



ANNUAL TOWN MEETING  
Lawrence School Auditorium  
Falmouth, MA 02540  
APRIL 2, 2012

1. Choose Town Officers
2. Hear Report Of Committees and Town Officers
3. Authorize Board of Selectmen to settle claims and suits
4. Authorize Board of Selectmen to apply for and accept State and Federal Grants
5. Fix salaries of Elected Officials
6. Revolving Funds
7. Amend Zoning Bylaw – Article II Building Permit Moratorium
8. Rezone 28 Nathan Ellis Highway (A.Minasian)
9. Amend Official Zoning Map of the Town of Falmouth – 740 Thomas B. Landers Road (J.Haddad)
10. Fund – International Association of Firefighters, Local 1397 Contract
11. Fund – American Federation of State, County and Municipal Employee, Local 1636 Contract
12. Fund – Laborers’ International Union of North America, Local 1249 Contract
13. Fund – Falmouth Public Library Association, Massachusetts Laborers’ District Council Contract
14. Fund – Technical, Administrative, Management and permanent employees increase
15. Adopt Bylaw Chapter 39 of the Code of Falmouth – Department of Finance
16. Amend the Salary Administration Plan – Director of Finance and Office Assistant
17. Amend Classification Plan – Department of Public Works
18. Fund – Wind I and Wind II Operational Expenses
19. Establish - Health Insurance Stabilization Fund
20. Establish – Capital Improvement Stabilization Fund
21. Fund – Town’s Capital Improvement Stabilization Fund
22. FY2013 Annual Budget
23. Petition - Continue suspended operation of Wind I and continue curtailment of suspended operation of Wind II (B.Funfar)
24. Petition - Support updated bottle bill (J.Kluever)
25. Petition – Constitutional Amendment on personhood rights (A.Ziss)
26. Petition - Community Preservation Committee funds for Falmouth Ice Arena (P.Moore)
27. Petition – Support plan to mitigate adverse impacts of wind turbines (C.Rawley)

28. Petition – Appoint committee to investigate water department plant and personnel (M.Finneran)
29. Petition – Appoint solid waste manager (M.Finneran)
30. Fund – Administrative expenses Community Preservation Committee
31. Amend Falmouth Code – Chapter 136 Secondhand Dealers and Secondhand Collectors
32. Fund – Tide’s Bulkhead repairs
33. Fund – Town’s share of Federal assistance to firefighter grant
34. Fund – Ellen T. Mitchell Beach Administration Building repairs
35. Amend Chapter 178 of the Code of Falmouth - Scenic Roads
36. Repeal Chapter 213, Article V, §§ 213-13 through and including 21-22 Code of Falmouth – Open Air Parking Lots
37. Rescind acceptance of M.G.L ch. 148 § 56 – Open Air Parking Lots
38. Funding Article

**ARTICLE 1:** To choose all other necessary Town Officers for the year in accordance with nominations to be offered at Town Meeting.

**RECOMMENDATION (Finance Committee):** That the Town vote Article 1 as printed.

**ARTICLE 2:** To hear reports of Committees and Town Officers and act thereon.

**RECOMMENDATION (Finance Committee):** That the Town vote Article 2 as printed.

**ARTICLE 3:** To see if the Town will vote to authorize the Selectmen to settle claims and suits which are pending or may arise against the Town. Or do or take any other action in the matter. On request of the Board of Selectmen.

**RECOMMENDATION (Finance Committee):** That the Town vote Article 3 as printed.

**ARTICLE 4:** To see if the Town will authorize the Board of Selectmen to apply for and accept state or federal grants they deem beneficial to the Town, provided that the Board of Selectmen shall hold a public hearing prior to the Board’s acceptance of any such grant, if said grant requires the Town to meet future conditions or requirements including anticipated future costs to the Town. Further, the Board of Selectmen shall advise the Finance Committee of such anticipated costs prior to the public hearing. Or do or take any other action in the matter. On request of the Board of Selectmen.

**RECOMMENDATION (Finance Committee):** That the Town vote Article 4 as printed.

**EXPLANATION:** The Finance Committee is concerned about equipment or programs that are obtained through grants, which cost nothing at the onset, but eventually will cost the taxpayers’ money in the future years. These anticipated costs should be projected and relayed to the Finance Committee at the time the grants are accepted by the Board of Selectmen in order to forecast needs that will be included in the budgets.

**ARTICLE 5:** To see if the Town will vote to fix the salaries of the Elected Officials.

Moderator.....	\$1,500
Town Clerk.....	\$70,157
Selectmen (4).....	\$3,000
Chairman of Selectmen.....	\$3,500

Or do or take any other action in the matter. On request of the Board of Selectmen.

**RECOMMENDATION (Finance Committee):** That the Town vote Article 5 as printed.

**EXPLANATION:** According to the requirements of the Town Charter, the Finance Committee reviewed the salaries of the elected officials and recommended to keep the part time elected officials at the existing levels. The Town Clerk’s position pay scale is equivalent to that of like Administrative, Management and Technical positions (Gr. M-5 \$25.77-\$33.60/hr.). The funding for the Clerk’s position is included in the budget.

