

**Vol. One of Two  
172 pages**

**COMMONWEALTH OF MASSACHUSETTS**

**TOWN OF FALMOUTH**

**ANNUAL TOWN MEETING**

**Lawrence School  
Lakeview Avenue  
Falmouth, Massachusetts**

**MODERATOR: David T. Vieira**

**TOWN CLERK: Michael C. Palmer**

**Monday, November 10, 2008**

**7:00 p.m.**

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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 that your attendance will be published in the Falmouth Enterprise.

[“God Bless America” played.]

THE MODERATOR: Okay, would all Town Meeting Members present please come forward and take your seats so we can establish a quorum. Our tellers this evening: in the first division will be Mrs. Tashiro; in the second division will be Mr. Dufresne; and in the third division will be Mr. Hampson.

Okay, let’s establish a quorum. All Town Meeting Members please rise for the establishment of a quorum.

[Pause.]

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

MRS. TASHIRO: 55.

THE MODERATOR: 55.

In the third division, Mr. Hampson?

MR. HAMPSON: 64.

THE MODERATOR: 64.

And in the second division, Mr. Dufresne.

MR. DUFRESNE: 97.

THE MODERATOR: 97.

By a counted vote of 216 we have a quorum and I call the Annual Town Meeting into session.

If anyone lost their reading glasses this evening and they need them for the warrant --

FROM THE FLOOR: Oh, oh!

[Laughter and applause.]

THE MODERATOR: Oh, come on up and -- I figured you might need that for the warrant.

I want to remind all Town Meeting Members that we're being broadcast live this evening on FCTV13, so please remember to identify yourselves each time you speak. I also want to recognize our sign language interpreters with us this evening, and Carol Tinkham doing our transcription. Again, if you could identify yourself each time you speak for the official record.

As many of you know, tomorrow is Veteran's Day. I hope all of you know that tomorrow is Veteran's Day, and most of our scout organizations in town are participating in that event, and the Girl Scouts will be here to present our flags on Wednesday night, however we were

unable to get one of our scout units this evening. So, at this time will you please rise and follow me in the Pledge of Allegiance.

[Pledge of Allegiance taken.]

THE MODERATOR: At this time, we'll have the Falmouth Town Band Brass Choir play the national anthem.

["Star Spangled Banner" played.]

THE MODERATOR: At this time, I'd like to introduce our new Associate Town Counsel Patricia Harris for the invocation.

MS. HARRIS: Thank you. Heavenly Father, may our meeting this evening be not only an exercise of 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 you to 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: Please remain standing for our moment of silence to remember all of our past Town Meeting Members who have passed since our last gathering, and also for John Ferreira, the former Police Chief of the Town of Falmouth who recently passed.

[Pause.]

THE MODERATOR: Our first order of business this evening will be our swearing in of new Town Meeting Members.

I'll make a few announcements before we do that. For those of you who haven't had a chance to see, the Town Report is in on the electronic version. The CD is available out there in the lobby. This includes not only our 2000 Annual Report but it also includes the years 2004, 5, 6, and 7, and a special bonus: the 1908 Town Report.

If we return on Wednesday night, we want to ask all Town Meeting Members and our guests that come to Town Meeting to remember the folks in our community during this holiday season by bringing some items for the Falmouth Service Center. The items that the Service Center is asking at this time of the year are: cranberry sauce, gravy, canned vegetables, stuffing, quick bread mixes, canned or fresh hams, frozen turkeys, whole chickens, fresh vegetables, pies and baked breads. So, if we're here on Wednesday night, we'll have a collection up in the lobby to help support the Falmouth Service Center.

Also with us this evening, some of you may have remembered we had a national and state election last week, and with us this evening is our new State Representative Elect Tim Madden. Tim, congratulations.

[Applause.]

THE MODERATOR: Tim will be taking the seat formerly held by State Representative Eric Turkington. Eric, thank you for all your years of tireless service to the town.

[Applause.]

THE MODERATOR: Mr. Clerk, would you call the roll for the swearing in of our new Town Meeting Members.

CLERK PALMER: Will the following people please stand:

Barbara Perry, Peter Clark, Weatherly Dorris, Virginia Gregg, Megan Jones, Catherine Bumpus, Thomas Peterson, Judith Stetson, Linda Whitehead, Sandra Cuny, Adrian Dufresne, Alice Dufresne, Joyce Johnson, John Magnani, Judith Magnani, Rebecca Moffit, Maureen Northern, Judith Rebello, Harold Crocker, Robert Donahue, Genevieve Henrique, Chester Krajewski, Mary Little, Kevin Lynch, Eddy Marks, Laila Freire, Charles Russell, Daniel Palanza, Scott Augusta, Cynthia Botelho, Maura Hanning, Richard Kendall, J. Michael Kinney, Ahmed Mustafa, Gary Schneider, F. Bradley Stumcke, Mark Woods, Peter Boyer, Carol Burgess, Kevin Callahan, Troy Clarkson, George Hampson, Patricia Johnson, Ray Rowitz, Jack Scanlon, Virginia Valiela, Terri Ann Medeiros, Elizabeth Gladfelter, Robert Antonucci, Martha Asendorf, Karen Bissonnette, Michael Duffany, Stephen Fassett, Mary Pat Flynn, John Netto, Paul Sellers, Daniel Shearer, Jayne Abbott, Joseph Briana, Paul Kanellopoulos, Steven Leaf, Matthew McNamara, William Peters, Charles Swain, Gail Sylvia, Margaret Szuplat, Margaret Finnell, Margaret Freeman, Michael Freeman, Helen Gordon, Sheryl Kozens-Long, Brian Losordo, Scoba Rhodes, M. Reginald Soares, Nason Swain, Susan augusta, Sally



Collinsworth [sic], Richard Goulart, Joseph Martinho, Carol Murphy, Joseph Netto, William Peck, John Turner, Pam Vidal and Richard Vitagliano.

Okay, all raise your right hand and repeat after me: I – state your name – do solemnly swear and affirm that I will faithfully perform the duties of a Town Meeting Member according to the best of my abilities and agreeable to the Constitution and the laws of the Commonwealth of Massachusetts and the bylaws of the Town of Falmouth, so help me God.

Congratulations.

[Applause.]

THE MODERATOR: 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 the Town Hall and every precinct in the town. Signed, George Morse, Constable.

At this time, I'd like to start with the dispensing of the warrant. Mr. Chairman.

CHAIRMAN MUSTAFA: 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 unanimous. 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 unanimous.

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 Town Meeting. So moved. 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.

At this time, I'll recognize the Planning Board for notification of

public hearing.

MR. VOLOSEVICH: In accordance with Chapter 40A, Section 5, Massachusetts General Law, and Article 43 of the Falmouth Zoning By-Law, a public hearing was held on September 30th, 2008 on Articles 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 for the November 10th, 2008 Fall Annual Town Meeting and all those who wished to speak were heard.

THE MODERATOR: Okay, thank you. If you could all turn to the back cover of your warrant booklet, we'll briefly go over the rules for Town Meeting.

Number one, 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.

Motions 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 are seven o'clock on the first night, seven o'clock on subsequent nights, and we'll close at 11:00 unless a motion to continue is made and approved by a two-third's vote of Town Meeting members.

We're going to begin this evening by utilizing the blanket vote. On the blanket vote, we'll go through the entire warrant article by article, paying special attention to its recommendation. Any article that is not held on the blanket will be adopted as

recommended as the official action of Town Meeting.

So, if you'd like to speak on an article or you'd like to contest the recommendation, just stand up and yell, "Hold"; we'll mark that article. When I complete going through the warrant once, I'll do a quick run a second time, give you a second shot at it, and then we'll entertain a motion to accept all articles not held on the blanket.

Article 1 to hear reports is a hold.

Article 2 is a hold. Article 3, unpaid bills, is a hold. Article 4 is a hold by the Planning Board.

Article 5, the recommendation is as printed, that the Town will vote to amend Article 30, accessory and temporary uses of the Zoning Bylaw.

MR. KINGWELL: Hold.

THE MODERATOR: Who's holding this one? Mr. Kingwell.

Article 6 is a hold by the Planning Board.

Article 7, to amend the first sentence of Section 240-199, "There shall be a Zoning Board of Appeals of five members and two associate members." This is cleaning up some language in the Zoning Bylaw based on the change from a three member to five member board.

Article 8. This is dealing again with the Board of Appeals. To

reverse the decision or order the Building Commissioner, it takes four members of the new board.

Article 9, dealing with special permits issued by special permit-granting authority shall require a current vote of four members of the five member board.

Article 10 –

MR. FLEER: Hold.

THE MODERATOR: Okay, that's a hold. Mr. Fleer.

Article 11 –

MR. SHEARER: Hold.

THE MODERATOR: Mr. Shearer.

Article 12 –

MR. NIDOSITKO: Hold.

THE MODERATOR: Mr. Nidositko.

Article 13 –

FROM THE FLOOR: Hold.

THE MODERATOR: Article 14, special permit business.

The recommendation is indefinite postponement. Article 15, rezone abutting properties; the recommendation is indefinite postponement.

Article 16, Town vote to appropriate additional sum of \$992,000 for the installation of a wind energy facility at the Wastewater Treatment Facility.

Article 17 is our capital budget; that is a hold.

Article 18, to appropriate the sum of \$75,000 from Certified Free Cash for the purpose of replenishing the Worker's Compensation Fund. Article 19, to appropriate the sum of \$5,000 from Certified Free Cash for the expenditures of updating the Code of Falmouth. Article 20, to appropriate the sum of \$25,000 from Certified Free Cash to contract for ongoing engineering and consulting services at the Gifford Street Department of Public Works site for groundwater monitoring and reporting.

Article 21, to appropriate \$956,316 under Chapter 86 of the Acts of 2008 as the state's share of the work under Chapter 90. Article 22, the recommendation is indefinite postponement, a sum of money for vehicle gasoline and vehicle diesel; Department of Public Works. Article 23, the recommendation is indefinite postponement for Water Department electrical account. Article 24, to appropriate the sum of \$38,000 from Certified Free Cash for the funding of the Wastewater Department Sludge Hauling account. Article 25, to appropriate the sum of \$50,000 from Certified Free Cash to Veteran's Ordinary Benefits.

Article 26, to amend the Town's Position Classification Plan; the recommendation is indefinite postponement.

FROM THE FLOOR: Hold.

THE MODERATOR: Hold.

Article 27, another amendment to the Classification Plan; indefinite postponement is the recommendation.

Article 28 is a hold by the Finance Committee.

Article 29; this is Community Preservation Committee to appropriate the sum of \$48,500 from the Community Preservation General Budgeted Reserve for the purpose of window restoration at the Woods Hole Public Library.

Article 30, to appropriate the sum of \$20,000 from the Community Preservation General Budgeted Reserve for the purpose of restoration of the Highfield Hall Ice House.

MR. SHEARER: Hold.

THE MODERATOR: Mr. Shearer.

Article 31, to appropriate the sum of \$25,000 from the Community Preservation General Budgeted Reserve for the purpose of conducting a shellfish habitat assessment of Eel River.

FROM THE FLOOR: Hold.

THE MODERATOR: Article 32, to appropriate the sum of \$21,000 from the Community Preservation Undesignated Fund Balance for the purpose of additional funding to complete the installation of irrigation equipment at the Sandwich Road Athletic Fields. Article 33, vote to expand the purpose of funds previously appropriated under Article 15 at the Special Town Meeting in April, 2005 for the purpose of conducting engineering surveys and placing boundary markers on Land Bank parcels to allow the funds to be applied to a variety of land surveys on open space



properties acquired with CPA funds or Land Bank funds.

Article 34, vote to transfer \$7,500 from Fiscal Year 2008 planning encumbered funds budget line item 01775-57799 to the Community Preservation Undesignated Fund Balance.

Article 35, to vote to transfer \$5,767 from Fiscal Year 2009 Health Insurance Budget Line Item 01914-51177, to the Community Preservation Undesignated Fund Balance.

Article 36, to see if the Town will vote to authorize the Board of Selectmen to grant an easement for the installation and maintenance of underground utilities and an above ground transformer together with appurtenant structures and accessory equipment to NStar Electric Company.

Article 37 –

FROM THE FLOOR: Hold, please.

THE MODERATOR: Hold. I didn't think that one was going to get by us.

Article 38, to see if the Town will vote to petition the General Court to amend Chapter 654 of the Acts of 1975, which establishes the Falmouth Historic District Commission. The recommendation of the Board of Selectmen is indefinite postponement.

Article 39, vote to amend Chapter 199, Article II of the Code of Falmouth, obstructions at intersections, by amending Section 199-2.

MS. FENWICK: Hold.

THE MODERATOR: Okay, Ms. Fenwick.

Article 40, to transfer \$50,000 from Certified Free Cash to fund the completion of a restoration design for Lower Bog in East Falmouth. The recommendation is indefinite postponement.

Article 41–

FROM THE FLOOR: Please hold.

THE MODERATOR: And Article 42, to recommend that the Board of Selectmen exercise its authority under Article 3, Section C35 of the Falmouth Home Rule Charter and conduct an investigation of the Falmouth High School renovation project. The recommendation of the Board of Selectmen is indefinite postponement.

FROM THE FLOOR: Hold.

THE MODERATOR: And Article 43 is a hold by the Finance Committee.

We'll go through real quickly one more time. I'm just going to call out by numbers.

Article 1 was a hold. Article 2 was a hold. Article 3 was a hold. Article 4 was a hold. Article 5 was a hold. Article 6 was a hold.

Article 7. Article 8. Article 9.

Article 10 was a hold. Article 11 was a hold. Article 12 was a

hold. Article 13 was a hold.

Article 14. Article 15. Article 16.

FROM THE FLOOR: Hold.

THE MODERATOR: Sixteen, hold.

Article 17 is a hold.

Article 18. Article 19. Article 20. Article 21. Article 22.

Article 23. Article 24. Article 25.

Article 26 was a hold.

Article 27.

Article 28 was a hold.

Article 29.

Article 30 was a hold. Article 31 was a hold.

Article 32. Article 33. Article 34. Article 35. Article 36.

Article 37 was a hold.

Article 38.

Article 39 was a hold.

Article 40.

Article 41 was a hold and Article 42 was a hold. Article 43  
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've all heard the main motion to approve the blanket vote. 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 1, to hear reports. Mr. Chairman. Notice of reconsideration, Mr. Chairman.

CHAIRMAN ANDERSON: Mr. Moderator, I hereby serve notice of reconsideration of all articles passed under the blanket vote.

THE MODERATOR: Okay, notice has been served.

Article 1, Mr. Chairman, to hear town reports.

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

THE MODERATOR: Okay, Article 1 as printed to hear reports. I have three committees on the list so far. The first will be the Falmouth High School Building Committee.

MR. JOHNSON: Mr. Moderator, I am Donald Johnson from precinct 4, Chairperson of the Falmouth High School Building Committee. Good evening. Our interim report is in the form of a one page narrative

and our current budget on the back of that handout. I hope you all have a copy. We will also show a few pictures of the renovated spaces which we are currently using.

We request that the full written report be read into the minutes of this meeting. I am sure there are questions that are not answered in our report and we wish we could answer them, but mediation to resolve a number of issues and litigation with ARCAD, our first architect, preclude us addressing them. To the extent possible, we will provide some information on those two items in the written report. Highlights of the written report include: the Memorandum of Understanding reached last spring has provided us guidance for the Committee as we move forward on this project. Teachers, students started this school year in the renovated portion of the building. We are occupying 168,000 square feet of new facilities.

The Building Committee welcomed new members Patrick Callahan and John Scanlan; they bring valuable resources to the Committee and have actively joined the process of resolving issues and bringing this project to a successful conclusion.

A negotiating team that includes Pat and John has been formed and is working hard weekly on resolving these issues and planning for the future.

Mediation with the general contractor to resolve issues and set

the path for completion of this project is underway. A trial date has been set for January 20<sup>th</sup> for the ARCAD litigation case.

On the financial picture of the total appropriation of 86 million, we have spent 51 million. We are expecting project completion sometime in the year 2010.

The next two minutes of pictures will provide you with a tour of the new facility, some of which are functioning as temporary spaces.

[Pause, during which there was a slide show.]

MR. JOHNSON: This concludes our report. To the extent that we can, we will attempt to answer some of your questions.

THE MODERATOR: Okay, any questions for the High School Building Committee? Mr. Nidositko.

MR. NIDOSITKO: Yes –

THE MODERATOR: Microphone, please.

