

Special Town Meeting

Monday, November 17, 2008

Meeting Called to Order. Town Moderator Irene Rabinowitz convened the Special Town Meeting at 6:00 p.m. on Monday, November 17, 2008 in the Veterans Memorial Elementary School.

Preliminary Motions:

(1) Michele Couture moved that the Town vote to waive the reading of the warrant.

Motion Passed.

(2) Michele Couture moved that the Town vote to grant permission to speak at the November 17, 2008 Special Town Meeting to the following persons who are not registered voters of the Town of Provincetown: Alexandra Heilala, *Director of Municipal Finance*; Wendall Kalsow, and Mark Almeida, *McGinley Kalsow Associates*; Russell Braun, *Building Commissioner*; John W. Giorgio, Esq., and other attorneys of the firm of Kopelman & Paige, P.C., *Town Counsel*; Beau Jackett, *Information Systems Director*; Michelle Jarusiewicz, *Housing Specialist/Grant Administrator*; Jane Evans, *Health Agent*; Maxine Notaro, *Permit Coordinator*. **Motion Passed.**

(3) Michele Couture moved that on all matters to come before the November 17, 2008 Special Town Meeting, requiring a two-thirds vote by statute, that a count need not be taken unless the vote so declared is immediately questioned by seven or more registered voters. **Motion Passed.**

Article 1. General By-law Amendment: Community Preservation Committee By-law. To see if the Town will vote to amend the Provincetown General By-laws by amending §5-14-2-4 to delete the words, "not less than 80%" and insert in place thereof the words, "not less than 10%", or to take any other action relative thereto, so that the section will read as follows:

In every fiscal year, the community preservation committee must recommend either that the legislative body spend, or set aside for later spending, not less than 10% of the annual revenues in the Community Preservation Fund for open space (not including land for recreational use), not less than 10% of the annual revenues in the Community Preservation Fund for historic resources; and not less than 10% of the annual revenues in the Community Preservation Fund for community housing,

or to take any other action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 4-1-0

FINANCE COMMITTEE RECOMMENDS: 9-0-0

HISTORICAL COMMISSION DOES NOT RECOMMEND: 5-0-0

CONSERVATION COMMISSION RECOMMENDS: 3-0-1

Michele Couture moved that the Town vote to approve Article 1 as printed in the warrant. **Motion**

Passed.

Article 2. *Accept Town Collector Local Option Statute.* To see if the Town will vote, pursuant to M.G.L. c. 41, §38A, to authorize the Tax Collector to collect, under the name of the Town and under the title of the Town Collector, all accounts due to the Town, or to take any other action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 5-0-0
FINANCE COMMITTEE HAS NO RECOMENDATION

David Bedard moved that the Town vote to approve Article 2 as printed in the warrant.

Motion Passed.

Article 3. *Collection Costs Imposed on Delinquent Local Taxpayers.* To see if the Town will vote, pursuant to M.G.L. c. 60, §15, as amended, for each written demand issued by the Town Collector a fee of \$15.00 to be added to and collected as part of the tax, or to take any other action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 5-0-0
FINANCE COMMITTEE RECOMMENDS: 9-0-0

Elaine Anderson moved that the Town vote to approve Article 3 as printed in the warrant. **Motion Passed.**

Article 4. *Capital Projects Fund Transfer.* To see if the Town will vote to transfer from the appropriation under Article 71 of the 1999 Annual Town Meeting, or any other available fund, the sum of \$492,955, more or less, to fund Phase I construction costs to repair the structural integrity of the Town Hall, including structural repair of the roof and comprehensive exterior damage at Town Hall; or to take any other action thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 5-0-0
FINANCE COMMITTEE RECOMMENDS: 9-0-0
OPEN SPACE COMMITTEE DOES NOT RECOMMEND: 3-0-0

Austin Knight moved that the Town transfer the sum of \$492,955 from the appropriation under Article 71 of the 1999 Town Meeting to pay for the Phase I construction costs to repair the structural integrity of Town Hall, including structural repair of the roof and comprehensive exterior damage at Town Hall, including all costs incidental and related thereto. **Motion Passed. (2/3rd's Vote Declared)**

Article 5. *Town Hall Renovations.* To see if the Town will vote to raise and appropriate, or transfer from available funds, or borrow the sum of \$2,000,000.00, more or less, for Phase I construction costs to repair the structural integrity of the Town Hall, including structural repair of the roof and comprehensive exterior damage at Town Hall, and including all costs incidental and

related thereto, with said borrowing authority contingent upon approval by the voters of a Proposition 2 ½ debt exclusion ballot question in accordance with the provisions of M.G.L. c. 59, §21C(m); or to take any other action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

