
**TOWN OF FALMOUTH
OFFICE OF TOWN COUNSEL
MEMORANDUM**

TO: JULIAN SUSO, TOWN MANAGER
FROM: FRANK K. DUFFY, TOWN COUNSEL
PATRICIA A. HARRIS, ASSOCIATE TOWN COUNSEL (THROUGH 4/30/19)
IRIE MULLIN, ASSOCIATE TOWN COUNSEL (8/5/19 TO PRESENT)
SUBJECT: LITIGATION REPORT
DATE: 11/6/2019
CC: TOWN DEPARTMENTS AS NOTED

The following is the Legal Department's periodic report of pending cases and cases resolved since the previous report. Following the name of the case/action is the name of the Court or Agency involved, the nature of the case and the present status of the case. Special Counsel is noted where appropriate.

BOARD OF APPEALS

CASE: George N. Bagley, Elizabeth H. Bagley, Stephen Huban and Diane Huban v. ZBA and Midway Trap and Skeet Club of Falmouth, Inc.
PROPERTY: 284 Old Meeting House Road, East Falmouth
COURT: Barnstable Superior Court
DATE OF ENTRY: January 2018
ISSUE: Appealing two decisions of ZBA regarding operations at Midway Trap and Skeet Club of Falmouth, Inc.
STATUS: Settled by agreement of the parties with Agreement for Judgment filed with the Court 9/2019. Case closed.

CASE: Carol Duclos, Trustee of the 315 School Street Nominee Trust v. ZBA
PROPERTY: 198 Thomas B. Landers Road, East Falmouth, MA
COURT: Barnstable Superior Court
DATE OF ENTRY: July 2015
ISSUE: Appealing decision of ZBA after remand denying request for modification of use variance and alteration of nonconforming use.
STATUS: ZBA denied on remand. Plaintiff appealed Remand Decision. Trial held August, 2019. Judgment affirming ZBA August 2019.

CASE: David Epstein and Sari Friedman v. ZBA
PROPERTY: 533 Woods Hole Road (The Dome)
COURT: Barnstable Superior Court
DATE OF ENTRY: July 2019
ISSUE: Appealing the decisions of ZBA
STATUS: Pending.

CASE: Joseph L. Hackler and Karen R. Schwalbe v. ZBA
PROPERTY: 8 Solar Way, East Falmouth
COURT: Barnstable Superior Court
DATE OF ENTRY: October 2019
ISSUE: Appealing a decision of the ZBA, which denied an appeal from an adverse decision of the Building Inspector regarding a pole barn.
STATUS: Pending.

CASE: Terrell Halewijn v. ZBA and Latitude 41 North, LLC
PROPERTY: 34 Oakwood Avenue
COURT: Land Court
DATE OF ENTRY: December 2018
ISSUE: Appealing decision of ZBA overruling a determination of the Falmouth Zoning Building Inspector that no violations of zoning exist at 34 Oakwood Avenue
STATUS: Land Court trial held September, 2019. Under advisement by Court.

CASE: Falmouth Hospitality, LLC v. ZBA
PROPERTY: Lantern Lane
COURT: Dept. of Housing and Community Development/Housing Appeals Committee
DATE OF ENTRY: July 2017
ISSUE: Appeal of Appeals Board decisions purporting to approve a Comprehensive Permit with conditions.
STATUS: Pending. Final oral arguments October 31, 2018 and case under advisement.

CASE: Vincent Geoffroy v. Heather Campion and ZBA
PROPERTY: 20 Sheridan Avenue, Falmouth
COURT: Land Court
DATE OF ENTRY: December 2018
ISSUE: Appeal of Appeals Board decision overturning the Building Commissioner's determination that a bulkhead and deck/elevated walkway requires a building and special permit.
STATUS: Pending.

CASE: Matthew R. Gould, Davien B. Gould, Pierre Tillier and Gisella Tillier v. Zoning Board of Appeals, Falmouth Hospitality LLC, John J. Fay, III, Trustee, Robert A. Fay, Trustee of Fay's Realty Trust
PROPERTY: Lantern Lane
COURT: Barnstable Superior Court

DATE OF ENTRY: August 2017
 ISSUE: Appeal of Appeals Board approval of 40B Development
 STATUS: Case stayed until Housing Appeals Committee case is resolved.

