

TOWN OF FALMOUTH
SELECT BOARD
Meeting Minutes
Open Session
MONDAY, AUGUST 10, 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 August 10, 2020 public meeting of the Falmouth Select Board (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.*

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 Counsel; Irie Mullin, Assistant Town Counsel; Peter Johnson-Staub, Assistant Town Manager; Greg Banwarth, IT Department; Thomas Cox, IT Department.

1. Call to Order by Chair English Braga at 7pm.
2. Pledge of Allegiance
3. Recognition
The continued diligence of the MA community for wearing masks and safe distancing was recognized.
4. Announcements-none.
5. Public Comment-none.

SUMMARY OF ACTIONS

1. Administrative Orders
 - a. Approve Warrant for 2020 State Primary on Tuesday, September 1, 2020
Mr. Suso noted in the packet is a warrant for the State primary and is recommended. Polls open 7am-8pm and info. available on the Town website and Town Clerk's Office.

Mr. Jones motion approval of Precinct 2 voting in the old senior center and Precinct 5 voting in the St. Elizabeth Seton Hall. Roll Call Vote: Chair English Braga, aye; Mr. Patterson, aye; Mr. Brown, aye; Ms. Taylor, aye; Mr. Jones, aye.

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

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

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

Mr. Suso noted that Town Counsel affirmed that the Board needs to execute in person a consent to mortgage application.

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

7:30 p.m. PUBLIC HEARINGS

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

Chair English Braga read the hearing notice.

Counsel for the applicant asked that the application be withdrawn.

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

Assistant Town Counsel, Irie Mullin, said that if approving withdrawal without prejudice, there is no need for the Select Board to take testimony. If the Select Board did not want to allow that withdrawal without prejudice, a hearing could be held and the Select Board could make findings.

Mr. Jones motion to approve withdrawal of the application without prejudice. Second Mr. Patterson. Roll Call Vote: Chair English Braga, aye; Mr. Patterson, aye; Mr. Brown, aye; Ms. Taylor, aye; Mr. Jones, aye.

Mr. Brown asked if they maintain a file of the public comments made at previous Select Board meetings? Chair English Braga explained that anything emailed to the Select Board is part of a public record that may be searched, it would be retained for two years as general correspondence.

Mr. Johnson-Staub noted that Town Counsel Frank Duffy said that unlike other permits, an alcohol license applicant can reapply at any time if there is a substantial change to the application.

Mr. Jones noted his concern that those here for the summer may not be around to speak against the application in the future.

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

Chair English Braga read the hearing notice.

Glen Wood will do the presentation. Also present Matt Costa, Cape and Islands Engineering, and Charlie Agro, Coastal Engineering.

Attorney Wood explained this has to do with a man made and permitted canal as part of a subdivision. Permitted by Planning Board in 1971 and the Select Board approved a special permit in 1994 for the bulkhead and has a Chapter 91 license. It has come to the Pentikis' knowledge the floats may not have been licensed under zoning or Ch. 91. The application was submitted months ago, he has been in conversation with Attorney Wall, attempted a resolution, but have not been successful. They do not believe any comments from harbor master or shellfish constable and deposition by another attorney for another property owner on the canal is applicable because of the nature and private use of the canal. While deposed, Mr. Frasier said this is not something the Town would get involved in regarding navigation. They oppose Attorney Wall's 1 dock, 1 float proposition. The majority of owners do not have permits, they have never heard of any navigational issues and there is no navigation problem. Neighbors' counsel would prefer them to give up 20' off the setback; they have 52-53 coverage, they could have 75% of the use. The Select Board will be dealing with others in the future; they are 10 feet off corner and proposing 13ft. Under Ch. 91 setbacks, it is discretionary and when feasible, it is not possible to use that here.

Mr. Costa shared his screen and reviewed a plan of the end of the canal on Eel Pond. Two existing floats for Pentikis, there is no float in front of the Katchadoorian's property. There is a shoal in the corner. They are proposing taking the two floats, pushing them together at the end of the property line and get them about 14 feet off the end of the bulkhead. That would leave enough room for a 4 ft x24 ft float and take a line 45 degrees from the corner, there is room to fit the 4x24' float with an appropriate size vessel. How the boat maneuvers is shown in and out of the spots. In bow first orientation keeps the boats far from the corner and away from the shallow area.

