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**COMMONWEALTH OF MASSACHUSETTS**

**TOWN OF FALMOUTH**

**NOVEMBER ANNUAL TOWN MEETING**

**Memorial Auditorium  
Lawrence School  
Lakeview Avenue  
Falmouth, Massachusetts**

**MODERATOR: David T. Vieira**

**TOWN CLERK Michael Palmer**

**Tuesday, November 10, 2009**

**7:00 p.m.**

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**ANNUAL TOWN MEETING**  
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## P R O C E E D I N G S

THE MODERATOR: Will all Town Meeting Members please come in and take your seats. I want to remind all Town Meeting Members to check in; attendance will be published in the Falmouth Enterprise. So make sure you do check in this evening.

Occasionally I have a question of “How do I get an excused absence from Town Meeting?” Town Meeting Members, if you are looking to get an excused absence -- Town Meeting Members. [Bangs gavel.] Town Meeting Members looking for an excused absence should write a letter or an email to the Town Clerk. The Town Charter authorizes the Town Clerk to take attendance and to issue excuses from Town Meeting. So I want to thank the five people who called me and then sent the email to the Town Clerk.

This evening we are going to reconvene the Annual Town Meeting. We’ll begin on Article 21, which is our Capital Budget. Currently at this time we do not have microphone carriers. If they’re at home watching this on television, please hurry up and get down here. Otherwise, we’ll have the two microphones in the front and the two microphones in the middle that are on the stands.

For the two microphones that are in the middle on the stands, in order to speak, you have to push the button on the bottom of the microphone. Just push it up on the bottom and the microphone will turn on. Okay?

Our tellers this evening: in the first division will be Mrs. Tashiro; in the second division will be Mr. Dufresne; and in the third division will be Mr. Hampson.

All Town Meeting Members present please rise for the establishment of a quorum.

[Pause.]

THE MODERATOR: In the first division, Mrs. Tashiro?

MRS. TASHIRO: 46.

THE MODERATOR: 46.

THE MODERATOR: In the second division, Mr. Dufresne.

MR. DUFRESNE: 86.

THE MODERATOR: 86.

Okay. We'll take them up on the offer. I've got two offers to help run mics for a while. That would be great. Mr. Leaf and Ms. Siegel. Thank you very much.

And in the third division, Mr. Hampson.

MR. HAMPSON: 58.

THE MODERATOR: 58.

By a counted vote of 190, we have a quorum and I call the Annual Town Meeting back into session.

At this time would all Town Meeting Members please rise for the Pledge of Allegiance.

[Pledge of Allegiance taken.]

THE MODERATOR: At this time, we'll have an invocation by our Falmouth Police Chief Anthony Riello.

CHIEF RIELLO: Lord, when it comes to meeting and communicating with each other, help us to be good listeners. Help us to be open-minded, putting aside our own agendas. Help us to be honest without being insensitive. Help us to be respectful without being too formal or artificial. Help us to question and to challenge without being harsh, much like Andy Dufresne. Help us to be aware that this is just one moment, just one meeting. And lastly, help us to remember that you, too, are always meeting and communicating with us. Amen.

THE MODERATOR: Okay.

[Laughter.]

THE MODERATOR: Okay, I want to thank Mr. Leaf and Ms. Siegel for offering to do the microphones and our microphone carriers have just arrived.

Let's see, we finished Article 19 last night. The next article is Article 21. Mr. Fox?

MR. FOX: Yes, Mr. Moderator, I would like to request reconsideration of Article 10.

THE MODERATOR: Reconsideration for Article 10. Article 10 was the zoning bylaw amendment for one dwelling per lot. What new information do you have for the meeting?

MR. FOX: Well, I believe last night we didn't get answers to that were asked. In particular, we asked Town Counsel whether or not they were – whether the judgment made them illegal and we didn't get an answer. We were told it was a conflict of interest. But I went down to the Zoning Board today and the judgment is there and it clearly says they are illegal. We could have gotten that answer straight then. And we also only heard what people thought Eladio Gore was going to do. We never really heard from Eladio Gore whether now that they're illegal, whether there would be any enforcement, and I believe the people that own those 200 units need to know, and we here have to be careful in how we handle this.

MR. LATIMER: Point of order, Mr. Moderator.

THE MODERATOR: Mr. Latimer.

MR. LATIMER: [No microphone – inaudible.] This is

nothing new – [inaudible.]

THE MODERATOR: Okay, Mr. Latimer, that's okay, Mr. Latimer, I make that decision, not you. The question will come on whether or not to reconsider Article 10, one dwelling per lot zoning bylaw amendment. This requires a majority. However, if you reconsider, the main motion still requires a two-thirds vote.

So the majority vote to reconsider. All those in favor of reconsideration, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[No.]

THE MODERATOR: It's the opinion of the Chair that the No's have it by a majority and Article 10 will not be reconsidered.

Article 21. Mr. Chairman.

CHAIRMAN ANDERSON: Mr. Moderator, I move that the Town vote to appropriate \$191,227 to fund the Capital Improvement Plan as set forth in Article 21, and for this purpose the Town shall be authorized to transfer \$75,000 from the Reserve Waterways Fund, and \$116,227 from Certified Free Cash, to be expended under the jurisdiction of the Board of Selectmen.

THE MODERATOR: Okay, you've all heard the main

motion. It's as printed, striking the \$200,000 from line 3 and striking the \$200,000 from the AFCEE fund.

Mr. Chairman.

CHAIRMAN ANDERSON: The change in the Finance Committee's recommendation on line 3, the Comprehensive Wastewater Management Plan from \$200,000 to zero, came about as a result of discussions with the Selectmen and those involved in the Wastewater project.

The AFCEE fund is a special fund to be spent by the Town for specific purposes and is not general revenue subject to appropriation. The Board of Selectmen have indicated that they will hold public workshops to gather input from the citizens as well as provide additional information for the general public on the wastewater issue. After these workshops, the Board of Selectmen will determine amounts needed to study the various alternatives.

THE MODERATOR: Okay, Madame Chairman?

CHAIRMAN FLYNN: Yes, thank you, Mr. Moderator. The Board of Selectmen voted unanimously to support removing this funding from this particular article. The article provided some flexibility in terms of how the monies would be spent to pursue various studies related to the wastewater plant. The Board of Selectmen believes along with the Finance Committee that it's

important to be very specific about how these monies are spent and for what studies. We're very much aware that we need to do more studies in terms of groundwater analysis impact. We certainly need to look far more carefully at innovative technologies and innovative alternatives to sewerage and many other areas in which we can study, but the most important thing that we have seen, particularly as a result of some of the precinct meetings recently, is the need to build community consensus around this wastewater plant. It's a huge project. In fact, it's the biggest public works project the Town will ever undertake and, in order to do that, we really need to have the community on board. And I don't think we're there yet, at all. And I think we can use some of this AFCEE money to be able to help the community build a consensus around the plan.

So, after Thanksgiving, the Board of Selectmen will hold another wastewater workshop and we will begin to look at very carefully as to how we might be able to do this and what resources will be available to us not only to conduct the studies that need to be done around wastewater itself but also around community consensus. So, I hope you will support this article.

THE MODERATOR: Okay, what we're going to do with this budget, as we do with the Annual Budget, we'll have a presentation by the administration and then we will go to each line

item. You don't have to hold it, we'll go through each line item; if you want to discuss it or do anything with it, we'll do it right when we get to that line item. And we'll allow more than two amendments on this article because it is an omnibus capital budget.

Mr. Whritenour.

MR. WHRITENOUR: Good evening, ladies and gentlemen. I'd like to make a few comments on the Capital Improvement Program that is really the thought process behind the Capital Budget and the actions in front of the Town Meeting this evening.

The Capital Improvement Program not only incorporates the Capital Budget, which is the amount that's voted annually by Town Meeting, it's also a plan for the ensuing six year period that's comprehensive in terms of including all of the capital improvements that we foresee for that period and we update this every year. It's one of the major financial planning tools for the Town and it's one that we take quite seriously.

And I do want to point out that we've got a full copy of the six year Capital Improvement Program posted online and I'd like to encourage you to go on the Town's website and take a look at the plan, and any feedback that you have is very, very much

accepted and we look forward to that.

We also have annually with the Finance Committee a public hearing that we cover all of the aspects of the Capital Improvement Program, and one of the points that I want to make is that, in these tight economic times, like the recession that we're facing right now, this financial planning is even more important. And I want to single out a few people and recognize our Assistant Town Manager Heather Harper, the yeoman's work that she performs in coordinating our Annual Capital Improvement Program, and even more importantly each and every one of the department heads, although we weren't able to fund every request -- actually very few for this Town Meeting -- you need to know that we have a comprehensive analysis of all of the capital needs of every single department and we are working with each one of the department heads to make sure that the real needs of the Town are identified, items are addressed, things don't fall through the cracks and we get the projects moved forward that we need to move forward.

And another aspect of that Capital Improvement Program, it does incorporate an analysis of the debt levels and the debt service for this community throughout the life of every single one of the bond issues that are in place now or else proposed in the plan. So, while you have the projects that take place over the next

six years, much of the debt that's incorporated with those projects extends out maybe another 20 years and that's all incorporated in the Capital Improvement Program.

