



February 20, 2024

Falmouth Select Board
Falmouth Town Hall
59 Town Hall Square
Falmouth, MA 02540

Dear Falmouth Select Board Members,

Over the past couple of months, the West Falmouth Village Association has monitored the discussions related to the request by the Black Beach Homeowners Association (BBHHA) to erect a fence at the east end of Little Neck Bars Road. Now that they have had a chance to make their case and secure the approval of the Conservation Commission (ConCom), the West Falmouth Village Association would like to raise two issues that we feel need to be resolved to ensure that all of our constituents in West Falmouth feel that their interests are served.

Recounting the background for this issue; in November of 2023, the (BBHHA) sent a letter to the West Falmouth Village Association asking us to inform the West Falmouth residents that they had filed a Notice of Intent application with the Falmouth Conservation Commission. Their letter was communicated to our members and other interested parties. According to their letter, the concerns that prompted the BBHHA to ask ConCom for permission to erect a fence include increased pedestrian and bicycle traffic entering from the Shining Sea Bikeway and traveling through their neighborhood, safety entering from and exiting to the bike path, and liability exposure (additional color was provided recently in a Guest Commentary published in the Enterprise). On January 10, 2024, the Town's Conservation Commission (ConCom) issued an Order of Condition that addresses the conditions that must be met by the Black Beach Harbor Heads Association to place a gate as requested at mile marker 6.7 off the bike path. The "special conditions" include the following: remove current signage, the gate is to swing inward away from the bike path, the gate shall remain unlocked and be not blocked at all times, and no signs are to be on the gate or fence.

Discussions of the Notice of Intent application and Con Com's special conditions opened the discussion of additional issues and concerns from residents of West Falmouth. The West Falmouth Village Association asks the Town of Falmouth to clarify two issues for our constituents.

For centuries, Black Beach has been a hidden gem. Simply put, Black Beach has been found. It is now a beach discussed on social media and in newspaper articles. It is a beach visited by people walking through the Black Beach neighborhood or along the waterline from Chapoquoit beach or from small boats anchored offshore. There is a general understanding among long-term residents of West Falmouth that there is a prescriptive easement right of way that allows Falmouth residents to walk from the Shining Seas Bikeway through a right of way and along Little Neck Bars Road to Black Beach. Since ConCom's charter limits their authority to wetlands related issues, some important aspects of this issue have been left unresolved. The absence of documentation stipulating the existence of this prescriptive easement right of way has led to different expectations between residents outside of the Black Beach neighborhood from the home buyers of properties adjacent to the access point, as well as other property owners within the Black Beach neighborhood. It is important for all West Falmouth residents to understand the Town's position on the legal right of residents to access the Town's Black Beach through

(what is believed to be) a prescriptive easement right of way off the bike path and along Little Neck Road. Understanding the facts regarding this issue is important to current property owners and future property buyers within the Black Beach neighborhood and to their West Falmouth neighbors desiring to gain access to Black Beach through this neighborhood.

We believe it is in the best interest of all Falmouth residents to have this issue clarified by the Town's Legal Counsel so there is no misunderstanding between the users of the (believed to be) prescriptive easement right of way and the Black Beach property owners. We, therefore, ask the Town's Legal Counsel to provide their understanding of a) does a prescriptive easement right of way exist at this location? and b) are there any limitations or restrictions to the right of way?