FINANCE COMMITTEE RECOMMENDS: 8-0-0

Borrowing Authorization - 2/3's vote required

Mary-Jo Avellar moved that the Town appropriate the sum of \$1,052,045 for Phase I construction costs to repair the structural integrity of Town Hall, including structural repair of the roof and comprehensive exterior damage at Town Hall, and including all costs incidental and related thereto; that to meet this the appropriation the Treasurer, with the approval of the Board of Selectmen, is authorized to borrow said sum pursuant to M.G.L. ch. 44, §7(3A), or any other enabling authority, and to issue bonds or notes of the Town therefor, said borrowing authority to be contingent upon approval by the voters of a Proposition 2 ½ debt exclusion ballot question, in accordance with the provisions of M.G.L. ch.59, §21C(m). **Motion Passed. (2/3rd's Vote Declared)**

Article 6. *Town Hall Renovations.* To see if the Town will vote to raise and appropriate, or transfer from available funds, or borrow the sum of \$500,000.00, more or less, for Phase II design costs for the comprehensive restoration and renovation of Town Hall, which phase includes the interior and mechanical systems at Town Hall, including costs of architectural design development and preparation of construction documents and including all costs incidental and related thereto, with said borrowing authority contingent upon approval by the voters of a Proposition 2 ½ debt exclusion ballot question in accordance with the provisions of M.G.L. c. 59, §21C(m); or to take any other action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

FINANCE COMMITTEE RECOMMENDS IN THE AMOUNT OF \$350,000: 8-0-0

Borrowing Authorization - 2/3's vote required

Michele Couture moved that the Town appropriate the sum of \$340,000.00 for Phase II design costs for the comprehensive restoration and renovation of Town Hall, which phase includes the interior and mechanical systems at Town Hall, including costs of architectural design development and preparation of construction documents and including all costs incidental and related; that to meet this appropriation, the Treasurer, with the approval of the Board of Selectmen, is authorized to borrow the sum of \$340,000.00 pursuant to M.G.L. ch. 44, §7(3A), or any other enabling authority, and to issue bonds or notes of the Town therefor, said borrowing authority to be contingent upon approval by the voters of a Proposition 2 ½ debt exclusion ballot question, in accordance with the provisions of M.G.L. ch.59, §21C(m).

Motion Passed. (2/3rd's Vote Declared)

Article 7. *Relocate and Alteration of Layouts of Alden St., Cemetery Road, and Standish*

St. To see if the Town will vote to accept the altered and relocated layouts as public ways of Alden Street, Cemetery Road, and Standish Street to include within the layouts of Cemetery Road and Standish Street the parcel of land located at the intersection of Cemetery Road and Standish Street and shown as “Alteration A=113 Sq.Ft.± To Become a Portion of Cemetery Road” on a plan of land entitled “Plan of Land in Provincetown Showing Alterations to the Layouts of Cemetery Road, Standish Street and Alden Road,” dated June 30, 2008, prepared by Slade Associates, Inc., and on file with the Town Clerk, and to exclude from the layouts of Alden Street and Cemetery Road the parcel of land located at the intersection of Alden Street and Cemetery Road and shown as “Area to be Abandoned” on the aforesaid plan; and to authorize the Board of Selectmen to acquire on behalf of the Town, by gift or eminent domain, easements to use the land within said ways as so relocated and altered, and in particular an easement to use the parcel of land shown as “Alteration A=113 Sq.Ft.± To Become a Portion of Cemetery Road” on the aforesaid plan for all purposes for which public ways are used in the Town of Provincetown; and further to authorize the Board of Selectmen to convey all of the Town’s right, title and interest in the parcel of land shown on the aforesaid plan as “Area to be Abandoned” on such terms and conditions, and for such consideration, which may be nominal consideration, as the Selectmen deem appropriate; or take any other action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 5-0-0
FINANCE COMMITTEE HAS NO RECOMMENDATION

2/3’s vote required

[Mary-Jo Avellar moved that the Town vote to approve Article 7 as printed in the warrant.](#)

Motion Passed. (2/3rd’s Vote Declared)

Article 8. *Town Acceptance of Mortgage at Private Property Location.* To see if the Town will vote to authorize the Board of Selectmen to accept on behalf of the Town a mortgage upon property located at 467 Commercial Street, Provincetown, Massachusetts, which the Selectmen may amend and subordinate from time to time, and to enforce said mortgage, including the statutory power of sale there under, to secure the payment to the Town of an amount of money due to the Town and the performance of other obligations of M. L. Bryant, LLC, and Eugene A. Bryant (separately or together “Bryant”) under a certain agreement between the Town and Bryant dated November 14, 2007 and of the obligations of Bryant under any promissory note or notes given to the Town pursuant to said agreement to evidence said monetary obligation, and to authorize the Treasurer of the Town to accept and hold said note or notes until paid in full, or take any action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 5-0-0
FINANCE COMMITTEE RECOMMENDS: 9-0-0

[Austin Knight moved that the Town vote to approve Article 8 as printed in the warrant.](#)

Motion Passed.