If we could look at the next slide. I put this slide in here to show you that the Capital Improvement Program is really much more than a planning exercise. It has direct impacts on residents on a daily basis in our community and, as you can see in this picture here, without a solid capital improvement program, the replacement of this capital equipment, this gentleman right there would be standing in a rather large puddle. But it's just an example of the type of work that goes on on a daily basis and the value of the capital equipment that we fund on an annual basis through this program.

If we could go to the next slide. I want to point out that this CIP, the six year plan, one of its major benefits as a planning tool is that we specifically construct it so that it can help us carry out both the financial policies of the town that we've adopted and also it's an implementation tool for our strategic plan of the Board of Selectmen. The current focus in working with those other planning documents of the Capital Improvement Program right now and one of the key challenges that we're looking at when we plan these capital improvements is to make this spending more sustainable on

an ongoing basis.

It's no secret, the Finance Committee, we've conducted meeting after meeting on this topic. You've heard the presentations. We've been much too reliant on the Town's reserves to fund these capital improvements and we need to develop sustainable financing mechanisms to stay on top of the replacement of that equipment, to stay on top of the infrastructure and municipal buildings without spending reserves down to levels that we can't sustain. And it's been the policy of the state government to have municipal governments in Massachusetts have smaller reserves, work closer to the margin. We're a part of that process and we need to recognize it.

So, what that means for us. Through this Capital Improvement Program, one of the long-term goals that we've established and we need to work together on is to fund more of our capital improvements outside of Proposition 2 ½, and we've done a great job on that. All of the major building projects are accompanied by Proposition 2 ½ debt exclusions and now, over the past since 2007, we've been bundling together some much needed infrastructure/public safety projects, doing those on limited debt exclusions, capital exclusions and that is the type of financing in the long term cities and towns across the Commonwealth are moving to

and I think we're going to see a lot more of that.

If we could go to the next slide. In the short term, what we need to worry about immediately, is we need to start today in reducing capital spending from Free Cash. And this evening, that's why the Capital Improvement Budget that you see is so small is that we simply no longer have the Free Cash – which is neither free nor is it cash. What it is are the reserves of the town. We no longer have those large reserves that we can depend on to meet these big projects.

So what we're doing right now, and this is part of the implementation of our other planning documents, is we are taking the pressure off of the Town's reserves in these difficult economic times to move ahead with the projects. And as we move forward, when we talk about capital spending, a major issue is going to be: what is the source of funding? Not just whether we need a project or not. So, it's going to be very, very important that we analyze all of these projects in terms of where the funds come from. And we've had a lot of success in that area, if we can go to the next slide.

This is just from the previous week, a project that we're all very proud of. Here's a community, probably the only community in the Commonwealth of Massachusetts at this time of

year in this year that's put a million dollars into its Stabilization Fund, direct revenues from this particular capital project, that is underway on Blacksmith Shop road right now.

If we can get to the next slide, I think if you can see this slide, that's called the nacelle; it's the hub of the wind turbine that we're erecting. And I like this picture because it's really symbolic for me as, you know, you see the Town of Falmouth and kind of its hopes being lifted off the ground. But it's not coming easily, it's a lot of team work. This fellow here looks like he's getting ready to be dragged along. And it takes a lot of hard effort, but it's moving - it's moving forward.

And if we could have the next slide, there you see maybe 300 feet in the air we have the Town of Falmouth, and that project is ready to roll. As of this morning the blades on that hub were installed. And this is a project that by we hope the end of the year is going to be generating additional revenue from the town. Not only will we be able to get that initial million dollars by selling those renewable energy credits, but this project here and its sister turbine, which will be 100 percent federally funded, will be generating to the Town before long in excess of one million dollars in equivalent revenues and savings in energy per year.

So, that's an amazing project and it shows just

because there's difficult economic times that it doesn't mean that you can't make progress and you can't take meaningful steps forward to stabilize issues that are going on.

If we can get to the next slide back to work up over here. This shows what the Capital Budget is in summary for 2009, this Town Meeting. And I do support the recommendations of the Finance Committee. The amounts we have in are \$116,000 from Free Cash, from Waterways 75, for a total of only this year \$191,227, and those are only projects that have their own funding or else are under contract that we have to move forward at this time.

But to give you a sense of some of the principles that we've discussed up to now in terms of not letting these projects fall through the crack and trying to make sure that we present for placement outside of Prop 2 ½ some of the projects.

If we could take a look at the next slide, part of the game plan, and this is one of the things that you need to know and see, is we're working toward an additional capital exclusion for consideration in April of 2010 at the next Town Meeting, which takes into account some of the other key items that are in the Capital Improvement Program and moves forward some of the priorities that we feel are much necessary to help the community.

We've got items in here for improving water quality through coastal drainage construction. We have approximately 300,000 in facilities maintenance projects for the Town buildings. We have coastal structures that are in dire need in some of our harbors for improvement. We also have some public safety improvements in communication and technology. There's roughly \$1.1 million that we're looking at.

What we'll be doing over the winter, along with coming up with an annual budget that will be balanced for Fiscal Year 2011, projects of this nature will be going through the vetting process through the Board of Selectmen then into the Finance Committee and we will develop a program that we will seek to take some of the key projects that we're not able to fund at this Town Meeting because we don't have the Free Cash to do them, and we're going to take the highest priority projects and we're working potentially towards submitting those for a potential capital exclusion, and that would be a one-time capital exclusion. And what this does is it enables the voters to be able to be in a position to control the spending so we're not looking at any permanent tax increases or anything of that nature, but we will seek to take some of the key projects that we've done the planning for that we feel need to move forward and we will attempt to place those outside of Proposition 2

½.

Now, to wrap up, I'd like to talk a little bit about moving forward beyond this year. As you know, it is a six year program, and don't think that we can talk about the Capital Improvement Program without stating quite clearly that one of the key focuses – and this has been over the last two years and especially now and as we move forward – a key focus of the Capital Improvement Program is to in sincerity begin this community dialogue around wastewater financing. And the Chairman of the board of Selectmen introduced that topic this evening. We know that the water quality in our coastal embayments is threatened by nitrogen loading, and that's a project that this generation must deal with. It's not an issue that can be put off for the next generation. There has been a tremendous amount of work that's been accomplished already in terms of developing a comprehensive wastewater plan. There is more work that is required.

One of the items, though, that you need to know about in this Capital Improvement Program, we have an ongoing analysis of some alternative financial models for completing this project, for meeting this challenge, which will be the subject, along with the use of some of the AFCEE funds, of many community forums. And we're getting some tremendous input, feedback from local

residents. Mr. Boyer I really – I thought it was just a tremendous article that he had in the paper with fantastic ideas for consideration. And we have a number of models that currently are under consideration and that we'll need to roll out to the community and again be able to achieve some community consensus.

But, for the purpose of this evening, there are some key financial considerations that, regardless of what ultimately the plan rolls out for implementation, or regardless of what financing alternative is selected, that you need to keep in mind as we enter into this process in earnest. And the first one of those is I cannot underscore enough the impact you'll hear about, you know, the new legislation that through the state revolving fund has zero percent financing. That zero percent financing is absolutely equivalent to a 50 percent grant on this project. So, for the Town to move ahead without that zero percent financing would be foolhardy, and that is something that we're going to have to make sure as we move forward if there is financing that is available without interest, that is an enormous subsidy to this project. And the longer you go with the debt, the higher that – that 50 percent could even grow from there, it's that important.

So we need to keep our eyes on the financing that's available and not lose that.

A second key issue that I think everyone needs to understand is that we talk about can these projects be done with betterments and things of this nature; I'm here to tell you that the answer to that question is No. Property tax financing will absolutely be required to take on a project of this magnitude. It's possible to do some betterments, but this project will not occur without the full support of the community and without the full faith backing of the valuation of this community. The numbers just do not support a strict betterment application. And a major discussion that we're going to have moving forward is what appropriate mix of any betterments, if any, and property tax contributions.

But the key things to remember: zero percent financing is an absolute must. Property tax financing will be required and we need to achieve a consensus over what that appropriate mix is going to be. And there are ways of going about this process and accomplishing it, but the key thing is is that I've seen the numbers and I'm not scared of the numbers. This community has the wherewithal to complete a project that will improve and protect the quality of the water and the coastal embayments and the financing won't be the major stumbling block. It's a matter I think of planning, achieving consensus, and moving forward with that.

And that's kind of the thrust of my remarks. I just put

this up just so to, you know, recall what we're looking at. The green area is phase one and two over the next 20 years, along with the yellow area. We hope never to have to get up – this is more for alternative systems in this area, the pink part. But it's all going to depend on how successful what goes on in these green areas is in improving the water quality. But this is something that we're looking at very closely through this six year Capital Improvement Program and we look forward to rolling out for the community.

And that's just a few comments that I wanted to make this evening on the overall capital planning process and what direction that we're heading. Thank you very much.

THE MODERATOR: Okay, Mr. Boyer.

MR. BOYER: Mr. Moderator, Peter Boyer, Precinct 5.

I really wanted to focus not on the sewer issue; that will certainly get its share of discussion over the years, but rather on the proposed Capital Exclusion for next spring. I believe this is really the way to go and I want to reinforce that for Town Meeting and I support this concept. Because it's clear that it will be many years before we can accumulate the reserves that we once enjoyed and that we cannot rely on any such reserves to fund these crucial items.

