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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

Monday, November 9, 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. Okay, all Town Meeting Members present please come forward and take your seats.

I want to remind all Town Meeting Members that Town Meeting is being broadcast live compliments of FC-TV13. Please make sure you identify yourselves by name and precinct each time you speak.

The 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 the quorum.

[Pause.]

THE MODERATOR: As we enter this Thanksgiving season, I'd like to remind all Town Meeting Members that the

Falmouth Service Center is looking for canned goods such as gravy, cranberry sauce, stuffing, mashed potatoes, instant mashed potatoes. You can bring those tomorrow night if we're here tomorrow night, or you can bring them anytime up to the Service Center on Gifford Street.

And on Sunday, November 22nd, the Sunday before Thanksgiving, you can bring frozen turkeys, fresh vegetables and home baked pies to the Service Center. Again, that's the Sunday before Thanksgiving between 1:00 and 4:00 in the afternoon.

In the first division, Mrs. Tashiro?

MRS. TASHIRO: 48.

THE MODERATOR: 48.

In the third division, Mr. Hampson?

MR. HAMPSON: 52.

THE MODERATOR: 52.

And in the second division, Mr. Dufresne.

MR. DUFRESNE: 96.

THE MODERATOR: 96.

By a counted vote of 196 Town Meeting Members, we have a quorum and I call this Annual Meeting into session.

Would all Town Meeting Members present please rise for our opening ceremonies which are going to be led by the Brian

Baru Pipe Band.

[Song by Brian Baru Pipe Band.]

THE MODERATOR: Please follow me in the pledge
of allegiance.

[Pledge of Allegiance taken.]

THE MODERATOR: At this time, we'll have the
National Anthem, played by the Town Band Brass Choir.

[National Anthem played.]

THE MODERATOR: Please remain standing for the
invocation. The invocation this evening will be given by Bill
Chapman, our water superintendent.

MR. CHAPMAN: Please bow your heads. Heavenly
Father, may our meeting this evening be not only an exercise in
care and concern for our community and its residents, but also an
example of how a community can agree and disagree and still be a
community. We ask that you watch over and protect our families,
our community, our nation and our world. May your gift of peace
become a reality for all. Amen.

THE MODERATOR: The Brian Baru Pipe Band this
evening will play Amazing Grace in lieu of our moment of silence.
And also we want to pause to remember Katherine Abrams, who
was a sitting Town Meeting Member who has passed since our last

meeting. We also should take the time to pause in honor of the men and women who were tragically killed at Fort Hood, and remember that on Wednesday, as Veterans' Day, we'll have an opportunity to honor our veterans here in Falmouth in the morning at Memorial Lane.

[Amazing Grace played.]

THE MODERATOR: Okay, at this time, I'll read the officer's return of the warrant. By virtue of this warrant I have this day notified and summoned the inhabitants of the Town of Falmouth qualified to vote on Town affairs, as said warrant directs, by posting an attested copy thereof in Town Hall and in every precinct in the Town. Signed by Constable Jim Crossen.

At this time, the Chair would entertain a motion from the Chair of the Board of Selectmen to dispense with the reading of the warrant.

CHAIRMAN FLYNN: Mr. Moderator, I move to dispense with the reading of the warrant except for the Officer's Return.

THE MODERATOR: Okay, you've all heard the main motion to dispense with the reading of the warrant. All those in favor, signify by saying "Aye".

[Aye.]

THE MODERATOR: All those opposed, No.

[None opposed.]

THE MODERATOR: The Ayes have it. Mr. Clerk, I ask that the warrant become an official part of the record.

At this time, the Chair would entertain a motion for non-Town Meeting Members to sit up front with their respective boards and committees. So moved. All those in favor, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[None opposed.]

THE MODERATOR: The Ayes have it.

At this time, the Chair would entertain a motion for all Town employees who are not residents of the Town of Falmouth to have the right to speak on all issues before this Meeting. So moved. All those in favor, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[None opposed.]

THE MODERATOR: The Ayes have it.

At this time, I recognize the Planning Board for notification of public hearings.

MR. VOLOSEVICH: Mr. Moderator, in accordance with Chapter 40A, Section 5, Massachusetts General Law, and Article 43 of the Falmouth Zoning Bylaw, a public hearing was held on October 6th, 2009 on Articles number 3 through number 14 for the November 9th, 2009 Annual Fall Town Meeting and all those who wished to speak were heard.

THE MODERATOR: Thank you. At this time, we'll briefly review the Rules for Town Meeting. If you look at the last page, the back cover of your warrant book.

I want to thank all of our new Town Meeting Members who attended the orientation that we had a few weeks ago. A lot of good questions. We encourage folks each year to attend that if you have questions about procedure at Town Meeting.

Town Meeting Rules. Speaking and Voting.

Registered voters, residents and taxpayers of the town may speak on any article in the warrant. Persons who are not voters, residents or taxpayers of the town may address the meeting only with the consent of a majority of those present. Only Town Meeting members may vote.

Motion and Amendments. Motions and Amendments may be made only by town Meeting members. Two amendments will be accepted on any article. Long or complicated Motions, and

other Motions which he shall so request, shall be presented to the Moderator in writing.

Reconsideration. Reconsideration will be allowed at any time during the meeting if the article does not involve the appropriation of money. If the article involves the appropriation of money, notice of reconsideration must be given within 30 minutes of the vote on the article. Reconsideration may then be allowed at any future time. The Moderator shall determine if the motion to reconsider is in order. Motions for reconsideration must be based on substantially new information not available to the Meeting at the time of the original debate. The motion to reconsider is not debatable.

Our hours of operation will be 7:00 on the first night; each night thereafter 7:00 and we'll close at 11:00 p.m. unless Mr. Hampson makes a motion for us to continue and you all vote by 2/3rds.

Okay. Tonight we are going to begin with a blanket vote on the Annual Warrant. We have 33 articles here. The blanket vote, I'll go through each article in the warrant and draw your attention to the recommendation. If you want the article to pass as it's recommended in the warrant book, you need to do nothing. If you want to discuss the article or you want a different

motion, you want to amend it, just stand up and yell, "Hold" and we'll hold that article.

I'll go through the entire warrant twice and then the Chairman of the Finance Committee will make a motion to accept all articles that are not held as recommended. And then we'll go back to Article 1 and we'll begin individual debate on the article.

Article 1 is a hold to hear reports. Article 2 is a hold for a new main motion.

Article 3, vote to amend the zoning bylaw for lot coverage by structures 20 percent lot coverage by structures, paving and parking 40 percent in a Senior Care Retirement District.

Article 4, vote to amend the zoning bylaw to include the new sentence, "A Senior Care Retirement Community shall have a minimum lot area of 15 acres and lot frontage of 100 feet."

Article 5, vote to amend the Code of Falmouth Section 240, 68A (8) by removing the word "building" and replacing it with the word "structure".

Article 6.

MS. SIEGEL: Hold.

THE MODERATOR: Who's holding this? Okay.

Article 7, to see if the Town will vote to amend Section 240-14 of the zoning bylaw by adding the words

“Business Redevelopment District” to a list that appears in the zoning bylaws under Types of Districts.

Article 8, to see if the Town will vote to amend Section 240-66C (3) of the zoning bylaw by inserting the following: “or within 300 feet of a tidal marsh, tidal pond, tidal river as defined or within 300 feet of a water body listed in section 240-100 A, B or C of the Coastal Pond Overlay District”.

Article 9, to see if the Town will vote to amend the zoning bylaw by deleting the words “Planning Board” and inserting the words “Boards of Appeal”.

Article 10.

FROM THE FLOOR: Hold.

THE MODERATOR: Article 11, to see if the Town will vote to amend Chapter 240 of the Code of Falmouth, the zoning bylaw dealing with affordable housing. I draw your attention to the recommendation that the third paragraph should read “Documentation shall be provided on an annual basis for both ownership and rental affordable units that each is occupied by a qualified owner or renter, respectively, as a principal residence.”

Article 12, to see if the Town will vote to amend the Official Zoning Map to rezone seven plus or minus acres from Agricultural AA District to Senior Care Retirement District. The

seven plus or minus acres are a portion of a 31.2 acre parcel owned by CLSV Associates.

MR. ROWITZ: Hold.

FROM THE FLOOR: Mr. Moderator, who held that?

THE MODERATOR: Mr. Rowitz.

Article 13, the recommendation of the Planning Board is indefinite postponement to change zoning on 28 Nathan Ellis Highway from Resident B District to a B1 Business District.

Article 14, the recommendation of the Planning Board is indefinite postponement to change the property at 28 Nathan Ellis Highway from Resident B District to a Business Redevelopment District.

Article 15, to vote to authorize the Board of Selectmen to let or lease the Old North Falmouth Fire Station for a period of ten years or more.

MR. MURPHY: Hold.

THE MODERATOR: Article 16, vote to establish a stabilization fund to be known as the Renewable Stabilization Fund.

CHAIRMAN FLYNN: Hold.

THE MODERATOR: Article 17 is a hold. Article 18; the recommendation is indefinite postponement.

CHAIRMAN FLYNN: Hold.

THE MODERATOR: Hold by the Board of
Selectmen.

Article 19 is going to be a hold for a new motion.

Article 20. This is the town's share of road work under
Chapter 90, \$956,009.

FROM THE FLOOR: [Sneeze.]

THE MODERATOR: Bless you.

Article 21 is a hold. That will be our Capital Budget.

Article 22 will be a hold for a new main motion.

Article 23, to vote to appropriate \$50,000 from Certified
Free Cash to the Falmouth School Department.

MS. FENWICK: Hold.

THE MODERATOR: Hold, Ms. Fenwick.

Article 24, to vote to appropriate \$16,493.00 from
Certified Free Cash to the Upper Cape Cod Technical School
Department Operating Budget.

Article 25, to vote to transfer \$3,000 from Fringe
Benefit Longevity Budget Line Item 01919-51142 to Fringe Benefit
Other Budget Line Item 01919-51172.

Article 26, that the Town vote to appropriate a million
dollars for road and sidewalk improvements and to authorize such

borrowing for those improvements, to be done pursuant to the Betterment Act.

Article 27, the Town vote to appropriate \$10,000 from the Community Preservation Fund Undesignated Balance for the purpose of handicap accessible trails at the Town-owned Bartholomew Conservation Area.

Article 28, the Town vote to appropriate \$35,000 from the Community Preservation Fund Undesignated Balance to fund the Historic Resources Reserve Account.

Article 29, to vote to amend Chapter 75 of the Code of Falmouth Alarm Systems by adding a section for false alarms.

Article 30, to vote to amend Chapter 83 of the Code of Falmouth Regulations so that the Board of Selectmen shall be authorized to adopt, repeal, reasonable rules and regulations related to the keeping and control of animals.

Article 31, to vote to amend Chapter 87 of the Code of Falmouth Beaches by adding a section under General Regulations for banning the use of smoking materials for public beaches.

FROM THE FLOOR: Hold, hold.

THE MODERATOR: Article 32 will be a hold.

CHAIRMAN FLYNN: Hold.

THE MODERATOR: And Article 33, the funding

article, will be a hold.

Okay, I'm going to run through it real quick one more time just by number. So, if you missed one, yell out "Hold".

Article 1 was a hold. Article 2 was a hold.

Article 3. Article 4. Article 5.

Article 6 was a hold.

Article 7. Article 8. Article 9.

Article 10 was a hold.

Article 11.

Article 12 was a hold.

Article 13. Article 14.

Article 15 was a hold. Article 16 was a hold. Article 17 was a hold. Article 18 was a hold. Article 19 was a hold.

Article 20.

Article 21 is a hold. Article 22 is a hold. Article 23 is a hold.

Article 24. Article 25. Article 26. Article 27. Article 28. Article 29. Article 30.

Article 31 was a hold. Article 32 is a hold and Article 33 was a hold.

Mr. Chairman for the main motion.

CHAIRMAN ANDERSON: Mr. Moderator, I move that all articles that have been passed and not held be and hereby are adopted as recommended as the official action of this meeting and that the necessary monies for the same shall be appropriated or as otherwise specified.

THE MODERATOR: Okay, you all heard the main motion to accept everything on the blanket. All those in favor, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed No.

[None opposed.]

THE MODERATOR: The Ayes have it unanimous.
Mr. Chairman.

CHAIRMAN ANDERSON: I hereby serve notice of Reconsideration of all articles passed under the blanket vote.

THE MODERATOR: Okay, you've all heard the notice of reconsideration has been served on all articles of the blanket.

Article 1, to hear reports of committees and town officers. I have so far three committees: I have the Historical Commission, speaking on behalf of the Preserve America designation; then I have the Falmouth High School Building Committee report; and the Finance Committee. Are there any other

Town committees that would like to make reports this evening?

Okay, hearing none, we'll begin with the main motion.

Mr. Chairman.

CHAIRMAN ANDERSON: Mr. Moderator, I move Article 1 as printed.

THE MODERATOR: Okay, the main motion as printed, to hear the reports. We'll start with the Historical Commission Chairman Ms. Kozens-Long.

CHAIRMAN KOZENS-LONG: This is always set for people of normal height.

[Laughter.]

CHAIRMAN KOZENS-LONG: Cheryl Kozens-Long, Chairman of the Falmouth Historical Commission. Tonight I am honored to report to you that Falmouth has been designated by the White House as a Preserve America Community. The Preserve America Program is an initiative originally spearheaded by First Lady Laura Bush after Executive Order 13,287 was signed by President Bush on March 3rd, 2003. The Executive Order is a federal policy to provide leadership in preserving America's heritage by actively advancing the protection, enhancement and contemporary use of historic properties, landscapes and neighborhoods.

In July, First Lady Michelle Obama, who now carries the torch for the Preserve America Program, proclaimed Falmouth a Preserve America Community. This designation brings Falmouth many benefits, of which one is the eligibility to apply for Preserve America grants. The program allows us to celebrate and educate our town and tourists of our historic assets of our heritage.

It is most fitting that this report be presented in front of this body tonight, as Town Meeting has been throughout the years and continues to be the final arbiter of preservation planning and implementation. Town Meeting has voted to purchase hundreds of acres of open space and to rehabilitate and save many historic buildings. Through Town Meeting we have adopted into our Charter the Falmouth Historical Commission, the Falmouth Historic Districts Commission, the Falmouth Agricultural Commission, the Community Preservation Act, all towards the goal of maintaining our cultural heritage and the preservation of historic character of our town.

Town Meeting has supported works of our committees, the creation and ongoing documentation and inventory of cultural resources, the passage of a six month demolition delay bylaw, the scenic roads bylaw, the creation of seven historic districts and the regulation of those districts, as well as the right to farm bylaw.

Town meeting has supported the recommendations of numerous community preservation articles for the rehabilitation of historic buildings, the partnerships with the 300 Committee for land acquisition, all in efforts to maintain the cultural significance of this great town.

We are proud of the accomplishments of the citizens of this town, who have labored to preserve our heritage, the many civic associations, village associations, all who maintain a force and a voice in the preservation of all of our neighborhoods. Falmouth residents have been concerned about the preservation of open space and the depletion of our Town's historic and rural character. Falmouth was in the forefront in the Land Bank legislation, approving a surcharge on the real estate tax back in 1997, even before it was ratified by the legislature. The Falmouth Historical Society, who have diligently honored and shared over 300 years of Falmouth's heritage, the Portuguese-American Association, the Cape Verdean Association for maintaining and sharing Falmouth's cultural history, Mary Lou Smith and all of her commissioners and local historians for the gift of the Book of Falmouth and sharing Falmouth's cultural history.

The list is wide and deep for all those leaders who worked to maintain Falmouth's character. So tonight I honor all of

those who made this award possible. All of those who, past and present, who continued to contribute to the preservation of the heritage and culture of our town.

This award reminds us why, just like tonight, Town Meeting will scrutinize and often agonize over decisions of zoning and planning articles while Town Meeting questions and supports articles under the Community Preservation Act, all to honor and continue to lead in the traditions of the preservation of our part of America, Falmouth.

A salute to all of you. A salute to the Town of Falmouth, a Preserve America Community.

Now it is my pleasure to introduce to you the president of the Falmouth Chamber of Commerce to present the Heritage Tourism Celebration, Jay Zavala.

[Applause.]

THE MODERATOR: Mr. Zavala.

MR. ZAVALA: Good evening. I'm Jay Zavala, Precinct 8, President Falmouth Chamber of Commerce. As you heard, on July 29th, 2009, the First Lady of the United States designated the Town of Falmouth as a Preserve America Community. The honor was not a surprise. Working together, the Falmouth Chamber of Commerce, Falmouth Historical Society and

Museum on the Green, Falmouth Historical Commission, Falmouth Historic Districts Commission, Highfield Hall, Assistant Town Planner, Assistant Town Manager, in consultation with the Community Preservation Committee, the 300 Committee, the Massachusetts Office of Travel and Tourism, State Historic Preservation Office, Massachusetts Historical Commission and with the support of Senator John F. Kerry, Representative William Delahunt, and Senate President Therese Murray, we placed a Preserve America application before the Board of Selectmen.