**ARTICLE 6:** To see if the Town will vote to authorize continued use of the following Revolving Funds for certain town departments under MGL Chapter 44, Sec. 53E½ for the fiscal year beginning July 1, 2012, with the specific receipts credited to each fund, the purposes for which each fund may be spent and the maximum amount that may be spent from each fund for the fiscal year as follows:

Revolving Fund	Authorized to Spend	Revenue Source	Use of Fund	FY13 Spending Limit	Disposition of FY12 Fund Balance
Emerald House	Board of Selectmen / Town Manager	Payments in Lieu of Rent	Maintenance of Building	\$28,000	Available for expenditure
Recreation Department	Recreation Director	Participation Fees	Departmental Special Activities	\$7,000	Available for expenditure
Historical Commission	Historical Commission	Sale of Books	Administer Book Program	\$7,500	Available for expenditure
Shellfish Propagation	Conservation Commission	Mitigation and Donations	Purchase Shellfish Seed	\$13,000	Available for expenditure
<b>TOTAL SPENDING</b>				<b>\$55,500</b>	

Or do or take any other action on this matter. On request of the Board of Selectmen.

**RECOMMENDATION (Finance Committee):** That the Town vote Article 6 as printed.

**EXPLANATION:** Town Meeting approval is required each year to continue the use of the revolving funds outlined in this Article.

**ARTICLE 7:** To see if the Town will vote to amend Article II, section 240-10, – Building Permit Moratorium – Windmills – of the Zoning Bylaw by deleting the words “May 1, 2012” and insert in its place the words “May 1, 2013” and by deleting the last sentence of Article II so as to read:

“The provision of the Zoning Bylaw to the contrary notwithstanding, no building permit or special permit for the construction of a windmill, as defined, shall issue until May 1, 2013 or until this Article is repealed by a vote of town meeting, whichever occurs first. The purpose of this Article is to provide the time necessary to study noise, vibration, shadow and other issues associated with the location of this use near residential neighborhoods.”

Or do or take any other action on this matter. On request of the Planning Board.

**RECOMMENDATION (Planning Board):** That Town Meeting vote Article 7 as printed in the warrant.

**EXPLANATION:** With the recent delivery of the Wind Turbine Health Study from the State, the Planning Board has assembled a large inventory of data to review. Zoning alternatives for wind turbines will be developed during the spring and summer months for consideration at the November 2012 Fall Town Meeting.

**ARTICLE 8:** To see if the Town of Falmouth will vote to rezone 28 Nathan Ellis Highway, map 05, section 09, parcel 007A, lot 001; business redevelopment. Or do or take any other action on the matter. On request of Antranig Minasian and others.

**RECOMMENDATION (Planning Board):** Indefinite Postponement

**EXPLANATION:** The proponent of this Article did not appear at the public hearing held by the Planning Board for this article. The Planning Board's recommendation when this occurs is always indefinite postponement. However, the Planning Board is sponsoring a more comprehensive Article for this area. Please refer to Article 3 of the Special Town Meeting warrant.

**ARTICLE 9:** To see if the Town will vote to amend the Official Zoning Map of the Town of Falmouth so as to change the existing Agricultural AA Zone by rezoning from Agricultural AA to Light Industrial C the land at 740 Thomas B. Landers Road shown on the Falmouth Assessors Map 15 Section 04 Parcel 14 Lot 00, located south of Thomas B. Landers Road and shown on a plan entitled "Plan of Re-zoning 740 Thomas B. Landers Road West Falmouth, Massachusetts prepared for The Tradesman Realty Trust", Scale: 1" = 40', Dated: August 30, 2011, prepared by BSS Design, Incorporated, Engineering & Surveying, 164 Katharine Lee Bates Road, Falmouth Massachusetts 02540.

Or do or take any other action on the matter. On request of John M. Haddad and David A. Haddad, Trustees of The Tradesman Realty Trust dated November 17, 2008 and others.

**RECOMMENDATION (Planning Board):** That Town Meeting vote Article 9 as printed in the warrant.

**EXPLANATION:** The Planning Board believes Thomas Landers Road to be an appropriate place for the introduction of this new zoning district. The Planning Board is working with other property owners in the Thomas Landers Road area and intends to bring additional Articles to a future town meeting to expand the Light Industrial C district in this area.

**ARTICLE 10:** To see if the Town will vote to appropriate a sum of money to be appropriately distributed by the Town Accountant to the accounts affected for the purpose of funding the provisions for the contract period commencing July 1, 2010, as agreed to by the Town of Falmouth and the International Association of Firefighters, Local 1397, and to determine how the same shall be raised and by whom expended. Or do or take any other action on this matter. On request of the Town Manager.

**RECOMMENDATION (Finance Committee):** Indefinite postponement.

**EXPLANATION:** This is still in process; no final agreement has been reached.

**ARTICLE 11:** To see if the Town will vote to appropriate a sum of money to be appropriately distributed by the Town Accountant to the accounts affected for the purpose of funding the provisions for the contract period commencing July 1, 2010, as agreed to by the Town of Falmouth and the American Federation of State, County and Municipal Employee, Local 1636, and to determine how the same shall be raised and by whom expended. Or do or take any other action on this matter. On request of the Town Manager.

