zoning Code, is baseless. Michael Kachadoorian owns property adjacent to Pentikis, located at 50 Muskeget Road that has approximately thirty-two feet of frontage. Pentikis' frontage is on the northern side of the canal, abutting Kachadoorian's frontage on the northwestern side of the canal. Although the docking situation throughout the canal is relatively close and condensed, navigation can be accomplished safely with the proper configuration of docks and improved even further with the proper orientation of boats - as is done elsewhere in the canal. As detailed in the Coastal Report, there is nothing preventing Kachadoorian from having a float and safely accessing it with a boat if Pentikis moves his floating docks to the eastern end of his frontage - which he already has offered to do, and Kachadoorian moves his dock to the southern edge of his frontage.

In his Special Permit application Pentikis has, in good faith, volunteered to join his two floats together and move them to the eastern edge of his frontage. This would allow Pentikis to maintain his existing 40 feet of floating dock while provide nearly 14 feet from the bulkhead on Kachadoorian's frontage to the western edge of Pentikis' dock. If Kachadoorian moved his float to the southern border of his frontage, such that his float was orientated parallel to the Balas' existing float at 64 Muskeget Road, he could install a 4 foot wide by 24 foot long floating dock. It is Mr. Agro's professional opinion that this dock configuration would create enough space in the canal for both Kachadoorian and Pentikis to navigate, access, and dock safely thereby addressing the navigational concerns raised by Mr. Wall regarding § 240-77 through § 240-79 and 310 CMR 9.36(2) in his letter. It is also Mr. Argo's opinion that boating access and dockage would be further improved for both property owners if Pentikis docked his vessels on his dockage with the bow of the boats facing the western face of the bulkhead and Kachadoorian

Megan English Braga
August 7, 2020
Page 4

docked his boat along his floating dock with the bow facing the northern face of the bulkhead. See Site Plan prepared by Cape and Islands Engineering attached hereto as Exhibit 9. This would optimize the space for safe navigation in and out of their dockage.

Notably, there is a shoal of sand in the northwest corner of the canal, extending out about 6.5 feet in the southwest direction. At low-tide, there is less than 2.5 feet of water in this location. Placing a float in close proximity to that corner could mean that it would come to rest on the seafloor during low-tide and/or that operation of a motor in close proximity to that corner could cause increased turbidity both of which are environmental and permitting concerns. This is another reason why the parties docking their vessels with the bow of their boats facing the northwest corner of the canal bulkhead makes sense.

Mr. Wall's contention that a finding by this Board that a "one float and one boat" rule "is a fair and equitable solution" ignores the real issue and frankly would create a slippery slope for enforcement in the canal and elsewhere in the waters of Falmouth. First, the number of floats is not the issue, it is whether the size of the float(s) interferes with other property owners' fair and equitable use of the canal. As discussed above, Pentikis' proposed dock configuration addresses this issue head on. Kachadoorian should not be allowed to dictate how many floats Pentikis has and/or where they are located when they have no adverse impact upon Kachadoorian's fair and equitable use of the canal. Notably, there are no restrictions on the number or size of floats or vessels to be kept on the frontage of the various property lots in the original subdivision plan. If the Board were to adopt the "one float and one boat" rule suggested by Mr. Wall, even if informally, it would create a dangerous precedent of arbitrarily stripping property owners of usable frontage without consideration of how floats on that frontage impact navigation. This would have a vast adverse impact on property value and the investment-backed expectations of property owners in the canal, and elsewhere, whom paid a premium for more frontage so that they could use it, within the applicable regulations, as they wished.

Second, Kachadoorian's demand that the Board carve out 20 feet of Pentikis' frontage cannot reasonably be considered fair or equitable. If approved, Kachadoorian would be able to utilize approximately 75% of his frontage while Pentikis would be deprived of using 38% of his waterfront. Conversely, if the plan proposed by Pentikis is adopted, both Kachadoorian and Pentikis would be able to use approximately 75% of their frontage. This is clearly a more equitable and just result.

Third, Mr. Wall's reference to MA DEP Waterways regulation, 310 CMR 9.36(2), as support for Kachadoorian's request for "20 feet of free and unoccupied space extending from Kachadoorian's bulkhead easterly along Pentikis' bulkhead" is disingenuous at best. The requirement in 310 CMR 9.36(2) that a proposed structure be placed at least 25 feet away from an abutting property line is meant to be enforced along a liner shoreline, not an artificial man-made structure created specifically for boating such as the canal. A perfect example of this is Falmouth Inner Harbor where the 25 foot setback standard is clearly not enforced. Furthermore,

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Page 5

even if it is applicable, the 25 foot setback is a discretionary design restriction that can be waived where it is infeasible. As demonstrated by the other docks in the canal, including but not limited to those of Dundulis and Balas, it is not feasible to have a 25 foot setback in the canal. Notably, Dundulis was awarded a Chapter 91 License and his floating docks are clearly less than 25 feet from Balas' property. In fact, if this requirement was to be applied as suggested by Mr. Wall, then Kachadoorian, with his 32 feet of frontage, would not be able to have any kind of float or boat. Tellingly, Kachadoorian is not pushing this setback relative to Balas, his neighbor to the south. There is no rational reason why it should be used against Pentikis where, as detailed above, the Pentikis' existing floating docks do not "significantly interfere" with Kachadoorian's "right to approach [his] property from a waterway, and approach the waterway from said property, as provided in M.G.L.c. 91, § 17." 310 CMR 9.36(2).

Pentikis agrees with Kachadoorian that the canal is a limited resource and that Kachadoorian has a right to fairly and equitably utilize it. However, as discussed above, Pentikis' proposed dock configuration does not impede Kachadoorian's rights because it allows for both parties to safely navigate, access, and berth vessels on floating docks in the canal. Accordingly, there is no need to adopt an arbitrary "one float and one boat" rule in the canal. Such a measure by the Board fails to address the principal issue of navigation and would arbitrarily strip Pentikis, and other property owners, of their investment-backed expectations to be able to use their canal frontage, consistent with application regulations, as they wished.

IV. Conclusion.

For these reasons, Pentikis requests that the Board grant his application for a Special Permit to allow Pentikis to continue to maintain a 4 foot by 40 foot float area so that he may use 75% of his frontage and reject Kachadoorian's request for the Board to adopt a "one float and one boat" rule. This is the most equitable, common-sense solution to this issue.

Sincerely,



Glenn A. Wood, Esq.

cc: Nikolas J., John S. and Anthony P. Pentikis/James N. Pentikis Trust udt
Matthew Costa, P.L.S., Cape & Islands Engineering, Inc.
Brian Wall, Esq.

EXHIBIT 1



August 07, 2020

Project No: C19456.00

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

RE: Mr. Tony Pentikis - Dock Configuration at 5 Canapitsit Drive East Falmouth, MA

Dear Town of Falmouth Board of Selectmen,

Coastal Engineering Company was retained by Mr. Pentikis so that I, Charlie Agro, could provide an expert opinion on the navigability and boating access to his floating docks and a potentially proposed floating dock along his neighbor's property at 50 Muskeget Rd. I am a USCG OUPV – Operator Licensed Boat Captain, Certified Engineer in Training (E.I.T), Project Manager with the Marine Engineering Division of Coastal Engineering Company, and Hydrographic Surveyor with over 6 years of professional experience in hydrography. In my current position at Coastal Engineering Company, which I have held for over three years, I regularly operate a 22 foot hydrographic survey vessel in and out of very tight and sometimes shallow harbors and marinas around the Cape, Islands, and South-shore of Massachusetts to collect soundings for dredging, marina reconfiguration, new dock installation, and seafloor monitoring projects. As well as operating the hydrographic survey vessel and hydrographic survey equipment, I am also a project manager for designing and permitting such proposed projects. I have been involved with the design and permitting process for many private and municipal docks and piers, some of which are in tight harbors that involve innovative thinking to meet required setbacks, water depth, distance from neighboring docks, and provide safe navigation and access for boaters. As a Licensed Boat Captain I regularly operate my own 22 foot fishing vessel for commercial and recreational fishing around a lot of the nearshore waters of Cape Cod and have been through many of the harbors around the entire Cape. In my professional experience as a licensed boat captain I have operated vessels up to 42 feet long in and around harbors from Florida to Massachusetts. For these reasons I believe I am a qualified professional to provide an expert opinion in this matter.

On July 09, 2020 I visited Mr. Pentikis' property (referenced above) to visually observe the water body along the shorefront edge of his property, take measurements along the existing concrete bulkhead to determine where his docks would be relocated to and estimate where a dock could potentially be installed at 50 Muskeget Rd, and navigate his boat in and around his existing floating docks. From my initial observations, the man-made canal appears to be a safe harbor for the many boats berthed at floating docks abutting the concrete bulkhead around the Canal. Each property along the canal appears to have its own floating dock(s) with a vessel or two berthed along the dock. The docking situation is relatively close and condensed throughout the canal. Most boats appear to be approximately 20-25 feet long with a few larger vessels up to approximately 35 or 40 feet long. The canal does appear to be a safe area for vessel navigation and berthing due to sufficient water depth in the unmarked channel (vessel traffic is through the middle of the canal) and low current velocity due to minimal tidal flow in and out of the canal. According to Buzzards Bay National Estuary Program (interactive map showing tidal datum elevations along the coast of Massachusetts, using data generated by NOAA's VDatum Software) mean-high water (MHW) is 0.456 feet and mean-low water (MLW) is -1.23 feet (in reference to NAVD88) within the canal. Therefore the average tidal range is approximately 1.7 feet. This is a relatively low tidal range in comparison to most of the waterways in and around Cape Cod and therefore will produce relatively low tidal-driven currents. Wind-driven currents should also be minimal within the canal due to the orientation of the canal and protection from the adjacent topography and buildings along the adjacent upland area. For these reasons the canal should be a safe place for navigation and dockage of vessels even though the docking situation is relatively tight and condensed. Docking a vessel can be difficult in tight situations when there is a high velocity current, however in this area current flow should be minimal making docking a vessel safe and easy.

Mr. Pentikis currently has two floating docks located parallel to and abutting the concrete bulkhead along the shorefront of his property. The floating docks are both 4 feet wide by 20 feet long. They are currently situated

parallel to each other with an approximate 3 foot gap between them. His float on the eastern side of his frontage is tied up approximately 1 foot west of the property line. He owns a 19' Center Console vessel which is berthed along his floating docks with the bow (front) of the boat facing east. The vessel is powered by an outboard motor which was tilted up and pointing toward the western face of the concrete bulkhead which is located along the frontage of 50 Muskeget Rd. According to Mr. Pentikis he has a smaller boat, which he owns, and is sometimes tied up along the eastern end of his dock between his center console and his neighbor's dock at 13 Canapisit Dr. According to Mr. Pentikis his neighbor at 50 Muskeget Rd is proposing to install a floating dock along the north-western face of the bulkhead adjacent to his lot frontage. The proposed dock plans for 50 Muskeget Rd have not been released so the proposed size and configuration of the floating dock is unknown.

I have been made aware that the potentially proposed dock to be installed at 50 Muskeget Rd has caused a dispute between Mr. Pentikis and Mr. Kachadoorian, the owner of 50 Muskeget Rd. According to Mr. Pentikis he has volunteered to move his floating docks to the eastern edge of his lot line and join the two floats together to provide more space for a proposed dock at 50 Muskeget Rd. I am aware that Mr. Pentikis' Engineer, Matt Costa from Cape and Islands Engineering, has prepared an application and plans to license the reconfiguration of the two floating docks. While I was onsite I measured 40 feet from the lot line stake on the eastern end of Mr. Pentikis' property and left a temporary mark to show where the western end of the floating dock would be. Then I measured the distance from that mark to the north-western corner of the bulkhead to be 13 feet 10 inches. Having not seen the proposed dock plan for 50 Muskeget Rd, I assume the floating dock will be approximately 4 feet wide to match the width of the typical floating docks in the area. So I measured 4 feet from the corner of the bulkhead to the east (towards Mr. Pentikis' property) and made a mark to visualize where the potential proposed dock may be located. After making the marks I spent some time visually observing the area and conceptualizing how boating access and dockage could be possible for both properties. While onsite I made the determination that boating access and docking is possible for dockage at both properties, especially with the proposed reconfiguration of the docks at Mr. Pentikis' property. I also determined navigation and access could be further improved for both property owners if Mr. Pentikis rotates his boat 180 degrees so the bow of the boat is facing the western face of the bulkhead. If Mr. Kachadoorian docked his boat along his potential floating dock with the bow of his boat pointing north, both boats would be docked pointing bow to bow (front of the boat) which will optimize the space for safe navigation in and out of their dockage. (Refer to the sketch plans provided by Cape and Islands Engineering for a schematic view of the proposed layout and for more information and details).

Having not seen the proposed site plan for the proposed dock(s) at 50 Muskeget Rd, I can only speculate as to the location and size if the potential floating dock. As previously stated I assume the proposed dock will be approximately 4 feet wide and installed parallel to and immediately abutting the concrete bulkhead similarly to the other floating docks in the canal. From the proposed dock re-configuration plans for Mr. Pentikis' property, prepared by Cape and Islands Engineering, it appears the lot frontage for 50 Muskeget Rd is approximately 32 feet. Therefore I assume the proposed floating dock(s) at 50 Muskeget Rd will be approximately 24 feet long to occupy approximately 75% of the lot frontage along the waterfront (75% occupancy of the waterfront to match the percent occupancy of Mr. Pentikis floating docks). Given these assumptions, a 24 foot long by 4 foot wide floating dock installed at 50 Muskeget Rd should be installed to the furthest southern limit of his lot frontage along the bulkhead for the following reasons.

1. The amount of space would be optimized for both property owners to navigate their boats in the area near the north-western corner of the concrete bulkhead. There is another dock owned by 64 Muskeget Rd a few feet south of the southern lot line of 50 Muskeget Rd which is oriented in the same direction along the bulkhead. Installing a dock at 50 Muskeget Rd immediately adjacent to the southern abutter's dock would not cause a navigational, access, or docking issue because they are oriented parallel to each other. This is the same situation between the docks at Mr. Pentikis' property and the docks owned by his eastern abutter at 13 Canapisit Dr. The docks at Mr. Pentikis' property and his neighbor's property at 13 Canapisit Dr. do not interfere with each other or cause a navigational, access, or docking hazard because they are oriented in the same direction allowing vessels to dock parallel to each other. The same would be true for a potential floating dock(s) along the bulkhead in front of 50 Muskeget and the existing dock 64 Muskeget Rd. If the proposed dock at 50 Muskeget Rd is situated as far to the southern limit as possible, it would optimize the navigable space between Mr. Pentikis' property and 50 Muskeget Rd.
2. Upon my visual observation, it appears a shoal of sand exists from the north-western corner of the bulkhead and extends about 6.5 feet in the south-west direction along the bulkhead. The shoal may have formed due to seepage through apparent cracks in the bulkhead and deposition of sediment transported through Eel River. It appears there may not be sufficient water depth for a floating dock within the area of

the shoal because the floating dock might sit on the seafloor during low tide. The presence of the shoal could be an environmental and permitting concern due to the bottom of the float being very close to and potentially resting on the seafloor, as well as increased turbidity from the proximity of the motor to the seafloor. From my experience in dock design and permitting most floating docks need to be designed so that there is at least 2.5 feet of water between the bottom of the float and the seafloor at mean-low tide. Due to the presence of the shoal, I don't think it would be possible for a floating dock to be located over the shoal and maintain the 2.5 foot gap between the bottom of the float and seafloor at mean-low tide. This further supports my recommendation to orient both boats so they are pointed bow to bow with the stern of the boat and the propellers away from the shallower water in the area around the shoal.

I have read the letter prepared by Troy Wall Associates, who represents Mr. Kachadoorian, dated June 13, 2020 and addressed to the Board of Selectmen and have several comments regarding his four reasons why "the Abutters" (Mr. Kachadoorian) is opposed to the two floats owned by Mr. Pentikis.

1. There is no reason, from a navigational, access, and berthing perspective that the two floats owned by Mr. Pentikis would preclude Mr. Kachadoorian from having any float and boat on his water front. As previously stated, Mr. Pentikis has already agreed to move both of his docks to the eastern limit of his property frontage to provide more space for Mr. Kachadoorian to install a boat. As I have recommended, Mr. Pentikis has rotated his boat 180 degrees so that the narrowest point of his vessel, the bow (front), is pointed towards Mr. Kachadoorian's waterfront. By moving his floats as far away from Mr. Kachadoorian's water front as possible and rotating his boat, Mr. Pentikis has provided plenty of space for a floating dock and boat along Mr. Kachadoorian's waterfront.
2. It is my understanding that Mr. Prentikis team of engineers and attorneys have submitted applications to the necessary permitting agencies to obtain the required permits for his floats.
3. Mr. Pentikis is proposing to move both of his docks together to reduce his occupancy along the bulkhead to 40 feet which is only 75% usage of his frontage. As I have stated, it is my professional opinion that there is enough space for a vessel (potentially Mr. Kachadoorian's vessel) to navigate around Mr. Pentikis' dock and berthed vessel and pull into a dock along Mr. Kachadoorian's waterfront. Especially when docking would be a bow to bow orientation. For this reason, Mr. Pentikis' floating docks and boat do not prevent Mr. Kachadoorian from occupying any of his waterfront with a dock and boat. There will likely be permitting and navigational limitations for Mr. Kachadoorian's floating dock and boat due to the presence of the shoal located in the north-western corner of the bulkhead, which has nothing to do with Mr. Pentikis' floating dock and boat. The shoal could potentially be dredged to remove the shoal and resolve this issue. Mr. Pentikis' boat and float does stick out approximately 13 feet into the canal, however there is plenty of space for a vessel to navigate around it, and if one of Mr. Pentikis' floats was removed it would not change the fact that his float and dock would still stick out 13 feet into the canal. Either way this does not prevent Mr. Kachadoorian from occupying his entire frontage with a boat and dock. The proposal by Mr. Pentikis to connect his docks, move them as far to the eastern limit of his waterfront as possible, and rotate his boat 180 degrees provides plenty of room for a vessel to navigate around Mr. Pentikis floating dock and boat and berth at a dock along Mr. Kachadoorian's waterfront.
4. It is my understanding that Mr. Pentikis is seeking to keep both of his floats because both of his floats have existed in the canal for many years and he has used them for docking with no issues from other boaters. According to Mr. Pentikis he has another vessel which sometimes, temporarily ties up to the other float. Over the years he may upgrade to a larger vessel which would require the docking space that he currently has. As previously stated, Mr. Pentikis' proposal to modify his float layout will reduce his occupancy of his waterfront to 75% and his proposal will not impede on Mr. Kachadoorian's ability to use any of his waterfront. The proposed float configuration will not prevent a vessel from navigating around the floating docks and boat owned by Mr. Pentikis. For these reasons the existence of Mr. Pentikis second float has no effect on installing a floating dock for a boat along Mr. Kachadoorian's waterfront.

As a qualified professional, it is my opinion that there is sufficient space to provide access and safe navigation and dockage for both existing floating docks on Mr. Pentikis' property and a new floating dock to be potentially installed along the bulkhead at 50 Muskeget Rd. In reference to my determinations, comments to the opposing comments made by Troy Wall Associates, and the sketch plan provided by Cape and Islands Engineering, both boats would have enough room to pull into and out of their docking space and navigate through the canal safely. The bow to bow orientation of the boats would optimize the space between the boats and provide safe and easy turning

patterns for the boats to follow as they leave their docks. The man-made canal is a well-developed and frequently used waterbody with many boats berthed close to each other and in a safe manner. In my professional opinion, the existing docks at 5 Canapsit Rd do not cause a navigational, access, or docking concern for a potential dock at 50 Muskeget situated along the western face of the bulkhead. The proposal by Mr. Pentikis to move his docks as far away from the waterfront frontage of 50 Muskeget Dr. and to rotate his boat 180 degrees so the bow is pointed toward the western face of the bulkhead further improves navigation within the area between both properties and provides more space for a proposed floating dock and boat at 50 Muskeget Rd.

Very Truly Yours,

COASTAL ENGINEERING CO., INC.



Charlie A. Agro, E.I.T
Marine Department Project Engineer
USCG OUPV Captain - Hydrographic Surveyor
August 07, 2020

EXHIBIT 2

THE COMMONWEALTH OF MASSACHUSETTS

19270

DEPARTMENT OF NATURAL RESOURCES

100 CAMBRIDGE STREET
BOSTON, MASSACHUSETTS 02202

BOOK 1524 PAGE 1096

PERMIT UNDER

G.L. c.130 s.27A

FILE NUMBER: DF-588 PROJECT LOCATION: Falmouth
 TO: Robert B. Pacheco, 136 Acapesket Road
 Robert H. Moore, 83 Walker Street CERT. MAIL NO.: 332141
 Falmouth, Massachusetts 332142
 John R. Augusta, Susan Lane Their successors 332143
 Teaticket, Massachusetts & assigns.
 RE: NOTICE OF INTENT AND PLANS DATED: October 13, 1970 - Locus, Muriel Lane
Salt Water Shores Trust / the

See Plan Book 2 47 Page 146

Pursuant to the authority of G.L. c.130 s.27A, the Director of the Division of Marine Fisheries has considered your notice of intent and plans submitted therewith, and has determined that the proposed project described therein should be approved. However, the Director finds that in order to protect shellfish and other marine fisheries, the following conditions are necessary, and all work must be performed in strict conformance therewith. Therefore, the said Director issues this permit, and upon the recording thereof in the appropriate Registry of Deeds, work may commence.

CONDITIONS

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this permit.
2. The provisions of G.L. cc.91 and 111, and any regulations adopted thereunder, must be fully complied with.
3. This permit does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
4. This permit does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinances, by-laws and/or regulations.
5. The work authorized hereunder shall be completed within one (1) year from the date of this permit. A one (1) year extension of this period may be obtained by the submission of plans to the Director of the Division of Marine Fisheries which indicate the remaining work to be performed.
6. Any fill used in connection with this project shall be clean fill containing no trash, refuse, rubbish or debris, including, without limiting the generality of the foregoing, lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles or parts of any of the foregoing.
7. All septic systems of dwellings adjacent to the proposed canal should be placed at a minimum distance of one hundred (100') feet away from the edge of the canal.
8. In order to improve circulation within the proposed canal a cut will be made connecting the canal with the existing brook near the head of Eel Pond. This cut will be approximately ten (10') feet wide and six (6') feet deep.
9. The minimum distance between the canal and the brook will be ten (10') feet.
10. All construction must conform in every respect with the plan submitted entitled, Subdivision Plan of Land in Falmouth, Massachusetts, for Salt Water Shores Trust, by John P. Doyle, R.L.S., dated April 28, 1971, revised May 25, 1971.

FILE NUMBER: DF-588

PERMITTEE: Robert B. Pacheco
Robert H. Moore
John R. Augusta
Their successors & assigns

In the event that the permittee is aggrieved by the terms and conditions of this permit, he is entitled pursuant to G.L. C.30A, to file a petition for Judicial Review in the Superior Court within thirty (30) days after the receipt thereof or, if a petition for rehearing has been timely filed with the Department, within (30) days after the receipt of any notice from the Department denying such petition for rehearing.

PRIOR TO COMMENCEMENT OF WORK HEREUNDER, THIS PERMIT MUST BE RECORDED AND/OR REGISTERED IN THE APPROPRIATE REGISTRY OF DEEDS IN THE NAME OF THE OWNER OF THE PROPERTY UPON WHICH THE WORK IS TO BE PERFORMED.

PREPARED BY:

George R. Sprague
Director George R. Sprague
Div. of Conservation Services

ISSUED BY:

Frank Grice
Director Frank Grice
Div. of Marine Fisheries

APPROVED:

Arthur W. Brownell
Arthur W. Brownell, Commissioner

1250

On this 22nd day of July 1971, FRANK GRICE, before me personally appeared to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Silvia Ferrante
Notary Public

My commission expires: Aug. 6, 1976

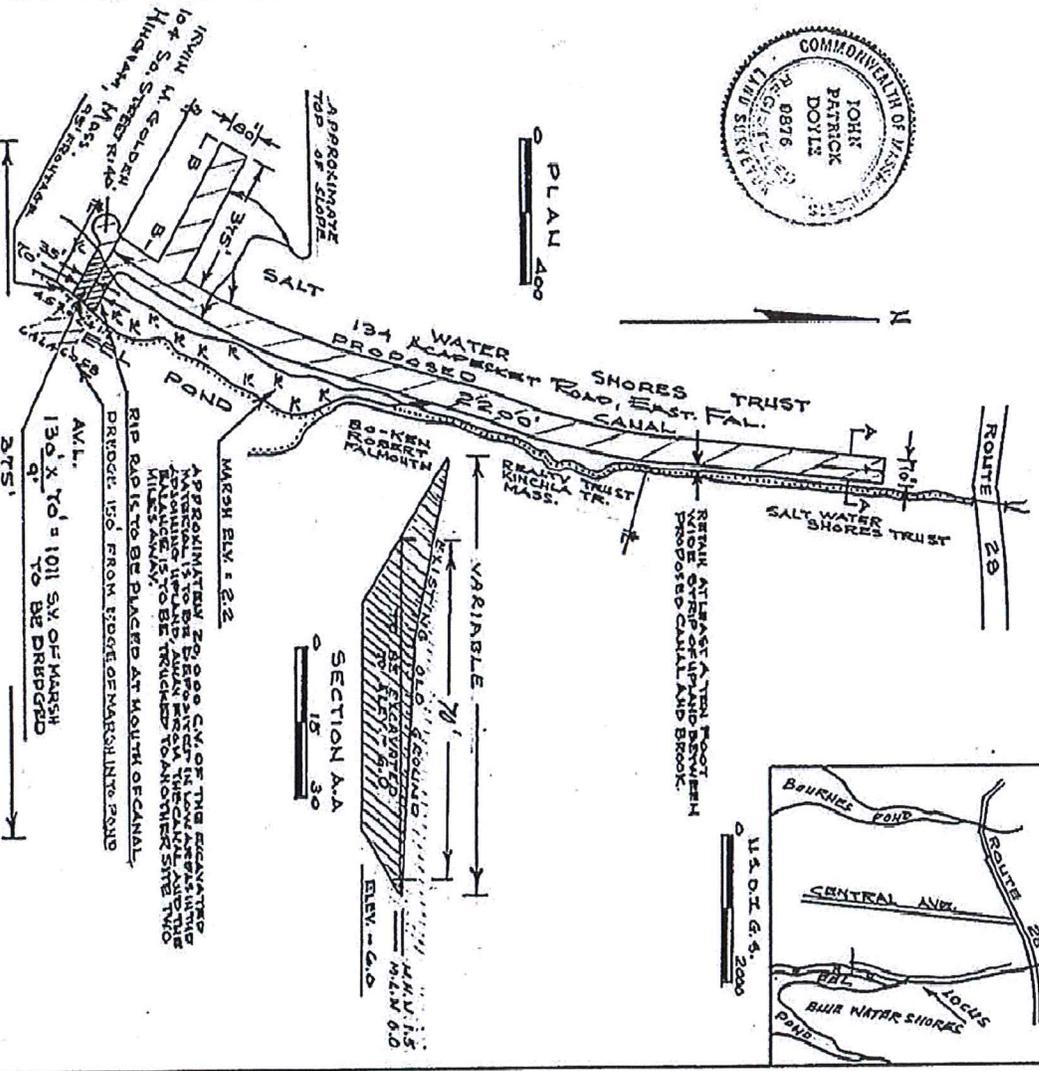
BOOK 1524 PAGE 1097

REC'D AUG 26 1971

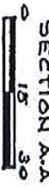
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PLAN 400



SECTION A-A



PROFILE B-B



UNRECORDED
 HARRISVILLE
 REGISTRY OF DEEDS
 AUG 26 1971
 2 RECORDED
 4:55 PM

PLAN ACCOMPANYING PETITION
 OF
 SALT WATER SHORES TRUST
 AND
 IRWIN M. GOLDEN
 TO DREDGE A CANAL AND EXTEND
 BEP POND BY DREDGING OF MARSH
 IN
 FALMOUTH

LICENSE PLAN NO. 5852
 APPROVED BY DEPARTMENT OF PUBLIC WORKS OF MASSACHUSETTS
 MARCH 10 1971
 COMMISSIONER
 of PUBLIC WORKS

Robert S. Doyle
Richard

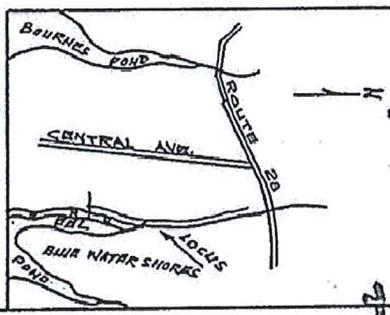
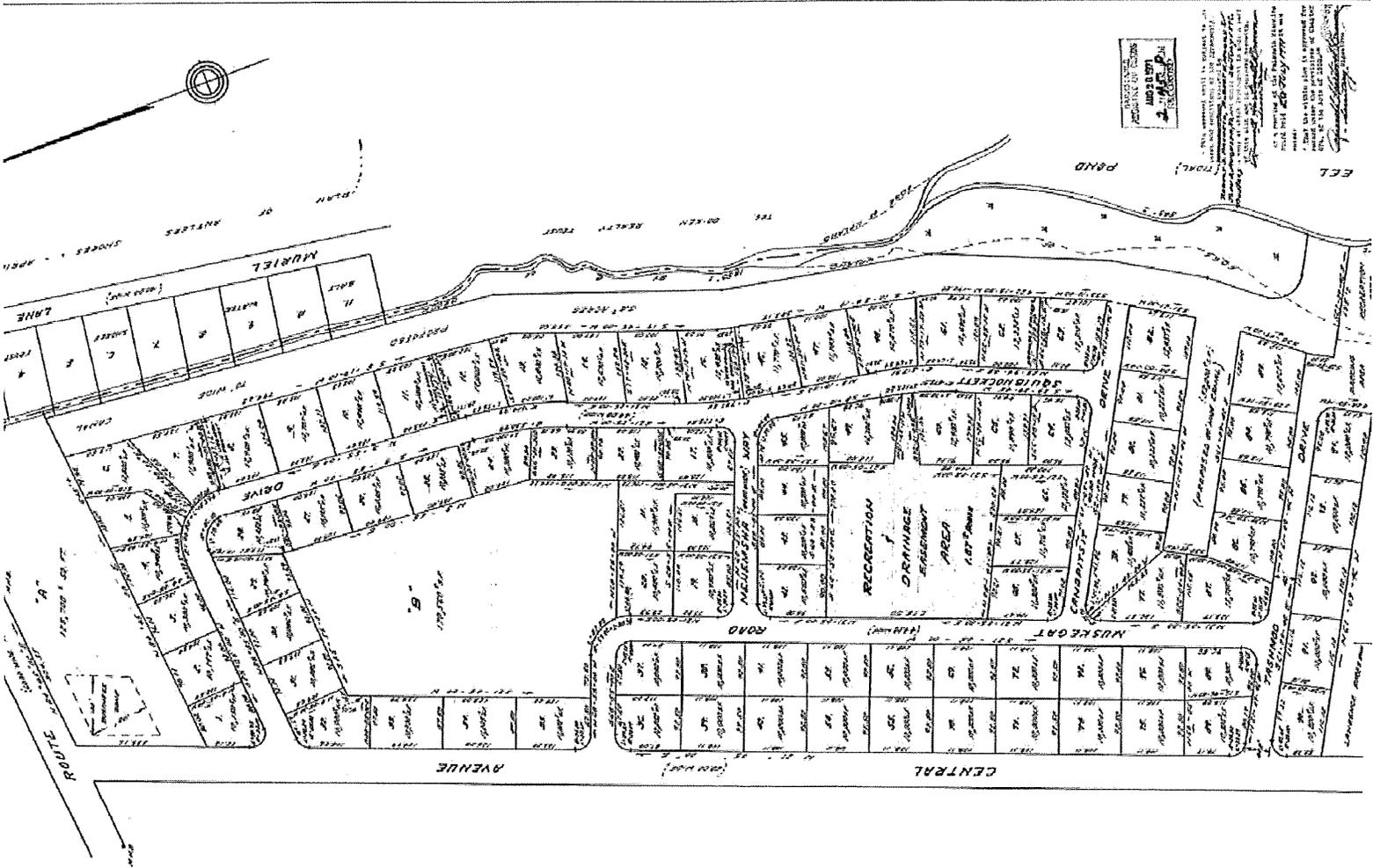