On December 30th, 2008, over the signature of Ahmed Mustafa, then Chairman of the Board of Selectmen, our application went forward. On Thursday, November 12th, one day after we have honored and said thank you to the men and women in the military for what they have done and are doing and the sacrifices they have made, including their lives, to insure our way of life, 24 of these banners, compliments of the Enterprise, will wave on Main Street.

[Banner is held up for viewing.]

MR. ZAVALA: Thank you.

Then, next Sunday, November 15, the community is invited to Highfield Hall to celebrate this distinctive designation. Falmouth is the only town on Cape Cod to enjoy this distinct honor.

Falmouth joins only 18 other communities in Massachusetts and 653 other communities, neighborhoods, state and tribal historic preservation offices across the land. After the brief ceremony, Falmouth's citizens and guests are invite to tour up to 17 historic properties across our town. These properties will be open from noon to 3:00 p.m. and access is free. The properties include Highfield Hall, the Museum on the Green, the Falmouth Chamber of Commerce, Odd Fellows Hall, the Poor House, Methodist Society Burying Ground, Peterson Farm, Emerald House, the Waquoit Congregational Church, Emerson House, West Falmouth Library, Bourne Farm, West Falmouth United Methodist Church, Nobska Lighthouse, Woods Hole Historical Museum, Woods Hole Public Library, Woods Hole Aquarium. Ladies and gentlemen, this is a new beginning for historic tourism. Please join us. Thank you.

[Applause.]

THE MODERATOR: Okay. Any questions on the Preserve America designation?

Next I'll recognize the chairman of the Falmouth High School Building Committee for a report on the renovation. Mr. Johnson.

MR. JOHNSON: Thank you, Mr. Moderator. Donald Johnson, Precinct 4, Chairman of the Falmouth High School

Building Committee.

Ladies and gentlemen, members of Town Meeting, once again I appear before you on behalf of the Falmouth High School Committee to present another status report on the project. I am pleased to report that we are making substantial progress and are confident that the project will be completed on time and for the start of the 2010 school year.

I will present a brief report on the progress made and then will entertain a few questions as time allows. I would ask that when we get to the question and answer period that you refrain from asking questions about the ongoing litigation and defamation suits involving ARCAD and any reference to the professional or private lives of anyone involved with the project. I would appreciate your consideration on this and here we go with the report.

Next slide, please. Overall, the project is about 880 percent complete. The construction account balance amounts to almost \$9 million, represents about 50 percent of the job to be completed. The approximate value of Phase 2 work is about 18 million, and we are about 50 percent through Phase 2.

Regarding the architect and project management line, at the conclusion of the mediation settlement, we were able to negotiate fixed contract fees for the balance of their contracts to the

end of this project. Specifically, these contracts deal with Dinisco Design Partnership and Gilbane Building Company. The management and legal line include project management, which is Gilbane Services, and legal expenses, including in this line is also the recent ARCAD jury award of 2.1 million.

We have a separate slide later to address equipment and technology.

We have negotiated slightly reduced monthly portable classroom fees, and the budget includes the funds for the removal of those facilities this coming summer. The contingency account represents the amount available for the committee after the budget judgments that were made last week, and includes \$500,000 in unexpected conditions not encountered in Phase One.

Overall, the last leading approved requisitions of the Committee has slightly less than \$16 million remaining in the appropriated account.

Next slide, please. Schedule. These are the major benchmarks established from a very complex critical path management schedule. The contractor is on schedule to meet these dates and the detailed schedule is monitored closely monthly and reviewed weekly at the construction meetings. I believe some of the photos you will see shortly demonstrate the status of this

schedule.

Next slide, please. The amount of manpower on the job has been of great concern. This chart represents the work hours and the average number of tradesmen working on this project since the implementation of the mediation settlement. It demonstrates the ramping up in the spring and the workers on the job during the summer. With the site work and some items unable to be accomplished while school is in session, the work force has leveled off in the 50 workers per day range. All the required trades to meet the schedule are on the job.

Next slide, please. The next few slides are intentioned to demonstrate the status of these areas, and we'll move through them quite quickly.

Next slide. All the roof areas of the Building have a new roof. On the left of this picture is House B light well and in the center is House B mechanical room that was installed as a part of Phase Two and is supporting House B classrooms that were built in Phase One.

Next slide, please. We are looking at the front of the school with the metal siding and new operable windows installed. At the very left of the pictures shows the auditorium portion of the Building occupied at the conclusion of our Phase One.

Next slide, please. Temporary heating is being provided by the contractor as required by the contract and these tanks are in the process of being installed and protected.

Temporary heating for Phase Two is totally separate from the regular building heating and paid for by the general contractor.

Next slide. This represents the north end of the building and shows the wall materials being installed. This is the last area of the building to be closed in.

Next slide, please. This is the House C northwest corner or the loading dock area. On the right of the picture are the west side House C classrooms and the lower level is the House C cafeteria.

Next slide, please. We use this picture to show the final stages of the masonry work on the House C loading dock area. I think we said exterior masonry is about 90 percent complete on this project.

Next slide, please. Interior work. The next six pictures show the status of the interior. The contractor is working from the top down in Phase Two so we will start on the roof.

Next slide, please. This is the inside of the House B penthouse. There are several mechanical rooms on the building that support the environment of the school. This equipment was

built during the early stages of Phase Two and now supports the heat and ventilation of the House B west side classrooms that were built and occupied after Phase One, and when this is fully operational will support all of House B.

Next slide, please. We're looking up from the first floor and we see the light well shown in the previous picture and the extent of the interior framing, ready for dry wall and glass. These light wells extend from the roof to the lower level.

Next slide, please. On the second floor, the second floor science room looking out into the light well area. You can see that the sheet rock work is done there and we're beginning to do other finishing work.

Next slide, please. Second floor Life Skills room. Probably better known to most of us as Home Economics and Household Arts. The operable windows looking east are the same as were installed in Phase One.

Next slide, please. We're now on the first floor. This is House C first floor classrooms looking west as of last Friday. Almost ready for electrical work and sheetrock. This is the lower level House C cafeteria. Please note that this wall is now complete and that this area is temporarily enclosed for the heating season.

Next slide, please. Safety and inspections. Safety on

the job is an important consideration and TLT and Gilbane are actively overseeing this area. We use Briggs Engineering for testing of the various products and systems. Weekly visits from the Building Department have proved very helpful in keeping Phase Two on track and in compliance with regulations. We have had two visits from the Massachusetts School Building Authority during the Phase Two construction, and they toured the site and spent time with Gilbane and the contractor reviewing the schedule. We expect visits on a monthly basis and we submit financial reports to them and other information on a monthly basis.

Now let's look at furniture and equipment, next slide. Furniture and equipment are shown on the financial slide and the current budget of just under \$4 million and an existing balance in that account of \$3.2 million. This slide represents the plan for furnishing the final part of this project. We have a very finite plan for the technology needs to finish the project, and that list totals 1.3. With regards to the furniture and equipment, you can see that we are in the planning stage; that we will be reviewing the budget in the January of the coming year, ordering in March and expect delivery and installation in the summer of 2010.

Next slide. Continuing management. As we work toward the completion, these are the major areas the Committee is

monitoring closely. The project is on track for completion.

Thank you for your patience and we hope you – we will take a few minutes for questions as time permits.

THE MODERATOR: Okay, questions for the Building Committee. Microphone to my right, please. Mr. Young.

MR. YOUNG: Bob Young, Precinct 5. I would hope after five years we would be 80 percent complete and I would like to thank Mr. Driscoll, the administration at that high school for putting up with us for five years. It's been an embarrassment.

I have two questions for the Committee. I read recently that we're \$500,000 in additional change orders and I'm hoping that more of those don't creep in, and if the gentleman can tell me if that's a possibility. And my question is I also read there's a disagreement in the recent TLT payments. I'm worried that this will jeopardize our future funding from the Mass. State Funding Authority if that's not settled. If you could address those two questions, please.

MR. JOHNSON: If I heard the first question you asked about the 500,000 set aside for unexpected items in Phase Two. The building is a very complex building and what we did in Phase One did establish an awful lot of what we would face in Phase Two, but not everything. And therefore, when we worked on

the mediation agreement, we felt it important to set aside a sum of money to address those issues. The rest of the contingency account would be used wherever needed and we hope we don't need it totally, but it's there in case we do in other areas.

And the second question related to? I'm sorry.

MR. YOUNG: I'm curious because I had read that there's some dispute ongoing with TLT and payments and I was hoping that our future state funding wouldn't be jeopardize.

MR. JOHNSON: TL – I don't know. Bob, can you help me out?

THE MODERATOR: Dr. Antonucci.

DR. ANTONUCCI: Yeah, Bob Antonucci, Precinct 6, member of the Committee. The answer is our funding will not be jeopardized. What you saw is we are going to have some disputes as we finish the project. In our opinion, that was a customary kind of way to deal with it, so that we mediate it while the project continues on a regular basis.

What happened a year or two years ago, the project would stop. So now we're moving the project forward, we're mediating the dispute. We'll resolve it and it will not affect the state funding.

THE MODERATOR: Okay. Other questions for the

Building Committee? Okay.

MR. JOHNSON: I'll wrap it up.

THE MODERATOR: Mr. Chairman.

MR. JOHNSON: The Falmouth Building Project has been a complex one. We are as anxious as you are to insure that the project is completed and within the current budget. I thank you for your patience and continued support and in the end the current and future students of Falmouth will be the beneficiaries of a top-notch educational facility which will allow them to pursue a more than stellar education. Thank you.

THE MODERATOR: Okay, thank you, Mr. Chairman.

[Applause.]

THE MODERATOR: The next and final report will be the Finance Committee. Mr. Anderson.

MR. ANDERSON: Good evening. I'm Gary Anderson from the Finance Committee. Since our Special Town Meeting was held only six months ago – six weeks ago, sorry about that – and this is actually our fifth Town Meeting in this calendar year, I've been thinking about asking Mr. Dupuis the Superintendent if we could maybe condo this auditorium. It would save on commute expenses.

I suspect you're probably thinking that you're going to

hear more of the Finance Committee's doom and gloom message, but tonight there's a mixed message of good news and bad news. Along with the bad news of the economy, continued job losses and our Town's finances, I do have something positive that I want to share with you that's very upbeat. But before I get to that, I want to return to our September Special Town Meeting and call your attention to some requests from Town Meeting Members and your Finance committee's responses.

There's always a need for you to have the most current financial information possible before coming to Town Meeting. You voluntarily give of your time to be here for as many nights as it takes. You prepare for Town Meeting by attending the precinct meetings to hear explanations of the articles in the warrant and you review the numbers to make informed decisions. It's sometimes a struggle to get these numbers. One last minute change may affect the economics and the recommendation of the Finance Committee of any article. Jill Irving Bishop, the Finance Committee Administrator, does a tremendous job of keeping our committee informed in as timely a manner as possible.

When these changes occur after the warrant goes to print, the Finance Committee will post the latest information on the Town's website. Over the past few weeks, such changes did occur

and we posted some supplemental information on the Town's website. To find this information, go to www.falmouthmass.us and follow these links. For future town meetings, the Finance Committee will print these links in the warrant book and post the changes to this website.

The Finance Committee has also made a new addition to the warrant book in response to your requests. At the back of your warrant book, there are definitions of frequently used municipal government terms which will hopefully make some of the government-speak that we all hear a little bit more understandable. If anyone has any questions about any other terms, please list another item to this glossary.

Now I need to make you aware of some sobering financial truths. The Finance Committee is extremely concerned about this very austere Capital Budget presented in the warrant. The painfully stubborn economic recession and the precarious level of our financial reserves have left us no choice but to exercise great fiscal restraint in our recommendations. Several requests for equipment and projects have not been recommended because the funding is just not available at this time.

We understand from attending precinct meetings that this is also a concern to many of you. However, we feel it is

prudent for our town to conserve its diminished free cash and fund only those capital budget requests which are contractual or which have a dedicated and specific funding source or which may jeopardize ongoing operations or safety if not implemented now.

We've suggested to department heads that some requests be re-submitted as articles in the Spring Special Town Meeting. The cost of some capital equipment and projects will likely need to be funded by debtor capital exclusions and placed on the May ballot for approval by the voters. The reason for this is: if Town Meeting approves all of the Finance Committee's recommendations tonight, we will have only \$211,000 of Free Cash available for items on the Special Town Meeting in April. That's the lowest level of Free Cash we've had for Spring Town Meeting in recent history, and it doesn't even come close to provide the funding for the capital equipment and the projects that are requested.

The Finance Committee foresees more cuts in state aid and possible shortfalls in local receipts revenue, which may result in yet another deficit in our recently-revised Fiscal Year Operating Budget for Fiscal Year '10. We also see a risk that some departments such as Legal, Unemployment, and Snow and Ice Removal, will run out of money in their budgets well before the end

of the year. We will be monitoring these risks on an ongoing basis and working with our Town leaders.

Partially offsetting these risks are potential opportunities. First, the Board of Selectmen has increased certain fees for services which allow some departments the ability to recoup their costs. Second, the Town is projecting the new wind turbine to be operational around the first of the year, and this may give us some budgetary relief because the Town may be able to offset some of the energy costs with the new net metering arrangement. And if low interest rates persist, the Town might save some interest expense on our debt service costs. However, until the Town struggles out from under its financial problems, the Finance Committee strongly recommends minimal spending from Free Cash at this time.

On a more positive note, I'd like to share some interesting and encouraging observations with you. A key role of the Finance Committee is to meet with heads of departments, boards and committees to gauge the urgency of their capital budget requests. One very positive phenomenon was recently mentioned time and again by our members. In spite of the very difficult financial struggles we're experiencing, there was a great level of support and team work between the various departments, boards,

and committees. Given the budget reductions most departments have experienced, it really wouldn't be surprising to witness some level of sibling rivalry or resentment between departments over the cuts. But expressions of these sentiments have been almost non-existent.

Each town group feels a responsibility to its own constituency. For example, the Finance Committee has Town Meeting Members and taxpayers as its constituency. The School Committee has students, parents and faculties as its constituencies. We could break down each department and committee this way. However, our hard-working professionals and volunteers seem to have tempered their advocacy agenda and they're pulling together as a community. It's not to say that there hasn't been some frustrations expressed; there have. But the focus has clearly been on finding solutions in our town. I've been very impressed by the grace, dignity and selflessness displayed by the individuals and groups throughout this town during this difficult period.

We still have some distance to travel along this path of financial adversity. We need to look at both short-term and long-term solutions to our financial problems. But it's important that we maintain our sense of civility and community as we forge ahead to

deal with these problems.

Let's remember to encourage and congratulate our Town employees for teamwork, for finding creative ways to do more with less, and for persevering in these difficult times. And let's also truly remember to thank the volunteers on our boards and committees for all the time and effort they put into making Falmouth a better community.

As Town Meeting members, we are advocates for Falmouth taxpayers and must set aside our personal preferences and predispositions to focus on the big picture. Just like our household budgets, we know we cannot afford to do all the things and have all the things that we want, but we need to find ways to do those things that must be done in our town. And as always, we must be thoughtful, prudent, and fiscally responsible decision makers. Thank you.

THE MODERATOR: Okay, any questions for the Finance Committee?

[Applause.]

THE MODERATOR: Okay, hearing none, the question will then come on the main motion to accept the reports. All those in favor, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[None opposed.]

THE MODERATOR: The Ayes have it unanimous.

Article 2. This is to appropriate a sum of money for paying unpaid bills from a prior fiscal year. Mr. Chairman for the main motion.

CHAIRMAN ANDERSON: I move Article 2 as recommended with the following changes. The new total to be appropriated is \$25,797.87, and we're adding a bill for the Harbor from Falmouth Publishing for \$48.

THE MODERATOR: Okay, so the main motion is as printed, adding a \$48 Falmouth Publishing bill – as recommended, excuse me, thank you. As recommended, adding the \$48 Falmouth Publishing bill for a total of \$25,797.87. Any discussion on Article 2?

In the back.

MR. MARTIN: Craig E. Martin, Precinct 9. Just curious what the Center for Policy Analysis expense is. I'm fairly aware of what that – I think they're out of U Mass Dartmouth, I believe?

THE MODERATOR: Okay, Mr. Chairman or Mr. Whritenour.

MR. WHRITENOUR: Yes, that was for a cable television survey of local residents for the licensing process. There's a ten year license that's going to be coming in this year.

THE MODERATOR: Okay, any further questions on the Unpaid bills?

