

TOWN OF FALMOUTH
BOARD OF SELECTMEN
Meeting Minutes
Open Session
MONDAY, MAY 4, 2020
SELECTMEN'S MEETING ROOM
TOWN HALL
59 TOWN HALL SQUARE, FALMOUTH, MA 02540

In accordance with the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20, relating to the 2020 novel Coronavirus outbreak emergency, the May 4, 2020 public meeting of the Falmouth Board of Selectmen shall be physically closed to the public to avoid group congregation.

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

1. *The meeting will be televised via Falmouth Community Television.*
2. *Real-time public comment can be addressed to the Board of Selectmen 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 selectmen@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/Board of Selectmen'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.*

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

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

1. Call to Order at 7:09 p.m. by Chair English Braga.
2. Pledge of Allegiance
3. Recognition

Mr. Brown recognized the innovation of the Falmouth Road Race organizers for the virtual road race this year.

4. Announcements

Mr. Brown announced the White Ribbon Day video conference chat to spread word about domestic violence issues in Town.

On behalf of Michael Palmer, Town Clerk, Mr. Johnson-Staub announced that early voting is being urged by Town Clerk for people to mail in application for an early voting ballot. If someone wants to vote in both the State Special Election and Town Application, that needs to be specified on the form submitted to Town. On election day the Town Clerk works with Mr. Suso and Scott McGann to put in place as many protections as possible for the public and pole workers. Wear a mask, 6 people in to vote at a time. Encouraged to bring your own black or blue pen. Early ballots need to be returned to clerk 2-3 days before election day.

Chair English Braga noted that the Clerk is encouraging people to vote early via mail, call them, drop the request off, no reason why folks cannot request an early ballot. No need to choose between their health and voting. Reminder that the Governor's mandate goes into effect next week, it will be required.

5. Public Comment

Mr. Johnson-Staub noted no advance public comment has been received. If people want to make comment now, use the chat function and enter comments now and they will be read into the record.

Mr. Brown noted that they have received supportive emails of the EDIC Recovery Loan Program.

BUSINESS

1. Discussion and Vote on Proposed EDIC Recovery Loan Program

Continuance from last week's BOS meeting.

EDIC presentation, then hear from Town staff, then conversation with EDIC members and small business owners.

Mike Galasso made a PowerPoint presentation made at the last BOS meeting.

The EDIC has participated in 3 lending projects before including Cape Cod Symphony paid in full \$22,500, Historic Highfield \$27,500 paid in full, and SBA Lending Program Coastal Community Capital \$100,000, about \$36,000 balance remaining.

The EDIC asked the BOS to consider modifying the intergovernmental agreement to change amount of rent to \$10 per year the EDIC shall pay to the Town for EDIC's lease of the landfill solar array phase 1 and 2.

Reviewed paycheck protection program spending relative to March Job Losses. This program is not reaching one of the major industries in Falmouth.

Program Summary: This would be a revolving loan fund to provide low interest loans to small businesses, usually with less than 3 employees. \$2 million from lender, security is current and future income from the EDIC, typical loan \$30-50,000, underwriting and administration would be by the fund's lending partner. Oversight provided by the Falmouth Fund Advisory Board and an annual independent audit of the fund. Application lottery and then after rolling applications. Pre application assistance, lending partners' staff assist applicants prior to the deadline. Marketing and research through social media, newspaper ads, and press releases. They want to ensure all have the opportunity.

Fund replenished with repayment and reloaned to new borrowers. Business recovery and growth will help stabilize the Town.

Mike Kasparian finds this a tremendous opportunity. The need is huge, much feedback about the PPP program, which is not appropriate for every small business. This program designed for those businesses who were left behind. These loans underwritten by their loan partner, vigorous approval to ensure safe and secure. This could mean the survival of small businesses, of the 600 Chamber members, majority are 1-3 employees and this money could go a long way to help them keep going and neighbors employed.

Michael DiGiano reviewed the projected operating budget with the Recovery Loan Fund. Sources of income are Falmouth Depot rent and lease projects for solar array. They pay for staff, accounting, and

auditing fees. If they are able to use all the lease income from the solar developer for both projects, use that to arrange for the loan pool funds, the EDIC will still dip into its reserves because income from second project does not kick in until 2021. They can run the program in an operating deficit which can be covered through reserves. This shows why they are asking the Town to provide a good deal on the landfill so the solar income revenue can be used to set up this loan program along with the resources the EDIC has available. They have provided responses to the Town's questions, including previous loans done, and local counsel opinion the EDIC has the authority to undertake this program. They look forward to working with Town administration to provide answers to some additional questions posed by counsel. The EDIC will get \$80,000 in reimbursement from Citizens Energy, the recurring revenue from Citizens Energy to the EDIC ground lease payment: half of the payments go to the EDIC, half to the Town.

