



## Special Town Meeting

WEDNESDAY, APRIL 4, 2007 AT 6:00  
P.M.

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**Meeting Called to Order:** Town Moderator Mary-Jo Avellar convened the meeting at 6:05 p.m. on Wednesday, April 4, 2007 in the Town Hall Auditorium. Provincetown Student Poet Laureate Chad Edwards read an original poem to open the Town Meeting.

### **Preliminary motions:**

Cheryl Andrews moved that the Town vote to waive the reading of the warrant. **Motion Passed.**

Cheryl Andrews moved that the Town vote to grant permission to speak at the April 4, 2007 Special Town Meeting to the following persons who are not registered voters of the Town of Provincetown: Chad Edwards, *Provincetown High School Student Poet Laureate*; John W. Giorgio, Esq., and other attorneys of the firm of Kopelman & Paige, P.C., *Town Counsel*; Alexandra Heilala, *Town Accountant*; Beau Jackett, *Information Systems Director*; Michelle Jarusiewicz, *Acting Assistant Town Manager*; Matthias Mulvey, *Interim Building Commissioner*; Maxine Notaro, *Permit Coordinator*; Dr. Floriano Pavao, *PHS Principal*; Warren D. Tobias, *Acting Chief of Police*; and Betty White, *Administrative Assistant for Business and Finance, School Department*. **Motion Passed.**

Cheryl Andrews moved that on all matters to come before the April 4, 2007 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. Phase II Sewer Project.** To see if the Town will vote to appropriate and borrow the sum of \$175,000 for Phase II of the sewer project, with said borrowing authority contingent upon the voters approval of a Proposition 2½ override ballot question, in accordance with the provisions of MGL C. 59, §21C(m); with said sum to be expended under the direction of the Town Manager and the Board of Selectmen for the development of plans and specifications for optimization and expansion to the Town's sewerage systems, and including without limitation all costs defined under C.29C,§1 of the General Laws; and to raise said appropriation the Town Treasurer, with the approval of the Board of Selectmen, is authorized to borrow said sum of money under and pursuant to C.44,§7(1) and/or C.29C of the General Laws, or any other enabling authority, and to issue bonds or notes of the Town therefor; and that to the extent that any State, Federal or other funds are or become available for the purposes set forth above, the Board of Selectmen is authorized to apply for and accept such funds; and, further, the Town votes to authorize the Water and Sewer Board to assess one hundred percent of the project cost to the Town upon those who benefit from the project, such assessments to be made by the Uniform Unit method as provided by General Laws Chapter 83, Section 15; or to take any other action relative thereto.

*[Requested by the Board of Selectmen]*

**BD OF SELECTMEN RECOMMENDS INDEFINITE POSTPONEMENT: 3-0-0**

**FINANCE COMMITTEE RECOMMENDS: 6-1-0**

**CONSERVATION COMMISSION RECOMMENDS: 3-0-0**

Cheryl Andrews moved that the Town vote to indefinitely postpone action on Article 1. **Motion Passed.**

**Article 2. *Community Preservation Funds for Community Housing Phase II Sewer Costs.***

To see if the Town will vote to hear and act on the report of the Community Preservation Committee, to appropriate from Community Preservation Fund revenues, as recommended by the Community Preservation Committee, the sum of \$100,000 of community housing funds to create a fund to reserve 20,000 GPDs of Title 5 design flow for community housing to be built in Phase II of the sewer project, provided that amounts expended hereunder shall be repaid to the Community Preservation Fund by the developer of such community housing upon issuance of the final betterment assessment by the Water & Sewer Board; or to take any other action relative thereto.

*[Requested by the Community Preservation Committee]*

**COMMUNITY PRESERVATION COMMITTEE RECOMMENDS: 7-0-0**

**BOARD OF SELECTMEN RECOMMENDS: 3-0-0**

**FINANCE COMMITTEE RECOMMENDS: 8-0-0**

**LOCAL HOUSING PARTNERSHIP RECOMMENDS: 4-0-0**

**HOUSING AUTHORITY RECOMMENDS: 4-0-1**

**BOARD OF HEALTH RECOMMENDS: 4-0-1**

**WATER & SEWER BOARD RECOMMENDS: 3-0-0**

Elaine Anderson move that the Town vote to transfer from the Community Preservation Fund community housing reserve the sum of \$100,000 for the purposes specified in Article 2. **Motion Passed.**

**Article 3. *Establishment of Provincetown Community Housing Council.*** To see if the Town will vote to establish the Provincetown Community Housing Council, to be comprised of five regular and two alternate members appointed by the Board of Selectmen for staggered three-year terms. It shall be the function of said council to oversee the Provincetown Housing Office; to perform all of the functions of the Provincetown Local Housing Partnership, which shall be abolished upon the appointment of members to said council; and to administer the Affordable Housing Trust Fund established under Chapter 230 of the Acts of 2002 upon the transfer of said function from the Provincetown Housing Authority; and to vote to instruct its senator and representative in the General Court to file a home rule petition for a special act to read as follows:

SECTION 1. The second sentence of Section 1 of Chapter 230 of the Acts of 2002 is hereby amended to read as follows: "Expenditures from the Affordable Housing Trust Fund shall be authorized by a majority vote of ~~said housing authority, in consultation with the Provincetown housing partnership~~ ***the Provincetown Community Housing Council.***"

SECTION 2. This act shall take effect upon its passage.

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 to take any other action relative thereto.

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

**BOARD OF SELECTMEN RECOMMENDS: 3-0-0**

**FINANCE COMMITTEE RECOMMENDS: 6-0-0**

**LOCAL HOUSING PARTNERSHIP RECOMMENDS: 4-0-0**

**HOUSING AUTHORITY RECOMMENDS: 5-0-0**

**COMMUNITY PRESERVATION COMMITTEE RECOMMENDS: 5-0-0**

Cheryl Andrews moved that the Town vote to approve Article 3 as printed in the warrant with the following amendments:

- (1) By amending the first sentence of said article to read as follows: "to vote to establish the Provincetown Community Housing Council, to be comprised of *four* regular and two alternate members appointed by the Board of Selectmen, *and one regular member appointed by the Housing Authority, all* for staggered three-year terms." and
- (2) by adding, "further, that the Town vote to amend the Provincetown General By-laws deleting all references therein to the 'Provincetown Local Housing Partnership [PLHP]' and inserting in place thereof 'Provincetown Community Housing Council [PCHC].'" **Motion Passed.**

**Article 4. *Zoning Amendment – Provincetown Community Housing Council.*** To see if the Town will vote to amend the Provincetown Zoning By-laws by deleting all references therein to the "Provincetown Local Housing Partnership [PLHP]" and inserting in place thereof "Provincetown Community Housing Council [PCHC]," or to take any other action relative thereto.

*[Requested by the Board of Selectmen, the Housing Authority, and the Town Manager]*

**BOARD OF SELECTMEN RECOMMENDS: 3-0-0**

**PLANNING BOARD RECOMMENDS: 3-0-0**

**LOCAL HOUSING PARTNERSHIP RECOMMENDS: 4-0-0**

**HOUSING AUTHORITY RECOMMENDS: 5-0-0**

*Zoning Amendment - 2/3's vote required*

Richard Olson moved that the Town vote to amend the Provincetown Zoning By-laws by deleting all references therein to the "Provincetown Local Housing Partnership [PLHP]" and inserting in place thereof "Provincetown Community Housing Council [PCHC]." **Motion Passed. (2/3<sup>rd</sup>'s Vote Declared)**

**Article 5. *Home Rule Petition Provincetown Community Housing Bank – Real Estate Transfer Fee.*** 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 transfer fee equal to 1.5 percent and paid by the seller on the sale of all property, providing that: (a) all primary residences be allowed to first exempt from the fee an amount equal to the median price of a home sold in Barnstable County for the previous calendar year (\$360,000 in 2005); (b) there be public accountability to insure that the funds collected shall be dedicated effectively to the creation and preservation of affordable/community housing opportunity serving a population earning up to 150 percent of area median income and (c) the transfer fee cease ten years after its initial implementation; with said special act to read as follows:

SECTION 1. For the purposes of this act, the words and phrases set forth in this section shall have the following meanings:

"Community Housing", rental and home ownership housing units for use by those residents of Provincetown earning 150 per cent or less of the median household income for Barnstable county, as calculated and adjusted for household size annually by the federal Department of Housing and Urban Development (HUD); this percentage of median income, should economic conditions warrant a change, can be adjusted by a majority vote of the community housing council.