Mr. Agro is a certified licensed Captain, Project Manager, and hydrographic surveyor; he does engineering and permitting for similar projects. He offered his opinion for the docks. Mr. Agro visited the site and the docks were oriented in a way with a 3 ft gap between them and eastern most float. He took measurements to see where Mr. Katchadoorian's dock would be and how they could safely dock the boats. Mr. Agro had the idea of the boat being turned; both boats would be pointed bow to bow, narrowest part of the boat, which leaves more space for operation and docking safely. Operated Mr. Pentikis' boat, low tidal amplitude, tide flows are low. The area is surrounded by areas of higher elevation, it is a protected area from wind as well. It is a tight area, most property owners have a dock or two, some have multiple boats, some large boats. There is enough room for each property owner to have a boat and safety berth them.

Mr. Jones asked why boats were brought in the opposite way to begin with?

Mr. Agro did not know, unless it is easier to pull out. The water level is low, if they do it the way they did in the past, the propeller wash was probably hitting the ground; the 45 degree line shows the equitable usage and where a boat could be and having boats in a corner is not ideal, but can be done safely in this location.

Mr. Jones asked whose boats are there every time he goes there?

Attorney Wood said there has always been a Pentikis boat there, it is possible there was a second Pentikis boat. There was a friend who had a boat there in the past, that is not a continuous practice. Attorney Wood suggested a condition only for the owners of the property's usage. 1994 special permit indicates the bulkhead can be used by owners and their guests. Happy to have a prohibition against nonfamily. Mr. Jones noted he has always seen 2 boats there for the last couple years.

Attorney Brian Wall his clients are Mr. Katchadoorian and Steven Balas. The argument is driven by the applicant seeking to have 40 feet of floats and leaving Mr. Katchadoorian with 13ft. They are arguing for equitable use of the waterfront. There are two boats on the canal, the plan presented only shows one boat and argue that is not really clear what is going on out there. They think there will be 2 boats, the boats shown do not show engines, neighboring boats, engine on Mr. Katchadoorian's boat, the boat in front of Mr. Balas' property or another property. Mr. Pentikis backs up where his second boat would be. That plan would not work and more room needs to be given to Mr. Katchadoorian. Things worked well before Mr. Katchadoorian came along because his lot was a vacant lot, there was no need for boats at that end of the canal. Mr. Katchadoorian has since built a home and wants access, there were 2 floats in front of Mr. Pentikis' property and 2 in front of another across the canal. They proposed a perpendicular dock, got wetlands permits, got permit by constructive grant. Neighbors came out at both hearings and were passionate, stating that the proposed perpendicular float would be in the way of their existing floats. Appeals were made, as part of the defense, neighbor Dundulis' or Pentikis' floats had special permits. These floats were illegal and being used to prevent his clients from the same enjoyment of the waterfront as

the neighbors. Second boat on Mr. Pentikis' property belongs to Mr. Heinz, Mr. Dundulis also had a second boat belonging to Mr. Heinz. Mr. Pentikis sought zoning enforcement, both floats were ordered to be removed. When he was before the Select Board 2 years ago, his clients wanted to have parallel floats adjacent to their bulkheads, but needed adequate room in front of their corners. For floats to work, they need to be 4 ft in width, when you fender a boat to a dock, you need 13 ft; Mr. Pentikis has 53' of frontage and is proposing 40' dock. What needs to be done is 13ft plus adequate room to maneuver a boat safely for Mr. Katchadoorian and Mr. Pentikis. The application presented to the Select Board is not fair because it doesn't give Mr. Katchadoorian enough room. They expect to be in front of the Conservation Commission in a week or 2, then back to the Select Board in about a month.

Mr. Brown asked Attorney Wall if he read the report by the Coastal Engineer?

Attorney Wall received the report on Saturday and read it. There were 2 boats out there for a long time, there is 1 boat there now. Attorney Wall asked that a certain amount of bulkhead in front of Mr. Katchadoorian's property to be left clear to give Mr. Pentikis enough room to get in. If Mr. Pentikis puts his floats within 12 ft of the corner, Mr. Katchadoorian cannot make the corner when he comes in. Mr. Costa's plan does not show a boat on Mr. Balas' float or a second boat on Mr. Pentikis' float, it does not show actual conditions. What is shown on the plan is not what will be in the canal.

Attorney Drew Hoyt represent the Dundulis'. The Dundulis' reached a settlement agreement with Mr. Balas and Mr. Katchadoorian; the Dundulis' will move their float so there is nothing protruding over a line 17 ft from the terminal end of the canal. They will come to the Select Board with an application to the Conservation Commission for an order of conditions, request to the Select Board is rather than devising a formula or rule, they look at each property and application regarding factors unique to those properties. The Dundulis' have more frontage than Mr. Pentikis. Hope there will not be a one float per property, the Dundulis' property has plenty of room for 2 boats. Noted that some pictures of the Dundulis' floats are shown in locations that are not accurate, it will be 17 ft or more from the bulkhead and the Dundulis' are hoping to implement this settlement agreement.