MR. NIDOSITKO: Jim Nidositko, precinct 6. Will that court date – is that open to the public or is that a closed court session?

MR. DUFFY: The court session is open to the public in the Barnstable Superior Court.

MR. NIDOSITKO: Thank you.

THE MODERATOR: Microphone to my right, please.

MR. SWAIN: Rick Swain, precinct 7. My question is all the legal bills that we are incurring, are they included in what was appropriated

to build the high school?

MR. JOHNSON: Yes, they are.

THE MODERATOR: Any further questions? Microphone to my left, Mr. Maclone.

MR. MACLONE: Through you, Mr. Moderator. Richard Maclone, precinct 4. This was a bonded job, wasn't it?

MR. JOHNSON: Yes, yes.

MR. MACLONE: Now all the cost overruns and the problems, are we going to get the benefit of that bonding that we paid for?

MR. JOHNSON: John, would you answer that question?

MR. MACLONE: And how much of it will be covered under the bonding and where is the Town going to stand at the end of it?

THE MODERATOR: Mr. Scanlan.

MR. SCANLAN: John Scanlan. All the costs incurred for the construction project will be covered by the bond.

THE MODERATOR: Mr. Maclone, follow up?

MR. MACLONE: Yes, we had a major cost overrun on this that we had to vote for; how does that figure into the bonding? I mean, where is the town protected in the bond? And how much are they protected?

MR. SCANLAN: The Town is protected for all the change orders approved by the Building Committee for the full amount of the

change orders. It's a performance in the payment bond, so the Town is protected that the contract or the surety will have to finish the project if the contractor does not finish it and the bond insures that all the bills are going to be paid at the end of the project.

MR. MACLONE: You still didn't answer my question.

MR. SCANLAN: Okay.

MR. MACLONE: The question is that we had a large cost overrun on the job and will the bond cover any of that cost overrun so the taxpayers don't have to take it?

MR. SCANLAN: The cost overruns to the degree that they're approved change orders are covered under the budget. If there's costs over and above that incurred by the Town that are covered by the change orders, then the bond covers those costs.

THE MODERATOR: Mr. Duffy –

MR. MACLONE: Maybe I'm not being clear –

THE MODERATOR: Mr. Duffy.

MR. MACLONE: Sorry, Mr. Moderator, I'm trying to find out –

THE MODERATOR: We know. We have a couple of lawsuits that we're trying to –

MR. DUFFY: We've got a new system up here and I'm not quite sure how it works. Mr. Maclone, the bond that you're talking about is a payment bond and a performance bond. It's provided by the contractor.



Those bonds don't come into play unless a contractor is called into default, which has not happened yet. But we do have bonds in the event of a contractor's default. And it will cover the cost of completing the project.

THE MODERATOR: Okay, Mr. Krajewski.

MR. KRAJEWSKI: Chester J. Krajewski, precinct 3. As recently as yesterday this is something that came to my knowledge, and I'd like to know if there's any truth in this. Somehow, somewhere, something went awry and plumbing supplies to the amount of fifty or eighty thousand dollars, and they are not going to be used in this building and they are stored somewhere in this building. Is there any truth to that?

MR. JOHNSON: As a part of this project, there were shower units which were not installed and yes, they are stored at the present time. And when we are through with this project, we will be trying to offer them for sale.

THE MODERATOR: Okay, further questions?

Okay, thank you, Mr. Chairman. Thank you.

Cable Advisory Committee report, Mr. Lynch.

MR. LYNCH: Good evening, I'm Kevin Lynch, precinct 3 and a member of the Cable Advisory Committee.

THE MODERATOR: Folks.

MR. LYNCH: The Cable Advisory Committee, the Selectmen, the Town Manager's Office for the last year have involved in ascertaining

the process of the Comcast Cable license to prepare the license renewal negotiations which must be completed by December 29, 2009, almost a year away. The Cable Advisory Committee has had multiple meetings with town departments, Comcast, Falmouth Community Television and others to determine Comcast's compliance with the current contract. The Selectmen have also had public ascertainment hearings to the current Comcast license. The objective is to determine the town's future needs in the next ten year license. The quickly changing nature of T.V. and other electronics makes the future forecast difficult. The Selectmen will have their last public ascertainment hearing on December 1<sup>st</sup>, 2008, within a month. The next step will be to write the Request for Proposal to present to Comcast. Next slide.

The Cable Advisory Committee is seeking public input to the last ascertainment public hearing. You can write to Town Hall, and I hope you know the address: 59 Town Hall Square, Falmouth, Massachusetts, or email. Next slide.

We have an email address set up specifically for this, it'll be [cable@falmouthmass.us](mailto:cable@falmouthmass.us). Next slide.

On Wednesday November 19<sup>th</sup>, there will be a comment on Comcast live call-in television show on Channel 13. The Cable Advisory Committee will take live call-in comments on the Comcast current license, compliance and future cable-related needs. Next slide.

On Monday, December 1<sup>st</sup>, 2008, at 7:15 the Selectmen will have a public ascertainment hearing, the last one on the Comcast license renewal. The public hearing will be the last chance for citizen testimony on the Comcast license compliance and future cable needs for the next ten year license. The information will be compiled at this hearing and during the entire ascertainment process, which will result in a request for proposal to be sent to Comcast which will lead to the Selectmen negotiating a new licence. We encourage everyone here or in the town if they have comments, to submit them.

And, an aside, currently the Cable Advisory Committee is short three members; we'd encourage any citizen to apply for the seats on the committee. Thank you.

THE MODERATOR: Microphone here, please.

MR. STETCHER: If I'm not mistaken – Bernie Stetcher, precinct 3 – I think I read that Comcast is applying for rate increases, is that true? And does the town have any leverage on the rates at all?

MR. LYNCH: The town – in fact, the Commonwealth of Massachusetts regulates the basic rates for cable. Now, it's not the basic rate that Comcast calls it, it's basically the old Channels 1 to 24, something like that, the broadcast channels. Those are currently regulated by the state, and that's the only portion of your Comcast bill that falls under any type of regulating. Otherwise, we cannot affect that.

I will say that Comcast within the last year filed a petition with the FCC that asks that they no longer have the basic rates regulated because more than 15 percent of the customers in Falmouth have some other way to get cable, basically the satellites. They say there's a 15 percent penetration therefore they no longer have to comply with the state regulated rates. However, the town Cable Advisory and the Selectmen have petitioned the FCC to review that because we do not believe that they have that 15 percent competition here in Falmouth.

THE MODERATOR: Any further questions for Cable Advisory? In the back.

THE MODERATOR: Rebecca Putnam, precinct 9. Just one question: I'm wondering if anybody is considering asking Comcast about senior citizen rates. I hear that there are multiple towns here on the Cape who have negotiated senior citizen discounts into their contracts with Comcast.

THE MODERATOR: Mr. Chairman.

MR. LYNCH: The – what I can suggest to that is that's why we're looking for input to this renewal process. Within the next month we're taking testimony on what the needs are and I believe that's already come in in the future hearings and it will be a consideration. However, most of the time that we've been able to get Comcast to move on something is when they see that the citizens really want that. The more

input, positive input for senior rates, the better off we'll get in the negotiation process.

THE MODERATOR: Okay, any other questions? Okay, thank you, Mr. Chairman.

Chairman of the Finance Committee.

CHAIRMAN ANDERSON: Good evening, I'm Gary Anderson from the Finance Committee. My comments tonight will provide some context for the Finance Committee's recommendations on the financial articles in the warrant, how we'll pay for them, and gives some insight into how we might take advantage of an opportunity to limit the effects of the economic turmoil swirling around us.

At the spring town meeting, the Finance Committee sounded an alarm. We warned about expenses increasing at a faster rate than revenues and we warned that our rainy day funds remained at dangerously low levels. Today the chaos in our economy threatens state aid to towns and puts a strain on our financial stability. The recommendations in this warrant reflect our concerns for fiscal constraint, balanced with a reasoned perspective of what needs to get done and provides a view of where we need to go as a town.

Inside the front cover of your warrant there's a pie chart with revenue and expense numbers. After the warrant went to print, the Finance Committee received new information leading us to modify some of

our recommendations which affect these numbers. The expenditures we will recommend tonight now total just over \$3 million, and we'll provide more detail on those changes when we consider those affected articles later this evening.

It's important to understand how we will pay for all the requests and where the revenues are coming from. Let's start with the biggest number under revenues: borrowing. The revised number is \$992,000. Now, some of you may be wondering why the Finance Committee would recommend any additions to the Town's debt load when economic times are difficult. Our recommendations fund only one project through debt, and that's the wind turbine in Article 16. We recommended this project because it fits well with a key strategic priority established by the Board of Selectmen, and that's energy resources. And it also generates enough revenue to pay for itself. So, assuming that the wind turbine meets or exceeds its cash flow projections, no new taxes will be required to pay for debt service or operating costs.

The next revenue item to consider is Chapter 90 Highway Funds, amounting to just over \$956,000. This is for repair of town owned roads and is 100 percent reimbursed from the state. There's no increase in taxes to us.

Next is nearly \$115,000 for projects recommended by the Community Preservation Committee. This funding comes from dollars the

group has already set aside.

Next is \$143,000 from available funds. The two principal sources of money used here also already exist: the AFSSE government settlement fund and the Waterway Funds. Again, no new taxes.

The last item is Certified Free Cash, which will fund the remainder of the Financial Articles in the Capital Budget recommendations. This new number is \$847,382, and since free cash is basically money that wasn't spent from last year's budget, no new taxes are needed. Town Meeting can fund all of the Finance Committee's recommendations in this warrant without imposing any new taxes.

You may ask why we make such a big deal out of no new taxes? Well, last May the voters of this town approved three ballot questions which increased everybody's property taxes to fund the purchase of fire trucks and an ambulance, the completion of the high school, and money for the DPW to maintain our roads, bridges and sidewalks. 8,531 ballots were cast, and with the exception of the fire rescue equipment, the margins of approval were pretty slim, as you can see. The voters of this town are sending a clear message: taxpayers are stressed and are approaching the limits of their willingness to pay more taxes.

Future property tax increases outside Prop 2 ½ may be harder to come by and will require a substantial demonstrated need.

So, what does this mean for us as a Town on a go-forward basis? Well, let's return to that slide from last spring, the financial fork in the road. Some of you may remember it. We're always going to have all these options available to us. However, as I suggested last April, I doubt that the good people of Falmouth are going to find it acceptable to go down the path of doing nothing and allowing our wonderful town to deteriorate.

As I just mentioned a few minutes ago, there was no ringing endorsement for raising revenues even temporarily. And, let's face it, raising revenues is just a euphemism for raising taxes. And, whether they're temporary or permanent, it'll be very difficult to accomplish in this fiscal environment.

So, if the town is saying "No" to doing nothing and they're saying "No" to tax increases, it seems like the best option for the future is controlling or reducing expenses.

We all know it is difficult to embrace expense reductions through cuts in municipal services, but we may not be at the point where cuts are necessary. All of us are coping with new economic realities which have required us to become more aware and efficient in our own household budgets. Our town should do the same, and improve municipal services while saving money through increased efficiency.

Tonight, Town Meeting Members will have the opportunity to begin a journey toward identifying and creating efficiencies in the



department with the second largest operating budget in town: the DPW. Over a year ago, the Matrix Consulting Group presented their findings and recommendations from their study of the DPW. There's been concern expressed about spending \$30,000 for a study and then just putting it on a shelf. Ray Jack, the Director of the DPW, the Finance Committee, and town leaders have all been vocal in their support for many of the changes and efficiencies suggested in this report. Two of the key recommendations in the study are in this warrant tonight. One of them is the first item of the capital budget, a request to purchase management systems software and hardware. The second one is in Article 28: a recommendation to create a business systems manager position in the DPW. The Finance Committee strongly endorses both recommendations.

What does the approval of these two items give the town? My response is: a chance and a start. A chance to save money and avoid the more difficult and painful option of cutting services, the scenario that Barnstable, Harwich, Yarmouth and other towns throughout the Commonwealth are confronting. And approval of these two items gives Falmouth an opportunity to start a program of performance management and accountability. The learning we get from this model can then be applied to help increase efficiency and reduce costs throughout other Town departments.

The management software and hardware are the tools to

gather and process data, provide a means for scheduling work orders, tracking purchase orders and supply costs, monitoring equipment utilization and building repair projects, and to analyze man hours and job costs.

The business systems manager is the specialist who will use these tools to gather and shape the data into actionable money-saving information for DPW management decisions.

Many towns and cities throughout the United States have already implemented performance management and accountability programs. Here are just a few of them. I chose these examples to demonstrate that many cities and towns both big and small are using this model. It's clear that funding for municipal services nationwide is becoming scarce. Citizens don't want more tax increases and they're insisting that their hard-earned dollars be used efficiently. You, the taxpayers of Falmouth, deserve nothing less.

In closing, although our country and state are experiencing difficult financial contractions, with good stewardship of our town's resources we may be able to minimize tax increases and avoid painful service reductions. We must be cautious and fund those projects which address key needs and further our strategic priorities. And now is the time to take action, to invest in the people and the tools which will allow us to provide municipal services in a productive, efficient manner that is

affordable and sustainable for the citizens of Falmouth. Thank you.

THE MODERATOR: Any questions for the Finance Committee? To my right.

MR. STUMCKE: Brad Stumcke, precinct 4. You cite \$100,000 from the AFSCE funds that are going to be used. We usually got \$8.5 million. My question is, of that 8.5 million, after you use the 100,000, how much is left?

CHAIRMAN ANDERSON: I'm going to have to ask the Town Manager to respond.

THE MODERATOR: Mr. Whritenour.

MR. WHRITENOUR: There's approximately \$2 million of that funding that is left which is programmed for the Comprehensive Wastewater Management Planning and Design process.

THE MODERATOR: Further questions for the Finance Committee. Down here on my right.

MR. FOX: Jim Fox, precinct 2. It's a question – I held Article 16; is it appropriate a question now since he brought it up, or when we do the article?

THE MODERATOR: If it's a general question, you can ask it. If it's specific, we'll wait until we get to 16.

MR. FOX: Well, the question was is just basically the revenues that you are projecting that are savings, what was the cost of

energy you were basing those on?

THE MODERATOR: We'll hold that for Article 16, and we'll actually have a full schedule of the projection for that Article. Any further general questions for the Finance Committee?

CHAIRMAN ANDERSON: Thank you.

THE MODERATOR: Okay, thank you, Mr. Chairman. Are there any other town committees that would like to make a report before Town Meeting?

Hearing none, the question then comes on the main motion to hear 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 and the reports are accepted.

Article 2 is to see if the Town will vote to adopt the Town Meeting Presentation Guidelines as presented by the Town Meeting Rules and Procedures Committee. Since I serve as chairman of the Town Meeting Rules and Procedures Committee, I'm going to step down from the Chair and make our committee's presentation. Under statute, if I do that, the Clerk becomes the moderator, so I'm going to allow it to go that way. And I do have additional copies of the guidelines. Some folks at

precinct meetings said they couldn't find their copy mailed out with the warrant. So, if you could please stand as I come down to the floor, if you need a copy of the presentation guidelines, and Ms. Cuny, if you could help me hand those out. And I will hand over this Chair to Mr. Palmer.

MR. PALMER: Anybody want to change anything else while I'm here?

[Laughter.]

MR. PALMER: Okay, okay. Article 2, do we have a main motion for Article 2?

CHAIRMAN MUSTAFA: Mr. Moderator if I might, I move Article 2 as presented.

MR. PALMER: Thank you. David, for the presentation.

MR. VIEIRA: Mr. Moderator. I never thought I'd say that. Ladies and gentlemen, Town Meeting members, tonight is the culmination of a few years of strained eyes in the crowd. Folks that have come to our Rules and Procedures Committee meeting and members of our Rules and Procedures Committee that say, "You know, sometimes we just have trouble seeing what's up there on the screen." And we've asked folks to do handouts and to do things, so what we're attempting to do tonight is to present some general guidelines that we hope presenters and Town Meeting Members and Town department heads will follow in order to make sure that the information presented to this body is in its clearest form as

possible.

On the overhead right now you see the members of our Rules and Procedures Committee. Megan Jones serves as our clerk and we have representatives from each of the precincts. They're also listed in the front cover of your warrant.

The next slide shows what I hope will be a great guideline so that all of you can see what we're going to be presenting. Anyone have trouble seeing this?