Article 9. *Acceptance of M.G.L. c.90, §20A ½ - Schedule of Fines for Parking Violations* To

see if the Town will vote to rescind its acceptance of M.G.L. c.90, §20A and to accept M.G.L. c.90, §20A1/2, effective January 1, 2009, which authorizes the Board of Selectmen to establish by regulation a schedule of fines for parking violations, or take any action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 5-0-0
FINANCE COMMITTEE HAS NO RECOMENDATION

Elaine Anderson moved that the Town vote to approve Article 9 as printed in the warrant. **Motion Passed.**

Article 10. Use of Free Cash to Fund FY2009 Budget To see if the Town will vote to transfer from free cash the sum or sums to fund the operating budget of the Town for the fiscal year beginning July first, two thousand and eight, or take any other action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 5-0-0
FINANCE COMMITTEE RECOMMENDS: 9-0-0

David Bedard moved that the Town vote to transfer the sum of \$592,089 from Free Cash to fund the operating budget of the Town for the fiscal year beginning July 1, 2008. **Motion Passed.**

Article 11. Use of Free Cash for Capital Projects. To see if the Town will vote to transfer from free cash the sum or sums to the various capital projects as listed below or any other capital project, or to take any other action relative thereto.

Area A recreation	2,612.53
Police station dispatch	21,431.21
Landbank improvements	12,424.92
Buildings and grounds	14,064.28
Fire vehicle	15,492.38
Dump truck	660.82
Transfer station hauler	654.02
Acquisition of locke property	12,399.87
Landbank preacquisition	1,901.64
Macmillan pier construction	165,845.96
Municipal harbor	211.64
Stormwater mgmt master plan	517.90
Wetlands mgmt plan	24,900.00
Winthrop street cemetery	<u>12,486.62</u>
	285,603.79

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

BOARD OF SELECTMEN RECOMMENDS: 5-0-0
FINANCE COMMITTEE RECOMMENDS: 9-0-0
CONSERVATION COMMISSION RECOMMENDS: 4-0-0

Elaine Anderson moved that the Town vote to transfer from free cash the sum of \$285,603.79 to

fund the various capital projects as printed in the warrant.

Motion Passed.

Article 12. *Use of Free Cash for Special Revenue Funds.* To see if the Town will vote to transfer from free cash the sum or sums to the various special revenue funds as listed below or any other special revenue fund or to take any other action relative thereto.

Affordable housing grant	1,493.01
Cape end manor renovation grant	2,291.90
Cape end comm planning grant	502.38
Soft shell clam grant	2,980.00
Edward Byrne grant	2,971.58
Department of Justice – COPS grants	56,258.01
CCCC Tech grant	5,581.07
Gates foundation COA grant	1,500.00
Barnstable Tappe grant	<u>26,006.00</u>
	99,583.95

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

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

FINANCE COMMITTEE RECOMMENDS: 9-0-0

David Bedard moved that the Town vote to transfer from free cash the sum of \$99,583.95 to fund the various special revenue funds as printed in the warrant.

Motion Passed.

Article 13. *Stabilization Fund.* To see if the Town will vote to transfer from free cash the sum of \$250,000 to the stabilization fund, or to take any other action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

FINANCE COMMITTEE RECOMMENDS: 9-0-0

2/3's vote required

Mary-Jo Avellar moved that the Town vote to transfer from free cash the sum of \$250,000.00 to the stabilization fund. **Motion Passed. (2/3rd's Vote Declared)**

Article 14. *Room Occupancy Tax.* To see if the Town will vote to authorize the Board of Selectmen to petition the General Court for special legislation authorizing the Town to impose a room occupancy tax on vacation rentals not currently subject to such tax; provided, however, that the General Court may make clerical or editorial changes of form only to said bill, unless the Board of Selectmen approves amendments thereto prior to enactment by the General Court, and provided further that Board of Selectmen is hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition, or take any other action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

FINANCE COMMITTEE RECOMMENDS: 6-0-3

Austin Knight moved that the Town vote to approve Article 14 as printed in the warrant.

