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

TO: JULIAN SUSO, TOWN MANAGER
FROM: FRANK K. DUFFY, TOWN COUNSEL
IRIE MULLIN, ASSOCIATE TOWN COUNSEL (8/5/19 TO PRESENT)
SUBJECT: LITIGATION REPORT
DATE: 6/1/2020
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.

ZONING BOARD OF APPEALS

CASE: Gawdat Meawad v. ZBA
PROPERTY: 0 and 213 North Falmouth Highway
COURT: Dept. of Housing and Community Development/Housing Appeals Committee
DATE OF ENTRY: December, 2019
ISSUE: Appeal of ZBA decision purporting to approve a Comprehensive Permit with conditions.
STATUS: Case settled in mediation May 2020.

CASE: Pheasant Lane, LLC v. ZBA and Edward Van Keuren, Individually
PROPERTY: 33 Pheasant Lane
COURT: Land Court
DATE OF ENTRY: January, 2020
ISSUE: Appealing decision of ZBA to tear down house.
STATUS: Pending.
SPECIAL COUNSEL: Michael S. Giaimo, Esquire

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 approving development of the Dome property.
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, affirmed a decision of the Building Inspector to tear down 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 Building Inspector that no violations of zoning exist at 34 Oakwood Avenue
STATUS: Land Court trial held December 2019. Under advisement by Court.

CASE: Joseph Keenan and Marilyn Keenan v. John W. Leddy, Maura W. Leddy and the ZBA
PROPERTY: 105 Silver Beach Avenue, North Falmouth
COURT: Land Court
DATE OF ENTRY: March, 2020
ISSUE: Appealing a decision of ZBA allowing a special permit to reconstruct a dwelling on said property.
STATUS: Pending

CASE: James M. Keller, in his capacity as Trustee of The Howard Heller Qualified Personal Residence Trust v. John W. Leddy, Maura W. Leddy and the ZBA
PROPERTY: 105 Silver Beach Avenue, North Falmouth
COURT: Land Court
DATE OF ENTRY: March, 2020
ISSUE: Appealing a decision of ZBA allowing a special permit to reconstruct a dwelling on said property.
STATUS: Pending

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 zba decisions purporting to approve a Comprehensive Permit with conditions.
STATUS: Housing Appeals Committee affirmed the Ch. 40B comprehensive permit and struck many of the ZBA's special conditions and restored all deleted units.

CASE: Vincent Geoffroy v. Heather Campion and ZBA
PROPERTY: 20 Sheridan Avenue, Falmouth
COURT: Land Court
DATE OF ENTRY: December 2018
ISSUE: Appeal of ZBA decision overturning the Building Commissioner's determination that a bulkhead and deck/elevated walkway requires a building and special permit.
STATUS: Case stayed while Ch. 90 license is resolved by Mass. DEP.

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 ZBA approval of 40B Development
STATUS: Case stayed until Housing Appeals Committee case is resolved.

CASE: Cornelius K. Hurley, 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 ZBA of Appeals affirming 80 Santuit Road is a buildable lot.
STATUS: Judgment of the Land Court February 8, 2018 overturning ZBA decision. Appeal filed with Appeals Court. Appeals Court affirmed the Land Court Judgment August 6, 2019. Plaintiff appealed to Supreme Judicial Court for further appellate review. SJC denied request. Land Court judgment stands.

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: Parties settled by agreement. Joint Stipulation of Dismissal filed with court March 2020.

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: Motion to Dismiss allowed November 2019. Case over.

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: Settlement between parties pending approval.

BOARD OF ASSESSORS

NONE

BUILDING DEPARTMENT

NONE

CONSERVATION COMMISSION

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. Pending.

CASE: Bruno Gallinelli and Faggio, LP v. Conservation Commission
PROPERTY: 117 Surf Drive
COURT: Barnstable Superior Court
DATE OF ENTRY: February 2020
ISSUE: Appeal from Commission decision granting an amended order of conditions regarding fencing.
STATUS: Pending.

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; claims for a regulatory taking and an injunction.
STATUS: Hearing on certiorari claim held January 9, 2020. Judgment issued March 30, 2020 affirming Conservation Commission's inclusion of the disputed special conditions. Remaining claims pending.

CASE: David Howe v. Conservation Commission and Town of Falmouth
PROPERTY: 0 and 55 Vineyard Street, East Falmouth
COURT: Barnstable Superior Court
DATE OF ENTRY: December 2019
ISSUE: Appealing Enforcement Order
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: Settlement between parties pending approval.

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 to deny the variance on 2/7/14. Jury awarded judgment for Plaintiff in the amount of \$660,000 in the regulatory taking claim against the Town. Appeals Court reversed the jury's finding that a regulatory taking occurred. Plaintiffs filed for Further Appellant Review with Supreme Judicial Court, which was denied. Plaintiff filed a Petition for Writ of Certiorari with United States Supreme Court and the Town filed a response opposing the Petition. U.S. Supreme Court declined to review the SJC's decision.
 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 timber 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. Briefs filed.

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: Settlement between parties pending approval.

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: Judgment for Chief of Police. Plaintiff appealed decision to Superior Court. 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: Judgment for Chief of Police.