**RECOMMENDATION (Finance Committee):** Indefinite postponement.

**EXPLANATION:** No final agreement has been reached.

**ARTICLE 12:** To see if the Town will vote to appropriate a sum of money to be appropriately distributed by the Town Accountant to the accounts affected for the purpose of funding the provisions for the contract period commencing July 1, 2010, as agreed to by the Town of Falmouth and the Laborers' International Union of North America, AFL-CIO, Local 1249, and to determine how the same shall be raised and by whom expended. Or do or take any other action on this matter. On request of the Town Manager.

**RECOMMENDATION (Finance Committee):** Indefinite postponement.

**EXPLANATION:** No final agreement has been reached.

**ARTICLE 13:** To see if the Town will vote to appropriate a sum of money to be appropriately distributed by the Town Accountant to the accounts affected for the purpose of funding the provisions for the contract period commencing July 1, 2010, as agreed to by the Town of Falmouth and the Falmouth Public Library Association, Massachusetts Laborers' District Council, and to determine how the same shall be raised and by whom expended. Or do or take any other action on this matter. On request of the Town Manager.

**RECOMMENDATION (Finance Committee):** Indefinite postponement.

**EXPLANATION:** No final agreement has been reached.

**ARTICLE 14:** To see if the Town will vote to appropriate a sum of money to be appropriately distributed by the Town Accountant to the accounts affected for the purpose of funding an increase for the Technical, Administrative, Management and permanent employees for the period commencing July 1, 2010, and to determine how the same shall be raised and by whom expended. Or do or take any other action on this matter. On request of the Town Manager.

**RECOMMENDATION (Finance Committee):** Indefinite postponement.

**EXPLANATION:** No final agreement has been reached.

**ARTICLE 15:** To see if the Town will vote to adopt a by-law within Chapter 38 of the Code of Falmouth establishing a department of finance as follows:

#### Chapter 38

#### Department of Finance

1. There is hereby established in the town of Falmouth a department of finance (hereinafter referred to as the department). This bylaw and the department it creates shall be deemed consistent with the provisions of the Falmouth Home Rule Charter.
2. The department shall include and absorb the present functions, duties and responsibilities of the assessing department, the treasurer, the collector, the accountant and the chief purchasing officer. The town manager may designate these offices as divisions of the department or otherwise arrange them as deemed necessary or expedient. The department shall be managed by a finance director.
3. The department's functions shall include, but shall not be limited to, the following:
  - a. coordination of all financial services and activities of the town;
  - b. provide support and serves as liaison to the Finance Committee;
  - c. to assist the town manager in the preparation of the annual operating budget and annual capital budget; and
  - d. to assist the town manager in long-range financial planning including the forecasting of revenue and expenditures and the general financial condition of the town.
4. The finance director shall be appointed by the town manager in accordance with section C5-4A of the Falmouth Home Rule Charter. The finance director shall be a person particularly qualified by education, training and experience to perform the duties of the position and shall be bonded on an annual basis, at town expense.

5. The director shall exercise administrative control and management of the department and may serve, ex officio, as the accountant, treasurer or collector of the town: provided, however, the director shall not serve, ex officio, as the treasurer or collector and the accountant at the same time.

Or do or take any other action on the matter. On request of the Board of Selectmen.

**RECOMMENDATION (Finance Committee):** That the Town vote Article 15 as printed.

**EXPLANATION:** The Town’s external auditor has recommended this important organizational change in its management letter to the Town. The creation of a Department of Finance will improve organizational efficiency. It will provide a focal point for our increasingly complex financial services and will provide integrated professional oversight, financial planning, leadership and enhanced taxpayer accountability.

**ARTICLE 16:** To see if the Town will vote to amend the Salary Administration Plan as follows:

Add: (1) Director of Finance	TAM, Gr. 11
Add: (1) Office Assistant to Director of Finance	TAM, Gr. 02

Or do or take any other action on this matter. On request of the Town Manager.

**RECOMMENDATION (Finance Committee):** That the Town vote Article 16 as printed.

**EXPLANATION:** The positions proposed are consistent with the creation of a Finance Department as described in Article 15 (a full-time Director of Finance and a part-time office assistant). The available funding for these positions is accommodated without the need for an additional appropriation by not filling the vacant staff positions of Assistant Treasurer and Budget Officer/Finance Committee Administrator. The Finance Director position will assume all former duties of the Budget Officer as well as coordinating the professional finance staff, procurement and related financial responsibilities. The Finance Director will serve as the primary liaison providing direct staff support and service to the Finance Committee. The current salary range for Gr. 11 is \$40.53/hr to \$52.90/hr and Gr. 2 is \$16.96/hr to \$22.09/hr.

**ARTICLE 17:** To see if the Town will vote to amend the Town’s Position Classification Plan for the purpose of reclassifying the following positions in the Public Works Department.

Delete:	(1) Working Foreman – Parks and School Grounds	Gr. 09
Add:	(1) Field Supervisor – Parks	Gr. 10
Delete:	(1) Working Forman – Forestry	Gr. 10
Add:	(1) Crew Leader – Forestry	Gr. 09
Delete:	(3) Public Works Crew Leader	Gr. 07
Add:	(2) Crew Leader – Parks	Gr. 08
Add:	(1) Assistant Field Supervisor	Gr. 09

Or do or take any other action in this matter. On request of the Town Manager.