FROM THE FLOOR: Yes, yes.

MR. VIEIRA: That is not what we want in front of Town Meeting as a presentation. That slide actually includes all of the slides that I will present tonight.

The Committee talked about developing guidelines versus developing a rule or a regulation, and the difference is the rules and regulating, somebody's going to have to give me a plug up there so I can unplug the laptop or the projector if you don't follow the rule or the regulation. What we're hoping to do is to have general guidelines that folks will want to have a presentation that Town Meeting Members can see and read, and will be able to follow those.

So, part of it was enforcement and part of it was not being too, too stringent, so we decided to go with the guidelines.

The second part is the work that the Committee did with the

Information Technology Department. You'll notice we have a screen tonight behind the podium. You'll notice that the colors on the screen – and you'll see this in a couple of other slides – the colors are much easier to see than they are on this mustard-colored wall. We are looking at whether or not we can have a screen potentially on a wall and on the front. We're also working with a new projector that we rented for this Town Meeting that's a higher lumen than the normal projector that we use. So, we've been working with the IT Department to try to look at the technical aspect of improving the presentations. And when we get to other presentations that have photographs, you'll see a big difference on the photograph on the screen versus on the mustard-colored walls. So I want to thank the IT Department for all the work you've done with our Committee in the last few months.

And basically this one page presentation guideline that we're recommending tonight, the draft where we started was a 12-page regulation from the Town of Stowe, Massachusetts. And we thought the last thing Falmouth needed was a 12 page regulation on overhead PowerPoints. So we boiled it down to one page. Our next slide.

So, we're asking in number one of our guideline that individuals that are looking to make a presentation, that you contact the IT Department prior to your Town Meeting and you make sure that they load the presentation onto the computer, make sure that the software works

out, make sure that the font styles don't change when they do those syncing. And we've put the phone number for the IT Department right on the guidelines so that everybody will know where to go.

We're recommending that the slides have three main texts. Again, it's a recommendation. The Arial, Times New Roman and Verdana.

These are text fonts styles that when you use them they retain their property, they retain their size.

I'm going to show you a couple of slides in a moment that use these guidelines, by having titles at 32 points, equal to or greater than. Bullets at 28 points, sub-bullets at 24 points, and then really asking folks that our background colors are contrasting with our font colors. Next slide, please.

So, here's a slide. Can you see me now? 32 points: we're saying that that should be a minimum to title off your slide. Going to 28 for bullets and 24 for sub-bullets. Next slide.

Contrasting. Colors. Having a dark background and a light foreground. Folks might be using a template slide, so making sure that that contrast exists in the template that you choose. Just another form of a dark background and a light foreground. Our next slide.

Graphs, charts, pictures and maps should have clearly visible titles. Now, we know that folks import data from programs like Excel, which create a chart or a graph for you, and the subtitles are all in there



and they get imported over, so sometimes those detailed charts and graphs are going to be difficult to see on the overhead when they're just imported into PowerPoint. So we're asking for those detailed charts and graphs if folks could make a handout, and make those available to Town Meeting Members. If we're looking at a 30 year debt schedule, could you please hand out the 30 year line item rather than having 30 years listed on the overhead.

Folks working on slide advancement with IT beforehand. You don't have a clicker up here, so either, "Next slide, please", or nodding, pointing. If you've got little things like the fire chief, you've got a truck that comes in in the middle with sirens, you know, when do you want the sirens to come in, working those out beforehand.

And the last one, which will hopefully make my job a little easier, is for folks to be able to rehearse their presentations beforehand and to try to be mindful of the length of your presentation and the clarity of your presentation. Sometimes folks will call me before town Meeting and say, "How much time do you think I should present?" I'll say, "I don't know, I think maybe ten minutes, or fifteen, depending on if it's a main presentation." And they'll say, "Okay." Then I come to Town Meeting and I sit at the podium and at the 20<sup>th</sup> minute of the recommended ten minute presentation, we're asking speakers to please speed up.

So, if you're going to have a time line, please practice

beforehand and know the length of your presentation. Next slide, please.

So, we're not looking at a regulation that we have to enforce; we're not going to shut the projector off if you don't follow these, but we are just trying to give you some guidelines to make your presentations clearer and easier for folks in this room to see. The folks at home don't have a problem because FCTV-13 now works with IT and they put the graphic directly on your television screen. But sometimes it's difficult in this room for us to see that.

So, at this time, I'll take any questions that Town Meeting Members may have.

MR. PALMER: Back here.

MR. VIEIRA: I was almost going to call on you, but.

MR. JOHNSON: Leonard Johnson, precinct 5. David, I hope you're going to print this in the Town Reports so we'll have an easy reference place to find it.

MR. VIEIRA: Good point.

MR. JOHNSON: I mean in the warrant, excuse me, in the warrant.

MR. VIEIRA: A couple of things. One that we talked about at the Rules Committee was in the warrant. We also talked about working with the Board of Selectmen's Office so that when a petition goes out, when anyone is getting ready to put an article before the Town Meeting,

that they get a copy of this with their petition. So, in the warrant booklet and also with the petitions. And we'll put it on the website, too.

MR. PALMER: Anybody else? Okay, the question comes on to adopt the Town Meeting Presentation Guidelines as presented by the Town Meeting Rules and Procedures Committee. All those in favor, say Aye.

[Aye.]

MR. PALMER: All those opposed?

[None opposed.]

MR. PALMER: The Ayes have it unanimous.

MR. VIEIRA: Thank you, Mr. Moderator. Thank you, Town Meeting Members. It's great to be back on the floor after ten years.

[Mr. Vieira retakes the Chair.]

THE MODERATOR: Article 3, unpaid bills. Mr. Chairman of the Finance Committee for the main motion.

CHAIRMAN ANDERSON: Mr. Moderator, I move that the town vote to appropriate the sum of \$3,341.22 from Certified Free Cash, to be expended under the jurisdiction of the Board of Selectmen for the purposes of paying unpaid bills from a prior fiscal year as follows: Counsel on Aging from NStar Electric \$400.82; DPW Highway, Cormier's Auto Service and Tire \$29.00 –

FROM THE FLOOR: [Laughter] Can't see it.

CHAIRMAN ANDERSON: Let me finish the motion –

THE MODERATOR: You just voted the regulation, so, or the guideline.

[Laughter.]

CHAIRMAN ANDERSON: Legal - Thompson West, \$300.25; Police - Tessco, \$25.40; Treasurer - First Southwest Company, \$2,280.75; Barnstable County Registry of Deeds, \$305.00.

THE MODERATOR: Okay, so we've had a few bills that are added to the list of what you had in your warrant booklet and the new total is \$3,341.22. Any discussion on Article 3?

Hearing none, the question will come on the main motion. 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 4 is a Planning Board article. Madame Chairman.

CHAIRMAN KERFOOT: First I would ask all of you to make a small change in the first line of the article. Change the Roman numeral to 3 and change the number in parens to 3. Then the Planning Board recommends and I move that the town vote Article 4 as printed with the change that has just been made.

THE MODERATOR: Okay, there's a reference here to Article 13 of the Zoning Bylaw; it should be Article 3; that's the only change in the main motion. Any discussion on Article 4?

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.

[None opposed.]

THE MODERATOR: The Ayes have it unanimous. Article 5, Madame Chairman for the main motion.

CHAIRMAN KERFOOT: The Planning Board recommends and I move that the Town vote Article 5 as printed.

THE MODERATOR: Okay, Article 5 as printed. This was held by Mr. Kingwell.

MR. KINGWELL: Jay Kingwell, precinct one. This article bothers me because it gives a great deal of liability as well as a great deal of authority to the Building Commissioner. For instance, the sentence begins, "The Building Commissioner may limit the time frame of said permit". Well, he could limit it to say 9:00 to 10:00 in the morning on Saturdays and months beginning with the letter R in them.

What bothers me most is the second part of the last sentence, "...or further restrict the activities subject to the permit as may be in the

best interests of the neighborhood or town.” So you’re asking the Building Commissioner, whoever he or she may be, and this is certainly not directed at the present Building Commissioner, but anybody, what is the best interests of the town. And why can one person decide? just to make for an example, I have a home printing business, and I’m printing stuff that is not particularly socially acceptable. Now, I’m not talking about adult language or adult publications which are covered under I think it’s Article 11, but things that express say a religious or a political viewpoint that is inimical to most of the people in town. This article as it is constituted would give the Building Commissioner the right to shut this printing operation down.

So, I would therefore move that we remove the sentence beginning, “The Building Commissioner may limit the time frame”, and then in the last sentence the clause beginning, “or further restrict” through “neighborhood or town”.

THE MODERATOR: Okay, so your amendment is to strike the third sentence in its entirety and the last half of the last sentence “or further restrict”.

MR. JOHNSON: That’s correct. I think particularly in the example I cited, you’re getting into First Amendment violations if this were to happen. And I don’t think you want to put the Building Commissioner in that position. And the only thing that can overrule him, by an article that’s

coming up, is a four out of five vote. Thank you, Mr. Moderator.

THE MODERATOR: All right, we have an amendment.

Discussion on the amendment. Mr. Latimer.

MR. LATIMER: Richard Latimer, precinct 2. I am a member of the Planning Board but I was not asked to speak by the Planning Board on this issue. I think the concern that has been expressed has been misplaced. If you read the article carefully, it refers to paragraphs A through E as being the criteria which the Building Commissioner must apply when he's making determinations of whether something is in the best interest of the town.

Furthermore, the concern expressly stated by this gentleman about the content of his publication I don't think is what this article is at all intended about. What this article is intended about is things in the operation of a business that are going to be inimical with their surroundings in the neighborhood that it's in, not what he's trying to say. And, besides that, he's got ample protection under the First Amendment for whatever he's saying, and any decision by a building commissioner that infringes upon his first amendment rights would be the subject of a big lawsuit against the Town where he'd probably be well compensated. So I would recommend voting against this amendment. Thank you.

THE MODERATOR: Further discussion on striking those two sentences.

Hearing none, then the question will come on the amendment.

All those in favor of striking the two sentences signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed No.

[No.]

THE MODERATOR: All those in favor, signify by standing and the tellers will return a count. This is striking the third sentence in its entirety and the second half of the last sentence starting at "or further restrict".

[Pause.]

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

MR. DUFRESNE: 28.

THE MODERATOR: 28.

In the third division, Mr. Hampson?

MR. HAMPSON: 24.

THE MODERATOR: 24.

In the first division, Mrs. Tashiro.

MRS. TASHIRO: 32.

THE MODERATOR: 32.

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

[Pause.]



THE MODERATOR: In the first division Mrs. Tashiro.

MRS. TASHIRO: 23.

THE MODERATOR: 23.

In the third division Mr. Hampson.

MR. HAMPSON: 45.

THE MODERATOR: 45.

And in the second division Mr. Dufresne.

MR. DUFRESNE: 63.

THE MODERATOR: 63. By 84 in favor and 131 opposed,  
the amendment does not carry.

Any further discussion on the main motion as printed?

MR. MCNAMARA: Thank you, Matthew McNamara, precinct  
7. Also chairman of the Zoning Board of Appeals. Home occupation by  
definition in our bylaw includes such things as the manufacture, provision  
or sale of goods and/or other services.

Currently in the Town of Falmouth we have absolutely no  
inventory of home occupations. Unless there is a pre-existing non-  
conforming structure or non-conforming lot, no special permit is required.  
So nearly anyone could have a home occupation, including the  
manufacture of goods, in a single family residence. In order to get a  
handle on home occupations, this article is simply asking that a permit be  
issued by the Building Commissioner.

It shouldn't change much right now. Anyone who doesn't typically have a complaint about their business or anyone that doesn't know that the business exists, it'll probably be approved. If somebody disagrees with the Building Commissioner's decision, it goes to the Board of Appeals as in any Building Commissioner's decision for a decision to either uphold or overrule the Building Commissioner.

But right now there is literally no knowledge of the number of home occupations in the Town. This article is simply trying to protect those folks who live in single family districts so that there isn't going to be a noxious home occupation that could result out of manufacture, provision or sale of goods. It's simply a way of trying to get a handle on this and I think both the Planning Board and the Zoning Board did not feel this was terribly onerous. The Zoning Commissioner already has similar powers in a great deal of areas within the Zoning Bylaw. Thank you.

THE MODERATOR: Okay, further discussion on Article 5?  
To my left, Mr. Maclone.

MR. MACLONE: Thank you, Mr. Moderator. Richard Maclone, Precinct 4. My problem with this article is when they reference A through E, there's probably a handful of people in here who know what A through E actually mean. And it's kind of cumbersome for a Town Meeting Member to really know what they're addressing in paragraphs A through E when we don't really know what it is. In the future, Mr.

Moderator, when they reference something like this, could we have a handout on it so that we would be aware of what we're voting for? And how will this also – if this bylaw is passed, how is it going to effect people with current home business operations? I feel right now, with the downturn in the economy there may be an upswing in home business occupations for people to feed their families. So, I would probably request that no further restrictions be made at a time like this on some people that could be trying to survive, and I would vote no on this article. Thank you, Mr. Moderator.

THE MODERATOR: Ms. Liechtenstein.

MS. LIECHTENSTEIN: Lesley Liechtenstein, precinct 8. I just have one question. This is that the Building Inspector can issue a permit. There is no monetary fee for a permit here. I know there are a lot of people in town that do have home businesses; not on a very large scale. If we suddenly see a \$500 business permit, that's going to severely impact anybody who might have a small business running in their garage. So, I'd just like to know what kind of a monetary fee is going to be attached to this.

We all know that nothing comes for free, and once we put a license or a permit, there's going to be some kind of a fee and then what happens to that fee in the future? They do tend to escalate. Thank you.

MS. KERFOOT: There is no fee associated with this. We could not –

FROM THE FLOOR: Yet. [General talk, laughter.]

MS. KERFOOT: Pardon?

THE MODERATOR: The comment was "Yet."

MS. KERFOOT: Oh. Well, you'll have to talk with your selectmen about that. But, as of right now, there is no fee associated with this.

THE MODERATOR: Mr. Dick.

MR. DICK: Where a permit is required, a fee will follow. Period.

THE MODERATOR: Mr. Shearer.

MR. SHEARER: I'd like to make an amendment, please. Oh, Dan Shearer, precinct 6. That there will be no fee for this at any time. [Laughter.]

THE MODERATOR: Okay, the amendment to include the words, "There will be no fee at any time"?

[Laughter.]

THE MODERATOR: Any discussion on the amendment?

[Pause.]

THE MODERATOR: I'm just being reminded by counsel that this is a zoning bylaw, but I'm going to take it. All those in favor of adding the words "There will be no fee at any time," signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[No.]

THE MODERATOR: It is the opinion of the chair that the Aye's have it and the language is added to the main motion.

Any further discussion on Article 5 as amended? Use this one right here, Mr. Jones.

MR. JONES: I feel there's a good chance we've now put an amendment that will make this un-approvable by the Secretary of State. For us to put legislation that says no fees in a zoning bylaw at any time, there's just no way the Secretary of State will approve this as –

THE MODERATOR: The Secretary of State can strike in part or in entirety the bylaw, so he can say that that clause is no good. Mr. Duffy, do you want to – isn't that correct, he can do in part or in entirety?

MR. DUFFY: Yes.

THE MODERATOR: Or, she now, right?

MR. DUFFY: Yes, the Attorney General approves bylaws and has the authority to approve a bylaw in whole or in part. And my comment about this being a zoning bylaw is that under our bylaws, fees are set by the Selectmen. So I don't know how this is going to go over, but we'll just submit it and see.

THE MODERATOR: Okay, any further discussion on Article 5?

Hearing none, the question will come on the new main motion.

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

[Pause.]

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

[Pause.]

THE MODERATOR: All those in the first division that are in favor, please stand again? Oh, hold up. Could you get a microphone, Ms. Tashiro? I can't hear you.

MS. TASHIRO: They are not quite sure in their minds if they're passing the amendment.

THE MODERATOR: Okay, we're not sure what we're voting on? Okay. The motion before the Town Meeting right now is Article 5 as amended. You've already voted to add the words no fee, so now you're voting to adopt Article 5 as printed with the addition of the no fee clause. Okay?

All those in favor – this requires a two-thirds vote because it is a zoning bylaw. All those in favor of Article 5 as amended, signify by

standing and the tellers will return a count.

In the first division?

MS. TASHIRO: 16.

THE MODERATOR: 16.

In the third division, Mr. Hampson.