EXHIBIT 3

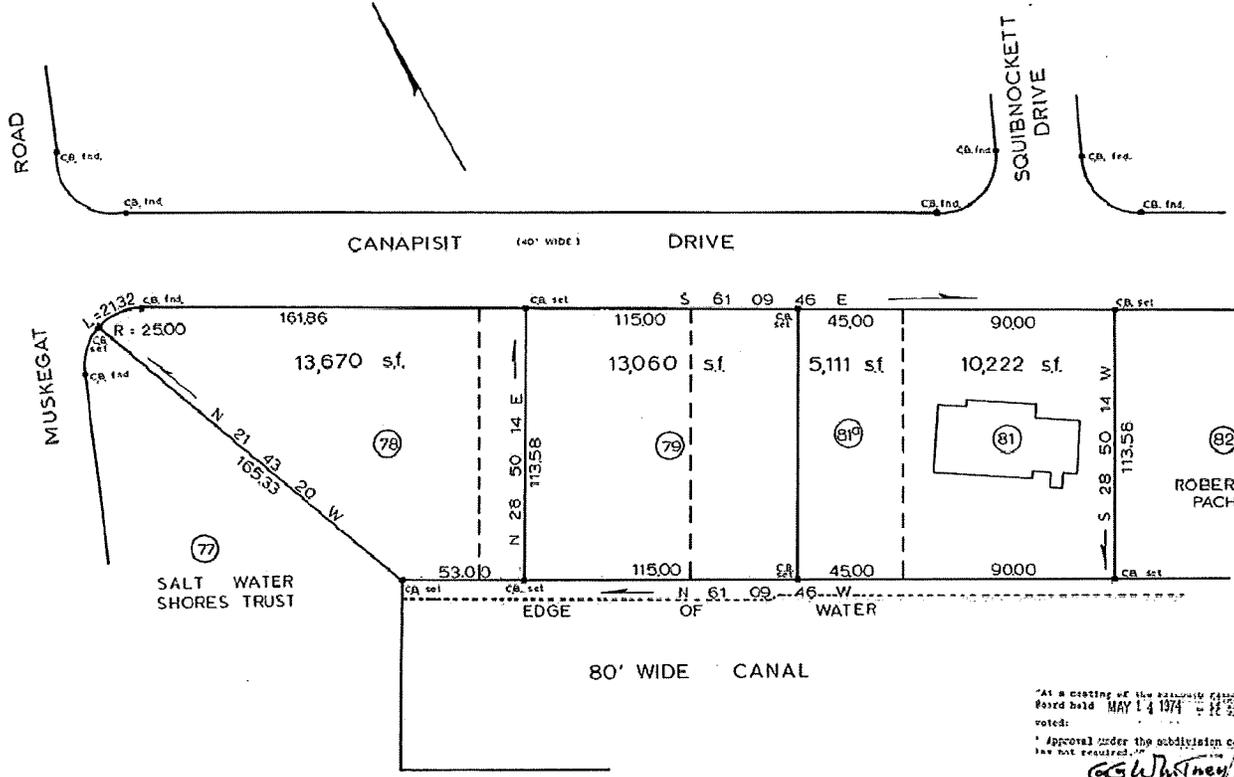
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PLAN DRAWN 200 11/22/62

6-11

RECORDED
10r 22 S 17 11/74
SABINE
RECORDS
SITTING ROOM
FALMOUTH



REFERENCE:
SUBDIVISION PLAN OF LAND IN FALMOUTH - MASS.
FOR SALT WATER SHORES TRUST, SCALE 1"=80', APRIL 28,
1971, JOHN P. DOYLE, R.L.S.

NOTE:
LOT 81 TO BE CONVEYED TO LOT 81

I CERTIFY THAT THIS PLAN WAS MADE
WITH LAND COURT STANDARDS OF ACCURACY,
AND THAT ALL POINTS SHOWN DO EXIST ON
THE GROUND AS SHOWN.
John P. Doyle 3/26/74
MONTEGOMERY COURT
FALMOUTH, MASS.



"At a meeting of the Falmouth Planning Board held MAY 14 1974 ...
voted:
Approval under the subdivision control law not required."
CS Whitney

REVISED SUBDIVISION
PLAN OF LAND
IN
FALMOUTH - MASS.
FOR
ROBERT B. PACHECO
SCALE 1" = 30' MAR 26 1974
JOHN P. DOYLE R.L.S.

EXHIBIT 4



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

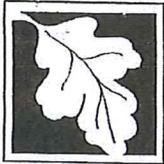
Name of Municipality

Pursuant to the following municipal wetland ordinance or bylaw:

Falmouth Conservation Commission

Name

Ordinance or Bylaw Citation



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:

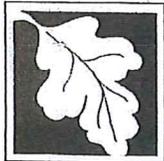
by hand delivery on by certified mail, return receipt requested on
 1/25/12 James M. Pentekis _____
 Date Date

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:

6/13/2012
 Date



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.

EXHIBIT 5

1 COMMONWEALTH OF MASSACHUSETTS
 2 BARNSTABLE, ss. SUPERIOR COURT
 3 NO. 1872CV713
 4

5 *****
 6 PATRICIA DUNDULIS, FRANK DUNDULIS)
 AND ANTHONY PENTIKIS,)
 7 Plaintiffs,)
 8 vs.)
 9 SUSAN MORAN, MEGAN ENGLISH BRAGA,)
 DOUG JONES, SAM PATTERSON AND)
 10 DOUG BROWN, AS THEY ARE MEMBERS)
 OF THE TOWN OF FALMOUTH BOARD)
 11 OF SELECTMEN, STEVEN BALAS AND)
 MICHAEL KACHADOORIAN,)
 12 Defendants.)
 13 *****

14 **DEPOSITION OF GREGG FRASER**, taken in
 15 behalf of the Plaintiffs, Patricia Dundulis
 16 and Frank Dundulis, pursuant to the
 17 applicable provisions of the Massachusetts
 18 Rules of Civil Procedure, before Sarah
 19 Harper, Registered Professional Reporter and
 20 Notary Public in and for the Commonwealth of
 21 Massachusetts, at the offices of the Town Of
 22 Falmouth Town Counsel, 157 Locust Street,
 23 Falmouth, Massachusetts, on Tuesday,
 24 January 18, 2020, commencing at 10:10 a.m.

1 it.

2 Q. I see. Fair enough. And do you recall
3 whether you have ever reviewed any applications
4 for docks in Fiddlers Cove?

5 A. Yes.

6 Q. Do you know how recently that occurred
7 or do you remember the address?

8 A. I think it was on Waterside Drive. I
9 think that's the name of the road. But those
10 docks, we did not oppose it. They're all
11 almost identical docks sticking out the exact
12 amount, so they had no general navigation
13 impact because they were all similar to all the
14 other docks that were there.

15 Q. The proposal didn't have any effect on
16 the width of the track, the navigable way?

17 A. No. It didn't, no.

18 Q. I want to show you an email chain and
19 if you can just take a moment to look it over.
20 Do you remember this email exchange?

21 A. I do.

22 MR HOYT: Can I ask that this be
23 marked as Exhibit 1?

24 (Exhibit No. 1, Email; so marked.)

1 Q. Is this the email by which Mike
2 Borselli of Falmouth Engineering asked you to
3 review the proposed float that's the subject of
4 this lawsuit we have been talking about?

5 A. Yes.

6 Q. I'm going to show you a plan. Do you
7 recognize the plan?

8 A. I do.

9 Q. Do you remember whether the plan
10 attached to the email we just marked as
11 Exhibit 1 --

12 A. I don't remember. I believe I was
13 commenting on the original plan, not the
14 revised plan. But I don't see on this -- I
15 think this is the original? I'm not a hundred
16 percent sure, but it doesn't say revised on it,
17 which it usually would if it was a revised
18 plan, so I believe it is the one.

19 Q. When you say the revised plan, do you
20 remember what the revisions were?

21 A. I think it was -- as I recall, it
22 wasn't the dock proposed but the width of the
23 canal.

24 Q. Do you know what is the width of the

1 canal?

2 A. I do not. Well, it says 40 feet, or 40
3 feet to the bounds.

4 Q. That's fine. If you don't, that's
5 fine. As far as you recall, this was the plan
6 that was attached to the email.

7 A. Yes.

8 MR. HOYT: Can we have this marked
9 as Exhibit 2?

10 (Exhibit No. 2, Plan; so marked.)

11 Q. So to the best of your recollection,
12 can you sort of summarize what your analysis
13 was of this plan when you received it?

14 A. It was simply that the proposed dock
15 would not have an impact on general navigation,
16 because in my opinion, the only people that
17 would be impacted by navigation are the
18 applicant and the abutters.

19 Q. Is it accurate to say that the impact
20 on the applicant and the abutters was not
21 within the scope of your review on which you
22 would give comment?

23 A. That's correct. I expressed to the
24 Conservation administrator that I did not feel

1 it was a general navigation issue.

2 Q. Based on its location at the dead-end
3 of a canal.

4 A. Exactly.

5 Q. You mentioned that at the end of --
6 just tell me if I say this correctly -- that in
7 Eel River West near the mouth of Tashmoo Canal,
8 there are some town moorings or some moorings
9 that the town issues permits for?

10 A. All the way throughout Eel River West,
11 there are moorings, even outside of this canal.

12 Q. Did you evaluate whether the proposed
13 dock and float would have any impact on those
14 moorings?

15 A. No, it wouldn't. I didn't say that
16 because there were no moorings in the immediate
17 area, and the moorings that are here are on the
18 other side of the split, essentially, where you
19 have to turn left to come into Tashmoo or you
20 go straight where the mooring field is.

21 Q. So a boat coming in to use this
22 proposed dock would not have to traverse
23 through a mooring field.

24 A. No.

1 Q. Was there any other substantive
 2 analysis that you did with respect to this
 3 proposal?

4 A. Analysis, no.

5 Q. Do you remember -- prior to receiving
 6 the email, Exhibit 1, from Mike Borselli, do
 7 you recall whether you had had any previous
 8 conversations with Mr. Borselli about this
 9 proposal?

10 A. I don't believe I have.

11 Q. Do you remember discussing the proposal
 12 with anyone other than, I think you said,
 13 Ms. McKay?

14 A. Lincoln now, but yes.

15 Q. And Mr. Borselli?

16 A. I may have discussed it with the
 17 shellfish constable who also has to comment on
 18 behalf to the Conservation Commission as to the
 19 effects on shellfish. We typically discuss the
 20 applicants because we both have to comment.

21 Q. Right. And looking back to the email
 22 for a moment. You responded to Mr. Borselli by
 23 saying, "Mike, I have no objections to this
 24 proposal for navigational moorings," and you

1 signed your name. Is that the only
2 communication you had with Mr. Borselli about
3 the proposal?

4 A. As far as I recall, it is.

5 Q. After this exchange in March of 2008,
6 do you recall whether you ever made any further
7 written comment to anyone else at any time
8 after that?

9 A. I did send an email to Jennifer McKay
10 basically reiterating that I did not believe it
11 was a general navigation issue and that I
12 wasn't going to take any further position on
13 it.

14 Q. I'm not sure I have a copy of that
15 email. I'd probably ask you in a follow-up
16 through counsel if you can get a copy of that.

17 Do you recall whether you ever went to
18 any public hearing with respect to the project?

19 A. I did not.

20 Q. Turning back for a moment to your more
21 general job as a law enforcement officer in the
22 coastal part of Falmouth, if there are
23 incidents in which, say, a boat has an
24 accident, crashes into another boat or crashes

1 orientation than the other docks in Tashmoo
2 Canal?

3 A. Yes.

4 Q. And when you talk about the Fiddlers
5 Cove canal, were all those docks, were they
6 parallel to the bulkhead or were they
7 perpendicular?

8 A. It's a combination of both.

9 Q. Okay, pardon. I thought I heard you
10 say they're essentially all the same in there
11 so there wouldn't be any issues with
12 navigation.

13 A. Well, they don't impact navigation
14 because the ones that do stick out are all of
15 the same length, but there are some flat walls
16 as well.

17 Q. You mentioned that you spoke with the
18 shellfish constable regarding this proposed
19 dock, correct?

20 A. I believe I did, yes, because I knew
21 that he has to comment on every one as well. I
22 typically get them in the office, and then I
23 put his copy in his box for his comment.

24 Q. And could you remind me who the

1 shellfish constable is at this time?

2 A. It's Chuck Martinsen, Deputy Director
3 of MES.

4 Q. He continues to be the constable as
5 well?

6 A. Yes, he is.

7 Q. Are you aware he issued a comment on
8 this project?

9 A. I believe he issued it was not an
10 impact on the shellfish. This area is never
11 open for shellfishing.

12 Q. And you are not aware of any, I think
13 the term is, is it collisions, when boats hit
14 boats?

15 A. Boat accident.

16 Q. Okay. Let's go with boat accident
17 and/or collisions. So you are not aware of any
18 of those in Tashmoo Canal?

19 A. None that have been reported to me, no.

20 Q. What about Fiddlers Cove, do you
21 remember any of those being reported to you?

22 A. There have been issues at the marina
23 but not in the canal.

24 Q. Okay. So there's a marina outside of

EXHIBIT 6



TOWN OF FALMOUTH
59 TOWN HALL SQUARE
FALMOUTH, MA 02540

August 3, 1994

Mr. James N. Pentikis
P. O. Box 901
East Falmouth, MA 02536

Dear Mr. Pentikis:

After a public hearing duly advertised and held on August 1, 1994 at 8:00 P.M., in accordance with Section 4300 (Wetland Regulations) of the Zoning Bylaws, to license and maintain an existing 53' concrete seawall located at 5 Canapitsit Drive, East Falmouth, the Board of Selectmen has voted approval subject to the following:

PRE-EXISTING STRUCTURE

1. That all work has been done in accordance with the plan dated January 7, 1994, submitted at the hearing, and drawn by Robb B. Sykes P.L.S.
2. Structure is authorized for private non-commercial use of home occupant and guests. It may not be used for commercial purposes, leased, rented or otherwise let for compensation. Any change of use requires an amended application and appropriate hearing. This decision does not authorize the holder of this permit to violate any appropriate deed restrictions of property rights of others.

James N. Pentikis
Page 2
August 3, 1994

Notice is hereby given that any appeal of this decision shall be made pursuant to Section 17 of Mass. General Laws, Chapter 40A, and shall be filed within twenty (20) days after the date of filing of this decision in the office of the Town Clerk.

Sincerely,

Edward Marks Jr
Edward Marks, Jr.

Troy B. G. Clarkson
Troy B. G. Clarkson

George DeMello
George DeMello

Virginia Valiela
Virginia Valiela

Mary Pat Flynn
Mary Pat Flynn

BOARD OF SELECTMEN

B/lca

- cc: Conservation Commission
- Shellfish Warden
- Department of Natural Resources
- Harbor Master
- Town Clerk
- Planning Board
- Building Department
- Health Department
- Abutters

TOWN CLERK'S OFFICE
 Falmouth, MA Aug 9 1994
 Received for Record at 10 O'Clock A M
 and Recorded in Vol 19 on Page _____
Carol A. Martin Town Clerk

EXHIBIT 7

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).

5 Canapitait Drive Falm

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:
 - 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.

EXHIBIT 8



MARINE & ENVIRONMENTAL SERVICES
TOWN OF FALMOUTH
180 SCRANTON AVENUE, FALMOUTH, MA 02540
TEL: (508) 457-2550 • FAX: (508) 457-2525
TOWN MARINA TEL: (508) 457-2551

To: Falmouth Conservation Commission

From: Chuck Martinsen ~ DNR
Deputy Director of MES

Date: April 6, 2018

Re: Site Plan – Proposed Ramp & Float
64 & Lot 77 Muskegat Road

RECEIVED
APR 10 2018
BY CONSERVATION

We have no comment at this time.

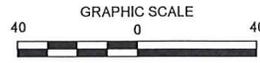
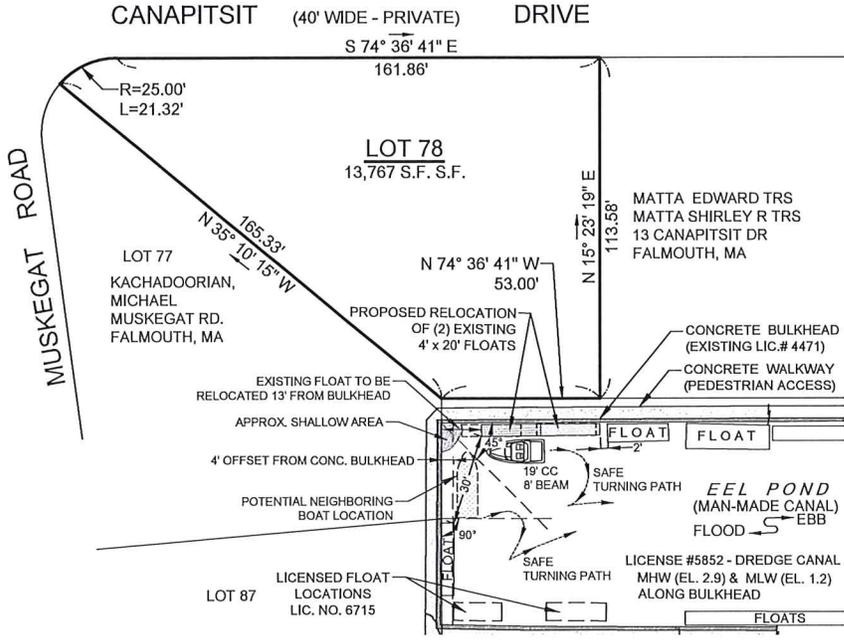
EXHIBIT 9

I HEREBY CERTIFY THAT THIS PLAN DOES CONFORM WITH THE REQUIREMENTS FOR RECORDING OF PLANS IN THE REGISTRY OF DEEDS.

MATTHEW C. COSTA, P.L.S.



LOCUS MAP N.T.S.



TIDE RANGE: ±1.7
LATITUDE 41.572402
LONGITUDE -70.546010
DATUM: NAVD88 = 0.00 FT.
ELEVATIONS IN FEET

EXISTING FLOAT PLAN
PARCEL ADDRESS: 5 CANAPITSIT DRIVE
FALMOUTH, MA (BARNSTABLE COUNTY)
PLAN ACCOMPANYING PETITION OF
NICKOLAS, J., JOHN S. AND ANTHONY P. PENTIKIS
TRUSTEES OF THE JAMES N. PENTIKIS TRUST
TO MAINTAIN 2 FLOATS
IN AND OVER THE WATERS OF
EEL POND CANAL, EAST FALMOUTH,
MASSACHUSETTS

PLAN BY: CAPE & ISLANDS ENGINEERING, INC.
508.477.7272 DATE: 9/12/18, REVISED 1/21/20

PARCEL ID MAP 32-04-008-078 SHEET 1 OF 2

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

August 7, 2020

Megan English Braga, Chair
Select Board
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:

This serves to supplement the correspondence that we submitted to the Select Board on June 13, 2020 regarding the above-referenced matter.

Emphasized in our letter is the fact that Mr. Balas (“Balas”) and Mr. Kachadoorian (“Kachadoorian”) have suspended their effort to obtain permits for a perpendicular dock at their shared property boundary (in large part because of the opposition by neighbors) in order to seek permits for floats parallel to their bulkheads. Both Balas and Kachadoorian will soon be filing applications with the Conservation Commission for wetlands permits. Thereafter, they will each be applying to the Select Board for a Special Permit.

Balas and Kachadoorian respectfully request the Select Board to take their intentions into account when reviewing Mr. Pentikis’ application for Special Permit. Enclosed herewith is a working draft of their plan which depicts the probable size (4’ x 25’) and location of the floats that they will be proposing.

The canal is a limited resource and its use should be apportioned fairly and equitably so that each owner can have room for a float and a boat. Obtaining permits should not be based upon being first to file. Balas and Kachadoorian request the Select Board to consider their respective need for space for a float, space to tie a boat to the float, and room to maneuver a boat in and out from the float in various wind and weather conditions.

August 7, 2020
Page 2

Thank you for your consideration.

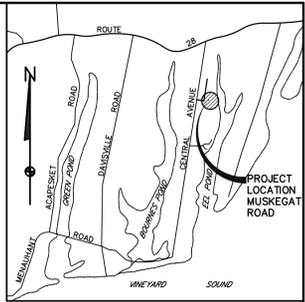
Very truly yours,

A handwritten signature in black ink that reads "Brian J. Wall". The signature is written in a cursive style with a large, stylized "B" and "W".

Brian J. Wall

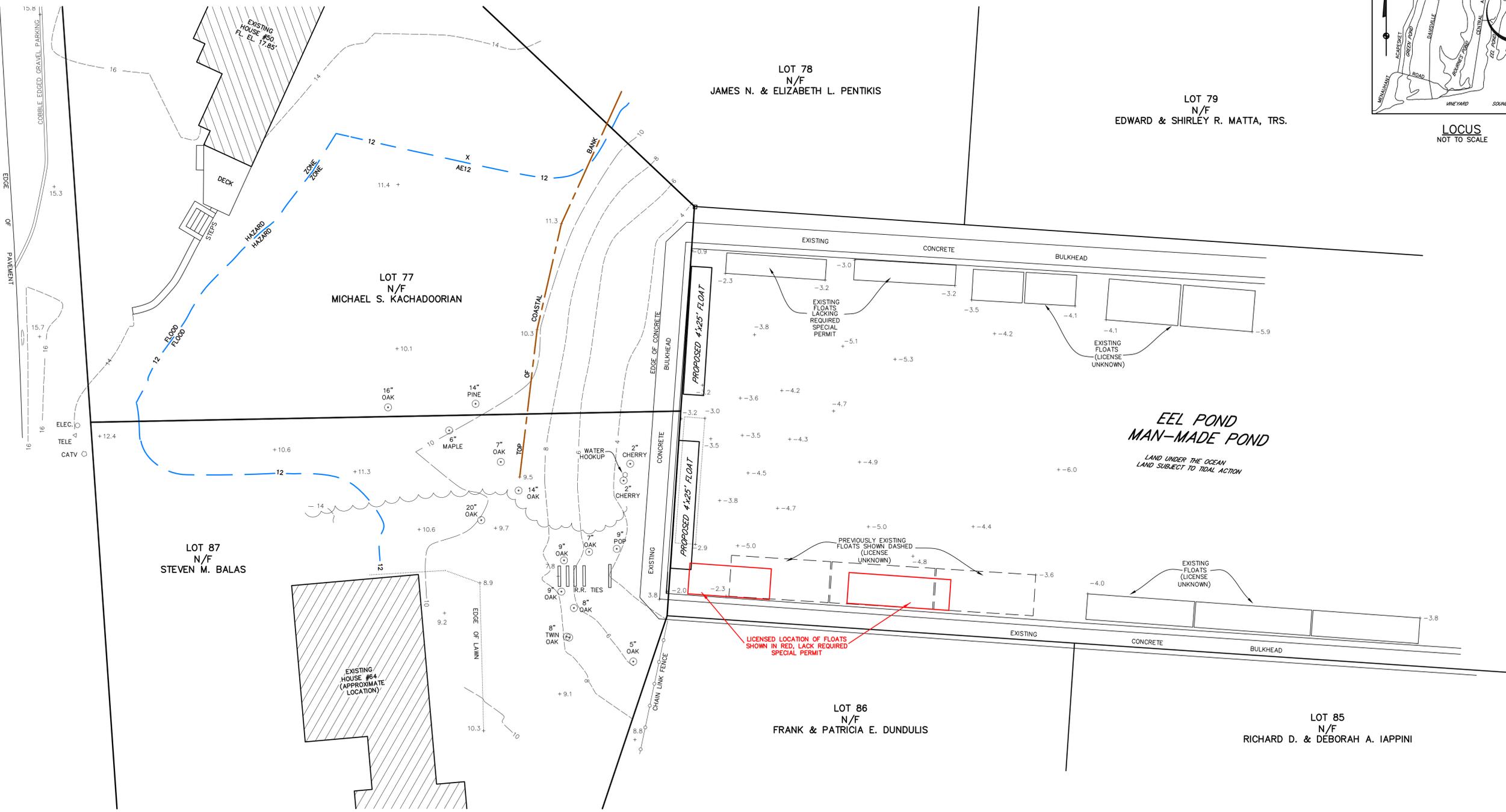
Enclosure

**Cc: Steve Balas
Michael Kachadoorian
Matt Costa, PE, PLS
Glenn Wood, Esq.
Drew Hoyt, Esq.**

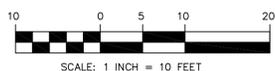
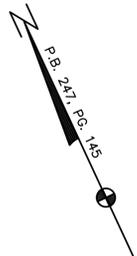
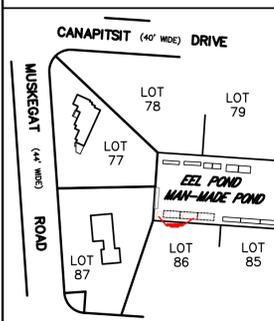


LOCUS
NOT TO SCALE

MUSKEGAT ROAD (44' WIDE)



KEY MAP
SCALE: 1" = 100'



LEGEND

- 2' --- EXISTING 2' CONTOUR
- 10' --- EXISTING 10' CONTOUR
- +5.5 EXISTING SPOT ELEVATION
- OAK ○ EXISTING TREE
- CB FOUND □ CONCRETE BOUND

SITE PLAN – PROPOSED FLOATS
FOR #50 & #64 MUSKEGAT ROAD
PREPARED FOR
STEVEN BALAS & MICHAEL KACHADOORIAN
IN
FALMOUTH MA

PLAN DATE: JULY 17, 2020 PLAN SCALE: 1" = 10'

CIVIL ENGINEERING	WETLANDS PERMITTING
WASTEWATER DESIGN	COASTAL ENGINEERING
TITLE 5 PLOT PLANS	PIERS AND DOCKS
LAND USE PLANNING	COMMERCIAL/RESIDENTIAL

Serving Cape Cod and Southeastern Massachusetts

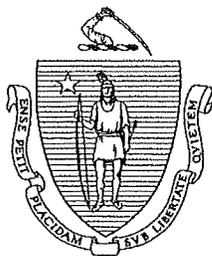
17 ACADEMY LANE, SUITE 200 – FALMOUTH, MA – 02540 – 508.495.1225

PROJECT NUMBER: 17059 CAD FILE NAME: 17059SP 2020 DRAWN BY: L.M. SHEET 1 OF 1



7:45 p.m. BUSINESS

1. Discussion/update on COVID-19 issues
 - Discussion of suggested “mandatory mask zone”



OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

**ORDER REQUIRING FACE COVERINGS IN PUBLIC PLACES WHERE SOCIAL
DISTANCING IS NOT POSSIBLE**

COVID-19 Order No. 31

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus (“COVID-19”);

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, the Federal Centers for Disease Control have determined that COVID-19 is spread mainly by person to person contact and that the best means of slowing the spread of the virus is through practicing social distancing and by minimizing personal contact with environments where the virus may be spread;

WHEREAS, the Department of Public Health continues to urge all residents of the Commonwealth to limit activities outside of the home and to practice social distancing at all times to limit the spread of this highly contagious and potentially deadly virus;

WHEREAS, public health experts have determined that it is possible for an infected individual to transmit COVID-19 even when the individual does not exhibit symptoms of the virus;

WHEREAS, the Centers for Disease Control and Department of Public Health have advised individuals to wear cloth face coverings when they are out of the home and may be in close proximity to others in order to prevent transmission of this highly contagious virus;

WHEREAS, the number of confirmed cases of COVID-19 continues to rise in the Commonwealth. As of April 30, 2020, the Department of Public Health had reported 62,205 cases of COVID-19, including 3,562 deaths, with all counties across the Commonwealth affected;

WHEREAS, the eventual reopening of businesses and public places in the Commonwealth will require residents to continue to take precautions, including the wearing of masks or cloth face coverings; and

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to authority over assemblages and pedestrian travel in order to protect the health and safety of persons; transportation or travel; regulation of the sale of articles of food and household articles; and the policing, protection, and preservation of public and private property;

NOW, THEREFORE, I hereby Order the following:

Effective Wednesday, May 6, 2020, any person over age two who is in a place open to the public in the Commonwealth, whether indoor or outdoor, and is unable to or does not maintain a distance of approximately six feet from every other person shall cover their mouth and nose with a mask or cloth face covering, except where a person is unable to wear a mask or face covering due to a medical condition or the person is otherwise exempted by Department of Public Health guidance. A person who declines to wear a mask or cloth face covering because of a medical condition shall not be required to produce documentation verifying the condition. This requirement applies to all workers and customers of businesses and other organizations open to the public that are permitted to operate as COVID-19 Essential Businesses as defined in Appendix A of COVID-19 Order 13, as extended by COVID-19 Orders 21 and 30.

All persons are required to wear masks or cloth face coverings at all times when inside grocery stores, pharmacies, and other retail stores. All persons are also required to wear masks or cloth face coverings when providing or using the services of any taxi, car, livery, ride-sharing, or similar service or any means of mass public transit, or while within an enclosed or semi-enclosed transit stop or waiting area.

All persons are strongly discouraged from using medical-grade masks to meet the requirements of this Order, as medical-grade masks should be reserved for healthcare workers and first responders.

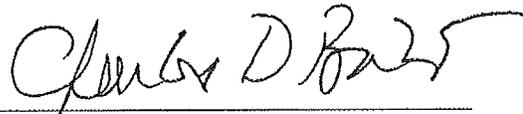
The Commissioner of Public Health is directed to issue guidance, subject to my approval, to implement the terms of this Order, which shall include guidance for the use of face coverings by children between the ages of two and five years old.

If a customer refuses to wear a mask or cloth face covering for non-medical reasons, a business may decline entry to the individual.

