TOWN OF FALMOUTH
SELECT BOARD
OPEN SESSION MINUTES
MONDAY, FEBRUARY 24, 2025 – 5:30 P.M.
SELECT BOARD MEETING ROOM
TOWN HALL
59 TOWN HALL SQUARE, FALMOUTH, MA 02540

The Select Board may discuss and vote appropriate action on any item listed on this Agenda unless a different disposition is noted. At the discretion of the Chair, agenda items may be taken out of order.

Present: Nancy Robbins Taylor, Chair; Edwin P. (Scott) Zylinski II, Vice Chair; Douglas C. Brown; Robert P. Mascali; Heather M. H. Goldstone
Others present: Mike Renshaw, Town Manager; Peter Johnson-Staub, Assistant Town Manager; Maura O'Keefe, Town Counsel

5:30 p.m. - OPEN SESSION

EXECUTIVE SESSION

1. M.G.L. c. 30A § 21(a)(3) To discuss strategy with respect to litigation (Falmouth Southerly, LLC) where discussion in an open session would have a detrimental effect on the litigating position of the Town
2. M.G.L. c. 30A § 21(a)(3) To discuss strategy with respect to litigation (PFAS Product Liability Class Action) where discussion in an open session would have a detrimental effect on the litigating position of the Town

Motion by Mr. Zylinski: To enter into Executive Session per M.G.L. c. 30A § 21(a)(3) - to discuss strategy with respect to litigation (Falmouth Southerly, LLC) where discussion in an open session would have a detrimental effect on the litigating position of the Town; and to discuss strategy with respect to litigation (PFAS Product Liability Class Action) where discussion in an open session would have a detrimental effect on the litigating position of the Town. Second: Mr. Brown
Roll Call Vote: Taylor – aye; Zylinski – aye; Brown– aye; Mascali - aye; Goldstone – aye; Yes – 5 No – 0

6:30 p.m. - OPEN SESSION

<u>Call to Order:</u> By Chair Nancy Robbins Taylor at 6:30 p.m.

<u>Pledge of Allegiance</u>: Led by Select Board

<u>Recognition:</u> None at this time.

<u>Announcements:</u> Ms. Goldstone announced a number of events as Black History Month concludes. She also noted that Farming Falmouth will be screening a movie on Friday and Saturday; there will be a talk regarding the Rights of Nature.

Mr. Brown stated that there will be a Mass Military Civilian Community Council meeting on February 26th at 5:30 pm regarding composting.

Public Comment:

Katherine Jansen, Chair of the Bicycle & Pedestrian Committee, acknowledged a number of pedestrians hit by vehicles in Town recently. The Town needs to protect vulnerable road users. The Town has so far resisted safety items such as speed tables for a variety of reasons such as cost, but she asked about the cost of a life or the cost to the Town once word spreads that it is not safe to walk on its streets. It is not the sole responsibility of the DPW, but part of a strategic plan for safety in the Town. She asked the Board to act on public safety starting with its strategic planning process.

CONSENT AGENDA – *The Board addressed this agenda item at this time.*

1. Administrative Orders

    a. Consider a vote to approve the petition of NSTAR Electric Company d/b/a Eversource Energy and Verizon New England, Inc. for permission to install 1 new JO pole on Ter Heun Drive to be labeled 570/4-5 approximately 80' (feet) west of existing pole 570/4. This pole location is necessary for a new underground cable line from Eversource Station 933.

    b. Consider a vote to approve the petition of NSTAR Electric Company d/b/a Eversource Energy to install along Redwing Terrace two (2) new manholes 10114/035 and 10114/045. The installation of the 2 new manholes is to address the faulted section of Direct Buried cable along Pebble Lane and Redwing Terrace and install fault indicators.

    c. Consider a vote to approve the petition of NSTAR Electric Company d/b/a Eversource Energy to install on Pebble Lane two (2) new manholes 10114/055 and 10114/065. The installation of the 2 new manholes is to address the faulted section of Direct Buried cable and install fault indicators.

    d. Consider a vote to accept a donation in the amount of $500.00 from Joan Tweedell to the Cultural Council Donation Account for Music at the Table

    e. Consider a vote to accept the Amendment to Water Easement and Drainage Easement at 64 Technology Park Drive from the Falmouth EDIC

There was a request to consider this item separately.

> f. Consider a vote to opt in to Early Voting in Person for the May 20th Annual Town Election
>
> ~~*g. Consider a vote to approve the Solar Rooftop Lease with Select Energy Development LLC for the Water Treatment Plant (650 Gifford Street)*~~

Mr. Renshaw noted that this item is proposed to be removed from the agenda and addressed at a later time.