MR. HAMPSON: 34.

THE MODERATOR: 34.

In the second division, Mr. Dufresne?

MR. DUFRESNE: 61.

THE MODERATOR: 61.

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

[Pause.]

THE MODERATOR: In the third division?

MR. HAMPSON: 35.

THE MODERATOR: 35.

In the second division?

MR. DUFRESNE: 32.

THE MODERATOR: 32.

The first division?

MS. TASHIRO: 43.

THE MODERATOR: 43, okay.

By a counted vote of 111 in favor and 110 opposed, the necessary two-thirds does not carry and Article 5 fails.

Article 6 is a favorite at many Town Meetings, the Senior Care Retirement District. Madame Chairman for the main motion.

MS. KERFOOT: First please open your warrant book to page 3, number 11. There is a small change here. It should read Section 240-65.4.A(2). With that correction, the recommendation by the Planning Board and I recommend and move that the town vote Article 6 as printed and corrected.

THE MODERATOR: Okay, the changes again in paragraph 11, we're just changing the section, there. So it's section 265.4.A(2). Discussion on Article 6.

MS. KERFOOT: I do have a presentation, Mr. Moderator.

THE MODERATOR: Yes, Madame Chairman.

MS. KERFOOT: I have a presentation. Falmouth has, as you know, a current Senior Care Retirement District which was voted by Town Meeting in November, 2002. It has never been used. The Planning Board brought a similar article before you a year ago. We listened to your comments at that time and subsequently held more hearings and meetings and revised the proposed bylaw to incorporate your comments. That is what you have before you tonight.

The Planning Board asks that you delete the current bylaw



and replace it in its entirety with what is in front of you tonight. We need this type of housing choice -- and the operative word here is “choice” – in town for our families, our friends, our neighbors and ourselves as we age and become less able to live on our own, taking care of our individual homes and properties.

The Housing Production Plan that was completed by the Planning Board and the Selectmen this year reinforced the growing demand for this type of housing choice. Next slide, please.

What I’d like to share with you is some of the demographic findings that are driving the need for a usable bylaw that encourages such development. If you look at the graph on the screen, it represents a percentage change in various age segments. You see that the youth segment is in decline. We’ve lost population in the younger, working segment; that’s the 20 to 34 age group. We see growth in the 35 to 54 age segment, with lesser growth in the 55 to 64 segment, and then you get into the retired segment of the population.

The 65 to 84 year segment can be further broken down into two parts, and should be for your further understanding. Ages 65 to 74 years has increased by 27%. That’s the earlier retired and aging group. Ages 75 to 84 years has increased by 56%. The latter group is starting to become frail. The frail elderly group of 85 plus has increased by 58.6%. These demographic percentages show aging trends. What it tell us is that

an increasing part of our population is becoming the frail elderly. That would be all of us as each year inevitably passes by, year by year.

If the elderly are to remain a part of their community, they need more choices where they can live out their years, where they can be safe and with the appropriate level of care and respect that they deserve. We talk about “they”; remember, it’s becoming “us”. Currently there is no room in the existing independent living units or the assisted living units in the Town of Falmouth. You or your loved ones would have to go elsewhere should you need any of these options now. May I have the next slide, please.

The article before you tonight allows a Senior Care Retirement Community to be permitted through the Planning Board Special Permit process. A project may be structured with independent living units, service-enriched assisted living units, skilled nursing care beds or a combination of these types of housing. For those of you who may not know what the differentiation is, this slide gives you the definitions of these various types of housing units.

Please remember, this is important, if you pass this recommended substitution for the existing article 13.1, you, Town Meeting, still has ultimate control. Before the Planning Board may permit any such project, a property has to come before you, a future Town Meeting, to seek permission for rezoning of that property to this zoning district. May I have

the next slide, please.

In order to be rezoned, a proposed Senior Care Retirement District must have at least 15 acres of land. The current bylaw requires 35 acres. My personal belief is that's one of the major reasons this has not been taken advantage of. Out of the acreage that is been rezoned, whether 15 or more acres, 65 percent must be set aside as open space. The only use of that 65 percent set aside into the future must be open space or recreation, which is consistent with Section 240-130 of our bylaws. For this illustration, we have used a 20 acre parcel. The percentage division allows seven acres to be used for buildings, parking and other development. So only seven acres of that twenty acre parcel may be covered by development. The remaining 65 percent, or 13 acres, must be reserved as open space. In recognition of the smaller parcels of land available for such development, the proposed bylaw change allows up to 1/3 of the land dedicated to open space to be located elsewhere in town. Again, for purposes of example, we have used a proposed 20 acre development with five acres to be located in another part of town. Next slide please, Bob.

You can see that five acre parcel has now been removed from the 20 acre parcel. What you have left is the seven acres that first was there that you can have developable. Then, on this particular property, you have eight acres of open space remaining. That five acres can be

moved to some other part of town. That is an advantage; it allows flexibility. It allows the possible expansion of existing open space land. It allows for creation of smaller village parks. It can be broken up for that five acres: you can have two acres one place, three acres in another place. So, there's a lot of flexibility there advantageous to the town.

This sort of thing is also advantageous for the potential developer. We all know the parcels are smaller that are available. May I have the next slide, Bob.

A large difference between the existing bylaw that we're asking you to change tonight and the one before you is design flexibility under the special permit. The Planning Board, as you can see from the slide, has a lot of design control to make sure that any proposal fits into the neighborhood. This means all the way from decisions on to the total number of units, whether or not the off site open space option will be allowed, the required setbacks and height of the units; that has flexibility there. The size and location of the structure on the property. Any accessory uses that may be allowed as part of this development, such as a bank, a hairdresser. There's control of the parking and its location.

In the prior bylaw and the one that's on the books right now, there was no definition for parking that might be allowed or where it could occur. We can allow for the phasing in of construction to help the impact to the neighborhood or for the financial concerns.

A density bonus which is now allowed requires an affordable housing component; we heard you on that one, that you wanted to see affordable housing. Next slide.

Slide seven, which is up there now, shows an example calculation for a density bonus. This uses a fifteen acre parcel, for example. To be eligible for a density bonus, the requirement is 15 percent of affordable units. It must be met. There has to be – that's number one and that has to be met.

In addition to that, there's a second component of this, and it has to do with sewage treatment. The bylaw requires tertiary treatment, but if the developer wants an increased density, they have to either have greater standards for treatment – which will be nine parts per million instead of the 12 that's currently required – or no net increase, which means they can treat other development in the area so that there would be no net increase to the nitrogen. Or, if available, they can hook up to the municipal sewage treatment system. Next slide.

Okay, as I said, we heard Town Meeting's request for an affordable housing component. This does not exist under the current bylaw. A density bonus is not a by-right addition, but must be allowed by the Planning Board. It requires that 15 percent of the units be counted toward Falmouth's subsidized housing inventory. If the developer cannot meet that requirement, then no density bonus will be granted and the

Building permits will allow for no more than the allowed six units per acre.

There was a question at some of the precinct meetings about whether any units other than the independent living units could count towards the subsidized housing inventory under the Department of Housing and Community Development's regulations. Be assured that the Planning Board will condition any special permit with a density bonus to require that the applicant fulfill all of the DHCD's requirements for the units to be counted in the subsidized housing inventory before a building permit may issue. If the applicant cannot satisfy DHCD's requirements, then there will be no density bonus and the project can move forward with only the six units per acre that's allowed.

DHCD's regulations and guidelines change frequently. This year alone, amendments were made on February 22<sup>nd</sup>, April 14<sup>th</sup>, June 25<sup>th</sup> and July 30<sup>th</sup>. A bylaw should not ever cite a specific state regulation when it is subject to that kind of change. The proposal before you includes the statement, and I quote: "Consistent with the requirements of the Massachusetts Department of Housing and Community Development for qualification of affordable housing units toward the town's subsidized housing inventory." In this manner, the local permit requires that the rules in place at the time are followed. Thank you.

THE MODERATOR: Okay, any questions or discussion? Mr.

Ketchum.

MR. KETCHUM: Thank you. Paul

Ketchum, precinct one. When I look at your example, the 65 percent as I understand it does not have to be developable land. So someone could have five acres of upland and 13 acres of cranberry bog or 13 acres of marsh and the 13 acres of open space would be considered that marsh?

THE MODERATOR: Madame Chairman.

CHAIRMAN KERFOOT: No, it all has to be buildable upland. Dry land. The wetlands, that sort of thing, cannot count.

MR. KETCHUM: But that can count as open space, and that's what you've defined it as.

CHAIRMAN KERFOOT: In the way our bylaw is open the calculations are based upon upland.

MR. KETCHUM: Upland.

CHAIRMAN KERFOOT: Upland –

MR. KETCHUM: Can you add that to this bylaw? Can we add developable –

CHAIRMAN KERFOOT: Can we add that it's upland?

MR. KETCHUM: Yes. It doesn't say upland here, as I understand it.

FROM THE FLOOR: Look at slide 12.

THE MODERATOR: Slide 12.

CHAIRMAN KERFOOT: Slide 12, please. No, no that's the wrong – okay, that's the one.

MR. KETCHUM: Thank you.

CHAIRMAN KERFOOT: So it refers to that in the bylaw so that answers your question?

MR. KETCHUM: I think so, thank you.

CHAIRMAN KERFOOT: Yeah, it actually refers to it by number in the bylaw.

THE MODERATOR: Okay, further discussion on Article 6. Down here to the right, Mr. Goulart.

MR. GOULART: Richard Goulart, precinct 9. Just a clarification. If five acres can be off site for open space, does the original 15 have to be contiguous? You say you need a minimum of 15 acres, correct? Does that 15 acres have to be contiguous?

MS. KERFOOT: Yes.

MR. GOULART: Okay, thank you.

THE MODERATOR: Ms. Fenwick.

MS. FENWICK: Judy Fenwick, precinct 1. Could you go back to the slide about density and the number of units with a density bonus? I had a question on that particular slide.

So, it says here that the standard density is 15 acres and you've multiplied that by six units per acre. But I thought of those 15 acres



that 65 percent couldn't have units on them.

MS. KERFOOT: This is the manner of counting the number of units that can be on it. It's not to be disbursed all over the property. Those 90 units would be on the 35 percent of the property. So it's a denser housing on lesser property.

THE MODERATOR: Okay, someone over here wanted a microphone, yeah.

MR. SCHMIDT: Yes, Edward Schmidt, precinct 8. I'd like to commend the Planning Board for this article on all the work they've put into it, but I do have a concern and I'd like to suggest an amendment, a very short, simple one. My concern relates to permitted business uses under section in my warrant here 240-65.3, it indicates among permitted business units: Bank, professional offices. This also would permit Class I or Class II restaurants. I'm concerned that once a property is rezoned into this Senior Care District, something changes and somehow the senior facilities are no longer economically viable, and somehow to me the wording of this article would then permit bank and professional offices, and that has not been defined. It would also include these restaurants and I'm told that a Class II restaurant seats as many as 265 people.

So, I would like to suggest an amendment to this section 240-65.3 on permitted business uses, and at the end of that section I propose the following words: "These permitted uses shall be restricted to residents

and employees of the SCRC.” What this does is permit facilities for residents of these communities to eat and dine. It also gives them convenient banking in their area, but it does not open up the entire zoning district to these alternate uses. Thank you.

THE MODERATOR: Could you read that again for us?

MR. SCHMIDT: Yes, certainly.

THE MODERATOR: “These permitted –

MR. SCHMIDT: These permitted uses shall be restricted to residents and employees of the SCRC.

THE MODERATOR: Okay, so this is in the third section, 240-65.3, “These permitted uses shall be restricted to residents and employees of the SCRC.” Okay. Discussion on the amendment, Mr. Latimer.

MR. LATIMER: Yes, I have to speak against this amendment. You know, we have zoning – we’re not talking about something that’s in a void, here. You know, we’re talking about trying to find parcels of land that would be suitable in what are now very different kinds of districts where there are very different kinds of uses. And it’s hard enough as it is. The reason we’re coming back to Town Meeting with this is because the first one the Town Meeting passed never got used because it was too restrictive.

Now, it’s unreasonable to expect that everything in this new district is going to be a senior care retirement community. There are going

to have to be other uses, and we agonized over this, you know, pretty long and hard as to how to do this in a way that's reasonable that doesn't restrict other uses unnecessarily. So, we came up with other uses which were compatible with the kind of district we were trying to create.

Now, is this going to happen like what's happened with our so-called agricultural districts, where, you know, it's hard to find a farm in Falmouth anymore because it's all housing? Well, I would hope that that would not happen because what we're trying to do is we're trying to enact a zoning change here that people will use to create these SCRC's, and if we get a few of them, well, then, that's all we're trying to do, is we're trying to get, you know, enough to meet the demand that's in this town and we don't need to tie up the rest of the land that happens to be in that zoning district once we've done that. So, I would vote against this amendment. Thank you.

THE MODERATOR: Dr. Clark. Mr. Latimer, if you'd just pass the mic to Dr. Clark, thanks.

DR. CLARK: With all due respect to – Peter Clark, precinct 1. Having spent some time in one of these with my parents, I think we should not get into adding language, here. For instance, the word "guests". And when I'm there visiting, I need to be able to eat. I might want to use the bank. I just think we ought to leave it alone and leave it to the Board to make those decisions.

THE MODERATOR: Okay, Mr. Dick.

MR. DICK: When we look across town and we see the veneer development we have all over town, it's pretty horrifying. For a long time – Mr. Dick, precinct 8. For a long time, we were going in the direction of increasing lot sizes as a way of reducing the impact and that turned out to be a really bad idea. This is a high density development with a lot of advantages, but one thing we don't want to create is a ghetto for our senior citizens, where this is where the senior citizens are and this is where the rest of us are. These provisions allow this unit – the SCRC to be integrated with the rest of the town.

So, for example, when we go down Main Street, we see a wonderful brick building that's been constructed which has residences on the upper floors and it has businesses that the town uses on the lower floors. So this provision allows the senior citizens – SCRC, I think it is – to be integrated with the town. So that people, ordinary people who aren't retirees, are going to be coming and going. It'll be a much more attractive place both for the town and for the senior citizens.

THE MODERATOR: Okay, Ms. Peterson.

MS. PETERSON: Hi, Laura Peterson, precinct 3. I for one was looking forward to my parents moving off Cape to a senior care facility. That was a joke.

But I looked this over and almost every section has “the

Planning Board may decide”, “the Planning Board”, “the Planning Board”, so I would like to respect Mrs. Taylor’s request for a place for our seniors. They’ve spent a lot of time on this. This seems like a very reasonable proposal and I think there are enough provisions in here that if someone tries to slip a fast one in, they’ll be prevented from doing so. So, I’d like to make – can we vote on it now?

THE MODERATOR: Well, we’re going to let Mr. Patterson talk because you’ve already made some comments. Mr. Patterson.

MR. PATTERSON: I was reviewing this article and it seems to me that paragraph 6 under 240-65.4 actually addresses Mr. Schmidt’s concerns, and I don’t see the need for the amendment, personally.

THE MODERATOR: Okay. The gentleman in the back of the auditorium, in the public section.

MR. MARTIN: Mr. Moderator, Craig A. Martin, precinct 9. Are we just discussing the amendment now or the article yet?

THE MODERATOR: We’re talking about the amendment for limiting permitted uses to residents and employees.

MR. MARTIN: Okay, so it’s strictly – okay. So, I’d like a chance to speak about the article itself when that time comes. Thank you.

THE MODERATOR: Okay. Hold the mic for one second. Is there any further discussion on the amendment? Okay, the question will come on the amendment to add the language, “The permitted uses shall

be restricted to residents and employees of the SCRC.” All those in favor of the addition of that language, 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.

Mr. Martin, do you want to talk on the main motion?

MR. MARTIN: Thank you, Mr. Moderator. I'm a little troubled by the one section of the article, and that's Section 11. There was reference – the presentation did mention that before a building permit would ever be issued, you'd have to – the developer, the proponent would have to show approval of the affordable units for the density bonus, but it doesn't say that in the article itself, and that's bothersome. It should mention that no permit will be issued until they prove that the state has recognized these affordable units.

And I'll tell you why it's so troublesome, because I know that assisted living units cannot be accounted by DHCD as an affordable unit. They will not recognize such. That essentially kills paragraph 11. Certainly in past town meetings we've discussed the importance of affordable units, and just recently, this week, in my own research, I find out that no, they can't be recognized.