"Eligible Applicants", non-profit and for-profit corporations and organizations, individuals, and public entities.

"Housing Bank", the Provincetown Community Housing Bank, established by section 2.

"Community housing council", the Provincetown Community housing council, established by section 3.

"Legal representative", with respect to any person, shall mean any other person acting under a written power-of-attorney executed by that person, but any affidavit attesting to the true and complete purchase price of real property, submitted to the community housing council under section 9, may also be signed on behalf of that person by an attorney admitted to practice in the commonwealth.

"Purchaser", the transferee, grantee or recipient of any real property interest.

"Purchase price", all consideration paid or transferred by or on behalf of a purchaser to a seller or a seller's nominee, or for the seller's benefit, for the transfer of any real property interest, including, but not limited to, all cash or other property paid or transferred by or on behalf of the purchaser to discharge or reduce any obligation of the seller; the principal amount of all notes or their equivalent, or other deferred payments, given or promised to be given by or on behalf of the purchaser to the seller or the seller's nominee; the outstanding balance of all obligations of the seller which are assumed by the purchaser or to which the real property interest transferred remains subject after the transfer, determined at the time of transfer but excluding real estate taxes or other municipal liens or assessments which are not overdue at the time of the transfer; and the fair market value at the time of transfer of any other consideration or thing of value paid or transferred by or on behalf of the purchaser, including, but not limited to, any property, goods or services paid, transferred or rendered in exchange for the real property interest.

"Real property interest", any present or future legal or equitable interest in or to real property, and any beneficial interest therein, including the interest of any beneficiary in a trust which holds any legal or equitable interest in real property; the interest of a partner or member in a partnership or limited liability company, the interest of a stockholder in a corporation, the interest of a holder of an option to purchase real property, the interest of a buyer or seller under a contract for purchase and sale of real property, and the transferable development rights created under Massachusetts General Laws chapter 183A; but shall not include any interest which is limited to any of the following: the dominant estate in any easement or right of way; the right to enforce any restriction; any estate at will or at sufferance; any estate for years having a term of less than thirty years; any reversionary right, condition, or right of entry for condition broken; and the interest of a mortgagee or other secured party in any mortgage or security agreement.

"Seller", the transferor, grantor or immediate former owner of any real property interest.

"Time of transfer", of any real property interest shall mean, the time that the transfer is legally effective between the parties to the transfer, and, with respect to a transfer evidenced by an instrument recorded with the appropriate registry of deeds or filed with the assistant recorder of the appropriate registry district, not later than the time of the recording or filing.

SECTION 2. There shall be a Provincetown Community Housing Bank, to be administered by a community housing council established by section 3, for the purpose of providing funding for community housing as set forth in section 5. The Housing Bank shall be a body politic and corporate and a public instrumentality, and the exercise of the powers conferred upon the Housing Bank by this act shall be considered to be the performance of an essential governmental function.

SECTION 3.

(a) The Provincetown Community Housing Bank shall be administered by a community housing council consisting of five (5) regular and two (2) alternate members who are legal residents of Provincetown, each person to be appointed to a three (3) year term by the Provincetown board of selectmen. The initial terms, which will be drawn by lot by the initial five appointed members, shall be staggered so that two members are appointed each year, and in the third year, one member appointed.

(b) Administration: Members shall serve without compensation. The community housing council shall

elect a chairman and a vice chairman from among their regular members and shall elect a secretary and a treasurer who may be the same person, and who need not be members of the community housing council. The members of the community housing council shall adopt, after holding a public hearing, rules and regulations for conducting its internal affairs and procedural guidelines for carrying out its responsibilities under this act.

(c) Quorum: A quorum for the Provincetown community housing council shall be three or more members. Decisions of the community housing council shall be by majority vote at a meeting where a quorum is present. The Community Housing Council may make rules regarding attendance. The Community Housing Council shall keep accurate records of its meetings and actions and shall file annual reports that shall be distributed with the annual report of the Town of Provincetown. The Community housing council shall be classified as a municipal agency for purposes of chapter 268A of the General Laws, and be subject to the open meeting law (chapter 39, sections 23A, 23B and 23C of the General laws).

SECTION 4A. The community housing council shall (a) provide funding as has been first approved by an annual or special town meeting of the town of Provincetown, in the form of grants, loans, loan guarantees, lines of credit, interest subsidies, rental assistance or any other means determined to further the goals of the housing bank for eligible community housing activities under section 5, (b) accept gifts of funds to further the purposes of the housing bank; (c) prepare an annual budget, provided however no more than 5% of all funds received by the housing bank during any fiscal year may be spent for administration purposes without approval by an annual or special town meeting of the town of Provincetown, (d) hire staff and obtain professional services that are necessary in order to perform its duties; (e) adopt regulations and procedures that it considers necessary or appropriate, subject to this act, regarding the use and investment of its funds and the keeping of records and accounts; (f) adopt procedures in the form of rules and regulations that it considers necessary or appropriate setting forth its programmatic goals, policies and recommendations to serve as standards for decisions to provide funding for programs under section 5, provided however, such procedures shall not take effect until approved by an annual or special town meeting of the town of Provincetown; and (g) enter into and enforce contracts that it considers necessary to achieve the goals of this legislation.

SECTION 4B. The Town of Provincetown may appropriate money to be deposited in the Provincetown Housing Fund as provided in said section 7A. The Town of Provincetown is hereby further authorized to provide funds to repay any notes or bonds of the town issued pursuant to this section and, when authorized by a two thirds vote of town meeting as defined in G.L. Chapter 44, section. 1, to incur debt of the town for such purposes in accordance with the provisions of G. L. Chapter 44, section 7(3).

SECTION 4C. The housing bank may issue bonds and notes to further the purposes of the housing bank but only if the issuance of these bonds or notes has been approved by a two thirds majority vote at a Provincetown town meeting. The proceeds of such bonds or notes may be used to pay, in whole or in part, for the purposes set forth in section 4A of this act, reserves for debt service and other expenses, to pay consulting appraisal advisory and legal fees and costs incidental to the issuance and sale of such bonds and notes, to purchase, refund or renew bonds or notes previously issued and to pay an other costs and expenses of the community housing council necessary for the accomplishment of its purposes. Bonds or notes issued pursuant to this act shall be authorized by the council which shall have full power and authority to determine the amount, form, terms, conditions, provisions for payment of interest and all other details thereof and to provide for the sale and issuance at such price and in such manner as the Council shall determine subject only to any limitation set forth in this Act. Unless the town of Provincetown shall have authorized by two-thirds vote of a town meeting the pledging of the full faith and credit of the town of Provincetown to secure an issue of bonds or notes of the housing bank, all bonds or

notes issued hereunder shall be payable solely from the fees and other revenues of the housing bank pledged to their payment and shall not be deemed a pledge of the full faith and credit of the Town of Provincetown, the Commonwealth of Massachusetts or any political subdivision thereof.

The Community housing council may enter into any agreements, including without limitation a loan agreement and a trust agreement, necessary to effectuate and to secure any bonds or notes issued by the housing bank. Such agreements may pledge or assign, in whole or in part, the revenues and other money held or to be received by the housing bank. Such agreements may contain such provisions for protecting and enforcing the rights, security and remedies of the holders of such bonds or notes, including, without limiting the generality of the foregoing, provisions defining defaults and providing for remedies in the event thereof which may include the acceleration of maturities and covenants setting forth the duties of, and limitations on, the housing bank in relation to the custody, safeguarding, investment and application of money, the issuance of additional debt obligations, the use of any surplus proceeds of the borrowing, including any investment earnings thereon, and establishment of special funds and reserves.