Mr. Jones asked Mr. Hoyt about the 2 boats.

Attorney Hoyt said a neighbor used their float. They have become aware that there is a concern about that and will not continue that practice going forward; most of the time one float is sed absent the occasional use by a family member. Mr. Jones said it cannot be used by a neighbor, but by a temporary guest. Could the Dundulis' move it down more than 17 ft? Attorney Hoyt said this was what was negotiated by the Dundulis'. 17 is an agreed upon compromise and Attorney Hoyt does not know if they could go larger.

Attorney Wood does not object to a reasonable size float at the Katchadoorian property, he objects to the common dock, but a 24-26' float in corner with bow in would not be a problem. This is not a 1 boat 1 property solution. An additional condition they would suggest is the bow of the boat facing west could not protrude beyond the float. The only expert testimony is from his expert who presented substantial information.

Mr. Costa shared his screen and reviewed the Katchadoorian's property and noted this work. Mr. Agro, who is an expert boat captain, came up with this plan.

Mr. Aglow said that if you push off from the stern of his boat, pull forward, go in neutral, and then back out of there.

Mr. Jones asked about the boat coming in, the second boat on Mr. Pentikis' property. Mr. Pentikis would make a wide turn, bow close to neighbor's boat, work the propeller in to get it in there. He did not see the other boat there, the size of the other boat is unknown. He would push off the stern on a southern direction, back out, and come around the other way. Mr. Costa said the applicant wants to use his floats and his 19ft. boat. He mentioned upgrading to a larger vessel, which is why he has 40 ft of float.

Mr. Jones noted a 30' float could get away with a 20 ft dock. Mr. Costa said you could have 40 ' float with no boat. Doug Jones said the 2 floats are not legal, just because they exist does not mean he has the right to keep them.

Attorney Wood said if they are trying to decide how much, look to percentage of area. Their client has not upgraded to a larger boat yet.

Mr. Brown asked if Mr. Pentikis would consider retrofitting 2 floats into 1 34' and end up with the same 17' offered on the other side of the canal. Attorney Wood said they have considered all options, their opinion is that the plan as presented in the application works and should not be treated the same as Mr. Dundulis, who has more frontage. The harbormaster felt that it works, realizing they all need to work together.

Mr. Katchadoorian said that this does not show Mr. Balas' boat on his float, 13 ft of space is not enough. Mr. Pentikis wants enough space for his neighbor's boat that has been there since day one and recently disappeared. Mr. Katchadoorian pays waterfront real estate taxes and cannot use his property, but the neighbor across the street can. At Zoning Enforcement Hearing Mr. Pentikis said the second boat was his neighbor's and when asked why you let the neighbor keep his boat on his float, it is because Mr. Pentikis a nice guy. A corner is a corner, he has the same corner as Mr. Balas and he needs more than 13ft.

Attorney Wall said the 17' figure mentioned is what Mr. Balas and the Dundulis' agreed upon after multiple lawsuits, proceedings, much money spent. Mr. Balas made agreement because it is the minimum he needs to get out. The expert testifies it is possible, describing elaborate ways of leaving; outboard motors are different, conditions are variable and you need a safety margin; this is not reasonable and equitable.

Mr. Costa is not asking permission for the neighbor's boat, it is for one boat; the applicant's boat. He wants to use his floats and frontage he paid for, it is a tight corner because the Katchadoorian's lot has a small amount of frontage. Percentage of frontages is the most equitable. He wants to use his floats for his own boat, not his neighbor's boat.

Mr. Jones asked if he's looking for float or floats for his boat, what is that room to work with below what has been proposed for the float/floats size for a single boat.

Attorney Wood said that the application is not for a single boat, it is for the linear length of the float they have, whether it is for one or two boats.

Mr. Jones said the existing condition is the starting point, but the existing condition is not licensed or legal. 40ft is troubling, if it is for his boat, let's use the number for what suits that purpose.

Attorney Wood is agreeing to push the floats together, limit to 13, bow in.

Mr. Jones noted Attorney Wood is stuck with 40 feet. The only expert in the hearing is opining it can work, albeit tight. One has to trust your neighbor is competent in boating. All have been getting along for decades there.

Mr. Balas said it has been difficult with the congestion wrought by nonowner boats. He sat out this season, but it is really tough. He has words with Mr. Heinz when Mr. Balas tries to get out. About a week ago Mr. Balas asked a Heinz family member to shut his motor off because the fumes were going in his house, he noticed a large fishing boat was pumping diesel fumes into his house, asked him to shut off the diesel and the operator said no, he had to get it up to temperature. Mr. Balas is paying for waterfront frontage, understands he will not use his entire waterfront to tie up and commented that the last person to benefit is someone who does not own there. One Select Board member asked if there is more room to give, there is, but there is plenty of room to go around for owners. The guests that run his boat is the enforcer, he makes sure no one gets near Mr. Pentikis and the Dundulis floats.