I'm also pleased that it's a capital exclusion. I think we

need to expect every year to have an omnibus capital exclusion vote on the ballot and that every year – and I would add to it, frankly, all the DPW. While we've done a three debt exclusion for the DPW needs, I think that should be part of the Annual Capital Exclusion Program. So it's two million, two and a half million dollars every year. I have faith that Town Meeting and the voters will support this because these are ongoing needs. We can't bury or hide the demands that are placed on us. And so I really wanted to highlight this as a tool that I believe is going to be necessary for years to come. Thank you.

THE MODERATOR: Okay. Any other general comments before we get into line items?

Okay. Utilities Division. The Well Rehab at Mares Pond. The Finance Committee recommendation is zero.

Utilities Division - Wastewater. Collection System Repair & Maintenance. The motion here is 70,000. The Comprehensive Wastewater Management Plan, the new main motion is zero.

Lines 4 and 5 for Beach Improvements, zero. Okay, Ms. Murphy.

MS. MURPHY: Thank you, Mr. Moderator. Carol Murphy, Precinct 9. I just have a question as far as the Septic

System Repair of Old Silver Beach. How badly in repair is that – the system hasn't failed or has it failed?

THE MODERATOR: Is Mr. Hoffer here? Yes, there he is. Sorry, I didn't see you there.

MR. HOFFER: The system is – Don Hoffer, Precinct 4. The system definitely needs repairs, however we've been combating that for the past few years by just increasing the number of pump-outs that we have. And we have not had a problem, say, in the last two years.

MS. MURPHY: Thank you.

THE MODERATOR: Any further questions on the beaches? Yes, Mr. MacLone.

MR. MACLONE: Richard MacLone, Precinct 4. The number 4 on the Maintenance Dredging Permit for Manuhant Nourishment, does that mean that the inlets for Waquoit Bay and for by the Manuhant Yacht Club, those areas are not going to be dredged? Are those waterways going to be open?

THE MODERATOR: Mr. Hoffer.

MR. HOFFER: Yeah, that has nothing to do with Waquoit Bay. That item is to cover the requirements from the ConCom order of conditions to analyze the Bourne's Pond inlet. And this is for permitting and analysis in the – so that we'll be ready

in the event that we must dredge it.

MR. MACLONE: Okay, so there's no problem –

MR. HOFFER: This doesn't include – this amount would not include dredging. It's more to obtain permitting and survey work.

MR. MACLONE: Okay, thank you, sir.

THE MODERATOR: Yeah, go ahead, Mr. Chairman.

CHAIRMAN ANDERSON: Just by way of notation, item 10 is for dredging there, \$75,000, there, and that would be perhaps to answer your question, the dredging of those jetties in there.

THE MODERATOR: Anything else on the beaches?  
Ms. O'Connell.

MS. O'CONNELL: Yes, Mr. Moderator. Maureen O'Connell, Precinct 4. Just for a point of information, I'm wondering what does it cost each time there is a pump-out at Old Silver Beach and how many times a year does that have to be done?

THE MODERATOR: Mr. Hoffer.

MR. HOFFER: For the ten week beach season, we pump it twice a month. I really don't know how much it costs. The DPW pays for it, but I would say it's probably around \$500 a month, something like that. Where's Maureen?

THE MODERATOR: Ms. O'Connell.

MS. O'CONNELL: So is there somebody that could answer? Is there a DPW person here, Mr. Moderator? We've sort of, as from a personal perspective, this can add up.

THE MODERATOR: Okay, Mr. McConarty, want to take a shot at that one?

MR. MCCONARTY: Thank you, Mr. Moderator, Peter McConarty, Acting Town Engineer. Yeah, the pumping price is approximately \$300, \$310 per month. Currently we have been asked by the Beach Department, Mr. Hoffer, and the Engineering Department to perform a survey to come up with a preliminary design for the new septic system at the beach. That could be – that septic system and that design could be done in-house.

THE MODERATOR: Okay. Any further questions on Beaches? Mr. Duffany.

MR. DUFFANY: Thank you. Michael Duffany, Precinct 6. I just want to mention from my standpoint the beach nourishment is a very, very important aspect of going forward in the town to maintain the beaches that we have. We saw the success of the project in Manauhant. We've also seen the disappointment of the project that the Corps of Engineers didn't allow us to do at Chappaquoit years ago and now the -- as you see what we have to

do in order to keep the wall there.

I just think that the Town needs to adopt the philosophy that without the beaches we're not Falmouth the way that we believe that we are and the way that we have been in the past and we need to strongly consider nourishment. And I'm not suggesting we put the money back here tonight but, Mr. Whritenour, I would suggest that would be something that the voters could probably be very receptive to in the spring. Thank you.

THE MODERATOR: Okay. Further discussion on Beaches?

Okay. Police Department, Cruiser Replacement. The motion is zero.

Fire Department – oh, Mr. Marks. Mr. Marks, the former chairman of the Finance Committee when I began coming to Town Meetings.

MR. MARKS: Mr. Moderator, I got two questions and a comment. My first question is, is the Police Chief happy with this and did he agree to it? My second question is, with the Capital Exclusion of \$500,000, is there money in there for the replacement of cruisers?

And my comment is, we tried this once before, sometime back. Some of you in the Town Meeting might remember

it. Eighteen months replacement and we ended up with a junk yard behind the Police station.

THE MODERATOR: Okay. Chief. Chief Riello.

CHIEF RIELLO: Thank you. Actually, I talked to my esteemed colleague and friend, Chief Brodeur; he's going to let us borrow one of his fire trucks for a few months. So, we'll be riding around doing that. No.

Actually, we're on a definite cruiser replacement plan, which is something that – I'm sorry?

FROM THE FLOOR: [Inaudible.]

CHIEF RIELLO: Oh, you did. It is.

And you're right, we do have a definite cruiser replacement plan. We did take a small hit last year and, in talking with Finance Committee representatives, you know, we believe that we can make it until April. If we go much beyond that, you've experienced it as you said. I've experienced it from where I came from and it's not pretty. We're on a replacement plan right now. We try to keep at least ten marked cruisers ready and available. And you have to remember we do put on about 500 to 750,000 miles a year on that fleet, and that's responding to calls for service and patrolling the 44 square miles of Falmouth.

The cruiser replacement plan that we've embarked on

in just the last couple of years has also been to downsize our administrative fleet. We've been going to Tauruses. We're getting better gas mileage. And that program is also, you know, part and parcel of the entire cruiser replacement. So, I feel, you know, we're on track. And we can hold off for a bit, but, you're right, we're really pushing it in April.

So, we can live with this. You know, we've talked about it at the Police Department with Captain McManamon who manages the fleet, and it's my sense perhaps we may spend a little bit more on maintenance but, you know, come April, we definitely would like to get back on track, but we should be okay.

THE MODERATOR: Okay? And the second question about the 500,000. Mr. Whritenour, do you want to take that one? And the projected capital exclusion?

MR. WHRITENOUR: I'm not sure I recall the question. Could you –

THE MODERATOR: In the 500,000 that you had up there for the Capital Exclusion Plan, did that include any cruiser replacements?

MR. WHRITENOUR: Yes.

THE MODERATOR: Any further discussions on the Police Department?

Fire Department, an ambulance lease. This is 41,227.

Information Technology, 5,000 for the Annual  
Maintenance and Financial System Upgrade, zero.

And the Waterways, Dredging and Permitting, \$75,000.

Any further questions on the Capital Budget? Hearing  
none, the main motion will come as presented by the Finance  
Committee. All those in favor, signify by Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[None opposed.]

THE MODERATOR: The Ayes have it unanimous.

Article 22. Mr. Chairman.

CHAIRMAN ANDERSON: Mr. Moderator, I move  
indefinite postponement.

THE MODERATOR: Okay, Article 22, indefinite  
postponement. This was engineering, surveying, permitting for  
work with the harbor bulkheads. Mr. Chairman.

CHAIRMAN ANDERSON: As I mentioned in my  
comments last night, sometimes last minute changes in the  
numbers affect the economics of a project and cause the Finance

Committee to change its recommendation. Such is the case with Article 22.

Late last Friday we received word that the proper section of the Mass. General Laws which covers financing of wharf reconstruction projects specifies that the debt can be issued for a maximum term of ten years rather than the 15 years as presented to us.

Just yesterday, after additional analysis and further discussion with the Town Manager, the Harbormaster and the Town Treasurer, it was determined that the funding for this project needs to be reassessed. The Finance Committee changed its recommendation to indefinite postponement at our meeting last night. The Harbormaster and the Town Manager will re-evaluate this project and likely bring this as an article in the spring town meeting.

THE MODERATOR: Okay, in Article 22, the recommendation is now indefinite postponement. Is there anyone who would like to place a positive motion on the floor for Article 22?

Hearing none, we will then entertain indefinite postponement as the main motion. This is where yes means no. All those in favor, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[No.]

THE MODERATOR: The Ayes have it and the article is indefinitely postponed.

Article 23. Mr. Chairman.

CHAIRMAN ANDERSON: Mr. Moderator, I move Article 23 as recommended.

THE MODERATOR: Okay, as recommended. This is to appropriate \$50,000 from Certified Free Cash to the Falmouth School Department budget line item 01300-57780, Other Expenses. Ms. Fenwick held this article. Microphone to my right, please. Microphone down here on my right, please. If the microphone carriers could go right around the sign that says, "Town Meeting Members Only" so that we can move quickly up and down the aisle.