The pledge of any such agreement shall be valid and binding and shall be deemed continuously perfected for the purposes of the Uniform Commercial Code from the time when the pledge is made; the revenues, money, rights and proceeds so pledged and then held or thereafter acquired or received by the housing bank shall immediately be subject to the lien of such pledge without any physical delivery or segregation thereof or further act; and the lien of any such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the town or county, irrespective of whether such parties have notice thereof. No document by which a pledge is created need be filed or recorded except in the records of the housing bank and no filing need be made under the Uniform Commercial Code.

The trustee with respect to any such trust agreement entered into pursuant to this section shall be a trust company or a bank having the powers of a trust company within the commonwealth. Any such trust agreement may provide that any money received thereunder may be held, deposited or invested by the trustee, notwithstanding the provisions of section 7A pending the disbursement thereof, in any deposits or investments which are lawful for the funds of savings banks and shall provide that any officer with whom or any bank or trust company with which such money shall be deposited shall act as trustee of such money and shall hold and apply the same for the purposes hereof and thereof, subject to such regulation or limitation as this act or such trust agreement may provide.

It shall be lawful for any bank or trust company within the Commonwealth to act as depository of the proceeds of bonds or notes, revenues or other money hereunder and to furnish such indemnifying bonds or to pledge such security, if any, as may be required by the Council. Any trust agreement entered into pursuant to this section may set forth the rights and remedies of the holders of any bonds or notes and of the trustee and may restrict the individual rights of action by any such holders. In addition to the foregoing, any such trust agreement may contain such other provisions as the Council may deem reasonable and proper. All expenses incurred in carrying out the provisions of such trust agreement may be treated as part of the cost of operation of the housing bank and paid from the revenues or other funds pledged or assigned to the payment of the principal of and the premium, if any, and interest on the bonds or notes or from any other funds available to the housing bank. In addition to other security provided herein or otherwise by law, bonds or notes issued under this section may be secured, in whole or in part, by insurance or by letters or lines of credit or other credit facilities issued to the housing bank by any bank, trust company or other financial institution, within or without the Commonwealth, and the housing bank may pledge or assign any of its revenues as security for the reimbursement by the housing bank to the issuers of such letters or lines of credit, insurance or credit facilities of any payments made thereunder.

SECTION 4D. If at any time any principal or interest is due or about to come due on any bonds or notes of the housing bank to secure which the full faith and credit of the town of Provincetown shall have

been pledged and funds to pay the same are not available, the Council shall certify to the town treasurer and selectmen of the town the amount required to meet such obligations and the town treasurer shall thereupon pay over to the housing bank the amount so certified from any funds in the treasury. For the purpose of providing or restoring to the treasury the sums so paid over to the housing bank, the town treasurer, with the approval of the selectmen, is authorized to incur debt outside the town's debt limit and issue notes therefore for a period not exceeding two years and to renew or refund the same from time to time until the town shall have received from the housing bank sufficient funds to repay such notes and the interest thereon in full. Whenever the town shall have been required to pay over any sums of money to the housing bank under this section, the housing bank shall be precluded from issuing any grants or purchasing, constructing or making improvements to land or housing, or issuing any of its bonds or notes for purposes other than repaying the town, until the housing bank shall have repaid the town in full for all sums paid to the housing bank hereunder, including interest on any notes issued for such purpose, unless the town shall have appropriated sufficient funds for such purpose at a town meeting.

SECTION 4E. Bonds and notes issued under the provisions of this act are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies in their commercial departments, savings banks, cooperative banks, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds and notes are hereby made securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations of the Commonwealth is now or may hereafter be authorized by law.

SECTION 4F. Notwithstanding any of the provisions of this act or any recitals in any bonds or notes issued under this act, all such bonds and notes shall be deemed to be investment securities under the Uniform Commercial Code.

SECTION 4G. The Housing Bank's revenues and income will be used solely for the furtherance of its public purposes and shall be exempt from taxation. The Housing Bank and all its revenues, income and real and personal property used solely by the Housing Bank in furtherance of its public purposes from the date of acquisition thereof, shall be exempt from taxation and from betterments and special assessments and the Housing Bank shall not be required to pay any tax, excise or assessment to or for the Commonwealth or any of its political subdivisions. Bonds and notes issued by the Housing Bank, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be exempt from taxation within the Commonwealth.

SECTION 4H. With authorization of an annual or special town meeting of the town of Provincetown as provided for in section 4C of this Act, bonds and notes may be issued under this act without obtaining the consent of any department, division, commission, council, board, bureau or agency of the town of Provincetown, except that the full faith and credit of the town of Provincetown shall not be pledged for the payment of such bonds or notes unless such pledge shall have been authorized by a two-thirds vote as provided in this Act, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required therefore by this act. The validity of and security for any bonds and notes issued by the housing bank shall not be affected by the existence or nonexistence of any such consent or other proceedings, conditions or things.

SECTION 5. The Provincetown Community Housing Bank shall be a funding agency only, but may acquire by purchase, lease or gift offices for its operation, and may enter into leasebacks, mortgages or other loans for this purpose. Upon receiving applications from eligible applicants in a competitive process which will include public notice of funding availability, and in a form prescribed by the council, and upon compliance with the provisions of section 4A of this Act, the housing bank will provide funding for

eligible community housing activities as defined below, while respecting special Provincetown habitats. The housing bank shall, wherever possible, give preference to (a) the reuse of existing buildings, and (b) construction of new buildings on previously developed sites.

Eligible community housing activities for receipt of funding shall include, but not be limited to, the following:

- (a) Purchase and rehabilitation of existing structures for rental or home ownership;
- (b) Construction of rental or home ownership housing and necessary on-site or off site infrastructure, including mixed use development;
- (c) Purchase of land, and any and all improvements including easements;
- (d) Down payment assistance, grants and soft second loans;
- (e) Rental assistance programs;
- (f) Modernization and capital improvements of existing rental and ownership housing;
- (g) Creation of apartments and other ancillary housing;
- (h) Housing counseling, predevelopment costs and technical assistance associated with creating community housing projects and programs; and
- (i) Mixed -use development projects.

SECTION 6. All housing units created by funding from a housing bank under this act shall be deed restricted in perpetuity for use as community housing as defined in section 1 of this act, except in cases when the community housing council determines that a deed restriction is not feasible, and except in cases when the community housing council makes a finding that such a deed restriction would delay, prevent or otherwise defeat the purpose of developing and making available to the public Community Housing.

SECTION 7A. The Community housing council shall meet its financial obligations by drawing upon a fund to be set up as a revolving or sinking account of the community housing council in the treasury of the Town of Provincetown. Deposits into the Provincetown Housing Fund shall include (a) funds appropriated, borrowed or transferred to be deposited into the fund by vote of the town meeting; (b) voluntary contributions of money and other liquid assets to the fund; and (c) revenues from fees imposed upon the transfer of real property interests under section 9 occurring in Provincetown after the effective date of this act as set forth in section 15. Grants or gifts of money or other assets to the housing bank shall be subject to any restrictions or limitations imposed by the grantor or donor. All expenses lawfully incurred by the Community housing council in carrying out this act shall be evidenced by proper vouchers and shall be paid by the treasurer of the town of Provincetown only upon submission of warrants duly approved by the community housing council. The community housing council treasurer shall prudently invest available assets of the fund under the regulations and procedures adopted by the community housing council under clause (f) of section 4A, and all income from investments shall accrue to the fund.

SECTION 8. The community housing council shall keep a full and accurate account of its actions including a record of when, from or to whom, and on what account money has been paid or received under this act. These records shall be subject to examination by the director of accounts or the director's agent under section 45 of chapter 35 of the General Laws. There shall be an annual audit conducted by a duly recognized accounting firm, and a copy of that audit shall be distributed to the Board of Selectmen of the Town of Provincetown. However, schedules of beneficiaries of trusts, lists of stockholders of corporations, lists of partners, partnership agreements, tax returns, and other materials deemed by the Council to be private to a particular entity or individual, which are filed with the Council for the purposes of determining or fixing the amount of fee imposed by this Act for any transfer or for the purpose of determining the existence of any exemption pursuant to this act shall not be public records for the purposes of section 10 of chapter 66 of the General Laws.