**RECOMMENDATION (Finance Committee):** That the Town vote Article 17 as printed.

**EXPLANATION:** This vote amends the salary administration plan for certain public works positions. The current salary range for Gr. 8 is \$18.38/hr to \$23.44/hr, for Gr. 9 it is \$19.66/hr to \$25.06/hr and for Gr. 10 it is \$21.04/hr to \$26.81hr. There are several vacancies in the Parks Department which require new job descriptions to redefine position responsibilities. The positions were then reviewed and reclassified in accordance with the Town’s reclassification system and the requirements of the union contract. This proposed change will reduce spending by several thousand dollars annually.

**ARTICLE 18:** To see if the Town will vote to appropriate a sum of money to pay debt service and maintenance and operation costs of the town wind turbines known as Wind I and Wind II and further to pay costs associated with the purchase of electric power to replace the electric power not produced during periods they are shut down, or do or take any other action on the matter. On request of the Town Manager.

**RECOMMENDATION (Finance Committee):** That the Town vote to transfer the sum of \$37,133.00 from the Wind Energy reserve fund for the purposes of this article to be expended under the jurisdiction of the Town Manager.

**EXPLANATION:** This transfer is necessary to make scheduled debt payments for the wind turbines.

**ARTICLE 19:** To see if the Town will vote to create a health insurance stabilization fund as authorized by Chapter 40, section 5B of the Massachusetts General Laws for the purpose of funding employee health insurance costs, including costs incidental and related thereto or do or take any other action on the matter. On request of the Town Manager.

**RECOMMENDATION (Finance Committee):** That the Town vote Article 19 as printed.

**EXPLANATION:** This year, because of the new lower health care premiums paid by the Town, achieved in significant part due to municipal health care reform, Falmouth will benefit from a onetime, non-recurring, reduction in cost. Rather than simply incorporating this onetime savings into General Fund, it is prudent and consistent with the recommendation of the Town's financial advisors to establish this fund to help offset future increases in health care costs. This represents a unique; one time cost-containment opportunity that otherwise will be missed. Money is voted in and out of the fund by a 2/3 vote of Town Meeting. Funds are in the Budget.

**ARTICLE 20:** To see if the Town will vote to create a capital improvement stabilization fund as authorized by Chapter 40, section 5B of the Massachusetts General Laws for the purpose of funding capital improvements to the town roads, buildings, utilities, equipment and other infrastructure including costs incidental and related thereto, or do or take any other action on the matter. On request of the Town Manager.

**RECOMMENDATION (Finance Committee):** That the Town vote Article 20 as printed.

**EXPLANATION:** The Capital Planning Committee has been working to identify the long and short range capital needs of the Town and how to fund these needs. Again, moneys voted in and out of this Stabilization Fund will be by 2/3 vote of Town Meeting.

**ARTICLE 21:** To see if the Town will vote to appropriate a sum of money to the capital improvement stabilization fund established in accordance with Article 20 herewith, for the purpose of funding annual capital improvements, to determine how the same shall be raised and by whom expended. Or do or take any other action on the matter. On request of the Board of Selectmen.

**RECOMMENDATION (Finance Committee):** Indefinite postponement.

**EXPLANATION:** The Finance Committee did not have an opportunity to review the financial plan for funding our Fiscal 2013 Capital Improvements Plan prior to the printing of this warrant. The Board of Selectmen has however, recommended that the Town vote to fund a \$1,620,000 Capital Improvement Plan by raising and appropriating \$800,000 by Capital Exclusion subject to approval by Town Meeting and the voters at the May election. This would replace the tax effort adopted in the \$800,000 Capital Exclusion for the Long Pond Filtration Study in FY12, The Board also recommended \$520,000 from the Capital Stabilization Fund and an additional \$300,000 from local revenues, subject to appropriation at the November 2012, Town Meeting.

The Town of Falmouth has well established capital needs involving all Town Departments of \$3 million annually. Our comprehensive capital needs have not been addressed for many years and this proposal is similar to the three year Public Works Exclusion which expires this year. This plan utilizes our existing tax effort and available revenues to partially fund our capital needs in Fiscal 2013. The Board of Selectmen has pledged to continue to work together with the Finance Committee to develop a long range sustainable plan to meet our ongoing capital needs.

**Proposed Fiscal 2013 – Capital Improvements Plan**

<u>Descriptions</u>	<u>\$ Amount</u>
a. Police Department communications equipment And Fire Department vehicles and equipment	\$ 190,000
b. Department of Public Works (including Beach Department) various including vehicles, road and bridge repairs, water and wastewater repairs and maintenance and building and structure repairs and maintenance	\$1,075,000
c. Information Technology and GIS for equipment and Software	\$ 160,000
d. School Department and Natural Resources vehicles	\$ 85,000
e. Harbormaster and Recreation	<u>\$ 110,000</u>
<b>FY 13 Total</b>	<b><u>\$1,620,000</u></b>

The \$1,620,000 to be comprised of:

- \$ 800,000 - capital exclusion (included in TM Article 21)
- \$ 520,000 - FY13 capital stabilization fund (in TM Article 22)
- \$ 300,000 - local revenues, subject to November 2012  
Town Meeting approval

**ARTICLE 22:** To see if the Town will vote to appropriate such sums of money as may be deemed necessary to defray the Town’s expenses for the ensuing year, and to determine how the same shall be raised and by whom expended. Or do or take any other action on this matter. On request of the Board of Selectmen.