The Department of Public Health, local boards of health and authorized agents pursuant to G. L. c. 111, § 30 are authorized to enforce this Order and if necessary may do so with the assistance of State or municipal police. Violation of the terms of this Order or Department of Public Health Guidance may result in a civil fine of up to \$300 per violation, in the manner provided for non-criminal disposition of violations of municipal by-law, ordinance, rule, or regulation pursuant to G. L. c. 40, § 21D.

This Order is effective Wednesday, May 6, 2020, and shall remain in effect until rescinded or until the emergency is terminated, whichever happens first.

Given in Boston at 9:30 AM this 1st day of
May, two thousand and twenty

A handwritten signature in black ink, appearing to read "Charles D. Baker". The signature is written in a cursive style with a horizontal line underneath it.

CHARLES D. BAKER
GOVERNOR

Commonwealth of Massachusetts

Diane Davidson

From: Julian Suso
Sent: Friday, August 7, 2020 10:10 AM
To: Diane Davidson
Subject: FW: Mask policy

Diane,
For SB Packet – COVID-19. Thanks.
Julian

From: Catherine Bumpus <catherinebumpus@gmail.com>
Sent: Tuesday, August 4, 2020 10:07 AM
To: Megan English Braga <megan.english-braga@falmouthma.gov>
Cc: Falmouth Selectboard <selectboard@falmouthma.gov>; Falmouth Health Department <health@falmouthma.gov>
Subject: Mask policy

Hi Megan,

I am asking that you put implementing a mandatory mask zone for certain areas of town on the Select Board's agenda for next Monday night.

I would hope that the board would also seek Board of Health support of such a measure if possible given meeting times and days.

Given that is that there is an uptick in cases locally this has some urgency. Some of the uptick has been publicly reported, like the lifeguards, but much have not. Testing is seriously delayed. I know someone who started to feel ill on Tuesday of last week. Spoke with their doctor on Thursday who ordered a test that day. The first available test was Monday morning and results may take 6 to 8 days. That testing is through Cape Cod Healthcare at the Falmouth Hospital drive through site. I have spoken with a doctor friend of mine who says that other testing has similar delays. My friend is also seeing an uptick in people who are feeling ill and wanting a test rather than just wanting a test for travel.

People may be wandering around not knowing that they are ill. It is important that everyone make efforts to protect themselves and others but not everyone is. In Woods Hole walking down the sidewalk it is very hard if not impossible to social distance, but some people feel that they are outside and don't need to put on their masks. Designating outdoor areas as mandatory masks zones has been done in any number of other communities and I believe it's important for the health of this community. I've had people say to me they are not comfortable walking down the street because of the number of unmasked people they encounter, both in Woods Hole and on Main St.

While it might be nice to think that fewer people will be here soon, I have heard of a lot of people who are staying in their summer homes into the fall. I know someone who was asked if they would rent their house to seven undergraduate college students who were going to be doing remote learning for the fall semester. That kind of group is likely to add to the potential for community spread. Now is the time to be vigilant. The possibility that enforcing a mask requirement might be hard is not a reason not to try to slow possible spread. If you can act on this at the next select board meeting then you have the chance to implement it promptly.

As they have done in the past, Woods Hole Community Association would be more than willing to help with signage and public awareness if you chose to implement such a policy in Woods Hole.

Best,
Catherine

1. Discussion/update on COVID-19 issues
 - Discussion of Cape Cod Times August 6, 2020 Lifeguard Article

Julian Suso

From: Falmouth Town Manager
Sent: Thursday, August 6, 2020 10:15 AM
To: Falmouth Selectboard
Cc: Scott McGann; Maggie Clayton
Subject: CC Times Lifeguard article
Attachments: Falmouth lifeguards - capecodtimes 8-6-2020.pdf

Dear Select Board:

We want to bring to your attention a mischaracterization of CDC guidance that appears in an article published in the Cape Cod Times today. The article suggests the Town did not follow CDC guidance by allowing lifeguards to work while awaiting test results. That is not accurate. The author of this article misrepresents CDC guidance when she writes: "Guidelines from the federal Centers for Disease Control and Prevention state that a person should stay home for 14 days after contact with someone who has COVID-19, the disease caused by the new coronavirus."

The actual CDC guidance can be found on the CDC website via the links below. As we know, the CDC guidance is that a person should quarantine after "close contact" or "prolonged exposure" with someone who has COVID-19. The CDC recommends a 14 day quarantine when an: "Individual who has had close contact (< 6 feet) for ≥15 minutes." Copied below for your reference is a table showing the applicable CDC guidance. The Town has, without exception, immediately removed from active service any employee known to have had contact within 6 feet or less for 15 minutes or more of an individual who has COVID-19 within the timeframes outlined by the CDC as shown in the table below. The Beach Department, as with all Town Departments, also requires each employee to self-certify that they do not have COVID-19 symptoms at the start of the work day. The author of the news article has done a disservice to the community by spreading misinformation and suggesting the Town did not follow CDC guidelines in managing exposure to lifeguards who tested positive for COVID-19.

Please let us know should you have any questions or concerns regarding this matter.

<https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>

"Suspected or Confirmed Cases of COVID-19 in the Workplace

If employees have been exposed but are not showing symptoms, should I allow them to work? Employees may have been exposed if they are a "close contact" of someone who is infected, which is defined as being within about 6 feet of a person with COVID-19 for a prolonged period of time:

- Potentially exposed employees who **have** symptoms of COVID-19 should self-isolate and follow CDC recommended steps.
- Potentially exposed employees who **do not have** symptoms should remain at home or in a comparable setting and practice social distancing for 14 days.

All other employees should self-monitor for symptoms and wear cloth face coverings when in public. If they develop symptoms, they should notify their supervisor and stay home."

Person	Exposure to	Recommended Precautions
<ul style="list-style-type: none">Individual who has had close contact (< 6 feet)** for ≥15 minutes***	<ul style="list-style-type: none">Person with COVID-19 who has <u>symptoms</u> (in the period from 2 days before symptom onset until they meet criteria for <u>discontinuing home isolation</u>; can be laboratory-confirmed or a clinically compatible illness)Person who has tested positive for COVID-19 (laboratory confirmed) but has not had any <u>symptoms</u> (in the 2 days before the date of specimen collection until they meet criteria for <u>discontinuing home isolation</u>). <p>Note: This is irrespective of whether the person with COVID-19 or the contact was wearing a mask or whether the contact was wearing respiratory personal protective equipment (PPE)</p>	<ul style="list-style-type: none">Stay home until symptoms resolve and maintain social distancing from others at all timesSelf-monitor for symptoms<ul style="list-style-type: none">Check temperatureWatch for shortness of breathOther symptomsAvoid contact with people who have <u>severe illness</u> from COVID-19Follow <u>CDC guidelines</u>

On behalf of:
Julian M. Suso & Peter Johnson-Staub

Peter Johnson-Staub
Assistant Town Manager
Town of Falmouth, MA
O: 508-495-7320

<http://www.falmouthmass.us>

Be advised that most emails to, and from, municipal offices and officials are public record. Confidentiality should not be expected.



Falmouth lifeguards work while awaiting virus test results

By Jessica Hill / jhill@capecodonline.com

Posted Aug 5, 2020 at 8:08 PM

Updated at 6:04 AM

Town officials maintain that state, federal protocols being followed.

FALMOUTH — With at least 10 lifeguards testing positive for the coronavirus, the town of Falmouth has encouraged all Beach Department staff to get tested, but it also has allowed those employees to continue working until results come back.

In a July 27 email to staff obtained by the Times, Acting Beach Superintendent Maggie Clayton said “those who have tested negative, are awaiting test results, or have not tested yet are able to continue working” if they are not exhibiting symptoms, continue to wear a mask, wash their hands regularly and maintain social distance.

In an email sent two days earlier, Clayton told employees “we may not be able to fulfill our mission to keep the community safe” because of employees who tested positive, lived with someone who tested positive, or quit or refused to work since the first positive tests were revealed.

[Read more coronavirus news on Cape Cod](#)

Town Manager Julian Suso said the town has followed state and federal protocols for contact tracing and has immediately removed any employee from active duty for a 14-day quarantine if it has learned the individual has been exposed to the virus.

“The Town cannot remove individuals from active duty absent evidence of an exposure, or symptoms, or a positive COVID-19 test,” Suso said via email Wednesday.

Guidelines from the federal Centers for Disease Control and Prevention state that a person should stay home for 14 days after contact with someone who has COVID-19, the disease caused by the new coronavirus. Even those who test negative or feel healthy should stay home, since symptoms may not appear for two to 14 days after exposure, according to the guidelines.

A lifeguard told Beach Department supervisors July 24 about a positive test result, and throughout that weekend additional lifeguards came forward to report positive results. Suso said July 29 that those lifeguards had been “removed from working status” and recommended to quarantine.

The town coordinated with Cape Cod Healthcare to set up free nasal swab tests for all Beach Department staff at Falmouth Hospital.

Since then 55 of the 117 staff members have been tested, and the total number of positive cases remains at 10, Megan English Braga, chairwoman of the Falmouth Select Board, said Wednesday.

Quest Diagnostics, one of several labs used by Cape Cod Healthcare, reported Monday that the average turnaround time for test results was five days, although that can vary by region.

Suso said although several lifeguards carpool to work, most of them are siblings. Those who are not related and have to carpool to get to their station from roll call are directed to wear masks in the car with the windows down. No more than three people are allowed per vehicle, he said.

Suso said interactions at work in the Beach Department do not meet the definition of “close contact.” The town has built 10 additional lifeguard stands so that two lifeguards are not sitting in the same chair, and he said lifeguards wear masks whenever on ground level.

Lifeguards participate in drills most of the season that include running, swimming or a combination of both as a “fit-for-duty” check, Suso said. The lifeguards complete the drills in small groups, and masks are worn, he said.

In a July 26 email to staff, Clayton said lifeguards had not done drills for the previous two days, but she stood by a decision to continue “morning workouts that are less than 15 mins. in length without a mask.” She cited CDC guidelines,

which state there is no evidence the virus can spread to people through water.

Before the start of the season, all Beach Department staff signed protocols designed to keep staff safe and control the spread of COVID-19, according to a July 25 email from Clayton. The protocols require staff to wear masks and wash hands, among other precautions.

The protocols also stated, "meeting sizes should be limited; for the Beach Department, this translates to Orientation being virtual, Water Clinic/Training Day in groups of 10 or less, and multiple locations for daily roll call."

Normally all staff members gather at the Ellen T. Mitchell Bathhouse before heading out to their assigned beaches. Although the protocols included conducting roll call in multiple locations, lifeguards said roll calls have continued to be held at the bathhouse.

Suso confirmed Wednesday that roll call is held outside at Surf Drive every day for announcements, with everyone wearing masks and keeping 6 feet apart. Head lifeguards and assistant head lifeguards are assigned to specific beaches for five days per week, and other lifeguards rotate around the 10 public beaches, Suso said.

In a July 25 email to staff, Clayton said the development of positive cases among employees was attributed to "choices made by some on our staff who acted carelessly and imprudently in not following social distancing guidelines in a gathering after work hours; these cases are not related to exposure at work."

Town Health Agent Scott McGann stated in his weekly COVID-19 update Friday that the town's infection rate was "pretty close to negligible recently." He discouraged large social gatherings, saying people who have no symptoms or have not been tested yet can spread the disease, creating a "snowball effect."

"That's really what we don't want," McGann said. "By following the guidance and not having large gatherings, and limiting those types of things and quarantining as you're supposed to, that will help keep the counts down. ... It only takes one gathering where somebody who is asymptomatic ends up spreading."

Since the lifeguards tested positive, the town has operated with reduced staff at some beaches, Suso said previously. On Wednesday, for instance, no lifeguards were at Falmouth Heights Beach, and a sign informing beachgoers of that was at the parking lot entrance. The department updates its website frequently with information as to which beach parking lots are full, but posts no information about which beaches do not have lifeguards that day.

The Beach Department directed all questions Wednesday to Suso's office, and McGann did not respond to a request for comment.

Follow Jessica Hill on Twitter: [@jess_hillyeah](https://twitter.com/jess_hillyeah).

1. Discussion/update on COVID-19 issues

Diane Davidson

From: Julian Suso
Sent: Friday, August 7, 2020 2:50 PM
To: Falmouth Selectboard
Cc: Edward Dunne; Peter Johnson-Staub; Diane Davidson
Subject: FW: Baker Orders New Enforcement

Dear Board Members,
FYI, this helpful summary of just-released COVID-19 fine-tuning on restrictions from Governor Baker.
Julian

From: Edward Dunne <edward.dunne@falmouthpolicema.gov>
Sent: Friday, August 7, 2020 1:56 PM
To: Julian Suso <julian.suso@falmouthma.gov>
Subject: Baker Orders New Enforcement

Baker Orders New Enforcement, Gathering Size Limit to Fight Virus Spread

[Coverage Developing] Gov. Charlie Baker is indefinitely postponing the next step of the state's reopening in response to the uptick in COVID-19 cases that Massachusetts has seen in recent weeks. The governor said the second step of Phase 3 of the state's reopening plan will be put on hold and the outdoor gathering limit will decrease from 100 to 50, effective Tuesday. He said he was authorizing all state and local police to enforce the orders, and that people who host events -- even on private property -- that exceed gathering limits will be subject to fines. Amid reports of large parties and unauthorized gatherings, Baker said "some residents feel a bit too relaxed about the seriousness of this virus." He also announced the creation of a COVID Enforcement and Intervention Team that will ramp up enforcement efforts and coordinate intervention efforts in yet-to-be-named high-risk communities. "We have to work hard, always, harder in some respects than ever, to contain COVID-19 and keep our economy open for business," Baker said. "We also want to keep this virus out of our communities as we head into the fall so we can give our kids a chance to get back to school." Movie theaters, gyms, casinos, museums and more were allowed to reopen in early July as part of Phase 3. The Baker administration referred to it as "Step One of Phase III" but did not fully detail what would be included in the second step of Phase 3. On the state's reopening website, it lists indoor theater or concert hall performances, and laser tag, roller skating, trampolines and obstacle courses as the activities that would be allowed to reopen in step two of Phase 3. Baker said the gathering limit for any outdoor event will be reduced to 50 as of Tuesday, but the limit on indoor gatherings will remain at 25. He said the limits apply to all types of locations on public or private property. He also said he was updating restaurant guidance to make clear that alcohol may only be served for on-site consumption if it is accompanied by food prepared on-site. - Colin A. Young/SHNS

Edward A. Dunne
Chief of Police

Falmouth Police Department
750 Main Street
Falmouth, MA 02540

edward.dunne@falmouthpolicema.gov

Ph. 774-255-4527
Fax 508-457-2513



-----NOTICE-----

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Diane Davidson

From: Julian Suso
Sent: Friday, August 7, 2020 2:55 PM
To: Diane Davidson
Subject: FW: New Gathering Order, including enforcement expansion
Attachments: Revised%20Gatherings%20Order%20August%207,%202020 (1).docx

Diane,
For Select Board packet as well. Thanks.
Julian

From: Irie Mullin <irie.mullin@falmouthma.gov>
Sent: Friday, August 7, 2020 2:40 PM
To: Julian Suso <julian.suso@falmouthma.gov>; Edward Dunne <edward.dunne@falmouthpolicema.gov>
Cc: Scott McGann <scott.mcgann@falmouthma.gov>; Frank Duffy <frank.duffy@falmouthma.gov>; Kim Fish <kimberly.fish@falmouthma.gov>; Peter Johnson-Staub <peter.johnson-staub@falmouthma.gov>
Subject: New Gathering Order, including enforcement expansion

Julian and Chief Dunne,

As you probably know, the Governor issued a new gathering order, Order 46, today. A signed copy is not available yet, but I have attached the text posted by the state. There are some significant changes in this order that go beyond the decrease of the outdoor gathering cap from 100 to 50.

First, Order 46 expands enforcement from the DPH and local BOHs to the state and local police. The fines have been increased, and municipal LLAs (the Select Board) can take action on an establishment's alcohol license in response to a violation of Order 46 (after notice and hearing).

6. *Enforcement.* The Department of Public Health, local boards of health and their authorized agents pursuant to G. L. c. 111, § 30, and State and municipal police are authorized to enforce this Order. Violation of the terms of this Order may result in a civil fine of up to \$500 per violation as provided in St. 1950, c. 639, § 8, provided that the fine shall be administered in the manner provided for the non-criminal disposition of violations of municipal by-law, ordinance, rule, or regulation pursuant to G. L. c. 40, § 21D. This Order may also be enforced by injunction. A motion for an injunction to enforce this Order may be filed in the district court or any other court of competent jurisdiction for the municipality in which the violation has been charged. The Alcoholic Beverages Control Commission or a local licensing authority may, after notice to the licensee and a reasonable opportunity to be heard, suspend, revoke, or cancel a license for the sale or service of alcoholic beverages or take other appropriate enforcement action upon satisfactory proof that the licensee has violated or permitted a violation of this Order.

Second, capacity limitations now apply outdoors in **any space**, public or private, regardless of whether that space is a "permitted space." The prior order only placed capacity restrictions on permitted outdoor venues, such as wedding venues, but not spaces like backyards. Now, Order 46 applies to gatherings in any indoor or outdoor spaces. The 50 person maximum does not apply to overall capacity at large recreation areas (beaches, parks, fields, parking lots) so long as individuals present are not congregating in larger groups and there is sufficient space to stay 6 feet away from others

that are not members of the same household. However, any program, activity or gathering within such a space is subject to the 50 person limit, and/or any space that has too many people in it to be able to maintain 6 foot distance.

3. *Otherwise Applicable Indoor and Outdoor Gathering Limits:* The following limitations apply to indoor and outdoor gatherings not exempted by Sections 1 and 2:
- Indoor gatherings are limited to 8 persons per 1,000 square feet of accessible, indoor floor space, and never more than 25 persons in a single enclosed, indoor space.
 - Outdoor gatherings are limited to 25% of the maximum permitted occupancy of the facility or space as documented in the occupancy permit on record with the municipal building department or other municipal record holder if there is a capacity limitation on record, or 8 persons per 1,000 square feet where no occupancy limitation is on record, and never more than 50 persons in a gathering in a single outdoor space.
 - All participants in indoor and outdoor gatherings must maintain at least 6 feet of physical distance from every other participant in the gathering aside from participants who are members of the same household. A gathering shall violate this provision where, no matter the number of participants present, conditions or activities at the gathering are such that it is not reasonably possible for all participants to maintain this degree of separation.

Gatherings that are subject to the limitations of this Section include, without limitation, community, civic, public, leisure, sporting events, concerts, conferences, conventions, fundraisers, fairs, festivals, road races, and other similar events or activities. Except as provided in Sections 1 and 2, these restrictions apply to gatherings in all public and private venues and locations in the Commonwealth, including private homes, backyards, parks, athletic fields, and parking lots.

Third, masks must now be worn at outside gatherings, regardless of 6 foot distance, if there are more than 10 people that are not in the same household present. This restriction applies to all spaces that are not otherwise regulated as Phase 1-3 enterprises (as well as the exceptions for town meeting, schools, and political protests). In short, any social gathering of 10+ individuals not all residing together, whether in a private backyard or in public spaces like a beach, must now be masked.

4. *Face Coverings:* For gatherings of more than 10 people, all persons over the age of two must wear a face covering when they attend indoor and outdoor gatherings where participants other than those in the same household will be in attendance, unless they are prevented from wearing a face covering by a medical or disabling condition. This restriction applies to gatherings in all venues and locations, including private homes, backyards, parks, athletic fields, and parking lots.

Please let me know if you have any questions about this Order or how it applies to specific activities.

Thanks,
Irie

Irie E. Mullin, Associate Town Counsel
Town of Falmouth

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

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**THIRD REVISED ORDER REGULATING GATHERINGS
THROUGHOUT THE COMMONWEALTH**

COVID-19 Order No. 46

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus (“COVID-19”);

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, the Federal Centers for Disease Control and Prevention (“CDC”) have advised that COVID-19 is spread mainly by person-to-person contact and that the best means of slowing the spread of the virus is through practicing social distancing and by minimizing personal contact with large groups and with environments where this potentially deadly virus may be transmitted including, in particular, spaces that present enhanced risks because of the large number of persons present or passing through the area who may spread the virus through respiratory activity or surface contacts;

WHEREAS, the CDC has issued guidance for large gatherings and community events, such as conferences, festivals, parades, concerts, sporting events, and other potentially super-spreading events, recognizing that gatherings can significantly contribute to the spread of COVID-19 and introduce the virus to new communities;

WHEREAS, that CDC guidance states that, while virtual-only activities are the safest, the risks associated with in-person events can be reduced if they are held outdoors, remain small, and participants maintain 6 feet of distance and wear face coverings;

WHEREAS, on March 23, 2020, in order to restrict all non-essential person-to-person contact, non-essential movement outside the home, and reduce opportunities for spreading the COVID-19 virus within the Commonwealth, I issued COVID-19 Order No. 13, which temporarily closed the brick-and-mortar premises of businesses and organizations that do not provide COVID-19 Essential Services and prohibited gatherings of more than 10 people;

WHEREAS, in response to gradual improvements in the public health data, on May 18, 2020, June 6, 2020, and July 2, 2020, I issued COVID-19 Orders No. 33, 37, and 43, respectively, which designated certain businesses and other organizations as Phase I, II, III, or IV enterprises and initiated a progressive, phased plan for re-opening workplaces and other facilities across the Commonwealth;

WHEREAS, again in response to sustained improvements in the public health data at the time, on July 2, 2020, I issued COVID-19 Order No. 44, which rescinded the 10 person limitation on gatherings and set a maximum gatherings limitation of 25 persons for indoor gatherings and 100 persons for outdoor gatherings, with exceptions for certain businesses and organizations governed by sector-specific guidance and for outdoor gatherings organized for the purposes of political expression;

WHEREAS, contrary to the sustained improvements in the public health data in the preceding period, over the last 3 weeks, the 7-day rolling average of percent positive COVID-19 molecular tests has increased from approximately 1.7% each day to approximately 2.1% each day and the 7-day rolling average number of confirmed cases from 166 to 234 over the same period;

WHEREAS, clusters of COVID-19 infections have been traced to house parties in the Commonwealth and in other States experiencing increases in infection rates, suggesting that gatherings are contributing to the current rise in cases in the Commonwealth and that increased vigilance and enforcement of safety measures for gatherings is necessary;

WHEREAS, the statewide increase in the rate of transmission means that it is appropriate to reduce the allowances on outdoor gatherings so as to continue to minimize opportunities for person-to-person spread of the COVID-19 virus while the Commonwealth remains in the midst of the COVID-19 public health emergency; and

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to authority over assemblages in order to protect the health and safety of persons, transportation and travel by any means or mode, and policing, protection, and preservation of public and private property;

NOW, THEREFORE, I hereby Order the following:

1. *Entities Subject to Sector-Specific Rules:* A business or other organization that has been designated by Executive Order as a Phase I, Phase II, or Phase III enterprise and that is permitted to open its brick-and-mortar premises to workers and the public shall not be subject to the general gathering limitations in Section 3 of this Order, if the enterprise is operating in compliance with COVID-19 safety rules and any applicable capacity limitation issued by the Department of Public Health, the Department of Labor Standards, the Massachusetts Gaming Commission, or the Executive Office of Energy and Environmental Affairs.

Phase IV enterprises shall remain closed, consistent with the requirements of the Order Authorizing the Re-Opening of Phase III Enterprises (COVID-19 Order No. 43).

2. *Gatherings for Political Expression and Religious Activities.* Outdoor gatherings for the purpose of political expression and gatherings for religious activities shall not be subject to the limitations in Section 3 of this Order; provided, however, that indoor gatherings for the purposes of political expression shall be governed by the indoor limitations of Section 3, and gatherings for the purpose of religious services shall follow the COVID-19 safety rules and capacity limitations set forth in the Places of Worship sector-specific guidance.
3. *Otherwise Applicable Indoor and Outdoor Gathering Limits:* The following limitations apply to indoor and outdoor gatherings not exempted by Sections 1 and 2:
 - Indoor gatherings are limited to 8 persons per 1,000 square feet of accessible, indoor floor space, and never more than 25 persons in a single enclosed, indoor space.
 - Outdoor gatherings are limited to 25% of the maximum permitted occupancy of the facility or space as documented in the occupancy permit on record with the municipal building department or other municipal record holder if there is a capacity limitation on record, or 8 persons per 1,000 square feet where no occupancy limitation is on record, and never more than 50 persons in a gathering in a single outdoor space.
 - All participants in indoor and outdoor gatherings must maintain at least 6 feet of physical distance from every other participant in the gathering aside from participants who are members of the same household. A gathering shall violate this provision where, no matter the number of participants present, conditions or activities at the gathering are such that it is not reasonably possible for all participants to maintain this degree of separation.

Gatherings that are subject to the limitations of this Section include, without limitation, community, civic, public, leisure, sporting events, concerts, conferences, conventions, fundraisers, fairs, festivals, road races, and other similar events or activities. Except as provided in Sections 1 and 2, these restrictions apply to gatherings in all public and private venues and locations in the Commonwealth, including private homes, backyards, parks, athletic fields, and parking lots.

This Order does not impose a general capacity limitation on large, unenclosed public spaces such as beaches, parks, and recreation areas. Capacity limitations for such spaces set by other rules and regulations shall continue to apply. The limitations of this Order are instead specifically applicable to programs, celebrations, social outings, and similar events that draw together groups of people. Such gatherings are subject to the limitations of this Order when they take place within large, unenclosed public spaces such as beaches, parks, and recreation areas or within any other indoor or outdoor space, public or private, that falls within the scope of this Order.

4. *Face Coverings*: For gatherings of more than 10 people, all persons over the age of two must wear a face covering when they attend indoor and outdoor gatherings where participants other than those in the same household will be in attendance, unless they are prevented from wearing a face covering by a medical or disabling condition. This restriction applies to gatherings in all venues and locations, including private homes, backyards, parks, athletic fields, and parking lots.
5. *Legal Exceptions*: This Order shall not apply to any of the following businesses, organizations, workplaces, or facilities:
 - a. Any municipal legislative body, the General Court, or the Judiciary
 - b. Federal governmental entities
 - c. Any health care facility or licensed health care provider
 - d. Any of the following workplaces or facilities with specialized functions and populations:
 - Polling places
 - Public and private elementary and secondary (K-12) schools
 - Residential and day schools for special needs students
 - Licensed, approved, or exempt child care programs and any emergency child care centers and emergency residential programs operating under emergency authorization
 - Facilities operated by the Department of Correction or any Sheriff
 - Facilities operated, contracted, or licensed by the Department of Youth Services, Department of Mental Health, Department of Public Health, or the Department of Developmental Services
 - Facilities and programs that provide safe spaces for the unstably housed such as homeless and domestic violence shelters
 - and any other facility or workplace that the Commissioner of Public Health may in writing exempt from the terms of this Order
6. *Enforcement*. The Department of Public Health, local boards of health and their authorized agents pursuant to G. L. c. 111, § 30, and State and municipal police are authorized to

enforce this Order. Violation of the terms of this Order may result in a civil fine of up to \$500 per violation as provided in St. 1950, c. 639, § 8, provided that the fine shall be administered in the manner provided for the non-criminal disposition of violations of municipal by-law, ordinance, rule, or regulation pursuant to G. L. c. 40, § 21D. This Order may also be enforced by injunction. A motion for an injunction to enforce this Order may be filed in the district court or any other court of competent jurisdiction for the municipality in which the violation has been charged. The Alcoholic Beverages Control Commission or a local licensing authority may, after notice to the licensee and a reasonable opportunity to be heard, suspend, revoke, or cancel a license for the sale or service of alcoholic beverages or take other appropriate enforcement action upon satisfactory proof that the licensee has violated or permitted a violation of this Order.

If any provision of this Order or the application thereof to any person, entity, or circumstance is determined to be invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Order or its application to other persons, entities, and circumstances.

The Second Revised Order Regulating Gatherings Throughout the Commonwealth (COVID-19 Order No. 44) is hereby rescinded effective 12:01 am on August 11 2020.

This Order shall be effective 12:01 am on August 11, 2020 and shall remain in effect until rescinded or until the state of emergency is ended, whichever occurs first.

Given in Boston at _____ AM/PM this 7th
day of August, two thousand and twenty

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts

2. Status/update on automatic sprinkler ban



TOWN of FALMOUTH

DEPARTMENT OF PUBLIC WORKS, WATER DIVISION

416 GIFFORD ST., FALMOUTH, MASSACHUSETTS 02540

TELEPHONE (508) 457-2543

FAX (508) 548-1537

DATE: August 6, 2020

SUBJECT: Update on Automatic Irrigation ban

FROM: Stephen Rafferty, Water Department Superintendent

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

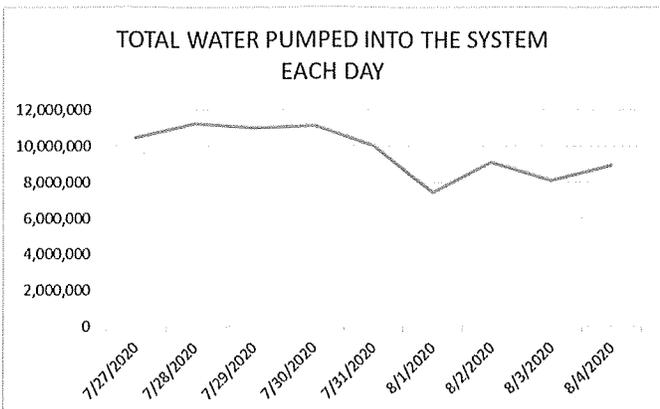
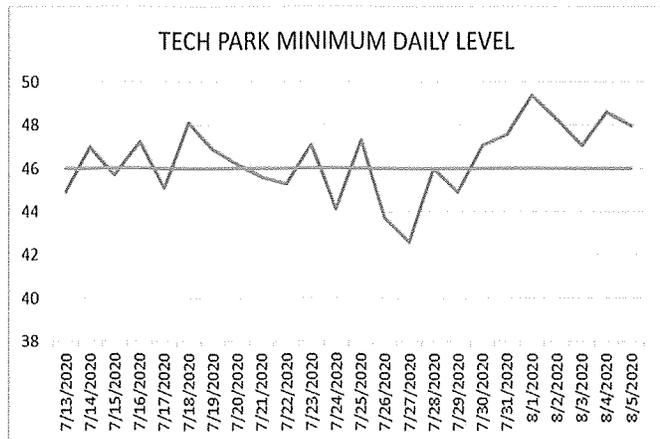
We are on the agenda for Monday evening the 10th of August to provide information to the Board of Selectman relative to the recently implemented automatic irrigation ban. This memo is intended to provide an update on the ban's implementation, information on our current sources of supply, and to outline next steps – short term and long term.

Ban's effectiveness

Most homeowners and business are aware of the ban and are cooperating. We are encouraged by their participation.

The pressure issues on Telegraph Hill occur whenever the Tech Park Storage Tank level drops below elevation 46. Since the ban was implemented we have been able to maintain the tank level above elevation 46.

The amount of water that we are pumping daily into the system has decreased. We were pumping over 10 million gallons daily prior to the ban. Since the ban we have seen the demand drop back towards 8.5 million gallons daily. A demand that is more manageable.