Motion by Ms. Goldstone: To approve Consent Agenda Items a-d.
Second: Mr. Zylinski Vote: Yes – 5 No – 0

Motion by Mr. Brown: To approve Consent Agenda Item f.
Second: Mr. Zylinski Vote: Yes – 5 No – 0

e. Consider a vote to accept the Amendment to Water Easement and Drainage Easement at 64 Technology Park Drive from the Falmouth EDIC

Mr. Mascali abstained from this item.

Motion by Mr. Zylinski: To approve Consent Agenda Item e, with Mr. Mascali's abstention.
Second: Mr. Brown Vote: Yes – 4 No – 0 Abstain - 1

MINUTES
1. Review and Vote to Approve Minutes of Meetings – *The Board addressed this agenda item at this time.*
    a. Public Session: October 25, 2021, and February 10, 2025

Motion by Mr. Brown: To approve the meeting minutes of October 25, 2021, as presented.
Second: Ms. Robbins Taylor Vote: Yes – 2 No – 0 Abstain – 3

Motion by Mr. Brown: To approve the meeting minutes of February 10, 2025, as amended.
Second: Ms. Goldstone Vote: Yes – 5 No – 0

BUSINESS – *The Board addressed this agenda item at this time.*
4. Discuss and consider the approval of a letter to the Cape Cod Commission concerning a Conservation Restriction for 41, 59 and 48 Theater Drive and 0 Boxberry Hill Road

Town Counsel O'Keefe explained that this is a request for a large scale ground-mounted solar array to be placed at the Cape Cod Country Club. The Cape Cod Commission would like to hear from the Board regarding placing a conservation restriction on this land. There were some concerns regarding how that restriction would be structured, as the intention is to conserve part of the parcel and save another potion for future municipal purposes. Generally, a lot is subdivided to put in place various restrictions, but doing so on this lot would impact the economic feasibility of the solar array. After some negotiations, it has been determined that different restrictions can be placed on this parcel without having to subdivide it. The Cape Cod Commission is asking for a letter from the Board showing continued support for the project and also acknowledging that the Town has found a way forward to conserve the property for affordable housing and for conservation purposes. The conservation restriction will be in perpetuity. The mechanism to allow for these two restrictions is that there will be detailed plans delineating the areas of the various restrictions. The parcel will remain as one deeded unit, but clear lines will be shown on a plan and submitted for approval to the Land Court.

The Board noted amendments it would like made to the language of the letter, including additional details such as the exact acreage of the restriction and to modify a clause to read, "the Select Board has been informed and wishes to convey that the Town with the continued support or cooperation of the applicant is confident that the proposed conservation goals can be achieved in a way that will benefit all."

Motion by Mr. Brown: To approve the letter, as amended.
Second: Mr. Mascali Vote: Yes – 5 No – 0

PUBLIC HEARINGS

1. Fee Hearing – Discuss, consider and vote proposed Recreation Department fee changes for 2025

The Board opened the hearing at 6:54pm.

Julie Williams-Tinkham, Recreation Director, explained that the proposal is to increase the Summer Adventure Program fees. The program has maintained the same fee since at least 2006. The Department has rising operational costs and increasing participant needs. The current fee structure is $75 per week and $25 for extended stays. In 2009, the estimated average hourly wage for summer employees was $10.26 and in 2025 the approximate is $18.81, or an 86% increase. There are also increasing social-emotional needs of students, and it will be important to make sure that students are getting the support they need. The proposal is to increase fees from $75 per week to $100 per week. This would remain less costly than other surrounding communities.

Ms. Robbins Taylor asked how this increase can be offset for Falmouth families who cannot afford it. Ms. Williams-Tinkham stated that there are scholarships available for each school. Falmouth children are considered first during the enrollment period for the program.

Mr. Mascali asked where the fees for this program go. Mr. Renshaw stated that these fees go into the General Fund and there is already an additional head counselor position proposed in the budget based on the increase in fees.

Ms. Goldstone asked if additional leeway could be considered in increasing the fees higher, in order to allow for additional funding to be available for the scholarships. Ms. Williams-Tinkham stated that the intention was to start the increase at a lower point.

Motion by Mr. Mascali: To approve the proposed fee adjustments for the 2025 Summer Adventure Program as presented.
Second: Ms. Goldstone Vote: Yes – 5 No – 0

Ms. Williams-Tinkham stated that there is an additional proposal to institute program fees for adult sports programs. Currently, the Department does not charge fees for any adult sports programs. There has been increased participation from non-residents and growing operational and maintenance costs. Fees would help improve program supplies, deal with maintenance, and manage non-resident use of Town facilities. She presented two proposed fee structures for adult programs. One option is to charge $30 for resident and $40 for non-residents per session for 8 weeks. The other option is a punch card system, at $30.00 for eight punches.