Hearing none, the question will then come on the main motion. All those in favor, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[No.]

THE MODERATOR: The Ayes have it unanimous.

Article 6. Article 6 is to vote to amend the definitions of the Zoning Bylaw by adding "Border". Mr. Chairman of the Planning Board for the main motion.

CHAIRMAN LATIMER: Mr. Moderator, I move Article 6 as printed.

THE MODERATOR: Okay, Article 6 as printed. Who held Article 6? Okay, Ms. Siegel. Microphone on the right.

MR. SIEGEL: Debra Siegel, Precinct 6. Mr. Moderator, I'm holding this for Craig Martin, a Falmouth resident who's asked to speak to it.

THE MODERATOR: Okay, Mr. Martin. He's up

behind you.

MR. MARTIN: Craig E. Martin, Precinct 9. Mr. Moderator, may I request that the following question be presented to the Planning Board: Under what circumstance is a special permit required for the allowance of boarders into a residence?

[Pause.]

THE MODERATOR: Mr. Chairman.

CHAIRMAN LATIMER: I didn't hear the question.

THE MODERATOR: Could you repeat the question, just a little closer to the mic, maybe?

MR. MARTIN: Thank you. Under what circumstance is a special permit required for the allowance of boarders into a residence?

CHAIRMAN LATIMER: The Board of Appeals is charged with administering and enforcing our bylaws. Board of Appeals asked the Planning Board to give them a definition of boarder which did not exist. So the Planning Board accommodated the Board of Appeals by coming up with a commonsense definition of what a boarder is, since they have special permit obligations and previously no definition of what a boarder is. That's all this is about.

It's basically a housekeeping article, but we looked at

the commonsense, common understanding of the term “boarder” and gave that as the official definition for purposes of the Board of Appeals doing its job.

MR. MARTIN: Well, I’m a little perplexed as to when a special permit is required. I thought a single family residence, for instance, had it by right, without the necessity of –

THE MODERATOR: Mr. Curry might be able to address that question as well. Mr. Curry.

MR. CURRY: Well, thank you, Craig, for pointing that out to me. That’s a misprint. It should say, “in the same dwelling when a permit is required,” and I’m sorry for the confusion with regards to the issuance of a special permit. It’s a by-right use.

MR. MARTIN: Oh, okay, so the explanation had an extra couple words in there, okay. Well, I was going to say that that was my most confusing aspect of it. But I still have an argument against this article. Of primary importance, I believe, is the fact that this definition conflicts with existing definitions and bylaws already within the Code of Falmouth. I went to the library last week just for ten minutes, before closing time, and I found three examples of contradictions, reading the Code book in the Library Reference Center. I would have found more, I think, if I stayed – if I was allowed to stay longer.

For instance – and I think that those conflicts should be shown here in this article with the necessary changes.

For instance, Chapter 240-22 says a family member of a single family residence must remain on the premises in order to allow boarders. Yet Article 6 here allows renters of the house to admit up to four boarders. That's a pretty drastic change. Also, under the definition of "family" in the Code book it says that a group of unrelated individuals is, quote "expressly prohibited" end of quote, from the taking of boarders. Yet this article contradicts that.

Broaching on semantics, but I think this definition presented tonight differs completely with the Webster's Dictionary definition as well. I mean, the word "boarder", right here in this definition in Article 6, they're making it an option to provide means and/or access to the kitchen. That's the definition of a boarder. The history of the word is the kitchen tables used to be "boards" and that meant your meal.

Webster's Dictionary explains that thoroughly.

So, this definition, it doesn't cut it.

Article 6 also says that individuals who stay at a place for just one night are considered as boarders. My question is what would preclude a bed and breakfast operation from changing their classification to a single family residence with four boarders? That

would end their necessity of collecting the state rooms' taxes.

I just see this simple little definition causing a heck of a lot more problems. It's not inviting to read the Code of Falmouth book as it is, let alone finding different variations of the same topic throughout.

The City of Boston's zoning code does not define boarder. The Mass. General Laws do not specifically define it, and this Town has never had the need to do this, either. I can't recall one instance where there was a debate in Town Hall about what was a boarder and what wasn't a boarder when the zoning decision was being made. There's never been a need for it.

This article was drafted to, well, to protect the interests of a local real estate attorney's client who placed a commercial enterprise on a residential lot off of Maravista. The Planning Board, on my last date with the Planning Board, has fervently explained in the past that zoning bylaws are to protect the interests of the community in whole, not a select few. Thank you.

THE MODERATOR: Okay, further discussion on Article 6? Hearing none, then the question will come on the main motion, Article 6 as printed. All those in favor, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[No.]

THE MODERATOR: This requires a two-thirds. All those in favor of Article 6, signify by standing and the tellers will return a count.

[Pause.]

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

MRS. TASHIRO: 12.

THE MODERATOR: 12.

In the third division, Mr. Hampson.

MR. Hampson: 28.

THE MODERATOR: 28

In the second division, Mr. Dufresne.

MR. DUFRESNE: 44.

THE MODERATOR: 44.

All those opposed to Article 6 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: 39.

THE MODERATOR: 39.

And in the second division, Mr. Dufresne?

MR. Dufresne: 45.

THE MODERATOR: 45.

By a counted vote of 84 in favor and 113 opposed,
There is no 2/3rds majority and the article fails.

Article 10. Article 10 is to see if the Town will vote to amend the zoning bylaw in its entirety under the section one dwelling per lot. The recommendation of the Planning Board was indefinite postponement. This was held – yeah, Mr. McNamara.

MR. MCNAMARA: Good evening, Matt McNamara, Precinct 7. Mr. Moderator, I move Article 10 as printed, with one minor typographical correction. In the fifth line, before the words “existing residential uses”, please add Section 240-5.1, and I will show this on a slide later.

Mr. Moderator, I present this article both as a Town Meeting Member as well as chair of the Zoning Board of Appeals. You will no doubt be hearing from some lawyers in this article, and as many of you know, I too am a lawyer. However, I’m speaking to you tonight as a fellow resident and as a homeowner. Although

zoning articles can be complex, you don't need a law degree to understand this one, you just need a sense of fairness. Don't let anyone try to confuse you, the issue is very simple. If you have a question this evening, turn to the experts that are here: Brian Curry, our Town Planner; Sari Budrow, our Zoning Administrator; Eladio Gore, our Zoning and Building Commissioner; and Frank Duffy, our Town Counsel.

So why Article 10? Town Meeting correctly reserves the right to make and change zoning laws because only Town Meeting Members know the history of Falmouth, the character it wants to preserve and how we want to live. However, this past June a Land Court judge effectively re-wrote our zoning bylaws. On June 24th of this year, a judge of the Land Court in Boston ruled that more than one dwelling on a single lot after 1926 is illegal. This judge, in responding to one property owner, went way beyond the case before him. He did not simply focus on whether or not the ZBA acted properly in that one case, but instead undid 83 years of Falmouth zoning history.

How could this happen? Well, because judges can. Perhaps our bylaw wasn't clear enough for this judge, and I've been asked at some of the precinct meetings whether or not an action by Town Meeting tonight can actually overrule the judge. The answer

is Yes. Like any legislative body, Town Meeting can clarify a law by passing this article.

I've been asked if the Appeals Court can invalidate this article if passed tonight. The answer is No. If you pass Article 10, the only approval required is from the Attorney General's Office. I've contacted the Attorney General's government bureau and the unofficial initial reaction is that there would be no problem with this article as grandfather clauses are generally approved, particularly when they provide clarification. They are not generally approved when they focus on only one property owner. This is not the case here.

The Town of Falmouth has always interpreted and enforced its own zoning bylaws to prohibit more than one dwelling on a single lot only after 1959. In fact, Town Counsel's Office has always interpreted the bylaw as allowing more than one dwelling on a single lot up until 1959 and has made representations to other courts in this manner.

Tonight you are asked, through Article 10, to restore Falmouth's historic interpretation of its own bylaw. The Town has appealed the court's ruling, as it always does in situations where a court's decision doesn't reflect the Town's own interpretation. But this appeal could take up to three years. Meanwhile, if affected,

your property is illegal for the entire three years unless you pass Article 10.

Bob, next slide.

What is the problem? Those of you who have more than one dwelling on a single lot built after 1926 now have illegal dwellings retroactively. That means if you bought a lot anywhere between 1926 and today that had more than one dwelling built on it between 1926 and 1959, the use of your property is no longer legal. Even if you got a special permit or a building permit.

For example: a young family buys a piece of property for their home this past May. They select the property because it has a second home on it that was built in the '30's. They intend to rent the second home to generate some income so that they can afford their purchase, or maybe they want to have their elderly parents live there.

Remember we are talking about dwellings. These are habitable buildings, not garages, not commercial structures. Falmouth defines a dwelling as a building used exclusively for residential occupancy used for living, sleeping, cooking, eating. So, in essence, substitute the word "home" for the word "dwelling".

In June of this year, that same innocent family learns that they can no longer rent the second home because it's illegal.

Now considered an illegal dwelling, if you're affected, the value of your property drops. Your ability to finance, refinance, lease or sell your property will be negatively impacted. It is questionable that your insurance will cover an illegal use. That means no coverage for a loss such as a fire in that second dwelling. So that same family can no longer afford that home. Even if they illegally rent the second home, no bank will ever refinance the property to allow them to make improvements or repairs.

The Building Commissioner would be required to force homeowners to remove kitchens from all but one dwelling on your single lot or otherwise make those homes non-dwellings. As a result, the elderly parents or the family in the second home can no longer live there. Can we really wait to correct this problem?

Due to the judge's decision, your property, if affected, is now non-complying, meaning illegal. As a result, you will never be able or be eligible to alter or improve the structures on the lot if a special permit were to be required. The result will be homes that are vacant and in disrepair, particularly when our need for affordable rentals has never been greater.

If you pass Article 10, there is no gap in the protection that has always existed, and more than one dwelling on a single lot will still be prohibited after 1959.

Next slide, Bob.

How big is the problem? The Town Planner estimates that there are approximately 100 owners and their properties that are affected. I believe Brian's a bit conservative with that number. My own research identifies approximately 200 properties legally existing with more than one dwelling on a lot after 1926, but before 1959. No doubt many, if not most Town Meeting Members, have such a lot or knows a family with one. These properties are scattered throughout the town, primarily in older, existing, well-established neighborhoods. But the problem is far greater than the number of owners or properties. If each lot legally had at least two homes, the number of families that would be forced to leave their homes could be over 200. These are our neighbors, co-workers and family members.

Next slide, Bob.

What Article 10 does not do. It does not increase the opportunity for condominiums. This article does not affect the right to condominiumize nor does it change any of the prohibitions against condominiumization. It does not allow the conversion of garages or accessory buildings. One opponent at precinct meetings has stated that this article is a blank check to out-of-towners to condominiumize. It does not.

It does not authorize the subdivision of lots. This article does not affect the right to subdivide or change any subdivision rules. It does not change the 83 year old interpretation that Falmouth has had of its own zoning bylaw. It does not allow more than one dwelling on a lot after 1959, which is what town meeting clearly stated in 1959.

This has been the interpretation of the Building Commissioner, the Town Planner, Town Counsel and most importantly you, the Town Meeting.

Next slide, Bob. What does Article 10 do? It preserves the 83 year old bylaw interpretation by clarifying the language of the bylaw. One opponent at precinct meetings also stated that this article is without any protections. That statement is incorrect. The article makes properties with more than one dwelling after 1926 pre-existing non-conforming uses rather than what the judge declared as illegal. Neighborhoods get protection. They get protection through the requirement of a special permit from the Board of Appeals before any owner can alter, extend or modify any of these dwellings that were legally existing on a lot. This preserves the character of neighborhoods and gives abutters notice and an opportunity to be heard before any of those changes are made.

Next slide, please. How does Article 10 work? You are asked to delete Section 240-66D, the language as shown exactly on the slide. The reason you are asked to delete this section is that it's actually misplaced in the bylaw, which actually could have led to confusion on the part of the judge. It addresses – the section it's currently in addresses – I'm sorry, this language addresses the use of properties, but it's found in the section of the bylaws regarding lot dimensions.

You are next asked to put the issue of use limitations under the appropriate bylaw section, in the General Use regulations, by adding Section 240-18.2, exactly as shown in the slide. This language preserves the change that you made in 1959 which explicitly prohibited after that date more than one dwelling per lot. Again, this article creates no new dwellings.

You are next asked to put the 83 year old protection in the more appropriate General Provisions section, Article 1, by adding Section 240-5-1, exactly as shown on the slide, including the typographical correction I made earlier.

I've been asked if this article has a financial impact, and it does. Aside from preventing the human financial disaster I've described for you, there is a positive financial side. If you pass the article, property values are preserved and the Town drops the

appeal and the associated legal costs. If you do not pass this article, imagine how many lawsuits the Town will have that will need to be defended.

As you deliberate on this article, think about the following question. If you were asked to pass a zoning article this evening that took away the property rights of owners that they've had for 83 years, or took away homes from approximately 200 families, would you do it?

Do the right and fair thing this evening: pass Article 10 as presented in this motion and preserve our 83 year old property rights. Thank you.

[Applause.]

THE MODERATOR: Okay, Article 10. Just out of curiosity, was anybody here in 1959 when they voted the original one? No. Okay.

Further discussion. What? Mr. McDonald. Microphone to the left. Microphone down here for Mr. McDonald, please.

MR. MCDONALD: Richard McDonald, Precinct 2. I had a constituent call me on this article which I knew nothing about at the time. I'm very glad to hear the clarification the previous speaker gave to us about this. This man had two lots – two houses

on a lot that he's been paying for for 17 years and he was confused, as I was also confused. Especially about the judicial review. I'm so glad that the Town of Falmouth does review a judge's decision and I thank Mr. Duffy and his legal staff for going over this. I'm sure it will relieve this man's worries. He's been calling me every night and I've been trying to explain to him. But now I'm so pleased to hear this and I urge you to support the recommendation of the previous speaker. Thank you.

THE MODERATOR: Okay, Mr. Latimer

CHAIRMAN LATIMER: Yes, the Planning Board voted indefinite postponement on this article because the matter is now pending before the Appeals Court. There is no definitive determination whether the Town's interpretation of the bylaw was in fact wrong. That will only come from the Appeals Court. We do not know at this point whether the Appeals Court will uphold this or whether it will partially uphold the bylaw and provide us with guidance as to how to change it. The Planning Board did not feel it was appropriate to take and change a bylaw while the matter at issue is before the court. That's not the way things are done, no matter what anybody on the Board of Appeals feels about having lost a case in court. That's just not the way it's done.

Now, I would like to – that was the Planning Board's

consideration. I would like to speak as an individual Planning Board – excuse me, as an individual Town Meeting Member to the issues raised by Mr. McNamara.

[Mr. Latimer descends from the dias and takes microphone on the floor.]

MR. LATIMER: This article as written goes way beyond where it needs to go and way beyond where it should go in terms of sound public policy. Yes, 83 years of planning – not planning, 83 years of permitting without planning is what Mr. McNamara seeks to protect here. What the Planning Board's concern – what my concern is and some other members of the Planning Board, not necessarily all of them – is that if we're going to change the wording of a bylaw to reflect what we think is in the best interests of the Town, we ought to be looking at what is in the best interests of the Town as a whole.

For example, 83 years ago or 1959, we didn't have an affordable housing problem. We didn't have market units that counted against a quota that would affect us and our ability to plan and develop this town the way we want to. We have that now. So one thing that seems glaring to me that's missing from this language is, well, I'll tell you, first of all this would allow anybody to redevelop, get a special permit, whether or not it affects the affordable housing quota. We would want to know, as reasonable

planners, that not only has this property been taxed as appropriately for two dwellings all along and that the taxes have been paid, but we would also want to know has these two dwellings been counted as separate market rate units. Because if they haven't, Mr. McNamara's comment notwithstanding, they can be condom-ized. They can be sold as two separate units to two separate owners.

Now, when that happens, now you have two market rate units counting against us. This bylaw that's being proposed, this article, doesn't address that question, and that's a serious planning question that some of us on the Planning Board have.

Now, the fact is that the very case that's on appeal involved somebody who bought a piece of property that had been existing in a neighborhood, a quiet residential neighborhood for decades, with that structure in place and the neighbors didn't say anything. It was sold to a developer who is in fact seeking to create two condominium units. Changing the neighborhood character. And that's another thing that this change or this article would not address, is the impact that this recognition would have on the neighborhood character, the character of quiet neighborhoods that have existed for many – for decades, even allowing for this second dwelling that nobody was complaining about, but now people

coming in using these properties as investments, not simply as, well, a little extra cottage where grandma can stay or things of that nature, or where the folks who come and visit up in the summer, they have a cottage they can stay in. No, they're creating market rate units.

