



March 29, 2023

FSW Kupchick [Letter](#) for Reconsideration to FEMA

Federal Delegation Support [Letter](#)

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March 24, 2023

The RTM voted 27-9 with 2 abstentions to approve the plan at Penfield Pavilion. You can watch the meeting [here](#).

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March 23, 2023

The RTM will have the third and final vote on Penfield Pavilion tonight at 7:00 PM. The agenda is linked [here](#) with instructions on how to attend in person or virtually.

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March 14, 2023

The Board of Finance approved the Penfield Pavilion repair on a 7-2 vote. To view the updated slide deck I presented with a new timeline, please click [here](#).

To watch the meeting, please click [here](#).

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March 7, 2023

To watch the March 6 Board of Selectmen meeting, [click here](#).

To view the slide deck the I presented, [click here](#).

To view the resolution that passed the BOS 2-1, [click here](#).

The item will go before the BOF on March 13 and the RTM on March 20.

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March 3, 2023

Dear Fairfielders,

On February 23rd, my administration hosted a Town Hall meeting regarding Penfield Pavilion with FEMA officials, staff from Congressman Himes' office, and Town officials. Approximately 200 people attended in

person or tuned in live remotely. I have included a link below to the slide deck presentation and a [recording](#) of the entire meeting for our community to have a better understanding of the actions which put us in this very unfortunate position.

In an effort to simplify a complicated issue involving multiple regulatory agencies that goes back many years, I am providing a basic summary of the issues, followed by specifics and back up documentation.

## **WHAT IS THIS ABOUT?**

1. Contaminated fill from the (Julian) fill pile was illegally deposited beneath Penfield Pavilion during construction. By state and federal law, the Town is required to remove it.
2. FEMA has determined the Town installed horizontal grade beams at a height that is in violation of federal floodplain management regulations. Under federal law, the Town is required to bring the site into compliance.
3. As a result, the Town has received Notices of Violation from federal and state agencies that must be addressed.

## **WHERE ARE WE?**

If the Town does not take corrective action by the end of March regarding the Notice of Violation at Penfield Pavilion, we face a myriad of negative consequences that will impact residents and the Town. FEMA has made it very clear this is non-negotiable.

## **WHAT MUST THE TOWN DO?**

*Adopt a plan to address the grade beam Notice of Violation (NOV) from FEMA on the Pavilion and the NOV from the CT Department of Energy & Environmental Protection and the Environmental Protection Agency for the contaminated soil beneath the building.*

**FEMA NOV:** Fix the main building structure (excluding the locker room portion) to bring it in compliance by lowering the elevation of the grade beams. The alternative to comply is knocking down the main building structure and removing the grade beams.

**DEEP/EPA NOV:** Under the executed consent order, the Town is legally required to remove all "Julian Fill" (contaminated fill from the fill pile) under the building.

## **WHAT HAPPENS IF WE DON'T COMPLY?**

If the Town does not approve a remediation plan by March 31st, FEMA will begin the process to downgrade the Town's Flood Zone Classification. A downgrade will result in residents in the flood zone losing the 10% discount on flood insurance, and ultimately, FEMA flood insurance would not be available in the community.

Additionally, the Town would also be ineligible for disaster and public assistance funding in the future. This result would also likely have a devastating impact on the real estate market as flood insurance is a prerequisite for a mortgage in the flood zone.

## **HOW MUCH WILL IT COST?**

**REPAIR THE BUILDING:** To remove the contaminated fill, fix the elevation of the grade beams and reinstall the decking and all access to the building, it will cost an estimated \$11.5 million.

**KNOCK DOWN THE BUILDING:** To remove the contaminated fill and knock down the building (excluding the locker rooms) it will cost an estimated \$8.5 million.

The difference between keeping the building as a revenue generating asset and tearing it down to eliminate the building altogether is estimated to be \$3 million.

## **HOW WILL WE PAY FOR IT?**

Over the past two years, the Town has accumulated and boards have voted to set aside significant surpluses, approximately \$15 million of which, is still available and could be used to fund costs related to both NOVs. In addition, the Town allocated \$1 million in ARPA funding for fill-pile-related costs.

## **IS THERE AN OPTION TO RECOUP FUNDS SPENT?**

The Town is exploring all avenues civil and criminal, and the investigation from the State's

Attorney's Office is still active. Here is a [link to the court docket](#) that sets forth all pleadings and is a matter of public record.