Public Comment: none.

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

Discussion:

Mr. Brown read the engineers report and the arrangement appears workable, he is concerned they may be causing an unsafe navigational situation.

Mr. Jones cannot support the 40 ft float.

Ms. Taylor agrees with Mr. Brown and that tightness of the area and cannot predict the wind or tide.

Attorney Duffy said this is a 4/5 vote for special permit.

Mr. Jones noted the logistics, if the application is for a 40 ft float, it is unknown if they can approve for different size. He would be willing to consider something less than 40 ft.

Mr. Jones said they can make a decision to continue their discussion.

Mr. Brown said there have been other actions by other boards in interim.

Mr. Patterson said there is more than enough float on Mr. Dundulis' property, he could moor his boat closer to the entrance of the canal.

Mr. Brown noted Mr. Dundulis' Attorney was there to caution against a widespread decision that would affect other neighbors.

Mr. Patterson feels they are moving in the right direction, but it is more of mooring boats in such a way they can both move in and out without colliding with each other.

Chair English Braga has heard issue of nonhomeowner usage of the docks for boats. It has been the crux of the conflict. This matter has gone on for a long time. Goal is always reaching a resolution. Both Attorneys have worked diligently to resolve, it is incumbent on the Select Board to make findings and decision.

Mr. Jones would prefer to approve with 30' of docks, but unknown if they have that flexibility to make that adjustment to the plan. They have no legal docks at this time. This would give them enough room for a larger boat and a temporary guest.

Attorney Duffy said that the Select Board is to act upon application before them. It is always risky to try to broker a deal on the fly. No testimony has been heard regarding the implications of a 30 ft dock, it has all been on 40 ft.

Mr. Brown asked Attorney Duffy, if not approved, can they come back to request something different. If denied, cannot come back for 2 years unless the permit request is substantially different.

Mr. Brown said the floats have been there a long time, understandable the paperwork was not done.

Options are voting up or down on application in front of the Select Board.

Can the Select Board direct the applicant to try to reach a resolution? Attorney Duffy said they cannot, they only have so much time to decide a special permit, it is unknown how far along they are before it is constructive approval. Chair English Braga said that is why they continued it, unknown the tolling and Ch. 19 affect.

Attorney Mullin explained that tolling existing permits and local board duties is broad and does not specify. It would apply equally to a ch. 91 license.

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

Mr. Brown asked Attorney Wood and Mr. Costa, if they would reconfigure the dock at 35 feet?

Attorney Wood cannot say that he has the authority of his client at this time to broker something else. Even if closed and voted on, there is time to process the decision under the Zoning Act, they could caucus with their client and discuss it. He is not in contact with his client given this hearing is remote. They may have some time under the act.

Mr. Jones noted all the continuances were troubling, what was going on? Attorney Wood said there have been ongoing conversations and they thought they may see Mr. Katchadoorian's application to the Conservation Commission. They have worked hard to resolve, not successful.

Mr. Jones asked about the referenced navigation problems? This was the result of a deposition in pending litigation against the Select Board for constructive approval for the common dock special permit. The only expert they have is the one paid for by Attorney Wood's client. Attorney Wood said that harbormaster had no role here and if shellfish was an issue, their noncomment is defacto no comments.

Chair English Braga noted the comment was it was the proposed dock would not have impact on general navigation because only the applicant and abutters would be impacted.

Mr. Brown asked Mr. Agro what the optimum setback is for one of these docks from the end of the bulkhead.

Mr. Agro said the presence of a shoal was identified, it was from the northwestern corner of bulkhead and 6.5 feet to where it drops off quickly. If that shoal was not there, the minimum setback would be the width of the dock itself.

Mr. Brown asked what would be best practice if designing the float arrangement? Mr. Agro said that Mr. Pentikis' boat and float moved back, Mr. Katchadoorian's boat would have to do a similar technique to current due to the shoal. There are concerns with that, if they shortened Mr. Pentikis' dock, it does not affect maneuvering into the spot. Attorney Wall said at 13 ft wide, that is the widest part, not at the bow. Bow to bow, he could actually go forward 4-5 ft to then backup. The arrows presented by Mr. Costa that Mr. Agro drew are not completely accurate. Mr. Agro said he needs to be back far enough so the width of his boat is not touching Mr. Katchadoorian's boat. On the plan, 3-4 ft between boats when at dock.

Mr. Jones noted that the one dock, one boat proposal has been done around Falmouth, allowing storage of 1 boat with the exception of visiting boat for an hour or so tie up. He would condition the 40 ft for docking of one boat all around Falmouth.