Now, we are increasing -- as the gentleman earlier here just mentioned, this is a high density project. I do know that the Boston division of the Census Bureau counts all these units in our denominator for the affordable formula to reach ten percent. So these units will count as living residences but we can't get any affordable units in an assisted living center to offset that increase in living units. And that bothers me. That's a major component of this article, is how to get affordable units in there.

THE MODERATOR: Okay, further discussion. Ms. Valiela.

MS. VALIELA: Virginia Valiela, precinct 5. I support this article. Mr. Moderator, just for clarification, the way I heard the correction made to Section 11 by the chairman of the Planning Board wasn't exactly what I heard you repeat. So, just to make sure that the numbers are correct.

THE MODERATOR: Madame Chairman, do you want to go through it again to make sure I've got it right?

CHAIRMAN KERFOOT: It's section 240-65.4.(A)2.

THE MODERATOR: Yes, that's not what I said; you're correct. Good catch. 240-65.4.(A)2. Okay.

Further discussion on the main motion of Article 6? In the center, Ms. Shepard, and then we'll go over there.

MS. SHEPARD: Susan Shepard, precinct 1. Could we have some clarification on Mr. Martin's comment?

THE MODERATOR: Mr. Curry or?

MR. CURRY: It's my understanding that the Pocasset residences just north of us, there's about 83 units, they're all assisted living, and they are all on the SHI. But we will certainly abide by any rule that comes down from DHCD – and, as you know they change them often. The goal here is to get some affordable units and the Planning Board will go in that direction given the masters we got up at the state. But that's my understanding, they can be used.

THE MODERATOR: Okay, Ms. Vidal.

MS. VIDAL: Pam Vidal, precinct 9. On number 3, it says, part of the last section: "five acres of the required open space, whichever is greater, may be located off-site at the discretion of the Planning Board." I'd like that explained to me. It would be like me owning an acre of land and giving a quarter of that land over to some other place, but it's still mine. I don't understand that. I'd need that explained, please.

THE MODERATOR: Madame Chairman.

CHAIRMAN KERFOOT: Yeah. You're confused about how you can, say, remove a portion of land. But we're not really removing it. What we're saying is that if the developer in the example wishes to develop it to the extent of what would be allowed for a 20 acre parcel. Let's say he has only 15 acres on this one parcel and he wants to devote another five acres elsewhere, he would then have to purchase either a five



acre parcel or enough land to make up five acres that would then be given over to open space slash recreation usage. And it could be other places in town.

I don't know if that was your question?

THE MODERATOR: Ms. Vidal?

MS. VIDAL: Not really, no.

CHAIRMAN KERFOOT: Okay.

MS. VIDAL: Does that – that belongs to the units, then. Do people have to go off of the property to use that?

FROM THE FLOOR: No, no.

THE MODERATOR: No, it's a –

MS. VIDAL: All right, I'm missing it, I guess.

THE MODERATOR: It's like a mitigation, or.

CHAIRMAN KERFOOT: You could call it a mitigation or whatever you want, but it becomes part of the public inventory. It's open space. It could be added to open space that the Town already has, let's say there are two parcels that need that five acres to –

MR. VIDAL: I've got it.

CHAIRMAN KERFOOT: Okay.

[Laughter.]

THE MODERATOR: Okay, further discussion? Ms. Bissler.

MS. BISSLER: Hi, Wendy Bissler, precinct 2. Is there going

to be any criteria, the Planning Board, will they be looking at the value of this open space? Will there be any criteria? I would just hate to see a bunch of little pieces together that may not add up to much on their being cobbled together to equal five acres. You know, maybe — you would just think you would want to preserve land that is of some — you know, has some high habitat value rather than just pieces that aren't so valuable otherwise.

And I'm also wondering is there going to be any kind of conservation restriction on this land and who's going to own it. Will it be the Town of Falmouth or the developer? Thank you.

THE MODERATOR: Madame Chairman.

CHAIRMAN KERFOOT: [Inaudible.] Could you please put up slide 13. I believe that answers Wendy's question.

This section of our bylaws is mentioned in number 3, and that is what that section refers to. So, by reference, it will be whatever land there is there in conservation. Whether it's a removed acreage that's put somewhere else or whether it is part of the original acreage and stays as part of the original acreage for that development, it will be set aside and permanently conveyed to a corporation or trust owned by the owners of the unit within the development, and it's to be used only for recreational or open spaces or conveyed to an non-profit organization or conveyed to the Town, et cetera.

So, that's what controls it to keep it open.

And, the other part of your question is the Planning Board does not necessarily have to allow that if it's not in the interests of the town. Obviously the larger parcel – I would say obviously the larger parcel would be better, but it may be advantageous to do smaller pocket parks in the villages. So, we'd be looking at the advantage of the town; in other words, we would definitely be expecting to get something for what we are giving.

THE MODERATOR: Okay, Mr. Shearer was next on my list.

MR. SHEARER: Dan Shearer, precinct 6. In this same paragraph, I'd like to make an amendment. After it says "off-site", I'd like to add "in one location at the discretion of the Planning Board." We have seen little places all over town where people have given little bits and they're never taken account for. We don't know where they are. They're not locate-able. And I think it's very bad to have little pockets here and there. Thank you.

THE MODERATOR: Mr. Shearer, can we get the language again so we can get it clear, up here?

MR. SHEARER: Sure.

THE MODERATOR: This is for Section 3, correct?

MR. SHEARER: On Section 3. "...located off-site, in one

location, at the discretion of the Planning Board.”

[Pause.]

THE MODERATOR: Okay, the amendment is to add the words “in one location” after the words “off-site”.

Mr. Latimer and then Mr. Dufresne.

MR. LATIMER: Richard Latimer, precinct 2, talking again as a Town Meeting Member although I am a Planning Board Member who has put in a lot of time and effort on this article, as we all have. And I just would remind everybody that this is not primarily an environmental or an open space article. This is an article that we want to put in to create a senior care retirement complex, a district where these facilities can be located. We don't want to hamstring people too tightly. If somebody comes in with 19 ½ acres and they can't qualify because we have 20 acres, we'd like to be able to say, “Well, yeah, okay, find a ½ acre someplace and put in a pocket park.” That will get the primary objective of this article done and if they have a suitable ½ acre someplace that some other organization can use or the town can use, everybody wins.

Let's not tie people up with, you know, nitpicking over this. This is not an open space article. It's a planning article for a specific kind of district that is badly needed. Thank you.

THE MODERATOR: Mr. Duffany.

MR. DUFFANY: Mr. Moderator, Michael Duffany, precinct 6.

I'd have to take exception to trying to divvy this up and the way that Mr. Shearer would like with just one extra piece and say that a lot of the beachfront property that we have and that we've acquired over the years has been very small pieces. We just acquired the Haddad property, which was not a total five acre piece. We've – after Hurricane Bob, we acquired a number of pieces along Surf Drive that were either purchased or they were – say they were conveyed to the Town in very small parcels. So, I think there's a lot to be said for leaving that open, and I'm sure that the Planning Board will use its discretion before it allows such a permit to be issued.

So, I would urge that we vote against the amendment.

THE MODERATOR: Okay, Mr. Shearer, did you want the floor again? Mr. Shearer?

MR. SHEARER: I'd just like to point out that Mr. Latimer's idea was one place, and also I believe we said beaches and so forth would not be permitted. So, that would not help. Thank you.

THE MODERATOR: Any further discussion on the amendment? Anybody on the amendment? Yes, go ahead in the back, left. Ms. Putnam.

MS. PUTNAM: Rebecca Putnam, precinct 9. Ms. Kerfoot had answered Ms. Vidal's question by saying that that land would be Town land originally and now Section 240-130 states that it would be permitted

to the developers – or to the unit owners of the senior housing facilities. Which is it going to be? Because if this is going to be off-site open space, these people will have to travel to it to enjoy it.

FROM THE FLOOR: No.

THE MODERATOR: I think it's one of the many options listed up there, right? There's a list of options up there; one of them is the trust of the –

CHAIRMAN KERFOOT: Right. There is that list. If it is on the property, obviously the owners of the property would enjoy that. If it's off the property, there are many other options as to how that can be conveyed.

THE MODERATOR: Okay, we've got the amendment for the one location that Mr. Shearer put forward. Any further discussion on the amendment? Then I still have a speaker list on the main motion.

Hearing none, the question will come on the amendment adding the language on one location. All those in favor, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[No.]

THE MODERATOR: The opinion of the Chair is that the No's have it by the voice vote. The next on my speaker's list was

Mr. Hampson.

MR. HAMPSON: Mr. Moderator, ladies and gentlemen, I hope you will pass this tonight because a few of us might need this in the near future.

[Laughter.]

MR. HAMPSON: Thank you very much.

THE MODERATOR: Okay. To my right in the aisle.

MR. SCHLITZ: Ron Schlitz, precinct 8.

THE MODERATOR: Folks, come on.

MR. SCHLITZ: Can the Planning Board show me an inventory of potential parcels, please?

CHAIRMAN KERFOOT: Okay, the answer is no, we did not prepare for that tonight. I'm very sorry. Brian?

THE MODERATOR: Mr. Curry, did –

CHAIRMAN KERFOOT: I'll defer to Mr. Curry.

THE MODERATOR: Yes, Mr. Curry.

MR. CURRY: The last time we went through this exercise looking at potential parcels, I think the bylaw required 30 acres, and I think we went through that exercise and we found about 15 sites. That's the best analogy I can give you tonight. I don't have the specific number for 15 acres with a five acre set-aside.

THE MODERATOR: Mr. Magnani. Microphone for Mr.

Magnani.

MR. MAGNANI: John Magnani, the Director of the Senior Center here in Falmouth, and also the hopefully the person who gets the questions of the availability of senior residences, not only from the Housing Authority but also these independent living places for seniors. And, instead of sending them off-Cape, it would be wonderful to be able to say that the people who come to the Senior Center would be able to answer – be answered by saying, “Just contact the SCRC, which is right here in our own town.” I suggest and urge the voters to pass this.

THE MODERATOR: Okay. Mr. Martin, anything new? Mr. Martin.

MR. MARTIN: Mr. Moderator, Craig A. Martin, precinct 9. Because I think it truly is an important factor of this article, I'm going to clarify the clarification that was earlier made. There was a mention that Pocasset has countable, affordable units for the state. Correct. As a matter of fact, Provincetown has one location and Harwich does, as well. All three of those were recognized before the revised DHCD regulations. And one of the reasons they did these regulations and revised them was they had some complicated subjects in the past and that was how to recognize these assisted living units as affordable units. They decided: they're not going to. That is the revised regulations.

So, granted, there are some recognized in the state but they



were built before the revised regulations and recognized before. And I think this is an important factor of this. We're talking about potential housing for our aging population and certainly affordability is a crucial criteria when trying to get into these assisted living units.

Now, we're talking about the problem of perhaps sending our aging population to those off-Cape assisted living units or centers off-Cape. If nobody can afford them from Falmouth, what we're going to be doing is just welcoming the retirees from communities off-Cape to be living in here and causing further services, further costs and services.

So, I think affordability is a crucial element, here, and I find this article broken. And it's such a crucial element I believe we should not pass this article until we can get this worked out.

THE MODERATOR: Ms. Borden, you're next on my list.

MS. BORDEN: Meg Borden, precinct 7. I still have a problem with paragraph 3, and it's with the – with being able to have the open space requirement located off-site. I feel this is a huge difference since the original article that was passed where, was it 30 or 35 acres? Can anybody answer if it was 30 or 35?

MS. KERFOOT: 35.

MS. BORDEN: 35. So, we've gone from 35 down to 15. Well, I'm willing to accept that, but now we're saying that five acres out of that requirement can be in some other location? I would rather strike that

last sentence.

THE MODERATOR: Okay, we've already had two amendments on this article, so we're going to vote up or down. Any further discussion on Article 6?

Go ahead, something new? Go ahead, Ms. Poole.  
Microphone, please.

MS. POOLE: Diane Poole, precinct 9. Would preference be given to Falmouth residents for these areas and who is in charge of – are the developers in charge of renting out or leasing out these properties or is the Town?

THE MODERATOR: Madame Chairman.

CHAIRMAN KERFOOT: These are private enterprise.

MS. POOLE: So there would be no preference given to Falmouth residents over say people coming from off-Cape who wanted to?

CHAIRMAN KERFOOT: That is correct.

MS. POOLE: Okay, thank you.

THE MODERATOR: Okay, the – something new? Go ahead.

MR. SMOLOWITZ: Ron Smolowitz, precinct 8. Just a question, then: if five acres could be off-site and 15 acres is the minimum, does that mean that the district itself could be a ten acre parcel?

THE MODERATOR: Yes, that's the math.

CHAIRMAN KERFOOT: It would be ten acres that would be developed. We are trying to make this more usable, in recognition that there are much smaller parcels. If a developer can pull together 15 acres from an area by consolidating, that's wonderful. But, if that developer can't and there is a ten acre parcel available or a twelve acre parcel available, he would have to make up the difference to make that minimum 15 acres, and this is our way of making it more doable and benefitting the Town at the same time.

MR. SMOLOWITZ: I'm fully – I'm just trying to get a clarification. The parcel could be ten acres; it could have 80 units on it, as long as he buys five acres somewhere else and sets up tennis courts or something?

CHAIRMAN KERFOOT: It could if he can make up other components of this. If on that ten acres he wants to put 15 of the units as affordable, and those are the units that are ILU's, ALU's, it does not include the staff. If he can put on a not only a tertiary treatment system but an enhanced tertiary treatment system that would get the nitrogen down to nine parts per million, or if there's a municipal sewer available or if he wants to sewer surrounding properties to get it no net increase. That's something that the developer would have to determine to do to be able to get that increased density.

MR. SMOLOWITZ: Okay, so –

CHAIRMAN KERFOOT: That gets more difficult on smaller parcels.

MR. SMOLOWITZ: Right, but it could be a ten acre parcel with 80 units that have a state of the art sewage treatment system? That's a possibility?

CHAIRMAN KERFOOT: It could be, with five other acres somewhere else in town. That is correct.

MR. SMOLOWITZ: Okay, so in a residential area, he could also have – that ten acres could be the 60 units, let's say, and plus a large restaurant and a bank in a residential area. In other words, it's possible. It has to go through the Planning Board but it is possible?

THE MODERATOR: This wouldn't be a residential area. You would have to change the zoning to SCRC district.

CHAIRMAN KERFOOT: Correct. You would have to do that.

MR. SMOLOWITZ: Right. It'd be a little spot, a ten acre spot within a larger area that might be mostly recreational – residential.

CHAIRMAN KERFOOT: But you're reaching a little bit. Remember that of that 15 acres, only 35 percent can be developed; 65 percent must remain open.

MR. SMOLOWITZ: Well, but five acres of that is that 65 percent. So that could be somewhere else?

CHAIRMAN KERFOOT: Correct.

MR. SMOLOWITZ: So that would not be in that ten acres?

CHAIRMAN KERFOOT: That is correct.

THE MODERATOR: Okay, Ms. Gregg.

MS. GREGG: I would like to ask if those five acres, if separate, would be liable for property taxes. It says that it's in a trust owned by the owners of the development, but turned over to the Town. Now, are they liable for property taxes on that five acres?

THE MODERATOR: Madame Chairman.

CHAIRMAN KERFOOT: Definitely, I do not know the answer to that, but I believe it would be. But if it's turned over to Town ownership

—

MS. GREGG: The way it's written made me think that they would still be liable because it would still be owned by them, though managed by the Town or by the 300 Committee, or something.

CHAIRMAN KERFOOT: If it is still owned by the development, it should be taxable. If it is owned by — turned over to a non-profit group or the Town, it wouldn't be taxable.

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

MR. FOREMAN: Question that I hope will lead to a clarification, which is what we're voting on here is enabling this district to exist. However, it is not mapped anywhere in the town. If the Planning

Board, if a proposal was made to actually create one of these SCRC facilities, would the Planning Board come back to Town Meeting with a proposal to map that at a specific location? And then would Town Meeting have final authority –

THE MODERATOR: Absolutely.

MR. FOREMAN: – to approve or not approve?

THE MODERATOR: By statute, absolutely. Only you can change the zoning map; you as Town Meeting. Okay, anything new? Mr. Dufresne?

MR. DUFRESNE: Adriane Dufresne, precinct 2. I think the Planning Board has worked very hard to present a proper article to Town Meeting tonight and I would like to move the question.

FROM THE FLOOR: Yes.