**RECOMMENDATION (Finance Committee):** The Fiscal Year 2013 budget is found in the center section of the warrant booklet.

**EXPLANATION:** The explanation will be on Town Meeting floor.

**ARTICLE 23:** To see if the Town will vote to continue suspended operation of Wind I and continue curtailment of suspended operation of Wind II, except for periods required for further study or ordinary maintenance of either turbine, until the November 2012 Annual Town Meeting at which time concerns for both turbines can be addressed in the context of studies and mitigation options funded by Town Meeting in November 2011 as well as a new turbine currently under development by the Planning Board. Or do or take any other action on this matter. On request of Barry Funfar and others.

**RECOMMENDATION (Board of Selectmen):** Indefinite postponement.

**EXPLANATION:** The Board of Selectmen continues to be engaged in a formal review of mitigation alternatives related to the operations of Wind I and Wind II, and is exploring the potential for consensus building. This process is ongoing and it would be inappropriate and premature to make a decision before all reasonable options and alternatives are fully reviewed.

**ARTICLE 24:** To see if the Town will vote to pass a resolution to support the updated bottle bill (H890/S1650) which will add water, juice, and other non-carbonated beverages to the current 5-cent deposit system. Or do or take any other action on this matter. On request of Janet Kluever and others.

**RECOMMENDATION (Board of Selectmen):** Indefinite postponement.

**EXPLANATION:** The Board encourages individual Town Meeting members to consider the merit of this article independently.



**ARTICLE 25:** To see if the Town will vote to adopt a resolution as follows:

We, the members of the Falmouth Town Meeting, affirm our belief that the First Amendment to the United States Constitution was designed to protect the free speech rights of people, not corporations.

We believe that the United States Supreme Court's ruling in Citizens United v. FEC, which allows corporations and unions to give unlimited funds to advocacy groups to influence elections, and the billions of dollars corporations spend in lobbying, greatly outweighing amounts spent by unions and public-interest groups, threaten democracy by allowing corporations to cause the election of candidates who will serve themselves, not ordinary citizens.

The people of the United States through their legislators have previously amended the Constitution to regulate elections and federal officeholding nine times.

Now, therefore, be it resolved that we, the members of the Falmouth Town Meeting, call upon the United States Congress to pass and send to the states for ratification a constitutional amendment to specify that constitutional personhood rights are for natural persons only and to restore the peoples' rights to fairness in elections and influence on government policy, and further, we call upon the Massachusetts General Court to pass one or more resolutions asking those actions.

Or do or take any other action on this matter. On request of Alexander Ziss and others.

**RECOMMENDATION (Board of Selectmen):** Indefinite postponement.

**EXPLANATION:** The Board encourages individual Town Meeting members to consider the merit of this article independently.

**ARTICLE 26:** To see if the Town will vote to appropriate the sum of \$123,976.87 from the Community Preservation Fund to be made available for the purpose of creation, rehabilitation and/or restoration of land for recreational use of the Falmouth Ice Arena located at 9 Technology Park Drive (Assessor's Parcel No. 15-04-015D-010) under the Community Preservation Act category of Recreational Land Uses, or act in any way relative thereto as allowed under the Community Preservation Act. Or do or take any other action on the matter. On request of Paul P. Moore and others.

**RECOMMENDATION (Community Preservation Committee/Finance Committee):** Indefinite Postponement.

**EXPLANATION:** The project does not qualify for CPC funding.

**ARTICLE 27:** To see if the Town will vote to support the Board of Selectmen's plan of action to mitigate adverse impacts and optimize the operation of the Town-owned wind turbines to maximize local environmental and economic benefits. Or do or take any other action on the matter. On request of Christina Rawley and others.

**RECOMMENDATION (Board of Selectmen):** Indefinite postponement.

**EXPLANATION:** The Board of Selectmen continues to be engaged in a formal review of mitigation alternatives related to the operations of Wind I and Wind II, and is exploring the potential for consensus building. This process is ongoing and it would be inappropriate and premature to make a decision before all reasonable options and alternatives are fully reviewed.

**ARTICLE 28:** With recent revelations that the boil water order comprised not 4 but 26 violations (operator and supervisory) thus illustrating the Board of Health investigation was deficient at best we, the undersigned request the moderator to appoint a 5 member committee (inclusive) to investigate and recommend to town meeting remedial action including the 40 million dollar filtration plant and the ability of supervisory personnel to remain in their positions. Or do or take any other action on the matter. On request of Marc Finneran and others.

**RECOMMENDATION (Board of Selectmen):** Indefinite postponement.

**EXPLANATION:** The Department of Environmental Protection (DEP) and the Falmouth Board of Health have reviewed the course of events culminating in the boil water order. The violations are cumulative, on a day by day basis, all arising from the same sequence of events and are the subject of negotiations with DEP. Daily operations, management and long term plans for the Town's public water supply have been thoroughly reviewed and adjusted in response to this very serious public health issue which occurred in the summer of 2010.