I think this is probably something we need to look at and something we need to change, but we don't want to do it by throwing the baby out with the bath water by just giving everybody a blank check to do whatever they want. If the Appeals Court says the bylaw was wrong, let's fix it, but let's fix it in ways that address all the issues we're facing, not simply the concerns of maybe 100 homeowners who, by the way, would not necessarily have even been affected by this had not the ZBA come before this Town Meeting and made this an issue that the whole Town knows about.

I mean, how many of us actually knew about this case in the Appeals Court before the ZBA brought it to our attention?

So, I think what we want to do is we want to take a step back, let the Appeals Court decide. When the Appeals Court decides, whether it's in the Town's favor or not, we probably want to look at that existing or pre-existing use of houses, two dwellings on a lot, and address that in terms of when permits are sought, building permits or other kinds of permits, that we address those

real planning issues. Thank you.

Now I'm going back as the Planning Board Chairman.

THE MODERATOR: Okay, and in the back, Mr. Dewitt. Mr. Hampson, I'll put you on the list. Mr. Fox, I'll put you on the list.

MR. DEWITT: Good evening. Edward Dewitt, Precinct 1, 116 Pin Oak Way and I'm feeling kind of evil tonight after Mr. McNamara got up and gave his presentation. My wife and I were the ones that brought the appeal in the Land Court originally, and I think there is, as Paul Harvey says, "There's more to the story here." Here's page two.

Deeming something a pre-existing non-conforming use is both dangerous and loaded with unintended consequences. In the case that the ZBA deemed our neighbors property a pre-existing non-conforming use, they did this despite a neighborhood that was eager to offer evidence to the contrary. They didn't hear any of that evidence. That deeming actually got us standing in the Land Court to bring the appeal, and ultimately victory from the Land Court judge, who is an expert in zoning law. That's what Land Court does, they sit and hear cases of zoning disputes every day.

The unintended consequences or the consequences of the case in our neighborhood was that what we had next door to us

was a bungalow and a garage. Now, there's some dispute as to what was inside the garage, but what we ended up with was a condominium complex that had two houses next door to us, thanks to the Board of Appeals. Instead of a garage and a bungalow and a pleasant lot, we had two houses and a huge paved parking area. What used to look like a garage now looks like a house.

At the precinct meeting I attended, the chairman of the Zoning Board was a lot more confident about his likelihood of prevailing in the Appeals Court than I heard him tonight, but he still seems confident, and I think that, as Mr. Latimer pointed out, it's probably worth your while to – you paid the bucks, you paid top dollar to get to the Appeals Court; you might as well get the decision and get the guidance in terms of – from the Appeals Court; who's a panel of judges who will consider the facts and the law in this particular case.

The big problem that I have this evening is that this change goes well beyond turning the ZBA's loss into a victory. It goes beyond establishing a date of 1959. If the Board of Appeals does prevail in the Appeals Court, you're going to get a lot more change than you would from simply winning in the Appeals Court.

Did you notice the last sentence in 240-66D when they had it up on the wall? And I don't know if it's possible to put it back

up, but the last sentence in 240-66D talks specifically about winterizing dwellings, changing from seasonal use to year round use. That section is eliminated. That has been the law in Falmouth since 1926, that winterizing a dwelling is an intensification of use. And that, you can see that it's up there, [Reading:] "Year round habitation is deemed to be an extension of use." That's gone. That's vanished. That's a principle of zoning that is just being deleted. And tonight is the first night that I've ever seen the Board of Appeals even acknowledge that that was going out of the bylaw.

It's curious that none of the summaries mention that elimination. In our particular case, that was one of the issues that we tried to challenge. We challenged whether the garage had been previously winterized before it was converted into the condominium unit. Under oath in the Land Court, the builder-developer, the individual who came in, said he didn't remember the type of heating system that was in that garage. He didn't remember what kind of heating system it was. He forgot. I have some doubts about that.

What does deeming something a pre-existing non-conforming use do? Well, it gives it grandfathered protected. And you get there by a three part test, and the Zoning Board has forgotten one of the three parts. The first part is was it legally commenced, and their change would say in 1959 it was legally

commenced, and that's okay. The second part is has the use been continuous and not abandoned, and the change does have an abandonment provision. But the third and really critical element to deeming something a pre-existing non-conforming use is whether the use and character is the same as it was when it was instituted. Is it the same type of impact on the neighborhood that it was when it started out? If it's grown over the years, illegally grown, it doesn't get grandfather protection. Only what was legally commenced gets grandfather protection.

So, if someone had a little cottage in the back yard in 1959, regardless of what happened to that cottage between 1959 and 2009, you have deemed it a pre-existing non-conforming use. So if that small little cottage in the back yard somehow has now grown into a whole different kind of thing, you've told it that it's grandfathered.

Don't get fooled by looking later that the Board of Appeals is going to make an evaluation of what's now planned for the property. To be a grandfathered property, you have to meet all three of those elements, and that third element has been completely ignored out of this section of the bylaw. That's a huge deficiency.

I must say that there is something odd going on here.

The significance of eliminating that seasonal use to year round use just seems to have vanished. Pre-existing non-conforming use is a challenging concept for zoning attorneys. The ZBA went to the Town Planner for help. Now, I have the highest respect for Mr. Curry, but he isn't a lawyer and the Planning Board doesn't deal very often with pre-existing non-conforming uses.

It's a tough concept. This three element test comes out of two cases, and if Mr. Cooper was here, he'd be asking me to cite the cases and they're Chuckran versus Bridgewater and it's Powers v. Barnstable. And those two cases establish those issues.

There's two excellent zoning lawyers on the – in the Town Counsel's office. I'm not there, by the way. I've been gone for a couple of years. But there's also an attorney that they hired in this case. Mr. Duffy didn't handle this case because of my previous involvement with working with him and there was conflict of interest so he wasn't involved in this. And there was another attorney. But they didn't go to the attorneys, they went to the Town Planner who doesn't work in this particular area and look at those.

The proposed change was made without looking at the zoning history. 1926 there's a section that says: One house, no matter what kind, single family, multi-family. And in those days they

had the Philadelphia houses, you know, the split houses where they had matching sides on them. I always called them Philadelphia houses. The bylaw allowed those. You could have one of those, even though there was two different units on it.

1948, you, Town Meeting said, "Okay, anything that had two dwellings on it in 1926, you can divide those houses into two separate lots and give each house its own lot." So that's what you said in 1926.

1959, you said "One dwelling on one lot," and by the way, ladies and gentlemen, there's a footnote in there that says this has always been the law in Falmouth.

So, this – in 1981, the section that you had up on the wall, there, again you re-emphasize this idea that goes way, way back in zoning. It's only a recent interpretation, a very recent interpretation that has created a lot of these problems. And it's about condominiumization. The developer/builder came in, the house, the property was on the market for 440, got into a bidding war with someone, paid 550, and then put the two condominium units on the market for over a million dollars. That's what this is about.

You go in and you buy a property that has two existing dwellings on it and it is real easy to condominiumize. And that's

what this change is about, it's about condominiumizing of properties and I think that you need, as Mr. Latimer pointed out, to have some protections in here about affordable housing, how these things are going to add. The sky is not falling.

Mr. McNamara was flat-out wrong when he said that property owners that had special permits and building permits get no protection for the uses. There is protection after a number of years, six or ten years after a permit is granted where no enforcement can be taken. That has always been the law. If the Board of Appeals or the Building Commissioner makes a mistake and erroneously issues a permit, you can rely on that permit and after the period of time you don't go in.

There's another odd thing. The General Residence District, did anybody notice that that's not included in the list? I live in the General Residence District. I'm kind of curious if they thought I wouldn't come up here and object to this if they had left the General Residence District out. I don't know.

Who are we really trying to protect? It's really not clear to me here. There's a correct way. The sky, as I said, is not falling. We're secretly eliminating sections of the bylaw. In the end, if you want a detached garage next door to you to be converted into a house and a condominium complex like happened to us, vote Yes.

If you like the character of your neighborhood, leave the radical changes to zoning principles, need reflection, careful analysis, vote No.

The Planning Board was right when it voted to wait for guidance from the Appeals Court. If the ZBA is about the outcome, you don't need to make radical changes. Thank you.

THE MODERATOR: Okay, next on my list is Ms. Putnam. Mr. Fox, your on the list. Mr. Freeman, I'll add you to the list.

MS. PUTNAM: Rebecca Putnam, precinct 9. Through you, Mr. Moderator, I'm not sure who this question should be directed to. If this judge has deemed these properties to be invalid, is this going to affect the tax rate of these properties until this is resolved and are we going to be having a loss of revenue in this town?

THE MODERATOR: Anybody have an answer to the question? No. I don't think anyone can answer that question.

MS. PUTNAM: Nobody can answer assessments on that question?

THE MODERATOR: Mr. Bailey, you want to give a try at it? Based on the current ruling, is this going to change assessments.

MR. BAILEY: Dave Bailey, Director of Assessing. I think we're going to have to wait and see what counsel advises us on that issue. If indeed we have homes that are not worth what we're assessing them for, yes, it will. If you've got a dwelling that we consider a dwelling on your property that has been found to be illegal, then we'd have to recognize that in the assessment. So it certainly conceivably could affect the assessed value, could affect taxes, sure.

MS. PUTNAM: So currently these properties are illegal because of this ruling, correct?

MR. BAILEY: I'm not the lawyer, here. I'm the Assessor. It will depend on the individual units, you know, how they are assessed and what their specific legal status is. But, as I say, if we find that something we're assessing as a multi-family lot cannot be used by multiple families, it will certainly have an affect on their assessment, yes.

MR. PUTNAM: Mr. Moderator, I'd like to move the vote on the question as amended.

THE MODERATOR: Okay, I have a practice of not allowing a speaker to move the question if they've used the floor. So I'm going to go onto my next speaker, which was Mr. Hampson. Mr. Hampson.

I'll put you on the list, Richard.

MR. HAMPSON: George Hampson, Precinct 5. I've been in a lot of Town Meetings and this is a tough one, I'm going to tell you. I don't know what's going on. I really don't. And I think that a lot of people out there are joining me on this. Maybe I'm – but I'd like to hear from our Town Counsel, and get his opinion.

[Laughter.]

MR. HAMPSON: And then, after that, I don't know what to do. But I think it's almost unfair for us to have to deliberate this tonight. I mean, it just is – it's a hard problem to figure out where it's going. Thank you.

THE MODERATOR: Mr. Duffy, did you want to?

MR. DUFFY: Thank you for the question, Mr. Hampson.

[Laughter.]

MR. DUFFY: As Mr. Dewitt mentioned during his remarks, he worked in my office for a number of years and we have over the time become very good friends and we were friendly colleagues. When this case arose, I determined I would not become involved in it and the Board of Appeals hired special counsel to handle the case. That was Mr. Antine, who's the town counsel for the Towns of Rehoboth and Raynham, and he handled

the matter. We had nothing to do with it.

I also had nothing to do with the drafting of this bylaw from the Board of Appeals nor did I participate in any way with the Planning Board in writing its recommendation on this particular matter. So, where I have had a hands-off policy on this particular case and this particular issue, the only thing I would point out is that the case is before the Appeals Court of Massachusetts, which has the right to overrule or sustain the decision of the Land Court, and the Appeals Court does give you a written decision which may be of some guidance to this town in determining this issue.

The only question I have, well, not a question but in terms of how long it will take to get a decision out of the Appeals Court, the experience my office has, and we've taken four cases to the Appeals Court in the last year, we get a decision within a year. So, maybe by the April Town Meeting we might have an answer. Certainly by the November Town Meeting of next year we would have an answer and if that's any benefit to you, I'll just offer that to you, okay?

THE MODERATOR: Okay, Mr. Fox.

Can I get one microphone carrier in each aisle so that the folks don't have to come down to the front. Thank you.

Mr. Fox.

MR FOX: I'm definitely in favor of the article as printed. I think it's important that we protect the interests of the homeowners right now. This judge has come in and made a ruling that really impacts the ability for people to finance or to use or even to update their kitchen or any modification at all because they would have an illegal dwelling.

I'm from Precinct 2 up and down Shore Street, and there's very – there's an awful lot of these in my neighborhood and I know it's really important. I think the issues that have been brought up about affordable housing are real and need to be dealt with, but I don't think we need to interject them here as an opportunistic time to come in and change things. I think this article is trying to put back what the judge took away, stabilize things, and if we have to make other changes in the future, then we should do that. But right now, if we sit and wait for a year, people will be hurt by this very, very badly. They won't be able to be refinanced. They won't be able to sell.

I have been through the process of the pre-existing non-conforming use in front of the Planning Board and it's onerous. You have to prove that those buildings have been continuously used since 1959 and it hasn't lapsed for two years. You have to have copies of the leases, names of tenants, views and vistas of

the neighborhood. The neighborhood gets involved. The special permit process has worked for a long time. It's there to protect our interests and those are here and I strongly urge you not to take away the values of many of our fellow homeowners on this issue.

Let's pass this now and if we have to come up with another solution after the court case, then we come up with another solution. Thank you.

THE MODERATOR: Okay, Mr. Freeman, microphone in the center for Mr. Freeman. Yeah, stand up so they can see where to bring the mic.

MR. FREEMAN: Through you, Mr. Moderator to Mr. Duffy. The question that I have is: What authority does Town Meeting vote have over an issue that was deemed by the Land Court? Do we have any authority at all? We have bylaws and we enforce those bylaws. Now we're being challenged by the Land Court. If we vote against the indefinite postponement, does that have any weight against what the Land Court did? This is our town, not theirs.

THE MODERATOR: Mr. Duffy.

MR. DUFFY: The Land Court judge ruled on the bylaw as it exists now. If you want to change it and you change it, the change would be reported to the Land Court and or perhaps to

the Appeals Court and they'll determine whether or not what you do tonight changes the outcome of the case. But you're not in any way constrained against acting tonight if you want to.

MR. FREEMAN: Thank you. Next question through you, Mr. Moderator, to the Chairman of the Planning Board. To Mr. Latimer: when you decided or your Planning Board decided for indefinite postponement, how many homes were you looking at, do you remember? Answer the question, please.

CHAIRMAN LATIMER: We were informed by Mr. McNamara that there are approximately a hundred properties that might be affected here in this town of 35,000 people – 34,000, excuse me. That was the information we had. I don't think that that's really the question we need to look at as planners. As planners, we don't need to look at, well, who's going to be damaged more as opposed to what's going to happen to the interests of the town as a whole, and as planners particularly in our ability to plan intelligently, which is basically the reason the Planning Board felt we ought to wait until we see what the Appeals Court says so that we can know which way – in which direction we should go in. That's just common sense.

But to get to that where – I'm not speaking for the whole Planning Board now. I just did, but as to what our thinking

was.

MR. FREEMAN: You represent the Planning Board.

CHAIRMAN LATIMER: But now I'm going to speak –

THE MODERATOR: No, no, Richard, you're not. You answered the question. Mr. Freeman has the floor. You're on the list. You answered the question. Mr. Freeman.

MR. FREEMAN: Okay, thank you. I think that research that was done by Mr. McNamara where he identified 200 homes, 200 families possibly that are involved in this issue, that we support those people. We're going to take all of their rights away from them. Please support this article, thank you.

THE MODERATOR: Okay, Ms. Fenwick, you were next on the list. To my right here.

MS. FENWICK: Judy Fenwick, precinct one. Earlier this evening, we received the news that Falmouth has been declared a Preservation Community, and I would urge that we support the recommendation of the Planning Board for indefinite postponement, take guidance that we may receive from the Land Court or the Appeals Court and then come back at Spring Town Meeting with a more robust recommendation from the Zoning board of Appeals and the Planning Board for information that's going to be deleted and information that's going to be added for a new bylaw.

THE MODERATOR: Okay, right there to my right, do you still want the floor?

MS. TOBEY: Linda Tobey, Precinct 4. I would agree with Judy, I think that's a wonderful idea. I'd also like to add that I can see both sides of this issue. I have feelings on both sides of this article. But what I feel that we all have in common, versus a court in Boston, is that we really all want the best for this town, and that we know our town better than anybody else.

What I'm wondering, through you, Mr. Moderator, to somebody on the Board of Appeal, if we do approve this article tonight, can it be tightened up at a later date? Can we get some restrictions put in or is it just as printed and then we go with that?

THE MODERATOR: Mr. McNamara.

MR. MCNAMARA: Thank you. First of all, this language was put together jointly mostly by Brian Curry, which I appreciate, with input from the Planning Board and of course our special counsel. The answer is: of course. We always modify our bylaws. This is just getting us back to ground zero, and if there's need for more modification or more time for planning, certainly that can occur. But we need to protect the people at this point, thank you.

THE MODERATOR: Ms. Lichtenstein, did you still

want the floor?

MS. LICHTENSTEIN: Leslie Lichtenstein, Precinct 8.