Mr. Costa said that all took shape when first pier proposed up the middle. He met with Mr. Katchadoorian and Mr. Pentikis were in his office with no attorneys, tried to work it out, and they cannot agree. They are at an impasse. All continuances and efforts were trying to get to a decision.

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

Findings:

1. Bulkhead is licensed and approved.
2. For many years they had 2 20' floats used at a property with 1 used by property owner.
3. Continuation of 40' makes it difficult for neighbor to use their boat.
4. Application as proposed is possible to navigate, but it is tight area to do that.
5. The applicant proposing to shift 40' to give greater access to the neighbor.

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

7:45 p.m. BUSINESS

1. Discussion/update on COVID-19 issues
Scott McGann, Health Agent, today's count is 238. 11 lifeguards tested positive, some are residents of other towns. Individuals at a nursing home were affected, that has subsided with asymptomatic only. The Health Department is doing enforcement and follow up. Falmouth Hospital at 0 patients with COVID-19. State has seen had an uptick. Outdoor gathering size decreased from 100 to 50 people, food service to restaurant only, practicing use of masks and social distancing. Average about 5 noncluster cases per week.

Mr. Jones said numbers sound great, but many would not count for our numbers, likely residents of where they are visiting from. Look at caseload as being higher than what it is reported.

Sam Patterson asked for update on availability of testing? Scott McGann said averaging 5-600 tests per week in Falmouth. The laboratories are at max., there has been a delay in receiving the test results. CVS, Convenient MD, Mashpee clinic, and Falmouth Hospital are offering the PCR test and that is best at this time. Cape Cod Healthcare requires a doctor's order.

Mr. Brown asked if there was any follow up to the accuracy of the lab used by the Dennis testing site. Mr. McGann said it is unique to the test, results are considered probable cases, up to 30% error rate, and reporting delay. It is recommended that all get tested by the PCR.

- Discussion of suggested "mandatory mask zone"
Mr. McGann said it is about enforcement and trying to drive compliance. This was brought up at the Board of Health (BOH) meeting, they support these zones on Main Street and Woods Hole areas with similar density.

Chair English Braga noted the need to think about who that impacts when talking about enforcement. Who will need to implement/enforce the policies?

Mr. Brown noted the Governor's order is that if you cannot social distance 6 feet apart, you need to wear a mask. Posting signs to put people on notice may help.

Mr. Jones agreed with Mr. Brown and would rather not have the Falmouth Police Department (FPD) take their time to conduct enforcement of the mask zone(s).

Ms. Taylor noted that signs are posted on the bike path, but she does not see people wearing masks. She asked if more information can be provided to the community, noting that she is not advocating for the FPD to take that on.

According to Mr. McGann, when it becomes mandatory, the volume of calls will increase at the Health Department, the mandatory zone can cause those problems. It needs to be clear what the intent is so that Mr. McGann can explain it to those who contact the Health Department.

Chair English Braga noted that even if you have someone to enforce it and can get there in time, it will be spotty. It would not make sense to have a policy if they did not plan for enforcement. To put more work on the FPD or Health Department for enforcement does not seem doable.

FPD Chief Dunne spoke with other PD Chiefs with areas that are mandatory masks. Provincetown does signage, banners, and some visitors do not know the rules. Martha's Vineyard communities educate, have nonpolice officers who are sworn in under the health agent and provide information packets and masks to the public. The FPD is financially strapped this year, no beat people are available because the academy closed down. No walking beat in Woods Hole or on Main Street, he would have to refer back to a civilian to do that.

Dianna Molloy, Board of Health (BOH) Chair, said the BOH is supportive and understand enforcement is the biggest challenge and suggested considering deputizing health ambassadors, sharing information and masks with the public.

Attorney Duffy has no personal experience with health ambassadors, does not see a downside to it. Attorney Mullin noted the Select Board and/or BOH shall use care to prevent spreading of disease.

Mr. Johnson-Staub said that given it is 8/10/20 and hiring new employees takes about a month or so, it is unlikely this is an option for the current season. Volunteers could be located more quickly, need to be thoughtful about following clear directions to the message and their authority.

Mr. Jones suggested proclaiming these areas as mask zones and then worry about the enforcement in the future.

Mr. Patterson wants to be cautious about a rebellious response by someone who may have COVID-19. There is an issue, liability issues.

Mr. Brown asked if there is a supply of mask and flyers they could hand out? Mr. McGann said they would have to get more masks and noted the conversations about this issue are not pleasant.

The Select Board noted that a possibility may be to have two stationary places where there is a sign that says there is a mandatory mask order in place with someone there making masks available along with literature. This would remove the element of a confrontation.