Information was received from the EDIC, analysis conducted by Finance Director Jennifer Mullen, Attorney Frank Duffy, and others. Atty. Duffy continues to have questions regarding this program. Ms. Mullen received input from bond counsel.

Atty. Duffy made the following remarks. There is no dispute of the necessity for this and it is for a commendable purpose, though it raised questions. Atty. Duffy looked at legal authority of the Town and EDIC to undertake the recovery loan program, involves public funds so it is essential all legal requirements be followed. He looked at 2 issues: 1. Whether the EDIC has the authority to create and administer and 2. Whether the BOS has authority to use Town funds for this program. The Town is looking to resolve these questions. This is a request of the Town, the EDIC and Town are legally independent. They operate separate. The EDIC has provided information regarding a similar program in 2012, Atty. Duffy reviewed all documents they provided, the 2012 loan program is not similar and not a model for the program proposed today; the Town was not involved in the 2012 loan program. The EDIC possesses only the powers the statute gives it, loans for economic development project approved by Town Meeting. This needs to be done to make sure there is a proper framework.

Chair English Braga asked if it would that be a different scenario because renegotiating a lease and not allocating the money in a different way.

Atty. Duffy said Phase 1 is done. Phase 2 is not done yet, so there is some latitude in Phase 2, not the same latitude in Phase 1. Taking a stream of revenue delegated to the Town by Town Meeting may be an appropriation that requires a Town Meeting vote. The Enabling Act has a section in it that allows the EDIC to loan money, but not unsecured loans. Statute provision that loans must be in a defined economic development area, which has not been identified by a Town Meeting Vote. These questions need to be answered. Authority of the Town to enter into this project: does the BOS have authority to commit public funds to this program? The Town may not appropriate any money inconsistent with general laws. This issue has come up in other communities. The MA DOR said a special act of the legislature may be necessary. The MA Constitution permits public funding of private interest, may need special act. Atty. Duffy suggested the special act include specific authority to the EDIC to enter into the recovery loan program. Reallotment of rent is an expenditure of public funds and subject to Town Meeting appropriation. Atty. Duffy cannot give assurance that we can go forward, there are issues that need to be looked at further, look at proposed loan documents, and at least 3 Town Meeting votes: the EDIC is an established program, need a special act, and then appropriate money. He reached out to the DOR via phone and email, but has not heard and will continue to pursue that.

Jennifer Mullen, Finance Director, worked with Atty. Duffy and got opinion from Bond counsel who concurs with Atty. Duffy's comments. Conversation was had with State Auditors, they suggested getting a determination and have the DOR weigh in. Part of Atty. Duffy's comments was from the DOR regarding ruling another Town was looking to do something similar and that was special legislation. She asked whether the Town wants to commit future revenues for this purpose with competing revenue stream for basic Town functions? Another entity would need to audit this program. Our auditors said that the Town may want to stay away from this because of internal control. The EDIC is a component unit on our financial statement, her concern is liability particularly if a member of the BOS is on the advisory committee. Also concerning is control of how to allocate money through this fund, what is the criteria, who will monitor it, making sure payments are received on time. Part of Atty. Duffy's comment was the DOR's comment to another community trying to do same thing, some of the issue is unsecured loans. The Town cannot borrow money to give money to someone else, have to have an asset for that.

Chair English Braga's understanding is that the money they are giving is for debt service of funds they are going through the bank with.

Michael Galasso noted this is proposed as partnership with EDIC and lending partner, applications through the EDIC for review, pass them to lending partner for underwriting like they would any loan, and then the bank would decide whether they want to loan the money for that purpose. Eligibility requirements could be determined, he passed along a small business loan application with criteria the Small Business Administration (SBA) uses. Looking for cashflow from the landfill to support the initial \$2 million they want to borrow and then lend out. The EDIC will do whatever they can to work through these issues so they can put the program together and get the money out to those who need it. He has advised local representatives of their idea. The amount of the program may be reduced, if the path best to do it is with Phase 2 and not Phase 1.

Mr. Brown asked whether modifying the Phase 2 lease agreement- would be enough.

Michael DiGiano noted budget projections he showed assumed retaining all rent from the developer, still running deficit of \$35,000 a year. If they did not have the \$35,000 from Phase 1, they would be cutting it close. Maybe a separate intergovernmental agreement for Phase 2. They would have to take a look at it.