CASE: Douglas DeCosta as he is Lieutenant for Falmouth Police Department v. William K. Rose
COURT: Falmouth District Court
DATE OF ENTRY: February 2020
ISSUE: Suspension of firearm identification card for unsuitability.
STATUS: Dismissed without prejudice at request of plaintiff.

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: Stipulation of Dismissal filed with court 10/2019. Case closed. (Case
being handled by insurance counsel)

CASE: Philip Furtado v. Town of Falmouth
PROPERTY:
COURT: Barnstable Superior Court
DATE OF ENTRY: March 2020
ISSUE: Claiming civil rights violation..
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)
June 2020**

POLICE

CASE: Falmouth Police Federation and Town of Falmouth (Comp. Time)
COURT/AGENCY: Department of Labor Relations and Arbitration
DATE OF FILING: March 25, 2019
ISSUE: Union claimed Town violated compensatory time practice by granting leave only if staffing is above the minimum at time shift starts.
STATUS: The matter was raised in a charge at the Department of Labor Relations and in three grievances. The DLR matter was deferred to arbitration, and a hearing was held on December 3, 2019. Post-hearing briefs were submitted on 2/18/2020. On March 31, 2020, the Arbitrator upheld the Department's right to deny or delay determinations regarding the grant of compensatory time to see if a hiring situation will be created.

CASE: James Morse Civil Service Bypass
COURT/AGENCY: Civil Service Commission
DATE OF FILING: May 5, 2020
ISSUE: James Morse appealing Town's bypass of his Police Officer application based on a background investigation revealing conduct unbecoming and several issues requiring discipline, resulting in termination from the Oak Bluffs Police Department in 2018.
STATUS: Pre-hearing Conference held by the Civil Service Commission on June 2, 2020; Pre-hearing conference scheduled for August 14, 2020, and full hearing scheduled for September 9, 2020.

CASE: Falmouth Police Patrolmen's Federation Negotiations
COURT/AGENCY: Joint Labor-Management Committee
DATE OF FILING: May 20, 2020
ISSUE: The FPPF filed a petition with the JLMC for exercise of jurisdiction regarding shifts, overtime, sick leave, holiday pay, education benefits, swaps, wages, differentials, fitness, hazardous duty, civil service impacts
STATUS: Awaiting scheduling of Investigation meeting by JLMC.

CASE: N.E.P.B.A. v. Town of Falmouth (MUP-20-8022)
COURT/AGENCY: Department of Labor Relations
DATE OF FILING: May 29, 2020
ISSUE: Union representing Lieutenants contend that efforts to remove Department from Civil Service required bargaining above and beyond the bargaining that has been undertaken.
STATUS: The matter was raised in a charge at the Department of Labor Relations on 5/29/20. Awaiting an in-person investigation date to be agreed upon between both parties.

FIRE

CASE: Falmouth Firefighters Local 1397 v. Town of Falmouth
(Case No.: 01-20-0005-3502)
COURT/AGENCY: American Arbitration Association
DATE OF FILING: May 21, 2020
ISSUE: A grievance was issued by the Union regarding assigning Firefighters to assemble a medical tent.
STATUS: Pending selection of Arbitrator.

**TOWN OF FALMOUTH – LITIGATION REPORT
SUBMITTED BY LABOR COUNSEL
MIRICK O’CONNELL
May 2020**

CASE: MA Public Employee Council v. Town of Falmouth
COURT: American Arbitration Association
DATE OF FILING: April 2019
ISSUE: MA Public Employee Council filed a demand for arbitration alleging that the Town violated the Collective Bargaining agreement when an employee was denied a promotion.
STATUS: An arbitration hearing was held on November 14, 2019. The Arbitrator issued his award on March 25, 2020, in favor of the Town finding that the Town did not violate Article 7 of the parties’ Collective Bargaining Agreement. Grievance was denied, matter closed.

CASE: MA Public Employee Council v. Town of Falmouth
COURT: American Arbitration Association
DATE OF FILING: November 2019
ISSUE: MA Public Employee Council filed a demand for arbitration alleging the three DPW employees were suspended for 2 days without just cause in violation of the Collective Bargaining Agreement.
STATUS: This matter has been settled by the parties, matter is closed.

CASE: AFSCME v. Town of Falmouth
COURT: Dept. of Labor Relations (DLR)
DATE OF FILING: January 2020
ISSUE: Union filed a demand for arbitration alleging that the employee was terminated without just cause in violation of the Collective Bargaining Agreement.
STATUS: A hearing is scheduled for August 25, 2020, matter is pending.

**SPECIAL COUNSEL
LEGAL FEES
FY 2020
7/1/2019 – 6/01/2020**

Mirick, O’Connell, Demallie & Lougee, LLP (Labor)	\$70,476.27
Norris, Murray & Peloquin, PC (Labor)	\$51,920.00
Pierce Atwood, LLP (Smyth v. ConCom)	\$17,281.31
Robinson & Cole, LLP (Pheasant Lane, LLC v. ZBA)	\$19,324.24
Donahue, Goldberg & Weaver, LLP (Smyth v. ConCom)	\$21,413.03
TOTAL	\$180,414.85