Mr. Brown noted a fine and enforcement would enhance the signage. Mr. McGann said it increases the intensity, doing that is going away from ambassadorship to enforcement.

Mr. Jones is more interested in educating people than enforcement.

Chair English Braga asked if there is something the Select Board needs to do if they make something mandatory and not include a consequence? Attorney Duffy was not sure, if thinking of mandatory zone, they should probably ask someone to think about a plan for enforcement.

Mr. Suso said if the Select Board wants to pursue a voluntary education idea, have a reasonable chance of short term success and enhance the wearing of masks. If you add enforcement, could create unintended consequences.

Diana Molloy, suggested a focus on social distancing, start with the education piece, maybe if things still need to continue, they can plan for enforcement.

Chief Dunne will forward to Town Counsel the policies and procedures from Provincetown and Oak Bluffs. An escalating fine is used in those communities, but emphasis is on education not enforcement.

Mr. Jones motion to create two Mask Advisory Zones in Woods Hole from Water Street to Luscombe Avenue and on Main Street from the Village Green to Shore Street. These are the areas in Town where one must wear a mask because one cannot social distance in these areas. Second Mr. Brown. Roll Call Vote: Chair English Braga, aye; Mr. Patterson, aye; Mr. Brown, aye; Ms. Taylor, aye; Mr. Jones, aye.

- Discussion of Cape Cod Times August 6, 2020 Lifeguard Article
Concern was that some info in the article was incorrect re: CDC best practices.

Mr. Johnson-Staub explained that the Town followed CDC guidelines for lifeguards who tested positive or were exposed to COVID-19. Presentation of some of the details. If an employee is known to have tested positive or has reported symptoms, the employee must be removed from service for isolation. Any employee exposed to someone who is known to have exposure has been removed from service. All employees are required to self screen for COVID-19 symptoms daily. At the start of each workday, employees fill out automated email distribution. Walked through the CDC website FAQ section. Those who had no known exposure and no symptoms were allowed to work after taking advantage of the Town making the testing available.

2. Status/update on automatic sprinkler ban

Steve Rafferty, Water Superintendent, and Peter McConarty, DPW Director.

Mr. Rafferty noted a positive effect from the ban and most are cooperating. Tank level holding steady in the morning hours. Printed door hangers to notify anyone in violation of the ban, put out about 200 flyers so far. There has been no rain fall. Ban was a bit of surprise to people, not unusual to have water bans. Many communities have some sort of water use ban. Managing water supply as we go forward is being addressed, the Town needs to look at getting the Fresh Pond Well back online, but the State owns the water and permits it back to us. Only get water if being used for essential use, looking at irrigation desires with being sure there is enough water for regular needs. Working on interim short term solution for water pressure issues. This ban will remain in effect through around September/October 2020.

Doug Jones noted ban for automatic irrigation systems. If manually turned on then off, it may technically be a violation. A couple people are not in their house and their irrigation system running, not sure how to contact them to shut it off. If you use a sprinkler connected to your hose, that is not included in this ban.

Mr. Brown has received comments from landscapers, he feels they overlooked landscaping. When it is new, can new construction be watered for the first year? Mr. Rafferty said those can be hand watered. They can set up hoses and put a timer on the hose. Mr. Brown asked if they could set their new construction timer at night, can that be worked around?

Attorney Mullin explained that Town bylaw 233 sections 4 and 5 say a water restriction declaration applies to all public and private use and if the water is Town water, not private well. There is no carve out for a particular user or property type.

Paul Raposa, Raposa Landscaping, asked for emergency selective relief from the water ban. Some clients have new landscaping who will lose the money that they paid for landscaping. Exemption for new lawns and plantings until established was requested.

Chair English Braga noted the Select Board cannot supersede the confines of the bylaw. This ban is only effectuated when necessary. The bylaw is for automatic sprinkler systems.

Mr. Brown said the only way to give relief were to rescind their vote and make it advisory.

Peter McConarty, DPW Director, said this is not the first year they have had conversations on the water usage in Town. Water usage is up 20% this year. Only allowed out of Water Management Act to draw so much water, last year we got to 97% of our allocation, this year we are 20% over. There are a lot of new roads and developments going on in Town, 460 in last 2.5 years; all those dwellings/residences have water connections. This is extreme situation and will be an ongoing issue in coming years. This will be continuing discussion.

Mr. Rafferty noted we have a contract for water from the Upper Cape Water Supply, this year there is a well they are doing some work on this year, so limited ability to get extra water from them.

Mr. Suso noted this is also about fire protection.

Mr. Patterson noted we source water from a sole source aquifer, so need to be mindful of the water we use for future generations.