THE MODERATOR: Okay. The question has been moved. I'm going to move it from a call of the chair. So we're going to vote on the main motion. We had two amendments that failed and we're now voting as printed with that numerical change in number 11. So, the main motion is as printed. This requires a two-thirds vote. 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  
Ayes have it by a two-thirds majority; I so declare. Is there --

[Applause.]

THE MODERATOR: Folks, hold on a second. Any  
challenge to the chair?

[None.]

THE MODERATOR: Okay, hearing none we'll be in recess  
for 15 minutes.

[Whereupon, a recess was taken 9:20 to 9:40 p.m.]

THE MODERATOR: All right, it's time to take the quorum  
count. Would all Town Meeting Members please stand and the tellers will  
return a quorum count.

[Pause.]

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

MR. HAMPSON: 65.

THE MODERATOR: 65.

In the first division, Mrs. Tashiro.

MRS. TASHIRO: 57.

THE MODERATOR: 57.

And in the second division, Mr. Dufresne.

MR. DUFRESNE: 101.

THE MODERATOR: 101.

By a counted vote of 223, we have a quorum and the Town Meeting is back in session.

Article 10. This article was held by Mr. Fleer. The Planning Board for the main motion.

CHAIRMAN KERFOOT: The Planning Board recommends and I move that the Town vote to approve Article 10 as recommended. And you will note, as an aside, that there is a change to that. There has been a change in the phraseology. So the change is on page 5.

THE MODERATOR: Okay. As recommended. The difference between the recommendation and the article is in the fifth line, the words "special circumstances" has been changed to "substantial mitigation". Mr. Fleer.

MR. FLEER: Thank you, Mr. Moderator. Alan Fleer, precinct 6. And you may remember, Town Meeting, this is very similar to an article that we had last spring that loosens up the setback requirements for curb cuts serving drive-thru establishments, and we defeated it last spring.

This year, it comes back to us – I mean, this Town Meeting, it comes back to us with a special permit provision. So, a few things you should probably know. First is that the Planning Board declined to sponsor this article itself and the recommendation was not voted on unanimously.

So, what about centerline offsets? Well, think about subdivision roads on say Sandwich Road or other places in town. Those



are supposed to be 300 feet apart and a lot of them aren't. And, you know, it's a pretty standard waiver granted by the Planning Board. In fact, I don't know of any request for a waiver of centerline offset for a subdivision road that's ever been denied.

Now we have substantial mitigation. Now, I don't really think that mixed use redevelopment really is any kind of substantial mitigation. Mitigation would be something like real infrastructure change. You know, extra lanes. You know, significant changes to intersections, et cetera. I think that consolidating curb cuts is just good site review planning. I don't think it's really any kind of substantial mitigation.

And so, what about special permits? Well, you know, I really can't think of a recent special permit application that's been denied in this town. So, you know, even though we have this very reassuring-sounding language, I don't think it is. I think that this special permit is just going to be one small little bump in the road on our way to many more curb cuts and many more drive-thru establishments on East Main Street and Davis Straights and Teaticket Highway and West Falmouth Highway and even Worcester Court, where it's already grid-locked at non-peak hours right by CVS.

You know, do we really need more of this?

There's another issue, too, and that I don't think that this is really an approvable bylaw. I'm not sure if the business at the hospital

lights is pre-existing non-conforming or not, but a lot of business are, and so they would have to come to the Zoning Board of Appeals for a special permit under 240-3C and a not more detrimental finding. Which would mostly look, presumably, at the addition of a drive-thru. So you would have that special permit and then you would also have a special permit from the Planning Board. This is exactly the same as our old site plan special permit that was turned down – turned away by the courts, which stated that we could not have two special permits from two separate special permit-granting authorities for essentially the same project.

So, what's the solution? Well, if we, you know, change the special permit-granting authority to the Zoning Board of Appeals, then we have a problem when people are applying for a special permit through the Planning Board for a business that is between 7,000 and 10,000 square feet. So this is really like a Catch-22, and I really don't see any way around it that you have two separate special permit-granting authorities with special permits for business use and then, laid over this, you have this extra special permit. I think it creates some large legal issues and when that happens the Town loses, the developer wins.

Now, if this development is actually going to be – this kind of drive-thru is going to be considered for say the hospital corners, which is the intention, I guess, of the applicant, do we really need a third drive-thru pharmacy in town? Do we really need it and do we really need it there?

Town Meeting has been very supportive in the past of preventing over-development at that intersection, and we need to continue to do that. The bylaws that exist have served us well and I don't think we should change it. Please vote against this article, thank you very much.

THE MODERATOR: Okay, further discussion on Article 10?  
Mr. Ament and Mr. Shearer.

MR. AMENT: Thank you, Mr. Moderator. Good evening, I'm Bob Ament; I'm a resident of precinct 1. I'm an attorney here in Falmouth. I'm mindful of the discussion earlier about presentation guidelines. I don't have a PowerPoint presentation; I'm just going to talk to you for a few minutes and I hope that the length and clarity of what I have to say is just about right.

I drafted the article that's before you, and Marilyn Fox, who lives in Falmouth and owns Cape Cod Bagel who's at the microphone in the back, asked me to speak about this article. And so did Eddy Marks, who is one of the bagel shop's steady customers –

[Laughter.]

MR. AMENT: Eddy sponsored the article.

And of course what we would like you to do is to follow the Planning Board's recommendation and approve the article. The current zoning bylaw does not allow a curb cut that serves a drive-thru for any kind of business to be within 300 feet of a curb cut for another drive-thru. This

article would give the Planning Board the discretion to waive the requirement by granting a special permit. But only when neither of the drive-thru establishments is a restaurant and where the Planning Board specifically finds there will be substantial mitigation that justifies the waiver.

Examples of mitigation might be improvements to the site such as redevelopment, consolidating existing curb cuts, reducing curb cuts, and it could involve much more mitigation as the Planning Board could require.

Now, in addition, the zoning bylaw provisions for special permits requires a Planning Board finding that the benefits from the project exceed detriments. And to get a special permit from the Planning Board you have to get five out of seven votes. Even if only five members are able to vote on the case, you still need – I'm sorry, you need – yeah, you need five of seven even if only five show up. You need five votes in that case.

A drive-thru window for a fast-food restaurant like a Wendy's or a McDonald's serves about 60 vehicles in the peak hour, and a Dunkin' Donuts window can serve around 100 cars per hour. When I read that recently, I said, "Can that possibly be right?" And I went back and I checked the traffic report that was submitted in connection with the East Falmouth Dunkin' Donuts that was recently approved, and that's right.

That report submitted to the Town said that there would be 137 vehicles going to the Dunkin' Donuts in an hour. That's 274 trips when you count in and out.

A pharmacy is different. The drive-thru window is only for picking up prescriptions. No other use. And there are only six to ten cars that use it in a typical pharmacy. Ten I'm told would be for a very busy pharmacy. The trips are to pick up prescriptions and therefore the trips are not elective car trips. Customers would either come to the same pharmacy if there was no drive-thru, or they'd drive further to another pharmacy. A drive-thru at a pharmacy does not increase traffic.

Customers using a drive-thru window for a prescription pick-up include elderly, disabled people, parents with children in the car who may be sick, sleeping, or just rambunctious. Others simply want the convenience of using a drive-thru especially in bad weather.

Now, drive-thrus for fast-food restaurants require long queuing lanes. Our zoning bylaw recognizes the difference already. You need ten stacking spaces for a restaurant, only three for other kinds of uses. And the fast-food restaurants approved more recently have all had significantly longer queuing, for up to 15 or even 20 cars, to be able to be serviced. That's restaurants. We're not talking about that, we're trying to distinguish between a restaurant and other kinds of drive-thrus, and specifically pharmacies, is what we're concerned about.

It's reasonable for the Planning Board to have discretion to permit a drive-thru for a pharmacy in a location where a drive-thru for a fast-food restaurant shouldn't even be considered. Now, the Planning Board supported this change this year by a five to two vote. They supported it last year. Last year, Town Meeting approved this by a majority vote but not by the required two-thirds vote. And the bylaw is different this year by discussing mitigation and by requiring a special permit to be approved.

Now, there are a number of locations in town where the ability to redevelop a site is affected by the existence of an establishment that already has a curb cut for a drive-thru. That is in a non-restaurant situation. This article, however, was submitted, as many articles are, by someone interested in a particular location in town, namely the redevelopment of the Cape Cod Bagel property and the adjacent Baker Monument property at the Palmer Avenue - Jones Road intersection.

The existing Bagel building covers almost 9,000 square feet, and that doesn't count the fenced dining patio. And it has second floor offices, it has about 13,500 square feet of floor area. Marilyn Fox sent to you a plan and description of what she would like to do. Not because you're voting on that site, but to give you an idea of what the impact of this bylaw could be. And her existing building doesn't conform to setback requirements from the street, and even though the building is only about

20 years old, it apparently wasn't very well constructed and it's in major disrepair. And the proposal is to raise that building and construct a pharmacy in virtually the same footprint, but conforming to setbacks this time, with no second floor, maintaining landscaping between the building and the street as now exists. And on the Baker Monument site where there are several old buildings, Cape Cod Bagel would erect a new bagel shop, better laid out, with somewhat fewer seats.

Now, all the curb cuts on Jones Road for both properties would be consolidated into one curb cut that would be located about 100 feet further away from the hospital lights than the existing Cape Cod Bagel curb cut. There's also the situation where presently there's parking that actually backs out onto Jones Road in front of the Baker Monument building. Instead, that would all be landscaped with a single curb cut in a better location. That will be an intersection improvement.

A traffic report indicates that the pharmacy and new bagel shop with three apartments above for work-force housing will have little traffic impact compared to what already exists: a whole bunch of businesses as well as a bagel shop with more seats and an underdeveloped Baker Monument property. There would actually be less traffic in the morning peak hour, very slightly more traffic in the afternoon peak hour, and there would be no change of level service for any intersection.

Now, no doubt the Planning Board would take a very good look at any traffic report. They'll take a very good look at the whole project. Whatever town permits are required I would think would get very careful scrutiny.

Now, Marilyn sent to all of you a description of the proposed redevelopment to explain why the zoning bylaw was proposed and to show the example of what it means. But this article doesn't change the zoning for that piece of property, which is already zoned Business 2. She doesn't need a zoning change. She could convert the building into a drugstore, but they'd like to have a drive-thru. If it weren't for the bank TD Banknorth across the street, then there would be no special permit requirement for a drive-thru. It's only because we have a curb cut already there for a drive-thru establishment, namely a bank, that we have a problem with the existing bylaw which was really intended to control development of fast food restaurants near each other.

The bylaw as changed will not allow a fast food restaurant with a drive-thru on that corner or anywhere else in Falmouth within 300 feet of any other drive-thru business. But it will allow the Planning Board to look at this redevelopment proposal to allow a pharmacy.

Again, the Planning Board has endorsed this proposal for the second year in a row and we hope that you'll give the Planning Board the authority that it recommends. Thanks.



THE MODERATOR: Mr. Shearer was next on my list.

MR. SHEARER: Dan Shearer, precinct 6. I was very pleased that Marilyn Fox had sent me this letter and I believe all of you got this letter as to what they planned to do, and to me it horrified me. But, first of all, I'd like to say it's a very bad precedent to change an existing bylaw which has been worked on hard for one property. I really am against this. I don't think we've looked at all the other implications that this could have in town and I hope everybody votes against it.

I do have one question, however, for Mrs. Fox, and that is: would she describe to me what a pharmacy is? What her – or somebody. Can somebody tell me what a pharmacy is? I mean, this is almost 10,000 square feet, that means it could be – is a Wal-Mart a pharmacy? Now, that's a good question that we're going to have coming into the front part of town if we pass this bylaw. We're going to have a 9,900 square foot building, big box store of a building, which is not going to be little Cape Cod. It's not going to be like the bank, it's not going to be like the thrift shop across the street. It's going to be like Hyannis.

I hope we vote it down. Thank you.

THE MODERATOR: Ms. Fox.

MS. FOX: Hi, Marilyn Fox. I'd like to respond to that.

Actually what we are planning is a one story building that will look like the bank and will look like the hospital thrift shop, and it will be very attractively

landscaped. Currently, you have a two story building that far exceeds the amount of square footage that will, you know, be replaced by. I mean, I hope that clarifies that.

THE MODERATOR: All right, Mr. Calfee, you're next on my list. Mr. Freeman, you're on my list.

MR. CALFEE: Yeah, I would like to speak in favor of this article. My legs aren't very good anymore and I use drive-ins, especially at pharmacies, and also banks. So, I'm in favor of drive-ins and if we can allow non – little, little use drive-ins like banks and pharmacies within 300 feet of each other, I think that would be fine. It's a good loosening up of the article that likes to keep restaurants apart from each other by 300 feet. That's a good idea.

This project that Marilyn has I think is going to be a good one. It's going to improve that location and cut down the square footage of the buildings that are there. So, I see that as a way to improve Falmouth, especially if she plants shade trees in the large area that's behind the buildings for asphalt that's going to be there.

So, this could be a really good project for the town. So I would encourage us all to vote for this article. Thank you.

THE MODERATOR: Okay, Mr. Freeman.

MR. FREEMAN: Thank you, Mr. Moderator, Michael Freeman, precinct 8. A lot of you people have traveled on Jones Road

coming from the hospital, coming off Palmer Avenue and going up to CVS.

Now, CVS is another story: Stop & Shop is up there, CVS came in and said they were a pharmacy; you go into CVS, maybe half of it is a pharmacy. The other half has got cards and gifts and all sorts of other things, food, et cetera.

Now we're going to the other end of Jones Road and we're going to close that off. We've already got the hospital traffic coming out and going and coming out of there, and then what happens is you're going to have both ends, the east end and the west end, that's going to be totally blocked and you're not going to be able to move up and down, particularly in the summertime on Jones Road.

I would suggest everybody considers that and votes against this article. Thank you.

THE MODERATOR: Mr. Stetcher to my left.

MR. STETCHER: I just have a point to – Bernie Stetcher, precinct 3 – to clarify in my own mind. I think she has a right to build by right on that property. If she wants to put a CVS in there – is that right, that she can do that? The whole question here is the curb cut and I think I'd just like to know if CVS would still go in there if there was not a curb cut there.

THE MODERATOR: Is somebody going to take it? Mr. Ament?

MR. AMENT: The main reason I've risen again to speak is just to make sure there's no misunderstanding by what Barney just said. And he mentioned CVS; there's no discussions going on between the Foxes and CVS to put a CVS pharmacy there. They'd like to put a pharmacy, but CVS is not involved in this and we just didn't want to leave that as a mis-impression.

The property is zoned B-2. If a pharmacy wanted to turn the entire existing building into a pharmacy at this time, then they could do that. There'd be some change of use involved where there's presently a restaurant there and other – some office space, but I think the zoning issues would be fairly simple to deal with if the existing building could be used, but it's not the right building and a better building, hopefully, will be put there, a better use of the site.

THE MODERATOR: Okay, Ms. Siegel, you were next on my list.

MS. SIEGEL: Debra Siegel, precinct 6. Mr. Fleer made reference to a previous lawsuit and I wonder if we could get some more information on that from Mr. Duffy, thank you.

THE MODERATOR: Mr. Duffy.

MR. DUFFY: I think what Mr. Fleer was talking about was a lawsuit some time ago where Mr. Fleer said that the court ruled that you could not have two special permits on a property. That's not what I

remember them saying. The court said that one special permit-granting authority cannot put a condition in a special permit that requires the permission of another board. That's not the same thing.

THE MODERATOR: Okay, Ms. Rabesa.

MS. RABESA: I'm sorry, I swore I wouldn't get up, but I have to. I am the only Planning Board member that voted against this last year, and I am one of the two that voted against it this year. And I feel we're getting off target. This bylaw, as Mr. Fleer said, will affect every part of this town. We can't focus on one site for this bylaw. And we talk about drive-thru drugstores or banks, but you know people can get really creative if they're given the opportunity.

I just had a recent conversation with a neighbor who has a brother who happens to have polio; he's had it all his life. And it's getting difficult for him to get around. And he happened to want to get a couple of bottles of wine, and he didn't want to bother to find out if a liquor store would deliver, so he was going to ask his niece to pick it up. Now, some business that might say, "Hey, we've got an aging population and you know it's difficult for them to get out of the car, maybe we could have a drive-thru liquor store," or a drive-thru dry cleaner. Why not come and pick up your clothes, you can give me the number, here's your clothes, there you go.