CASE: Cornelius K. Hurely, Jr., Individually and as Trustee of the C.K.H. Trust and Sheila H. Canty, Trustee of the Canty Family Trust v. Susanne H. Keohane, Trustee of the Harold J. Keohane Irrevocable Income Only Trust I; Harold J. Keohane individually and in his capacity as Trustee of the Keohnae Santuit Realty Trust; Patricia H. Keohane; Falmouth Zoning Board of Appeals; and Kimberly Bielan, Kenneth Forman, Terrence Hurrie, Edward Van Keuren, Paul Murphy and Mark Cook, as they are the members of the Falmouth Zoning Board of Appeals

PROPERTY: 80 Santuit Road, North Falmouth
 COURT: Land Court
 DATE OF ENTRY: March 2016
 ISSUE: Appealing decision of Zoning Board of Appeals affirming 80 Santuit Road is a buildable lot.

STATUS: Judgment of the Land Court February 8, 2018 overturning Board of Appeals decision. Appeal filed with Appeals Court. Appeals Court affirmed the Land Court Judgment August 6, 2019. Plaintiff has appealed to Supreme Judicial Court for further appellate review.

CASE: William Marston and Joseph Bento v. ZBA and Locustfield, LLC
 PROPERTY: 430 Locustfield Road (also known as "0" Locustfield Rd. (Lot 2)
 COURT: Barnstable Superior Court
 DATE OF ENTRY: July 2019
 ISSUE: Appealing the decision of ZBA granting a Comprehensive Permit under MGL ch. 40B.

STATUS: Pending.

CASE: Antranig Minasian, Trustee of 1843 Realty Trust v. The Town of Falmouth and ZBA and James Troubalos, Rita Klapes and Michael Shea
 PROPERTY: "0" Nathan S. Ellis Hwy., North Falmouth
 COURT: Land Court
 DATE OF ENTRY: August 2019
 ISSUE: Appealing decision of ZBA granting variance to construct single family home.

STATUS: Pending.

CASE: Sandra Stosz and Mark Stowes v. ZBA and Helms Circle, LLC
 PROPERTY: Alma Road "Little Pond Village at Falmouth Heights"
 COURT: Barnstable Superior Court
 DATE OF ENTRY: September 2018
 ISSUE: Appealing a decision of ZBA to issue a comprehensive permit under MGL 40B (affordable housing).

STATUS: Pending.

BOARD OF ASSESSORS

NONE

BUILDING DEPARTMENT

NONE

CONSERVATION COMMISSION

CASE: Mark Albers and Cynthia Albers v. Conservation Commission
PROPERTY: 177 Fay Road, Falmouth
COURT: Barnstable Superior Court
DATE OF ENTRY: November 2018
ISSUE: Appeal of Special Condition No. 1, which states "the coir fiber array shall not be installed/constructed as part of this Order of Conditions."
STATUS: Judgment for plaintiffs.

CASE: Patricia Dundulis v. Conservation Commission and Steven Balas and Michael Kachadoorian
PROPERTY: 64 and Lot 77 Muskegat Road, East Falmouth
COURT: Barnstable Superior Court
DATE OF ENTRY: August 2018
ISSUE: Appeal from Commission decision granting an order of conditions to construct a dock in canal.
STATUS: The Superior Court upheld the Conservation Commission 8/29/2019. Plaintiff has appealed to Appeals Court. 8/2019.

CASE: Nathan Holcomb v. Town of Falmouth and Conservation Commission
PROPERTY: 270 Sippewissett Road, Falmouth
COURT: Barnstable Superior Court
DATE OF ENTRY: May, 2019
ISSUE: Appeal of Special Condition No. 3 & 4, of the Order of Conditions.
STATUS: Pending.

CASE: Steven H. Kasok and Stephanie S. Kasok v. Conservation Commission
PROPERTY: 39 Jetty Lane, West Falmouth
COURT: Barnstable Superior Court
DATE OF ENTRY: July 2019
ISSUE: Appeal of Special Conditions Nos. 1, 2, 3 and 5. as part of the Order of Conditions.
STATUS: Pending.