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

The Select Board last met regarding this item on 7/27/20, Cumberland Farms is looking for 2 freestanding signs and a wall sign. Wall sign was granted by the BOS, concerns about the freestanding signs, they front 2 streets, and suggested that Cumberland Farms remove the request for free standing sign on Old Meetinghouse Rd. and instead put a wall sign. Attorney Douglas Troyer shared his screen with 2 proposed wall signs. Front type wall sign put on the side of the building. The other change was Teaticket Cumberland Farms (TT) sign discussion and proposed to use the same sign at this location.

Mr. Jones did not recall approving the other sign. It is 40% bigger than what the sign code allows and he did not want to make that mistake again.

Mr. Brown noted he did not know why it was approved, however it was the recommendation of the Select Board at the last meeting to use the same sign as was approved at TT.

Chair English Braga noted that she did not find the TT sign as large as she thought it might be. She agrees with Mr. Brown, that was the direction they gave to the applicant and the applicant subsequently did what the Select Board suggested.

Mr. Jones noted dangerous precedent.

Looking for a foot; the height is the same, the front sign is longer than the one on the side, looking for a height increase by about a foot. The sign is internally lit blue on both sides.

Mr. Brown is inclined to work with the sign as described, since they were willing to remove the second freestanding sign.

Mr. Patterson expressed concern about the internally lit sign and control over how bright that is. He would like to see a restriction on how bright the luminary may be.

Ms. Taylor found the facts troublesome, the TT sign is 40% over the size the Town allows, even though told to go back and mimic TT, the Select Board will allow a sign that exceeds it by 40%.

Mr. Joes motion approval to grant the variance of the wall signs. Roll Call Vote: Chair English Braga, aye; Mr. Patterson, aye; Mr. Brown, aye; Ms. Taylor, aye; Mr. Jones, aye.

Ms. English Braga motion approval of the application for the variance. Second Mr. Patterson. Roll Call Vote: Chair English Braga, aye; Mr. Patterson, aye; Mr. Brown, aye; Ms. Taylor, aye; Mr. Jones, no.

4. Announce November 2020 Town Meeting schedule

Mr. Suso referred to the suggested schedule in the packet. Encouraging any/all to consider passing on the November Town Meeting so the warrant articles can be kept to a minimum. They still need to reconvene to address 30 articles from Spring Town Meeting. Suggesting closure of warrant on 8/21 or 8/28. Mr. Suso recommends 8/21/20.

Mr. Patterson feels artificially moving the deadline up 3 weeks could affect important articles. Should be able to have discussion with people submitting the articles and ask them to go forward in Spring Town Meeting. Mr. Jones agreed.

Mr. Patterson motion to close the warrant on 9/11/20. Second: none.

Brown would like to hear from Staff about why that date proposed. Mr. Johnson-Staub noted that the conversation was about COVID-19 and still may not be in position to have lengthy town meeting in the fall, so thought it appropriate to consider a concerted effort to reduce the number of articles submitted.

Mr. Jones was leaning more towards 8/28/20.

Chair English Braga noted addressing pressing needs and the shorter the warrant is better for health purposes; she is happy with either date.

Mr. Brown suggested considering the 8/28/20 date.

Julian Suso noted purpose of earlier date was to send message it is not business as usual and even if submitted by an August date, the Select Board may need to carry things over to Spring Town Meeting.

Chair English Braga would like to reach out to the community and other committee/boards to have that conversation.

Mr. Jones motion approval of the posted agenda and the 8/28/20 closure of the warrant. Second Mr. Patterson. Roll Call Vote: Chair English Braga, aye; Mr. Patterson, aye; Mr. Brown, aye; Ms. Taylor, aye; Mr. Jones, aye.

5. Presentation from Charter Review Committee on proposed articles

Peter Clark asked the Select Board if they would like to hear about all 11 of the proposed articles, noting none will make a difference of whether the Town runs or not.

Mr. Jones asked to hear about 2 to 3 total. These would have to go until next November, because if voted I April, there is no time to get them on the ballot in May.

Attorney Duffy said the Charter amendment go to November Town Meeting. Mr. Clark said if they hold for a year from November, the committee will go on complete recess.

Attorney Duffy explained that if the Charter Review Committee goes to the next year, the Committee can submit a final report to the Select Board anytime and the Select Board has the authority to bring up the charter amendment, the committee could be reviewed but does not need to stay in existence the entire time.

Mr. Clark is willing to make the presentation a year from November.

5 amendments in first category, all presented last November and coming back to the Select Board. P. 5 of the presentation was noted to be one with practicality, because no one is deemed responsible for whether someone is removed for missing meetings. Recommend the process shall begin in 30 days.