So, you know, let's think of what potential this could do – you

know, the harm that it could do to the town, not just think about one site.

THE MODERATOR: Mr. Ament.

MR. AMENT: I think that we should think about the disabled -

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THE MODERATOR: Folks.

MR. AMENT: – and the ability of people to go to places.

THE MODERATOR: Mr. Ament has the floor, please. Mr. Ament.

MR. AMENT: And that's really part of what this is all about. But, in addition, any idea that somebody comes up with for a different type of drive-thru, we're only talking about uses that would be allowed in business districts, uses that would be allowed without a problem with a special permit if it weren't for the fact that there was another curb cut nearby. We're talking about only curb cut establishments that probably don't create much traffic, and we're requiring a special permit, a very thorough review before anything is allowed.

If it turns out that special permits are required from the Board of Appeals and the Planning Board, then there'll be even that much more review for any project that requires that.

THE MODERATOR: Mr. Krajewski, you were next on my list.

MR. KRAJEWSKI: Chet Krajewski, precinct 3. Mr. Moderator, I have a two-fold question to pose to the Chairman of the

Planning Board. Number one, has the Cape Cod Bagel plan come to the Planning Board yet?

CHAIRMAN KERFOOT: No.

MR. KRAJEWSKI: Do we have a bylaw on the books and effective now that there will be no buildings bigger than 7,000 square feet?

CHAIRMAN KERFOOT: 7500, then it has to go for a special consideration. It's not 7000, it's 7500.

MR. KRAJEWSKI: So, neither have come under this, what we're going through now.

Now, I was very surprised to see the mailing that I received Saturday, which is two days before Town Meeting, which I think should have come to the precinct members when they had their precinct meetings. I studied it, and I couldn't believe what I was looking at on the plot plan. Especially that curb cut: Jones Road. The arrow showing a right hand turn off Jones Road going towards the light, fine. The center lane is an exit with the arrow showing coming out, taking a left-hand turn towards Route 28, the other side of town, and what have you, against traffic. Whereas the third lane is showing a right-hand turn, perfect, towards the lights.

The other thing that amazed me: the drive-thru lane, the exit is going to the entrance that is coming off Palmer Avenue, and I can see it now, this happened over on Davis Straights since they ever approved what

they did then. People are crossing Route 28, taking a left-hand turn against traffic coming out of town to get into that drive-thru. It's inevitable, it's going to happen, I don't care how those arrows are pointed and believe me, I make quite a few trips up to the hospital and that center lane coming to the lights is a straight arrow, the right hand turn, turn right. Inevitably, I'm crossing Palmer Avenue and there's another car alongside me going up that hill. That would be twice the worst traffic jam that there is and exists on Davis – on Davis Straights if this is ever approved. I strongly recommend it. And, believe me, this should affect every Town Meeting Member here because just about everybody in this assembly uses that area. Vote it down, please.

THE MODERATOR: Okay. Something new? Ms. Whitehead.

MS. WHITEHEAD: It's probably not new. I would hope that this whole body would vote against this. It's not just the hospital lights but that is a prime concern. Ambulances go there all the time, there's traffic already. As you said, there's already a curb cut. That curb cut should be the only one there. The traffic and everything else is going to be a real problem. Safety is an issue and I hope that you will vote this down, please. Just for the safety of everybody.

And development of this town does not need another pharmacy or another anything at that corner. When we had the other



corner that was supposed to be bought by Mr. Dow, there – Mr. Doe, it was wonderful that this town meeting voted against that and the Town obtained that property. Please vote against this.

THE MODERATOR: Ms. Peterson, something new?

MS. PETERSON: Laura Peterson, precinct 3. The only thing I would state and what the attorney pointed out is that because the bank currently has a drive-thru, there cannot be a drive-thru on the other side. So, just stating the obvious is that current zoning is working so it would prevent a drive-thru being put across the street and prevent these problems that we're discussing now.

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

MR. KINGWELL: I just want to say that I think Mr. Ament, whom I have the greatest respect for, is being a bit disingenuous when he says there'd only be ten trips per hour. If you look at CVS, there's 100 trips per hour. So we're going to add another 100 cars per hour to what is arguably the second worst intersection in town. So I think you should vote this down, Thank you.

THE MODERATOR: Okay, the question – Mr. Lief, something new?

MR. LIEF: Steve Lief, precinct 7. It seems like everybody knows there's a pharmacy, I'm just wondering why we don't know which one it is.

THE MODERATOR: Okay, Mr. Nidositko.

MR. NIDOSITKO: Jim Nidositko, precinct 6. Mr. Calfee made reference to getting, you know, his runway getting a little shorter, like many of our runways at this age. I would just like to mention that from my experience a number of people come down from the hill, from the hospital, the emergency room, many of the doctors that are there, and they have prescriptions that have been called in to pharmacies. Many of these people come from Woods Hole, West Falmouth. Within the last week, I had a lady that I took up to Pocasset, who had to go to Rite Aid to get her prescription filled. It seems to me – and many of these people can't afford to have to go to another eight or ten dollar cab ride to go and get a prescription when they can go right down the hill and go through a drive-thru and pick up their prescription which their doctor called in. To me, I think it's a convenience to people who live on the other side of town and it would alleviate a lot of the traffic that's in the Jones Road-Davis Straights area. Thank you.

THE MODERATOR: Okay, the question will come on Article 10. Article 10 as recommended with the change – go ahead.

FROM THE FLOOR: I guess, you can correct me if I'm wrong, but quite a few years ago I believe we as a Town bought a parcel of land on Palmer Avenue which abuts Ter Huen Drive, which we paid a very heavy premium for, and the reason that we bought that parcel was

because there was serious congestion at that intersection as it was and we wanted to prevent any further congestion.

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

MR. LATIMER: Rich Latimer, Precinct 2, Planning Board member not speaking for the Planning Board. The real problem with drive-thrus is not the banks and the drugstores, okay, let's get that straight. The real problem is the fast-food restaurants which do carry high volume because their sites are designed to do that, and they exist not because of any concern for handicapped or elderly people but solely as a marketing advantage. That's why the problem is where it is with these fast food restaurants.

I would like to see an across the board limitation on site limitation for any new drive-thru establishment to no more than three cars being able to stand in line, have the site plan requirement that the site be designed so that no more than three cars can do that at any one time, including the car that's at the window. And I think certainly in terms of a drugstore or a bank, that would not be a hardship. So, I would propose an amendment of this that simply says, "At the end of traffic circulation" instead of a period, put a comma, "provided, however, that the applicant shall submit a site plan showing a lot configuration on which no more than three cars can be using the drive-thru lane at any one time."

THE MODERATOR: I need that one in writing.

MR. LATIMER: Excuse me?

THE MODERATOR: I need that in writing. That's too much verbiage.

MR. LATIMER: I'd be happy to write it for you.

THE MODERATOR: Are you going to write it?

FROM THE FLOOR: Question, question.

THE MODERATOR: Rich, are you serious? Are you going to write it down and submit it?

MR. LATIMER: Yes.

FROM THE FLOOR: No, no.

MR. LATIMER: I'll write fast.

THE MODERATOR: Anybody else want to talk on Article 10 while Mr. Latimer writes down his amendment? Mr. Dufresne?

MR. DUFRESNE: Adriene Dufresne speaking as a resident of precinct 2. This property will get developed, one way or another. The bank, from the crisis throughout the world and throughout the country, may not be there next year.

[Laughter.]

MR. DUFRESNE: But what this bylaw does is it allows the developer to go before the Planning Board, hopefully with a plan that they will accept and give them the ability to create a curb cut for that facility. Right now there are three curb cuts to my knowledge and some really

decrepit old buildings that the proponents of this project would like to make a major improvement.

Again, I'm going to repeat: it's going to get developed one way or the other, and I personally feel that that corner could be beautified with the project that I think is being proposed, at least the one that I looked at, the one that I talked to.

And when I listened to Mr. Ament, I think he was right on the mark. Let's give the Planning Board the ability to allow something proper to be created on that corner.

Thank you.

[Pause.]

THE MODERATOR: Mr. Latimer, where are we inserting this language, at what portion?

MR. LATIMER: [No microphone:] Right at the end. Instead of a period after [inaudible.]

THE MODERATOR: Okay right at the end? Okay. The amendment that Mr. Latimer just submitted adds this language at the end: "Provided, however, that the applicant shall submit a site plan showing a configuration that will permit no more than three vehicles to occupy the drive-thru lane at any one time." Let's keep the discussion on the amendment. Go ahead.

Mr. Johnson.

MR. JOHNSON: Leonard Johnson, precinct 5. I can't imagine how you would enforce this. What happens when the fourth car comes? What happens when the fifth car comes? Does a little genie come out and say, "Go away?"

[Laughter.]

THE MODERATOR: Okay, on the amendment. Anybody on this amendment? Okay, the question will come on the addition of this language to the main motion. 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 voice vote. And we're ready to go on the question? No?

FROM THE FLOOR: Aw, come on.

THE MODERATOR: Mr. Dick, you were on my original list.

MR. DICK: Henry Dick, precinct 8. I would like to call the question.

THE MODERATOR: Okay, the question's been called. All those in favor of closing discussion signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[No audible response.]

THE MODERATOR: The Ayes have it by the two-thirds majority.

The question will now come on Article 10. The main motion is as recommended. As recommended in your warrant booklet. All those in favor of Article 10 as recommended, 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: Mr. Hampson in the third division.

MR. HAMPSON: 22.

THE MODERATOR: 22.

In the second division, Mr. Dufresne.

MR. DUFRESNE: 36.

THE MODERATOR: 36.

In the first division, Ms. Tashiro?

MS. TASHIRO: 32.

THE MODERATOR: 32.

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

[Pause.]

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

MS. TASHIRO: 22.

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

MR. HAMPSON: 44.

THE MODERATOR: 44.

In the second division, Mr. Dufresne.

MR. DUFRESNE: 58.

THE MODERATOR: 58.

By a counted vote of 90 in favor and 124 opposed, Article 10 does not pass.

Article 11, this was held by Mr.

Shearer. The Planning Board recommendation for Article 11 is indefinite postponement. This is dealing with the zoning map. Mr. Shearer, would you like to make a positive motion on Article 11?

MR. SHEARER: I was asked to hold this article for a non-Town Meeting Member to speak on it.

THE MODERATOR: Okay, would you put a positive motion on the floor?

MR. SHEARER: Yes, sir.

THE MODERATOR: As printed?

MR. SHEARER: As printed.



THE MODERATOR: Okay, the main motion for Article 11 is as printed, and who wanted to speak on this? The non-Town Meeting Member that asked this to be held? Okay, microphone to my back right.

MR. VIALL: Good evening. My name is David Viall and my wife Susan and I are sponsors of Article 11. We live in East Falmouth. We own and operate Park Cleaners on Scranton Avenue across from the Windfall Market. Article 11 would rezone our property to Business 3, taking it out of the Marine District. The Article applies also to two other properties at the corner of Scranton Avenue and Robbins Road owned by Falmouth Heights Marina, where Gun and Tackle and the Harborside Sports was, and the other property on Falmouth Heights owned by Heights Investment Corporation where there is an office building.

Why did the owners of these properties get together to ask to be rezoned to Business 3? Because ours are the only properties in the Falmouth – included in the Marine District that are not on the water. The Zoning Bylaw specifically states that the purpose of the Marine District is to preserve uses dependent on access to the water, and other uses not directly dependent on the water access will only be allowed by special permit and to support the principal use. The only permitted business uses are marinas, boatyards and marine-related research.

There are a couple of exceptions to that may be made by permitted by special permit, but at least half of the building must have a

marine-dependent use. Our property, Park Cleaners, is a pre-existing, non-conforming use and we hope to be in business for many more years, but the owners are concerned about being in a zoning district that does not make sense where we are not on the water and any new complying use of the property would have to be primarily a marine-dependent use.

We are especially concerned because of the situation on the corner lot where Gun and Tackle was. Although a quarter of that building has become a restaurant, most of the building is vacant and has been for some time. Because none of the prospective tenants have qualified as marine dependent business. It's hard enough to fill a commercial vacancy these days, and it's probably only going to get even harder because of the economy, without limiting a property not on the water to finding a marina, boatyard, or oceanographic tenant.

We understand that the Planning Board recognizes that the Marine Zone limitations are too strict, and they are thinking about some new zoning in the future at least for the inner harbor area where all three affected properties are located. We don't think there is any harm in the meantime to put these three properties in Business 3 neighborhood zoning.

The three lots are all less than one-half of an acre, and B-3 zoning does not allow uses that would not be appropriate, such as fast food restaurants. B-3 does allow marina use, so there's no conflicting if

they want to absorb the properties. Each of the properties is right across the street from other Business zone property. For that reason, and because these three properties are different from other Marine zone properties, these lots are not even on the water, rezoning all three lots to B-3 as proposed would not be spot zoning.

Thank you very much for your consideration.

THE MODERATOR: Okay, Mr. Netto. Microphone to my left.

MR. NETTO: Joe Netto, precinct 9. I would speak against the proponent of the article and hope you would support indefinite postponement as recommended by the Planning Board. And the reason for that would be purely anecdotal. I was a Town Meeting Member when we passed this article, and as I look around the audience, I see some faces That I know were here in – was it the last '70's or early '80's – when this article was passed.

We created the Marine District to protect the marine interests in the Town of Falmouth in those areas that were situated by the water. At the time, we were getting overrun; everybody was converting to condos and people were selling, you know, waterfront property or property that was near the water. As Town Meeting Members, we – and this district applies to I think more than just Falmouth Harbor area – as Town Meeting Members, we looked at every lot that we gave Marine District zoning to.

In particular, the lot that was discussed a great deal is the one that's mentioned in this article where Gun and Tackle used to be, because it did not touch the water. And I distinctly remember, you know, hearing about that lot in particular, and the lots that did not touch the water.

I would think that a vote by a previous Town Meeting, 25, 30 years ago, would still hold to the current Town Meeting today. We gave this zoning a great deal of thought. I remember sitting here and if you turn to that map on page 15, Article 11, we looked at every piece of property and no owner of any property at the specific date, whether it be the late '70's or early '80's, I think the Moderator was Mr. Lebhurst [sp?] and we were very careful to do this.

I would hope that this Town Meeting in 2008 would support those of us that created this zoning earlier than this. Thank you.

THE MODERATOR: Okay, further discussion on Article 11? Yes, Ms. Stetson. And then in the back if you want to come down, come down to where this line is.

MS. ABBOTT: Jane Abbott, precinct 7. I think Mr. Viall spoke very clearly on the fact that these parcels are very small, are not on the water, that being Business 3 is appropriate with other businesses near them, across from them, and I don't think that there's any harm if we make this change now to Business 3. If the Planning Board wants to rezone a larger marine district, we can certainly do that, but I feel that these

properties are appropriately Business 3.

THE MODERATOR: The woman in the aisle and then Ms. Kerfoot.

MS. SELLECK: My name is Deborah Selleck, precinct 2, and I'm employed by Vince Jeffroy [sp?]; he's the owner of 56 Scranton Avenue, which is also known as the Falmouth Raw Bar. Mr. Jeffroy also owns and operates Falmouth Marine and Windfall Market on Scranton Avenue. The reason I'm here tonight is to ask you to vote in favor of Article 11. The building at 56 Scranton Avenue has not been fully leased in quite some time as there is a marine use restriction on the property. I can also attest that we have vacancies in our marina down the street at 278 Scranton Avenue, which is Falmouth Marine.

In these hard economic times, I feel it would be more beneficial to the Town to have vacant spaces occupied as operating businesses and we do not have any access to Falmouth Harbor at 56 Scranton Avenue, and we would like to have the marine use restriction removed. Thank you.

THE MODERATOR: Ms. Kerfoot.

CHAIRMAN KERFOOT: [Inaudible, no mic.] Oh, sorry, I keep forgetting to turn that on.

I would like to speak to the Planning Board's recommendation for indefinite postponement. It's the Planning Board's job to look towards

the benefit of the whole town. In regard to that, as you will remember, we have a planning district, the East Main Street Redevelopment District. You all voted that and it's been quite successful. We would like to look at either changes to the Marine District that would continue that sort of feeling or perhaps even more specifically the creation of a Harborside District.

This I believe is more appropriate for the area than to just rezone three small lots, as you're being asked to do. It takes this into a district sort of concept and what can be possible in that district. So we would appreciate the opportunity to be looking at that as a Harborside District or as a continuation of the Redevelopment District to make it more beneficial, we believe, for the town as a whole. Thank you.