We have a history of not spot zoning. I truly sympathize with the people who are caught in this, except we don't know where this 100 or 200 properties are. We have thousands of properties in Falmouth and dozens of neighborhoods. I am very leery of opening a door when we don't know what's on the other side of it. If we wait for year to see what the judge comes down with, then we know how to proceed. I think we should do what we have done in the past, and that is zone for the entire town and not for individuals. Thank you.

THE MODERATOR: Mr. Lowell, want to grab that mic.

MR. LOWELL: Nick Lowell, Precinct 5. I'm not a lawyer and I have a question that I'd like to direct through you, Mr. Moderator, to Town Counsel, which I believe he can answer. The question is: in the current state of these lots that have the two dwellings and the appeal, are they technically illegal right now or would they be illegal only in a year were the Land Court were to rule against us? So what is the state of these properties right now? Are they legal or illegal or in some sort of middle limbo?

THE MODERATOR: Mr. Duffy.

MR. DUFFY: Well, I would – it's kind of hard to answer, but I don't believe that the – the Building Commissioner would be posed with deciding whether or not to take enforcement action and he's certainly not going to do it until after the Appeals Court has come down. So, I think that between now and the time the Appeals Court decides, whoever advises the Building Commissioner would say hold off until we get a final decision.

THE MODERATOR: Okay, Mr. Latimer.

CHAIRMAN LATIMER: Yeah, and I'm speaking now not as a Planning Board member or Chairman of the Planning Board, but simply as a Town Meeting Member who has lived in this town since 1958. I was in high school when this last change was made. And I've seen all the changes that have occurred in this town. A lot of it occurring through open door policies allowing development. We've got a chance to not slam a door here but to make sure that only appropriate projects go through the door. This is not the ZBA's proposal. The ZBA's proposal is to open the door and in fact delete, as Mr. Dewitt said, one of the significant controls we did have regarding winterization of seasonal homes.

So I would like to just explain where as a Planning Board member had we had more time to look at this, you know, on our own, and we were being asked to evaluate what kinds of things

we'd like to see to make this an effective tool to protect existing uses that people have expectations in, but at the same time protect the Town's interests and our interests as planners.

The first one would be, and I'm going to offer this as an amendment. It's written here: the permit granting authority must find that A -

THE MODERATOR: Can you just into the mic.

CHAIRMAN LATIMER: – the property must at all times have been taxed as having two dwellings, and all taxes have been paid through the current year. Now, that's fair. You know, somebody can say, "Well, I've had this for, you know, how many years," but have you been paying taxes as what they want to do with it? Well, that's not fair.

B, the permit being sought will not change or extend the use as it existed in 1959, or recognize any such change or extension. Again, if the law changed in 1959, it will be interpreted as being changed in 1959, well then that should be where we look to to see what it is that should be permitted. Any changes that have occurred after that should not be recognized. It's not fair to the Town to do that.

C, the work being permitted will not adversely affect the character of the surrounding neighborhood. That is something

that is not just for 100 people, that's something that's for 34,000 people.

D, the permitted use will not increase the number of market rate units in the Town of Falmouth so as to count against Falmouth's affordable housing quota. That's a very important factor that we want to consider. We do not want to just write a blank check for people to create two market units where only one has really been recognized before. That's going to hurt us as a town, really hurt us.

And, finally, to retain the language in the bylaw that they want to delete, which will say, "Any conversion from seasonal to year round use shall be deemed a change or extension of use."

Now, I'm going to offer that as an amendment, and with that as an amendment, I can support this article.

THE MODERATOR: Okay, here's the amendment. The permit-granting authority must find that: A) the property has at all times been taxed as having two dwellings and all taxes have been paid through the current year. B) the permit being sought will not change or extend the use as it existed in 1959 or recognize any such change or extension. C) the work being permitted will not adversely affect the character of the surrounding neighborhood. D) the permitted use will not increase the number of market rate units

in the Town of Falmouth so as to count against Falmouth's affordable housing quota, and E) any conversion from seasonal to year round use shall be deemed a change or extension of use.

Any discussion on the amendment? Mr. Clark.

FROM THE FLOOR: Mr. Moderator, point of order.

We can't follow that without having it on the screen.

THE MODERATOR: Okay, so, then do what you need to do. Any discussion on it? Mr. Clark.

MR. CLARK: I was fully convinced to wait for deliberation by the Planning Board and to return to this article at another time. I think Mr. Latimer himself has probably argued that we shouldn't be writing this material on Town Meeting floor, and I'm sorry he then went ahead to do that. So I'm against this amendment.

THE MODERATOR: Is there any further discussion on the amendment? Hearing none, the question will come on the amendment. All those in favor, 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. Is there any further discussion on

the main motion, Article 10? Ms. Poole.

MS. POOLE: Thank you. Diane Poole, Precinct 9. I would like to know why Mr. Dewitt's case called for a blanket decision for the whole town and why it didn't just pinpoint his problem, because apparently there wasn't a problem throughout the town or if there was, each neighbor would take care of it individually, and I don't understand why the Land Court judge had to make a decision that covered the whole town and hurt some people that didn't need to be hurt.

And the other case is from switching from seasonal to year round housing. I think if that's a problem with people, they should take it up, too, but you've got to understand that, in this economy, that maybe changing some of these seasonal units or houses to year round is helpful to people who are having problems getting by.

THE MODERATOR: The reason for that is the judge was ruling on the bylaw, so it's sort of one of those unintended consequences. He made a ruling on the bylaw which applies to the whole town, that's why his ruling applies to the whole town.

MS. POOLE: [No microphone, inaudible.]

THE MODERATOR: He ruled on the bylaw, which applies to the whole town, therefore the consequence of that is a

town-wide application.

Okay, is there anything new?

MR. WAASDORP: Peter Waasdorp, Precinct 1. I call the question and ask the moderator to please explain a yes or no vote.

THE MODERATOR: Okay. The question has come on the question. This requires a two-thirds vote. If you vote Yes, we stop discussing it and we vote on the article. If you vote no, we continue to discuss this article.

All those in favor of moving the previous question, 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 two-thirds majority and the question is closed.

The question will now come on the main motion, which was presented as printed and we added the number that got cut out of the margin, the number of 240-5.1.

All those in favor of article – yeah?

FROM THE FLOOR: [No mic, inaudible.]

THE MODERATOR: Okay, yes means yes and no

means no. We're back to the old standard: yes means yes and no means no. I try to be consistent, but.

So, all those in favor of passing Article 10 as printed in the warrant book, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[No.]

THE MODERATOR: This requires a two-thirds. 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: 21.

THE MODERATOR: 21.

In the third division, Mr. Hampson.

MR. HAMPSON: 24.

THE MODERATOR: 24.

In the second division, Mr. Dufresne.

MR. DUFRESNE: 45.

THE MODERATOR: 45.

All those opposed to Article 10, signify by standing and the tellers will return a count.

[Pause.]

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

MRS. TASHIRO: 27.

THE MODERATOR: 27.

In the third division, Mr. Dufresne. Excuse me, second division, Mr. Dufresne.

MR. DUFRESNE: 51.

THE MODERATOR: 51.

And in the third division, Mr. Hampson.

MR. HAMPSON: 32.

THE MODERATOR: 32. By a counted vote of 90 in favor and 110 opposed, Article 10 does not pass and this meeting will stand in a 15 minute recess.

[Whereupon, a short recess was taken.]

THE MODERATOR: Let's re-establish our quorum so we can resume here on Article 12. This is the Senior Care Retirement District. Do I have a teller in the second – oh, there he is – second division.

Okay, all right, Town Meeting Members, please come forward so we can establish this quorum. Okay, all Town Meeting Members present please rise for the establishment of the quorum.

[Pause.]

THE MODERATOR: Mrs. Tashiro.

MRS. TASHIRO: 48.

THE MODERATOR: 48.

In the third division, Mr. Hampson.

MR. HAMPSON: 57.

THE MODERATOR: 57.

In the second division, Mr. Dufresne.

MR. DUFRESNE: 91.

THE MODERATOR: 91. By a counted vote of 196, we have a quorum and the Town Meeting is back in session.

Article 12. Article 12, Mr. Chairman of the Planning Board for the main motion.

CHAIRMAN LATIMER: Thank you, Mr. Moderator. I move – recommend – move Article 12 as printed.

THE MODERATOR: Okay, Article 12 as printed. Mr. Chairman.

CHAIRMAN LATIMER: By way of brief explanation, this is the third time this has come before the Planning Board and before Town Meeting. The third time sometimes is a charm. We have consistently opposed any rezoning of this article that would significantly adversely affect Route 151 as a travel corridor without

some – any kind of assurances or reasonable assurances that the use will actually benefit the Town. This time they've come forward with a plan which the Planning Board is comfortable with, as not adversely affecting the travel corridor on Route 151 any more than the by right use as a housing development would do, while at the same time it will advance the important policy concern we have for letting these kinds of Senior Care Retirement Centers exist in this town.

So, having explained the Planning Board's reason for recommending this version of the article, I would defer to the petitioners for further explanation of what it does and how it's going to work.

THE MODERATOR: Okay, this article was held by Mr. Rowitz. We'll have our presentation on this article and then Mr. Rowitz you'll have the floor.

MR. SHAW: Hi, good evening. Jody Shaw with Precinct 8 and also on behalf of CLSV. Diane Thompson is here with me as well.

I want to thank all of you again for this opportunity. We were here last April and it's a pleasure to be before you again. And we do have a brief PowerPoint presentation that we'd like to walk you through and show you some maps of the site and what we've

done since we were here last, and hopefully we've been able to address the concerns that were raised at Town Meeting this past April.

So, what we're asking you to consider, which is in your warrant booklet, is to rezone the 31.2 acres to the Senior Care Retirement District. The big difference with what we're presenting tonight is we're only asking you to consider rezoning seven acres of the 31.2 acres of that site, not the 31.2 acre site that we had proposed in April. Last April we were asking you to consider rezoning the entire 31 acres to the new Senior Care Retirement District. This time we're asking that you consider a portion of the 31.2 acres and hopefully this will address the concerns that were raised at the last Town Meeting.

The next slide is what's in your booklet, and this slide depicts the seven acre parcel, which is to the easterly side of the property. We've stayed away from the Route 28 highway. And this particular map is the area that you will be asked to consider to rezone, the seven plus or minus acres which has been delineated in this pictorial.

Since the April Town Meeting, we did receive many positive suggestions on how to come back and have you consider what we're proposing, and we started meeting with the Planning

Board immediately after last year's Town Meeting, last April's Town Meeting -- Planning staff -- and we started going before the Planning Board throughout the summer months and the Planning Board was kind enough to allow us to come before them on three occasions plus a public hearing in the month of October. And at that public hearing, after addressing their concerns and the concerns of some citizens that came to those meetings, we received a unanimous vote of support from the Planning Board.

Specific to the site that you'll see in another map momentarily, again, the site has 31.2 acres total; therefore it meets that 15 acre threshold required to be considered for a Senior Care Retirement District under common ownership. The seven acres that we're asking you to consider rezoning, that's the area that would be required for a 125 unit Senior Care Retirement Community, including the parking and paving, wastewater treatment. It would all be contained within those seven acres, and that's the reason that we came up with a seven acre area, so it confines the area on the site that could be developed and it shows you on that plan where that area would be, so you can be assured that 125 units of senior care housing and no more would be developed within that seven acres.

The Senior Care Retirement District bylaw requires

that 15 additional acres to be set aside as permanent open space, and in a map that I'll show you in just a couple of slides, we're showing a suggestion of where that open space might be, what it might look like so you can see what 15 acres of land looks like.

Once we look at the seven acres plus the 15 acres of open space, it would still leave some AGAA land left over. It will leave approximately 9.2 acres of AGAA land and that open space would be dedicated open space and it would just stay in the AGAA condition that it's in now.

So this slide is a summary of what I just mentioned so that hopefully I'm as clear as I can be because we did have some excellent questions at the precinct meetings and we wanted to show you how that breaks down. So that when you look at this, it's seven acres of Senior Care Retirement District, structures, pavement and parking; 15 acres of dedicated open space in addition to the seven acres, so 22 acres of land is required for 125 units of Senior Care living. That's six units per acre.

Of the remaining land, that does leave 9.2 acres that would just remain under the AGAA zoned land and it would only allow AGAA uses in that space. However, if there was – if we could demonstrate there was a need for an expansion of the facility, if new units were required, we would have to come back to Town

Meeting to even discuss that 9.2 acres. And of that 9.2 acres, 65 percent of that 9.2 acres still gets set aside as open space, so it only leaves 3.22 acres of possible additional development within those nine acres. So, that was a little confusing at some of the Precinct meetings, but that's how the 31 acres is looked at: seven acres rezoned, 15 acres of open space, and then there's a balance of 9.2 acres of land left over.

On the next slide is just again what's in your warrant booklet, just showing you the seven acres that we're asking you to rezone. On the next slide, this is a plan that we had at the precinct meetings that we color coded just to make it crystal clear, or as clear as we could make it, of how the possibility of the open space would look and how that remaining 9.2 acres would look. So, on this map, you see the seven acres of proposed SCRD, which that is a definitive area. That area is the way you see it; that would not change.

Over to the left, in the darker green – it doesn't look real green up there, but in the darker green on the far left of the map, open space 15 acres, that's an example of what the open space would look like. The Planning Board has full discretion to determine where on the balance of the site the open space goes. We indicated this particular area because it does contain the

walking trails, the wildlife corridor. It protects that side of the property, but again the Planning Board would have full discretion on how the balance outside of the seven acres would look. But we are trying to create a depiction so that you could envision 15 acres and what that remaining AGAA land would look like on this plan.

On the next plan, and this is a plan that we – if we could go to the next one, please. This is a plan that we started off showing the Planning Board, and this gets to the crux of a lot of the concerns we heard in April, is: what does a site plan look like? How do we know you're just going to do the senior housing? The concern about if the entire parcel was rezoned that there could be banking, a restaurant, medical office space. This is the site plan that we developed and engineered. All of the topography has been taken into account to depict that 125 unit building. The parking around it all meets the zoning requirements of the bylaw.

The setbacks from other curb cuts on Route 151 have all been thoroughly analyzed. This particular building that you see on that plan is 213 feet back from Route 151. Route 151 does require a 75 foot setback; we're back 213 feet because we do know their concerns about the visual impacts and how it would be situated on the site. The setbacks from the back lot line are 50 feet; this particular building is 100 feet. The power line easement, the

requirement from the border of the power line easement is 50 feet; we're 140 feet, and that's actually a single row of power lines that run down the middle of that.

So we did take the time and we did engineer this site plan and we presented this to the Planning Board throughout the summer months so that they could ask the proper questions and hopefully we could come back here to Town Meeting and give you the assurances that it would be 125 units of Senior Care Housing under the Senior Care Retirement District and not the other uses that we were asked about at the previous town meeting.

On the next slide, please. If we were rezoned, there are additional permitting requirements. This would take a complete review of the Cape Cod Commission as a Development of Regional Impact, and then we would have to come to the Planning Board for a special permit and site plan review. So that structure that you saw, that parking, all of that would have to be scrutinized and analyzed and we would have to go through probably another nine months to a year of permitting if the site was rezoned. And it would, again, all be contained within those seven acres.

The need for senior housing, this is information we did provide before and I think people agree that senior housing is needed. We did do a market study last year. We looked at all the

facilities on Cape Cod, assisted living, independent living, skilled nursing, and there's roughly a 97 percent occupancy rate in all the facilities on Cape Cod. And what the data showed -- and this is a survey that personal interviews were done with these facility managers and owners -- is that roughly 75 percent of the residents of these facilities are from within the town the facilities are located in or from roughly a five mile radius. So we are serving our own communities, serving the people of Falmouth, and that's the data that is consistent across all of Cape Cod. I think that encompassed almost 20 facilities of different styles of operation.

So that work was done and it was looked at very carefully and we've -- again, reiterating that tonight that we did in April as well.

The manager of the facility. We -- CLSV doesn't intend to be the manager of the facility. We have been working closely for over a year and a half with Salmon Family Retirement. They're a Massachusetts family-owned senior care community operator. They have five facilities in Massachusetts. I believe they just opened a sixth facility. They manage assisted living, they manage independent living and they own some of them. They've been in business for 50 years, as I mentioned, and we have been working very closely with them for well over a year and a half, now, and the

market study was done in conjunction with them.

We do have a memorandum of understanding in place with them. We provided that to the Planning Board, again, to provide additional assurances that we only care about the Senior Care Residential portion of the bylaw and not the other uses. So that's another way that we're trying to show Town Meeting that our intentions of Senior Care housing is really all we hope to do and hope to achieve if you rezone that land.