MS. FENWICK: Judy Fenwick, Precinct 1 and also a member of the Falmouth School Committee. I just wanted to ask a few questions on the explanation section of this article. And to help educate the other Town Meeting Members who may not know that the last sentence in the explanation that says, "This is a second payment for this year", a little history on what that payment started

out to be and what it's ended up to be.

What I'm going to do is try and lay out what I think I understand is the process for the Medicaid reimbursements that this article is addressing, and I would like to be corrected either by the Finance Committee or the Town Manager if I make misstatements.

The School Committee over many years has received Medicaid reimbursements or the Town has received Medicaid reimbursements for services that the School Department provides to students who are Medicaid eligible. And in a given year those Medicaid reimbursements to the Town total somewhere between 500 and 600 thousand dollars. The process for that money coming into the Town changed I believe last year so that we would receive half of the money in the spring and half of the money in the fall. At 2009 Annual Town Meeting, \$270,000 was appropriated in the School Department budget as it states in the explanation.

Now, those reimbursements, they come into the Town quarterly, they go into the Free Cash, is that a correct statement?

THE MODERATOR: Mr. Chairman.

CHAIRMAN ANDERSON: The payments for the Medicaid do some into the Town. They go into the General Account. Free Cash is certified after the end of the year, so any

monies that come in during the current year will not be certified as Free Cash until they go through the review process at the end of this fiscal year.

MS. FENWICK: And then at the subsequent Town Meeting after that time, we vote money out of Free Cash?

CHAIRMAN ANDERSON: Yes.

MS. FENWICK: Okay. So, back in April, we got \$270,000, and about \$250,000 was being counted on by the School Committee for Fall Town Meeting. And I think about a month and a half ago we were told that the amount we were going to be getting was a hundred thousand dollars, and then a few weeks ago we were told by the Finance Committee that that amount was now \$50,000.

So, what I was curious about is where is the other \$200,000.

THE MODERATOR: Mr. Chairman.

[Laughter.]

CHAIRMAN ANDERSON: Ms. Fenwick asks very difficult questions. First of all, on behalf of the Finance Committee, I just want to thank the students, the faculty and the administration of our schools for continuing to perform admirably during these difficult times. I'd also like to extend our appreciation and

understanding to the superintendent and the School Committee for their efforts and cooperation during this period of budget reductions and financial retrenchment for the Town.

Falmouth has historically been willing and generous in its support of the schools and the education of our children. Unfortunately we're in a different time now. We can all identify with the frustration and angst of Ms. Fenwick and others on the School Committee regarding the reduction in Medicaid funding. The Finance Committee also wishes we could recommend more for this need, but our job is to look at the big picture, to consider the needs of the whole town.

Some may feel it's only right to give the Medicaid funds to school, for which many years were given to them by an annual article. The Department of Revenue mandated the change and those amounts now must be paid out of Free Cash. Unfortunately, as I have reported, our Free Cash for Fiscal Year '10 is severely limited. Our recommendation in Article 3 is what we felt was fair given the financial risks the Town may yet face, and we ask Town Meeting to support the Finance Committee's recommendation.

THE MODERATOR: Okay. Dr. Clark.

DR. CLARK: Peter Clark, Precinct 1. I would like to then ask when the new amount of Certified Free Cash is

developed, will there be a supplemental payment? I think it's important to realize that these funds come to the Town because of services that are performed, they have been performed. They're recorded. We submit that information and the funds are kind of reimbursement or payment for those services. So it isn't as though the School Department has an ability to cut out those services; they've already been under way.

So, this is a significant reduction for the School Department. In my past history with the School Department, it would be devastating.

THE MODERATOR: Okay. Microphone down here. Midway on the right, microphone.

MS. BISSONNETTE: Karen Bissonnette, Precinct 6. So it's my understanding that the Town receives funds for services that the School Department provides for special needs students and then that money is not used for the education of those students; is that basically what has happened?

THE MODERATOR: The money goes into the General Fund and then Town Meeting can appropriate from Free Cash money to the School Department.

MS. BISSONNETTE: So is it not restricted funds that come into the Town? Why is it not restricted to the education of the

students that are generating those revenues?

THE MODERATOR: That's a question for Mr. Turkington or Mr. Patrick. That's the law for the state of Massachusetts. You can pass the mic to your right.

MS. ASENDORF: Thank you. Martha Asendorf, Precinct 6. Just to give Town Meeting an idea of how this is documented in our town, the related services of counseling, occupational therapy, physical therapy, speech language pathology, are documented on a weekly basis by our providers. We get signatures from families who are on Medicaid; we fill out the forms. Those providers have to document their services to the children, the attendance of the child in school that week, and it all goes down to the Medicaid people at the end of the week. We document on a weekly basis the services they provide. In a sense, we earn the money.

As a School employee, I'm one of several people in here who voluntarily voted to take a furlough day. I'm losing money, I am giving back to the Town of my own salary this year. We voted to take \$175,000 that way. I think this money, which we earned, we document, we work for, should stay with the Town, in the school system. Thank you.

THE MODERATOR: Okay. I saw a hand to my left.

Ms. Stetson.

MS. STETSON: Judy Stetson, Precinct 1. Through you I think to Mr. Duffy or maybe Mr. Anderson. Is it legal to divert Medicaid money to other purposes?

THE MODERATOR: Well, the Medicaid money goes into the General Fund but, go ahead, Mr. Duffy, you want to explain? Or somebody? About how it goes into the General Fund, therefore it's not earmarked.

MR. DUFFY: I really wouldn't be able to answer that, I'm not involved in the process of this at all.

THE MODERATOR: Okay. Yeah, Mr. Whritenour, do you want to?

MR. WHRITENOUR: In fact the specific ruling of the Department of Revenue was that the special education services are already funded in the School Budget and there's a federal reimbursement that the Town is eligible for for those services already provided. What is illegal, we found, is that we had ordinarily just appropriated those funds, any of the reimbursements, right back to the School Department, and they would use them for future special education services, not those services for which the reimbursement was received. It was a supplement to the budget of the School Department. And what the Department of Revenue has

issued as its legal ruling is that it's illegal for the Town to give those funds directly to the School Department. That they've ruled that those funds must be commingled in with the General Fund. And the reason that the \$200,000 isn't there is that when they're commingled with the General Fund, it goes into the same recession that the rest of the world is in.

So that, when you take a look at the bottom line at the end of the year, we're no longer allowed to segregate those Medicaid funds. So when you look at the Town's revenues, all of the similar revenues are down. We lost money in Motor Vehicle Excise Tax. We lost money in investment income. We lost money in permits, building permits. We gained a small amount of money on the Medicaid, but the net bottom line was a negative to the Town.

We were extremely fortunate, I feel, to be able to have that – the 320,000 out of the 500-plus, to divert back to the schools, and when, you know, the economy turns around, it's hoped that we can return, you know, back a like amount. But the key thing is the Department of Revenue has ruled it has to go into the school budget. So I think the issue, as ruled by the Department of Revenue, is no longer Medicaid money. There is no more Medicaid money. What the issue is is that we have to determine, including Medicaid, including everything, what the appropriate amount of

money that the Town can afford for the school budget, place that money in the School Budget in an appropriation.

This year was a transitional year. We know that we had only put 270,000 of the Medicaid money in the original School Budget last April. We knew times were tough. We had hoped that we would have enough Free Cash to put the entire amount back, but as things worked out, we did not get the Free Cash we had hoped for. So it is a reduction and it is extremely unfortunate and what we will do is work very closely with the School Department to insure that the special education services in their annual budget are funded.

THE MODERATOR: Ms. Stetson.

MS. STETSON: Thank you for the explanation about the money wandering around. It seems to me that we are undercutting the whole purpose of Medicaid and if we're asking Mrs. Asendorf to give us back of her own time, that's not paying in future, that's repaying back, only we're saying, "Hey we're not going to repay you out of Medicaid for the work you did for Medicaid." It seems to me why fund Medicaid? Why not just call it General Funds from the top down?

THE MODERATOR: Okay, Mr. Lewis.

MR. LEWIS: Gardner Lewis, Precinct 6. After we

voted Article 21 \$116,000 out of Free Cash, we now have \$211,000 in the Free Cash account, so Mrs. Fenwick, that's where your money is. The Finance Committee, when we changed our \$100,000 to 50, we felt – we knew we were going to be very low in the Free Cash, and we felt rather than give you the full 100 at the time and then after like we did last year start asking for money back in the spring when the fund is gone, it would be better to fund you short now.

THE MODERATOR: Okay. Yes. Couldn't hear him?

His answer was the money is the \$211,000 that's left in Certified Free Cash and they went to 50,000 rather than the 100,000 so they wouldn't have to ask him to give the money back later.

Mr. Chairman.

CHAIRMAN ANDERSON: You do understand that this is a difficult issue. As we move forward through the course of this fiscal year, there may be an opportunity at our spring special town meeting to put an article on that town meeting to request monies. We'll have a far better picture then of what the Town's finances and what the level of Free Cash looks like.

THE MODERATOR: Let's hope it doesn't snow this winter. Mr. Netto.