Inches of rain	Mar	April	May	June	July
2019	4.05	5.78	1.77	4.12	4.43
2020	4.58	5.91	2.62	1.84	0.44

Falmouth's irrigation ban compared to other systems

Falmouth has not had to implement a mandatory ban as best as I can tell from looking at past records since the mid 50's. That is unusual when compared to other communities.

The Town of Mashpee has had a policy in place since 1998 that prohibits outside automatic irrigation. Irrigation systems must be on a private well.

Bourne and Barnstable each have instituted either a complete or partial ban this year on irrigation.

The Commonwealth's Water Management Program currently lists 127 communities with mandatory water use restrictions.

Summary of our Water Supply availability and regulation

Our water supply is regulated by the Commonwealth under the Water Management Program. The program is responsible for monitoring community compliance with the Water Resource Management Act. The water resources are "owned" by the Commonwealth and the Program issues permits for all sources developed since the inception of the enabling act. Water supplies that existed prior to the enabling act became registered rates.

Falmouth has a registered withdrawal rate of 2.95 MGD and permitted withdrawal rates of 1.36 MGD— a total of 4.31 MGD. Annual allowable withdrawal is the product of 4.31 x 365 or 1,573 MGY. In 2019 we withdrew 1,529 MG or 97% of our allotted supply.

As noted in my memo to you in support of the ban, we were pumping all available sources at their maximum, prior to the ban. Not a safe or sustainable mode of operation.

In 2017 the Fresh Pond Well was shut down due to perchlorate exceedences. That source provided 0.75MGD. With that well unavailable we have no readily available reserves. We have piloted a treatment scheme for that well and continue to work with DEP to get their approvals to install ion exchange filters. They have asked for some additional pilot work that we are in the process of arranging. Optimally that well would be available for the summer of 2021.

We also have the Ashumet Well that was shut down due to MMR contamination. That has not been abandoned but would take time and money to bring back on line.

There continues to be both new developments as well as significant re-building. Over the last 2 ½ years we have added 460 new services/users to the system. A 2% increase.

Long Term need for additional sources of water.

A capital budget request to initiate the development of an additional 2-3 MGD supply of water was submitted last year and again this year. We estimate that with test wells, permitting, piloting, and construction that this will take at least 5 years.

Any new source will have to be permitted under the Water Resource Management Act. The program will look closely at our current water usage – and in particular the extent to which we have mandatory bans on outside usage. A usage that the program deems – as non-essential usage.

Falmouth's history of "voluntary" even/odd outside watering will not be sufficient.

We need only to review the history of obtaining the program's approval for the Crooked Pond Well and the restrictions imposed on that location to appreciate the difficulty of permitting the next source.

Short term needs and possible timetable for lifting the ban.

As noted at the start of this memo, the ban does appear to be reducing the early morning peak demand allowing us to maintain the tech park tank level.

As the summer ends we intend to paint the tech park tank. We have bid that work and have a contractor that will mobilize in September and need 4-8 weeks to complete the painting. Late in August or early in September we intend to isolate the Tech Park Tank and confirm our ability to meet the system demand. Hydraulic modelling says we can, we want to prove it before we allow the Contractor to proceed.

Having the ban in place until the tank painting is complete would be a prudent course of action.

3. Approve request for variance to sign code – Cumberland Farms Inc., located at 8 Old Meeting House Road and 400 East Falmouth Highway

Continued from July 27, 2020 to August 10, 2020

Request to move wall sign from front (Rt. 28) to side (Old Meeting House Road) as rendered in drawing.

Freestanding smaller size – similar to Teaticket sign – 12'h x 5'w +1w' post on each side (on Rt. 28).

Allowed two freestanding signs.

Applicant to return on August 10, 2020 with revised sign application and drawings.

Applicant will send new drawings on Monday morning, August 10.



MORIARTY TROYER & MALLOY LLC

ATTORNEYS AT LAW

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

August 10, 2020

FIRST CLASS MAIL

AND EMAIL: diane.davidson@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: Diane Davidson

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 Board Members:

As you are aware, this office 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"). Pursuant to the hearing held before the Town of Falmouth Board of Selectmen ("Board") on July 27, 2020, CFI has agreed to amend their request for signs to remove the requested free-standing sign facing Old Meeting House Road and instead request a wall sign facing Old Meeting House Road. Additionally, CFI has amended the size of their requested free-standing sign facing East Falmouth Highway to mirror the sign that CFI obtained and is currently using at their convenience store and gasoline station located at 212 Teaticket Hwy, Falmouth, MA.

CFI attaches hereto in further support of the sign application CFI's Revised 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.

Sign Applications

In connection with its Project, CFI seeks to install one (1) Freestanding Sign located on 400 East Falmouth Highway. Additionally CFI further seeks to install a wall sign over the front entrance of the store facing East Falmouth Highway and another wall sign on the side of the store facing Old Meeting House Road. (See CFI's Sign Application and Revised Inserts B, and Revised Inserts C-1 & 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 22.5 sq. ft. requiring a variance of 6.5 sq. ft. for the requested freestanding sign.

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 6.5 sq. ft. area variance in order to provide the information in a size that is safe and easily 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. Finally, and as discussed at the July 27, 2020 meeting, CFI has agreed to mirror the sign that was approved for its location at 212 Teaticket Hwy, and has revised its free-standing sign to match its approved Teaticket Hwy sign. In CFI's original application before this Board it sought a 24 sq. ft. free standing sign and has reduced the sign to 22.5 sq. ft. to match its Teaticket Hwy Store sign.

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 Signs (on store facing East Falmouth Hwy and Old Meeting House Road)

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 facing East Falmouth Hwy includes CFI's corporate logo symbol and the words "Cumberland Farms" over the entrance of the store which measures 4' 10 ½" in height. (See Insert C-2 and CFI's plans submitted in support herewith). Thus, CFI is seeking a variance of 1' 10 ½". At the July 27, 2020 hearing, this Board voted to grant this requested variance.

Additionally, and as discussed at the July 27, 2020 hearing, CFI has agreed to remove from its request the additional free-standing sign facing Old Meeting House Road and instead seeks to add a wall sign to the store side facing Old Meeting House Road. (See Insert C-1 and CFI's plans submitted in support here with). Thus, CFI is further seeking a variance of 1' – 10 ½' for its wall sign facing Old Meeting House Road.

It is CFI's position that architecturally the proposed wall sign is appropriate for this location and 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 sign and the wall signs, 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 are requesting to be placed on the next available meeting before the Board of Selectmen in connection with this request.

August 10, 2020

Page 4

Thank you for your attention to this matter.

Respectfully submitted,

CUMBERLAND FARMS, INC.,

By its attorneys,

MORIARTY TROYER & MALLOY LLC

A handwritten signature in black ink, appearing to read 'D. Troyer', with a long horizontal flourish extending to the right.

Douglas A. Troyer

Enclosures:

cc: Project Team (via email only)

Jonathan Dickinson (via email only jonathan.dickinson@falmouthma.gov).

REVISED INSERT B
(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'-6"H x 5' -0"W x 1'-0" = **22.5** 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.

REVISED INSERT C-1
(Wall Sign on Store Facing Old Meeting House Road)

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

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: 50'-8" lineal feet.

The proposed sign will face Old Meeting House Road. street/parking lot

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

REVISED INSERT C-2
(Wall Sign on Store Facing East Falmouth Hwy)

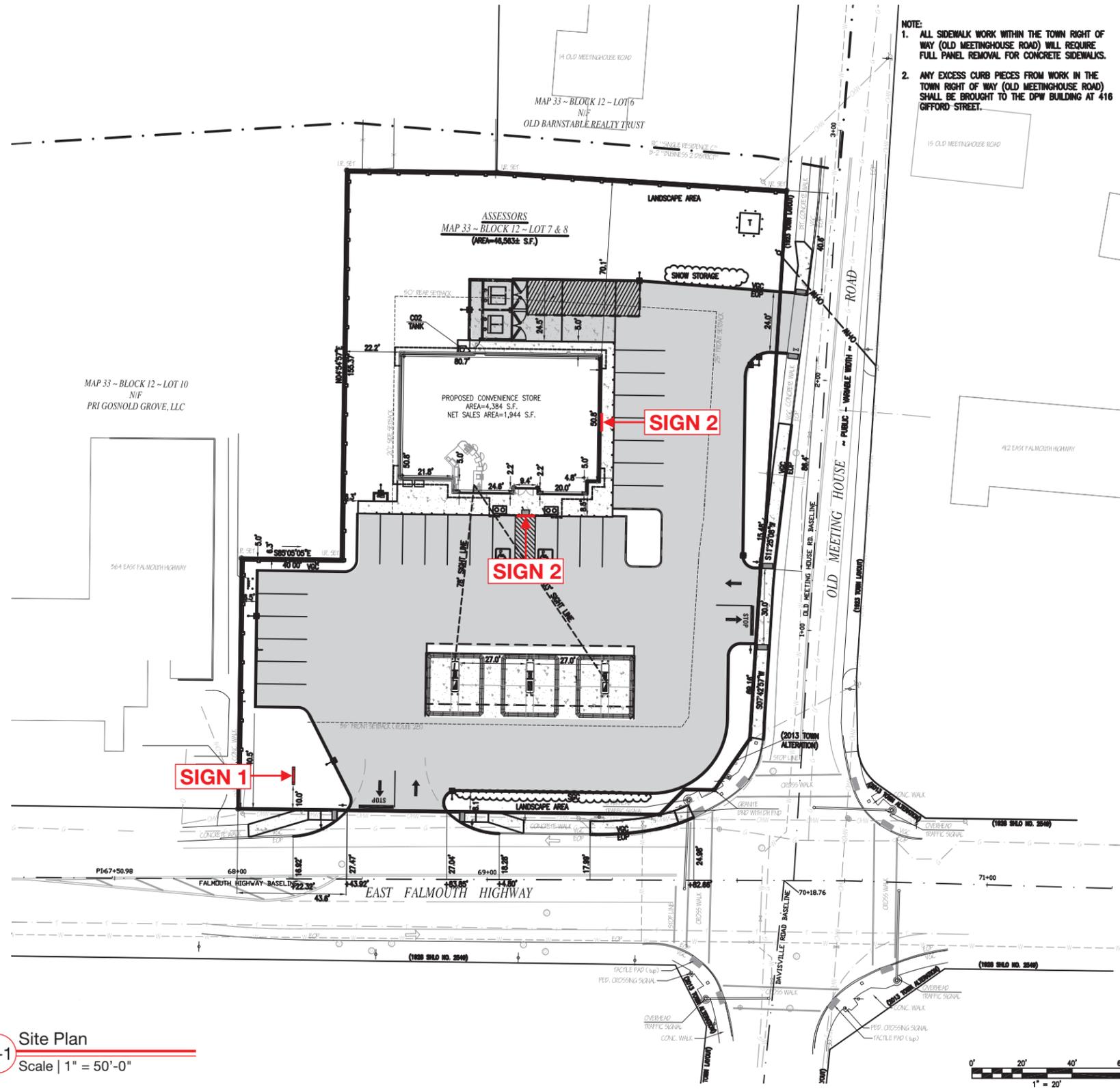
WALL SIGN(s) § 184-37; Awning(s) § 184-22

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.



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

O-1 Site Plan
 Scale | 1" = 50'-0"

SIGN 1 PYLON
SIGN 2 20" CHANNEL LETTERS (EXTERIOR)

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

PRESENTATION

Color Palette | Pantone • Paint • Vinyl

C1	Pantone Color: 301C Opaque Vinyl: 3M Vivid Blue 180C-17 Translucent Vinyl: 3M Bristol Blue 3630-97
C2	Pantone Color: 376C Opaque Vinyl: 3M Apple Green 180C-198 Translucent Vinyl: 3M Brilliant Green 3630-106 Green ACM: Alcoa Reynobond Duragloss 3000 Outrageous Green
C3	Paint Color: Cumberland Farms White matches Alcoa Shell White (300G B-10, .1g B-44)
C4	Pantone Color: 186C Opaque Vinyl: 3M Geranium Red 180C-63 Translucent Vinyl: 3M Cardinal Red 3630-53

251 Boot Road
 Downingtown, PA 19335
 610.518.5881
 610.518.5244
 info@prosign.net

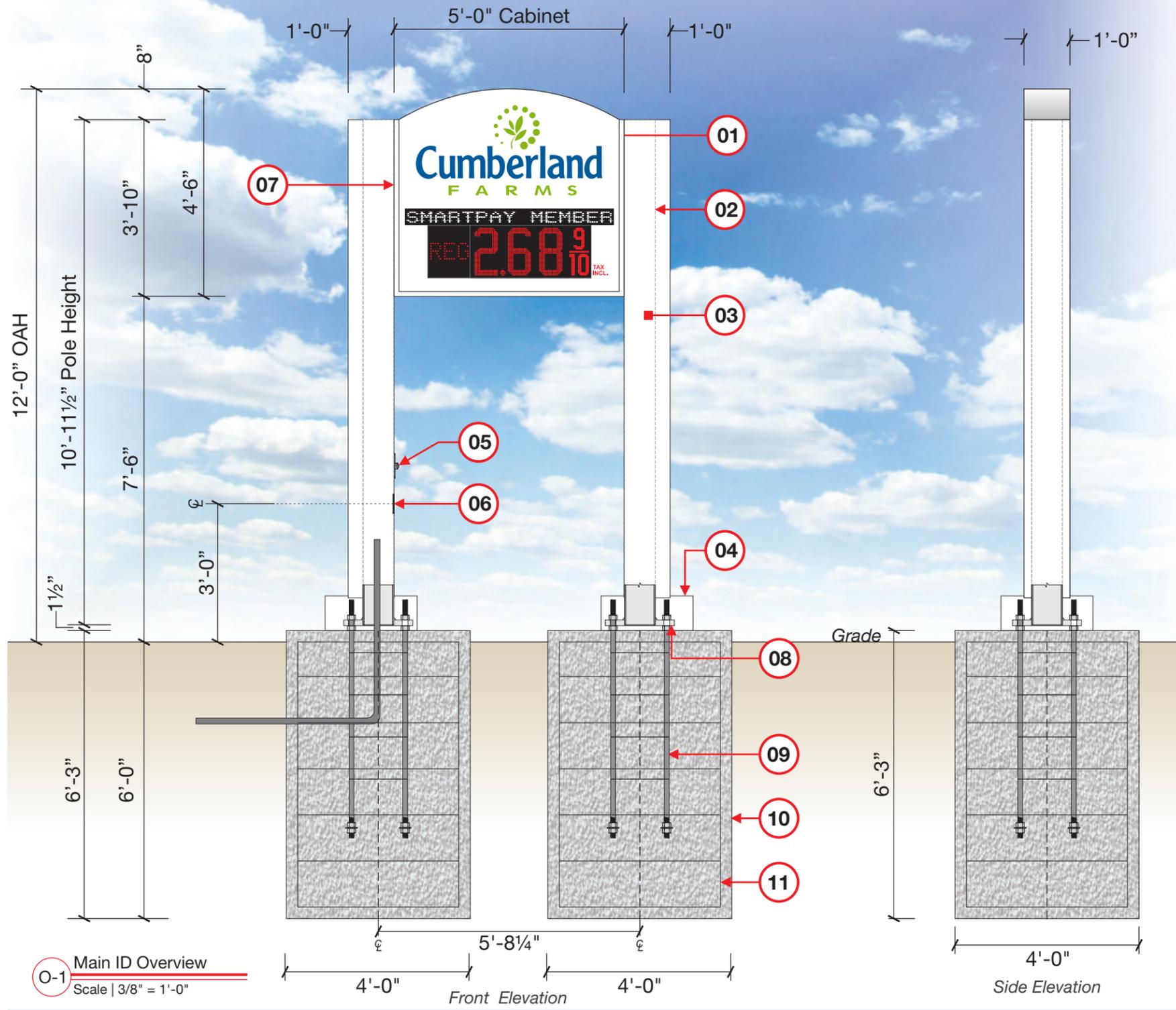
CF-MID-GP-6FT-SYS-1 | SPECIFICATIONS

REVISIONS - DK-(1) 3/11/18- REMOVED PLANTER FROM MAIN ID SIGN REVISED MAIN ID / PRICER LAYOUT REMOVED LEFT SIDE OF CANOPY SIGN
 DK-(3) 6/19/20-ADDED SITE PLAN 20" CHANNEL LETTERS & ADDED LED PRODUCT GRADE
 DK-(4) 8/6/20-REVISED SITE PLAN & REVISED SIGNAGE

PM: JD/AKS
DESIGNER: DK
DATE: 3/22/2018

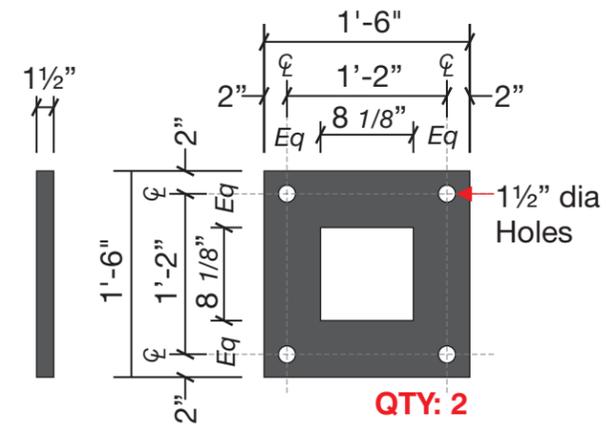
Copyright, Pro Sign Company, 2018
 THIS DRAWING INCLUDES DATA THAT IS PROPRIETARY INFORMATION OF PRO SIGN COMPANY. IT SHALL NOT BE USED, DUPLICATED OR DISCLOSED IN WHOLE OR PART FOR ANY PURPOSE OTHER THAN TO EVALUATE THIS PROPOSAL. IF A CONTRACT IS AWARDED TO THIS PROPOSER AS A RESULT OF OR IN CONNECTION WITH THE SUBMISSION OF THIS DATA, THE DEFEREE SHALL HAVE THE RIGHT TO USE OR DISCLOSE THE DATA TO THE EXTENT PROVIDED IN THE RESULTING CONTRACT.

Job File Locations
 DWG: W:\Cumberland Farms\Sites\MA\East Falmouth\12364\Design\12364-1_PRS-CF_EAST FALMOUTH, MA.cdr



- 01 CUSTOM MAIN ID/ PRICE SIGN
4'-6" h x 5'-0" w x 1'-0"
LED Illum. Main ID Cabinet & LED Price Cabinet
22.5 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 CUSTOM PLATE COVER
.080 aluminum Plate Cover in two halves
painted white to match pole cover
(Cumberland Farms White)
- 05 Electrical Access Panel
- 06 Dual pole service switch
- 07 Reveal to Remain Consistent 1/4" Throughout Sign
- 08 1'-6" x 1'-6" x 1/2" thk base plates (see plate detail)
- 09 1/4" Dia Anchor Bolts 54" Embedment
- 10 4'-0" x 4'-0" x 6'-3" (6'-0" below grade)
3000 psi Concrete Footings Installed by others
- 11 #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.



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

Approved by _____ Date _____
 APPROVED AS SHOWN APPROVED AS NOTED CORRECT & RESUBMIT

Cumberland FARMS

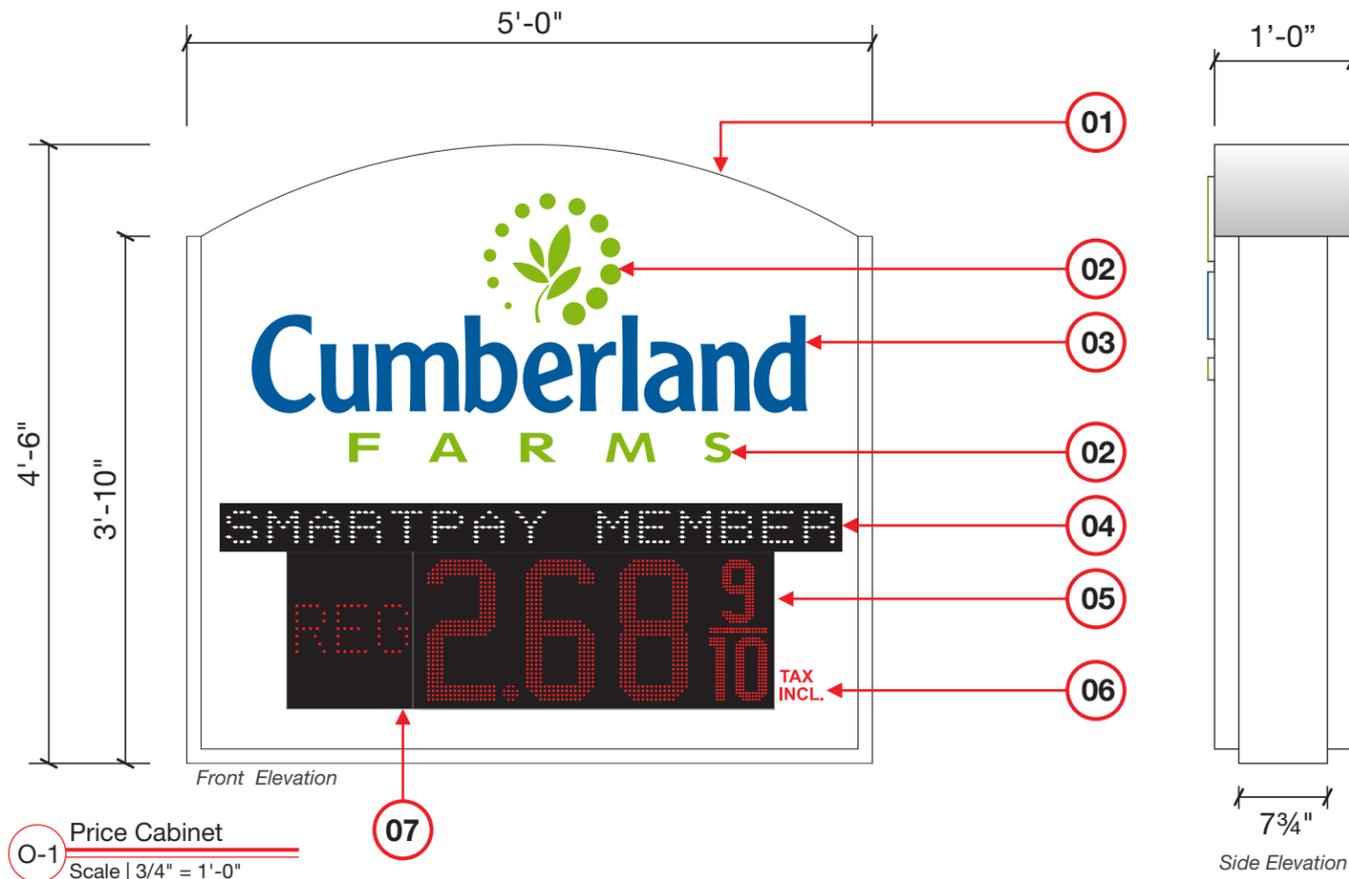
400 E. Falmouth Hwy
East Falmouth MA 02536

ACCT #: 12364

PRESENTATION

Color Palette | Pantone • Paint • Vinyl

C1	Pantone Color: 301C Opaque Vinyl: 3M Vivid Blue 180C-17 Translucent Vinyl: 3M Bristol Blue 3630-97
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Cumberland
F A R M S

400 E. Falmouth Hwy
East Falmouth MA 02536

ACCT #: 12364

PRESENTATION

Typography

Arial
Bold | 0 Kerning | 0 Spacing

ABCDEFGHIJKLMNOPQRSTUVWXYZ
abcdefghijklmnopqrstuvwxyz
0123456789#&

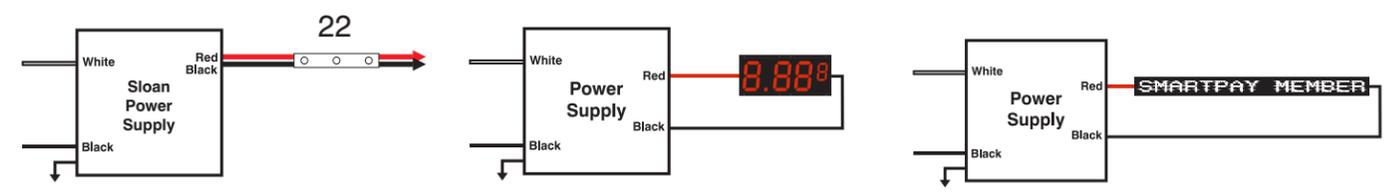
Color Palette | Pantone • Paint • Vinyl

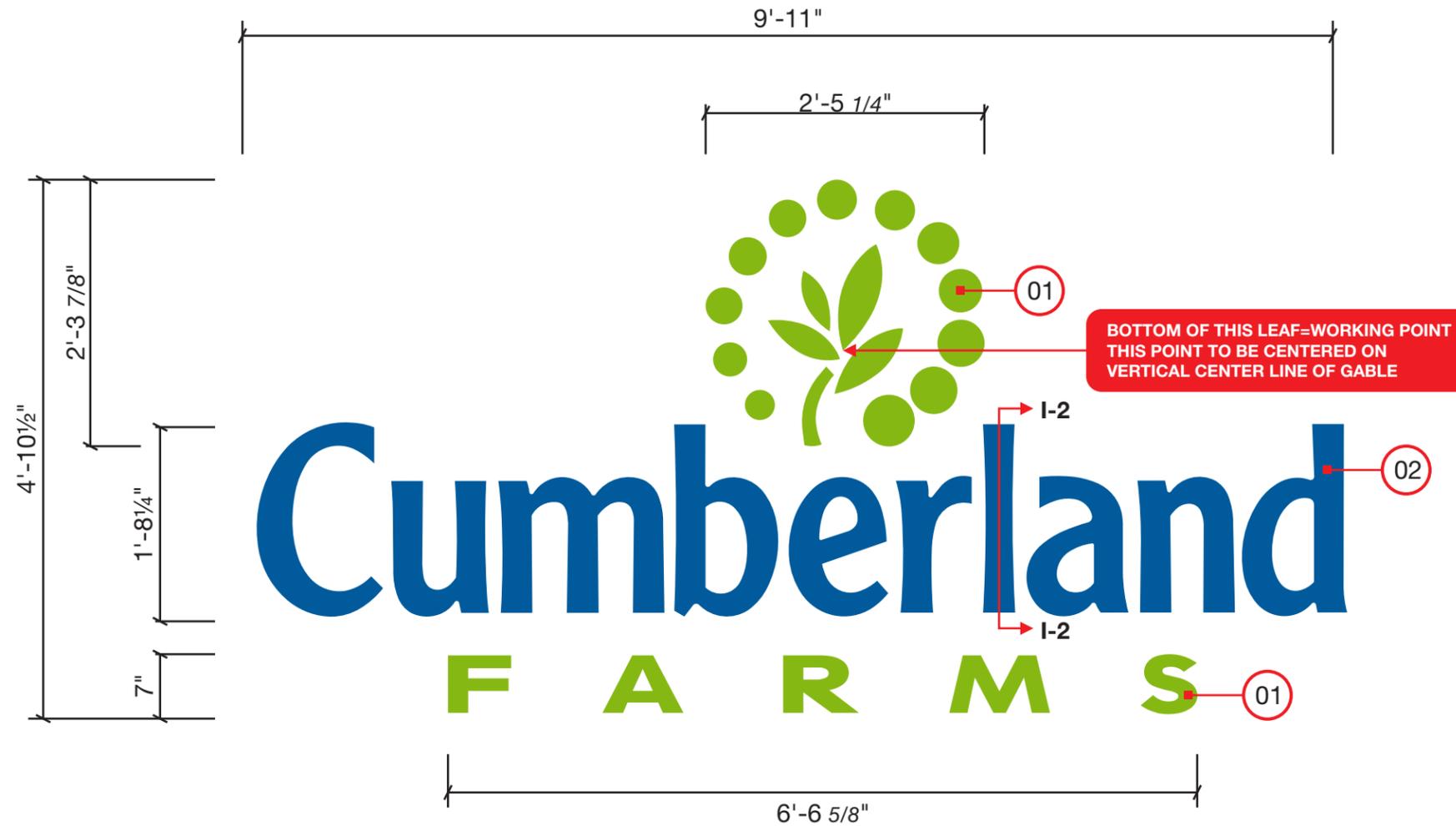
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C4	Pantone Color: 186C Opaque Vinyl: 3M Geranium Red 180C-63 Translucent Vinyl: 3M Cardinal Red 3630-53

O-1 Price Cabinet
Scale | 3/4" = 1'-0"

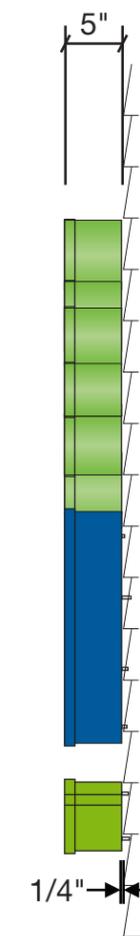
- 01** D/F illuminated fabricated aluminum cabinet w/ 1/8" faces painted Cumberland Farms White Formula (300G B-10, .1g B-44)
- 02** 3/4" Clear Acrylic Push Thrus (1/2" ± Exposed) w/ 3M™ Translucent vinyl **Brilliant Green #3630-106** laminated to 1st surface
- 03** 3/4" Clear Acrylic Push Thrus (1/2" ± Exposed) w/ 3M™ Translucent vinyl **Bristol Blue #3630-97** laminated to 1st surface
- 04** 4 1/4"h x 4'-6 1/2"w LED Smart Pay Board (4 1/4"H x 54 1/4" W Window Opening)
- 05** 12"h Able LED Pricer Unit (Red) Supplied By Cumberland Farms (1'-1 3/4"h Window Opening)

- 06** 3M™ Controltac™ Graphic Film with Comply™ Adhesive 180C-63 Geranium Red applied to 1st Surface
- 07** 14.75"h x 12.25"w Red LED Regular Board





Front Elevation



Side Elevation



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

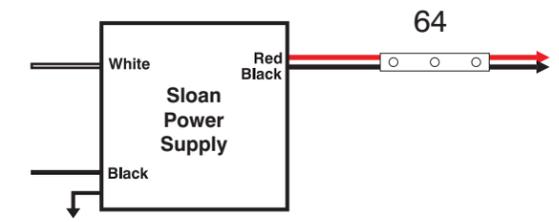
PRESENTATION

Color Palette | Pantone • Paint • Vinyl

C1	Pantone Color: 301C Opaque Vinyl: 3M Vivid Blue 180C-17 Translucent Vinyl: 3M Bristol Blue 3630-97
C2	Pantone Color: 376C Opaque Vinyl: 3M Apple Green 180C-198 Translucent Vinyl: 3M Brilliant Green 3630-106 Green ACM: Alcoa Reynobond Duragloss 3000 Outrageous Green



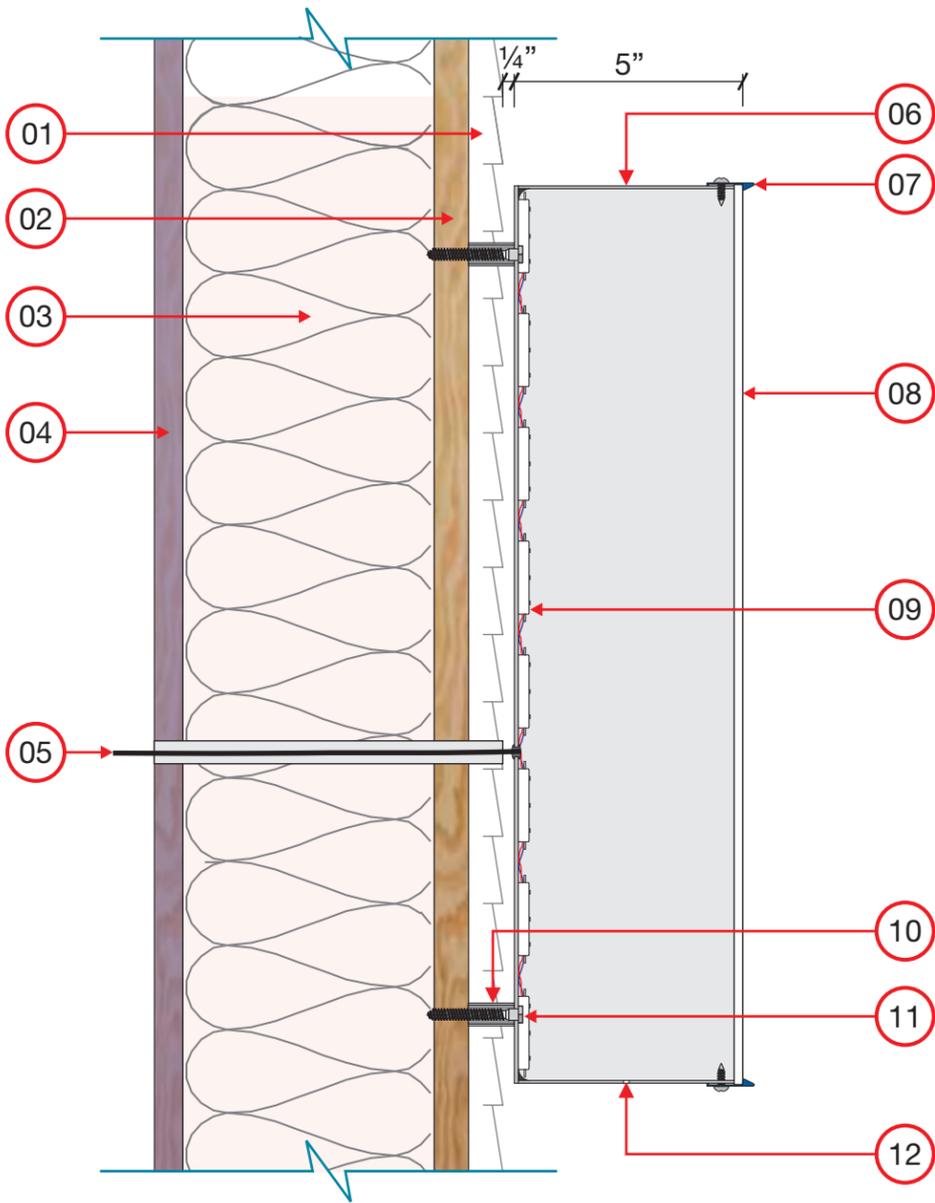
01 Channel Letters
D-2 Scale | 3/4" = 1'-0"



- 01 Face Lit Remote Channel Letters**
- 3M™ Translucent Vinyl **3630-106 Brilliant Green** applied to 1st surface of cut out 3/16" white acrylic faces (#2447)
 - 1" Jewelite trimcap painted to match PMS #376 green
 - 5" Deep .040 aluminum coil side returns painted to match PMS #376 green
 - Internally illuminated with white Sloan Prism LED's
 - Low voltage power supply located behind wall.
 - Letters mounted to clapboard siding with non-corrosive hardware / 1/4" stand-offs.