Motion Passed. (For 89 Against 69)

Article 15. *Purchase of Front End Loader.* To see if the Town will vote to raise and appropriate or transfer from available funds the sum, more or less, of \$138,848.00 for the purchase of a John Deere 544J loader to be used by the Department of Public Works, or to take any other action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

FINANCE COMMITTEE RESERVES RECOMMENDATION: 9-0-0

Michele Couture moved that the Town vote to transfer from free cash the sum of \$112,598.00 to be expended under the direction of the Town Manager and the Director of Public Works for replacement of one front end loader, and costs related thereto.

Motion Passed.

Article 16. *1% Real Estate Transfer Fee – A Home Rule Petition*

Whereas: The need for revenue is great. Our Town Hall has been condemned and needs repair, estimated at 6 million dollars or more and Provincetown has reached its debt limit, and has had to vote overrides to pay for our Police, etc.

Whereas: Provincetown is a unique community with a summer population 10 times the year round population requiring us to provide water, garbage disposal, police, ambulance, health and building inspectors, etc. for 40-50,000 people, rather than 4-5,000.

Whereas: The vast majority of real estate sales last year were properties owned by non-residents.

Whereas: Real Estate Transfer Fees are widely used and common across the Nation.

Therefore:

Section I: I move to see if the Town will vote to instruct its Senator and Representative in the General Court to file a Home Rule Petition for a Real Estate Sale Transfer Fee equal to 1%, paid for by the seller on the sale of all property and payable to the Town of Provincetown General Fund, providing that:

A: All residential property held by the owner(s) who have lived in Provincetown for 20 years or more are exempt from this fee.

Section II: The following transfers shall be exempt from the Real Estate Transfer Fee:

A: Transfers to the Government of the United States, the Commonwealth, the Town of Provincetown and any of their instrumentalities, agencies or subdivisions, such as the Provincetown Housing Authority.

B: Transfers without additional consideration to confirm, correct, modify or supplement a transfer previously made.

C: Transfers of convenience with consideration under \$100 which include name change, into trusts, out of trusts, etc.

D: Transfers to any charitable organization as defined in clause Third of Section Five of Chapter Fifty-nine of the General Laws, or any religious organization, providing that the real property interests so transferred will be held by the charitable or religious organization solely for its public

charitable or religious purpose.

E: Transfers between family members, marriage partners, parents and children, step-parents and step-children, brothers and sisters.

Section III:

A: The fee imposed shall be due at the time of the transfer of the real property interest and shall be paid to the Town of Provincetown General Fund.

B: The Seller shall pay interest on any unpaid amount of the fee at the rate of 14% per annum.

C: The Town shall notify a Seller by Registered or Certified Mail of any failure to discharge the amount in full the amount of fee due.

D: All fees and interest required to be paid under this act shall constitute a personal debt of the Seller and may be recovered in an action of contract.

The General Court may only make clerical or editorial changes of form to the bill, unless the Board of Selectmen approves amendments to the bill before enactment by the General Court. The Board of Selectmen is hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition or take any action relative thereto.

[Requested by Barbara Rushmore and others]

BOARD OF SELECTMEN DOES NOT RECOMMEND: 3-2-0

FINANCE COMMITTEE DOES NOT RECOMMEND: 7-0-2

Barbara Rushmore moved as follows: **Whereas:** The need for revenue is great. Our Town Hall has been condemned and needs repair, estimated at 6 million dollars or more and Provincetown has reached its debt limit, and has had to vote overrides to pay for our Police, etc.

Whereas: Provincetown is a unique community with a summer population 10 times the year round population requiring us to provide water, garbage disposal, police, ambulance, health and building inspectors, etc. for 40-50,000 people, rather than 4-5,000.

Whereas: The vast majority of real estate sales last year were properties owned by non-residents.

Whereas: Real Estate Transfer Fees are widely used and common across the Nation.

Therefore:

Section I: I move to see if the Town will vote to instruct its Senator and Representative in the General Court to file a Home Rule Petition for a Real Estate Sale Transfer Fee equal to 1%, paid for by the seller on the sale of all property and payable to the Town of Provincetown General Fund, providing that:

A: All residential property held by the owner(s) who have lived in Provincetown for 20 years or more are exempt from this fee.