CASE: Janice Smyth v. Conservation Commission and Town of Falmouth
PROPERTY: 250 Alder Lane, North Falmouth
COURT: Barnstable Superior Court
DATE OF ENTRY: February 2013
ISSUE: Appeal from Commission decision denying variance to construct a single family residence within wetland resource areas. Complaint includes a Regulatory Taking claim against the Town of Falmouth.
STATUS: Superior Court affirmed ConCom's decision 2/7/14. Jury awarded judgment for Plaintiff in the amount of \$660,000 in the regulatory taking claim. Appeals Court reversed Superior Court's decision. Plaintiffs filed for Further Appellant Review with Supreme Judicial Court, which was denied. Plaintiff has filed a Petition for Writ of Certiorari with United States Supreme Court and the Town has filed a response opposing the Petition.
SPECIAL COUNSEL: Michelle O'Brien, Esquire (for Regulatory Taking claim)
Matthew Littleton, Esquire (for US Supreme Court case)

CASE: Ari Soroken, Trustee of the AMS Revocable Trust v. Conservation Commission
PROPERTY: 77 Fay Road, Falmouth
COURT: Barnstable Superior Court
DATE OF ENTRY: October 2018
ISSUE: Appeal from Commission decision denying an application to construct a 175 long elevated walkway and 16 x 16 elevated platform to provide access from the residence to the beach and the waters of Vineyard Sound.
STATUS: Judgment affirming the Conservation Commission decision 8/2019. Plaintiff has appealed to Appeals Court 9/2019.

CASE: John R. Zizza v. Conservation Commission
PROPERTY: 82 Waterside Drive, North Falmouth
COURT: Barnstable Superior Court
DATE OF ENTRY: November 2017
ISSUE: Appeal of Conservation Commission decision. First Count claims decision did not issue within statutory deadline. Second Count appealing denial of Order of Conditions. Denying notice of intent to relocate boulders off shore in Buzzards Bay.
STATUS: Trial in First Count April 5, 2019. Second Count stayed pending outcome of trial in Count I. Judgment in favor of plaintiff on Count I rendering Count II moot.

FALMOUTH FIRE RESCUE DEPARTMENT

NONE

HEALTH DEPARTMENT

NONE

HISTORICAL COMMISSION

NONE

MARINE ENVIRONMENTAL SERVICES

NONE

PLANNING BOARD

CASE: Hugh F. McGourty, Jr. et al. v. Planning Board and Brian E. Sandlin, Trustee and Trent Toran-Sandlin, Trustee
PROPERTY: 209 Maravista Avenue, Teaticket
COURT: Land Court
DATE OF ENTRY: December 2016
ISSUE: Appealing decision of Planning Board allowing Defendants, Brian E. Sandlin and Trent Toran-Sandlin to subdivide said property.
STATUS: Pending.

POLICE DEPARTMENT

CASE: Michael A. Carlino v. Town of Falmouth Police Chief
COURT: Falmouth District Court
DATE OF ENTRY: July 2019
ISSUE: Appeal decision of Chief denying application for firearms identification card.
STATUS: Pending.

CASE: Ananta Macedo v. Town of Falmouth Police Chief
COURT: Falmouth District Court
DATE OF ENTRY: September 2019
ISSUE: Appeal decision of Chief suspending license to carry firearm.
STATUS: Pending.

CASE: Carli Taylor v. Officer Ryan Moore and Town of Falmouth
COURT: United States District Court
DATE OF ENTRY: August 2017
ISSUE: Plaintiff alleging civil rights violations of 4th and 14th Amendments to the US Constitution following arrest for OUI.
STATUS: Verdict in favor of defendant 7/2019. (Case being handled by insurance counsel)

RECREATION DEPARTMENT

NONE

SCHOOL DEPARTMENT

CASE: Sharon Lessard v. Falmouth Public Schools
COURT: MCAD
DATE OF ENTRY: October 2016
ISSUE: Claiming discrimination related to age.
STATUS: Pending. (Case being handled by insurance counsel)

CASE: Kara Quinn v. Lilia Davis
COURT: Barnstable Superior Court
DATE OF ENTRY: December, 2017
ISSUE: Claiming defamation in performance evaluation.
STATUS: Pending. (Case being handled by insurance counsel)

BOARD OF SELECTMEN

CASE: Patricia and Frank Dundulis and Anthony Pentikis v. Board of
Selectmen and Steven Balas and Michael Kachadoorian
PROPERTY: 64 and Lot 77 Muskegat Road, East Falmouth
COURT: Barnstable Superior Court
DATE OF ENTRY: December 2018
ISSUE: Appeal from Selectmen constructive grant of a special permit to
construct a dock in canal.
STATUS: Pending.