**ARTICLE 29:** In light of lost revenue and increasing evidence the DPW and Health Department are unable to manage or enforce our solid waste issues. We the undersigned, request town meeting appoint a solid waste manager to right this issue before any further tax payer remuneration. Or do or take any other action on the matter. On request of Marc Finneran and others.

**RECOMMENDATION (Board of Selectmen):** Indefinite postponement.

**EXPLANATION:** The warrant article as presented is incomplete and is lacking sufficient information to recommend any action by Town Meeting.

**ARTICLE 30:** To see if the town will vote to appropriate a sum of money from the Community Preservation Fund to fund the Administrative expenses of the Community Preservation Committee, to determine how the same shall be raised and by whom expended, or do or take any other action on the matter. On request of the Community Preservation Committee.

**RECOMMENDATION (Community Preservation Committee):** That the Town vote to appropriate the sum of \$149,000 from the Community Preservation FY-13 Estimated Receipts for the purposes of Article 30. \$13,788 of this appropriation shall be transferred to the General Fund and applied to the Health Insurance Budget line item to fund the health benefits for the Community Preservation Planner.

**EXPLANATION:** The Community Preservation Administrative Expenses include but are not limited to office supplies, salary expenses for professional staff, staff development and fees associated with technical contract services. The community Preservation Act allows for an appropriation of up to five percent of the Annual Community Preservation Fund revenues towards Administrative Expenses.

**ARTICLE 31:** To see if the Town will vote to amend Chapter 136 of the Code of Falmouth, JUNK DEALERS AND COLLECTORS, by repealing sections 136-1 through and including section 136-10 in their entirety and replacing them with new sections 136-1 through and including 136-14 titled SECONDHAND DEALERS AND SECONDHAND COLLECTORS as follows:

### **Chapter 136. SECONDHAND DEALERS AND SECONDHAND COLLECTORS**

**§136-1. Definitions.** As used in this chapter, the following terms shall have the meanings indicated:

**ACCEPTABLE IDENTIFICATION** - means either:

**A.** A current driver's license that includes the date of birth, photograph, and physical description of the person offering the identification; or

**B.** Two other pieces of current identification, at least one of which is issued by a governmental agency or subdivision and includes the date of birth, photograph and physical description of the person offering the identification.

**POLICE CHIEF** - The Chief of Police of the Town of Falmouth or her or his designee.

**REGULATED PROPERTY** - means the following used or secondhand property:

**A.** Precious metals, including but not limited to, any metal valued for its character, rarity, beauty or quality, including gold, silver, copper, platinum or other metals, whether as a separate item or in combination with other items.

B. Precious gems, including but not limited to any gem valued for its character, rarity, beauty or quality, including diamonds, rubies, emeralds, sapphires or pearls, or other precious or semiprecious gems or stones, whether as a separate item or in combination with other items or as a piece of jewelry.

C. Watches and jewelry containing precious metals or precious gems, including but not limited to, rings, necklaces, pendants, earrings, brooches, chains, pocket watches, wristwatches, or stopwatches.

D. Sterling silver flatware, including but not limited to knives, forks, spoons, candlesticks, coffee and tea sets, or ornamental objects.

E. Any electronic audio, video or photographic and optical equipment, along with computer or computer equipment or recordings in any form.

F. Any power tools or equipment.

G. Musical instruments.

H. Sporting equipment and bicycles.

I. Boats, planes, motorcycles, in whole or taken in parts, or any other type machinery.

J. Collectibles, including objects of art, coins, currency and antique objects, but not including those items identified in §136-8 section H, below.

**SECONDHAND COLLECTOR** Has the same meaning as the term "junk collector" in MGL c. 140, § 56.

**SECONDHAND DEALER** Has the same meaning as the term "junk dealer" and "keeper of a shop for the purchase, sale or barter of junk, old metals or secondhand articles" in MGL c. 140, § 54.

### **§ 136-2. Authority of Board of Selectmen.**

The Board of Selectmen is authorized to license suitable persons to be dealers in and keepers of shops for the purchase, sale or barter of junk, old metals or secondhand articles, subject to the provisions of MGL C. 140, §§ 202-205, and may revoke such licenses at pleasure.

### **§ 136-3. Dealers to be licensed.**

A: Every dealer in and keeper of a shop for the purchase, sale or barter of junk, old metals or secondhand articles in this Town shall be licensed.

B: A temporary license will be required for transient and special event dealers. The conditions of the temporary license will be determined by the Board of Selectmen.

### **§ 136-4. Collectors to be licensed.**

Every collector of junk, old metals and secondhand articles in this Town shall be licensed.

### **§ 136-5. Inspection.**

The licensed premises shall be subject to inspection by police officers of the Town of Falmouth during all hours that the premises are open to the public.

### **§ 136-6. Records.**

The licensee shall keep a detailed written record of every purchase, including serial numbers and a description thereof, the date of such purchase and the name and residential address of the person from or to whom such purchase

was made. The acceptable identification per 136-1 is required of each seller. This record shall be made available for inspection at all reasonable times for all state and local police officers.