SECTION 9. There is hereby imposed a fee equal to one-and-one-half per cent of the purchase price

upon the transfer of any interest in real property located within the Town of Provincetown. The fee shall be the liability of the seller of the real property interest, and any agreement between the purchaser and the seller or any other person with reference to the allocation of the responsibility for bearing this fee shall not affect the liability of the seller. This fee shall be paid to the Provincetown community housing council or its designee. Fees shall be accompanied by a copy of the deed or other instrument evidencing the transfer, if any, and an affidavit signed under oath or under the pains and penalties of perjury by the seller or the seller's legal representative, attesting to the true and complete purchase price and the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed. The community housing council, or its designee, shall promptly execute and issue a certificate stating that the appropriate fee has been paid or that the transfer is exempt from the fee and stating the basis for the exemption. The register of deeds for Barnstable county, and the assistant recorder for the registry district of Barnstable county, shall not record or register, or receive or accept for recording or registration, any deed, except a mortgage deed, for any real property interest located in Provincetown unless this certificate is attached. Failure to comply with this requirement shall not affect the validity of any instrument. The Community housing council shall deposit all fees received under this section with its treasurer as part of the fund established by section 7A. The fee imposed under this section shall be due at the time of transfer of the real property interest.

SECTION 10. At any time within seven days after the issuance of the certificate of payment of the fee imposed by section 9, the seller or the seller's legal representative may return the certificate to the community housing council or its designee for cancellation, together with an affidavit signed under oath or under the pains and penalties of perjury that the transfer has not been consummated. After receiving this certificate and affidavit, the community housing council shall in due course return the fee to the seller or the seller's legal representative.

SECTION 11. The following transfers of real property interests shall be exempt from the fee established by section 9. Except as otherwise provided, the seller shall have the burden of proof that any transfer is exempt under this section and any otherwise exempt transfer shall not be exempt in the event that such transfer (by itself or as part of a series of transfers) was made for the primary purpose of evading the fee imposed by Section 9.

(-a-) Transfers to the government of the United States, the commonwealth, and any of their instrumentalities, agencies or subdivisions, including but not limited to transfers to the Town of Provincetown and the Provincetown Housing Authority.

(-b-) Transfers which, without additional consideration, confirm, correct, modify or supplement a transfer previously made.

(-c-) Transfers made as gifts without consideration. In any proceeds to determine the amount of any fee due hereunder, it shall be presumed that any transfer for consideration of less than fair market value of the real property interests transferred was made as a gift without consideration to the extent of the difference between the fair market value of the real property interests transferred and the amount of consideration claimed by the seller to have been paid or transferred, if the purchaser shall have been at the time of transfer the spouse, the lineal descendant, or the lineal ancestor of the seller, by blood or adoption, and otherwise it shall be presumed that consideration was paid in an amount equal to the fair market value of the real property interests transferred, at the time of transfer.

(-d-) Transfer to the trustees of a trust in exchange for a beneficial interest received by the seller in such trust; distributions by the trustees of a trust to the beneficiaries of such trust.

(-e-) Transfers by operation of law without actual consideration, including but not limited to transfers occurring by virtue of the death or bankruptcy of the owner of a real property interest.

(-f-) Transfers made in partition of land and improvements thereto, under chapter two hundred and forty-one of the General Laws.

(-g-) 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, provided that the real property interests so transferred will be held by the charitable or religious organization solely for its public charitable or religious purposes.

(-h-) Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee, and transfers of the property subject to a mortgage to the mortgagee in consideration of the forbearance of the mortgagee from foreclosing said mortgage.

(-i-) Transfers made to a corporation or partnership or limited liability company at the time of its formation, pursuant to which transfer no gain or loss is recognized under the provisions of section three hundred and fifty-one or seven hundred and twenty-one of the Internal Revenue Code of 1986, as amended; provided, however, that such transfer shall be exempt only in the event that (i) with respect to a corporation, the transferor retains an interest in the newly formed corporation which is equivalent to the interest the transferor held prior to the transfer, or (ii) with respect to a partnership or limited liability company, the transferor retains after such formation rights in capital interests and profit interests within such partnership or limited liability company which are equivalent to the interest the transferor held prior to the transfer.

(-j-) Transfers made to a stockholder of a corporation in liquidation or partial liquidation of the corporation, and transfers made to a partner of a partnership or to a member of a limited liability company in dissolution or partial dissolution of the partnership or limited liability company; but the transfer shall be exempt only if (i) with respect to a corporation, the transferee receives property (including real property interests and other property received) which is the same fraction of the total property of the transferor corporation as the fraction of the corporation's stock owned by the transferee prior to the transfer or (ii) with respect to a partnership or limited liability company, the transferee receives property (including real property interests and other property received) which is the same fraction of the property of the partnership or limited liability company as the fraction of the capital and profit interests in the transferor formerly owned by the transferee.

(-k-) Transfers consisting of the division of marital assets under the provisions of section thirty-four of chapter two hundred and eight of the General Laws or other provisions of law.

(-l-) Transfers of property consisting in part of real property interests situated in Barnstable county and in part of other property interests, to the extent that the property transferred consists of property other than real property situated in Barnstable county; provided that the purchaser shall furnish the Council with such information as it shall require or request in support of the claim of exemption and manner of allocation of the consideration for such transfers.

(-m-) The first amount equal to the median price of a single family home sold in Barnstable County for the previous calendar year of the sale price of any transfer or series of transfers of real property interests in a single parcel, provided, however, that such an exemption shall be applied only to the principal residence of a taxpayer as used by the taxpayer for income tax purposes.

(-n-) Transfers of minority interests in corporations, trusts, partnerships or limited liability companies which are publicly traded, which trades are not part of a series of transfers which together constitute a transfer of control of a corporation, trust, partnership or limited liability company.

SECTION 12. A seller who fails to pay all or any portion of the fee established by section 9 on or before the time when the fee is due shall be liable for the following additional payments in addition to the fee:

(a) Interest. The seller shall pay interest on the unpaid amount of the fee to be calculated from the time of transfer at a rate equal to prime rate at the time of transfer plus 1 per cent per annum, adjusted each year in accordance with changes in prime rate.

(b) Penalties. Any person who, without fraud or willful intent to defeat or evade a fee imposed by section

9, fails to pay all or a portion of the fee within 30 days after the time of transfer, shall pay a penalty equal to five per cent of the outstanding fee as determined by the community housing council for each month or portion of a month that the fee is not paid in full, but in no event shall the amount of any penalty imposed under this paragraph exceed 25 per cent of the unpaid fee due at the time of transfer. Whenever the community housing council determines that all or a portion of a fee due under section 9 was unpaid due to fraud with intent to defeat or evade the fee, a penalty equal to the amount of the fee as determined by the community housing council shall be paid by the seller in addition to the fee.

SECTION 13A. (a) The Community housing council shall notify a seller by registered or certified mail of any failure to discharge in full the amount of the fee due under section 9 and any penalty or interest assessed. The Community housing council shall grant a hearing on the matter of the imposition of the fee, or of any interest or penalty assessed, if a petition requesting a hearing is received by the Community housing council within 30 days after the mailing of the notice. If the Council has determined that a fee is due by asserting the application of the evasion of fee doctrine described in section 11 of this Act, then the seller shall have the burden of demonstrating by clear and convincing evidence as determined by the Council that the transaction possessed both: (i) a valid, good faith business purposes other than avoidance of the fee set forth in section 9 of this Act and (ii) economic substance apart from the asserted fee avoidance benefit. In all such cases the seller shall also have the burden of demonstrating by clear and convincing evidence as determined by the council that the asserted non-fee-avoidance business purpose is commensurate with the amount of the fee pursuant to section 9 to be thereby avoided. The Community housing council shall notify the seller in writing by registered or certified mail of its determination concerning the deficiency, penalty or interest within 15 days after the hearing. Any party aggrieved by a determination of the Community housing council concerning a deficiency, penalty or interest may, after payment of the deficiency, appeal to the district or superior court within 3 months after the mailing of notification by the Community housing council.