TOWN OF FALMOUTH

CASE: Barnstable County Mutual Insurance Company a/s/o Mead A. Sommers
and Kathryn G. Sommers, Trustees of the 30 Sand Dollar Lane Real
Estate Trust v. Town of Falmouth
PROPERTY: Flood damage
COURT: Barnstable Superior Court
DATE OF ENTRY: July 2019
ISSUE: Claiming damage by water department at 10 Rivers Edge Drive.
STATUS: Pending. (Case being handled by insurance counsel)

CASE: Brian Handy v. Town of Falmouth, et al
PROPERTY: Cranberry bog south of Carriage Shop Road
COURT: Land Court
DATE OF ENTRY: October 1999

ISSUE: Petition to register/confirm title to cranberry bog. Town owns abutting land subject to sanding rights.

STATUS: Pending.

CASE: Mary Jane Hunt v. Robert B. Our, Inc. and Town of Falmouth

PROPERTY: Personal Injury

COURT: Barnstable Superior Court

DATE OF ENTRY: January 2018

ISSUE: Claiming injuries sustained in a fall because of construction of a new sewer line near Spring Bars Road, between Worcester Court and Davis Straits.

STATUS: Case with Town settled 7/2018, case pending with Robert B. Our, Inc. (Case being handled by insurance counsel)

CASE: Carol S. Petit, Trustee of Beach House Realty Trust v. Town of Falmouth

COURT: Land Court

DATE OF ENTRY: August 2013

ISSUE: Land Court registration case – County Road, Megansett.

STATUS: Pending.

CASE: Henry Pollock v. Town of Falmouth

COURT: Land Court

DATE OF ENTRY: August 2013

ISSUE: Land Court registration case – Country Road, Megansett.

STATUS: Pending.

CASE: Suzanne M. Sullivan v. Town of Falmouth

COURT: Land Court

DATE OF ENTRY: November, 2013

ISSUE: Land Court registration case – County Road, Megansett.

STATUS: Pending

CASE: Town of Falmouth v. Amerisourcebergen Drug Corporation, et al

COURT: United States District Court of Massachusetts

DATE OF ENTRY: October 2018

ISSUE: Complaint filed against numerous pharmaceutical manufacturers and pharmacies for public nuisance; violations of Racketeer Influenced and Corrupt Organizations Act (RICO); negligence and negligent misrepresentation; civil conspiracy; and fraud and fraudulent misrepresentation; violations of Massachusetts General Laws, Chapter 93A, Sections 2 and 11 and aiding and abetting. (The misuse, abuse, diversion and over-prescription of opioids.)

STATUS: Pending. (Case being handled by Richard M. Sandman, Esquire of Rodman, Rodman & Sandman)

TAX COLLECTOR/TREASURER

NONE

WATER DEPARTMENT

NONE

**TOWN OF FALMOUTH – LITIGATION REPORT
SUBMITTED BY LABOR COUNSEL
NORRIS, MURRAY AND PELOQUIN, LLC
(formerly Collins, Loughran and Peloquin, PC)
October 2019**

POLICE

CASE: Falmouth Police Superior Officers (Sergeant Rogers), NEPBA Local 61 and Town of Falmouth
COURT: AAA
DATE OF FILING: July 23, 2018
ISSUE: Sergeant ordered to do weekly check-in while on paid injury leave in accordance with Dept procedure; Union claims the check-in is not in accordance with past practice.
STATUS: Arbitration Hearing scheduled for December 6, 2019. This matter may settle, as there is a tentative agreement to resolve it in connection with successor contract negotiations.

CASE: Falmouth Police Federation and Town of Falmouth (Comp. Time)
COURT: DLR
DATE OF FILING: June 28, 2018
ISSUE: Union claimed Town violated compensatory time practice by granting leave only if staffing is above the minimum at time shift starts.
STATUS: DLR has deferred the case to the grievance and arbitration procedure and an arbitrator has been selected. Arbitration Hearing scheduled for December 3, 2019.