The last piece I'll talk about is there is an economic benefit to this particular site that I think bears some repeating. The parcel right now roughly pays \$6,000 in property taxes to the Town of Falmouth. If this development as 125 units went forward, that would increase to a little over \$200,000 per year. There would be both full and part time year round jobs with benefits that would be created in the range of 30 to 40 jobs would be created, possibly more. There would also be local contractors involved at all levels of developing this facility, the ongoing maintenance and operation of it. There are no impacts on the school systems. There's minimal impact on Town services and the private maintenance of the site would include trash, snow removal; that would not be provided by the Town. The site would be responsible and the facility for maintaining itself, and it would have the least impact possible on

Town services.

So, having said all that, I hope we've tried to address the concerns and the many good questions that were raised at both the precinct meetings and at town meeting last year to show you that reducing it down to just that seven acres restricts the area that can be developed. It shows you exactly on a plan where that area will be. It shows our commitment to doing just the senior housing. That site plan is how we would move forward. It's not a situation where we're looking at that in any other way.

So I hope that, through this presentation, we've been able to provide those assurances and I appreciate your time.

[Applause.]

THE MODERATOR: Okay, Mr. Rowitz. Microphone to my right for Mr. Rowitz.

MR. ROWITZ: Thank you, Mr. Moderator. Ray Rowitz, Precinct 5. I realize that CLSV and the Planning Board have been working hard to craft this plan for the Senior Care Retirement District, but there are a few concerns that I had about it.

The main one is the main thing is that the increased density on Route 151; how does it fit with the Comprehensive Plan? The other thing that bothers me about this is the 9.2 acres that are

left as agricultural AA zoning. That's a continued threat for future rezoning of this parcel.

I had a question directly for the Chief of the Fire Department as to how the ambulatory use would be used out of North Falmouth to be used for the Senior Care Retirement District, if I could have him answer that question.

THE MODERATOR: Yeah, if we could have the second mic for the Chief. There's one coming right behind you there, Chief.

CHIEF BRODEUR: Yeah, Paul Brodeur. Could you bring that question back again, please?

MR. ROWITZ: How would the extra demand for the Fire and Rescue Department be affected by a Senior Care Retirement District in this location, based on the equipment that you have?

CHIEF BRODEUR: That's why we were planning with the Department with the 5th ambulance in anticipation of the Senior Care residences throughout the town. We have one coming at Woods Hole; we knew this one was on the plate, so we're trying to stay ahead of the curve. And that's what we're in the business for.

MR. ROWITZ: The extra units that are in the Senior Care Retirement District, how do they affect the use of the North

Falmouth ambulance directly?

CHIEF BRODEUR: Well, number one, it depends on when they are ill; they're not all ill at the same time. We lost – Frazier Rest Home is no longer, so we do have the capability to transport additional patients since we've gotten the new ambulance in place at North Falmouth. That's been a very busy rig for North Falmouth, but that doesn't mean that we can't cover any other responses in that area with the other ambulances we have in town.

THE MODERATOR: Okay.

MR. ROWITZ: Thank you, Chief.

CHIEF BRODEUR: I think it's very doable.

MR. ROWITZ: Thanks, Chief.

THE MODERATOR: Mr. Rowitz.

MR. ROWITZ: Thank you. There's, in the Town of Falmouth, each of the Falmouth villages are diverse. In North Falmouth and Hatchville, it's out in the boondocks, some people will say. We have a relatively low density out there, particularly in Hatchville. The people that live off of Route 151 have enough trouble getting out onto 151 and traveling along that route anyway; this would increase it.

This Town Meeting has the ability to say no to these kind of things, if we want. If we want to increase the density along

151, this is the start of it. If we want to keep it the way it is and maintain our quaintness in our area of town, then we have the ability to do that.

The other thing that people may not realize but on this – according to this plan, it wasn't mentioned that that trash train – I'm sorry – the energy train travels by there up to four times a day, right through the southerly area. I just – I hope that people consider this as the start of something that we can't reverse, so please vote this down. Thank you.

THE MODERATOR: Okay, Mr. Dick.

MR. DICK: Henry Dick, Precinct 8. President of the Coonamessett Pond Association. Route 151 is an experience, for those of you who don't live in Hatchville. I tend to think of the various intersections as kill zones. And they are. Bodies turn up and crushed automobiles with great regularity. This is a particularly dangerous intersection. I have to go through there every day in the evening, and when I get home I'm kind of tired and sleepy, but I'm always wide awake after I've gone through that intersection. It's dangerous, it's really dangerous.

If you're to put that there, there's going to be major traffic lights, there's going to have to be a widening of that to a four lane road, and even that's not going to do much. People come off

of the – up the road, there, and they're accelerating from 35 miles an hour to 55 miles an hour and they don't care about the traffic that's coming in off the highway there. I've been run off the road a couple times by drunk drivers there, and I really say that I don't think this is the place for a senior care retirement facility. Can't put that kind of density on this road, this is a kill zone. Thank you.

THE MODERATOR: Okay, the woman in the aisle, here. Microphone down here. Yes, she's coming with the mic. And then Mr. Shearer.

MS. KINGWELL: Susan Kingwell, Precinct 1. Could we go back one slide? No. Oh, that's not it. Probably one slide, maybe. Well, anyway, there's a statement that said that there would be a minimal amount of usage from the town. Now, they've addressed the fire, and what kind of criteria did you use when you made that statement? What– the impact on the town, town services, what criteria did you use to make that statement?

MR. SHAW: We looked at Fire, Police, water resources and how those would be addressed. You know, obviously there would be some police services needed. We would have to bring water to the site at our expense and the Fire Chief was kind enough to answer that question. So that's what we looked at.

MS. KINGWELL: I wondered about water, actually.

Thank you.

THE MODERATOR: Okay, Mr. Shearer, next on the list.

MR. SHEARER: Dan Shearer, Precinct 6. I really hope you vote for this. I'm sorry to say I'm aging a bit. I would love to live the rest of my life in West Falmouth, I really like it here. And if and when you get over 70, you start thinking about places like this that maybe you need. And I think this is the best plan for that land I have seen and I don't think we're going to get another one and something's going to happen to it. So, please vote yes. Thank you.

THE MODERATOR: Okay, Mr. Bissler.

MR. BISSLER: Ken Bissler, Precinct 2. Thank you, Mr. Moderator. I think my comments will be more of a question, probably to the Planning Board, but I want to be sure what we're voting on. And it's really the difference between this zoning district and the senior care retirement community and the restrictions that apply. And it's my understanding we're voting on a Retirement District, a rezoning, is that correct?

THE MODERATOR: Yes. That's what the – yeah.

MR. BISSLER: And the restrictions we've heard about the open space, the 65 percent, Article 4 the 15 acres, those all

apply to a Senior Care Retirement Community. That's something else that comes later, correct? A Senior Care Retirement Community is something that may be allowed by special permit through the Planning Board, is that correct?

THE MODERATOR: A Senior Care Retirement Community definition versus the district definition.

MR. BISSLER: The way it's written, it appears that that is a special permit through the Planning Board; that's not what we're voting on, is it? That's my point.

THE MODERATOR: Yeah, go ahead.

MR. CURRY: With your permission. That's correct. You're voting a map change tonight and the special permit may issue from the Planning Board after the Cape Cod Commission conducts its review. Does that answer your question?

MR. BISSLER: Okay, and so the net result of that is tonight we're voting on one part and any other owner future use doesn't have to follow today's plan, that's all I want to point out is that the restrictions that we seem to be comfortable with, the 65 percent coverage, the wastewater treatment, is not what we're voting on a plan that fits that, because that sort of community, a retirement community, and what we're voting on is much more open-ended; it's a Retirement District.

MR. CURRY: Correct. A town meeting or so ago you voted all those restrictions that the Planning Board has to apply to the special permit that may issue to this group or some other group that may want to take advantage of it.

THE MODERATOR: Okay, Mr. Goulat, and then Ms. Siegel. Mr. Goulat, where are you? Did I not see your hand? No? Okay. Go ahead, Ms. Siegel.

MS. SIEGEL: Deborah Siegel, Precinct 6. I heard a number of comments at the precinct meeting and I've also heard that these comments have happened at other precinct meetings: people saying, "Well, this is the third time and look at how hard they've worked with the Planning Board to do what we want, and we should vote for this because they're being so nice about it." This is a business, folks. They are in business for one reason, and that's to make money.

Hey, capitalism is great, right? Well, that's what they're here to do: to make money. Now, they keep on talking about studies, about how necessary this is in Falmouth, and I'm sure Dan is right, plenty of us would like a place to go to someday if we can afford it. That's not a good enough reason to vote for it. What I want, what you want, is not enough reason to vote for something that affects this town so strongly.

We've heard that 75 percent of people come from the area around the existing – these existing communities, but we're not seeing any numbers. We're not seeing any facts. We're not seeing the studies. We're just being told that that's what the number is, and I would be a lot happier if I saw something written down that actually demonstrated that.

I'm a little concerned, I keep on hearing about how they're working with the Planning Board, and at the risk of incurring a lecture from Mr. Curry, I understand what the Planning Board may be attempting to do, but I just wonder whether this is a little questionable, whether this is the best way to do these things.

But I do urge you to think of this as the camel's nose under the tent.

THE MODERATOR: Okay, over here –

MS. SIEGEL: And to vote it down.

THE MODERATOR: In the center here I had a hand. With the white sweater, did you want to speak? No? Yeah. Go ahead.

MS. FINNELL: Margo Finnell, Precinct 8. I travel on Route 151 also and I find that this would be onerous and the traffic would increase the danger immensely. And I think that this is an example of spot zoning and I think we should not vote for this. We

should vote it down.

THE MODERATOR: Okay, Dr. Schneider, did you still want –

MS. SCHNEIDER: I have a different twist on looking at this. I really do hope we will vote this in and I don't like to speak on things other than CPC, but I'm going to because I have personal experience with having my in-laws in a facility like this. We can all sit here and say we want this for ourselves, but there are a lot of us in this room that are also dealing with this on the other end, which is to be dealing with it with our parents. We've already been told, and I believe it, I'm not saying this is a lie, because I am seeing it to be the case with my own in-laws, that 75 percent come from either the town where the facility is or the contiguous towns. If you were picking for your parents right now, believe me you would want them near you. It is very difficult to manage a situation when you are having to travel distances to help with your parents or your in-laws.

Secondly, I heard one gentleman use "quaint" for 151. Now, that's tough for me, because in the same breath, he used "trash train" going by four times. That and "quaint" don't quite fit.

The other thing I would tell you is that I know that there will be a traffic analysis. I have mentioned at our own precinct meeting that while there will be 125 units, what I experience myself

is that the only driving that really goes on other than the workers coming and going to work, is that people move their cars to take advantage of free parking time outside on April 1st and move their cars back inside to pay for parking on November 1st. There's not a whole lot of driving going on from this kind of a facility. It's very minimal.

And the last thing I would say is we all sit here and talk about how it affects the town. This is something that should affect our town positively. We need these kinds of places. We will never have enough of them in ten years, and I think this makes a lot of sense and I hope you will vote for it.

THE MODERATOR: Okay, Mr. Freeman.

[Applause.]

THE MODERATOR: Let's go, folks.

Mr. Freeman.

MR. FREEMAN: Thank you, Mr. Moderator. Michael Freeman, Precinct 8. I think the Planning Board has done a magnificent job this time. The persistence of the petitioner has been unreal, and as Mr. Shearer said, if we don't accept it now, we'll never see it come back.

I am not speaking as Barbara Schneider did with regard to her parents; I'm talking for myself. I would like to stay in

Falmouth. I would like to stay in Hatchville. I live in Hatchville; I love Hatchville. My wife's family goes way back to the early 1900's in Hatchville. I would like to stay here and I may need that facility. And I think what's proposed is excellent and I would like to see it voted in. Thank you.

THE MODERATOR: Okay, Ms. Haywood, next on the list, and then Mr. Gould.

MS. HAYWOOD: Thank you, Mr. Moderator. I had a question at the Precinct 5 - 6 meeting because they had – CLSV had presented a plan with a lot of green on it. The conservation area is not delineated and now Mr. Bissler has brought up a question. This article is to rezone seven acres as a Senior Care Retirement District. Now, it is unclear to me, and I think we really need to understand clearly, so would someone please explain to me again what can happen to this seven acres zoned as a Senior Care Retirement District if for some financial reason or otherwise CLSV does not build this on this plot. Does that mean it can have a certain number of senior units built and part of this has to go into whatever the percentage open space is? What happens to this if this plan doesn't go through, please? Perhaps Mr. Curry can answer that, or someone else.

THE MODERATOR: Allowable uses in an SCRC.

MR. CURRY: Well, Nancy, let's say for the sake of argument the plan doesn't pass the Planning Board's muster or the Cape Cod Commission and they want to use uses allowed by right. They could have single family homes. They could have a medical office building. I believe they could also have a Class one or two restaurant, that's like a Coonamessett Inn. That's about it.

THE MODERATOR: Okay, Mr. Gould.

MR. GOULD: Daniel Gould, Precinct 6. I'll be brief. I'm not nearly as old as Mr. Shearer, but I have – it's true, no one else is either, but –

[Laughter.]

MR. GOULD: – I share his concern as I age. But in all seriousness it seems to me that part of the problem up here is the problem we all have in Falmouth, is we still have a large population. When I moved in here, I think there was only one traffic light in the entire town and there was nothing out there. It seems to me that it's inevitable that there are going to be stop lights out there and perhaps that will even decrease some of the accidents, as much as I respect the viewpoints of some of my town meeting colleagues. So it may even slow people down if we have more lights there.

But, by and large, I – and I may be naive, but I'm trusting that there's been enough homework here for a facility that

has more benefit than not, and again I hate to give credit to Mr. Shearer, but I think where else will some place go, we have a need for this in this community. I took care of my mother for seven and a half years on a daily basis and was fortunate to have good facilities around when we needed it, but I hope we can vote this in. I think it's going to be a positive issue for the Town, thank you.

THE MODERATOR: Ms. Lichtenstein.

MS. LICHTENSTEIN: Thank you. Leslie Lichtenstein, Precinct 8. Cheryl addressed our meeting when we started tonight and said that we were now a Preserve America town. I would like to remind Town Meeting that Falmouth was originally an agricultural village, okay, except for sea coast. Hatchville is the last bastion of that. I am not against a Senior Care Facility at all; yes, we need them. However, what we are losing more than anything else in this town is agricultural land. We've done a great job with our beaches, with saving conservation land, with saving wetlands. What we haven't done is save agricultural land. And we won't have any left. If we're going to rezone a parcel like this, then we have to somewhere else in town rezone something else agricultural or preserve something else that's agricultural. Yes, we need senior care, but what is the cost? Think about the past and think about what you want Falmouth to be.

Remember our bumper sticker: "Isn't Falmouth Nice?"

We don't want to see a bumper sticker that says, "Wasn't Falmouth Nice Once?" Thank you.

THE MODERATOR: Mr. Nielsen.

MR. NIELSEN: Pete Nielsen, Precinct 5. I'd like to remind all Town Meeting Members that this piece of property, this parcel if it's rezoned, if for any reason it's not a Retirement care facility, that something else could go in there. It could be anything from the Cape Cod Commission rejecting it or somebody not deciding where the wildlife corridor is going to be. They could just pull it and a restaurant could go in there.

Second of all, I'd like to ask, is this a 31 acre parcel or is this a seven acre parcel or is this a nine acre parcel? What is it, right now, today?

THE MODERATOR: There's a total of 31 out there and they're asking to zone the seven.

MR. NIELSEN: Okay, if this is a 31 acre parcel, I don't understand how we can rezone something that doesn't exist. We're asking to rezone seven acres as it's shown here, but that doesn't exist.

THE MODERATOR: That's what we're here for tonight, to see if we want to create it.

MR. NIELSEN: No, you're asking to rezone seven acres, and the seven acres does not exist.

THE MODERATOR: Well, by my math, if you take 31 and take out seven, it exists within the 31.

Mr. Curry, do you want to explain some zoning, here? Does the seven acres exist within the 31 acres?

MR. CURRY: Peter, the parcel exists as a 31 acre parcel. On top of that 31 acres, this Town Meeting may decide tonight to rezone a portion of it from Agricultural AA to Senior Care Retirement District. There are no other legal parcels up there. You'll see that 31 acres only. And you're essentially creating what's known in planning-speak as a split zone. Some of it's going to be zoned AGAA, and some of it's going to be zoned – perhaps – Senior Care Retirement District some time tonight.

MR. NIELSEN: I personally would like to see this 31 acre parcel go through the Planning Board as an approval not required to divide this property up in to the seven acres, the 15 acres, whatever they want to do, then come back to Town Meeting and they can take that seven acres that they have just created out of the 31 and we can rezone that. Right now, we're asked to rezone something that does not exist. Thank you.