MR. NETTO: Joe Netto, Precinct 9. Mr. Anderson

through you, Mr. Vieira. What is the procedure if this line item in the School Budget reaches deficit spending? Because the services go on every day and when the School Department, because Special Needs, you know, funding and services change as students come and go and in and out of the Town and these services are federally and state mandated. So you have to provide for them. So I'm concerned at what's the procedure if this account –

THE MODERATOR: This item is into Other Expenses, the line item for the School Department. It doesn't transfer directly into Special Education. It's Other Expenses line item 01300-57780.

MR. NETTO: Okay, so when that line item reaches negative figures, what does the School – my question, obviously, is then what does the School Department do? Do they have to transfer funds – maybe it's a question better directed to the Superintendent of Schools, Mr. Dupuis, if I may. Would you have to direct other school expenses for other students to pay this account? Or would the bills wait until we have one of our, you know, Town Meetings? I'd like the answer to that question please, thank you.

THE MODERATOR: Mr. Dupuis. He's right behind

you, there.

MR. DUPUIS: Mark Dupuis, Superintendent of Schools. In response to the question, this money is in the General School Budget and it's the School Committee's responsibility to balance that budget at the end of the year. The services for special education clearly have to be provided to the students, but overall, with the money in the total budget, it's the School Department's responsibility to maintain the balanced budget by the end of the year.

THE MODERATOR: Okay, further discussion, Article 23? Okay, Ms. Tobey. To the right, here.

MS. TOBEY: Linda Tobey, precinct 4. I'm one of many people in this audience who gladly gave a day's pay to help support the Town. We've been very open and honest about this whole procedure and I'm disappointed that a member of our School Committee may – I guess our whole School Committee was not informed about what was happening with this money. I had the idea that all the Departments were working together and this feels like this was done without the knowledge of –

THE MODERATOR: Mr. McDonald, do you want to answer whether or not you were informed as a School Committee?

MS. TOBEY: You did know.

THE MODERATOR: The Committee – microphone for – okay.

MR. MCDONALD: They did — we did.

MS. TOBEY: They did know. Okay. And I'm wondering where the figure 50,000 came from. Why – sometimes when you share something, you just divide it down the middle, and how that figure just came about.

And my other question is – and I understand that we're down to bare bones. I understand how difficult the time is. I'm wondering if the money has already been spent; if that's how tough the times are right now.

THE MODERATOR: Okay, let's do Mr. McDonald first and then Mr. Chairman. Or Mr. Lewis will be next, then, on that.

MR. MCDONALD: Hi, Jamie McDonald, Chairman of the School Committee. To answer the question, we have known that there was going to be a cut in the Medicaid funds. It's been a sliding scale over the last four months. My fellow Committee members got up to explain to you what this Medicaid money is. I don't think that's ever been clear over the last ten years.

So, we've known this is happening. We just wanted to let people be aware of what these funds are for. We want to thank also the Finance Committee for informing of this, and they're in a

tight spot. And I want to thank all the unions and all the people in the staff at the schools for taking a furlough day, but thank you.

THE MODERATOR: Mr. Lewis, did you want to address the second half?

MR. LEWIS: Gardner Lewis, Precinct 6. The question on where do we come up with \$50,000? We felt it was better than nothing, and we talked – we voted a hundred the first time around and then we went back and re-visited all the dollar requests in the warrant and there were two requests that weren't mandated that we gave money to: 50,000 to the school and \$5,000 to the IT for computer servers. Those were the only two monies that we voted not directly mandated numbers. Okay.

THE MODERATOR: Okay. Further discussion on Article 23? Okay, I've got a – yeah, Mr. Waasdorp. Microphone to my right, please.

FROM THE FLOOR: Question.

MR. WAASDORP: Peter Waasdorp, Precinct 1. I'd like to move an amendment to the article that we appropriate the full \$170,000 and that we take that from –

THE MODERATOR: How much?

MR. WAASDORP: 170,000.

THE MODERATOR: 117?

MR. WAASDORP: 70. That's what was promised, apparently. 170 in the spring and 170 in the fall was originally the Medicaid funds promised.

THE MODERATOR: So \$170,000, okay.

MR. WAASDORP: Is that correct? 270 each? Ouch.

THE MODERATOR: Mr. Waasdorp, do you have an amendment?

MR. WAASDORP: What we're hearing is that the Medicaid fund dispersal passes the legal test but it just doesn't pass the smell test. And I'm trying to see what we can do about that and obviously there's not much to take from. But it seems like the money could come from the Waterways Dredging, \$75,000 and it could come from –

THE MODERATOR: No, the Waterways account is also as state law and regulation it can only be used for Waterways projects.

MR. WAASDORP: All right. And then that leaves us the Collection System Repair and Maintenance, 70,000.

THE MODERATOR: Well, you're talking about appropriations that were made in a separate article.

MR. WAASDORP: Right.

THE MODERATOR: So, until we go back and reconsider to get the money out of that article, that money's already been spent by Town Meeting. So the only thing you have left is, what, is it \$211,000? \$210,000, and that doesn't include Veteran's Ordinary Benefits, the Legal Expenses that are going to come up, and if it snows, that account's done in the first storm. So you've got \$211,000 in Certified Free Cash if you want to make an amendment.

MR. WAASDORP: I yield to someone with better knowledge of this, but I just think some of that money should be re-appropriated. It doesn't pass the smell test.

THE MODERATOR: Mr. McDonald. Mr. McDonald down here to the right.

MR. MCDONALD: Thank you very much for the thought; it's very well intentioned, but we as a Committee would probably vote against it. So, thank you. Next year we'll probably come through with the Stabilization Fund; That seems to be the way to go.

THE MODERATOR: Dr. Clark, did you have something else?

DR. CLARK: I also would have voted against that amendment. I was not trying to argue that there should be

supplemental money added at this point, but only that it has this powerful impact and in the future that I was pleased to hear people say they would try to reimburse that or add to that in some way.

Thank you.

THE MODERATOR: Okay, further discussion? Mr. Stetcher.

MR. STETCHER: I'm just trying to clarify something in my own mind. My impression is that this money that's coming in for Medicaid was figured into the budget originally for the School Committee and apparently there's not much fuss being made by the School Committee I think because that money's in the budget already, and if that's so, why are we even giving them \$50,000?

THE MODERATOR: Mr. Chairman.

CHAIRMAN ANDERSON: As Mr. Whritenour explained, the Medicaid monies are a reimbursement, so yes, it was in the budget. The monies go into the General Fund; it is a reimbursement. I think the issue is historically the money has gone by article back to the school.

THE MODERATOR: Okay, are we all set on this one?

FROM THE FLOOR: Yes.

THE MODERATOR: Mr. Patterson. Mr. Patterson, and then I think we're ready to vote.

MR. PATTERSON: Just to clarify, I've been on the School Budget Subcommittee for 12 years now, and if you don't think this is painful, you got the wrong message, all right? It is painful and thanks to the teachers for helping us balance the budget, because otherwise it just wouldn't be happening.

THE MODERATOR: Okay, the question will now come on the main motion, Article 23 as recommended: \$50,000 from Certified Free Cash to the Other Expenses line item of the School Department. All those in favor, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[No.]

THE MODERATOR: The Ayes have it by a majority. Article 31. Article 31, this is to amend Chapter 87 of the Code of Falmouth for Beaches, General Regulations for the banning of use of smoking materials.

Madame Chairman of the Board of Selectmen for the main motion.

CHAIRMAN FLYNN: Mr. Moderator, I move that the Town vote Article 31 as printed.

THE MODERATOR: Okay. Can we give it to her so it could be the main motion?

[Pause.]

THE MODERATOR: Okay. Madame Chairman, for your main motion, would you be agreeable to adding the words that the Town Clerk will appropriately number the section? We found that the numbering in the article as printed is not correct.

CHAIRMAN FLYNN: Yes, I would agree to that.

THE MODERATOR: Okay, so the main motion is Article 31 as printed, striking Section 87-10, the number, for the number to be appropriately numbered by the Town Clerk, okay? And this was held by Mr. Macdonald. Is Mr. McDonald with us tonight? He was sitting over here last night. No.

[Laughter.]

THE MODERATOR: Discussion? Okay, back right.

MR. PETERSON: Tom Peterson, Precinct 1. I did not hold this article.

I don't have a dog in this fight. I quit smoking and I never go to the beach.

[Laughter.]

MR. PETERSON: However, I think this is an issue of discrimination and fairness. Somewhere around 15 percent of the population smokes. We also have a number of people that come here in the summer from Europe and Canada; they smoke. We

have miles of beach in this town. I think some of it should be open to people who want to sit on the beach and have a cigarette or a cigar. I don't think you should send them out to the parking lot and treat them like second class citizens.

I think what you should do, rather than have no smoking on the beach, having smoking sections on the beach, not out in the parking lot or out in the back woods, or whatever.

[Laughter.]

MR. PETERSON: I think that would be more fair –

THE MODERATOR: Folks, folks, the gentleman has the floor. If you don't like what he's saying, put your hand up and you can speak after him.

MR. PETERSON: I just think it would be more fair to those people who choose to smoke. It's not illegal, it is not immoral, I think it's just a matter of fairness. Thank you.

THE MODERATOR: Go ahead, pass the mic right there.

MR. SCANLON: Yeah, Jack Scanlon, Precinct 1. I sort of agree with Tom, but I do go to the beach and I see butts all over the beach. It's not the smoking, it's the disposal of them, in my mind. They're everywhere and they're disgusting.