Last category page 14, removed the names of 4 committees from the Charter that did not meet definition they were putting in. There is still 4 committees that are really advisory. Recreation Committee objected because there was not time to discuss with them. Recommend a solution they have not been able to go to the Recreation Committee to talk with them. It would name all 5 bodies that are recommended to the Community Preservation Committee. Remove the old A32 language. He will carry this to the Recreation Committee to see how they feel about it.

p. 7 5 recommendations that may be regrouped into 3.

p. 9 The Select Board policy leadership, added and evaluated for consistency with the local comprehensive plan. The strategic plan consistent with the local comprehensive plan. Include the Planning Board and Select Board may make recommendations and the Select Board as chief executing board of the Town.

p. 11 clarifying the process.

The Town Manager shall assure the actions of Town agencies are evaluated for consistency with the local comprehensive plan, strategic plan, and capital improvement plan.

The Select Board is comfortable considering 5-6 warrant articles.

6. Vote to change polling place location for Precinct 5
Mr. Jones motion approval to change the polling place location to Elizabeth Seton Meeting Hall. Second Mr. Patterson. Roll Call Vote: Chair English Braga, aye; Mr. Patterson, aye; Mr. Brown, aye; Ms. Taylor, aye; Mr. Jones, aye.
7. Annual town committee reappointments
Mr. Jones motion approval of Certified Weighers in the packet to terms ending 6/30/20. Second Mr. Patterson. Roll Call Vote: Chair English Braga, aye; Mr. Patterson, aye; Mr. Brown, aye; Ms. Taylor, aye; Mr. Jones, aye.
8. Discussion of special events scheduled from September through December and follow-up actions

Mr. Suso noted a listing of special events September through end of the year have already approved. Weddings can be accommodated. Unlikely public events will be able to be held due to the pandemic.

Mr. Jones motion to recommend rescinding approval of events through the end of the year previously approved. If the event organizer comes to the Select Board with a plan consistent with Governor Baker's orders it will be reconsidered. Second Mr. Patterson. Roll Call Vote: Chair English Braga, aye; Mr. Patterson, aye; Mr. Brown, aye; Ms. Taylor, aye; Mr. Jones, aye.

Zelda McGregor, Tour de Falmouth, ready to share their readapted plan. That plan would be reviewed by the Town Manager's Office and then reviewed by staff.

Chair English Braga motion approval of the three weddings and the need to comply with the Governor's order. Second Mr. Jones. Roll Call Vote: Chair English Braga, aye; Mr. Patterson, aye; Mr. Brown, aye; Ms. Taylor, aye; Mr. Jones, aye.

Staff will reach out to the new applicants, ask them to share how they will adjust to the Governor's orders.

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

Reopening to the public, this not occur until a date later in the month of September. People are working, but the buildings remain not open to the public.

10. Minutes of Meetings:

Public Session

June 4, 2020

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

June 15, 2020

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

11. Individual Select Board Member's reports

Chair English Braga:

Press release there was meeting with relevant department heads, Mr. Brown, Chair English Braga, and Mr. Suso regarding offering more parking at the resident beaches. That process is underway, but will not include Old Silver or Chapoquoit.

Recognized the Falmouth Public Library for continuing to serve the community.

Mr. Patterson:

Reminded that email from Ed McMahon regarding the Cape Cod and Islands Selectmen's and Counselors Meeting Mike Palmer will talk about mail in voting; Christy Senatori will discuss the census.

School Committee held a parent forum Tuesday, it is dynamic and adaptive. Three models of remote learning were discussed. They are looking at all options, logistics, and it is very complex. Patrick Murphy ordered PPE for students and staff. Special needs masks. Special developmental courses for teachers.

Ms. Taylor

Asked for a list of the subcommittees, when they meet, and who name of the Chair.

Mr. Brown:

Assembly of Delegates meeting: Charter Review recommended the term remaining the same and recall only before commissioners and not for the Assembly.

12. Town Manager's report

Mr. Jones met last Thursday with Mr. Johnson-Staub, Mr. Brown, and the Marks Building Advisory Committee regarding procedures/processes anticipated going forward.

The Select Board Annual Strategic Planning Retreat is 8/17/20, they are looking into a space that allows for social distancing with a 5pm start. Any concerns/opinions may be emailed to the Chair. The next Select Board business meeting will be 8/24/20.

Mr. Jones motion to adjourn at 11:31 pm. Second Mr. Patterson. Roll Call Vote: Chair English Braga, aye; Mr. Patterson, aye; Mr. Brown, aye; Ms. Taylor, aye. Absent: Mr. Jones.

Respectfully Submitted,
Jennifer Chaves
Recording Secretary