- 02 Face Lit Remote Channel Letters**
- 3M™ Translucent Vinyl **Bristol Blue #3630-97** applied to 1st surface of cut out 3/16" white acrylic faces (#2447)
 - 1" Jewelite trimcap painted to match PMS #301 blue
 - 5" Deep .040 aluminum coil side returns painted to match PMS #301 blue
 - Internally illuminated with white Sloan Prism LED's
 - Low voltage power supply located behind wall.
 - Letters mounted to clapboard siding with non-corrosive hardware / 1/4" stand-offs.

- All Mounting Hardware to be non-corrosive
- All Holes & Seams to be Caulked & Sealed
- All Letters to be UL Labeled



D-3 Section View
Scale | 1:4

- 01 Wall siding
- 02 Plywood backing
- 03 Wall insulation
- 04 Moisture resistant gypsum wall board
- 05 Secondary electric connection to remote LED power supplies
- 06 5" Deep .040 aluminum coil returns
- 07 1" Trim cap retainers
- 08 White acrylic faces (#2447) w/ trans vinyl applied to 1st surface
- 09 White Sloan Prism LED modules
- 10 Aluminum spacer w/ 1/4" stand off
- 11 Non-corrosive Ø 1/4" lag bolt into plywood backer min 2" embed., 1" min. thread pen, min (3) per letter or logo
- 12 1/4" dia drain holes



400 E. Falmouth Hwy
East Falmouth MA 02536

ACCT #: 12364

PRESENTATION

Color Palette | Pantone • Paint • Vinyl

C1 Pantone Color: 301C
Opaque Vinyl: 3M Vivid Blue 180C-17
Translucent Vinyl: 3M Bristol Blue 3630-97

C2 Pantone Color: 376C
Opaque Vinyl: 3M Apple Green 180C-198
Translucent Vinyl: 3M Brilliant Green 3630-106
Green ACM: Alcoa Reynobond Duragloss 3000 Outrageous Green

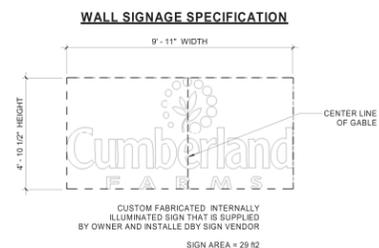


PRESENTATION

Color Palette | Pantone • Paint • Vinyl

C1 Pantone Color: 301C
Opaque Vinyl: 3M Vivid Blue 180C-17
Translucent Vinyl: 3M Bristol Blue 3630-97

C2 Pantone Color: 376C
Opaque Vinyl: 3M Apple Green 180C-198
Translucent Vinyl: 3M Brilliant Green 3630-106
Green ACM: Alcoa Reynobond Duragloss
3000 Outrageous Green



0-4 FRONT & SIDE SIGNAGE DETAIL
Scale | NTS



0-3 Front Isometric
Scale | NTS



0-2 Right Side Elevation
Scale | 1/16"=1'-0"

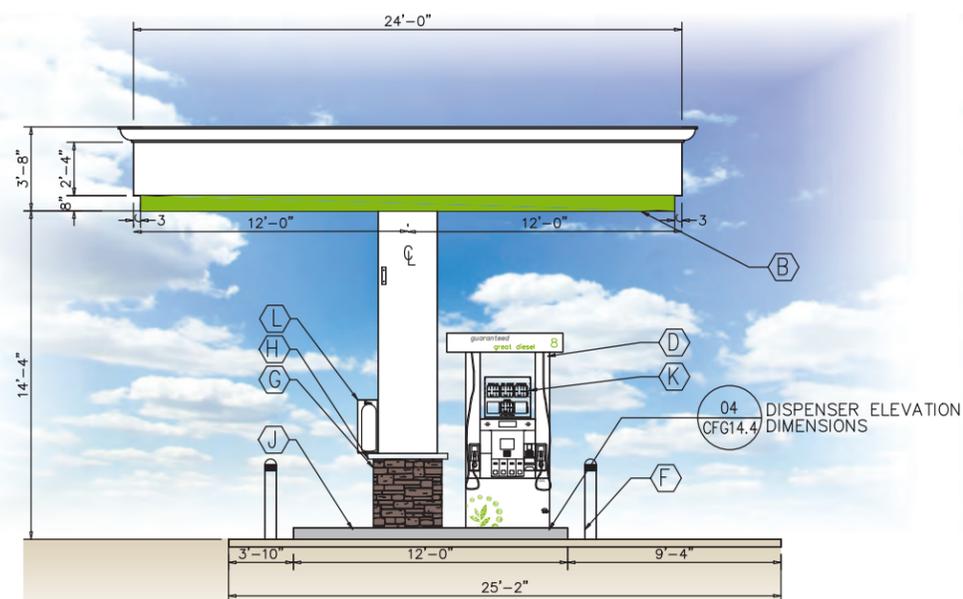


0-1 Front Elevation
Scale | 1/16"=1'-0"

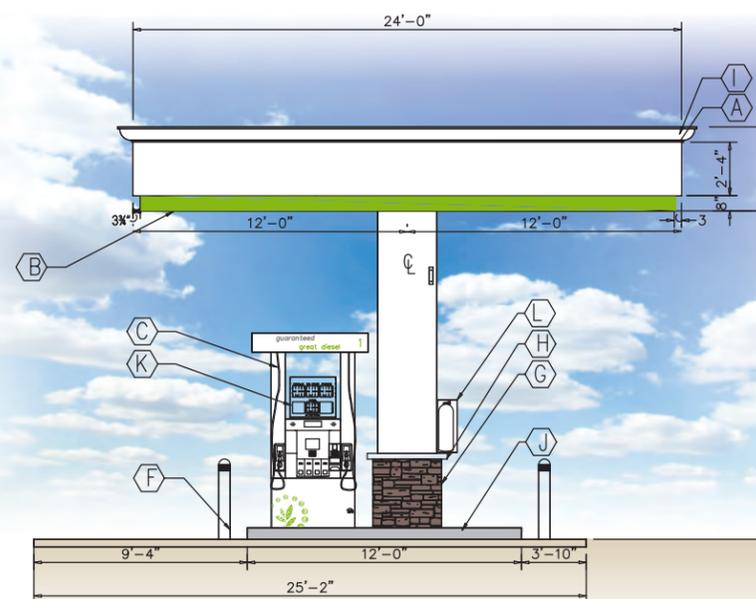
PRESENTATION

Color Palette | Pantone • Paint • Vinyl

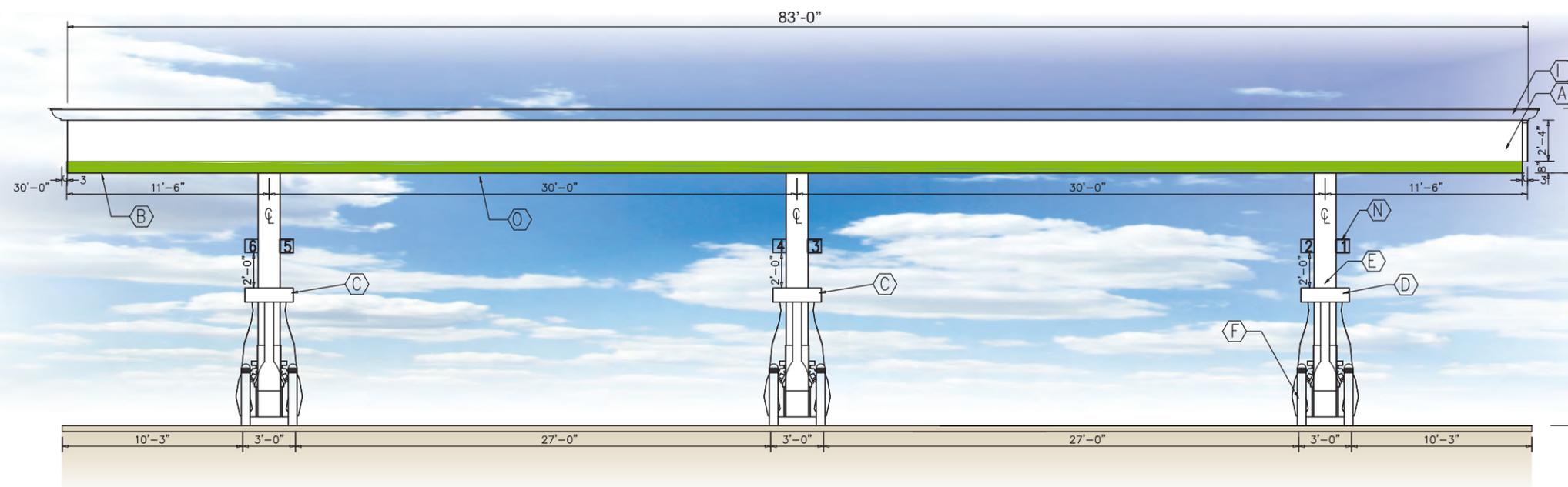
- C1** Pantone Color: 301C
Opaque Vinyl: 3M Vivid Blue 180C-17
Translucent Vinyl: 3M Bristol Blue 3630-97
- C2** Pantone Color: 376C
Opaque Vinyl: 3M Apple Green 180C-198
Translucent Vinyl: 3M Brilliant Green 3630-106
Green ACM: Alcoa Reynobond Duragloss 3000 Outrageous Green
- C3** Paint Color: Cumberland Farms White matches Alcoa Shell White (300G B-10, .1g B-44)



O-1 Canopy Left Elevation
1/8= 1'-0"

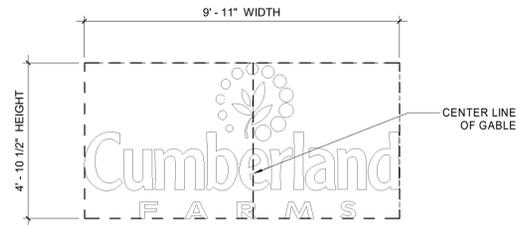


O-2 Canopy Right Elevation
1/8= 1'-0"



O-3 Canopy Front Elevation
1/8= 1'-0"

WALL SIGNAGE SPECIFICATION

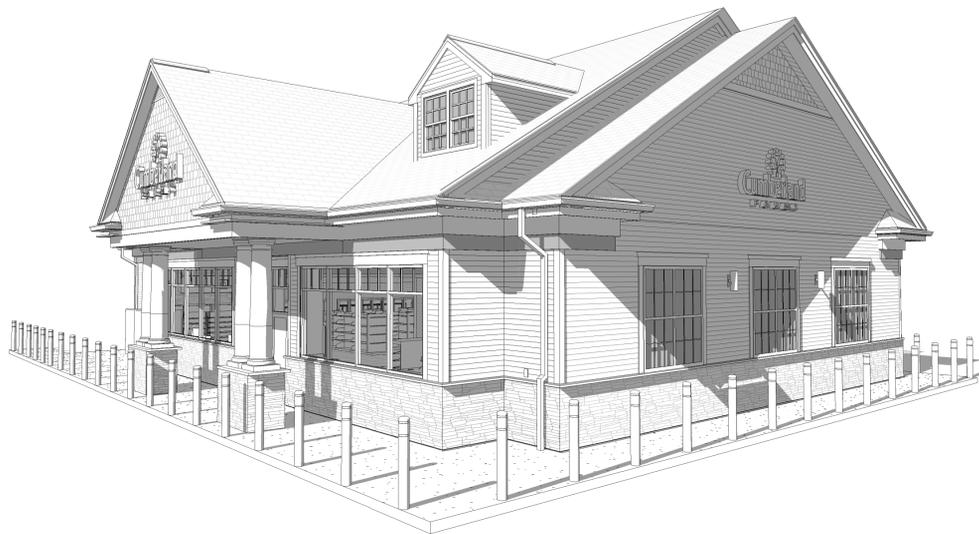


CUSTOM FABRICATED INTERNALLY ILLUMINATED SIGN THAT IS SUPPLIED BY OWNER AND INSTALLED BY SIGN VENDOR
SIGN AREA = 29.12

4 FRONT AND SIDEWALL SIGNAGE DETAIL
3/8" = 1'-0"

EXTERIOR FINISH SCHEDULE

MARK	DESCRIP.	MANUF.	MODEL	COLOR	NOTES
CS-1	CULTURED STONE VENEER	BORAL	COUNTRY LEDGESTONE	ECHO RIDGE	INSTALL DRystack ONLY
FB-1	FIBERGLASS COLUMN SHROUD	PACIFIC COLUMNS	-	WHITE	16"x6" ENDURA STONE PLAIN COLUMN ROUND SHAFT WITH TRUE ENTASIS TAPERED SMOOTH FINISH.
SHNG-1	ARCHITECTURAL ASPHALT SHINGLES	CERTAINEED	LANDMARK	COBBLESTONE GRAY	30 YEAR WARRANTY
GU-1	ALUMINUM GUTTER SYSTEM	ATAS	.032	WHITE	PROVIDE ALL ACCESSORIES REQ'D FOR A COMPLETE CONTINUOUS INSTALLATION. INSTALL PER MANUF. INSTRUCTIONS. ENSURE SEALED, WATERTIGHT CORNER CONNECTIONS. FLASH & SEAL TO DOWNSPOUTS AS REQ'D. PROVIDE SUPPORT STIFFENERS AT 12" MIN. O.C. GUTTER SHALL BE SEAMLESS & 6" MIN.
SW-1	SYNTHETIC WOOD TRIM	CERTAINEED	-	WHITE	PROVIDE SCARF JOINTS ON ALL EXTERIOR SYNTHETIC WOOD TRIM. G.C. TO PUTTY ALL NAIL HOLES & PAINT ALL SYNTHETIC WOOD TRIM & PANELS.
SW-2	SYNTHETIC WOOD TRIM	CERTAINEED	-	GREEN	PROVIDE SCARF JOINTS ON ALL EXTERIOR SYNTHETIC WOOD TRIM. G.C. TO PUTTY ALL NAIL HOLES & PAINT ALL SYNTHETIC WOOD TRIM & PANELS.
VS-1	VINYL SIDING	CERTAINEED	MONOGRAM 46L DOUBLE 4"	HERRINGBONE	ROUGH CEDAR FINISH. PROVIDE ALL REQ'D ACCESSORIES & TRIM FOR A COMPLETE INSTALLATION.
VS-2	VINYL SHAKES	CERTAINEED	NORTHWOODS	SAVANNAH WICKER	ROUGH CEDAR FINISH. PROVIDE ALL REQ'D ACCESSORIES & TRIM FOR A COMPLETE INSTALLATION.
FC-1	FIBER CEMENT SIDING	ALLURA	WEATHERBOARDS	TONY TAUPE-SW7038	WOOD GRAIN FINISH. PROVIDE ALL REQ'D ACCESSORIES AND TRIM FOR A COMPLETE INSTALLATION.
FC-2	FIBER CEMENT SHINGLES	ALLURA	TBD	TONY TAUPE-SW7038	STRAIGHT EDGE WITH 7" EXPOSURE.

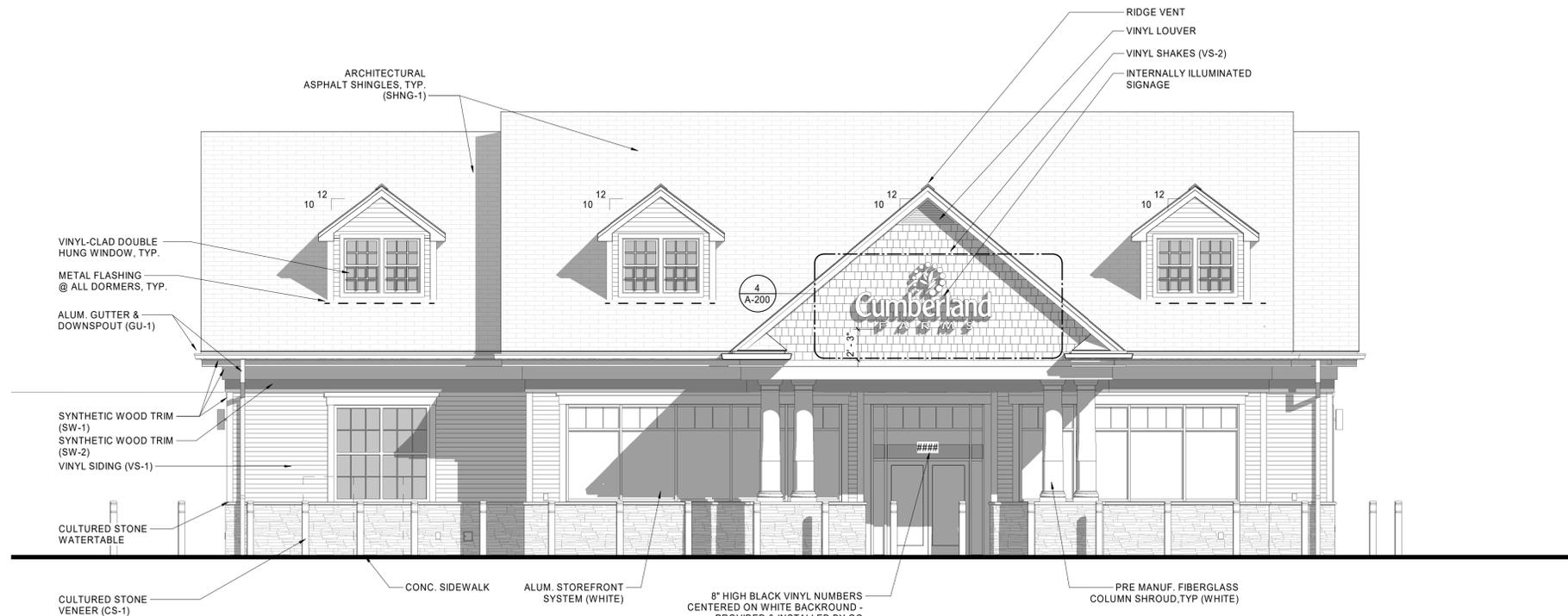


3 FRONT PERSPECTIVE - SD



SEE FRONT ELEVATION FOR TYPICAL NOTES

2 RIGHT SIDE ELEVATION -SD
3/16" = 1'-0"



1 FRONT ELEVATION - SD
3/16" = 1'-0"

HFA
Creative Solutions
Meaningful Places

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Cumberland
FARM S

Store Number: 2346
400 E FALMOUTH HWY
EAST FALMOUTH, MA 02536
JOB NUMBER: 41-18-00289

ISSUE BLOCK

CHECKED BY: MV
DRAWN BY: LT
DOCUMENT DATE: 8/2120
PROTO:



EXTERIOR ELEVATIONS

SHEET:
A-200

8/21/20 11:16:44 AM
 C:\Users\jowens\Documents\2019\Renov\Projects\41-18-00289\East Falmouth_Archi\A-200\Exterior Elevations.dwg
 8/21/20 11:16:44 AM

- ZONING DATA TABLE -

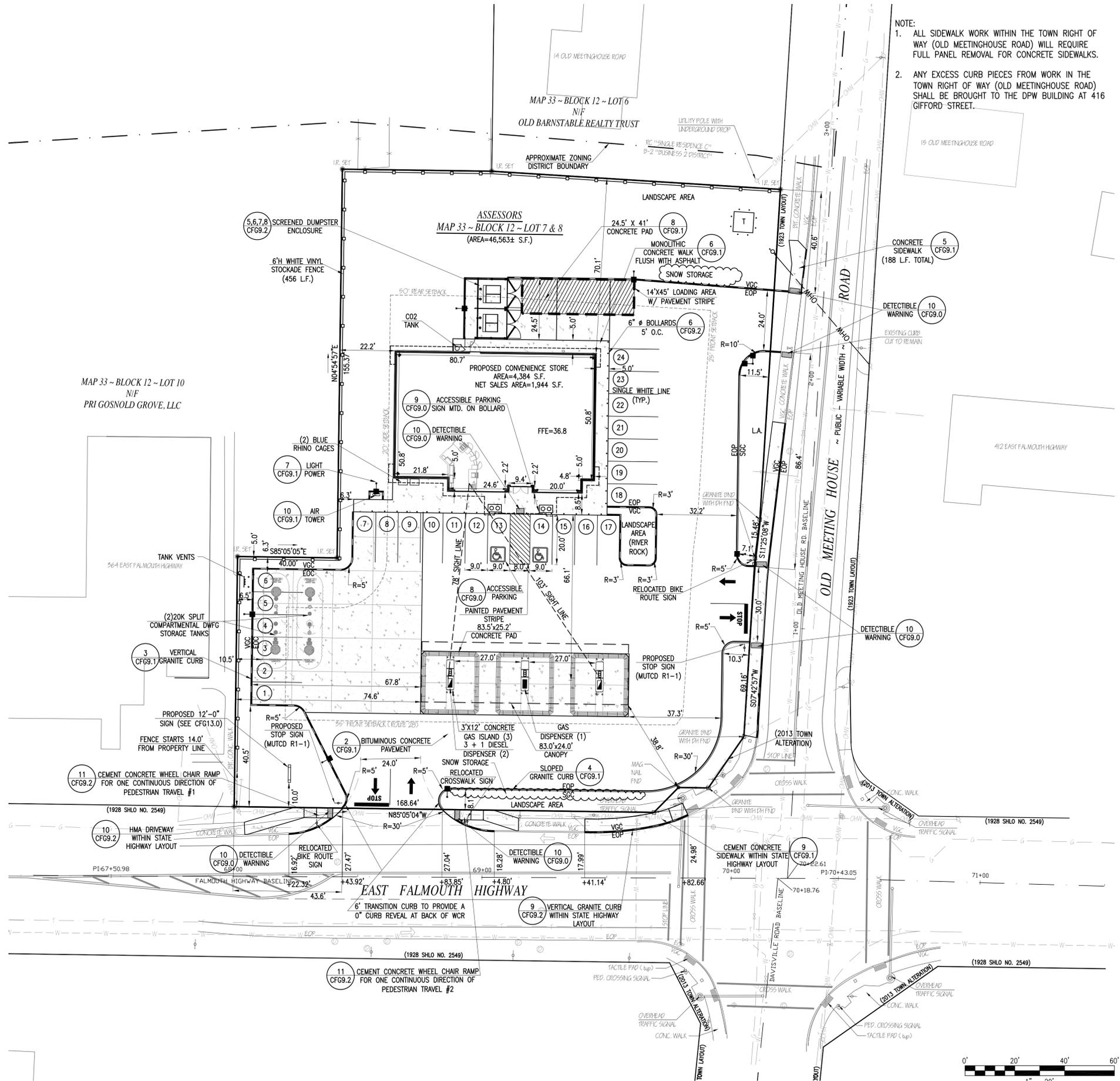
PROJECT DATA			
TOTAL SITE AREA	1.1± ACRES		
BUILDING FOOTPRINT	4,384 S.F. CUMBERLAND FARMS		
TOTAL PARKING REQUIRED	RETAIL: 1 SPACE/200 S.F. LEASABLE FLOOR AREA		
	4,384/200 = 22 SPACES		
TOTAL PARKING PROVIDED	24		
LAND INFORMATION			
ASSESSORS MAP	MAP 33		
BLOCK/LOT NUMBER	BLOCK 12 / LOT 7 & 8		
ZONING INFORMATION			
ZONING DISTRICT	BUSINESS 2 (B2)		
MIN. LOT AREA	REQUIRED	EXISTING	PROVIDED
	40,000 S.F.	46,563± S.F.	46,563± S.F.
MIN. FRONTAGE	REQUIRED	EXISTING	PROVIDED
	200	438.88	438.88
BUILDING HEIGHT LIMIT	REQUIRED	EXISTING	PROVIDED
	3 STORIES OR 45 FT	1.5 STORIES	32.83 FT
MAX. LOT COVERAGE	REQUIRED	EXISTING	PROVIDED
	12% (STRUCTURE), 70% (LOT)	16.7% (STRUCTURES) 67.4% (LOT)	13.7% (STRUCTURES) 68.9% (LOT)
STRUCTURE SETBACKS	REQUIRED	EXISTING	PROVIDED
FRONT YARD	25 FT (35 FT FROM ROUTE 28)	6.03 FT	38.8 FT (42.9 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 RIVERFRONT AREA.
- A SPECIAL PERMIT FROM THE ZONING BOARD OF APPEALS PURSUANT TO SEC. 240-3 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 12% BUILDING LOT COVERAGE.

CURBING:

- VGC** VERTICAL GRANITE CURB = 608 L.F.
- SGC** SLOPED GRANITE CURB = 247 L.F.

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

REVISIONS	
4	020520 DOT SUBMITTAL
5	021320 DOT REVISION
6	030420 LOADING AREA
7	062520 CONSTRUCTION SET
8	072420 ROTATE UST



www.FarlandCorp.com

401 COUNTY STREET
NEW BEDFORD, MA 02740
P.508.717.3479
OFFICES IN:
• TAUNTON
• MARLBOROUGH
• WARWICK, RI

DRAWN BY: JKM
DESIGNED BY: CAF
CHECKED BY: CAF

SITE PLAN
400 EAST FALMOUTH HIGHWAY
ASSESSORS MAP 33 BLOCK 12 LOT 7 & 8
EAST FALMOUTH, MASSACHUSETTS
PREPARED FOR: TMC OF NEW ENGLAND, LLC
501 PENNSYLVANIA PARKWAY, SUITE 160
INDIANAPOLIS, IN 46280

SEPTEMBER 10, 2019
SCALE: 1"=20'
JOB NO. 18-782
LATEST REVISION:
072420

SITE LAYOUT PLAN
CFG04.0

Diane Davidson

From: Diane Davidson
Sent: Friday, August 7, 2020 2:50 PM
To: Douglas A. Troyer
Cc: Kathleen Gillis
Subject: RE: Cumberland Farms, Inc.'s Sign Plan Application and Request for Variance - 400 East Falmouth Hwy and 8 Old Meeting House Road.

Dear Doug,

Thank you for your reply. I will let the Select Board know that the revised plans will be ready on Monday morning, and I will forward them to the Board at that time.

Diane

From: Douglas A. Troyer [mailto:dtroyer@lawmtm.com]
Sent: Friday, August 7, 2020 1:57 PM
To: Diane Davidson <diane.davidson@falmouthma.gov>
Cc: Kathleen Gillis <kgillis@lawmtm.com>
Subject: Re: Cumberland Farms, Inc.'s Sign Plan Application and Request for Variance - 400 East Falmouth Hwy and 8 Old Meeting House Road.

Hi,

Thank you. I am waiting on revised plans but they may not be available till late in the day. I am also away on vacation. Any chance I can forward along no later than Monday a.m.?

Regards,

Doug T.

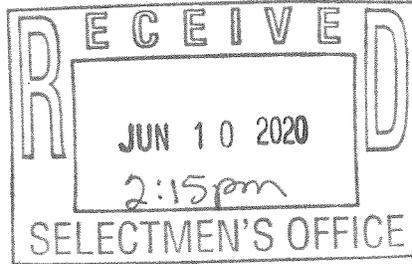
Douglas A. Troyer
Moriarty Troyer & Malloy LLC
30 Braintree Hill Office Park, Suite 205
Braintree, MA 02184
Phone: (781) 817-4900
Direct: (781) 817-4605
Cell: (508) 524-2761
Email: dtroyer@lawmtm.com

From: Diane Davidson <diane.davidson@falmouthma.gov>
Sent: Friday, August 7, 2020 11:27:49 AM
To: Douglas A. Troyer <dtroyer@lawmtm.com>
Subject: RE: Cumberland Farms, Inc.'s Sign Plan Application and Request for Variance - 400 East Falmouth Hwy and 8 Old Meeting House Road.