Section II: The following transfers shall be exempt from the Real Estate Transfer Fee:

A: Transfers to the Government of the United States, the Commonwealth, the Town of Provincetown and any of their instrumentalities, agencies or subdivisions, such as the Provincetown Housing Authority.

B: Transfers without additional consideration to confirm, correct, modify or supplement a transfer previously made.

C: Transfers of convenience with consideration under \$100 which include name change, into trusts, out of trusts, etc.

D: Transfers to any charitable organization as defined in clause Third of Section Five of Chapter Fifty-nine of the General Laws, or any religious organization, providing that the real property interests so transferred will be held by the charitable or religious organization solely for its public charitable or religious purpose.

E: Transfers between family members, marriage partners, parents and children, step-parents and step-children, brothers and sisters.

Section III:

A: The fee imposed shall be due at the time of the transfer of the real property interest and shall be paid to the Town of Provincetown General Fund.

B: The Seller shall pay interest on any unpaid amount of the fee at the rate of 14% per annum.

C: The Town shall notify a Seller by Registered or Certified Mail of any failure to discharge the amount in full the amount of fee due.

D: All fees and interest required to be paid under this act shall constitute a personal debt of the Seller and may be recovered in an action of contract.

The General Court may only make clerical or editorial changes of form to the bill, unless the Board of Selectmen approves amendments to the bill before enactment by the General Court. The Board of Selectmen is hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition.

Motion Does Not Pass.

Article 17. Community Preservation Act Money for Town Hall Repairs

Whereas: The Town has need of money to rebuild our historic Town Hall;

Whereas: A fee of 3% of our Real Estate Taxes has been given, under the Community Preservation Act (CPA) which allots, by law, 10% to historical preservation, 10% to affordable housing and 10% to open space, and the remaining 70% as the Community Preservation Committee votes with the approval of Town Meeting;

Whereas: The uncommitted CPA funds now amount to over 1.8 million dollars;

Therefore: I move to see if the Town will vote to change the percent for historical preservation from 10% to 80% and the percent for affordable housing from 80% to 10%, letting open space remain at 10%, and to release CPA funds for the renovation of Town Hall after all indebtedness, such as the affordable housing projects at Seashore Point, Sandy Hill Lane and Shank Painter Road, and any open space projects already voted are paid or put in reserve before the dollars are released for rebuilding our historic Town Hall or take any other action relative thereto.

[Requested by Barbara Rushmore and others]

BOARD OF SELECTMEN DOES NOT RECOMMEND: 5-0-0

FINANCE COMMITTEE DOES NOT RECOMMEND: 8-1-0

CONSERVATION COMMISSION DOES NOT RECOMMEND: 4-0-0

HISTORICAL COMMISSION DOES NOT RECOMMEND: 5-0-0

Barbara Rushmore moved as follows:

Whereas: The Town has need of money to rebuild our historic Town Hall;

Whereas: A fee of 3% of our Real Estate Taxes has been given, under the Community Preservation Act (CPA) which allots, by law, 10% to historical preservation, 10% to affordable housing and 10% to open space, and the remaining 70% as the Community Preservation Committee votes with the approval of Town Meeting;

Whereas: The uncommitted CPA funds now amount to over 1.8 million dollars;

Therefore: I move to see if the Town will vote to change the percent for historical preservation from 10% to 80% and the percent for affordable housing from 80% to 10%, letting open space remain at 10%, and to release CPA funds for the renovation of Town Hall after all

indebtedness, such as the affordable housing projects at Seashore Point, Sandy Hill Lane and Shank Painter Road, and any open space projects already voted are paid or put in reserve before the dollars are released for rebuilding our historic Town Hall. **Motion Does Not Pass.**

Article 18. *Open Space Purchase* To see if the Town will vote to use the Open Space funds to purchase lot 31 and 30 to make a “greenway” and preserve blueberries for a town garden of wild edible blueberries in perpetuity part of the Provincetown Conservation Trust, or take any other action relative thereto.

[Requested by Olga Opsahl and others]

BOARD OF SELECTMEN RECOMMENDS INDEFINITE POSTPONEMENT: 5-0-0
FINANCE COMMITTEE HAS NO RECOMMENDATION
CONSERVATION COMMISSION RECOMMENDS: 2-0-2 (does not pass)

Olga Opsahl moved to indefinitely postpone Article 18.

Motion to Indefinitely Postpone Passed.

Town Moderator Irene Rabinowitz motioned to dissolve the November 17, 2008 Special Town Meeting at 9:45 p.m. **Motion Passed.**

November 17, 2008 Special Town Meeting dissolved at 9:45 p.m.