FIRE

CASE: Falmouth Firefighters, Local 1397 IAFF and Town of Falmouth
COURT: JLMC
DATE OF FILING: August 21, 2018
ISSUE: CBA issues in dispute.
STATUS: Parties settled Contract prior to Day 2 of Interest Arbitration.

CASE: Falmouth Firefighters – Off Duty OUI (J. Frisbee)
COURT:
DATE OF FILING: June 25, 2019
ISSUE: FF J. Frisbee was charged with OUI, speeding, negligent operation and unregistered M/V.
STATUS: Suspended without pay as of July 9, 2019.

CASE: Falmouth Firefighters, Local 1397 IAFF and Town of Falmouth
COURT: Grievance over new facial hair policy
DATE OF FILING: August 28, 2018
ISSUE: Union contends Town has to bargain over facial hair policy designed to ensure safe seal when FF wearing masks

STATUS: Grievance at Town Manager's level.

CASE: Falmouth Firefighters, Local 1397 IAFF and Town of Falmouth
COURT: Domestic Abuse Allegations/Criminal Charges Against FF Matthew Edwards

DATE OF FILING: November 26, 2018
ISSUE: FF Edwards accused by his estranged wife of abusing her and their son; criminal charges pending.

STATUS: Fire Department conducting Administrative Investigation but, to date Mrs. Edwards declines to be interviewed. FF Edwards on paid administrative leave since November 26, 2018 and continuing; criminal charges pending in Falmouth District Court.

**TOWN OF FALMOUTH – LITIGATION REPORT
SUBMITTED BY LABOR COUNSEL
MIRICK O'CONNELL
October 2019**

CASE: AFSCME v. Town of Falmouth
COURT: Dept. of Labor Relations (DLR)
DATE OF FILING: 2018
ISSUE: AFSCME represents the DPW employee who filed a charge against the Town in connection with the reclassification of the Facilities Manager. Union alleges the Town has engaged in bad faith bargaining in connection with the implementation of the arbitration award, which required the Town to reclassify the Facilities Manager.

STATUS: DLR held an investigative conference 8/22/2018. On December 20, 2018, the DLR issued a complaint against the Town alleging the Town violated Chapter 150E by denying the Facilities Manager comp time and call back pay since July 1, 2018. A hearing is scheduled on the charge on August 6, 2019 before the DLR.

CASE: Town of Falmouth v. Local 1636 and AFSCME
COURT: Labor Relations Connection
DATE OF FILING: 2018
ISSUE: The Union filed a demand for arbitration with LCR, appealing the Town's denial of the Union's grievance, alleging that the Town violated the Collective Bargaining Agreement when Ms. Newton was denied overtime, callbacks and compensatory time; the same issues that are before DLR.

STATUS: On July 8, 2019, the Town filed a motion with the Department of Labor Relations requesting to defer the unfair labor practice charge to arbitration. The Town's Motion was approved by the DLR. The Arbitration hearing was held before Arbitrator Paul Edgar on September 5, 2019. The parties' post hearing briefs are due on October 25, 2019.

CASE: Town of Falmouth v. AFSCME
COURT: Dept. of Labor Relations (DLR)
DATE OF FILING: 2018
ISSUE: Town filed a charge of repudiation of the collective bargaining agreement and arbitration award against AFSCME regarding the reclassification of the Facilities Manager.
STATUS: DLR held an investigative conference 8/22/2018. On December 20, 2018, the DLR dismissed the Town's charges. The Town appealed the DLR finding to CERB, which dismissed the Town's appeal on February 28, 2019. The Town has filed a motion for reconsideration of the CERB's decision issued on February 28, 2019. The CERB denied the request on September 26, 2019.

CASE: Mass Public Employee Council and Town of Falmouth Arbitration
COURT: American Arbitration Association
DATE OF FILING: April, 2019
ISSUE: Union filed a Demand for Arbitration alleging that a bargaining unit member was unjustly denied a promotion.
STATUS: The matter is scheduled for an arbitration hearing on November 14, 2019.

**SPECIAL COUNSEL
LEGAL FEES
FY 2020
7/1/2019 – 10/31/2019**

Mirick, O’Connell, Demallie & Lougee, LLP (Labor)	\$15,109.57
Norris, Murray & Peloquin, PC (Labor)	\$15,565.00
Pierce Atwood, LLP (Smyth v. ConCom)	\$ 2,781.50
TOTAL	\$33,456.07