B. A digital photograph will be taken of each item purchased as defined under "regulated property" in §136-1 section ABC. The photographs may be stored electronically, but are subject to the same recordkeeping requirements as listed in §136-9. A. Copies of the photographs will be made available to the Chief of Police in a timely manner and are subject to the same rights of inspection as listed in §136-5.

C. The licensee shall cause to be delivered to the Falmouth Police Department, on a weekly basis, a copy of all transactions recorded.

#### **§ 136-7. Posting of license.**

A. All licenses shall be conspicuously posted in an accessible place on the licensed premises, available at all times to the proper authorities.

B. A secondhand dealer shall post the following notice, no smaller than 8 ½ inches by 11 inches with lettering no smaller than ¼ of an inch in height, outside each point of entry intended for patron use and at or near each place where a secondhand dealer purchases used property in the regular course of business. If a significant number of the patrons of the regular secondhand dealer use a language other than English as a primary language, the notice shall be worded in both English and the primary language or languages of the patrons.

#### **NOTICE:**

The sale or attempted sale of property to a secondhand dealer without consent of the property's owner is punishable by a civil penalty not to exceed \$300 per item. Don't sell property without consent of the property's owner. You will be held strictly liable for violation of this law.

#### **§ 136-8. Suspension or revocation.**

Any license shall be subject to suspension, revocation or modification for any violation of these regulations or conditions of the license.

#### **§ 136-9. Holding Period for purchases-**

A. A copy of every purchase report form filled out as required by this chapter shall be kept on the premises of the secondhand dealer or secondhand collector business during normal business hours for at least three years from the date of purchase. The report form shall be subject to inspection by the Police Chief or his designee. The secondhand dealer or secondhand collector shall not be required to keep the purchase report forms in excess of 3 years.

B. All regulated property in the categories of precious metals or precious gems, defined in §136-1, A.-D., purchased by a secondhand dealer or secondhand collector and required to be recorded on a purchase report form, shall be held by the secondhand dealer or secondhand collector for at least 21 days from the date of purchase.

C. All other regulated property purchased by a secondhand dealer or secondhand collector and required to be recorded on a purchase report form shall be held by the secondhand dealer or secondhand collector for at least 14 days from the date of purchase.

D. The secondhand dealer or secondhand collector shall maintain the property in substantially the same form as when purchased and shall not alter, exchange or commingle the property. During the holding period the regulated property shall be kept on the business premises during normal business hours and shall be subject to inspection by the Police Chief or his designee.

H. Secondhand dealers retailing or wholesaling used property, limited to the following are exempt from subsection B but not C. above:

- (1) Used clothing, furniture, costume jewelry, knickknacks, footwear, and house ware items such as dishes, pots, pans, cooking utensils, and cutlery; or
- (2) Used clothing, furniture, costume jewelry, footwear and house ware items such as dishes, pots, pans, cooking utensils and cutlery, obtained only from or through a registered charity or by donations; or
- (3) Used books, papers, or magazines.

**§ 136-10. Weights and measures.**

All weighing or measuring devices used by a licensee in the conduct of the licensed business shall be tested and sealed by the Town of Falmouth Weights and Measures Division prior to being placed in service.

**§ 136-11. Exemption of auto salvage yards.**

Auto salvage yards shall be exempt from this section.

**§ 136-12. Violations and penalties.**

A. Violation of any provision of this chapter may be prosecuted as a criminal matter or as an administrative procedure or by the noncriminal disposition method provided in MGL c. 40, §21D. Each violation shall be considered separately.

B. Whoever violates the provisions of this chapter shall be fined not more than \$300. The Licensing Authority may suspend, revoke or modify any license issued by it whenever it has reasonable cause to believe the licensee has violated the terms, conditions or regulations pertaining to such license. Any violation of this chapter enforced by the methods provided in MGL c.40 § 21D shall be subject to a fine of \$250.

**§136-13 Exemptions**

Persons holding licensed yard sales and property sold at licensed yard sales and hobbyist.

**§ 136-14. Severability.**

Each provision of this chapter shall be construed as separate. If any part of this chapter shall be held invalid for any reason, the remainder shall continue in full force and effect.

Or do or take any other action on this matter. On request of the Board of Selectmen.

**RECOMMENDATION (Board of Selectmen):** That the Town vote Article 31 as printed.

**EXPLANATION:** The Police Chief and our Second Hand Dealers have been working together to achieve a reasonable balance which increases protection and provides necessary safeguards for both the second hand dealers and those who are victims of theft of valuables. The Board recommends your support of this bylaw.

**ARTICLE 32:** To see if the town will vote to appropriate a sum of money to repair the Tide's Bulkhead which is located at the entrance to Falmouth Harbor (Clinton Ave 46B02 000D000), and to determine how the same shall be raised and by whom expended. Or do or take any other action on this matter. On request of the Board of Selectmen.

**RECOMMENDATION (Finance Committee):** That the Town vote to transfer the sum of \$368,500.00 from the Waterways reserve fund for the purposes of this Article to be expended under the jurisdiction of the Harbormaster.