THE MODERATOR: Okay, further discussion on Article 11.  
Mr. Latimer.

MR. LATIMER: Thank you. Rich Latimer, precinct 2.  
Speaking as a town member and also speaking for the Planning Board. The Planning Board really wants to look at this issue and we don't want to have something thrust on us because somebody is, you know, has other plans. As Joe Netto said, we created a planning district; maybe it does need some modification, but we are to do this in a – as planners, rather than simply reacting to somebody's perceived needs at the moment.

This is three – you can't put a McDonald's in there, but you could put a Dunkin' Donuts, and I don't think anybody would really want to

see something like that in this area and there's no guarantee, we rezone this land to B-3, yeah, while we wait to do something else, and we could rezone it later, yeah, but in the meantime it could be sold. And once it's sold and developed, well, that's it, that's what it is.

So, I would vote against this article, thank you.

THE MODERATOR: Okay, any further discussion on Article 11? Mr. Maclone, to my left.

MR. MACLONE: Richard Maclone, precinct 4. I think the proponents of this article have got the right idea on it. This was rezoned way back in the '80's and that's when the harbor was going boomtown and you couldn't find places to rent over there. They were getting top dollar all the time and we have to face the economic times. At this moment, there are people that are out of work, there are people that might want to start businesses in here, and the restrictions are a real burden to them and they're not on the water, so we shouldn't force them to sell anchors, fishing gear, or whatever. Because the market just isn't there. And plus, with Wal-Mart in there, they've taken a lot of the fishing away from a lot of the vendors in town and things aren't the way they were when we did this, and I don't think the people actually foresaw the problem with these places at that time.

So, I would give them the B-3 zoning. It is the most restrictive zoning and if they can put businesses in there and they can give some

people jobs I think it would be a benefit to our town. And let the Planning Board come forward with whatever they're going to do, you know, to rezone the district some way else, but I would give these people relief at this time. Thank you, sir.

THE MODERATOR: Okay. Ms. Haywood. Microphone for Ms. Haywood.

MS. HAYWOOD: Nancy Haywood, West Falmouth. I'm not a precinct member this year. I would like to have you, Mr. Moderator, or through you, I would like to know what the total size of these three lots are and I would also like to know is it or is it not correct that something like condominiums can be built in a B-3 district. Thank you.

THE MODERATOR: Total lot size? Mr. Ament, do you have the answer to that?

MR. AMENT: I can help Mr. Viall out. The corner lot at the top of the screen is 19,500 square feet. One of the other lots is about 11,000 square feet. And the other lot is about 13,000 square feet. It's true that in Business Districts, including Business 3, you can have multi-family housing by special permit, but at a density of only six units per acre. So, it's really not something to worry about on this lot. On two of the lots, I'm not even sure you could have two units, and on the third one, you couldn't have – you wouldn't quite be able to have three.

THE MODERATOR: Ms. Haywood, you had a



follow-up? With a microphone, please.

MS. HAYWOOD: Would someone please add the square feet up and tell me what the total size of the three lots is, thank you.

THE MODERATOR: I didn't keep track of what the three lots were, so. Mr. Martin? Somebody's saying around an acre. Mr. Martin.

MR. MARTIN: Craig A. Martin, precinct 9. I do want to remind the attorney that was just talking special permits, the Casino by the water went over the six units per acre. They were granted a variance or endorsed special permit. So that doesn't preclude the opportunity for that happening at one of these locations. And the statement that gave me chills down my spine is the Planning Board member Mr. Latimer talking about the possibility of a Dunkin' Donuts. It may not be their intention, but Dunkin' Donuts will be knocking on their door tomorrow if they find out that this has been changed to accommodate them.

Please, let's reject this in no certain – no offense taken, I'm hoping, by the petitioner, but this just should not happen at this location. He's talking about a temporary until the Planning Board works it out. There's no such thing as temporary, at least it's not a good idea, temporary zoning. Let's just wait until the Planning Board figures out a better idea for this location. Thank you.

THE MODERATOR: Ms. Putnam, and then Ms. Abbott.

MS. PUTNAM: Rebecca Putnam, precinct 9. I'd like to ask,

Mr. Moderator, that we move to vote this article as recommended.

THE MODERATOR: We're not going to take a motion to move as recommended because we have a positive motion on the floor. So, my practice is we vote yes or we vote no. The recommendation is indefinite postponement, therefore it will not be a main motion on the floor.

Go ahead, Ms. Abbott.

MS. ABBOTT: Jane Abbott, precinct 7. I think if you add up the acreage in the article, it equals .999 acres. Just an acre. And I don't think Dunkin' Donuts would really be apt to be on these very small lots. I don't think we're doing any great harm if we pass this article.

THE MODERATOR: Okay, are we ready?

FROM THE FLOOR: Yes, question.

THE MODERATOR: Is it really new? Mr. Shearer?

MR. SHEARER: [No microphone.] I believe you said as printed. [Inaudible.]

THE MODERATOR: Yes. As printed. She tried to do a procedural parliamentary trick and make the motion as recommended, and the recommendation was indefinite postponement. And I won't allow that motion because your main motion is as printed.

MR. SHEARER: [Inaudible.]

THE MODERATOR: Yeah, no, you were correct, but the

motion as recommended is not allowed on the floor of Town Meeting because this recommendation is IP.

All right, so the question will come on the main motion, which is Article 11 as printed. That was the main motion put on the floor by Mr. Shearer. All those in favor of Article 11 as printed, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[No.]

THE MODERATOR: It's the opinion of the chair that there is not a two-thirds majority and the article fails.

Article 12 was held by Mr. Nidositko.

The recommendation of the Planning Board again on this article is indefinite postponement. Mr. Nidositko, would you like to put a positive motion on the floor?

MR. NIDOSITKO: Mr. Moderator, I held the article at the request of the petitioner, Linda Clark, so that she could speak to the article.

THE MODERATOR: Okay, you'd put a positive motion on the floor?

MR. NIDOSITKO: Yes.

THE MODERATOR: As printed?

MR. NIDOSITKO: As printed.

THE MODERATOR: Okay. Is Ms. Clark here to speak on

this? Yes, if you want to come down to the front or grab a mic, either way.

MS. CLARK: Hi, my name is Linda Clark. I've lived here in Falmouth forever. I submitted this article and I hope you will approve it.

My parents bought a three family house on Sandwich Road in 1967. Assessment records from the 1950's showed the house had three apartments even then, before I was born. Our problem is the zoning bylaw doesn't allow us to legalize the apartments, which we could do if the house were in the Residential district instead of zoned Agricultural.

Pinecrest Beach, almost across Sandwich Road from our house, is in the Residential District, but we are not. We thought we solved this eight years ago, when Bill Clinton was in office. In April, 2000, Town Meeting overwhelmingly approved a provision to deal with situations like ours. By vote of 166 to 20, a non-conforming residential use assessed as such for at least 20 years would be allowed to continue as pre-existing use by special permit. Town Meeting added that at least one unit become affordable, which was fine with us.

After that Town Meeting, we obtained a special permit and it's recorded in Barnstable. We thought we were done. But then the Attorney General disapproved the article. The Attorney General said assessment records can't be used for that purpose, and like properties can't be treated differently.

We decided to let things lie awhile. The apartments continued

to be rented. There's a real need for these apartments and some of the tenants have been with us for many, many years. But we still have the zoning problem that makes it hard for us to sell or mortgage the property. We hope that if Town Meeting votes Article 12, it will be approved by the Attorney General because the properties eligible for a special permit will be distinguished by having been physically altered to create apartments more than ten years ago. State law bars any action to compel change to a structure on account of a zoning violation more than ten years old.

We figure that if the structure, as turned into apartments, is protected by state law, then the Attorney General should let the Board of Appeals legalize the use. The article requires at least one apartment to be permanently restricted as affordable. The article has the same language already in the bylaw for apartment conversions in the Residence district, including a minimum lot size in sensitive environmental areas, and requirements that there will be no increase in size of the house or number of bedrooms, and no material change from the way the house looked in 1980. That date is already specified in the bylaw for conversions in the Residence district.

If the Attorney General disapproves any of these provisions, we will try again, but we would appreciate your moving this forward by approving Article 12. Thank you.

THE MODERATOR: Okay, discussion on Article 12. Ms.

Kerfoot.

CHAIRMAN KERFOOT: I'll just say a few words. Actually the explanation for the Planning Board's recommendation for indefinite postponement is very well spelled out. We do not know what the town-wide implications of this zoning change may be. It was never given to us as an explanation as to what we might expect town-wide, and the kind of thing that turned it down before is in here again with the uniformity issue. Given the specific date that's mentioned, our planning staff believes that the Attorney General may in fact turn it down because of that specific date.

There's another big issue here, too. You don't know what the use has been for ten years or more. There's just no way of knowing how that building has been used for ten years or more.

So, for these reasons, any change does need additional work. We just recommend indefinite postponement because of the unknowns of this bylaw.

THE MODERATOR: Okay, further discussion on Article 12? Hearing none, the question will then 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: It is the opinion of the chair that the No's have it and there is no two-thirds majority.

Article 13. Again, the Planning Board recommendation is indefinite postponement. Who held this article again? Okay. Microphone to the back, please. We need a positive motion.

MR. FLOOD [SP?]: Allen Flood, Precinct 7. I put a positive motion on the floor and would like Mr. Lively to speak on behalf of the article he wrote.

THE MODERATOR: Okay, as printed?

MR. FLOOD: As printed.

THE MODERATOR: Okay, the main motion is as printed.  
Mr. Lively.

MR. LIVELY: Jay Lively, I'm not a member of Town Meeting. Given the last article, you'd think that there is, you know, plenty of apartments in the residential areas, and the reality is that it's so difficult to get an apartment approved under the current bylaws that you wouldn't even believe it. And it has to do primarily with the fact that Falmouth falls into what's called a coastal pond overlay zone, and because of that, there's restrictions on what can be done. And it's not just, you know, parts of Falmouth that fall under this. It's like 75 percent of the whole town.

And there also is another requirement. And, I don't know, I'm going from this handout that I printed up, so if you want to reference

anything. Also, under the current bylaws, you need to have a minimum of 40,500 square feet in order to satisfy the requirements for an accessory apartment unless you're willing to put in a de-nitrification system.

And so I've kind of been struggling with this for a while and I did some legwork on it and found out that, you know, 88 percent of Falmouth residential houses are under an acre, which means they're under the 40,500 square feet of lot dimensions required unless you want to have a de-nitrification system.

And so, if you take that and kind of reverse it, you know, you assume the same ratio on the coastal pond overlay district, and that means that only 12 percent of the residential dwellings are eligible for an accessory apartment without a de-nitrification system. And many of those may not even have the means to have an actual accessory apartment.

Let's see. And I also spoke to somebody on the Zoning board and they said under the existing bylaw there have been two apartments in the last four and a half years who have gone through the permitting and actually succeeded and now are legal.

And so then I'm going to go to the next page, and if the Town – this is taken from the Town of Falmouth website. If the Town of Falmouth is truly making every effort possible to realize an increase in its number of lower median income housing units, you know, and they've set goals to have ten percent of the town, you know, have ten percent of the



residential units affordable, which over the next – well, this was in 2005 – in seven years, since January of '07, the present gain in affordable – or, the net gain, excuse me, in affordable housing according to the Housing Authority has been nine units.

So, in the last three and a half years, the net gain of an affordable housing is less than the one year target that was proposed under this plan that was three years ago – three and a half years ago.

Let's see. And there is other considerations, too. Accessory apartments provide an opportunity for first-time home buyers to help offset some of the costs of the mortgage. And if there was, you know, they have considerations in the current zoning laws so that new construction, you know, can factor in an accessory apartment and legalize it, but there's really no real means to address pre-existing residential houses. And so, what happens is, you know, this deficit we have in 20 to 35 year olds and first-time home buyers on the Cape, they're not here anymore. I mean, it's already been, you know, proven by the graphs that have been shown for other articles.

And, if the goal in 2007 was to reach ten percent housing in seven years, and it's been three and a half years and we have increased that by three-quarters of one percent, I mean, I don't know all the answers, but it seems like, you know, these trends, and the fact that you can't keep putting up 40B's, would mean that there needs to be some other answers

that we need to look at. And it would make sense to prioritize the possibility of accessory apartments by special permit.

MR. PINTO: [No microphone:] Mr. Moderator -- [inaudible.]

THE MODERATOR: Mr. Pinto. We have a motion to continue after eleven o'clock to finish this article. All those in favor of finishing this article, 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 two-thirds and we'll continue after 11:00, Mr. Lively.

MR. LIVELY: Thank you. So now I'm onto the next page, which is talking about the Local Comprehensive Plan. Again, this was from February, 2007, and it talks about the fact that the number of rental units in town has declined over the past ten years and that correlates with the number of 20 to 35 year olds that aren't here, either. And there's also an issue with these accessory apartments – well, not actually accessory apartments. There's a high incidence of illegal apartments in the town and, you know, the Zoning Board says, "Well, the Town of Falmouth has and will continue to encourage homeowners having illegal apartments to apply to the Board of Appeals to legalize the units without being penalized." Well, you know, it's just me, but I would think a \$10,000 de-

nitrification system isn't any kind of reward.

Also in this, under the goals, you know, they're trying to prioritize existing structures. So if you already have these structures in place, you know, why not take advantage of them? Why not make it a little bit easier for somebody to create this affordable housing that we're so badly in need of? And the Planning Board has expressed concern, you know, on taking on a role of being in the bedroom policing – you know, policing role, but you know, just my first time here tonight, it would seem that that would be an easier role than trying to explain Article 6 tonight.

And so, you know, when you get the parcel configuration and site selection and construction of this SCRC finally completed, who if not the 20 to 30 year olds and/or those who rely on affordable housing, is going to staff this facility, you know, and bring the residents to the offsite satellite parks in order to –.

So, in summary, there is the rationale for change is the fact that there really needs to be an answer for the affordable housing situation that's in Falmouth. These accessory apartments will have benefits of helping first-time home buyers purchase homes; can help fixed-income seniors, retirees, create sources of additional revenues and income; help parents who maybe don't have kids in their house anymore, they're at college, pay for college, save for retirement, even hold onto their housing, their own houses right now. I mean, it's not a great economic climate.

And making a change in the existing bylaw will help homeowners avoid the costs of unnecessarily upgrading septic systems to incorporate a de-nitrification system.

Encouraging accessory apartments is consistent with the Local Comprehensive Plan and the Affordable Housing Plan, which is what I kind of talked about before, and it would seem like it's really worth looking at. Every time this comes up, it seems to just get brushed to the back of the priorities.

And the other issue about these unpermitted apartments is the safety and awareness that they're actually there. I mean, you could have a police officer or a firefighter, you know, going to respond to one of these houses and they don't know that there's necessarily an illegal apartment in the basement. And so there's a huge, you know, liability exposure.

So, the important thing is this article is not going to change the special permitting process. It's still going to be on a case to case basis, there's still a bunch of other requirements that you need to satisfy, but it just, in my opinion, is something that's worth taking a close look at to try to address this affordable housing situation. Thank you.

THE MODERATOR: Further discussion on Article 13? Ms. Abbott.

MR. ABBOTT: Jane Abbott, Precinct 7. I hope the Planning Board will work with Mr. Lively to craft an article that meets some of the

criteria he was describing.

THE MODERATOR: Okay, further discussion on Article 13?  
Hearing none, then the question will come on the main motion: Article 13  
as printed. All those in favor of Article 13, signify by saying Aye.

[Aye.]

THE MODERATOR: All those opposed, No.

[No.]

THE MODERATOR: It's the opinion of the Chair that the No's  
have it by a majority and there is no two-thirds. Article 13 does not pass.

This meeting will stand adjourned until Wednesday. Again,  
Wednesday at 7:00 p.m. Don't forget to bring some food items for the  
Falmouth Service Center.

[Whereupon, this matter adjourned at 11:00 p.m.]

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS

Carol P. Tinkham  
(508) 759-9162

COUNTY OF BARNSTABLE

I, Carol P. Tinkham, a Professional Court Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing transcript represents a complete, true and accurate transcription of my audiographic recordings taken in Falmouth Town Meeting, November 10, 2008 to the best of my knowledge, skill and ability.

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Carol P. Tinkham  
Notary Public  
My Commission Expires  
May 14, 2010

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