Upon the failure to timely petition for a hearing, or appeal to the court, within the time limits established in this paragraph, the seller shall be bound by the terms of the notification, assessment or determination, and shall be barred from contesting the fee or any interest and penalty, as determined by the Community housing council. All decisions of these courts shall be subject to appeal. Every notice to be given under this section by the Community housing council shall be effective if mailed by certified or registered mail to the seller at any available legal address of the seller, or at the address stated in a recorded or registered instrument by virtue of which the seller holds any real property interest, the transfer of which gives rise to the fee which is the subject of the notice; and, if no address is stated or if the transfer is not evidenced by an instrument recorded or registered in the public records of Barnstable county, the notice shall be effective when mailed to the seller in care of any person appearing of record to have had a fee interest in the land at the time of the transfer, at the address of that person as set forth in an instrument recorded or registered in Barnstable county.

(b) All fees, penalties 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 or in any other appropriate action, suit or proceeding brought by the community housing council subject to chapter 260 of the General Laws.

(c) Sellers applying for an exemption under subsections (a) through (n) of section eleven shall be required at the time of application for exemption to execute an agreement legally binding on sellers and separately legally binding upon any Legal Representative of the sellers (1) assuming complete liability for any fee, plus interest and penalties if any, waived on account of an allowed exemption subsequently determined to have been invalid, and (2) submitting to the jurisdiction of the trial court of the commonwealth sitting in Barnstable county. Fees, plus interest and penalties if any, shall be calculated as of the date of the initial property transfer. Execution of the above-described agreement shall not be required of any mortgagee, pledge, purchaser or judgment creditor unless notice of the agreement has been recorded or filed by the

Community housing council.

The Community housing council, without waiving any of its rights, may direct a civil action to be filed in the appropriate district or superior court division of the department of the trial court sitting in the Barnstable county to enforce the agreement of the community housing council under this section with respect to this liability or to subject any property of the delinquent seller, or in which the delinquent seller has any legal or beneficial right, title or interest, to the payment of this liability.

The Community housing council may issue a waiver or release of any agreement imposed by this section. Such waiver or release shall be conclusive evidence that the agreement is extinguished.

SECTION 13B. This act, being necessary for the welfare of the town of Provincetown and its inhabitants, shall be liberally construed to effect its purposes.

SECTION 14. This act shall expire on January 1, 2018.

SECTION 15. Acceptance of this act shall be by the affirmative vote of a majority of the voters at any regular or special town election, or a state election, at which the question of acceptance has been placed on the ballot. This act shall become effective on the date on which acceptance by the town has been effected.

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 to take any other action relative thereto.

*[Requested by the Board of Selectmen, the Housing Authority, and the Town Manager]*

**BOARD OF SELECTMEN RECOMMENDS: 3-0-0**

**FINANCE COMMITTEE RECOMMENDS: 6-0-0**

**LOCAL HOUSING PARTNERSHIP RECOMMENDS: 4-0-0**

**HOUSING AUTHORITY RECOMMENDS: 5-0-0**

**COMMUNITY PRESERVATION COMMITTEE RECOMMENDS: 5-0-0**

Michele Couture moved that the Town vote to approve Article 5 as printed in the warrant, with the following amendment: by amending Section 11 (-m-) to read as follows: "The first amount equal to *one hundred and fifty percent* of the median price of a single family home sold in Barnstable County for the previous calendar year of the sale price of any transfer or series of transfers of real property interests in a single parcel, provided, however, that such an exemption shall be applied only to the principal residence of a taxpayer as used by the taxpayer for income tax purposes; and further provided that in the case where an individual qualifies for a real estate exemption under G.L. c.59, sec.5, clause 41C, the amount of said exemption hereunder shall be the first \$700,00 of the sale price." And with the further amendment: section 3(a) change the reference to 5 regular members to 4 regular members, and add "and one regular member appointed by the Provincetown Housing Authority."

Greg Howe moved to amend the motion by inserting at the end of Section 9 the following: "The seller of real property interest has been a legal resident of Provincetown for five years or more, is sixty-two years of age, or older, and is transferring real property interest in a primary residence, the first \$700,000.00 of the purchase price shall be exempt from the provisions of the fee imposed in Section 9. **Motion to Amend Does Not Pass.**"

**Motion Does Not Pass (For 184 Against 194)**

**Article 6. *Route 6 Layout Alteration and Perfecting Title to 90 Shankpainter Road.*** To see if the Town will accept the alteration of the layout of a portion of Route 6, as shown on the plan dated March

5, 2007 as referred to the Planning Board, laid out by the Board of Selectmen and filed with the Town Clerk, which alteration commences at a point southwest of the intersection of Route 6 and Shank Painter Road and terminates at the property now or formerly owned by Enco Realty, Inc., as shown on the plan, the metes and bounds of said portion of Route 6 as so altered being as shown on said plan, thereby discontinuing as part of said town way all land lying between the above described boundaries of said portion of Route 6 and property now or formerly owned by Michael J. Tasha and Halcyon Tasha, and to transfer the discontinued portion of Route 6 from the Board of Selectmen for public way purposes to the Board of Selectmen for the purpose of conveyance of fee or easement, and to authorize the Board of Selectmen to convey all or any part of right, title and interest in the discontinued portion of Route 6 upon such terms and conditions and for such consideration as the Board shall determine to be appropriate, or to take any other action relative thereto.

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

**BOARD OF SELECTMEN RECOMMENDS: 3-0-0**

**PLANNING BOARD RECOMMENDS: 4-0-0**

**FINANCE COMMITTEE HAS NO RECOMMENDATION**

**LOCAL HOUSING PARTNERSHIP RECOMMENDS: 4-0-0**

**HOUSING AUTHORITY RECOMMENDS: 3-0-2**

**COMMUNITY PRESERVATION COMMITTEE RECOMMENDS: 5-0-0**

*Disposition of Land – 2/3’s vote required*

[Keith Bergman moved that the Town vote to approve Article 6 as printed in the warrant.](#)

**Motion Passed. (2/3<sup>rd</sup>’s Vote Declared)**

**Article 7. *Zoning By-Law Amendment: Growth Management Affordable Housing and Community Housing.*** To see if the Town will vote to amend the Zoning By-laws, Section 6300(4), to deem properties that have been granted an Affordable Housing Permit or a Community Housing Permit and containing 100% Affordable Housing and/or Community Housing dwelling units to be a public service use pursuant to Section 3 of Chapter 157 of the Acts of 2000, by adding the italicized language so that said section 6300(4) reads as follows:

*“4. Affordable Housing Permits and/or Community Housing Permits will be authorized on a priority basis as established by the PLHP, using criteria including but not limited to housing quality standards, quality of design, degree of affordability in terms of cost, and financial feasibility of the proposal. No Affordable Housing Permit and/or Community Housing Permit shall be issued without prior authorization of the PLHP. Each property in which 100% of the dwelling units are Affordable Housing and/or Community Housing, and for which an Affordable Housing Permit or a Community Housing Permit is granted, shall be deemed a public service use under Section 3 of Chapter 157 of the Acts of 2000.”*

or to take any other action relative thereto.

*[Requested by the Board of Selectmen]*

**BOARD OF SELECTMEN RECOMMENDS: 3-0-0**

**PLANNING BOARD RECOMMENDS: 3-0-0**

**FINANCE COMMITTEE HAS NO RECOMMENDATION**

**LOCAL HOUSING PARTNERSHIP RECOMMENDS: 4-0-0**

**HOUSING AUTHORITY RECOMMENDS: 4-0-1**

*Zoning Amendment – 2/3’s vote required*

Richard Olson moved that the Town vote to approve Article 7 as printed in the warrant.