FEMA confirmed in a [January 3rd email](#) that the Town is NOT able to reclaim the \$4.3 million in financial assistance under the Public Assistance Program to repair the Penfield Pavilion. FEMA also [confirmed](#) in writing that mediation is NOT an option available to the Town.

### **ARE WE DOING ANYTHING TO INCREASE RESILIENCY EFFORTS?**

Resiliency at Penfield is a separate issue from resolving the NOV. The Town has committed to funding the hiring of a coastal engineering firm to update previous resiliency studies. Once preliminary designs have been established, the town will review the designs with DEEP/EPA & FEMA. Any acceptable designs will then be discussed with the public.

### **CAN THE FEDERAL DELEGATION HELP US?**

On February 10, 2023, FEMA notified the Town for the first time that the insurance downgrade process was looming. The Town has been working with FEMA since July of 2021 and at no time until the February 10th call, was the town alerted to a deadline date for compliance with the NOV.

Congressman Himes and I agree the only path forward that would prevent FEMA from taking action by March 31st is for the town bodies to take action this month. We discussed a coordinated approach with the rest of the federal delegation, to ask FEMA for an extension on the insurance classification downgrade. You can read the official letter from FEMA received on February 27th [here](#).

### **NEXT STEPS**

After everything I have learned, I believe we need to move forward with a resolution at the March 6th BOS meeting to address the FEMA NOV by repairing the building, and the DEEP/EPA NOV, with the removal of the contaminated "Julian Fill" beneath the building.

I do not believe knocking down the building is the right approach for our community. The town has invested a lot of time and money into the pavilion and it's an asset ([valued at \\$7.4 million](#)) enjoyed by residents year round for weddings, birthdays, community events, or just sitting on the deck and sharing a meal with family. If we knock down the building instead of repairing it, it saves only \$3 million and then we are left with only basic necessities after spending \$8.5 million. And if history is our guide, those basic necessities will be debated for years.

The Board of Finance has scheduled a date of March 13th to take up this matter on the funding authorization.

My preference would be to use the surplus funds we set aside for this purpose, while also being cognizant bonding some of the costs is an option available to our town bodies.

### **WHAT CAN YOU DO?**

As with any voting item, the public will have the opportunity to weigh in at each of these meetings. Agendas will be posted and residents will have the ability to provide input in writing or live at the meeting in person or virtually. I welcome your feedback, and am always happy to talk with any resident who would like to call me. You can sign up to receive BOS, BOF and RTM agendas to your inbox [here](#).

### **SUMMARY**

While I wish we weren't faced with these Notices of Violations, and it is incredibly frustrating to spend taxpayer dollars on negligence and mismanagement of the past, solving these problems is the responsibility of all of us who raised our hands and swore an oath to serve the Town of Fairfield.

All appropriate stakeholders have a shared responsibility to face these challenges and make decisions to move our town forward to the best of our ability.

As the chief elected official of this town, it is my duty to follow the law, and comply with the regulatory agencies, despite how unpopular spending this money may be.

I included below, additional information and documentation to further clarify these issues for our community.

