

TOWN OF PROVINCETOWN - BOARD OF SELECTMEN
SPECIAL MEETING – WEDNESDAY, OCTOBER 3, 2007

JUDGE WELSH HEARING ROOM

Chairman Mary-Jo Avellar opened the meeting at 11:30 AM noting the following attendees: Board of Selectmen members: Mary-Jo Avellar, Michele Couture, Pam Parmakian

Excused Absence: Lynne Davies, Austin Knight

Other Attendees: Town Manager Sharon Lynn,

Recorder: Vernon G. Porter

The following are meeting minutes, in brief.

1. DETERMINE ORDER OF WARRANT ARTICLES

MOTION: Move that the Board of Selectmen vote to place warrant articles on the November 5, 2007 Town Meeting as follows:

Article 1: Police Contract FY07 & FY08

To see if the Town will vote to raise and appropriate or transfer from available funds the amount of \$165,000 to fund the collective bargaining agreement between the Town and the IBPO for the fiscal years as follows; \$59,042.45 beginning July first, two thousand and six, and \$105,957.55 for the year beginning July first, two thousand and seven provided that the appropriation shall be contingent on the passage of a Proposition 2 and ½ override by the voters of the Town in accordance with General Laws Ch. 59, sec. 21C(m); or take any other action relative thereto.

[Requested by the Board of Selectmen and the Town Manager]

Article 2: Prior Year Bills – required 9/10s vote

To see if the Town will vote to raise and appropriate or transfer from available funds the amount of \$3,113.82 for the purpose of paying prior year unpaid bills; or take any action thereto.

[Requested by the Town Manager and the Director of Finance]

Article 3: Telephone

To see if the Town will vote to raise and appropriate or transfer from available funds the amount of \$30,000 to fund the capital costs associated with a new telephone system, provided that the appropriation shall be contingent on the passage of a Proposition 2 and ½ capital outlay exclusion by the voters of the Town in accordance with General Laws Ch. 59, sec. 21C(m); and further to authorize the Town Manager to enter into a lease purchase agreement for a term not to exceed five years; or take any other action relative thereto.

[Requested by the Board of Selectmen and the Town Manager]

Article 4: FY2008 Budget Adjustments

To see what amendments the Town will vote to make the Fiscal Year 2008 operating budgets and enterprise funds established under Articles 2 and 5 of the April 4, 2007 Annual Town Meeting and what sums the Town will vote to raise and appropriate or transfer from available funds therefore; or to take any other action relative thereto.

[Requested by the Town Manager and the Director of Finance]

Article 5: Repair School Stairs

To see if the Town will vote to raise and appropriate or transfer from available funds the amount of \$15,000 to

fund the repairs to the concrete stairway that connects VMES, PHS and the Grace Hall parking lot., provided that the appropriation shall be contingent on the passage of a Proposition 2 and ½ capital outlay exclusion by the voters of the Town in accordance with General Laws Ch. 59, sec. 21C(m); or take any other action relative thereto.

[Requested by the School Committee and the Board of Selectmen]

Article 6: Supplement Operating Budget for FY 08

To see if the Town will vote to raise and appropriate or transfer from available funds the amount of \$340,700 to supplement the operating budget of the Town for the fiscal year beginning July first, two thousand and seven, provided that the appropriation shall be contingent on the passage of a Proposition 2 and ½ override by the voters of the Town in accordance with General Laws Ch. 59, sec. 21C(m); or take any other action relative thereto.

[Requested by the Board of Selectmen and the Town Manager]

Article 7: Stearns & Wheeler contract - requires 2/3 vote – borrowing

To see if the Town will vote to appropriate and borrow the sum of \$566,380 to fund the costs associated with Engineering and design for repairs to Commercial Street paving, with said borrowing authority contingent upon the voters approval of a Proposition 2 and ½ override ballot question, in accordance with Mass General Laws Ch. 59, sec. 21C(m); and that to meet this appropriation, the Treasurer, with the approval of the Selectmen is authorized to borrow said sum under and pursuant to Chapter 44, Section 7 (5 or 22), of the General Laws, or any other enabling authority, and to issued bonds or notes of the Town therefore; or to take any other action relative thereto.

[Requested by the Board of Selectmen and the Town Manager]

Article 8: Noise By-law

To see if the Town will vote to amend section 13-2-6 of the General Bylaws, by deleting the current text of section 13-2-6 in its entirety and replacing it with the following:

13-2-6 EXCESSIVE MUSICAL AND OTHER NOISE.