Mr. Jones noted \$2 million changed to \$1.5 then it could work with just Phase 2 without the complications of Phase 1 into it.

According to Atty. Duffy if Phase 1 is removed and just let the BOS negotiate Phase 2 it may simplify it. The intergovernmental agreement is a function of the BOS. They need to be authorized to enter into the lease, which is already on record as a vote.

Chair English Braga explained the process of drafting the second phase IGA, the EDIC would be the first drafters of it and send to the BOS for review.

Ms. Moran said when talking about the EDIC and all businesses considered in Falmouth, there will not be a need for scope. She likes the idea of trying to do something in a timeframe that does not have to wait for Town Meeting votes, the whole point is to work together to be sure Falmouth is in the best position possible to survive this pandemic.

Chair English Braga feels this is a relatively small amount of money the Town may not have, the potential numbers for what the businesses bring to Town. We have recipe for good turnout for this program, folks can apply for the federal program and fulfill the terms of the grant, they will go there and make use of it. This is for folks who cannot make use of those funds. She likes looking at second phase only, it is unknown when Town Meeting will happen, and it may be too late for a lot of businesses.

Mr. Patterson noted the EDIC developed the Technology Park, is there any property left to collateralize a loan to then loan that money out to small businesses.

Mike Galasso said the Town owns a water tank on property EDIC owns, maybe the Town would like to buy that from them. They have some properties, not great, some are landlocked and can look at that. They have long term ground lease with DOT for about 97 more years where the station is that includes 2 acres of vacant land.

The EDIC has ability to draft a lease agreement that the BOS can then review and negotiate.

Mr. Jones asked about an advisory board and whether the BOS member should be on it and sunset clause; what happens to funds if they vote not to have it anymore?

Chair English Braga considered what would be in the agreement if EDIC backing falls through and addressing when its sunsets and what do those terms look like. The EDIC should include this in a draft agreement to the BOS.

Michael DiGiano said the EDIC would draft the IGA and Phase 2 project is time sensitive, there are two other documents including Power purchase agreement for Phase 2 that the Town executes with Citizens and

sublease agreement with Citizens on Phase 2 which the Town reviews because it is referenced in the IGA. He points this out because it is important for Citizens to start construction on Phase 2 in the Fall, so it is important to move this along in a timely manner. Those 2 documents are independent of the IGA. Helpful for EDIC to know there was a desire to go forward with this plan.

Mr. Brown motion to request the EDIC to develop a new Intergovernmental Agreement with minimal payment schedule to facilitate this program and nominal rent for the duration of this loan program. Second Mr. Jones. Roll Call Vote: Mr. Brown, aye; Mr. Patterson, aye; Chair English Braga, aye; Ms. Moran, aye; Mr. Jones; aye.

Chair English Braga directed the EDIC to submit the IGA draft considering the issues heard tonight recognizing the direct connection of the waiver of rental fees with the lending program. Drafting of the agreement to be done in tandem with working with the Town Counsel and staff.

Mr. Jones said that the EDIC was seeking before this loan program idea.

Deb Maguire is pleased with the thoughtfulness going into this, this is a tough time for business and loss of revenues will be felt in the next year's fiscal budget. She hopes this can be expedited.

Shawn Daley appreciates the proposal of this program, this year it will be tough for him, clients have cancelled, some have rescheduled, and opened new gourmet business recently. This is crucial to him and other business owners in Town. He is looking through getting through the winter of 2021 and into the next season, the road construction has also affected businesses and hopes to have Main Street work done before the reopening of Main Street and influx of second homeowners.

Scott Ghelfi noted Main Street has been thriving because of all of the great restaurants, he got the PPP and is making a go of it with take out, drive ups, and shipping. Some restaurants are unable to open. When they are opened up, they will be at a certain percentage of capacity. People before this were gearing up for spring and have stock that has not been able to turn over.

Mr. Jones suggested a future agenda item be considering what can be done for restaurants limited by inside space in future and how to get them to operate more than 25% capacity.

Chair English Braga noted retail stores have been shuttered with no business at all and area really hurting as well.

Mr. Jones motion to adjourn at 8:55 pm. Second Mr. Patterson. Roll Call Vote: Mr. Brown, aye; Mr. Patterson, aye; Chair English Braga, aye; Ms. Moran, aye; Mr. Jones; aye.

Respectfully Submitted,

Jennifer Chaves
Recording Secretary