Ms. Goldstone asked if there are scholarships available for adult programs as well, to which Ms. Ms. Williams-Tinkham stated that there are.

There was no public comment at this time.

Motion by Mr. Mascali: To close the public hearing.
Second: Mr. Zylinski Vote: Yes – 5 No – 0

Motion by Mr. Brown: To approve the proposed fee adjustments for the 2025 Adult Sports Programming as presented.
Second: Mr. Zylinski Vote: Yes – 5 No – 0

BUSINESS

1. Discuss and consider a draft charge document and a vote to approve the establishment of a Short-Term Rental Advisory Committee

Mr. Renshaw explained that he provided a brief background of the outstanding efforts of the Planning Board in establishing a short-term rental working group at the January 27th meeting. The group started meeting in March of last year and finished their meetings in August of last year. As a result of that work, a draft short-term rental bylaw was presented to the Select Board in anticipation of Town Meeting. The Board opted to indefinitely postpone the proposal due to a consensus that some additional work was needed. The proposad draft mission document calls for a seven-member temporary short-term advisory committee to include one member of the Select Board, one member of the Planning Board, one representative of the Falmouth Police Department, one member of the Board of Health, one licensed realtor, and two residents. He recommended that the Board approve the establishment of a temporary Short-Term Rental Advisory Committee and approve the Committee charge document as presented.

Mr. Mascali expressed concern that the document specifically mentions drafting a general bylaw. He added that the Committee should consider also offering meetings at different times and locations.

Ms. Goldstone stated that it should be clear in the mission that there need to be mechanisms to regulate the behavior of short-term rentals, which is well-encapsulated in the general bylaw, while also addressing the economic and housing impacts of short-term rentals. There may be zoning implications. The language should be left more open than specifying drafting a general bylaw. The Committee should report back to the Board prior to drafting a proposed bylaw.

Mr. Renshaw suggested amending the language to include that the Committee should also consider a zoning bylaw as a potential product of its work.

Mr. Mascali suggested an amendment to the language that the Committee come to the Board with a proposed recommendation that could include possibly a general bylaw or zoning amendment.

Motion by Mr. Mascali: To approve the Mission Statement with the recommended amendments.
Second: Mr. Brown Vote: Yes – 5 No – 0

2. Discuss the Municipal Empowerment Act and consider drafting a letter of support

Ms. Goldstone stated that there are a number of issues addressed in the Municipal Empowerment Act including making permanent the ability of town bodies to meet either in hybrid or virtual format. This proposal is coming up against a deadline in March when the COVID provision is set to end. If this law passes, the Board may also want to consider provisions for additional revenue sources and additional tax exemptions for seniors.

Mr. Mascali stated that he would like a letter of support from the Board to be generally supportive of the Act, as many provisions are included. The Board agreed that the Town Manager should draft a letter indicating general support, while highlighting the couple of items as specifically discussed.

Motion by Mr. Brown: To send a letter from the Board generally supporting the Municipal Empowerment Act.
Second: Mr. Mascali Vote: Yes – 5 No – 0

3. Discuss and consider a vote to send a letter of endorsement to the Executive Office of Housing and Livable Communities (EOHLC) for the affordable housing project at 48 Benjamin Nyes Lane, North Falmouth

Maureen Brown, Director of Land Acquisition for Habitat for Humanity, explained that Habitat for Humanity of Cape Cod is proposing to build 14 new affordable homes on a 7.5 acre parcel of land at 48 Benjamin Nyes Lane in North Falmouth. Habitat for Humanity plans to permit this project through the Massachusetts Chapter 40B and is collaborating with The 300 Committee to execute this project. The intention is to maximize the use of the property for a long term public benefit, conserving 48 acres of land. These homes will be deed restricted at affordable prices determined by the Department of Housing and Urban Development. The homes will be priced between 60%-80% of the area median income (AMI). The homes will be protected in perpetuity as affordable and will be counted on the Town subsidized housing inventory. The Town has requested local preference, allowing 70% of the offerings to go to residents of the Town. The proposed homes will be solar powered and energy efficient. Habitat for Humanity has been awarded $1.5M from the Falmouth Affordable Housing Funds for land acquisition and construction of these homes. There will be a mix of three bedrooms, two bedrooms, and a four bedroom home. After a couple of neighborhood meetings, the site plans were revised to increase the 30’ protective buffer to 45’. The sewer treatment system was pushed to the other side of the street and some of the home sites were adjusted to reduce the amount of excavation of the land.