THE MODERATOR: Ms. Putnam is next on the list.

Mr. Wilber, you're on the list. And then Ms. Valiela.

MS. PUTNAM: Rebecca Putnam, Precinct 9. I have several questions. Having a father in law that his family is helping to take care of him in a facility in Maine, yes, these are needed. I understand, I see families go through this constantly with selling real estate for families that have to provide for those family members. And the costs are extremely expensive and we are on the Cape; it is an expensive place to live. Retired, not retired, you know, with families. My question is how much affordables are going to be deemed in this facility out of the 125, because we need them to be affordable for some people. Not everybody has great sums of money to spend.

And my second concern is track record of this company that they're going to have come in and run this place. I mean, you know, you want your family members to be taken care of, you want them to be safe; you don't want to have issues and have us have an albatross around our necks that, you know, here we have somebody in here running a company – because, it is a company and everybody deserves to have the right to make money and to run a business, but this is a health care business and we need to be concerned for our residents that they are safe and they are taken care of.

And I would want to see that if we rezone that seven acres that the rest of the parcel be deemed and left as open space.

THE MODERATOR: Ms. Thompson.

MS. THOMPSON: Good evening, Diane Thompson, Precinct 2. And to answer your question about the number of affordable units, there are a couple of factors involved. The Cape Cod Commission, if the project gets rezoned and ends up before the Cape Cod Commission, will require ten percent of the units to be affordable.

Now, we will be needing to negotiate with the Planning Board at the same time, because there is a provision in the Senior Care Retirement bylaw that talks about if you include affordable units you then potentially can increase your density. We have not gotten to that level of discussion with the Planning Board because we don't have the rezoning. So, that's one of the first issues that we'll need to address with the rezoning.

THE MODERATOR: Okay, Ms. Valiela. Microphone down here to my right.

MS. VALIELA: Virginia Valiela, Precinct 5. I have questions in three areas. Can I see the map that has the open space on it? Okay.

My first question has to do actually with the exit for the seven acres that are showed there as in more or less white, proposed. And you'll see where it comes out on Route 151. Henry Dick is absolutely correct that 151 is a very dangerous road and anywhere you have left hand turns in and out is indeed a killing zone.

You will see to the right, on the opposite side of the road, there's an indentation. That's Mr. Cavossa's contractor yards, with trucks coming in and out. And so my first concern is why this exit is not aligned with that exit, since I believe there is the capability of doing that, so that we can plan for deceleration and acceleration distances and so that you coordinate, if you eventually do get a light there, you coordinate activity at these two exits. So that's my first question.

If we're rezoning this so specifically so that it shows the exit in the location that it is now, it would prevent us from putting the exit any other place. That's my first question.

THE MODERATOR: I don't care. Just give her an answer.

MR. CURRY: Virginia, as I recollect, one of the reasons we chose that site was because it maximized the sight distances along the road, both in an eastbound and a westbound

approach because the design speed of that road, people go kind of fast.

MS. VALIELA: They do.

MR. CURRY: We don't ever envision there any kind of what's called a signal warrant's being triggered for a light, a traffic light. So we tried to maximize the area that you'll be able to see down the road in either direction if you want to make any kind of turning movement left or right.

MS. VALIELA: Okay, so you're not expecting any lights; you're expecting that it's just to be able to see it.

Through you, Mr. Moderator, to the Planning Board, were there any traffic studies done as to what the actual traffic would be?

MR. CURRY: No official study was done, Virginia, but I did do some quick calculations with regards to the possible turning movements and traffic in and out of the facility. Remember, the Planning Board has to make a finding that the traffic generated by a Senior Care Retirement community has to be no greater than uses allowed by right or special permit. And the use allowed by right is somewhere would be a 16 lot subdivision. A special permit use might be a hotel with a restaurant. But we're fairly conservative that you won't get a heck of a lot of traffic here and we're looking at

probably the equivalent of the 15 lot subdivision, which is about 150 trips a day, total, in and out of this facility, as a rough guess.

MS. VALIELA: 150 trips a day. Okay. Well, this transitions into my second concern. This parcel, going all the way back to the original developers in the 1980's wanted to make this area commercial. I think that there obviously has been a lot of work done to make it more clear that it's not going to be commercial, but we still heard what was allowed by right. So, my second question is do you have an actual written agreement with the Salmon family that if this is rezoned that's what's going to be built here?

MR. SHAW: Yes, we do. We have an agreement with the Salmon family that that's what we're going to go forward with. And, to answer an earlier question just real quick: we have spent over a year and a half working with them. We've looked at their facilities. We've looked at facilities that they manage. They actually manage a large section of the Pine Hills Senior Community they have up there. So we have done our homework, but yes we do have an agreement with them in place right now.

MS. VALIELA: Have you shown it to anybody?

MR. SHAW: We gave a copy to the Planning Board. It's a Memorandum of Understanding that was provided to the Planning Board at a public session.

MS. VALIELA: Okay.

All right, and then my third question has to do with the open space. Is that the sort of grey area that's around it? Or, where is the open space, supposedly?

MR. SHAW: Yeah, it's that area where your highlighter was that, if you see the arrow, it says Open Space 15 acres? Right there. So, that indicates, that grey-ish area, which is 15 acres, could be suggested open space, because the Planning Board will ultimately determine where that open space will be. We were trying to depict what 15 acres would look like, and we chose that area because you can see the Moraine Ridge Trail is in that area and the wildlife corridor to the south and the Ballymeade subdivision is 200 feet, so we protected that. That's why we chose to depict it that way.

But the Planning Board would have final discretion on where that would be.

MS. VALIELA: Does the open area include the electric easement and those two parcels that are owned by the Town, those are those two boxes?

MR. SHAW: No, it does not; those are outside of it.

MS. VALIELA: Those are outside of it; okay. And so the remaining nine acres that at some

point in the future might be used is the grey in the middle?

MR. SHAW: Yes, where the “AGAA” letters are.

That’s 9.2 acres.

MS. VALIELA: However the Planning Board could allocate something different for the open space; it doesn’t have to be what’s up there?

MR. SHAW: As long as it’s 15 acres.

MS. VALIELA: Okay. Thank you, Mr. Moderator.

THE MODERATOR: Okay, in the center, here, Ms. Asendorf. Microphone, yeah.

MS. ASENDORF: Lisa Asendorf, Precinct 8. I am all for this project. However, after hearing that there has not been a formal traffic study, I’m extremely concerned. Like many others, I drive the road every day. This isn’t just about me; this is about the teenagers pulling out into the road, having people staying in the Senior Care Center. Pulling out is impossible. Until there is a study, until there is a plan to have shoulder turns, like there are on MacArthur Boulevard, more succinct ingress and egress, I cannot vote for this project. Thank you.

THE MODERATOR: Mr. Putnam then Mr. Zavala.

MR. PUTNAM: Through you, Mr. Moderator. I’d like to ask the CLSV folks here that, I guess there’s a question of sincerity

here and I'm wondering why they haven't gone through the process further with getting the permitting done. Obviously you might want to have the property rezoned first, but it seems to me that you're going to satisfy the concerns of Town Meeting if you are further along in the permitting process to actually show us that there was a degree of sincerity here.

I think the reason why we keep coming back to this over and over again is that there is so many questions that are left unanswered that we really can't be sure that what we're being told is what's going to actually be the end result. So, the question again: why haven't you pursued this further so that there's something tangible that we can touch here, that we can hold onto and say Yes, we can see what the final result will be?

THE MODERATOR: Ms. Thompson.

MS. THOMPSON: Without – if I may. Again, Diane Thompson. Without the rezoning, the permits cannot even be applied for. I would say that after last April Town Meeting, we heard a lot of Town Meeting's concerns, and what you see is based on the concerns that we had. The plan that is before Town Meeting is an engineered plan. An engineer determined that seven acres is needed for 125 units.

As far as traffic, we did not do a traffic analysis,

however we obtained traffic information from the Planning office that demonstrated, as Mr. Curry just said, the traffic from the 125 unit Senior Care Facility will be very comparable to that of a 15 lot subdivision which is allowed as a matter of right on this particular piece of property.

I can tell you we have worked very hard with the Planning Board and the Planning staff to provide as much information as we possibly can to satisfy Town Meeting. We obviously satisfied the Planning Board and that was quite an accomplishment, you know? It takes a lot because rezoning a piece of property is very serious.

So, I don't know how to provide you with more information. With every question that we have been asked, we have given an answer. So, I don't know what questions have not been answered.

THE MODERATOR: Mr. Putnam.

MR. PUTNAM: Just a follow-up. So – and perhaps this is a question for Mr. Curry. If someone wanted to build a Senior Care Retirement Facility, would they necessarily have to have Senior Care Retirement District in order to do so?

MS. THOMPSON: Yes.

MR. PUTNAM: Could someone –

MS. THOMPSON: Yes.

MR. PUTNAM: I think the question was directed to Mr. Curry.

MS. THOMPSON: I apologize. I'll back off.

THE MODERATOR: Mr. Curry.

MR. PUTNAM: Could somebody come before the Planning Board or the ZBA and request a special permit to build a Senior Care Retirement Facility or would it have to be zoned for that before you could start a planning process?

MR. CURRY: That's why we're here tonight: it has to be zoned. They can't come to the Planning Board or the Zoning Board.

MR. PUTNAM: Okay, thank you.

THE MODERATOR: Okay, Mr. Zavala, and then anything new and I think we're almost – Wilber, you're next on the list.

MR. ZAVALA: Thank you, Mr. Moderator.

THE MODERATOR: And Ms. Muller, you're on the list, and Mr. Latimer's on the list. So let's make sure it's new, okay? Mr. Zavala.

MR. ZAVALA: Thank you. Ladies and gentlemen, as Falmouth's last representative to the Cape Cod Commission, I can

assure that every development of regional impact is tremendously scrutinized. Perhaps the most scrutinized of all is traffic, because of the very concerns that have been expressed here with regard to the life and limb. Scrutinized. And I can assure you that, on balance, the recommendations that the Cape Cod Commission imposes must be adhered to.

So, as we weigh the benefits and the detriments of this article, I know that earlier this year we were invited by members of the Board of Selectmen to find new non-tax-generating revenues, and with that I submit this article fills a number of needs. The needs of the aging, that includes you and me. The need for tax revenue. The need for construction jobs and the need for ongoing service jobs. These are all non-tax-generating revenues. I believe that, on balance, I will vote in favor of this article and I hope that you will join me. Thank you, Mr. Moderator.

[Applause.]

THE MODERATOR: Mr. Wilber, something new? Let's go, Mr. Wilber. And then Ms. Lowell's going to be next, so if we can stage a mic for Ms. Lowell.

MR. WILBER: Jude Wilber, Precinct 8. I'm a proud member of the community of Hatchville now -- or, as we call it out there, "Almost Bourne". And I travel the road. I travel a number of

the roads, there. I don't take 151 into town; I live only about a half a mile from this development and I've watched this parcel for over ten years.

As a member of the Planning Board, it was first suggested that we put a big old parking lot on there for the Steamship Authority. Well, that went nowhere. And then CLSV came to us with this proposal for a rather large rezoning, and that really wasn't to everybody's approval. And now they've come in with a very reasonable plan and it's a plan in good faith and it's a plan that's worked with the Planning Board.

Is there a specific traffic study? No. But Brian Curry's main expertise in planning is traffic. Why would we doubt Mr. Curry? Has he ever been wrong when he's put out a traffic number? I can't remember that he has.

So, I'm not concerned about a specific traffic study here.

It is a bad road, okay? We've already put lights at the craziest intersection on 151, and I suppose there are other lights to come to calm that traffic down toward 28, okay? That just seems to be the way it's going to have to be on that road if you don't want to have kill zones.

The other thing I wanted to speak to is this: preserving

Agricultural AA land, okay. I spent most of the '90's in the last century on the Planning Board with a whole Planning Board trying to preserve AGAA land in this town, and every effort we made was voted down. We wanted to set up an agricultural district that was going to be agricultural only. And everybody held onto their right to develop that land residentially, okay? That was the Town that did that. The Planning Board worked for years to establish an agricultural district and nobody bought it. Okay? And finally, one person in town, a farmer, Ron Smolowitz, walked into the Planning Office one night and said, "Having land doesn't make it a workable farm. You have got to allow us farmers accessory use in order to have a successful farm." And everybody on the Planning Board went, [smacks forehead] "Duh." Because Ron was right. Ron now owns Coonamessett Farm, okay? Coonamessett Farm is very successful.

I had the opportunity of working there all summer. I was the master pruner and weeder on Coonamessett Farm this summer. Ron subsidizes his farm with his Captain's License. He goes to sea for months each year at a very high rate of pay with his Captain's License to subsidize a farm that already has a bunch of ancillary uses, okay? He pays very low wages to the people that work on the farm --

FROM THE FLOOR: Point of order. Point of order.

THE MODERATOR: Okay, let's go. Come on.

MR. WILBER: My point here is you can keep that as AGAA and there's never going to be a farm there. There will never be a farm there unless there is a workable farm plan.

I highly support this. This is almost directly parallel to the CLSV process that we went through about five years ago by swapping land out there for a golf course and this and that and I can't remember what it was. The Town didn't like the amount of land the first time; we went back and haggled with the Planning Board and came back with a lot more land. This is the exact same thing. I strongly support this and I hope the town will vote this tonight.

THE MODERATOR: Okay, Ms. Lowell, something new? And then we're almost ready.

MS. LOWELL: Vicky Lowell, Precinct 1. I was on the Cape Cod Commission for the first five years and I think that it's a very important part of this proposal that it would have to go to the Cape Cod Commission. And even if they didn't do a Senior Care Retirement Center, the Town, because this is on a regional roadway, 151, they could make a referral to the Cape Cod Commission and they would have the power to turn down even a

by-right use if they didn't think the Town's interests could be protected, and we as the citizens of this Town could go and tell them what we wanted them to do, and they've very likely to – they like that kind of guidance and I think that's a real power of the Cape Cod Commission Act.

We haven't had because of the economy very many proposals going to the Cape Cod Commission, but this is somewhere where it really can do the job to protect the town's interests and I would love to see this land just stay open, but I think this is a reasonable proposal. It's residential. It's not an extension of the commercial strip. It is a change, but we've had tons of change in this town. Thank you.

THE MODERATOR: Okay. Something new?

FROM THE FLOOR: No, no. Question.

THE MODERATOR: Something new?

CHAIRMAN LATIMER: I began this, and maybe this will be the last comment on it. I just wanted to address one matter that was brought up earlier that the people at CLSV are in business. Everybody knows Calvin Coolidge's famous remark that the business of America is business. Less well-known is his comment also that capitalism can only be justified when it serves the public interest. And I think that's what the Planning Board has been

looking at here – we always look at when we look at the competing interests of business versus the public interest in zoning, and that’s exactly what we’ve done here.

The first two times these people came before us, we thought, “Well, this is a lot of business but not much public interest.”

This time around, we’re looking at this project with the understanding that we have with the developer here with their presentation of how they’ve been working with the potential operators for this facility with the scaled-down size of the rezoning, which means that any different use can only be on those seven acres. We understand that this gives us some confidence in that the public interest will be served here.

Now, business, as everyone knows, it’s risky. You put up your money and there’s no guarantees. And the same is true in planning. So, I mean, we have to work with these people on the same level. We have reached a point where we think they have made a proposal that we can live with, and they’re making a proposal that they believe they can live with, and it’s time to do something with this. Otherwise, what we’re going to see out here is 40B and we’re going to see a lot worse impacts than whatever they might want to do.

THE MODERATOR: Okay, this article, Article 12 as

printed, requires two-thirds vote. All those in favor of Article 12 as printed, signify by standing and the tellers will return a count.

[Pause.]

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

MR. HAMPSON: 47.

THE MODERATOR: 47.

In the first division, Mrs. Tashiro.

MRS. TASHIRO: 44.

THE MODERATOR: 44.

In the second division, Mr. Dufresne.

MR. DUFRESNE: 72.

THE MODERATOR: 72.

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

[Pause.]

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

MRS. TASHIRO: Three.

THE MODERATOR: Three.

In the third division, Mr. Hampson.

MR. HAMPSON: Eight.

THE MODERATOR: Eight.

And in the second division, Mr. Dufresne.

MR. DUFRESNE: 17.

THE MODERATOR: 17. By a counted vote of 163 in favor and 28 opposed, we have a Senior Care Retirement District on Route 151.

[Applause.]

THE MODERATOR: Let me share my thoughts with you. My goal here tonight, and to go a little after 11:00 if necessary, is to get us right up to the Capital Budget, at which time we will then adjourn and come back tomorrow night, pick up with the Capital Budget and try to call ourselves a half night tomorrow night.

So, if you can bear with me and focus on where we are, I'd like to get us to the Capital Budget. That brings us from Article 15 up to Article 19 and then we go home.