THE MODERATOR: Okay, further discussion? Yes,

Ms. Whitehead.

MS. WHITEHEAD: Lynn Whitehead, Precinct 1. It maybe not illegal, but it's unhealthy. I do go to the beach, and I don't think you can have a section of the beach for smoking because the wind blows. And many times I've gotten up to move because everybody has the right to smoke if they want to smoke, but it's – I don't think they have the right to let somebody else have all that smoke and breathe in that second-hand smoke. So I totally think that we should vote for this and have no smoking on the beach.

If they want to smoke in their car, they can sit and relax, open the windows, and you know, have a little joy, there. Thank you very much.

THE MODERATOR: Okay, Ms. O'Connell to my left.

MS. O'CONNELL: Maureen O'Connell, precinct 4. Mr. Moderator, I'm wondering about the enforcement of this proposal and also what would happen were someone, if there were anyone to police the smokers, what would be the penalty?

THE MODERATOR: Okay, Mr. Hoffer, enforcement and what's the penalty?

MR. HOFFER: During the beach season the lifeguards would enforce or be told to enforce this, but not at the

expense of trying to make sure that people are safe in the water. I've checked with Barnstable and Yarmouth, and what we find is that this is almost a self-enforcing proposition. People realize that they're – most people realize that they're offending their neighbors right next to them, and they go up to the – and, for instance, I was told they go up to the parking lot.

Somebody mentioned cigarette butts, and we have kids from Morse Pond School, we have the Young Professionals in town who do beach cleanups and they make a point of counting, believe it or not, the cigarette butts they get. It's really a nuisance on the beach, because they're not biodegradable, most of them, the filters, and they're talking thousands of cigarette butts.

But I would admit that probably it's mostly a self-enforcing, if that makes any sense, proposition. And as far as the – any penalty, I don't think there will be any penalty assigned to it. It'll be just a good neighborly type of thing and people will get the picture. And one of the goals of the beaches is to have clean beaches, and I think this would go a long way towards helping that.

THE MODERATOR: Okay, Mr. Duffy, could you address the penalty of a civil bylaw?

MR. DUFFY: We have a provision in the bylaw of Falmouth for penalties for violation. The maximum, by the way, is

\$300, but the penalty for violations on the beach, I can't remember what it is, but it's in there right now and it will be enforced. But it would be the same penalty as we have for drinking on the beach or for littering or anything else, it would be the same.

THE MODERATOR: Okay, Mr. Latimer, you're next.

MR. LATIMER: Richard Latimer, Precinct 2. I have a problem with this only in terms of its scope the way it's written. I have no problem with banning smoking on the beach during the summer months when the beaches are in operation, when smoking will be offensive to other people and the accumulation of butts will be a significant problem. But to say someone can't go out on the beach in February, walking his dog and smoking his cigar or his cigarette, it seems to me to be overkill.

I think it sounds like – I question there what is the public policy involved? The public policy to protect non-smokers from smokers when the beach is heavily populated is clear. That's a good public policy. And to keep the beaches clean when people are using it is also clear. But this just seems to be overkill. I would support one that said, well, between the months of May 1<sup>st</sup> and October 1<sup>st</sup>, there should be no smoking, that's a reasonable regulation. I just think this is overkill.

THE MODERATOR: Okay, Mr. Maclone.

MR. MACLONE: Richard Maclone, precinct 4. I don't usually agree with Mr. Latimer, but I think he has a point, and this doesn't extend to – it doesn't say whether the beaches include the parking areas or not. I think I'd like to see this come back written a little bit differently, maybe just segmenting it to the summer season, and even if there was a way that we could accommodate some of our foreign tourists that come who are – most of the ones I've met are smokers, as far as foreign tourists. I think maybe we could accommodate them by having a smoking section along the beach, perhaps. But I think it should be limited to the time when the beach is in operation and it shouldn't extend to the parking lots, and I would like to see this, if there is a penalty, have a penalty written up there. Thank you, and I would suggest we vote against this so it comes back in a better form for us. Thank you.

THE MODERATOR: Okay, Mr. Dufresne was next. The penalty is in the code for this section the bylaws. So there is a –

MR. DUFRESNE: Adrian Dufresne, resident of Precinct 2. I quit smoking in 1952. I hate smoking. I don't want to get near anybody that smokes. But do we really need a law on our beaches? Why not a courtesy sign that we've always put up: no ball playing, no frisbee playing, whatever, by the Beach Committee,

and let that be the Town's courtesy to both the people that are on the beach and the people that want to smoke? And most people out of courtesy will not smoke if there's a sign that says, you know. But a law? I just think we're going too far with it.

I've not smoked for 40 years; can't stand it, and I hope nobody in this room smokes. But I just can't see us creating a law for the people on the beach against something that's legal throughout the country. Thank you.

[Applause.]

THE MODERATOR: Okay, Ms. Long. Ms. Kozens-Long. Pass the mic.

MS. KOZENS-LONG: The explanation on this article says that the Board of Selectmen support the Beach Committee's efforts to make our beaches tobacco-free. But that's not actually what this regulation does. It talks about smoking materials, but what about chewing tobacco and how disgusting a lump of that is on the beach?

THE MODERATOR: Okay, Mr. Gould.

MR. GOULD: Daniel Gould, Precinct 6. I think certainly I hate to take issue with Mr. Dufresne and a lot of other respected people here, but I think this is just making a statement. And as far as enforcement, there's tons of people driving around

right now having a beer in their car and they don't get caught because there's not enough enforcement. There's not going to be anybody out there in the middle of February to enforce this law, but I think, getting back to the – Falmouth has a pretty good reputation in terms of tourism, and if we make a statement that you can come to our beaches and you can not have to wade among the cigarette butts, we can certainly put some ashtrays in the parking lot. We're not going to handcuff people, but we can make a statement to say, "This is how we feel". Because I don't think we have a good sense of this in terms of people coming here.

I certainly wouldn't want to offend anybody if I were a smoker, but I don't think people have a good sense of that anymore. It's the 21<sup>st</sup> Century and I'm sad to say that that's true. But there's not a common sense about this anymore.

I think we ought to make a statement and let the chips fall where they may.

THE MODERATOR: Okay, Mr. Swain.

MR. SWAIN: Charlie Swain, Precinct 7. There's more to this law than cigarette butts. The cost of our health care is so high; one of the reasons is smoking. And I'm a reformed smoker, too, Andy, but anything we can do to cut down on medical expenses and this is one of the reasons we should do it.

THE MODERATOR: Ms. Schneider, Dr. Schneider.

DR. SCHNEIDER: Barbara Schneider, Precinct 4. A couple things have been said tonight that I just want to address. First of all, we're talking about cigarette butts. If any of – and that's winter or summer. People, you can ask people to be courteous. I wish we lived in a society today where that would be enough. But just come along Davisville on a Sunday morning and take a look at what's been flung out of cars all along the road. Someone's not going to hesitate to drop a cigar butt or a cigarette butt on the beach no matter when it is, and so that's why I would see this as a year round thing.

Secondly, if you've had a grandchild or a child try to build a sand castle on any beach, you would realize that it's not that easy anymore because the sand is filled with cigarette butts. It's impossible to sift for them. It's disgusting when your two year old granddaughter is picking up butts on the beach and you realize what might be on those. And I'd love also to be like Michael Moore and bring my yellow crime tape and put it around the man who had the audacity in front of everybody last summer on a Sunday at Falmouth Heights beach to take out a cigar – he could have cared less if I went up and asked him, "Please don't smoke your cigar here; my two grandchildren are asthmatic." And if you have

anyone who's asthmatic, even a little asthmatic, this is no small thing. We ended up having to leave the beach; that man didn't want to hear about it and he could care less about a sign that said, "Please Be Courteous". Thank you.

[Applause.]

THE MODERATOR: Okay, further discussion. Mr. Shearer.

MR. SHEARER: Dan Shearer, Precinct 6. My son asked me to do this and I said I wasn't going to, but I will. Now.

Why don't we change this? We seem to be taking no smoking in schools, no smoking here, no smoking there. Let's change it that there's no smoking on any Town-owned property. It would be very simple, it would be easy, and we'll have a lot of tourists that won't come here and we'll lose a lot of the tax money from the room tax and so forth. But, so what? Let's just make everybody obey the laws.

I think Andy had the best idea. Let us just work on it and say and see what people can do. Or, change it and make no smoking. Thank you.

THE MODERATOR: Okay, Mr. Apicella. And then Mr. Dick.

MR. APICELLA: Thank you. Joe Apicella, Precinct 7.

Most of you know I live in Seacoast Shores and we have a little beach over there that I was privileged to use this year with my grandkids, and you sit next to a guy who smokes cigarette after cigarette and takes them and puts them out in the sand, and at our Board of Director's meeting I brought it up and we took the lead in this thing: Seacoast Shores has a no smoking beach and I think the Town of Falmouth should fall in line with everybody else and have a no smoking beach.

THE MODERATOR: Okay. Mr. Dick.

MR. DICK: I wasn't worried we wouldn't have any contentious articles tonight. I listened to both sides of this. I'm a non-smoker. I'm also a hypo-allergic. At the Oceanographic, they shut down smoking in the meeting rooms, which meant I could then go to meetings, because I couldn't go to meetings if people smoked.