Jo Ann Muramoto, President of The 300 Committee, explained that, as part of the conditions of the land grant, public access has to be provided to the conservation portion of the parcel. A small parking area is proposed on Quaker Road opposite the proposed affordable housing development. The proposal is for public access to the conservation area from the western side of the parcel and not to direct the public into the affordable housing parcel for privacy reasons. There will be a small trail from the affordable housing development area into the conservation parcel, but this is not intended to be the main public access.

Ms. Brown outlined the proposed timeline for the project, including to hopefully start the infrastructure in March 2026. This will occur in two phases, with seven homes proposed in March and April of 2027 and the rest in August 2028.

There was discussion regarding the proposed level of AMI for this project and the potential for that to change. The Board noted that a change in the proposed level of AMI should be brought back to the Board.

Motion by Mr. Zylinski: To endorse the LIP application of Habitat for Humanity of Cape Cod to construct 14 single-family homes for homeownership to be deed restricted as affordable at 48 Benjamin Nyes Lane, North Falmouth by sending a letter outlining their approval to the Executive Office of Housing and Livable Communities and by signing the LIP application.
Second: Mr. Brown Vote: Yes – 5 No – 0

4. Discuss and consider the approval of a letter to the Cape Cod Commission concerning a Conservation Restriction for 41, 59 and 48 Theater Drive and 0 Boxberry Hill Road

This item was previously addressed.

5. Vote article recommendations for the April 2025 Annual Town Meeting

Mr. Renshaw explained that there are eight (8) articles for which the Select Board will submit the formal recommendation to Town Meeting; these recommendations will be printed in the Town Meeting warrant book distributed to all Town Meeting members. The Finance Committee submits recommendations for financial articles, the Planning Board submits recommendations for zoning articles, and the Community Preservation Committee submits recommendations for funding from the Community Preservation fund. The eight articles falling under the purview of the Select Board to be included in the April 2025 Town Meeting warrant are Articles 4, 19, 20, 21, 39, 40, 41, and 42.

The Board reviewed each article.

Motion by Mr. Goldstone: To approve the April 2025 Annual Town Meeting article recommendations as submitted.
Second: Mr. Zylinski Vote: Yes – 5 No – 0

6. Update and discuss non-compliant soils at John Neill baseball fields

Mr. Renshaw provided an update to the Board concerning the discovery of non-compliant soils at the John Neill Baseball Field facility and discussed next steps concerning the work of the consultant Licensed Site Professional (LSP) in the ongoing investigation of the site and future remediation in accordance with the Massachusetts Contingency Plan. The primary focus is the health and safety of the community. During recent construction and installation of lighting at the John Neill Baseball Fields by contractor CDM Smith, unsuitable fill material with glass and metal debris was observed in the soil as a result of excavating some of the lighting foundations and accessories. The removed fill material was stockpiled and covered with plastic. To determine how to properly dispose of this material, the Town retained a Licensed Site Professional (LSP) to inspect and analyze the fill material. The stockpile was inspected with a backhoe and soil samples were collected and submitted to a laboratory for analysis of the Massachusetts Landfill disposal parameters. During the sampling event the material was observed to contain broken glass, bottles and metal. Further investigation into the source of the material was made and records at the Falmouth Historical Society indicate that the area of the Baseball Fields was used to receive household trash and municipal waste in the 1940s and 1950s. Currently there is an ongoing investigation to identify possible compounds or chemicals that may be present in the soil remaining on the ballfields that could present a risk for continued use of the fields. As part of the investigation, 14 soil borings were completed in the fields and samples from the topsoil and underlying material were collected and submitted to a laboratory for analysis of metals, polychlorinated biphenyls (PCBs), Volatile Organic Compounds, and Petroleum Products. Reported concentrations of Lead, Arsenic, Zinc and PCBs were greater than the RCS-1. The exceedances require notification to MassDEP within 120 days. After notification to MassDEP, the former landfill site will be further investigated and managed under the MCP to be eventually closed with a permanent remediation solution. Upon learning of the non-compliant soils, the ball fields were closed to the public in early January and access to the facility was secured. The LSP is currently conducting a geophysical survey of the area in order to delineate the limits of the landfill site, and the results of this survey will be available in early March. Based on the results of the geophysical survey, additional soil borings and monitoring wells are planned to be completed on or about March 11 and March 12. Staff are currently working with the LSP to explore site remediation options, to include rough cost projection estimates for both the full remediation of all three fields and completing the previously planned field and facility improvements. Although the Risk Assessment report recently completed by the LSP indicates that concentrations of lead discovered within two of the three fields do not exceed the Massachusetts Department of Environmental Protection health risk-based soil standard for lead of 200 ppm, a decision to maintain use of two fields while remediating the third is very problematic. Staff's opinion is that remediating all three fields and getting this process underway as soon as possible is the safest option. It is in the public's best interest to shut down all three fields at this time.