Article 15, this was held by Murphy –

CHAIRMAN FLYNN: No.

THE MODERATOR: Who held this? Oh, Mr. Murphy, okay.

CHAIRMAN FLYNN: Oh.

THE MODERATOR: The Board of Selectmen for the

main motion on Article 15.

CHAIRMAN FLYNN: Yes, Mr. Moderator, I move Article 15 as printed.

THE MODERATOR: Article 15 as printed. This is to authorize the Board of Selectmen to let or lease the Old North Falmouth Fire Station for a period of ten years or more. Mr. Murphy.

MR. MURPHY: Bill Murphy, Precinct 3. I'll be very brief. At precinct 3 meeting we had a couple of questions about this. The first question was is the station still in use?

THE MODERATOR: Not as a fire station.

MR. MURPHY: Not as a fire station.

THE MODERATOR: No. The North Falmouth Village Association, I believe, has the lease currently.

MR. MURPHY: That was one question. The second question, then, was if we gave the Selectmen the right to lease this, to whom are they going to lease it and how much, and the answer I got at the precinct meeting was: We don't know. And I guess I'm coming from the viewpoint of if we don't know, why are we doing it? We're not in the real estate business. Let's sell it and get some tax revenue.

THE MODERATOR: Madame Chairman.

CHAIRMAN FLYNN: Yes, Mr. Moderator. The Town has leased this Old Fire Station to the North Falmouth Village Association since 1979. The lease agreement at that time pretty much continues as it is today for one dollar a year. The Village Association pays all the maintenance. In 1979, when they actually leased it for the first time, they had to replace the electrical system and the furnace as well. And the renewal of the — they also have to provide liability insurance of up to a million dollars. The Town covers the fire insurance because it's appropriate as a Town building.

There's a clause in there that says that if the building is damaged to such a degree that the Village Association cannot support the costs for the repairs, that the building would then revert back to the Town. But that's the status of the lease.

THE MODERATOR: Okay. Mr. Hampson.

Mr. Hampson, before you start, I want to make an editorial comment directed towards that last question from Mr. Murphy. We worked, the Town Clerk, Deborah Siegel from the League of Women Voters, then Chairman Carey Murphy of the Board of Selectmen, to start rebuilding precinct organizations so that Town Meeting Members were able to go and to receive answers to questions that they had to prepare themselves to be

here at Town Meeting. And without putting Mr. Murphy on the spot to ask him who told him they didn't know, the Moderator would expect that the Planning Board, the Board of Selectmen, the Finance Committee and the Community Preservation Committee would send representatives to Precinct meetings that can answer the questions that a reasonable Board member could expect to be asked at those meetings. If not, put something in writing and send it to the precinct captain before the meetings.

We've done a lot of work to help the Town Meeting Members get their information before Town Meeting and I've gotten too many phone calls over the last two weeks that the questions could not be answered at the precinct meetings. I applaud the Town Meeting Members for attending those meetings and our Committee members for attending them; bring the answers to those meetings.

Mr. Hampson.

MR HAMPSON: George Hampson, Precinct 5. This will be an easy one. The North Falmouth Village Association and that old fire house is a gem for Falmouth. It's what we stand for for Falmouth. This is the president's message and I'll be brief. The outgoing president.

Through the efforts of NFVA, the North Falmouth

Village Association Board of Directors membership dues and the receipts of the 32nd Paul White Memorial Race, the Association was able to meet its charitable missions via donations to deserving families of the North Falmouth Village Elementary School, the Falmouth Service Center, the Avon Walk for Breast Cancer, the Falmouth Destination Imagination Contest for Talented Falmouth Fifth Graders, and Celebration of 2009 for the Falmouth Prom Students. Membership was maintained by the 300 Committee and the Coalition for Buzzards Bay.

A total of seven scholarships were awarded to high school seniors seeking higher education; four from the Village Association. And the amount of this, because of that road race, came up to \$4,000 total. We donate almost all the funds from that road race; it's a gem for North Falmouth and Falmouth in general. Thank you very much.

THE MODERATOR: Okay, any further discussion on Article 15? Mr. Dufresne.

MR. DUFRESNE: Just a point of information. Adrian Dufresne, Precinct 2. The Town of Falmouth has consistently leased the property in North Falmouth as we do – I think we have three properties in Woods Hole that the Town of Falmouth leases. Why this year a ten year lease versus a five year lease I think that

we've granted over the years without too many discussions, and I can go back 40 years that I've been in this room with the continuous lease.

THE MODERATOR: Ms. Harper.

MR. DUFRESNE: Why a ten year lease and would this affect anything with the Woods Hole leasing of I believe three buildings in Woods Hole?

THE MODERATOR: Ms. Harper.

MS. HARPER: Over the last several years, we've seen a lot of leases come before Town Meeting and we've taken that opportunity to modernize those and establish some benchmarks and baseline for the contribution that any of those leaseholders would make. We know that the ten year term allows us to memorialize that over a longer period of time to insure that the capital improvements to those buildings are made and this process would be in accordance with the Massachusetts Procurement Act, and would be publicly bid and the Board of Selectmen would have the opportunity to establish some baselines and there's no doubt in my mind that the North Falmouth Village Association will submit a very competitive proposal.

MR. DUFRESNE: I support the article. I think leasing this little fire station as we do the other buildings in Woods Hole is a

good thing and the best thing for us in the Town of Falmouth. I just thought the Town Meeting should have a clarification of why we went from a five year uncontested lease to a ten year request.

Thank you.

THE MODERATOR: Any further discussion on Article 15? Hearing none, the question will come on the main motion as printed. All those in favor, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[No.]

THE MODERATOR: The Ayes have it.

Article 16, held by the Board of Selectmen. Madame Chairman.

CHAIRMAN FLYNN: Thank you, Mr. Moderator. I move that the Town vote to establish a Stabilization fund pursuant to General Laws Chapter 40, Section 5 B, or any other enabling authority, to be known as the Renewable Energy Stabilization Fund, to be maintained by the Town Treasurer to receive and hold revenue received from the operation of Wind Energy Facilities or other renewable energy facilities, with the funds held to be available for further appropriation to pay for the notes and bonds issued by the Town for design, development and construction of wind energy

facilities or other renewable energy facilities, or to take any other action on this matter on request of the Board of Selectmen.

THE MODERATOR: Okay, you've all heard the main motion up there on the overhead as read by Chairman Flynn.

Madam Chairman, any further comment?

CHAIRMAN FLYNN: Nothing further.

THE MODERATOR: Any discussion on the main motion, Article 16, to establish a Renewable Energy Stabilization Fund? Hearing none, then the question will come on the main motion. All those in favor, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[No.]

THE MODERATOR: The Ayes have it and the fund is established.

Article 17. Article 17, Mr. Chairman.

CHAIRMAN ANDERSON: Mr. Moderator, I move that the Town vote to appropriate \$953,623 from Certified Free Cash to the Renewable Energy Stabilization Fund for the purposes of Article 17.

THE MODERATOR: Okay, the main motion Article 17: \$953,623 from Certified Free Cash to the Stabilization Fund.

This will require a two-thirds vote. The statute now requires two-thirds to put money into Stabilization and to take it out of Stabilization.

Mr. Chairman.

CHAIRMAN ANDERSON: In August the Town received \$1,010,623 in Renewable Energy Credits. Because the Town had no place else to put the money, it was placed in the General Fund. At the time the warrant went to print, the \$1,010,623 of Renewable Energy Certificates, or RECs, remained in the General Fund. Since Town Meeting cannot appropriate from the General Fund, the Town Accountant requested that the state certify these REC funds as part of the fiscal year '10 Free Cash, which is a source from which Town Meeting can appropriate.

On Wednesday, October 20th, the Department of Revenue notified the Town Accountant that they had certified the entire \$1,010,623 of RECs as part of the Town's Free Cash for Fiscal Year '10. Since Town Meeting has now established the Renewable Energy Stabilization Fund under Article 16, the Finance Committee has recommended putting \$953,623 of RECs into the Stabilization Fund.

The Department of Revenue has suggested that Town Meeting leave \$57,000 of the RECs in Free Cash to be

appropriated under Article 19 to make the first payment on the debt for the wind turbine. This debt payment is due March of 2010.

THE MODERATOR: Okay, any question on the money into the Stabilization Fund? Mr. Maclone.

MR. MACLONE: Mr. Moderator, Richard Maclone, precinct 4. If I'm not mistaken from what you just said, we can leave this money in Free Cash if we wish to, or we can put it into a Stabilization Fund, which requires a vote to get it back out, is that correct?

THE MODERATOR: Mr. Chairman.

CHAIRMAN ANDERSON: Yes, that is correct.

MR. MACLONE: And just way back when we started, you told us that we didn't have enough money to probably make it through the snow season without some problems. Is it wise for us to take this whole chunk of money and put it somewhere where we can't get at it with the Town Meeting when we may need it for some emergency purposes before next town Meeting?

THE MODERATOR: Mr. Chairman.

CHAIRMAN ANDERSON: The answer is yes to both of those questions. Yes, it is wise to move it into the Stabilization Fund. Yes, we are hurting for free cash, however the REC funds must be used for the purposes of the renewable energy. It's a very

limited purpose source of funds. It cannot be used in other ways.

MR. MACLONE: If our Town has an emergency coming up this winter –

THE MODERATOR: By law we can't use this money because we bought the credits and that's where the money came from.

MR. MACLONE: We can't use it in an emergency?

THE MODERATOR: Mr. Whritenour.

MR WHRITENOUR: I'd like to clarify that issue if I could just a little bit. When we initiated the renewable energy project, we specifically negotiated with the Massachusetts Technology Collaborative to create this payment so that we would have some adequate funding to get us over some of the initial ramp-up debt that's high at a time that we would not be generating the large amount of electricity that is going to turn a huge profit for the Town.

By leaving these funds in Free Cash, what you do is you jeopardize not having those funds available to support that ramp-up process. If you'll be patient with us, yes, the economy has been very difficult and the free cash resources of the Town have been limited, but what we need to do, it was part of the plan from the start to take this initial payment that we negotiated with the Mass.

Technology Collaborative, establish this fund and, moving forward, if the Town gets into too much of a bind, these are reserves in a Stabilization Fund that can be appropriated out. Any Free Cash that's used in the future needs to be appropriated out as well.

What our main concern here is not what happens during the rest of this fiscal year. These funds will be stable in a safe place. What you risk is that if the funds remain in Free Cash, they may not be available in subsequent fiscal years when you need that money to be able to appropriate it.

So, what we need to do at this Town Meeting, and it was part of our financial plan from day one, is we need to segregate the money at this early juncture that we're taking in from the renewable energy, and that way only Town Meeting can dole it out as needed, and they remain as reserves and the Town will be safe.

Having this million dollars in the Stabilization Fund is a very good thing and it's very wise and it provides much more protection than leaving it in Free Cash wherein next year it may be gone.

MR. MACLONE: So we can't – if we do have an emergency, we're going to have to call a special town meeting in order to get at our money.

MR. WHRITENOUR: You would have to have a

special town meeting to use Free Cash. Free Cash requires a town meeting vote. So if there's any money that's needed that's not in the Town Budget, you have to go to Town Meeting. And in a future Town Meeting, these funds are going to be safe in an account where the Town has access to those.

MR. MACLONE: Okay. I thought our Selectmen had enough latitude to bail us out of an emergency.

THE MODERATOR: No, the only emergency is the \$325,000 in the Emergency Reserve Fund, which you do in the April budget, and that's under the jurisdiction of the Finance Committee, which had a little meeting before we walked in the door this evening and they may some emergency transfers from that already.

MR. MACLONE: Thank you, Mr. Moderator.

THE MODERATOR: Mr. Hampson.

MR. HAMPSON: Mr. Moderator, I have to make a motion that we continue to finish Articles 18 and 19 beyond eleven o'clock.

THE MODERATOR: Okay, we go on beyond eleven o'clock to finish this article and Article 19. All those in favor of that motion, signify by saying Aye.

{Aye.}

THE MODERATOR: All those opposed, No.

[No.]

THE MODERATOR: It's the opinion of the Chair that the Ayes have it by a two-thirds majority.

Any further discussion on Article 17? Mr. Dufresne.

MR. DUFRESNE: I move the question.

THE MODERATOR: Mr. Dufresne would like to move the question. This is to close discussion. It requires a two-thirds vote. All those in favor of moving the question, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[No.]

THE MODERATOR: The Ayes have it and discussion is closed.

The question now comes on Article 17, to transfer \$953,623 from Certified Free Cash to the new Renewable Energy Stabilization Fund. All those in favor, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[No.]

THE MODERATOR: The Ayes have it by a two-thirds

majority and I so declare.

Article 18, Madame Chairman.

CHAIRMAN FLYNN: Yes, thank you, Mr. Moderator.

This is another wind energy article and you will hear as I read the motion that it is different than what you see in your booklet. So please bear with me.

I move that the Town Meeting vote to authorize the Board of Selectmen to petition the General Court to amend Chapter 200 of the Acts of 2007 as follows: deleting Section 5 in its entirety and replacing it with the following Section 5. Notwithstanding Section 53 of Chapter 44 of the General Laws, or any other general or special law to the contrary, the Town of Falmouth may establish a fund which shall be kept separate and apart from all other monies of the Town and into which shall be deposited all revenues from the operation of the Wind Energy Facilities authorized in this act and from any other renewable energy producing facilities which the Town is authorized by law to operate, and all monies received for the benefit of the wind energy facilities, any such other renewable energy facilities other than the proceeds of bonds or note issued therefore. Such receipts may be appropriated to pay the cost of operation and maintenance of wind energy facilities and any other

such renewable energy facilities to pay costs of future improvements and repairs thereto, to offset the other energy or energy- related expenses of the Town, to pay the principal and interest on any bonds or notes issued therefore, and for any other lawful municipal purpose. And further, that the Board of Selectmen is authorized to accept and agree to any other amendment to Section 5 which will enhance or carry out the intent and purpose of this article.

So the revisions to this special act will allow the town to establish a fund for all revenue generated by renewal energy facilities, and those funds will be appropriated by Town Meeting for the purposes that are described in Section 5.

THE MODERATOR: Discussion on Article 18 to establish a separate fund for our energy money to go into? Yes, Mr. Netto.

MR. NETTO: Joe Netto, Precinct 9. Mr. Moderator, I think to the Chairman of the Board of Selectmen if I may. Who would have control of the funds in this account? Would it still come under the purview of Town Meeting?

THE MODERATOR: Madame Chairman.

CHAIRMAN FLYNN: Yes, that's correct. The purview of Town Meeting.

THE MODERATOR: Any further discussion on Article 18? Yes.

MR. STETCHER: Bernie Stetcher, Precinct 3. I just have one question. At the very end it states that the Board of Selectmen is authorized to accept and agree to any other amendment to Section 5 which will enhance or carry out the intended purposes of this Article. I'm sorry, it's one sentence before that. I lost my place. "To pay the principal and interest of the bond. And for any other lawful municipal purpose." It seems to me that's sort of an open point there. They can spend it on anything, according to that. As long as it's a lawful municipal purpose.

THE MODERATOR: Mr. Duffy.

MR. DUFFY: The special act that we're talking about relates solely to the Town's Wind Energy and Renewable Energy Facility, so the lawful municipal purpose would have to be relating to that special law and those purposes. The last part of this, authorizing the Board of Selectmen to accept and agree to any amendments, is to take care of the following situation: after you enact this article here tonight, if you do, it then gets sent up to Boston to the Statehouse where our representatives will take it through committee process and take it before the House of

Representatives in the Senate. And it's quite possible that it will be identified at that point that some perhaps minor amendment might have to be made in the language to solve some problem that we haven't thought of here. And this simply authorizes the Board of Selectmen to agree to those changes. Everything must be related to the renewable energy special act and it's so focused.

THE MODERATOR: Okay, further discussion on Article 18? Hearing none, then the question will come on the main motion. 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 19. Mr. Chairman.

CHAIRMAN ANDERSON: Mr. Moderator, I move that the Town vote to appropriate \$57,000 from Certified Free Cash to Short Term Unexcluded Debt budget line item 01756-59925, Short Term Interest, for the purposes of Article 19 to be expended under the jurisdiction of the Town Treasurer.

THE MODERATOR: Okay, you've all heard the main motion to take \$57,000 from Certified Free Cash and put it into the Short Term Unexcluded Debt line item to pay the bonds and notes

for the energy facility. Any discussion on Article 19?

Hearing none, then the question will come on the main motion. 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 and this meeting will stand in adjournment until seven o'clock tomorrow.

[11:03 p.m.]

[Whereupon, meeting 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 9, 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 P. Tinkham, Notary Public
My Commission Expires:
May 14th, 2010

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