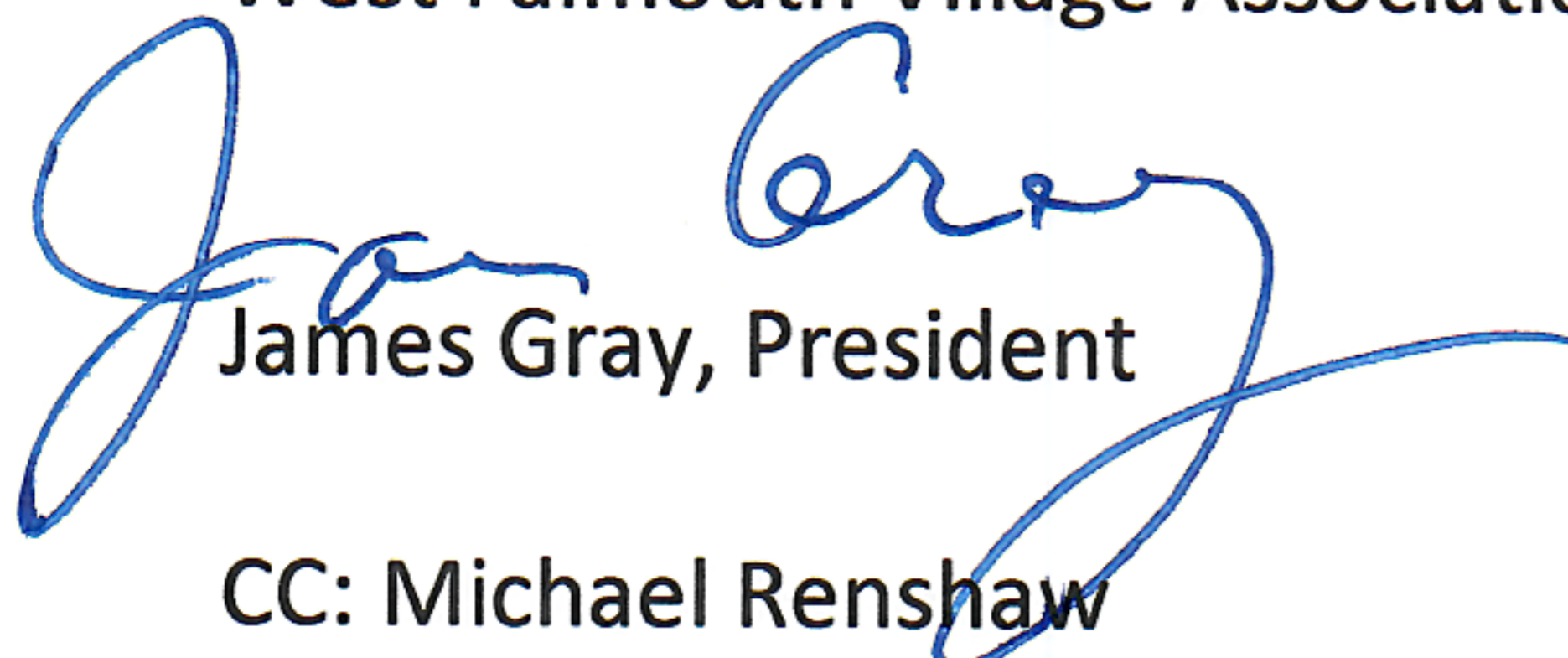
It has also been communicated to the West Falmouth Village Association that during Hurricane Carol, nearly seventy years ago, the Black Beach neighborhood was badly flooded. Little Neck Bars Road was the only egress route out of the Black Beach neighborhood. At that time, the Fire Department stipulated that the Little Neck Bars Road prescriptive easement right of way was a necessary emergency route.

Considering global warming implications, this road system and walking paths may be needed as an emergency route again to protect the safety of the BBHHA residents and those living on Chapoquoit Island. We ask the Town Manager to review the Town's hurricane preparedness plan and emergency evacuation plan, and to advise us whether this egress route from Chapoquoit Island and the Black Beach neighborhood is included in the Town's planning.

Due to the broad community interest in this public access issue, the West Falmouth Village Association would like to suggest that it would be helpful if there were a public hearing that allowed the Town's legal counsel to present the Town's position on this issue. This would allow members of the community to ask their questions necessary to fully understand the legal implications. Alternatively, if this approach is not workable, the West Falmouth Village Association asks that an agenda item be added at a Select Board meeting to allow the concerned residents to speak.

Sincerely,

West Falmouth Village Association


James Gray, President

CC: Michael Renshaw