Recognizing that people have a right to and should be ensured an environment free from excessive sound and vibration capable of jeopardizing their health, safety, or welfare, or of degrading their quality of life, this section is enacted to protect, preserve and promote the health, safety, welfare, and quality of life of the citizens of Provincetown.

The following definitions shall apply to Section 13-2-6:

dBa: A-weighted sound level in decibels, as measured by a general purpose sound level meter complying with the provisions of the American National Standards Institute, “Specifications for Sound Level Meters (ANSI s1.4 1971)”, or the latest approved revision thereof, properly calibrated, and operated on the “A” weighting network.

Amplification devices or similar equipment, includes, but is not limited to: phonograph, radio, television, stereo, record player, tape player, cassette player, compact disk player, digital music player, “boom box”, loud speaker, or other sound amplification device.

13-2-6-1. Noise Permitted By Person In Charge. No person occupying or having charge of any building, premises (including public places), mobile or stationary vehicle, or any part thereof, shall cause, suffer or allow unnecessarily loud, excessive or unusual noise in Town, regardless of its nature, source or manner of production or reproduction, including but not limited to amplification devices or similar equipment, which cause or result in a noise level measured as follows:

- a) In any residential district, as defined by the Zoning By-law , in excess of 45 dBA between the hours of 11:00 p.m. and 7:00 a.m. the following day, or in excess of 55 dBA at all other hours, measured at a distance from fifty (50) feet from the point of origin of the noise; and

- b) In any commercial district, as defined by the Zoning By-law, in excess of 65 dBA between the hours of 11:00 p.m. and 7:00 a.m. the following day, or in excess of 80 dBA at all other hours, measured at a distance from fifty (50) feet from the point of origin of the noise.

13-2-6-2. Noise caused or suffered by persons on premises. No person present in or about any building, dwelling, premises (including public places and property), shelter, mobile or stationary vehicle, boat or conveyance (or any part thereof), other than that section of any establishment licensed under G.L. c.138, shall cause, suffer, or countenance any loud, unnecessary, excessive, or unusual noise, regardless of its nature, source, or manner of production or reproduction, including but not limited to amplification devices or similar equipment, which causes or results in a noise level measured as follows:

- a) In any residential district, as defined by the Zoning By-law, in excess of 45 dBA between the hours of 11:00 p.m. and 7:00 a.m. the following day, or in excess of 55 dBA at all other hours, measured at a distance from fifty (50) feet from the point of origin of the noise; and
- b) In any commercial district, as defined by the Zoning By-law, in excess of 70 dBA between the hours of 11:00 p.m. and 7:00 a.m. the following day, or in excess of 80 dBA at all other hours, measured at a distance from fifty (50) feet from the point of origin of the noise.

13-2-6-3. Construction and manufacturing activities. No person shall operate or permit the operation of any tools or equipment in construction, drilling, blasting, mining, manufacturing or demolition work, or in preventive maintenance work for public service utilities between the hours of 9:00 p.m. and 7:00 a.m. the following day. The terms of this section shall not apply to emergency work or repair work performed by or for governmental entities or public service utilities, for public safety and welfare.

13-2-6-4. Domestic Power Tools. No person shall operate or permit the operation of any saw, drill, sander, grinder, lawn or garden tool, lawn mower, or similar device used outdoors in residential areas between the hours of 9:00 p.m. and 7:00 a.m. the following day.

13-2-6-5. Penalty. A non-criminal disposition penalty will be assessed of fifty (\$50) dollars to the owner, sponsor and/or responsible party for each offense under sections 13-2-6-1 through 13-2-6-4, above.

13-2-6-6. In addition to the non-criminal disposition penalty stated above, any 'stationary vehicle' or 'vessel' which violates 13-2-6-2 for a period of sixty (60) minutes or more, or whose vehicle is determined to be malfunctioning by an officer of the Provincetown Police Department, shall have said vehicle or vessel removed to a location where the source of the noise can be extinguished. The cost of removal and extinguishing of the source of the offending noise shall be paid by the owner or claimant of the offending vehicle.