It was noted that there are three alternate proposed fields to make up for the closures, these include the Morse Pond field, the JV field at the High School, and a field at the Lawrence School. There will be some improvements and fencing needed for these fields. Town Counsel O'Keefe stated that CPC funds can likely be used for these improvements. Mr. Johnson-Staub noted that the Community Preservation Committee will consider use of these funds. There is also a proposed $2M article on the warrant to get the project started.

Ms. Goldstone expressed concern regarding where the samples have been taken from thus far. It does not appear that there has been enough testing to allow for information regarding fields 2 and 3. Mr. Renshaw stated that there will likely be more borings completed near field 2. There is importance in getting the remediation underway as soon as possible.

Susan Augusta, member of the School Committee and Precinct 9 Town Meeting Member, stated that it is disturbing that fall ball was allowed to be played last year if any of this information was known prior to that. It is good to hear that the fields have been closed down and that the Town and Schools are working collaboratively to find alternate fields.

It was noted that a requirement for fall ball is field lights. Mr. Brown suggested that the old administration field could be used if netting is put up. Mr. Mascali suggested temporary lighting at one of the alternative fields.

Josh Oliver, Falmouth Youth Baseball (FYB) Board, stated that baseball is a struggling sport. He asked if there is another site in Town that could be considered to start over with a field. Mr. Renshaw stated that the Town Planner has completed an evaluation of Town-owned sites and there does not appear to be one that could be used of the size needed. The cost may be prohibitive.

Robert Brown, Recreation Committee, stated that it might be a great idea to start over on a different site. He stated that he does not believe CPC funds should be used to clean up the site.

Richard Rogers reviewed some approximate numbers with the Board. Since 1980, with three teams in the three divisions and 12 children per team, there would have been 108 kids per year playing in FYB for 45 years, or approximately 4,860 kids exposed to this toxic environment. These numbers do not include parents or siblings that may also have attended, leading to 19,440 Falmouth residents exposed to this toxic environment in the last 45 years. This does not include other teams, umpires, etc. that may also have been involved. Regarding the closure date, the press release of January 27th, stated that the Town of Falmouth announced the immediate closure of the John Neill baseball complex. He then emailed Mr. Renshaw to ask when the tests were conducted and was told that the Town's consultant performed the initial soil testing on the site December 20th with results provided to the Town on December 24th, at which time there was a decision to close the field to the public. If the results came back on Christmas Eve, he asked why the public was not notified till January 27th. However, an article in the Cape Cod Times on January 29th, noted that Mr. Renshaw stated in November that a consultant was hired to complete the test borings, with the testing done in December. In the same article, Mr. Renshaw stated that he initially called for the fields to be closed at the beginning of January pending consultation with the state on January 15th. On the information page for the John Neill field on the Town website, it says it was closed on January 9th. There are too many inconsistencies in the dates as provided. In the Enterprise article it was stated that the Town was first alerted to potentially dangerous materials in the soil in September. This could mean the Town knew about the potentially dangerous materials in September and did not test until November or December, allowing the fall ball season to occur and knowingly putting children in harm's way.

Ms. Robbins Taylor stated that she believes Mr. Renshaw closed down the fields as soon as possible once the testing information was revealed. She applauded his efforts.

TOWN MANAGER'S SUPPLEMENTAL REPORT:

- Mr. Renshaw updated the Board with regards to the Bad Martha's noise complaints. He reached out to the management of Bad Martha's and has a site visit planned for March 5th to review what has been put in place for sound mitigation and future plans to reduce the sound further.
- Mr. Renshaw stated that there were 51 applications for the Coastal Resiliency Specialist position and a first round interviews is tentatively scheduled for the week of March 3rd.
- Mr. Renshaw stated that the Town's automated agenda management system is close to launching.
- Mr. Renshaw stated that the comprehensive building condition assessments are moving forward. There should soon be a system which places condition indexes on each of the Town-owned buildings and allows that information to be added into the CIP.

SELECT BOARD REPORTS

- Mr. Brown asked if there is a way to reduce the size of the agenda packet.
- Ms. Robbins Taylor stated that there will be a workshop at 9AM on Saturday.

ADJOURN

Motion by Ms. Goldstone: To adjourn at 9:10pm.
Second: Mr. Mascali Vote: Yes – 5 No - 0

Respectfully submitted,
Kristan Patenaude, Recording Secretary