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.

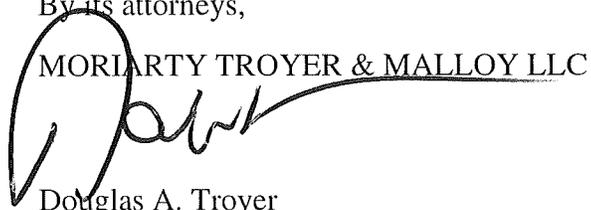
Thank you for your attention to this matter.

Respectfully submitted,

CUMBERLAND FARMS, INC.,

By its attorneys,

MORIARTY TROYER & MALLOY LLC

A handwritten signature in black ink, appearing to read 'Douglas A. Troyer', is written over the printed name of the law firm. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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. Referred by: N/A
2. gas station/convenience store
- | | |
|--|--|
| <input type="checkbox"/> New Construction | <input type="checkbox"/> Planning Board |
| <input type="checkbox"/> Alteration/Addition | <input type="checkbox"/> Zoning Board of Appeals |
| <input checked="" type="checkbox"/> Sign | <input type="checkbox"/> Building Department |
| <input type="checkbox"/> 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
 Name Meghan Vincent
 Phone (508) 528-0770 x423

8. Sign Company Pro Signs
 Name Jessica Davis
 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
Douglas A. Troyer

Date
5/19/20

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

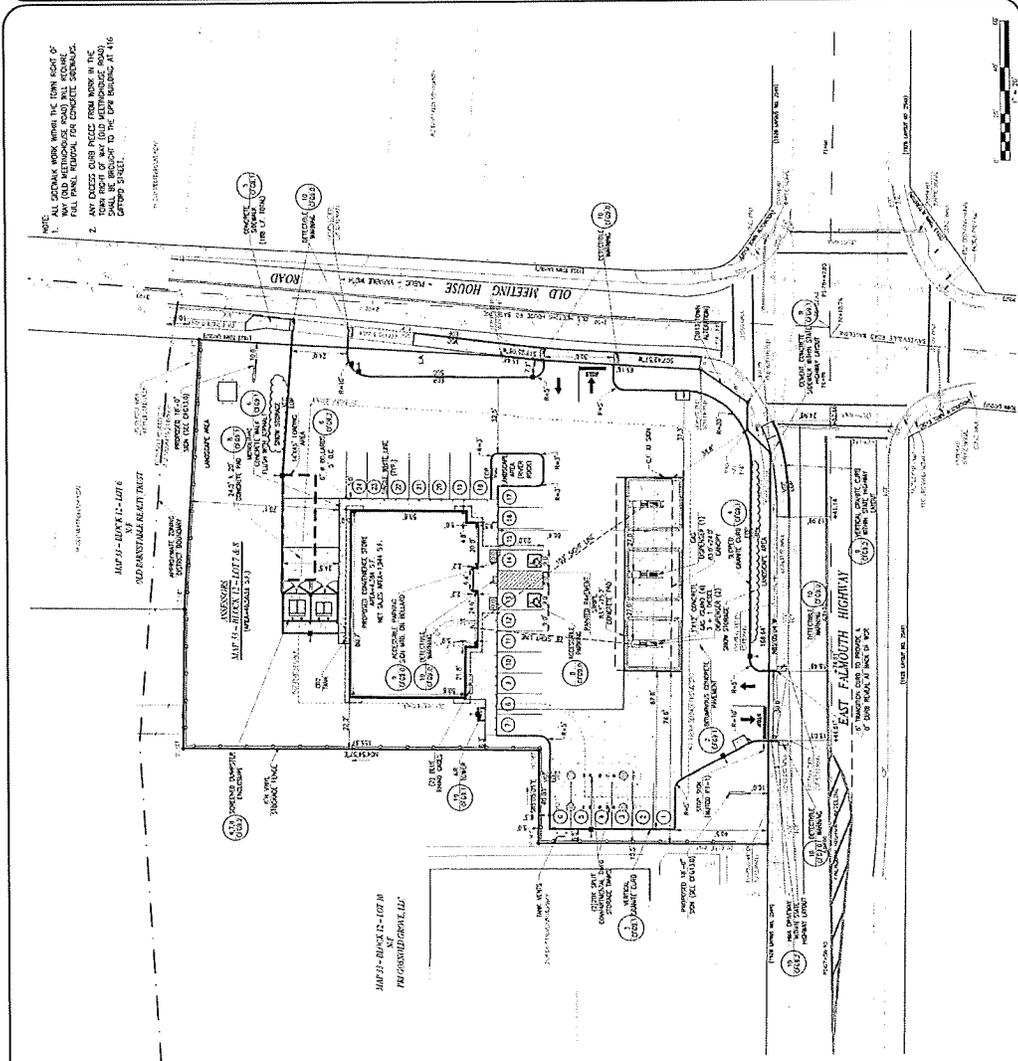
With the following conditions: _____

SITE PLAN
 400 EAST FALMOUTH HIGHWAY & 8
 ASSESSORS MAP 33 BLOCK 12 LOT 7 & 8
 EAST FALMOUTH, MASSACHUSETTS
 PREPARED BY: FIC OF THE ENGINEERS, LLC
 501 PENNSYLVANIA AVENUE, SUITE 150
 FALMOUTH, MASSACHUSETTS 01906
 DATE: SEPTEMBER 10, 2019
 SCALE: 1"=20'
 JOB NO.: 18-002
 CLIENT: FIC OF THE ENGINEERS, LLC
 SHEET NO.: 03/000
 THE LAYOUT PLAN
 CFG04.0

FARLAND CORP.
 www.FarlandCorp.com
 141 COUNTY STREET
 SUITE 200
 FALMOUTH, MA 01940
 OFFICES IN:
 • FAIRPORT
 • FAIRPORT
 • FAIRPORT
 • FAIRPORT

REVISIONS

NO.	DATE	DESCRIPTION
1	09/10/19	ISSUED FOR PERMIT
2	09/10/19	ISSUED FOR PERMIT
3	09/10/19	ISSUED FOR PERMIT
4	09/10/19	ISSUED FOR PERMIT
5	09/10/19	ISSUED FOR PERMIT



- ZONING DATA TABLE -

PROJECT DATA	
TOTAL SITE AREA	11.2 ACRES
BUILDING FOOTPRINT	1,200 S.F. CONCRETE AND IRON
TOTAL PARKING REQUIRED	1,200 S.F. / 20 S.F. USABLE SQUARE AREA
TOTAL PARKING PROVIDED	1,200 S.F. / 20 S.F. / 20 SPACES
LAND INFORMATION	MAP 33
SUBDIVISION NUMBER	BLOCK 12 / LOT 7 & 8
CELESTIAL MAP	
ZONING INFORMATION	
ZONING DISTRICT	RD-1 (RURAL)
MIN. LOT AREA	40,000 S.F.
MIN. FRONTAGE	40.00 FT.
BUILDING HEIGHT LIMIT	35.00 FT.
MIN. LOT COVERAGE	10.00%
STRUCTURE SETBACKS	10 FT. (FRONT), 10 FT. (SIDE), 10 FT. (REAR)
FRONT YARD	25 FT. (MIN. FROM PROPERTY LINE)
REAR YARD	10 FT.
SIDE YARD	10 FT.
LANDSCAPE/SCREEN SPACE	N/A
OVERLAP PERMIT	REQUIRED
MINOR ROAD ADJUNCTION	SEE TOWNSHIPS ORDINANCE (SECTION 20) - STATE HIGHWAY ADJUNCT
PROJECT NOTES	
1.	THE USER HAS OBTAINED RECORDS (CERTIFIED TRUE AND CORRECT) FROM THE TOWN ENGINEER.
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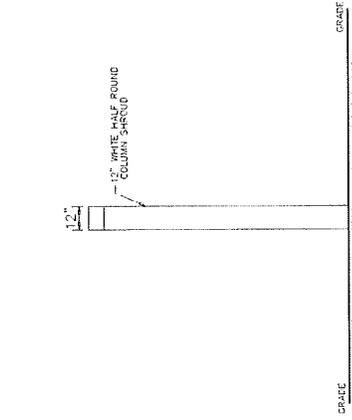
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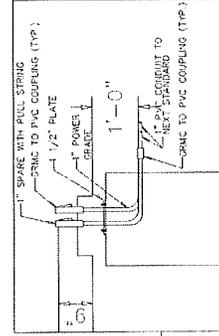
50. THE USER HAS OBTAINED RECORDS (CERTIFIED TRUE AND CORRECT) FROM THE TOWN ENGINEER.

- CUSTOM MARK, 0.75" CLEAR ACRYLIC PUSH THRUS (0.5" ± EXPOSED) W/ 3M TRANSLUCENT VINYL BRILLIANT GREEN #35-30-37 LAMINATED TO 1ST SURFACE
- LED LIGHT, MAIN I/O CABINET & LED PRICE CABINET (21.11 SQ. FT.)
- 4.5" X 60.5" LED SMART PAX BOARD
- 0.75" CLEAR ACRYLIC PUSH THRUS (0.5" ± EXPOSED) W/ 3M TRANSLUCENT VINYL CARNIVAL RED #4630-33 LAMINATED TO 1ST SURFACE
- 12" SQUARE LED PRICE UNIT (RED) 1375" X 31" LED WINDOW OPENING
- TRAY MOUNTED WITH CONDUCTIVE GROUNDING RING WITH CONDUCTIVE ADHESIVE 180°C-60 DEGREE MIN. APPLIED TO 1ST SURFACE
- 0.75" CLEAR ACRYLIC PUSH THRUS (0.5" ± EXPOSED) W/ 3M TRANSLUCENT VINYL BRISTOL BLUE #35-30-37 LAMINATED TO 1ST SURFACE
- 0.75" CLEAR ACRYLIC PUSH THRUS (0.5" ± EXPOSED) W/ 3M TRANSLUCENT VINYL BRILLIANT GREEN #35-30-37 LAMINATED TO 1ST SURFACE
- ELECTRIC ACCESS PANEL
- DUAL POLE SERVICE SWITCH
- METAL PANEL SYSTEM WHITE

FRONT VIEW (X2)



SIDE VIEW (X2)



NOTE:
SEE SHEET 442 AND 441 FOR EXHAUSTION AND APPROXIMATE SIZES.
PRICE TRAYS WILL BE INSTALLED IN PLACE OF A PRICING UNIT.
LOGGAS, PRICE SIGN ELECTRICAL REQUIREMENTS
1. PAX BOARD 2. JUNG AND THE BOARD 3. WP
1. LED PRICE CABINET 2. LED PRICE UNIT
SPECIFICATIONS:
1. ALL SURFACES SHALL BE FINISHED WITH A GLOSS FINISH.
2. ALL SURFACES SHALL BE FINISHED WITH A GLOSS FINISH.
3. ALL SURFACES SHALL BE FINISHED WITH A GLOSS FINISH.
4. ALL SURFACES SHALL BE FINISHED WITH A GLOSS FINISH.

REVISIONS		DATE	BY	DESCRIPTION
1	REVISED	07/20/20	JUN	REVISED TO INCLUDE LED PRICE UNIT
2	REVISED	07/20/20	JUN	REVISED TO INCLUDE LED PRICE UNIT
3	REVISED	07/20/20	JUN	REVISED TO INCLUDE LED PRICE UNIT
4	REVISED	07/20/20	JUN	REVISED TO INCLUDE LED PRICE UNIT
5	REVISED	07/20/20	JUN	REVISED TO INCLUDE LED PRICE UNIT

DATE: 07/20/20
BY: JUN
CHECKED BY: JUN
DRAWN BY: JUN
SCALE: 1/2" = 1'-0"

6' PROTOTYPE

Cumberland

PROPOSED SIGN DRAWING: CFC 130

Cumberland
F A R M S

400 E. Falmouth Hwy.
East Falmouth MA 02536
ACCT # : 12354

PRESENTATION

Color Palettes | Finishes | Poles - 1/4" | 1/2" | 3/4" | 1"

C1 Finish Color: R1C
Standard 1/4" | 1/2" | 3/4" | 1"

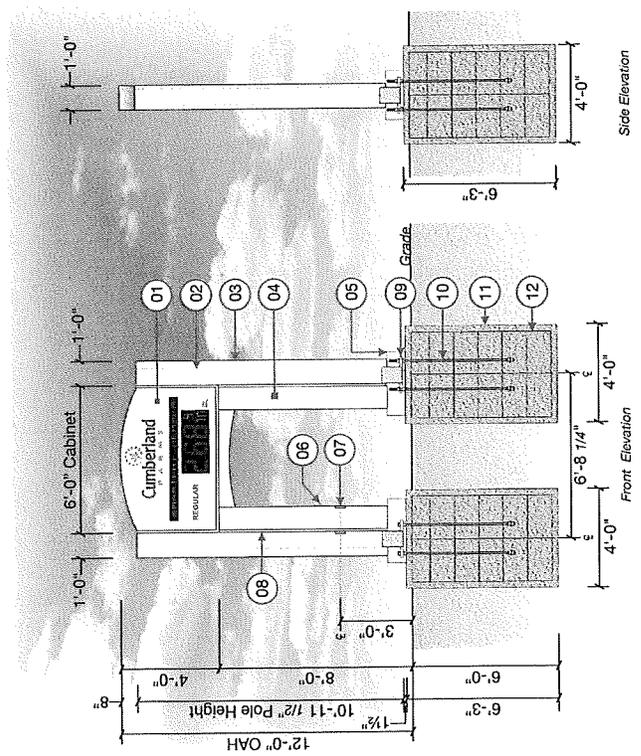
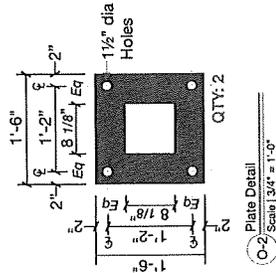
C2 Finish Color: R2C
Standard 1/4" | 1/2" | 3/4" | 1"

C3 Finish Color: R3C
Standard 1/4" | 1/2" | 3/4" | 1"

C4 Finish Color: R4C
Standard 1/4" | 1/2" | 3/4" | 1"

- 01 CUSTOM MAIN ID/PRICE SIGN
4'-0" h x 6'-0" w x 1'-0" LED Illum. Main ID Cabinet & LED Price Cabinet
2111 Sq Ft
(1/2" LED's Prices Units Supplied By Customer)
- 02 Dotted Lines Represent
10'-1 1/2" h x 8" x 8" x 5/16" Steel Posts
- 03 CF-MID-GP-6FT-SYS-P000 Pole Covers & Mounting
- 04 11" w x 1'-0" Deep Inner Column Shroud
- 05 CF-MID-GP-PL-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 1/4" Throughout Sign
- 09 1'-6" x 1'-6" x 1 1/2" thk base plates (see plate detail)
- 10 1 1/2" 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.



 www.prosign.net	221 East Road Downingtown, PA 19335 ☎ 610.513.5881 📠 610.513.5244 📧 info@prosign.net	REVISIONS: 01: Initial Design 02: Final Design 03: Final Design 04: Final Design	PM: JDI/MS DESIGNER: DK DATE: 9/22/2018	Copyright, Pro Sign, Company, 2017 All Rights Reserved. W/C Cumberland Farms Signage, All Rights Reserved. 12354-1-78 CF-6FT-SYS-P000-01A-MID	Page 1
	CF-MID-GP-6FT-SYS-1 SPECIFICATIONS QTY: ONE (1) D/F MAIN ID SIGN SYSTEM				

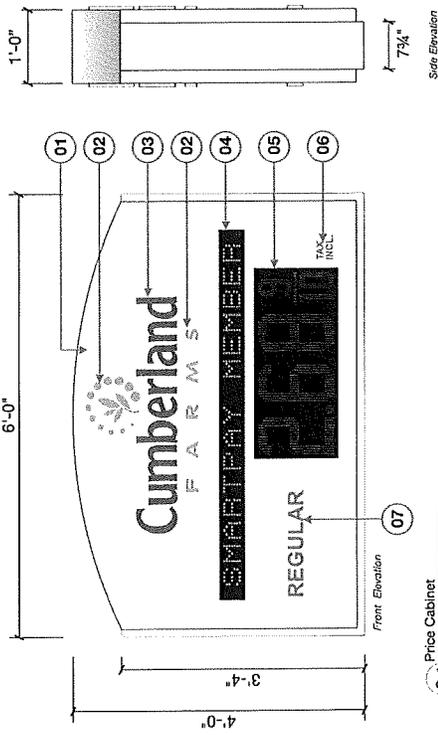
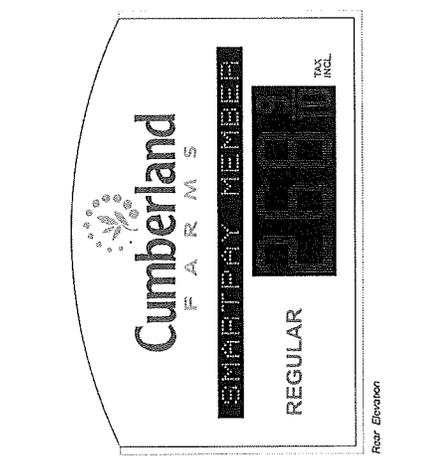
Cumberland FARMS
 400 E. Fairmount Hwy.
 East Fairmount MA 02536
 ACCT # 12364

PRESENTATION

Typography
 Ascii
 Bold 0 Kerning 0 Spacing
 ABCDEFGHIJKLMNOPQRSTUVWXYZ
 abcdefghijklmnopqrstuvwxyz
 1234567890

Color Palette | Paints - Vinyl
 G1 Jersey Coat 20C
 G2 Jersey Coat 20C
 G3 Jersey Coat 20C
 G4 Jersey Coat 20C

Price Cabinet
 Scale 1/32" = 1'-0"

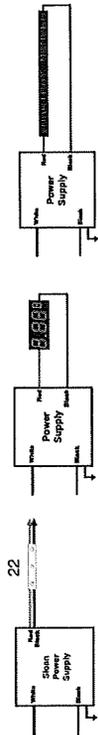


Rear Elevation

Side Elevation

Price Cabinet
 Scale 1/32" = 1'-0"

- 01 D/F illuminated fabricated aluminum cabinet w/ 1/8" faces painted Cumberland Farms White Formula (300G B-10, -19 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 1/4" 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



231 1st St Road
 Downingtown, PA 19340
 (610) 583-5881
 (610) 583-5244
 info@prosign.com

prosign
 www.prosign.com

REVISIONS:

CUSTOM MAIN ID / PRICER SIGN | SPECS
 QTY : ONE (1) D/F MAIN ID / PRICE CABINET

DESIGNER: DK
 DATE: 3/22/2018

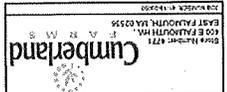
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Use the Location:
 DWG:
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Page 2



313A AND 313B FOR FIRM
 313A AND 313B FOR FIRM
 313A AND 313B FOR FIRM



NO.	REVISION	DATE

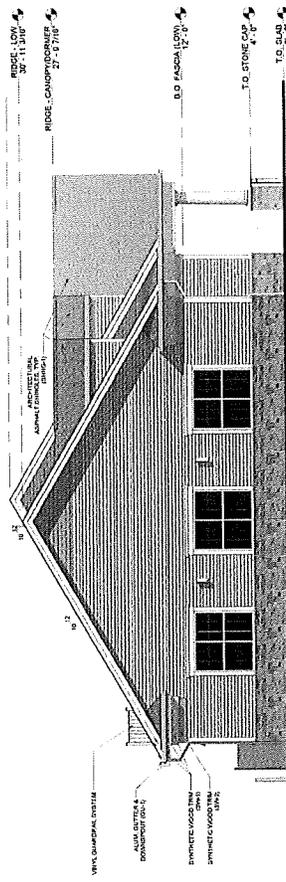
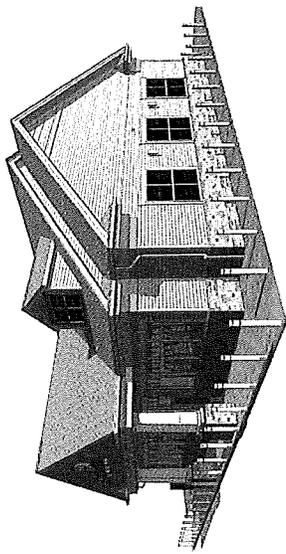
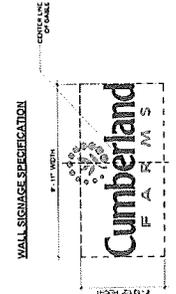
DESIGNED BY: AED
 DRAWN BY: LT
 DOCUMENT NO.: DWG17

NOT FOR CONSTRUCTION

EXTERIOR ELEVATIONS

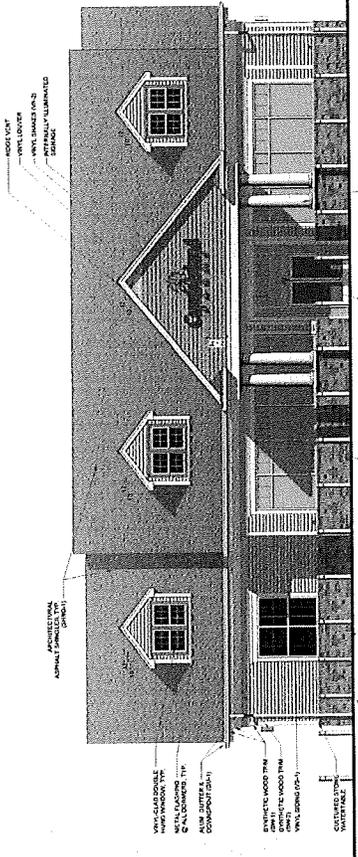
PROJECT: A-200

MARK	DESCRIPTION	MODEL	COLOR	NOTES
1	WOOD SHAKES	WOOD SHAKES	WOOD SHAKES	WOOD SHAKES
2	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM
3	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM
4	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM
5	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM
6	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM
7	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM
8	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM
9	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM
10	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM	SPRINKLE WOOD TRIM



2 RIGHT SIDE ELEVATION - SD
 3/17/12

3 FRONT PERSPECTIVE - SD
 3/17/12



1 FRONT ELEVATION - SD
 3/17/12

INSERT A

DATE: May 19, 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.

 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

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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,

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

4. Announce November 2020 Town Meeting schedule



DRAFT

NOVEMBER 2020 ANNUAL TOWN MEETING

Selectmen Announce Annual Town Meeting Monday, August 10, 2020

Close WarrantFriday, August 21, 2020
or.....Friday, August 28, 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 16, 2020

5. Presentation from Charter Review Committee on proposed articles

To: Select Board
From: Charter Review Committee
Date: 8/3/2020

Re: Charter Amendment Recommendations for November 2020 Warrant

The following 11 recommendations for Charter amendments were voted at our August 3 meeting. The are grouped into three categories for our presentation on August 10, although the Warrant article grouping and ordering might well change;

- I. Five recommendations that were presented to you in 2019 and were received with approval but deferred to reduce the volume at that time; one of the five has an added change, but the others are as you received them in 2019
- II. Five recommendations related to alignment of planning processes, an area presented in 2019 that was voted down by you with a request to try to rework the specifics.
- III. One recommendation in two parts that seeks to resolve a problem left when November 2019 Article 32 was voted down by Town Meeting

Note: Explanatory language is in *italic font*; added language in Charter amendments is in **bold font**; deleted language is shown by ~~strikethroughs~~.

I. Recommendations held from 2019 to 2020

At the September 2019 meeting with the Select Board on warrant articles for November 2019, the Board, while agreeing on the validity of five articles, decided to delay them until the 2020 November meeting to reduce the number of changes in one year. Amendment #4 is the only one that is different from 2019, with an additional change recommended.

Amendment #1:

This corrects an inconsistency between Charter language and current practice. The new language supports the Town's current approach of considering the capital improvement budget at the Fall Town Meeting while the operating budget is taken up at the spring Town Meeting. This change also provides future flexibility in placing budget issues before Town Meeting. Language from C2-A is used in B is amended to put "borrowing" in place of "bond issues" because Town Meeting votes to authorize the former

Article II The Representative Town Meeting.

C2-3 Procedures.

A. ~~A~~ Town Meeting shall be held **twice** annually: ~~in the spring~~ **in April**, on a date ~~to be fixed~~ **chosen by the Select Board by law**, and **in the fall on a date chosen by the Select Board**. ~~to consider and act upon, with or without amendments, all proposed operating~~

~~and capital improvement budgets, bond issues and all other issues that may properly come before the Meeting.~~

~~B. A Town Meeting shall also meet annually in the fall, on a date chosen by the Board of Selectmen, to consider and act upon matters that may properly come before the Meeting. These meetings will consider and act upon, as required, with or without amendments, all proposed operating and capital improvement budgets, appropriations, borrowings~~ ~~bond issues and all other issues that may properly come before them~~ ~~the Meeting.~~

Amendment #2:

The changes in C clarify that B applies to listed bodies, which often have State-defined authorities but are locally appointed, and C applies to the majority of governmental bodies which are both defined by and appointed by the Board. Changes also clarify punctuation and delete an arbitrary one-year requirement.

C3-6 Powers of appointment

...

B. The Board shall also have the power to appoint governmental bodies as provided in Article VII.

C. The Board shall also have the power to appoint ~~and~~ ~~other~~ governmental bodies, **to** ~~and~~ define their duties, **and to** set the limits for the scope of their responsibilities and the terms of their existence. Any such committee having a planning function shall coordinate its activities with the Planning Board ~~at least once a year.~~

Amendment #3:

This article unifies in one location the Charter information about the moderator's responsibilities with no actual change in wording, moving language from C4-2 to C2-6.

Article II. The Representative Town Meeting

C2-6 Moderator.

A. A Moderator shall be elected as provided in § C4-2.

B. The Moderator shall preside at all sessions of the Town Meeting and shall have no vote unless the members present and voting are equally divided.

C. The Moderator shall establish and promulgate written procedures for the orientation of new Town Meeting members and shall conduct an annual meeting at which time said orientation shall take place.

D. The Moderator, in consultation with the Town Clerk, shall prepare simplified

rules of parliamentary procedure, which shall be made available to all elected Town Meeting members.

E. The Moderator shall appoint ad hoc committees of the Town Meeting as provided in § C2-12B.

F. The Moderator shall preside at any public hearing to discuss the suspension or removal of the Town Manager.

Article IV. Other Elected Town Boards and Officers

C4-2 Moderator.

A. A Moderator shall be elected at the Annual Town Election for a three-year term.

~~B. The Moderator, in consultation with the Town Clerk, shall prepare simplified rules of parliamentary procedure, which shall be made available to all elected Town Meeting members.~~

~~C. The Moderator shall appoint ad hoc committees of the Town Meeting as provided in § C2-12B.~~

~~D. The Moderator shall preside at any public hearing to discuss the suspension or removal of the Town Manager.~~

Amendment #4:

The new language clarifies that the chairperson is responsible to initiate action when a member of a governmental body has had excessive unexcused absences, but only with a vote by the whole body. The final sentence has been changed to better reflect the need for urgency but within a more feasible time frame.

Article VII, C7-2G, General Provisions

C7-2G. The unexcused absence, without good cause, of a member from one-half (1/2) of the total number of meetings during any twelve-month period or from four (4) or more consecutive meetings of any such governmental body shall serve to vacate the office, **as determined by the chairperson and confirmed by vote of the governmental body.**

When such a vacancy has been created, it shall be filled ~~within thirty (30) days or in accordance with General Laws, when applicable, or the process to fill the vacancy shall begin within thirty (30) days.~~

Amendment #5:

Deleting the language in C7-3 eliminates a contradiction between the authority of the Select Board to establish appointed committees as a management function in C7-1A and this type of decision by Town Meeting.

~~C7-3 Change in composition of appointed boards.~~

~~The Representative Town Meeting may, by bylaw, enlarge or decrease the number of per-~~

~~sons to serve as members of appointed town multimember bodies; provided, however, that all such bodies shall always consist of an odd number of members.~~

II. Redevelopment of Language Related to Alignment of Plans

At the September 2019 meeting with the Select Board on Warrant articles for November 2019 the Board, while agreeing on the importance of alignment of planning, voted to reject three recommended changes and invited a new effort by the CRC for 2020. The following changes are the result of that effort. They touch on 5 portions of the Charter but may need not to be presented as 5 different Warrant articles.

Taken together the following five recommendations establish that the Select Board has the executive responsibility to achieve consistency among three major plans--its own Strategic Plan, the elements of the Local Comprehensive Plan (LCP) generated by the Planning Board, and the Capital Improvements Plan, generated by the Town Manager. by:

- 1. Amendment #6: These changes are recommended for clarity of Select Board responsibility to provide Warrant article recommendations. In conjunction with the recommended changes to C3-3B, this change makes it clear that the Select Board, as well as the Planning Board, should exercise executive branch review and Warrant recommendation of the Local Comprehensive Plan.*
- 2. Amendment #7: This change requires the Select Board to evaluate the consistency of the Strategic Plan and the LCP. It also requires the Select Board to set procedures holding all agencies accountable to act in ways consistent with the Strategic Plan and the LCP. Also, it makes the Select Board responsible for a formal review of the LCP with recommendations to Town Meeting. The Planning Board in C4-6C below is charged with developing the LCP elements and the Select Board and Planning Board are urged to act in collaboration to create consensus on Warrant recommendations. But this process might result in differing recommendations coming to Town Meeting from the Select Board and the Planning Board.*
- 3. Amendment #8: This change clarifies the movement of the LCP elements from the Planning Board through the Select Board.*
- 4. Amendment #9: This language and that below in C8-6 establishes the importance of the Town Manager in assuring adherence to the big three plans but leaves the details to be developed by the Select Board outside the Charter.*
- 5. Amendment # 10: This change reinforces the connection among the three plans.*

Amendment #6:

§ C3-2 [Select Board] General Powers

Except as otherwise provided in this Charter, all executive powers of the town shall be vested in the Board of Selectmen. It is the intent of this Charter that the Board shall exercise control over town affairs by:

- Setting and communicating policies
- Recommending major courses of action to the Town Meeting.
- Making recommendations to Town Meeting on ~~all~~ **any warrant** articles ~~except , especially those that are the responsibility of the Finance Committee, the Community Preservation Committee or the Planning Board. for which other governmental bodies have not provided recommendations.~~

Amendment #7:

§ C3-3 [Select Board] Policy leadership.

A. The Board shall serve as the chief executive goal-setting and policy-making governmental body of the Town. The Board shall set a Strategic Plan of no less than five (5) years to be examined annually, ~~and~~ modified as needed, **and evaluated for consistency with the Local Comprehensive Plan. The Board shall issue procedures to assure that the actions of town agencies are evaluated for consistency with the Strategic Plan and the Local Comprehensive Plan.** The Board shall cause the Strategic ~~p~~ Plan to be regularly printed in the Annual Town Report.