**EXPLANATION:** The bulkhead is in very poor condition and sustained additional damage during TS Irene. The Town expects to receive repair mitigation funding from FEMA for this damage. All repair permits are in hand for this project.

**ARTICLE 33:** To see if the Town will vote to appropriate a sum of money as the Town share of a Federal Assistance to Firefighters Grant (AFG) to purchase a Basic Firefighter Safety Ensemble for all Falmouth Fire Rescue Department (FFRD) personnel, to determine how the same shall be raised and by whom expended. Or do or take any other action on this matter. On request of the Board of Selectmen.

**RECOMMENDATION (Finance Committee):** That the Town vote to transfer the sum of \$57,333 from certified free cash for the purposes of this Article to be expended under the jurisdiction of the Fire Chief.

**EXPLANATION:** Realizing a need for upgrading basic firefighter safety equipment, the FFRD applied for a grant through the federal AFG program for the sum of \$573,337, with the Towns responsibility being \$57,333.00. These funds will be utilized to purchase new personal protective equipment (PPE) which is compliant with the National Fire Protection Association (NFPA) standards for all members. Additionally funds will be utilized to purchase self contained breathing apparatus (SCBA) for each apparatus riding position which is also in compliance with NFPA standards. The final portion of the safety package will be for purchase of 400mz portable radio system with portable radios for all members, providing two way communication and paging capabilities.

**ARTICLE 34:** To see if the Town will vote to appropriate a sum of money for the purpose of repair and modernizing the Ellen T. Mitchell Beach Administration Building at Surf Drive, and to determine how the same shall be raised and by whom expended. Or do or take any other action on this matter. On request of the Board of Selectmen.

**RECOMMENDATION (Finance Committee):** Indefinite postponement.

**EXPLANATION:** For the past several years, the Beach Committee has sought funding, unsuccessfully, for an architect to complete the redesign of the Ellen T. Mitchell Beach Administration Building at Surf Drive Beach. (The building has been at the 25% design stage for many years). Budget restraints have prevented funding this request. Recently, a volunteer group of Falmouth citizens have come forward to offer their expertise and labor to update the interior of the building to make it more functional, pleasant and welcoming to the thousands of residents and visitors who utilize the building every year. Utilizing this volunteer labor and expertise will obviously reduce expenditures on this building. The article seeks a nominal amount of funding to pay for the materials needed for this “facelift”.

**ARTICLE 35:** To see if the Town will vote to amend Chapter 178 – Scenic Roads of the Code of Falmouth by:

Adding the following words to Section 178-5: “Except as provided for in Section 178-5F below,”

And by adding the following new section:

“178-5F. The permission of the Planning Board will not be necessary when the removing of a stone wall occurs within a historic district, where the Falmouth Historic Districts Commission will have sole jurisdiction.”

Or do or take any other action on this matter. On request of the Falmouth Planning Board.

**RECOMMENDATION (Planning Board):** That Town Meeting vote Article 35 as printed in the warrant.

**EXPLANATION:** The Planning Board and Historic Districts Commission currently share jurisdiction over moving or reconstructing stone walls along scenic roads within Historic Districts. This Article would remove the Planning Board from decisions regarding stone walls in Historic Districts, leaving the Historic Districts Commission with sole responsibility.

**ARTICLE 36:** To see if the Town will vote to repeal Chapter 213, Article V, sections 213-13 through and including 213-22 of the Code of Falmouth relative to open air parking lots, which by-law was previously adopted by vote of the Town on Article 12 of the November 8, 2004 Annual Town Meeting, or do or take any other action on the matter. On request of the Board of Selectmen.

**RECOMMENDATION (Board of Selectmen):** That Town Meeting vote Article 36 as printed in the warrant.

**EXPLANATION:** The Board of Selectmen, with advice from Town Counsel, recommends that the Town repeal this existing bylaw section. The Massachusetts Appeals Court has affirmed that this bylaw does not apply to the Steamship Authority, the Town's largest operator of open air parking lots and therefore the Board does not recommend applying this bylaw to the remaining independent parking lots in town.

**ARTICLE 37:** To see if the Town will vote to rescind the acceptance of General Laws Chapter 148, section 56 relative to the licensing of open-air parking spaces by the Chief of the Fire Department, which statute was previously accepted by vote of the Town on Article 38 of the April 12, 2004 Annual Town Meeting, or do or take any other action on the matter. On request of the Board of Selectmen.

**RECOMMENDATION (Board of Selectmen):** That Town Meeting vote Article 37 as printed in the warrant.

**EXPLANATION:** The Board of Selectmen, with advice from Town Counsel, recommends that the Town rescind the acceptance of this existing General Law section. The Massachusetts Appeals Court has affirmed that this General Law does not apply to the Steamship Authority, the Town's largest operator of open air parking lots and therefore the Board does not recommend applying this General Law to the remaining independent parking lots in town.

**ARTICLE 38:** To see if the Town will provide funding for any or all of the purposes voted for in the foregoing articles by taxation, by transfer from available funds, by borrowing or by any combination of the foregoing. Or do or take any other action on this matter. On request of the Finance Committee and the Board of Selectmen.

**RECOMMENDATION (Finance Committee):** The Finance Committee will make its recommendation on Town Meeting floor.