**Motion Passed. (2/3<sup>rd</sup>'s Vote Declared)**

**Article 8. Zoning By-law Amendment – Section 4170 – Proposal I.** To see if the Town will vote to amend the Zoning By-laws by amending Section 4170 to read as follows:

**4170 Change of Use** Any **and all** change of use on a lot from a non-residential use or a mixed-use that is predominantly non-residential to a residential use or a mixed-use that is predominantly residential, ~~or~~ or from a boarding, lodging or tourist homes use or a mixed-use that is predominantly a boarding, lodging or tourist homes use to a residential use or a mixed-use that is predominantly residential, regardless whether other Special Permits or Variances are required, must **obtain an Affordable Housing Permit** and comply ~~comply~~ with the following conditions:

- i. Such change of use shall be authorized with a Special Permit from the Zoning Board of Appeals as provided for in Section 5300, which may require a Development Impact Statement as specified in Article 5, Section 5331.
- ii. Obtain a finding of compliance with Title V of the State Sanitary Code, as determined by the Board of Health, such compliance to be certified by a Registered Engineer.
- iii. Such change of use resulting in the creation of five (5) or more dwelling units shall be required to set aside a minimum of 33% of the total number of dwelling units for Affordable Housing **or Community Housing** as defined in Article 1 of these By-laws, **or a combination of Affordable Housing and Community Housing. The mix of Affordable Housing and Community Housing shall be determined by the Provincetown Local Housing Partnership in consultation with the Zoning Board of Appeals.**
- iv. The project must comply with the provisions of Article 4, Section 4100.
- v. Developments may not be phased, subdivided or segmented to avoid compliance with the conditions or provisions of this by-law.

vi. None of the above shall relieve the applicant of complying with other provisions of these By-Laws. or to take any other action relative thereto.

*[Requested by the Provincetown Local Housing Partnership]*

**LOCAL HOUSING PARTNERSHIP RECOMMENDS: 4-0-0**

**HOUSING AUTHORITY RECOMMENDS: 3-1-1**

**BOARD OF SELECTMEN RECOMMENDS: 2-1-0**

**PLANNING BOARD DOES NOT RECOMMEND: 4-0-0**

**COMMUNITY PRESERVATION COMMITTEE RECOMMENDS: 5-0-0**

**FINANCE COMMITTEE HAS NO RECOMMENDATION**

*Zoning Amendment – 2/3's vote required*

Arturo Alon moved that the Town vote to approve Article 8 as printed in the warrant.

Michele Couture moved to amend Article 8 by adding subsection v. to section 4170 as presented in the warrant.  
**Motion to Amend Passed.**

**Motion As Amended Does Not Pass. (For 127 Against 192)**

**Geraldine Anathan moved to reconsider Article 5 (signatures of 12 voters submitted). Motion to**

**Reconsider Does Not Pass.****Gayle Lovett moved to reconsider Article 8 (signatures of 16 voters submitted). Motion to Reconsider Does Not Pass.**

**Article 9. Zoning By-law Amendment – Section 4170 – Proposal II.** To see if the Town will vote to *amend the Zoning By-laws by amending Section 4170 to read as follows:*

Article E. *Zoning By-Law Amendment--Section 4170--Proposal II.* To see if the Town will vote to amend the Zoning By-Laws by amending Section 4170 to read as follows (deleted text shown in ~~strike through~~; added text shown in underline):

**4170 Change of Use/Non-Residential to Residential Use Conversions**

**1. Purpose and Intent**

The purpose of this by-law is to establish special permit requirements for changes of use from commercial to residential use and to minimize adverse impacts on the community from such development. In addition, this by-law is intended to create additional affordable housing opportunities for Provincetown residents and to assist the Town in creating units eligible for inclusion in its Subsidized Housing Inventory.

**2. Applicability**

Any The following types of change of use on a lot shall require Special Permit authorization from the Zoning Board of Appeals as provided for in Article 5, Section 5300:

- (a) Any change of use from a non-residential use to a residential use, ~~or~~
- (b) Any change of use from a boarding, lodging or tourist homes use, to a residential use; and
- (c) Any change of use involving mixed use development that alters the existing mix of uses such that a predominantly non-residential development becomes predominantly residential.

**3. Requirements**

The Zoning Board of Appeals, as a condition of any development referred to in Section 2(a)-(c) shall require that the applicant for special permit approval comply with the following requirements regardless whether other Special Permits or Variances are required, ~~must comply with the following conditions:~~

~~i.~~ (a) Such change of use shall be authorized with a Special Permit from the Zoning Board of Appeals as provided for in Section 5300, which may require a Development Impact Statement as specified in Article 5, Section 5331.

~~ii.~~ (b) The applicant shall ~~Obtain~~ obtain a finding of compliance with Title V of the State Sanitary Code, as determined by the Board of Health, with such compliance to be certified by a Registered Engineer.

~~iii.~~ (c) Any ~~S~~ such change of use resulting in the creation of five (5) or more dwelling units shall be required to ~~set aside a minimum of 33% of the total number of dwelling units for provide a~~ provide a Affordable Housing as defined in Article 1 of these By-laws and more fully described below in Section 4 Provision of Affordable Units.

~~iv.~~ (d) The project must comply with the provisions of Article 4, Section 4100.

~~v.~~ (e) None of the above shall relieve the applicant of complying with other provisions of these By- Laws.

**4. Provision of Affordable Units**

Any special permit application for a change of use requiring an affordable housing provision pursuant to Section 3(c) above shall comply with the following requirements for affordable units. For the purpose of calculating the 20% affordable housing contribution, all numbers shall be rounded to the nearest whole number.

(a) At least 20% of the units created shall be established as affordable housing units in any one or combination of methods provided for below:

- (1) The affordable housing units shall be constructed or rehabilitated on the locus subject to the special permit (see Section 5); or

(2) constructed or rehabilitated on a locus other than the one subject to the special permit (see Section 7); or

(3) an equivalent fees-in-lieu-of-payment may be made (see Section 8); or

an applicant may offer, and the ZBA may accept, donations of land in fee simple, on or off site, that the ZBA in its sole discretion determines are suitable as of right for the construction of affordable housing units. Land donated shall be comparable to the locus subject to special permit in terms of access and proximity to public amenities.

The applicant may offer, and the ZBA may accept, any combination of the Section 4(a) requirements provided that where an applicant meets the requirements through an off-site provision or cash contribution, the total number of affordable units provided exceeds the number or value required by this by-law.

## **5. Provisions Applicable to Affordable Housing Units On-and Off-Site**

- (a) Siting of affordable units. All affordable units constructed under this by-law shall be situated within the development so as not to be in less desirable locations than market rate units in the development and shall, on average, be no less accessible to public amenities as the market-rate units.
- (b) Minimum design and construction for affordable units. Affordable housing units within market rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units. Where feasible, interior features of affordable units shall comply in all respects to the minimum design and construction standards set forth in the Local Initiative Guidelines by the Department of Housing and Community Development (DHCD) November 2006, or as amended. There shall be a similar proportion of affordable and market rate units in developments with a mix of unit/bedroom sizes.
- (c) Timing of construction or provision of affordable units or lots. The development of on-site and off-site affordable housing units shall take place at the same rate and timeframe as the development of market rate units.
1. Building permits for any phase shall be issued at a ratio of 4 (four) market rate units to 1 (one) affordable unit. Building permits for subsequent phases will not be issued unless all the required affordable units in the preceding phase are constructed. The last unit permitted and constructed shall be a market rate unit.
  2. The project may also be constructed in its entirety with all permits issued at once provided that the occupancy permits are issued at a ratio of 4 (four) market rate units to 1 (one) affordable unit. The last occupancy permit to be issued shall be for a market rate unit.

## **6. Distribution**

Distribution of affordability for rental or ownership units as Low Income Community Housing or Moderate Income Community Housing shall be set as determined by the ZBA in consultation with the Provincetown Local Housing Partnership.

### **7. Provision of Affordable Housing Units Off-Site:**

In lieu of providing such units on site, an applicant subject to the bylaw may develop, construct or otherwise provide affordable units equivalent to those required by Section 4 off-site, provided that it results in a greater number of affordable units than had they been created on site. All requirements of this bylaw that apply to on-site provision of affordable units shall apply to provision of off-site affordable units. In addition, the location of the off-site units to be provided shall be approved by the ZBA as an integral element of the special permit review and approval process. The off-site units shall be comparable to the on-site units in terms of proximity and access to amenities. Providing affordable units off-site does not allow an applicant to increase the number of market rate units on site.