13-2-6-7. Waiver. The Licensing Board may waive any part of this Noise Control bylaw for a temporary licensed public event if, in the judgment and discretion of the Licensing Board, the noise that the event will create in excess of the noise level limits established under the Noise Control bylaw is offset by the benefits of the event to the participants or the public and the noise of the event will not cause undue hardship or disturbance to the surrounding area. Events covered by this bylaw will not extend beyond midnight nor begin prior to 10 A.M. The Licensing Board can stipulate any time it deems appropriate within this time frame depending on the expected noise level and impact on surrounding area. Residential private parties limited to invitation only are not affected by this bylaw as they are not licensed by the Licensing Board. They are still governed as to noise or nuisance stipulations of these bylaws under 13-1-2 and 13-2-6. The Licensing Board may impose, on the grant of a temporary waiver, terms and conditions appropriate to reduce the impact of the noise level exception. An application for a temporary waiver shall be filed with the Town Clerk. The applicant shall certify that notice of such temporary waiver application has been provided to all properties contiguous, or likely to be affected by the event, to the property where the event will occur. The applicant must also place a notice in the local media advising of the request for waiver at least two weeks prior to any hearing on the waiver by the Licensing Board. The applicant shall further certify that the Police Department has been consulted with respect to the event and has approved as to form the application for a waiver with the understanding that once the event is in process, complaints could arise necessitating action on the part of the Police, i.e., immediate consultation with the applicant to ameliorate the sound conditions if the complaints are numerous and clearly justified in the discretionary opinion of the responding Police. The application for a temporary waiver affects

all public events likely to produce sound levels that will affect the average person in a negative manner and in no instance will a waiver application be considered by the Licensing Board less than 60 days preceding any event. Applicants may receive more than one waiver in a year but the Licensing Board may recall any applications during the event year if complaints exceed the benefit to the public as determined by the Licensing Board as advised by the Police Department. The Licensing Board may suspend, modify or revoke any temporary waiver if it determines that an applicant has violated the terms or conditions of the waiver.

13-2-6-8. Disturbing The Peace/Nuisances. Nothing herein shall be construed as permitting conduct that would otherwise constitute a disturbance of the peace under G.L. c. 269, §1, G.L. c. 272, §53, or other applicable provision of state law. Nothing herein shall be construed as permitting conduct that would otherwise violate the provisions of General By-laws Section 13-1-2, relative to nuisances of noises.

13-2-6-9. Exemptions. The following are exempted from the provisions of Section 13-2-6 and shall not be considered unnecessarily loud, excessive or unusual noise for purposes of this section:

1. Noise from law enforcement motor vehicles;
2. Noise from emergency vehicles or emergency equipment which is audible during an actual emergency;
3. Noise from Town-sponsored events or activities;
4. Nonamplified crowd noises resulting from organized activities such as at school sporting events; and
5. Ferry whistles.

13-2-6-10. Severability. If any provision or subsection of this Section shall be held to be invalid by a court of competent jurisdiction, then such provision or subsection shall be considered separately and apart from the remaining provisions or subsections of this section, which shall remain in full force and effect.

Or to take any other action relative thereto.

[Requested by the Board of Selectmen and the Town Manager]

PETITIONED ARTICLES

Article 9: Restore the Race Point Parking Lot View

Whereas: In the National Seashore, the Race Point Parking Lot used to have a spectacular view of the Atlantic Ocean and the sun setting in it, has been made ugly and sterile by bulldozing up of sand barriers, planted with beach grass. No one can see the water from the parking lot anymore. Whereas: The same pattern of bulldozing up of sand obstructs some of our traditional viewing area at New Beach (Herring Cove Beach), ruining the view also by the bulldozing of outhouses. Whereas: This desecration of our treasured beaches was done without permit or hearing. Therefore: I move to see if the Town will vote to ask the National Seashore to restore our viewing spots by removing these obstacles before next summer. Copies of our Resolution shall be sent to local newspapers, the National Seashore, Congressman William Delahunt and all representatives who oversee our National Parks, or take any other action thereto.

[Requested by Barbara Rushmore and others]

Article 10: Cap the Visitor Services Board

Whereas: The Visitor Services Board (VSB) budget was \$100,000 a year when it started years ago and is over \$430,000 a year this year. (It is funded from Town money returned from the State Room Excise Tax). Whereas: The added expenses due to tourists such as summer police, extra garbage removal, fire, ambulance,

extra street cleaning, parking and street repair needs to be paid for by us, the taxpayers, as part of our budget at each April Town Meeting. Whereas: Public beautification projects such as street kiosks, summer help for the Buildings and Grounds Dept., the third barrel pickup of garbage, repair and building of rest rooms and the Beautification Committee are projects that should be in the budget or in a special article at Town Meeting. Therefore: I move to see if the Town will vote to cap the money given to the VSB from the Room Excise Tax at \$300,000 a year for advertising, staff, grants for events and the Fourth of July fireworks. The amount over \$300,000 shall be placed in the General Fund to be spent or to reduce the tax rate, or take any other action thereto.

[Requested by Barbara Rushmore and others]

Motion to adjourn by Michele Couture at 11:34 AM.

-

Minutes transcribed by: Vernon Porter, Secretary
October 4, 2007