Sincerely,



Brenda L. Kupchick

## TIMELINE | PENFIELD PAVILION

- **Fall 2006** – Town wide discussions began regarding rebuilding the original Penfield Pavilion.
- **Summer 2011** – A new Penfield Pavilion was constructed, costing the Town nearly \$5 million.
- **October 2012** – Penfield Pavilion was severely damaged during Hurricane Sandy
- **December 2015** – FEMA determined the Town would be eligible for \$4.3 million in reimbursement towards reconstruction of Penfield based on an approved project scope of work (SOW).
- **February 2016** – Construction started on rebuilding the Pavilion with a scope of work that was different than what FEMA originally approved.
- **August 2016** – FEMA sent written [notice](#) that the revised scope of work may not comply with local and NFIP regulations and commencing the revised SOW without FEMA approval violates the reimbursement conditions. Construction continued despite FEMA's notice.
- **March 2017** – Penfield Pavilion reopens costing \$7.3 million
  - 4.5 years after being damaged by Hurricane Sandy
- **November 2018** – FEMA confirmed the town is ineligible for reimbursement and reconfirmed the town's noncompliance with floodplain management.
- **January 2019** – The town submitted it's first appeal to FEMA's decision
- **June 2019** – FEMA denied the town's appeal.
- **August 2019** – The Town submitted its [second appeal](#) to FEMA's decision.
- **June 2021** – The town was [notified](#) that FEMA denied the town's second appeal and for the first time, reinstates the NOV.
- **July 2021** – My administration begins [discussions](#) with FEMA on the flood plain management regulations and NOV.
- **June to October 2021**– Negotiations begin to review and identify the scope of the NOV with FEMA. Town engages professional consultants to develop conceptual options for review. Discussions with LEP to determine potential remediation plans for "Julian Fill".
- **February to May 2022** – Developed detailed conceptual plans to respond to the NOV. Letter sent to FEMA outlining [options](#) for compliance and [response](#) from FEMA.
- **August 2022**
  - RFQs are issued for construction manager, architect, and structural, geotechnical & coastal engineers.
  - Town Hall Meeting held for elected officials. Administration proposes plan to finance all aspects of "Julian Fill" remediation and Penfield NOV compliance. [Update](#) sent to FEMA.
- **September 2022**
  - FSW email to all town boards with follow up information requested at the 8/31 meeting.
  - RFQ Interviews for construction manager and A&E services.
- **October 2022** – CFO presents all town boards with proposal to fund remediation and Penfield NOV.
- **November 2022**
  - [Update](#) sent to FEMA followed by [schematics](#).
  - Letter to FEMA with questions from elected officials. Elected officials requested documentation in writing from FEMA before voting.
- **January 2023**
  - FEMA responds to schematics with comments.
  - Administration contacted Congressman Himes office to assist in FEMA attendance at Town Hall meeting.
- **Feb 10, 2023** – Conference call with FEMA to discuss Town hall meeting, FEMA notified the Town for the first time of the downgrade of flood insurance deadline of March 31st.
- **Feb 20, 2023** – Zoom meeting with FEMA and administration to update Congressman Himes and State Delegation.
- **February 27, 2023** – CRS Retrograde [letter](#) received from FEMA.

## FURTHER INFORMATION AND DOCUMENTATION

### FLOOD INSURANCE DOWNGRADE

The Town is a member of FEMA's Community Rating System (CRS) which awards communities that go above and beyond the minimum standards of the National Flood Insurance Program (NFIP). As a class 8 CRS community, all flood insurance policyholders, including policies for town-owned buildings, in the special flood hazard area (1,794 policies) receive a 10% flood insurance premium discount.

FEMA has identified the elevation of the grade beams below Penfield Pavilion to be a violation of the NFIP and after 2 appeals by the Town, FEMA considers their determination to be final and is not subject to mediation, arbitration or any further appeal.

The violation jeopardizes our eligibility to remain in the CRS program. FEMA has initiated steps to downgrade the Town's CRS status, the result of which would eliminate the 10% flood insurance premium discount. The date of what FEMA describes as the "point of no return" for the downgrade is not final but could be as early as March 31<sup>st</sup>, meaning that if the Town has not demonstrated significant progress toward remediating the violation, (funding an approved plan), then notification to insurance companies would ensue and the downgrade would ultimately take effect for new flood insurance policies written or existing policies renewed after October 1<sup>st</sup>.

Should the town not address the violation, the next steps for FEMA would be probation, resulting in a \$50 surcharge for all flood insurance policyholders in addition to losing the 10% premium discount.

Continued non-compliance could ultimately result in suspension from the NFIP meaning that FEMA flood insurance would not be available in the community and the town would also be ineligible for disaster and public assistance funding.

This result would also likely have a devastating impact on the real estate market as flood insurance is a prerequisite for a mortgage in the flood zone.

### FEBRUARY 23 TOWN HALL MEETING

[TOWN HALL VIDEO RECORDING](#)  
[TOWN HALL SLIDE DECK PRESENTATION](#)

### DOCUMENTATION

#### FEMA LETTERS

[AUGUST 9, 2016](#)  
[OCT 17, 2017](#)  
[NOV 28, 2018](#)  
[JUNE 20, 2019](#)  
[CRS 2.27.23](#)

#### TECHNICAL REVIEW

[JUNE 1, 2016](#)  
[TOF 2ND APPEAL](#)  
**ENGINEERING**  
[SEPT 14, 2016](#)  
**NOV REINSTATED**  
[JUNE 9, 2021](#)

#### TOWN MEETINGS

[8.31.22 UPDATE](#)  
[1.18.22 UPDATE](#)  
[3.6.23 BOS VOTE](#)  
[3.13.23 BOF VOTE](#)