B. The Board shall schedule public meetings with such other governmental bodies as it deems necessary, and shall hold them jointly, for consideration of the town's Local Comprehensive Plan and other planning and policy initiatives. **The Select Board shall vote on all elements of the Local Comprehensive Plan proposed by the Planning Board, meeting with the Planning Board to develop consensus whenever possible, and then shall place its recommendations for Town Meeting action on Local Comprehensive Plan elements on the Warrant along with those of the Planning Board.**

Amendment #8:

§ C4-6 Planning Board.

C. The Planning Board shall be responsible for the development and periodic review of a Local Comprehensive Plan or portions thereof **and shall forward them to the Select Board for its review, vote, and recommendation to Town Meeting concurrently with those of the Planning Board.** Such plan may include all or portions of plans developed by other governmental bodies; but these inclusions must be approved by a vote of the Planning Board. The Local Comprehensive Plan shall be submitted to the Town Meeting and then to the Cape Cod Commission.

Amendment #9:**§ C5-3 [Town Manager] Powers and duties.**

A. The Town Manager shall be the chief administrative officer of the Town and shall be responsible for administering and coordinating all employees, activities and departments placed by general law, this charter or bylaw under the control of the Select Board and the Town Manager. The Manager shall implement the goals and carry out the policies of the Select Board. **The Manager, pursuant to procedures set by the Select Board [C3-3A], shall assure that the actions of town agencies are evaluated for consistency with the Local Comprehensive Plan, the Strategic Plan and the Capital Improvements Plan.**

Amendment #10:**§ C8-6 Capital Improvements Plan.**

A. The Town Manager shall prepare a five-year Capital Improvements Plan **consistent with the Strategic Plan and Local Comprehensive Plan** which shall include a clear summary of its contents; a list of all capital improvements proposed to be undertaken during the next five (5) fiscal years, together with supporting data; cost estimates, methods of financing and recommended time schedules; and the estimated annual cost of operating and maintaining the facilities or equipment to be constructed or acquired. The above information shall be revised and extended each year with regard to capital improvements pending or in the process of construction or acquisition.

III. Recommendations on Article 32, rejected by 2019 Town Meeting

Article 32 was voted down by the 2019 November Town meeting in part because the Recreation Committee felt that it happened without adequate consultation. At a subsequent meeting in January between CRC representatives and the Recreation Committee, it appeared that the primary concern of that committee is that its seat on the Community Preservation Committee sets it apart from the other three and deserves recognition.

With the May ballot approval of Charter amendments there is a voted definition at C7-2A of the Charter of those governmental bodies that belong in the Charter. However, when Article 32 was defeated in November 2019, four bodies that do not fit the definition were left in the Charter. With more than 40 governmental bodies of various kinds, the voted delineation sets two qualifications: both a mandate or authorization by State law and also an exercise of decision-making in some form that is independent from the Select Board. Four committees currently listed in the Charter carry out an advisory role to the Board as governed by C3-6C and C7-1, which gives the Select Board authority to set up and appoint advisory bodies. Removal from the Charter should not change the operations of

these groups as long-standing bodies advising on areas significant to the well-being of the Town.

The following is our current recommendation to resolve the issue: 1) amending the language for the Community Preservation Committee at C7-16 by listing the specific members, including the Recreation Committee by name, and 2) resubmitting the language from article 32 of the November 2019 warrant to remove the sections for the four advisory committees. The CRC will meet with the Recreation Committee on August 12 to discuss this proposal; it is the first opportunity to do so because the CRC reconvened remotely in June after the Rec Comm met and they did not have a July meeting.

Amendment #11:

C7-16. Community Preservation Committee

A Community Preservation Committee shall be appointed as provided by the provisions of Massachusetts General Law Chapter 44B and applicable Town bylaw, **consisting of nine (9) voting members, four (4) members appointed by the Board of Selectmen, and one (1) each appointed by the following five (5) governmental bodies: Conservation Commission, Historical Commission, Housing Authority, Planning Board, and Recreation Committee.**

Sec. C7 – 10, 11, 12 and 13

To see if the Town will vote to adopt the following proposed amendments to Article VII, Appointed Town Boards, of the Falmouth Home Rule Charter

by deleting section C7 – 10 relative to the Recreation Committee, section C7 – 11 relative to the Waterways Committee, section C7 – 12 relative to the Beach Committee and section C7- 13 relative to the Human Services Committee.

6. Vote to change polling place location for Precinct 5

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 1,000	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 1/2 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

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



7. Annual town committee reappointments

Affirm appointments

Committee	<u>Incumbent</u> for Reappointment	Term
Certified Weighers – Transfer Station	Ernie Santos	6/30/21
	Carlos Rebelo	6/30/21
	William Baldic	6/30/21

Diane Davidson

From: Jim Grady
Sent: Monday, July 27, 2020 7:18 AM
To: Diane Davidson
Subject: RE: Weighmasters for Re-Appointment

Good Morning Diane, The weighmasters are still the same.
Thanks

James F Grady Jr
Superintendent of Highways
Town of Falmouth
416 Gifford St
Falmouth Ma 02540
508-457-2543 Ext 3005
508-548-1537 Fax
jim.grady@falmouthma.gov

From: Diane Davidson
Sent: Friday, July 24, 2020 11:53 AM
To: Jim Grady <jim.grady@falmouthma.gov>
Subject: Weighmasters for Re-Appointment

Hi Jim,

Would you please provide me with a list of the Certified Weighers for the Transfer Station for next term beginning on July 1, 2020 – June 30, 2021?

Below is a list of the current Weighers:

- Ernie Santos
- Carlos Rebelo
- William Baldic

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

8. Discussion of special events scheduled from September through December and follow-up actions

Special Events

Approved Event Permits:

1. Ride for Homes – Bike Ride – Habitat for Humanity of Cape Cod – Bourne to Woods Hole to Bourne entirely on bike path in Falmouth – Sunday, 9/13/20 – 7:00 a.m. – 1:30 p.m. (100 participants)
2. Pedal to Parcels – Bike Ride – The 300 Committee Land Trust – Tony Andrews Farm start/finish – guided bicycle tour of conservation lands – Sunday, 9/20/20 – 9:00 a.m. – 12:00 p.m. (30 participants)
3. Autumn Escape Bike Trek – Bike Ride – American Lung Association – Ride through Falmouth, stop at Surf Drive Beach parking lot and bath house – Friday, 9/25/20 – 10:00 a.m. – 2:00 p.m. (300 participants)
4. Striper Fest – On the Water, LLC – Marina Park & Bandshell – Saturday, 9/26/20 – 12:00 noon – 6:00 p.m. (3,000 attendees)
5. Zooma Race – Road Race – Be Inspired Events LLC – Seacrest start/finish, bike path, streets, Old Silver Beach parking lots – Sunday, 9/27/20 – 7:00 a.m. – 11:00 a.m. (1,000 participants) (applicant submitted alternate plan, under review)
6. The Kirwin and Murray Memorial Bike Ride – Falmouth Housing Corp. – Surf Drive Beach start/finish – Sunday, 10/11/20 – 7:00 a.m. – 12:30 p.m. (100 participants)
7. Jazz Stroll – ArtsFalmouth, Inc. – Queen’s Buyway, along Main Street & Peg Noonan Park – Saturday, 10/17/20 – 5:00 p.m. – 8:00 p.m. (500 attendees)
8. Falmouth in the Fall Road Race – Cape Cod Moves – Woods Hole to Falmouth Heights – Sunday, 11/1/20 – 1:00 p.m. – 3:00 p.m. (750 participants)
9. Holiday Stroll – Falmouth Village Association – Road closure, Main Street to Village Green to Shore St. Ext. – Saturday, 12/5/20 – 4:00 p.m. – 9:00 p.m. (1,000+ attendees)

Approved Wedding Ceremony Permit:

1. Kristy Adams Alfieri – Douglas Johnson – Old Silver Beach (Public) – Saturday, 9/26/20 – 4:30 p.m. – 5:30 (60 – 70 guests)

New Permit Applications:

1. Where are the Wings? – Wings for Falmouth Families – Town-wide scavenger hunt – ~~Falmouth Heights Ball Field start/finish~~ (Recreation Center Start Finish?) – Saturday, 9/26/20, 9:00 a.m. – 2:00 p.m. (40 – 45 participants)
2. Buzzards Bay Coalition Watershed Ride – Bike Ride – County Rd. – Dock Rd. – bike path – Woods Hole – MBL – Saturday, 10/4/20 – 1:00 p.m. – 6:00 p.m. (400 participants)

3. Cape Cod Marathon Weekend – Road Race – Falmouth Track Club – Marathon, Half Marathon, 5K – Saturday, 10/24/20 and Sunday, 10/25/20 – 6:00 a.m. – 4:00 p.m. (4,500 participants)
(applicant submitted alternate plan, under review)

New Wedding Ceremony Applications:

1. Falmouth Heights Beach – Bowman – Saturday, 9/12/20 – 5:00 p.m. (23 guests)
2. Chapoquoit Beach – Jennings – Saturday, 9/19/20 – 5:00 p.m. (32 guests)
3. Chapoquoit Beach – Memorial Service – Ingles – Thursday, 8/20/20 – 4:00 p.m. (12-15 guests)

Events Cancelled by Organizers:

1. Rotary Club Craft Fair – Falmouth Rotary Club – Marina Park – Saturday, 9/5/20 and Sunday, 9/6/20
 - Reschedule to Saturday, 9/4/21 and Sunday, 9/5/21
2. Stroll & Roll – Compassionate Care ALS – Bourne Farm – Bike Path – Saturday, 10/24/20
 - Reschedule to Saturday, 5/15/21

Diane Davidson

From: Scott McGann
Sent: Friday, August 7, 2020 2:16 PM
To: Diane Davidson; Phyllis Downey
Cc: Peter Johnson-Staub; Julian Suso
Subject: FW: Movie on the lawn

Also this was included

1. *Face Coverings:* For gatherings of more than 10 people, all persons over the age of two must wear a face covering when they attend indoor and outdoor gatherings where participants other than those in the same household will be in attendance, unless they are prevented from wearing a face covering by a medical or disabling condition. This restriction applies to gatherings in all venues and locations, including private homes, backyards, parks, athletic fields, and parking lots.

From: Scott McGann
Sent: Friday, August 7, 2020 2:13 PM
To: Diane Davidson <diane.davidson@falmouthma.gov>; Phyllis Downey <phyllis.downey@falmouthma.gov>
Cc: Peter Johnson-Staub <peter.johnson-staub@falmouthma.gov>; Julian Suso <julian.suso@falmouthma.gov>
Subject: Movie on the lawn

Gov Baker just reduced the outdoor gatherings from 100-50 which could affect the weekly movie on the library lawn. Is there a contact I can reach out to?

Last time I scoped out the movie there was about 30 attendees.

Scott McGann, R.S.
Health Agent
Falmouth Health Department
59 Town Hall Square
Falmouth, MA 02540
508-495-7485
<http://www.falmouthmass.us/273/Health-Department>

**THIRD REVISED ORDER REGULATING GATHERINGS
THROUGHOUT THE COMMONWEALTH**

COVID-19 Order No. 46

WHEREAS, on March 10, 2020, I, Charles D. Baker, Governor of the Commonwealth of Massachusetts, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared that there now exists in the Commonwealth of Massachusetts a state of emergency due to the outbreak of the 2019 novel Coronavirus (“COVID-19”);

WHEREAS, on March 11, 2020, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization;

WHEREAS, the Federal Centers for Disease Control and Prevention (“CDC”) have advised that COVID-19 is spread mainly by person-to-person contact and that the best means of slowing the spread of the virus is through practicing social distancing and by minimizing personal contact with large groups and with environments where this potentially deadly virus may be transmitted including, in particular, spaces that present enhanced risks because of the large number of persons present or passing through the area who may spread the virus through respiratory activity or surface contacts;

WHEREAS, the CDC has issued guidance for large gatherings and community events, such as conferences, festivals, parades, concerts, sporting events, and other potentially super-spreading events, recognizing that gatherings can significantly contribute to the spread of COVID-19 and introduce the virus to new communities;

WHEREAS, that CDC guidance states that, while virtual-only activities are the safest, the risks associated with in-person events can be reduced if they are held outdoors, remain small, and participants maintain 6 feet of distance and wear face coverings;

WHEREAS, on March 23, 2020, in order to restrict all non-essential person-to-person contact, non-essential movement outside the home, and reduce opportunities for spreading the COVID-19 virus within the Commonwealth, I issued COVID-19 Order No. 13, which temporarily closed the brick-and-mortar premises of businesses and organizations that do not provide COVID-19 Essential Services and prohibited gatherings of more than 10 people;

WHEREAS, in response to gradual improvements in the public health data, on May 18, 2020, June 6, 2020, and July 2, 2020, I issued COVID-19 Orders No. 33, 37, and 43, respectively, which designated certain businesses and other organizations as Phase I, II, III, or IV enterprises and initiated a progressive, phased plan for re-opening workplaces and other facilities across the Commonwealth;

WHEREAS, again in response to sustained improvements in the public health data at the time, on July 2, 2020, I issued COVID-19 Order No. 44, which rescinded the 10 person limitation on gatherings and set a maximum gatherings limitation of 25 persons for indoor gatherings and 100 persons for outdoor gatherings, with exceptions for certain businesses and organizations governed by sector-specific guidance and for outdoor gatherings organized for the purposes of political expression;

WHEREAS, contrary to the sustained improvements in the public health data in the preceding period, over the last 3 weeks, the 7-day rolling average of percent positive COVID-19 molecular tests has increased from approximately 1.7% each day to approximately 2.1% each day and the 7-day rolling average number of confirmed cases from 166 to 234 over the same period;

WHEREAS, clusters of COVID-19 infections have been traced to house parties in the Commonwealth and in other States experiencing increases in infection rates, suggesting that gatherings are contributing to the current rise in cases in the Commonwealth and that increased vigilance and enforcement of safety measures for gatherings is necessary;

WHEREAS, the statewide increase in the rate of transmission means that it is appropriate to reduce the allowances on outdoor gatherings so as to continue to minimize opportunities for person-to-person spread of the COVID-19 virus while the Commonwealth remains in the midst of the COVID-19 public health emergency; and

WHEREAS, sections 7, 8, and 8A of Chapter 639 of the Acts of 1950 authorize the Governor, during the effective period of a declared emergency, to exercise any and all authority over persons and property necessary or expedient for meeting a state of emergency, including but not limited to authority over assemblages in order to protect the health and safety of persons, transportation and travel by any means or mode, and policing, protection, and preservation of public and private property;

NOW, THEREFORE, I hereby Order the following:

1. *Entities Subject to Sector-Specific Rules:* A business or other organization that has been designated by Executive Order as a Phase I, Phase II, or Phase III enterprise and that is permitted to open its brick-and-mortar premises to workers and the public shall not be subject to the general gathering limitations in Section 3 of this Order, if the enterprise is operating in compliance with COVID-19 safety rules and any applicable capacity limitation issued by the Department of Public Health, the Department of Labor Standards, the Massachusetts Gaming Commission, or the Executive Office of Energy and Environmental Affairs.

Phase IV enterprises shall remain closed, consistent with the requirements of the Order Authorizing the Re-Opening of Phase III Enterprises (COVID-19 Order No. 43).

2. *Gatherings for Political Expression and Religious Activities.* Outdoor gatherings for the purpose of political expression and gatherings for religious activities shall not be subject to the limitations in Section 3 of this Order; provided, however, that indoor gatherings for the purposes of political expression shall be governed by the indoor limitations of Section 3, and gatherings for the purpose of religious services shall follow the COVID-19 safety rules and capacity limitations set forth in the Places of Worship sector-specific guidance.
3. *Otherwise Applicable Indoor and Outdoor Gathering Limits:* The following limitations apply to indoor and outdoor gatherings not exempted by Sections 1 and 2:
 - Indoor gatherings are limited to 8 persons per 1,000 square feet of accessible, indoor floor space, and never more than 25 persons in a single enclosed, indoor space.
 - Outdoor gatherings are limited to 25% of the maximum permitted occupancy of the facility or space as documented in the occupancy permit on record with the municipal building department or other municipal record holder if there is a capacity limitation on record, or 8 persons per 1,000 square feet where no occupancy limitation is on record, and never more than 50 persons in a gathering in a single outdoor space.
 - All participants in indoor and outdoor gatherings must maintain at least 6 feet of physical distance from every other participant in the gathering aside from participants who are members of the same household. A gathering shall violate this provision where, no matter the number of participants present, conditions or activities at the gathering are such that it is not reasonably possible for all participants to maintain this degree of separation.

Gatherings that are subject to the limitations of this Section include, without limitation, community, civic, public, leisure, sporting events, concerts, conferences, conventions, fundraisers, fairs, festivals, road races, and other similar events or activities. Except as provided in Sections 1 and 2, these restrictions apply to gatherings in all public and private venues and locations in the Commonwealth, including private homes, backyards, parks, athletic fields, and parking lots.

This Order does not impose a general capacity limitation on large, unenclosed public spaces such as beaches, parks, and recreation areas. Capacity limitations for such spaces set by other rules and regulations shall continue to apply. The limitations of this Order are instead specifically applicable to programs, celebrations, social outings, and similar events that draw together groups of people. Such gatherings are subject to the limitations of this Order when they take place within large, unenclosed public spaces such as beaches, parks, and recreation areas or within any other indoor or outdoor space, public or private, that falls within the scope of this Order.

4. *Face Coverings*: For gatherings of more than 10 people, all persons over the age of two must wear a face covering when they attend indoor and outdoor gatherings where participants other than those in the same household will be in attendance, unless they are prevented from wearing a face covering by a medical or disabling condition. This restriction applies to gatherings in all venues and locations, including private homes, backyards, parks, athletic fields, and parking lots.
5. *Legal Exceptions*: This Order shall not apply to any of the following businesses, organizations, workplaces, or facilities:
 - a. Any municipal legislative body, the General Court, or the Judiciary
 - b. Federal governmental entities
 - c. Any health care facility or licensed health care provider
 - d. Any of the following workplaces or facilities with specialized functions and populations:
 - Polling places
 - Public and private elementary and secondary (K-12) schools
 - Residential and day schools for special needs students
 - Licensed, approved, or exempt child care programs and any emergency child care centers and emergency residential programs operating under emergency authorization
 - Facilities operated by the Department of Correction or any Sheriff
 - Facilities operated, contracted, or licensed by the Department of Youth Services, Department of Mental Health, Department of Public Health, or the Department of Developmental Services
 - Facilities and programs that provide safe spaces for the unstably housed such as homeless and domestic violence shelters
 - and any other facility or workplace that the Commissioner of Public Health may in writing exempt from the terms of this Order
6. *Enforcement*. The Department of Public Health, local boards of health and their authorized agents pursuant to G. L. c. 111, § 30, and State and municipal police are authorized to

enforce this Order. Violation of the terms of this Order may result in a civil fine of up to \$500 per violation as provided in St. 1950, c. 639, § 8, provided that the fine shall be administered in the manner provided for the non-criminal disposition of violations of municipal by-law, ordinance, rule, or regulation pursuant to G. L. c. 40, § 21D. This Order may also be enforced by injunction. A motion for an injunction to enforce this Order may be filed in the district court or any other court of competent jurisdiction for the municipality in which the violation has been charged. The Alcoholic Beverages Control Commission or a local licensing authority may, after notice to the licensee and a reasonable opportunity to be heard, suspend, revoke, or cancel a license for the sale or service of alcoholic beverages or take other appropriate enforcement action upon satisfactory proof that the licensee has violated or permitted a violation of this Order.

If any provision of this Order or the application thereof to any person, entity, or circumstance is determined to be invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Order or its application to other persons, entities, and circumstances.

The Second Revised Order Regulating Gatherings Throughout the Commonwealth (COVID-19 Order No. 44) is hereby rescinded effective 12:01 am on August 11 2020.

This Order shall be effective 12:01 am on August 11, 2020 and shall remain in effect until rescinded or until the state of emergency is ended, whichever occurs first.

Given in Boston at _____ AM/PM this 7th
day of August, two thousand and twenty

CHARLES D. BAKER
GOVERNOR
Commonwealth of Massachusetts

9. Discussion on future reopening of town hall/town buildings

Diane Davidson

From: Julian Suso
Sent: Wednesday, August 5, 2020 12:13 PM
To: Falmouth Selectboard
Subject: Town Hall/Town Buildings Public "Opening"

Dear Board Members,

As you know, in collaboration with Governor Baker's emergency orders, we have been reviewing/anticipating a reasonable process and future date for re-opening Town Hall and related Town Buildings to public access (although not likely the Senior Center for obvious reasons). We are continuing the "transition" process for modest "retro-fitting" of offices in these buildings to facilitate compliance with the necessary social distancing directives and, of course, all those who enter will be requested to have a face covering at all times inside public buildings. This is the same protocol which we have routinely been following for all Town employees for the past several months. We have been most fortunate that the careful protocol which we have been following in all Town buildings has paid dividends to date – with no occasions of non-safety employees having to isolate/quarantine related to the workplace. I pray that our good fortune continues. I have included Town Hall offices/managers in discussions regarding this review of the future re-opening, and we continue a most productive dialogue going forward in a reasonable, collaborative manner to best serve the public during this pandemic. As you know, some physical adjustments/enhancements which we have put in place to date have been most helpful – including the Town Hall main entrance "mail slot," the newly-placed Town Hall (oversized items) grey "mailbox" sited at the prime entryway to Town Hall, and the multiple mailboxes placed at the rear entryway to Town Hall to accommodate plan submissions for Building and the various Boards/Commissions.

Given recent cautions issued by Governor Baker (as the latest "data" suggests a possible expansion of the virus in the Commonwealth), and understanding that we remain in the midst of Falmouth's annual summer population boom, I am concluding that both Town employee health/safety and the health/safety of our residents are best served by continuing to be cautious and not anticipating a re-opening to the public until after this annual summer population surge abates following Labor Day/later in September. Perhaps the Board would like to further review/discuss this at an upcoming meeting. As a reminder, we are scheduled to meet virtually for the next three consecutive Mondays – August 10, 17 and 24. (August 17 is the rescheduled Annual Strategic Plan Retreat). I welcome your thoughts on this coming transition process. As a reminder, be sure that you respond ONLY to me and NOT to all members of the Board in respect to Open Meeting issues. Thank you.

Julian

10.Minutes of Meetings:

- Public Session – June 4, 2020; June 15, 2020 (regular and joint meeting)

TOWN OF FALMOUTH
SELECT BOARD
Meeting Minutes
THURSDAY, JUNE 4, 2020
SELECT BOARD'S 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 June 4, 2020 public meeting of the Falmouth Select Board (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 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.*
1. Call to Order by Chair English Braga at 7 p.m.
 2. Pledge of Allegiance
 3. Announcements-none.
 4. Public Comment-none.

BUSINESS

1. Further Discussion of Street Closure, Outdoor Business Seating, Temporary Licensing and Other Issues Related to COVID-19 Reopening

Received a number of emails today, no one asked their email to be read during the comment period.

Mr. Patterson noted two issues: 1. Allowing restaurants for outside seating 2. Street closing. Chair English Braga noted what was supposed to be submitted to the Board was for all businesses in Town, beyond Main Street, and the procedure for that office.

Street Closure

The Board was talking for quite some time on possible options, working with the Chamber, proposal looked at by public safety. There was not that much attention made until the Board voted Monday, when there was much communication with the Town by retail shop owners with concern about the street closure. Try to have on agenda at least twice for public awareness and garner some attention and input. In this case the information is on the back end of the process. Monday the Board voted to close a portion of Main Street, asked Town Counsel to draft documents to do so, but have since received a lot of input. Open the discussion to find out if the Board needs to reconsider the vote, shops very concerned and restaurant owners who don't anticipate using any space if it were made available. Only 2 restaurants anticipate using the closed portion, Water St. to Shore St. Ext. Since many businesses are concerned and not using the space, Chair English Braga asked the Board for input.

Mr. Jones would like to reconsider an amendment to do hard closure at Shore St. ext. and soft closure down Shore St. ext. so fire trucks could get to the restaurants and hard closure at Library Lane.

Chair English Braga noted that was a suggestion, but Chief Dunne did not feel that was a good direction and concerned about the diagonal blocking. Mr. Suso noted Chief Small is present.

Chief Small said the proposal is trading access from Library Lane and moving access to Shore St. Ext., Chief Dunne has solid ideas. To do so, you would need to abandon parking and turn Shore St. Extension with jersey barriers, it would look like an entry control point. Numerous jersey barriers staggered to slow traffic down.

Chief Dunne does not think it will work because Library Lane is not a wide road and will not be safe. If you close it off, the first Jersey barrier would need to be by Maguire's front door. Access to the buildings by the FFD. They have spent a lot of time walking around the area. As public safety, Chief Dunne does not believe it will work.

Mr. Brown talked with delivery drivers, suggested if closing it, allow mornings for deliveries. Mr. Brown is backing up from his vote Monday. At this time there is not enough positive response and a lot of negative response from the business community. A restaurant owner told him that she will not buy tables and set them out. She knew of another business not doing that.

If parking spaces are used as regular parking, another option not to do the closure, but maybe close those parking spaces as live parking.

Mr. Patterson said that a couple restaurants only want to do takeout but would like the picnic tables on Library Lawn. In Maryland they spread brown paper across tables and lay out the crabs to eat, after eating they wrap it up and throw it in the trash. That may be an option for the picnic tables, maybe the Town would consider it. Chair English Braga noted that idea can be put on a future agenda to get more details. There are new guidelines that they need to be cleaned between every use and would need to determine who would be responsible. Would also need to petition the Library Trustees. Sam Patterson is inclined to rescind the previous vote.

Mr. Jones suggested leaving possibility of a shoulder weekend where we try shutting down Main Street and have the restaurants bring out their tables in the Fall.

Mr. Brown watched Planning Board meeting Tuesday night and they were surprised the Board took action and did not get their view. Planning Board was against the closing because it was not suitable for downtown.

Mr. Johnson-Staub got lengthy comment through chat for this subject along with two others.

Public Comment:

Chair English Braga read the public comments received.

Frank and Sheila Carotenuto 38 Harriette Rd., E. Falmouth, vote on Monday's meeting was right idea to help restaurants, however it only helps those restaurants east of Walker Street and gives competitive edge to some restaurants. Please correct the error. Extending the closure.

Pickle Jar Restaurant asked about opening public bathrooms and portable toilets.

Kate Rickard: Agree with all points and have wondered about raining days, aren't tents the same as being inside? People may want things to be as they remembered. Routine is comforting. Restaurants will do best with all takeout. Maybe Town could fund tables and sanitization instead of the barriers.

Time frame for opening restrooms? Plan to open restrooms consistent with opening of outdoor restaurant seating, will be 6/8/20.

Mr. Brown asked if they can hire someone to clean tables? Mr. Suso noted some discussion, preference would be not to create another category of seasonal employees, but suggest contract cleaning could be explored and collaborate with the Chamber of Commerce to oversee and manage that function, the Town could procure funding to make that happen.

Mr. Jones noted comment on Town green, maybe table at Town Hall Square.

Chair English Braga asked merchants to do some consensus building with the Chamber to get clarity.

Mr. Patterson motion to rescind street closing vote made on 6/1/20. Second Mr. Jones. Roll call all aye.

Parking on Main Street will be during an upcoming meeting.

Outdoor Business seating and temporary licensing issues

Mr. Suso explained that Town Counsel and Associate Town Counsel, three documents in the packet: 1. Procedure to approve temporary outdoor restaurant service, 2. Temporary administrative approval of outdoor service, 3. Temporary license agreement with Town to use sidewalks and any other public areas for use of expansion of commercial operations due to limitations posed by COVID-19. These documents, subject to Board of Selectmen concurrence, transmit to all affected businesses to allow review and transmit to the Town with the potential of expedited licensing and permitting consistent with Governor's recent orders and intent of the Board. Also have attachments of the Governor's orders, safety standards, and checklist info. DPW Director and Health Agent, and Town Counsel present.

Mr. Jones asked if restaurant uses current parking area and it changes to # of parking spaces, will they get the waiver as quickly as the liquor license. Atty. Mullen explained the Governor's order 35, single unitary process and boards can override local zoning requirements including zoning. Handicap and other ADA requirements are maintained. It's possible for restaurant to use a portion of their parking lot through this single Town Manager initiated review. No additional review would be necessary.

Mr. Brown asked timeframe for turnaround of these applications? Mr. Suso said that estimate, shared with board another exhibit that discusses general anticipation. Hope is to share documents tomorrow with all eligible businesses and receive the forms, turnaround in the coming work week. Requires full applications, if they come in without full information to make the determination, they will need to follow up with the businesses and could lead to a delay.

Kevin Klauer asked will properties require separate decisions. They will be covered in the single process, no need to go back to Planning Board.

Mr. Patterson noted part of the application needs to be a sight sketch. Ms. Mullen said that section 2 of the application there is a requirement of a detailed description or sketch or plan with components that need to go into that sketch.

The application will be on the Town Website and sent to the Chamber. Mr. Suso will transmit the full package to all eligible businesses subject to the Board's vote.

Authority the Board has extends to November 1, 2020 or when the Governor's particular order is rescinded. The Board could consider a shorter timeframe.

Timeline: trying to complete by the Friday after June 8, pending the vote and Governor's order allowing restaurant seating. Taking applications and reviewing in anticipation that the Governor will allow sit down service.

Does mandate state how far the tables can be from parking spot or street? Atty. Mullen said Order 35 does not contain direction on that issue. That assessment can be made based on particular properties and what would be safe, by Town Manager's Office and other departments. Any restaurant serving alcohol, the area is required to be enclosed from rope to fence/barrier, so application requests what the business will do for closure. Feedback looked at on case by case basis.

Mr. Suso said that process following when completed application received, it will be reviewed by all critical town departments, public safety, public works, zoning, planning, building, health and comment, then brought back to Town Manager for action. This is a process with several internal checkpoints and overseen by the Town Manager's Office.

Kelly asked if tent canopy will be allowed on property or need separate permit. Governor order specifies requirements for tent and can be included in this single process. Requirements in the Governor's order is that 50% of side areas of a tent be unobstructed; not be a fully walled tent.

Temporary tents for rain only? All tents would need to comply with Governor's order.

Allowed for same number of occupants existing so long as social distancing. No approved restaurant seating will exceed the indoor capacity permitted for, if indoor dining starts under order of Governor, whatever is not being used outside may be used inside, but may not be more than 100% of what they had previously.

John asked that the Board include future agenda item, asked for capacity limits for taxis and Uber.

Mr. Brown move the Town Manager be authorized to act on behalf of the Board when acting as the local licensing authority for alcoholic beverages licensing and common victuallers licenses to approve temporary amendments to the licensed premises for restaurants to allow for outdoor service and to accommodate the provisions of the Order of the Governor of the Commonwealth, COVID-19 Order No. 35, dated June 1, 2020; and further that the Town Manager be authorized to approve temporary amendments or changes to the licensed premises for restaurants described in any special permit or variance issued under G.L. c 40A or the zoning bylaw of the Town of Falmouth to allow for outdoor service and to accommodate the provisions of the Order of the Governor described above. Second Mr. Patterson. Roll Call Vote: Roll Call Vote: Chair English Braga, aye; Mr. Brown, aye; Mr. Jones, aye; Ms. Taylor, aye; Mr. Patterson, aye.