### **8. Fees-in-Lieu-of Affordable Housing Unit Provision:**

(a) In lieu of providing such units or lots on site, an applicant may provide a cash

contribution of equivalent value that a) has a plan acceptable to the ZBA to expend those funds within the same time frame as the applicant's development, and b) will result in a greater number of units than had they been created on site. The method and timing of the payment(s) shall be secured as a condition of special permit approval. Providing a cash contribution in lieu of providing affordable units on site does not allow an applicant to increase the number of market rate units on site.

Equivalent value will be determined through one of the following methods: a) for ownership projects, the difference between the affordable sales price(s) and the appraised market sales price(s) of similar bedroom units within the project; and b) for rental projects, the difference in appraised value between the value of the project with and without the affordable units. The appraiser will be selected by the ZBA and paid for by the applicant.

#### **9. Maximum Incomes and Selling Price; Affordable Housing Inventory**

Maximum incomes and sales prices are set forth in Article 1 Definitions. It is intended that the affordable housing units created under this by-law be considered as Local Initiative Units or Local Action Units in compliance with DHCD requirements.

#### **10. Preservation of Affordability; Use Restrictions:**

(a) Affordable housing units created in accordance with this by-law shall use affordable housing restrictions that are recorded at the Barnstable County Registry of Deeds and that require the units to remain affordable in perpetuity. Such affordable housing restriction shall grant, among other things, the Town's right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be located.

(b) The ZBA shall require, as a condition for special permit under this bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the affordable housing restriction noted in Section 10(a) above. The Building Commissioner shall not issue an occupancy permit for any affordable unit until the affordable housing restriction is recorded.

**11. Segmentation** - Developments may not be phased or segmented to avoid compliance with conditions or provisions of this by-law.

#### **12. Conflict with Other Bylaws**

The provisions of this bylaw shall be considered supplemental of existing zoning bylaws/ordinances. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

#### **13. Severability**

If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of Provincetown's zoning bylaw.

or to take any other action relative thereto.

*[Requested by the Planning Board]*

**PLANNING BOARD RECOMMENDS: 4-0-0**

**BOARD OF SELECTMEN DOES NOT RECOMMEND: 2-1-0**

**HOUSING AUTHORITY DOES NOT RECOMMEND: 4-0-1**

**LOCAL HOUSING PARTNERSHIP DOES NOT RECOMMEND: 4-0-0**

**COMMUNITY PRESERVATION COMMITTEE DOES NOT RECOMMEND: 5-0-0**

**FINANCE COMMITTEE HAS NO RECOMMENDATION**

*Zoning Amendment – 2/3's vote required*

Kevin Rich moved that Town vote to approve Article 9 as printed in the warrant.

Bonnie Adams Campbell moved to indefinitely postpone Article 9. **Motion to Indefinitely Postpone Does Not Pass.**

Barbara Rushmore moved to amend the motion by eliminating Section 5 and Section 7. **Motion to Amend Does Not Pass.**

**Motion Does Not Pass (For 178 Against 95 - 2/3<sup>rd</sup>'s Vote Required).**

Irene Rabinowitz moved to adjourn and reconvene on Monday, April 9, 2007 at 6:00 p.m. **Motion Passed.**

Town Moderator Mary-Jo Avellar called the meeting to order at 6:00 p.m. on Monday, April 9, 2007.

Lynne Martin moved to reconsider Article 9 (signatures of 13 voters received). **Motion to Reconsider Passed.**

Kevin Rich moved to amend Article 9 as follows: Delete subsection 4a. In Section 4 Insert after the words "nearest whole number", the following words: "At least 20% of the units created shall be established as affordable housing units and shall be constructed or rehabilitated on the locus subject to the special permit (see Section 5). In Section 5 Title, delete the words "On-and-off-Site". In Section 5c, delete between the words "The development of" and "affordable housing units" the words "on-site and off-site". In Section 6, Delete the words "Local Housing Partnership" and insert the words "Community Housing Council". Delete entire Section 7. Delete entire Section 8, and renumber Article 9 accordingly.

**Motion As Amended Passed (2/3<sup>rd</sup>'s Vote Declared).**

Article 10. *Zoning By-law Amendment: Section 4800 Affordable Housing By-Law.* To see if the Town will vote to amend the Provincetown Zoning By-laws, as follows, with added text shown in **underlined, bold, italics** and deleted text shown in ~~strike through~~:

(1) Modify the following definitions to Article 1 Definitions:

**Accessory Dwelling Units A dwelling unit, which is subordinate in use and area to that of the principal structure and is located on the same lot therewith and subject to the requirements of Article 4 Section 4800 of these By-laws.**

(2) Strike line A7 of Section 2440 Permitted Principal Uses so that it reads as follows:

**2440 Permitted Principal Uses**

		Residential			Commercial		Seashore	Public Use
		Res 1	Res 2	Res 3 Res B	TCC	GC	S	M
<b>A.</b>	<b>Residential</b>							
A 1a	Single Family Dwelling							
	1. one per lot	YES	YES	YES	YES	YES	NO	NO
	2. two per lot (each separate structure)	BA <sup>11</sup>	BA	YES	YES	YES	NO	NO
	3. three or more (each separate structure)	NO	BA <sup>11</sup>	YES <sup>8</sup>	YES <sup>8</sup>	YES <sup>8</sup>	NO	NO

A1b	Two Family Dwelling								
	1. one per lot	BA <sup>11</sup>	YES	YES	YES	YES	NO	NO	
	2. two per lot	NO	BA <sup>11</sup>	YES	YES	YES	NO	NO	
	3. three or more per lot	NO	BA <sup>11</sup>	YES <sup>8</sup>	YES <sup>8</sup>	YES <sup>8</sup>	NO	NO	
A2	Multi Family Dwelling	NO	NO	YES <sup>8</sup>	YES <sup>8</sup>	YES <sup>8</sup>	NO	NO	
A3	Boarding, lodging or tourist homes	NO	YES	YES	YES	YES	NO	NO	
A4	Nursing Home	NO	BA	BA	BA	BA	NO	NO	
A5	Manufactured home park or subdivision	NO	NO	NO	BA	BA	NO	NO	
A6	Cluster Development	NO	NO	YES	YES	YES	NO	NO	
<del>A7</del>	<del>Dwelling, Accessory Apartment</del>	<del>BA</del>	<del>BA</del>	<del>BA</del>	<del>BA</del>	<del>BA</del>			
<b>B.</b>	<b>Business</b>								
B1	Business or professional offices, banks	NO	NO	NO <sup>1</sup>	YES	YES	NO	NO	
B2	Funeral Home	NO	NO	NO	YES	YES	NO	NO	
B3	Hotel, motel or inn	NO <sup>5</sup>	NO <sup>5</sup>	YES <sup>3</sup>	YES <sup>2</sup>	YES <sup>2</sup>	NO	NO	
B4	Retail sales or service								
	a. neighborhood	BA	BA	BA	YES	YES	NO	NO	
	b. art gallery	NO	NO	YES	YES	YES	NO	NO	
	c. motor vehicles sales, rental or services <sup>4</sup>	NO	NO	NO	BA	YES	NO	NO	
	d. marine service, boat sales	NO	NO	NO	YES	YES	NO	NO	
	e. package store	NO	NO	NO	BA	BA	NO	NO	
	f. all other retail	NO	NO	NO	YES <sup>17</sup>	YES <sup>17</sup>	NO	NO	
B5	Restaurant, bar	NO	NO	NO	BA <sup>6</sup>	BA <sup>6</sup>	NO	NO	
B6	Rental storage	NO	NO	BA <sup>9</sup>	BA <sup>9</sup>	BA <sup>9</sup>	NO	NO	
B7	Parking lots	NO	BA <sup>11</sup>	BA <sup>11</sup>	BA <sup>11</sup>	BA <sup>11</sup>	NO	NO	
B8	Fast Order Food Establishments (excluding those with seating for less than ten and which occupy no more than a total of 500 square feet.)	NO	NO	NO	BA <sup>12</sup>	YES <sup>13</sup>	NO	NO	
B9	Adult Entertainment <sup>17</sup>								
	a. Establishment which displays live nudity for its patrons	NO	NO	NO	YES	YES	NO	NO	
	b. Other adult entertainment	NO	NO	NO	YES	YES	NO	NO	
B10	Theater	BA	BA	BA	YES	YES	BA	BA	
<b>C.</b>	<b>Industrial</b>								
C1	Seafood processing	NO	NO	NO	BA	BA	NO	NO	
C2	Boat building, repair, overhaul								
	a. owner and one worker	BA	BA	YES	YES	YES	NO	NO	
	b. more workers	NO	NO	BA	YES	YES	NO	NO	
C3	On-shore boat storage								
	a. one or two boats	YES	YES	YES	YES	YES	YES	YES	
	b. three or more boats	NO	NO	BA	YES	YES	NO	NO	
C4	Oil, gas refining, processing pipelines	NO	NO	NO	NO	NO	NO	NO	
C5	Earth removal	NO	NO	NO	NO	NO	NO	NO	
C6	Solid waste processing, disposal	NO	NO	BA	BA	BA	BA	YES	