When they put airline non-smoking in, I was ecstatic because I could suddenly breath and not get sick when I went on airlines. But I also – we have a flat no policy smoking anywhere at the Oceanographic in any of the buildings, and in the winter I come out and I see people shivering in the snow, huddled over a little dish, trying to have a cigarette. They've got my sympathy. It wouldn't have been much for the Oceanographic to provide a

smoking area that wouldn't have affected anybody else.

And I think there's an issue of courtesy here and tolerance of other peoples, what they want to do that doesn't really affect each of you that much. And I think that having a small area of smoking beach is a very good idea. I think it's equally true that if you go down to the beaches in the summer, they're very crowded, and so for long stretches it also seems reasonable that for large sections of our beaches there would be no smoking. And I don't quite agree with Andy that just a courtesy sign that would put up that would stop people from smoking, because there are people who simply will not respect what they're doing to their neighbors. I've experienced it I restaurants before the no smoking laws.

But I think courtesy is really important and respect is really important. And respect for people who you may not approve of what they're doing but it's not really directly affecting you that much. And I think it's a very small thing to have a section of the beach where people can smoke. A section. And the rest should be non-smoking.

So, I would really prefer that this come back in April so that we can vote on a little more friendly-crafted bill that will achieve 90 percent or 95 percent of what a lot of people would like to see, which is non-smoking on most of the beaches, but show some

courtesy and respect for those 15 percent of the people who in my belief mistakenly smoke cigarettes. Thank you.

THE MODERATOR: Ms. Kingwell. Microphone down here on my right for Ms. Kingwell. Keep coming down.

MS. KINGWELL: I was in New York when the laws came out that you could not smoke in a restaurant or a bar and everybody said that nobody from overseas would come anymore. They wouldn't come to New York because they couldn't smoke. They also said that the bars and restaurants would be out of business because you couldn't smoke. Doesn't happen. They all survived it and very well.

I think somebody said what if Jay were here he would have said – my husband -- which is, it is a terrible health problem and certainly there are people who have a hard time not smoking, but there is the issue of second-hand smoke and even in outdoors it's there, so I encourage you to pass this article. Thank you.

THE MODERATOR: Okay, Mr. Dufresne. Mr. Murphy, I'll put you on the list.

MR. DUFRESNE: I'll just be very brief. This is almost an unenforceable regulation beyond the ability of the lifeguards on a busy beach. I just talked to Mr. Hoffer; is there some way that this regulation could be in effect just through the ten or twelve

weeks of the summer period? As one person indicated –

THE MODERATOR: Well, if your lifeguards are going to enforce it, they're not there except for in the summer, anyway. Your enforcement mechanism are the lifeguards and the lifeguards are only there for that period of time.

MR. DUFRESNE: So this regulation would only be effect for ten weeks?

THE MODERATOR: No, it would be year-round. The regulation would be in effect year round, but your enforcement mechanism I'm told is the lifeguards and they're only there for ten weeks.

Okay, Mr. Murphy.

MR. DUFRESNE: I'll leave it to Mr. Murphy.

MR. MURPHY: Ladies and gentlemen, I fought this battle once before about smoking as a restaurateur, and in fact we were able to work through that at that time, and come to some accommodations that were able to wean us through, and get the restaurants in this community to be smoke-free. And you know there are people that still feed their habit and that is something that I do not personally do.

But one of the issues that I want to stress on and talk about tonight is the idea of tolerance. I understand that we want

Falmouth – Falmouth’s jewels are its beaches. But we also need to be inclusive of everybody and respect other people’s opinions. I find myself occasionally and specifically tonight agreeing with part of what Mr. Latimer says, and that is very usually the last thing that happens with me. But I will agree that first of all, we don’t need to rush to judgment with this tonight because it is November. No one’s going to use those beaches again until next June. And if it is as cold as it was this June, no one will be using them until July.

My suggestion would be a little mixed hybrid, a hybrid of what Mr. Dick had said that, you know, we could make some smoking sections. We have some beaches that are totally underutilized. We know it would be inappropriate to allow any smoking on Old Silver Beach on Fourth of July weekend. You’d be lucky if you can find a spot of sand to sit on on Old Silver Beach. Let’s use common sense, reaching a consensus across government and building a consensus in government. That’s what we’re here for, to make sure we can please the most people without hurting somebody else’s rights.

There are some beaches that the school, pardon me, that the Beach Committee has tried to push people to go to. But you know what, they’re not as convenient to get to. Maybe they

could look at a couple of those beaches that are underutilized and on those beaches come up with an appropriate smoking section.

You know, there are some old timers in this town, I have a couple in my greater neighborhood, they cut the lawn and I see them sit down in their chair and they marvel and they have a cigarette or a cigar. That's not something that I do, but you know, I can relate to them and their satisfaction at what they've done and accomplished.

I want to be able to offer everything to everybody in this community. I think that we can give this back to the Beach Committee, come back in April, and maybe come up with a blend, something that can accommodate people without hurting people's rights. I hope that we would vote this down tonight, give it back to the Beach Committee and come back in April with a potential consensus. Thank you.

THE MODERATOR: Mr. Moreland. Yes, Mr. Moreland, and then Mr. Murphy.

MR. MORELAND: Ben Moreland, Precinct 4. He almost said what I was going to say, but a suggestion if we come back with the new article, pick one or more beaches and make them smoking beaches and then no smoking on the rest. And then advertise it as such so that the smokers will go to wherever the

smokers are going to be and the non-smokers will be where they want to be. Thank you.

THE MODERATOR: Okay, Mr. Murphy. Carey Murphy.

MR. MURPHY: Carey Murphy, Precinct 7. I'm going to disagree with my fellow former selectman Kevin Murphy. I think if we're going to err, I think we should err on the side of the majority of the people who don't smoke. I think we can self-enforce this regulation. We're a progressive community, and I think we should demonstrate that we're a progressive community.

You know, there's other communities on the Cape that have done this. There's no smoking anywhere on any school property, even in the parking lots or anywhere. You can't smoke outside this building. And I think that as a progressive community we should do that. We shouldn't allow our beaches to be turned into an ashtray, and that's exactly what's happening.

I support this article and I would ask that Town Meeting support this article and I would ask, David, that we end discussion and move the question.

THE MODERATOR: Okay, Mr. Leaf, something new?  
Mr. Leaf.

MR. LEAF: Yeah, move the question, please.

THE MODERATOR: Oh, okay. My practice is to not allow the motion if you've already spoken; that's why I didn't recognize it from Mr. Murphy.

So the question will come on moving the question, the previous question. This is to stop discussion. It requires a two-thirds vote. All those in favor of ending discussion, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[None opposed.]

THE MODERATOR: The Ayes have it unanimous.

The question will come on Article 31 as printed, striking out the section number and having the Town Clerk re-number the section appropriately. All those in favor of Article 31 as printed, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[No.]

THE MODERATOR: The Ayes have it but I'm going to count it. All those in favor, signify by standing and the tellers will return a count.

[Pause.]

THE MODERATOR: In the first division, Mrs.  
Tashiro.

MRS. Tashiro: 25.

THE MODERATOR: 25.

In the third division, Mr. Hampson.

MR. HAMPSON: 38.

THE MODERATOR: 38.

In the second division, Mr. Dufresne.

MR. DUFRESNE: 65.

THE MODERATOR: 65.

All those opposed, signify by standing and the tellers  
will return a count.

[Pause.]

THE MODERATOR: Mrs. Tashiro in the first division.

MRS. Tashiro: 17.

THE MODERATOR: 17.

In the third division, Mr. Hampson.

MR. HAMPSON: 19.

THE MODERATOR: 19.

In the second division, Mr. Hampson.

MR. DUFRESNE: 24.

THE MODERATOR: 24. By a counted vote of 128 in

favor and 60 opposed, the article passes.

[Applause.]

THE MODERATOR: Article 32. This is to decrease the members of the Historical Commission from seven to five. Madame Chairman of the Board of Selectmen for the main motion.

CHAIRMAN FLYNN: Mr. Moderator, I move that the Town vote to decrease the members of the Falmouth Historical commission from seven to five members as authorized by General Laws Chapter 40, Section 8D, or to take any other action on this matter on request of the Historical commission.

THE MODERATOR: Okay, the main motion for Article 32 is as printed. Any discussion? Ms. Hayward.

MS. HAYWARD: Thank you, Mr. Moderator, I'm Nancy Hayward, Precinct 5. I'm also a member of the Historical Commission and I was a dissenting vote when the Historical Commission voted to put this article on the Town Meeting warrant.

The Historical Commission was established in 1979 and it had five members. And it had five members until November, 2002, when Town Meeting voted in Article 36 to make the Historical Commission a seven member board. After that occurred, the Charter Commission had to revise the Charter and the Charter currently states that the Historical Commission has seven

members.

In the past, namely in I believe July of last year, the Selectmen have argued that the Historical Commission is one of the commissions that has the possibility of effecting property owners of property rights. The Historical Commission does administer the six month demolition delay for those buildings on the cultural resource list of Falmouth and Mass. Historical Commission.

And we cannot prohibit the demolition. We can only delay the demolition for six months.

It is my opinion that the seven member board gives a greater opportunity for discussion and gives you one more member to make decisions. The Chairman's point is that we have only been operating as a four member board. We only have four members currently and what this does require is that all four members be present at every meeting to have a quorum. Although, when one becomes a member of a commission, I think that one assumes that one should be attending the meetings.