Mr. Suso noted a timing consideration for restraint reopening downtown and milling and overlay of the roadway. Mr. Suso read the draft into the record.

Mr. McConarty confirmed milling and paving of Main Street, actual plan water main work completed this Tuesday and paving will begin at Queen's Byway down Main Street Tuesday, Wednesday, and Thursday of next week, then to the Village Green and Town Hall the week of the 15th. They will be out of the area by the 17th or 18th weather permitting and let the summer begin with a pristine roadway.

Pickle Jar commented asking if the closing of the street could wait until the Fall.

Chair English Braga asked about concern, if it could wait until the Fall. Mr. McConarty said that they have been pressuring the contractor and they have gotten a lot of work done, Main Street is rough, there have been a number of complaints. Preferable to get the work done now.

Mr. Suso said formal vote is not required, but the Board is welcome to vote.

Mr. Brown motion to allow the DPW to continue with milling and paving on Main Street. Roll Call Vote: Chair English Braga, aye; Mr. Brown, aye; Mr. Jones, aye; Ms. Taylor, aye; Mr. Patterson, aye.

Mr. Patterson asked that the Town come up with a picnic table plan that the Board thinks the Town could provide. Chair English Braga also said the Board will talk about a pickup parking for takeout.

Mr. Jones motion to adjourn. Second Mr. Patterson. Roll Call Vote: Chair English Braga, aye; Mr. Brown, aye; Mr. Jones, aye; Ms. Taylor, aye; Mr. Patterson, aye.

Respectfully Submitted,

Jennifer Chaves
Recording Secretary

DRAFT

TOWN OF FALMOUTH
Joint Meeting-Select Board and Finance Committee
Open Session
Meeting Minutes
MONDAY, JUNE 15, 2020
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 June 15, 2020 public meeting of the Falmouth Select Board (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 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.*

Select Board Present: Chair English Braga English Braga, Chair; Doug Brown, Co-Chair; Doug Jones; Sam Patterson; Nancy Taylor.

Finance Committee Present: Nick Lowell, Vice Chairman; Susan P. Smith; Judith P. Magnani; Wendy Vogel; Joseph L. Drolette; Ron Dyer; Peter Hargraves; Mary Harris; Deborah D. Maguire; James Marnell; Kathleen Beriau; Cynthia Eaton; Joseph Lemay; James Newman.

Also Present: Julian Suso, Town Manager; Frank Duffy, Town Attorney; Peter Johnson-Staub.

1. Vote transfers within the FY20 budget
2. Vote amended FY21 budget

Finance Director Jennifer Mullen reviewed the FY21 Budget, local receipts reduced by \$2,240,000 and state aid reduction of \$772,260.

Reserves will not be funded in the amount of \$1,672,079.

Use \$350,000 budget reduction from Cape Cod Technical High School Assessment.

Reduce Health insurance budget by \$500,000, health insurance is volatile, and she has always tried to fund a little bit, around 6/7%; last 2 years 0% increases, can comfortably reduce this.
Use \$500,000 in free cash for one year only to partially offset reduction in state aid.

Once we go to Town Meeting, the tax rate will be set and tax bills can be sent out.

The Town is self insured; the Town pays the claims.

Mr. Jones motion to move \$666,500 for health insurance to line items as listed by the Finance Director and sent to the Finance Committee for their deliberation. Second Mr. Patterson. Roll Call Vote: Patterson, aye; Mr. Jones, aye; Chair English Braga, aye; Mr. Brown, aye; Ms. Taylor, aye.

Mr. Schwegel motion \$666,500 from health insurance to line items listed on the chart. Second Mr. Hargraves. Roll Call Vote: Mr. Hargraves, aye; Ms. Lowell, aye; Mr. Marnell, aye; James Newman, aye; Ms. Maguire, aye; Ms. Smith, aye; Mary Harris, aye; Mr. Schwegel, aye; Mr. Lowell, aye; Ms. Magnani, aye; Ms. Vogel, aye; Mr. Drolette, aye; Mr. Dyer, aye; Ms. Beriau, aye; Ms. Eaton, aye; Mr. Lemay, aye.

Mr. Jones move a recommendation of a total operating budget of \$139,231,499 to the Finance Committee. Second Mr. Patterson. Roll Call Vote: Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye; Mr. Brown, aye; Ms. Taylor, aye.

Mr. Schwegel motion line 250 health insurance in \$500,000 for health insurance appropriation and total fiscal year operating budget \$139,231,499. Roll Call Vote: Mr. Hargraves, aye; Ms. Lowell, aye; Mr. Marnell, aye; James Newman, aye; Ms. Maguire, aye; Ms. Smith, aye; Mary Harris, aye; Mr. Schwegel, aye; Mr. Lowell, aye; Ms. Magnani, aye; Ms. Vogel, aye; Mr. Drolette, aye; Mr. Dyer, aye; Ms. Beriau, aye; Ms. Eaton, aye; Mr. Lemay, aye.

Mr. Schwegel motion to adjourn the Finance Committee. Second Mr. Lowell. Roll Call Vote: Mr. Hargraves, aye; Ms. Lowell, aye; Mr. Marnell, aye; James Newman, aye; Ms. Maguire, aye; Ms. Smith, aye; Mary Harris, aye; Mr. Schwegel, aye; Mr. Lowell, aye; Ms. Magnani, aye; Ms. Vogel, aye; Mr. Drolette, aye; Mr. Dyer, aye; Ms. Beriau, aye; Ms. Eaton, aye; Mr. Lemay, aye.

Respectfully Submitted,

Jennifer Chaves
Recording Secretary

TOWN OF FALMOUTH
SELECT BOARD
Open Session
Meeting Minutes
MONDAY, JUNE 15, 2020
SELECT BOARD MEETING ROOM
TOWN HALL
59 TOWN HALL SQUARE, FALMOUTH, MA 02540

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Select Board Present: Chair English Braga English Braga, Chair; Doug Brown, Co-Chair; Doug Jones; Sam Patterson; Nancy Taylor.

Also Present: Julian Suso, Town Manager; Frank Duffy, Town Attorney; Peter Johnson-Staub.

1. Call to Order by Chair English Braga at 6 p.m.
2. Pledge of Allegiance
3. Recognition
Mr. Brown recognized Town staff and Town Manager for getting Main Street ready for Phase 2.

Mr. Patterson recognized Town Manager, School Department Superintendent and staff for putting out statement in support of the protesters issue of looking at police management.

Ms. Taylor thanked Mr. Suso for keeping them up to date on the licensing of businesses.

Karin Delaney is the new Director of the Falmouth Service Center Director.

4. Announcements
Chair English Braga said they have gotten many emails, because of open meeting law, the BOARD does not have every board member weigh in or give response. In general, sometimes staff or chair/vice chair

will respond and direct the issue/question to staff. The BOARD reads emails, but cannot violate open meeting law by having a conversation via email. All BOARD members can all weigh in by putting the item on their meeting agenda.

5. Public Comment-none.

COMMITTEE INTERVIEWS AND APPOINTMENTS

1. Interview, Vote and Appoint/Re-Appoint Committee Members:

Regulatory Boards

a. Board of Health 6/30/23

i. Benjamin Van Mooy

Has enjoyed being on the board the last two years and has brought a couple things forward including the moratorium on certain chemicals used in pesticides last year. They are prepared to address it again soon.

Mr. Jones motion to appoint to a term ending 6/30/23. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

ii. Kevin Kroeger will carry to a future agenda or take it up if he is able to log in tonight.

b. Conservation Commission

i. Kevin O'Brien (alternate)

Mr. Jones motion to appoint to a term ending 6/30/23. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

ii. Mark Gurnee

Mr. Gurnee would like to become an alternate.

Mr. Jones motion to appoint as an alternate term ending 6/30/23. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

iii. Stephen Patton

Mr. Jones motion to appoint to a term ending 6/30/23. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

c. Zoning Board of Appeals – Edwin P. Zylinski II

Mr. Jones motion to appoint to a term ending 6/30/25. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

Non-Regulatory Boards

d. Affirmative Action Committee – Susan O'Brien

Mr. Jones motion to appoint to a term ending 6/30/23. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

e. Commission on Substance Use – Maro Titus

Mr. Jones motion to appoint to a term ending 6/30/22. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

f. Cultural Council

i. Cathy Rozynek

Mr. Jones motion to appoint to a term ending 6/30/23. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

ii. Lance Norris not present.

- g. Edward Marks Building Advisory Committee
 - i. Jean-Pierre Riu has not yet been in the building, has interested in construction and preservation of historical buildings.

Mr. Jones motion to appoint to a term ending 9/31/20 or however long it is extended by the BOARD. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

- h. Golf Advisory Committee
 - i. Robert Pacheco
All service staff masked, sanitizing carts, traffic flow to the building regulated. Practice facilities are open. The course is in good condition.

Mr. Jones motion to appoint to a term ending 6/30/22. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

- i. Historical Commission
The Board will need to advertise for an architect position, if appointed, the architect would take the regular member role. If after advertising no architect comes forward, Ms. Drescher would then be appointed to a full position.

- i. Lee Drescher
Ms. Drescher is already an alternate, so no need to appoint her as alternate.

- j. Water Quality Management Committee
 - i. Stephen Rafferty
Mr. Jones motion to appoint to a term ending 6/30/23. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

2. Vote Annual Committee Re-Appointments

Affordable Housing Committee
Pamela Harding Barrat

Chair English Braga motion to appoint to a term ending 6/30/23. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

List of Annual Committee Re-Appointments read by Chair English Braga as a motion from the packet, with exception of the Water Quality Management and Community Preservation Committees. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

Agricultural Commission (3 positions)	Amy Vickers Heidi Walz Jane Vose	6/30/23 6/30/23 6/30/23
Beach Committee (1 position)	Paul Miskovsky	6/30/23
Bicycle & Pedestrian Committee (5 positions)	Scott Lindell Benjamin Harden Christopher McGuire Edward T. Rowan Pamela Rothstein	6/30/23 6/30/23 6/30/23 6/30/23 6/30/23
Building Code Board of Appeals (1 position)	Donald Devaney	6/30/25
Cape Cod Regional Transit Authority	Samuel H. Patterson	6/30/23
Commission on Disabilities (1 position)	Frances Dupuis	6/30/23
Commission on Substance Use (2 positions)	Kath Schilling Samantha Bauer	6/30/23 6/30/23
Constable (1 position)	Thomas Zine	6/30/23
EDIC (2 positions)	Christopher Land Michael Galasso	6/30/23 6/30/23
Energy Committee (2 positions)	Alessandro Bocconcelli	6/30/23

	Matthew Patrick	6/30/23
Golf Advisory Committee (2 positions)	Barbara Dixon Christopher Inoue	6/30/23 6/30/23
Historical Commission (1 position)	Christian T. Valle	6/30/23
Human Services Committee (2 positions)	Lawrence Langler	6/30/23
Recreation Committee (3 positions)	Lori Dillon Sandra Cuny Scott Ghelfi	6/30/23 6/30/23 6/30/23
Shellfish Advisory Committee (3 positions)	Daniel Ward David Heffernan David Bailey	6/30/23 6/30/23 6/30/23
Solid Waste Advisory Committee (4 positions)	Alan Robinson Christopher Polloni Marc Finneran Ruth Brazier	6/30/23 6/30/23 6/30/23 6/30/23
Steamship Authority Port Council	Robert S.C. Munier	6/30/22
Veterans Council Committee (3 positions)	Kevin Casey Robert Foos Randy Collette	6/30/21 6/30/21 6/30/21
Waterways Committee (2 positions)	Jeffrey Thomas E. Kevin King	6/30/23 6/30/23
Certified Weighers – Cape Cod Aggregates	Linda DeVito Paul DeVito Ted Freeman Jennifer Quinn Edward Bousfield	6/30/21 6/30/21 6/30/21 6/30/21 6/30/21
Certified Weighers – Wastewater Treatment Facility	Charles Pires Kruser Keller Stephen Parsons Steven Devonis Cory Melemed Ronald MacLaughlin	6/30/21 6/30/21 6/30/21 6/30/21 6/30/21 6/30/21

Community Preservation Committee Russell Robbins

Chair English Braga motion to appoint to a term ending 6/30/23. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye. Abstain: Ms. Taylor.

Community Preservation Committee

Paul Glynn

Chair English Braga motion to appoint to a term ending 6/30/23. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye; Ms. Taylor.

Water Quality Management Committee

Eric Turkington

Mr. Jones motion to appoint to a term ending 6/30/23. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye. Abstain: Ms. Taylor.

Water Quality Management Committee

Matthew Charette

Mr. Jones motion to appoint to a term ending 6/30/23. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye; Ms. Taylor.

Cultural Council

Lance Norris

Writer, actor, director over 30 years, teacher at UMASS.

Mr. Jones motion to appoint to a term ending to be determined. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye; Ms. Taylor.

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 and April 27, 2020.

Mr. Jones motion to continue until July 27 at 7:30pm at the applicant's request. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

2. Wetland/Dock Hearing – Scott and Nillah Lutz for permission to modify and maintain an existing dock, located at 109 Madeline Road, East Falmouth

Mr. Patterson read the hearing notice.

This dock has been there since 1970 and permitted during 1990's, Board approval was missing. The MA DEP and Conservation Commission approved and have building permit, they are missing the approval letter from the Board. Order of Conditions had 3 components, Title V septic, home replacement, and the dock.

Mr. Jones noted if not done by 5/10/20 it was null and void. The DEP has relaxed this date for them due to Covid-19.

Diane Davidson told the applicant she could not find the Board letter from 1996.

Standard today is 6 feet clearance, but 5 foot between bottom of the joists and where one would walk. Mr. Jones said public access in a convenient way, most of the time will be in water and feels it may meet the requirement, but discourages people from using the public access. This is a three feet wide dock. The Conservation Commission may find it is okay, however it still needs to meet the Board standard: The Board looks at the effect on public and neighbors. The 6 feet was relaxed because of the size of the dock, it is 12 feet long. This has been negotiated to 5 feet. There is a review period of 10 agencies that looked at it. The Planning Board has signed off on it, awaiting Building Department sign off. Mr. Jones noted the Planning Board and Building Department do not look at docks, but the applicant said it is signed off by them on the dock piece.

According to the applicant, the dock does not impede public access and there is passage.

Current access is open without the dock. There is a current dock, it fell into disrepair, owner failed to rebuild it. There are posts there now, but no dock. This project is replacing a dock that has historically been licensed.

Mr. Jones noted that this is building a new dock, but no one else has said anything. This needs to come as a new dock. Applicant said that with narrower gain way, recommendation was to limit the height over the marsh. Mr. Tavares said there are posts remaining from the previous dock that was there 20 years ago. The former owner let the dock go 24 years ago, no maintenance was completed. Decking is in the water, applicant tried to tie up last summer, replace pilings; there is still substantial deck standing. Dock precedes the 1978 time period, there is family communication that it existed prior to 1972.

There are other docks in the area/adjacent, neighbors docks are substantial, 6-8 docks are larger than this.

Public Comment: none.

Mr. Brown noted an email was received in the last week or so regarding a dock and wondered if it is this one. Mr. Suso noted an email regarding the previous meeting was received, but not the present meeting.

The applicant confirmed notice to abutters.

Letter? Mr. Suso said that if approved, he will talk with Town Counsel about the type of approval.

Mr. Patterson motion to close the hearing. Second Ms. Taylor. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

Findings:

- a. This is to replace the dock that was there.

- b. Lower height allows for public access and consideration about the marsh and impact of that height from the wetlands.
- c. This dock will be an improvement on the treatment of the marsh compared to what was there in the past.
- d. There has been attempts to maintain public access.
- e. No objection from abutters

Mr. Jones motion to approve as conditioned by the Conservation Commission with the findings listed above. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

SUMMARY OF ACTIONS

1. Licenses

- a. Vote to approve application for Change of Manager of an All Alcoholic Club License – Falmouth Yacht Club, 290 Clinton Avenue, Falmouth

Mr. Kehoe Present. Is aware that he is responsible for any interaction regarding alcohol service, whether he or employees.

Mr. Jones motion approval. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

- b. Vote to approve application for a New Common Victualler License – The Stand – 75 County Road, North Falmouth
Catherine Hickey owns the Daily Brew. The landlord of this location asked if she could put in coffee shop. This will be all takeout. There will be coffee shop, smoothies, all prepared foods. Daily Brew has been open for 5 weekends. Ms. Hickey can comply with Phase 2 regulations. If approved, they will be ready to go in two weeks. Employees will be limited to two people working a shift at a time.

Mr. Jones motion approval. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

2. Administrative Orders

- a. Vote to approve application to the Division of Ecological Restoration (DER) for priority status for Upper Coonamessett River project

Betsy Gladfelter explained that the lower Coonamessett River construction is complete. Designated a priority River, they qualify for technical support and contract with experts for various things that need to be done, and they have given money directly. Asking for priority status for the upper river, two miles up the river near Broad River. In the 1800's ditches were dug down to ground level to connect the ditches, they would work with Division of Ecological Restoration, many culverts can be eliminated and result in continuance of the river. She is asking for approval by the Board and hoping for a letter from Mr. Suso tomorrow so she can submit it electronically. There is no obligation from the Town from any money for this.

Mr. Jones motion approval. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

- b. Vote to accept federal grant funds from the Department of Justice for the FY2020 Coronavirus Emergency Supplemental Funding (CESF) grant in the amount of \$36,698.00

The Board has a letter from Chief Dunne explaining how the grant would be allocated. This is a federal grant that can be spent going back to January to be used for supplies, overtime, and related expenses for COVID-19. They use outside service when they have individual who has COVID. They continued training their cadets and instructors got paid overtime for that. \$23,000 for personnel and \$13,698 supplies. No officers have been found positive for COVID-19.

Mr. Jones motion to accept the federal grant funds. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

- c. Vote to authorize the New Silver Beach Improvement Association to file a Notice of Intent with the Conservation Commission for an Order of Conditions to rake/screen the town beach parcel 04A 41 000 098 on Moses Road in the New Silver Beach neighborhood

Mr. Suso explained that previous action by the Board was not on point, Town Counsel suggested that the Board consider re-voting this due to the language of motion in email in packet. The order of conditions is not completed because this is missing in the package.

Mr. Jones motion to authorize. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

- d. Vote to accept donation from the Teaticket Village Association in the amount of \$500.00 to the Veterans Services donation account

Mr. Jones motion to accept. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

3. Special Events

- a. Vote to approve request for variance with modified plan to include social distancing procedures – Sunday Worship Services – John Wesley United Methodist Church – Surf Drive Beach – Sundays, July 5, 2020 – September 6, 2020

Mr. Patterson read the conditions into the record.

The Reverend has support from the Acting Beach Superintendent for the services. 7:15am-8:15 am.

Mr. Suso noted they would like the fee waiver.

Mr. Patterson motion approve permit as specified with appropriate relaxation on fees. Second Ms. Taylor. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

- b. Vote to approve application for special event – Food 4 Vets – food pickup for Veterans – reserved lot at Cape Cod Fairgrounds – Thursday, June 25, 2020

Mr. Jones motion approval. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

BUSINESS

- 1. Discussion/update on COVID-19 issues

Scott McGann confirmed tests 58. Falmouth's numbers around 195. Around 12-13% of the county's numbers. State numbers when under 3% it is considered under control, the State met this last week. Continue to be aggressive with contact tracing. Lots of questions from restaurants.

Nursing home and congregate living, they are going to get better, nursing homes there were issues are down. It would be good to test employees several times a week. Better the tests get, we can get those who are positive out of the nursing home. Fallon and the National Guard are offering testing.

- a. Update on planned cancellation of traditional recreation summer camp and discussion of alternative programming

Much discussion since guidelines came down from the Governor. Peter Johnson-Staub said that we are very aware of importance of the summer recreation program, affordable, staff does great job, and something they did not make a quick decision on it. The guidelines required keeping kids 6 feet apart as much as possible and wearing masks when they cannot be 6 feet apart. When kids interact and naturally do, they want to be near each other. The community will have to begin confronting these issues, even with measures in place, it will not be perfect and there will be some risk and experience not as positive to them as accustomed. Creating COVID risk and not a great

experience, it was found this was not a good thing for the community. No offsite field trips, which is a huge component of the program. Small groupings of 10 students with 2 staff members have also shaped this discussion.

Mr. Olenick's main concern was a great experience for the kids, play a lot of active sports games and running around, they were discouraging all of that. No in house shows, have to stay on grounds, no playground, keeping masks on; several children who would refuse to wear a mask, this could create an issue. Staff were nervous for the kids and themselves. What kind of experience can they be given compared to what they are used to.

Temperature taking at drop off inhibits the use. 50 kids maximum and would take an hour and half to get them in.

Alternative programming was considered that would give shorter programs, about 6 programs have been developed. In addition to sailing and junior golf. They will look at running Mon-Thurs for 2 hours including soccer for 10 kids 9am-11am, each will have their own soccer ball and socially distance, sanitize balls, basketball in afternoon. Pickleball program, volleyball, arts and crafts outside, some assorted other programs. Options and timeliness registration will be posted online next week.

Public can use fields, Mr. Olenick has asked for field reservation form, insurance, and COVID guidance plan. Groups of 10 or less, no games until phase 3. The fields are looking good.

b. Status/update on expedited temporary permit/license process for outdoor restaurant seating

Mr. Suso provided a status report, as of end of today there had been 5 licenses issued, another in process. 13 applications in staff and legal review, brought to closure in the next day or so. Two others are missing information and applicants have been asked for that information. Received about 2 dozen applications in all.

Mr. McGann noted state says 6 feet between tables, people needs to be 6 feet apart. Tents are fine, as long as less than 50% and ways patrons come in and out.

Chief Small noted no overriding concerns, they recommend those putting seating in parking areas, recommend as robust a barrier from vehicle traffic and seating area. Ultimately up to the businesses and people sitting there.

Chief Dunne noted barriers for pedestrians, patrons, and vehicles. Concern about alcohol service beyond the limits the licensing supports, they dealt with that with owner of the business and will forward info to the Board. Officers did address some concerns.

Mr. Jones heard about walkways blocked by tables. Mr. Suso was gratified that to date most restaurant operators have been conscientious and cautious. One exception, he will get that information to the Board because he is confident that will be corrected. Emails regarding insufficiently wide corridors maintained in a certain location and they are working with the business.

Pop up car show that occurred in Town was discussed, complaint was no social distancing and no masks, they were advised and then shut it down.

Mr. Brown said that people from other states where social distancing is not done may need to be reminded to be more careful. Is there ability to offer restaurants with outdoor space to apply for a supplement, Chair English Braga noted the Chamber has sent out the message. Regardless of whether you want to add to outdoor space or create that, put the plan together and provide a checklist and the Town can look at it.

The Town should keep up the education with the electronic sign boards and businesses are posting them as well.

Chair English Braga recognized announcement from Chief Small that he will retire after over 30 years of service, his leadership will be missed. He has brought the connection to the fire fighters,

building the rapport with the Town while supporting the firefighters and residents. Thanked for his service.

Mr. Suso explained there is a civil service process to follow for requisite approval from the State to select Chief Small's successor. An outside assessing firm will be brought in to work with position candidates.

2. Discussion and consideration to approve proposed phase II solar at Falmouth landfill

EDIC requested this be put over.

Mr. Jones feels there is a good proposal going forward and he would like to continue with how it is set up.

Mr. Suso reported the Town has been urged by Citizens and the EDIC that this has to be done by the Board in June due to federal changes. Town Counsel worked to try to respond to that demand received and it was communicated to Board members consistently, the next regularly scheduled Board meeting is 7/13/20. They understood Phase 2 solar was a priority. Outside counsel that was secured could have talked with Atty. Duffy, but they made their opinion and characterized Town Counsel's analysis. This did not occur before, and Town Counsel remains available to talk with any attorney. Now June is not an urgent date anymore. The last minute request for delay is confusing.

Atty. Duffy said this project was reported to be urgent and they have been trying to get this resolved, until a month ago when EDIC was trying to coordinate the lease with the loan program. Today when he noted approaching the deadline and not meeting for another month, he crafted a couple of motions the Board is being asked to approve. The Board can acknowledge the solar agreement and come forward with the details of the recovery loan program and Town's authority to contribute is confirmed.

Public Comment: none.

Mr. Jones move the approval of Inter-Governmental Agreement by and between the Town of Falmouth and the Falmouth Economic Development and Industrial Corporation (EDIC) for the Phase 2 area of the Solar Project at the town's capped landfill, being 18.8 (+/-) acres, for a term of twenty five (25) years, and for rent equal to fifty (50%) of the rent to be received by the EDIC from Falmouth Landfill Solar II, LLC, the selected solar developer of Phase 2 and presently represented to be \$177,650.00 per year. I further move the board acknowledge that the EDIC may request an adjustment of the rent to help fund a proposed EDIC Recovery Loan Program to assist small business in Falmouth with job retention and expansion associated with the COVID-19 pandemic at such time as the Recovery Loan Program is authorized and has legal existence with the Select Board's decision to be deferred until such time as details about the Recovery Loan Program are known and evaluated and the town's authority to contribute has been confirmed. Second Mr. Brown. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

The Contract and Sublease Agreement. Mr. Jones move the board acknowledge that the EDIC intends to sublease the Phase 2 area of the Solar Project at the town's capped landfill described in the Inter-Governmental Agreement previously approved by this board to Falmouth Landfill Solar II, LLC for the development of Phase 2 of the Solar Project at the town's capped landfill and that the town assents to the Contract and Sublease Agreement as presented. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

Solar On Bill Credit Agreement. Mr. Jones move the approval of the Solar On Bill Credit Agreement by and between the Town of Falmouth and Falmouth Landfill Solar II, LLC whereby fifty (50%) percent of the on bill credits generated by the operation of the Phase 2 solar project at the town's capped landfill will be sold to the town at the SMART utility tariff rate less a discount of twenty (20%) percent and the remaining on bill solar credits will be allocated to low income residents in the Town of Falmouth. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

3. Vote to affirm FY21 2% COLA for non-union employees

Mr. Jones motion to affirm. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

4. Minutes of meetings:

- a. Public session – June 1, 2020

Mr. Patterson motion approval. Second Mr. Jones. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

5. Individual Select Board member's reports

Mr. Patterson:

Attended the EDIC meeting, they are moving forward with Energy Application they are submitting and would like the Board to think about diversifying the EDIC board. Falmouth Bus station is operating, the grille is open. COVID-19 pandemic has slowed down the implementation of the Main Street broadband project, have about 20 signed up.

Sen. Moran listened to Zoom Meeting of the Cape and Islands Selectmen's Council Association, new President of the CCISIA, much discussion about similar issues discussing in Town, including facing Town Meetings. Sandwich held their Town Meeting and did so indoors with a shortened agenda. Sandwich Representative said be careful about shortening agendas and not posting them. Orleans and other towns on lower cape have sharks present and are hiring EMTs.

Attended School Committee Meeting, students and teachers are challenged by online learning.

Staff working to develop a productive routine, many children have dropped out of the learning process.

Superintendent noted that staff are trying hard to anticipate what the Fall restrictions will be and developing a plan.

6. Town Manager's report

- a. Annual compensation adjustment for Sealer of Weights and Measures position
This position has been overlooked for cost of living adjustments to 2009, at that time compensation was \$10,400 and he would like to adjust to \$13,000 annually, effective this calendar year.
- b. Update on Fire Chief retirement – Civil Service process
- c. COVID-19 funding opportunity is has been filed, worked with EDIC, Planning Dept, and others to assemble this and would provide microenterprise to those who qualify.
- d. Town Meeting 6/22/20 at FHS stadium.
- e. The Board annual strategic planning retreat, 6/29.
- f. Next regular Board business meeting is 7/13/20.

Chair English Braga noted they can consider an ability to do their retreat with social distancing but in person. About 8 individuals will be in attendance, which include the Board and staff. Mr. Suso will look at some spaces.

Mr. Jones motion to adjourn at 9:42 pm. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Ms. Taylor, aye; Mr. Patterson, aye; Mr. Jones, aye; Chair English Braga, aye.

Respectfully Submitted,

Jennifer Chaves

12. Town Manager's report

REPORT

TO: Board of Selectmen

FROM: Julian M. Suso

DATE: August 7, 2020



- The Board will convene in virtual executive session on Monday to consider a proposed collective bargaining settlement with Library employees. Denise Coleman will join us.
- As you know, the Tea Room application has been withdrawn. The Board must convene the advertised public hearing and can then close it and move on. We have posted notices on the Town website and in email responses advising all parties of this withdrawal.
- Under the COVID-19 Business, we will be discussing the request received to establish a “mandatory mask zone.” The request specifically mentioned “Woods Hole” and “Main Street.” My informal observations in both of these locations indicates that a very large majority of the persons I see are either wearing a face covering or carrying one with them (presumably to put on as needed to maintain Governor Baker’s order on social distancing). Both Scott McGann and Chief Dunne will be joining us. We will also be briefly discussing the unfortunate, misleading article recently placed in the Cape Cod Times which incorrectly suggested that the Town is NOT following CDC guidelines with regard to Town lifeguards. This was further articulated to the Board in an earlier email which is included in your Board packet.
- Steve Rafferty and Peter McConarty will be providing a status update on the automatic sprinkler ban. You will recall that we received an inquiry asking for a “waiver” or “exception.” Town Counsel has affirmed that no such waiver process exists on this ban.
- As represented last time, we are bringing forward a proposed schedule for the upcoming November Town Meeting. In it, we leave to the Board’s discretion either an August 21 or August 28 “closing” date for the warrant. As you know, we have been asking for the support of Town Boards/Commissions for “passing” on this upcoming November Town Meeting to keep the length and complexity down given the challenges we have with convening indoors with a large group related to this pandemic. Closing on either 8/21 or 8/28 is consistent with this request. I know that the Charter Review Committee is bringing a large group of proposed

Articles – the Board may wish to consider carrying this forward to 2021, consistent with our appeal for brevity to all others.

- As a follow-up to your action in collaboration with Town Clerk Michael Palmer, you will be voting to change the polling place for Precinct 5.
- As you know, earlier this year in support of Governor Baker’s emergency orders under COVID-19, the Board voted to cancel all Town special events through the month of August. I am now asking that the Board take this issue up once again for those special events already approved but which would take place in the September-December timeframe. As a reminder, the Governor has just “downgraded” his allowance for persons at “outdoor events” and gatherings from 100 to 50. If the Board so desires, we can consider special event requests from those persons who propose to fully function within the Governor’s orders. Given that September is just around the corner, it would be timely to affirm this determination on upcoming special events.
- We will be discussing my recommendation on delaying opening Town Hall/Town Buildings to the public to a date later in the month of September – to allow the routine summer population surge to abate, thereby further enhancing the protection of the health of Town employees and Town residents. Our modest retrofitting for social distancing continues as well. I welcome this review/discussion with the Board.
- I was pleased to participate with Peter J-S and Doug Brown in a virtual meeting of the Marks Building Committee on Thursday evening.
- As a reminder, the Board’s Annual Strategic Plan Retreat is set for Monday evening, August 17. Your next regular business meeting is Monday, August 24.