I have not felt that the town, by not always listing the correct number of seats open for the Commission perhaps if they have only listed one member and we haven't gotten one more member, maybe the fact that now the last listing in the newspaper very definitely stated very nicely the number of missing members of

a variety of boards and commissions. That has not always been so.

I feel that the Historical Commission should try harder to get more members. I think it's astonishing at this time that this article is put in this Town Meeting warrant. That there has been this big initiative which has primarily come from the Chamber of Commerce in support of the historical heritage of the Town of Falmouth. I would like the Town Meeting Members to give consideration to turning down this article in the hopes that the Falmouth Historical Commission will stir interest from members of the community who may be listening to this meeting. Thank you very much, Mr. Moderator.

THE MODERATOR: Ms. Kozens-Long.

MS. KOZENS-LONG: I'll be short and sweet. I've been reporting to the Board of Selectmen at the last three annual reports that we have a problem with applications. We're not receiving applications. We've been working as a four and a five member board for more than four years. We don't have applications on file and does it make it better to have a seven member board where you can share the work, share the ideas? Absolutely.

Bottom line is we don't have the applications. We have

four sitting members of a regulatory board who supports the Town's mission and respects the property owners. If one of us is sick, absent, can't fly home this winter, the board is disabled. This is something that I talked to the former chairman when he sat as chairman and the Historical Commission had gone to review to go up. The constructs of that were five members with associate members. The associate members attended the commission more than the actual voting members. So the philosophy for quorum, again, it was a quorum problem, just as we have now, the associate members then applied, were appointed and became members and it helped with the quorum problems for a time.

The applications aren't out. There's a lot of work to be on boards. It's a hard economic time for people to spend the time on a volunteer position.

I talked to Mass. Historical; he said this is a state-wide problem; it's not just in Falmouth. This is a fix, something that we've been asking the Board of Selectmen to support the Historical Commission on now for three annual reports. This spring, two of those four members are up for re-appointment. If they don't send that ticket back to Bob's office, we're in trouble. That's my concern: functioning as an Historical Commission for the Town for the greater good than having to shirk our responsibilities by not being

able to meet quorum.

One of our members – we actually scheduled hearings this summer around one of our commissioners having a baby, and thank you to the Porters for conveniently having their child in between our summer hearings this year. And so do the other 16 property owners, who were notified of the hearing. That's my fear. I spent my anniversary this year at a Historical Commission meeting. Because we are dedicated and the four people who sit on the board, I have to say they're there. We meet quorum. It's stressful. It's difficult. How long are we going to continue to work with knowing that no matter what, swine flu, anniversaries, babies, you'd better show up?

THE MODERATOR: Okay, further discussion on Article 32? Yes, Ms. Shephard.

MS. SHEPHARD: Susan Shephard, Precinct 1. Is it possible to make the number of members flexible so that it could be from five to seven and that the quorum then be based on the number of sitting members?

THE MODERATOR: Ms. Kozens-Long.

MS. KOZENS-LONG: The actual enabling legislature that creates us gives us a flexible membership from three to seven. And I took a survey from Mass. Historical about how many cities

and towns have Historical Commissions and all but two cities and towns in the Commonwealth have them, and they're all over the map as far as pretty much a third, a third and a third as far as three, five and seven members.

The associate members is a matter of policy that we can do within the legislature, so that we can have associate members that can share in the work and that maybe can check us out and try us out without the commitment of being a voting member, so that maybe they will come on board, and that seems to work, as well. That does not have to be changed at town meeting. That can be done with a commission as a matter of policy.

THE MODERATOR: Okay. Further discussion on Article 32. Mr. Buessler.

MR. BUESSLER: Thank you, Mr. Moderator. Ken Buessler, precinct 2. I was a little concerned earlier this evening on how I would express why I think this might not be a good idea to move ahead on this, and it really all came together when I saw this Citizen's Check List. And if we all look, you know, at number seven, number seven talks about when we're looking about concerning our votes, does it place too much power in the hands of an individual or group?

And after that it talks about once decisive power is

granted to non-elected public officials, a commission or an authority, private citizens lose control.

So why does that bother me? Well, the idea of going from seven to five means the size of the quorum goes from four to three members. That's what we're hearing about, that's the problem. A quorum of three means two people are the majority in that quorum, so two people, non-elected, will be allowed to make decisions if the quorum decides there's only three.

So I just urge us to not reduce the size of these committees. We have to work outside of Town Meeting on how to increase volunteerism in this town, but reducing our numbers puts a majority vote down to two people in a quorum of three and I think that's just the wrong idea, based upon what's stated in our Check List, thank you.

THE MODERATOR: Okay, further discussion, Ms. Flynn. Chairman Flynn.

CHAIRMAN FLYNN: Thank you, Mr. Moderator. We also looked into the option of changing the quorum requirement, for instance changing it to the majority of votes present, and in discussions with Town Counsel, we learned that that was not possible, to adjust the quorum requirement.

Another suggestion the Board asked the Historical

Commission to consider was perhaps coming back to the April Town Meeting with another article that might offer the opportunity to have alternate members, so that if they are five, it would also be hopefully a recruitment factor by getting alternate members who might then become permanent members. So that is still an option that might be available to them.

But, adjusting the quorum requirement is not.

THE MODERATOR: Ms. Kozens-Long.

MS. KOZENS-LONG: We need applications. That's the bottom line. We need people who will fill out applications. This is being made a bigger issue than it needs to be. It's a simple request between seven and five with a four year record. If this body doesn't want to support the commission in changing from seven to five, the Board of Selectmen doesn't want to support the Commission from changing to seven to five, I just hope that everybody realizes the impact to that commission for this coming year, for this coming flu season, when you make this decision.

THE MODERATOR: Okay. Something new, Ms. Hayward?

MS. HAYWARD: I would like to say that I don't agree with Ms. Kozens-Long's statement that for the last four years we have operated with only four members. I don't have the records in

front of me so I can't tell you how many members we've had each of the last four years.

As far as a committee not being able to in this case not being able to work if we had one member who wasn't there, there are so many possibilities if one is considering a severe flu meeting that there may be much larger committees or commissions that could be out of commission because of illness and all other manner of acts of God. Thank you.

THE MODERATOR: Okay, are we ready?

FROM THE FLOOR: Yes, yes.

THE MODERATOR: Okay, the question will come on Article 32, the main motion is as printed to reduce the membership of the Historical Commission from seven to five. All those in favor, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[No.]

THE MODERATOR: It is the opinion of the Chair that the Ayes have it by a majority.

FROM THE FLOOR: No, no.

THE MODERATOR: All those in favor, signify by standing and the tellers will return a count.

[Pause.]

THE MODERATOR: In the third division, Mr.  
Hampson.

MR. HAMPSON: 29.

THE MODERATOR: 29.

In the first division, Mrs. Tashiro.

MRS. TASHIRO: 37.

THE MODERATOR: 37.

And in the second division, Mr. Dufresne.

MR. DUFRESNE: 59.

THE MODERATOR: 59.

All those opposed, signify by standing and the tellers  
will return a count.

[Pause.]

THE MODERATOR: I hope that some of you who are  
standing are going to apply for the Commission.

[Laughter.]

THE MODERATOR: In the first division, Mrs. Tashiro.

MRS. TASHIRO: 12.

THE MODERATOR: 12.

In the third division, Mr. Hampson.

MR. HAMPSON: 29.

THE MODERATOR: 29.

And in the second division, Mr. Dufresne.

MR. DUFRESNE: 27.

THE MODERATOR: 27.

By a counted vote of 125 in favor and 68 opposed, the article passes.

Mr. Chairman, Article 33.

CHAIRMAN ANDERSON: Mr. Moderator, I move that all articles considered in this Town Meeting be funded as voted, for a total of \$3,298,149.87.

THE MODERATOR: Okay, you've all heard the main motion to fund this Town Meeting to the tune of \$3,298,149.87. All those in favor, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[None opposed.]

THE MODERATOR: The Ayes have it unanimous.

Madame Chairman for notification of our next Annual Town Meeting.

CHAIRMAN FLYNN: Mr. Moderator, the Spring Annual Town Meeting will begin on Monday, April 5<sup>th</sup>, 2010.

THE MODERATOR: Okay, our next Annual Town

Meeting – hopefully our next town meeting, but our next Annual Town Meeting will be April 5<sup>th</sup>.

Mr. Chairman.

CHAIRMAN ANDERSON: Mr. Moderator, ladies and gentlemen, I move the November, 2009 Town Meeting be closed.

THE MODERATOR: You've all heard the main motion to close this meeting. All those in favor, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[None opposed.]

THE MODERATOR: The Ayes have it and would dissolve this meeting.

[8:56 p.m.]

[Whereupon, this meeting was adjourned.]

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF BARNSTABLE, SS

I, Carol P. Tinkham, a Professional Court Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing is a true and accurate record of Falmouth Annual Fall Town Meeting, taken by me on November 10, 2009. To the best of my ability the within transcript is a complete, true and accurate record of said Town Meeting.

In witness whereof, I have hereunto set my hand and Notary Seal this 25th day of November 2009.

Carol Tinkham  
(508) 759-9162

---

Carol P. Tinkham, Notary Public  
My Commission Expires:  
May 14<sup>th</sup>, 2010

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