C7	Other manufacturing, processing	NO	NO	NO	NO	YES	NO	NO
C8	Public utility	NO	NO	BA	BA	BA	NO	NO
C9	Transportation terminal	NO	NO	NO	YES	YES	NO	NO
C10	Warehouse	NO	NO	NO	NO	YES	NO	NO
C11	Contractor's yard	NO	NO	NO	NO	YES	NO	NO
C12	Aircraft landing area	NO	NO	NO	NO	NO	BA	NO
<b>D.</b>	<b>Institutional</b>							
D1	Religious or educational use							
	a. exempt from zoning prohibitions <sup>7</sup>	YES						
	b. all others	NO	NO	YES	YES	YES	NO	NO
D2	Cemetery	BA						
D3	Municipal use	BA	BA	BA	BA	BA	BA	YES
D4	Non-profit club without entertainment	NO	NO	YES	YES	YES	NO	NO
D5	Museum	NO	NO	YES	YES	YES	NO	NO
D6	Hospital, other institutional or philanthropic use	NO	NO	YES	YES	YES	NO	YES
<b>E.</b>	<b>Recreational</b>							
E1	Boys' or girls' camp	NO	NO	YES	YES	YES	NO	NO
E2	Indoor recreation							
	a. commercial	NO	NO	NO	YES	YES	NO	NO
	b. municipal	NO	YES	YES	YES	YES	NO	YES
E3	Commercial outdoor recreation							
	a. tennis, golf, miniature golf, stables	NO	NO	NO	BA	YES	NO	NO
	b. picnic area, commercial beach, bathhouse	NO	NO	NO	YES	YES	NO	NO
	c. campground	NO	NO	NO	NO	BA	NO	NO
	d. amusement park, drive-in theater, cart track	NO						
	e. Temporary Carnivals, Festivals & Fairs <sup>14</sup>	NO	NO	BA	BA	BA	NO	NO
	f. All other	NO	NO	NO	BA	BA	NO	NO
<b>F.</b>	<b>Other Principal Uses</b>							
F1	Farms under 5 acres with livestock, aquaculture	BA						
F2	Other farms, nurseries, green houses	YES						
F3	Animal kennel	NO	NO	NO	NO	YES	NO	NO
F3a	Animal hospital	NO	NO	BA	NO	YES	NO	NO
F4	Use having externally observable attributes similar to uses permitted above.	BA						
F5	Artist's Studio	BA	BA	YES	YES	YES	YES	NO
F6	Temporary Single-family Dwelling <sup>15</sup>	YES	YES	YES	YES	YES	NO	NO
F7	Temporary Commercial Structure <sup>16</sup>	NO	NO	BA	BA	BA	NO	NO
F8	All other principal uses	NO						

1. Except "YES" in W-B for banks and for professional offices including real estate, insurance, and accounting, without stock in trade, with no more than one firm or 2,000 square feet per building and no more than one building per lot.
2. Except "NO" if serving alcoholic beverages and containing fewer than twenty guest units.
3. Except "BA" if serving alcoholic beverages and containing fewer than twenty guest units.
4. No moped rental in all zones. 1980 ATM Art. 87 amended.
5. Except "YES" if existing as of January 1, 1981. 1981 ATM amended.

6. No sale of food, drink, or other products to persons standing in the street, sidewalk, or parking areas at or about such establishment. Other outdoor service allowed only on Special Permit from the Board of Appeals. 1982 ATM amended.
7. See sec. 3, Ch. 40A, M.G.L.
8. Except "BA" if the total number of dwelling units on the lot exceeds six (6). Obtaining a Special Permit does not relieve the applicant from the obligation of complying with the Plan Review under Section 4160 nor any other applicable By-law provision.
9. Special Permit to be granted on a yearly basis only, and only after, a Public Hearing and approval of the Building Inspector and Fire Department each year; storage of toxic or hazardous materials (as determined by the Building Inspector, Fire Department and Massachusetts Division of Hazardous Waste under the provision of Chapter 21 M.G.L.) shall be cause for permanent revocation of Special Permit.
10. *Left blank.*
11. Special Permit to be granted only after a Public hearing and approval of the Building Inspector, the Fire Department and the Police Department.
12. After March 1, 1983, for any new construction, any substantial increase in intensity or use or any renovation of an existing structure to include the defined use, a Special Permit as specified in Sec. 5300 may be granted by the Board of Appeals: (a) only upon its written determination that the proposed fast food establishment does not create any adverse effect due to hazard or congestion especially including traffic impacts as determined by a traffic impact assessment prepared by the applicant according to Institute of Transportation Engineers guidelines regarding carrying capacity/level of service of the affected streets and any proposed mitigation sufficient to offset those impacts; (b) only if the applicant can demonstrate that the proposed use will not overburden public water, septage or solid waste facilities; (c) only if the applicant provides and enforceable plan for the mitigation and control of trash and litter generated by the proposed establishment; (d) any if the architecture and signage conforms to traditional Cape Cod style; and (e) only if, in order to assure that the concerns of the abutters and residents will be considered as a significant factor in the determination of the benefits or adverse effects of the proposed fast food establishment on the neighborhood and the Town, the Board of Appeals shall make a specific Finding of Significance regarding the response to the proposed use.
13. Architecture and signage must conform to traditional Cape Cod style and must be submitted to the Planning Board for review.
14. Temporary Carnivals, Festivals and Fairs shall not exceed one week in duration.
15. If a dwelling is destroyed by fire or other natural cause, a temporary dwelling such as a manufactured home built on a permanent chassis, designed for use with or without temporary foundation when connected to required utilities may be moved upon the lot for habitation by the resident(s) affected by the loss, provided that:
  - (a) the applicant has obtained all permits necessary for the temporary se from the building, electrical and health officials prior to occupancy;
  - (b) the occupancy of the temporary dwelling shall not exceed one year; and
  - (c) the applicant obtains a building permit to reconstruct the destroyed dwelling structure within three (3) months of the destruction of the original dwelling structure.
16. If a commercial use structure is destroyed by fire or other natural cause, a temporary structure may be erected upon the lot on which the original commercial structure was located, or within 300 feet of said lot for the operation of the business(s) for which that lot was used at the time the structures was destroyed. The temporary structure(s) shall meet the requirements of 780 CMR, the Massachusetts State Building Code, Sixth Edition, and Chapter 31 controlling temporary structure(s) shall require a special permit from the Zoning Board of Appeals as provided in Section 5300 of this By-law. The time that the temporary structures may remain shall not exceed 180 days.
17. All adult entertainment uses must be located at least 300 feet from any library, school or playground. Said setbacks are to be measured from the nearest points on the property lines of the lots hosting the proposed adult entertainment use and the use triggering the setback requirement. Furthermore, all adult entertainment uses with establishments which display live nudity for its patrons must take place entirely indoors and in such a manner as not to be observable from any abutting property, sidewalk or public way.

(3) Add line G17 of Section 2450 Permitted Accessory Uses so that it reads as follows:

**2450 Permitted Accessory Uses**

		Residential			Commercial		Seashore	Public Use
		Res 1	Res 2	Res 3 Res B	TCC	GC	S	M
G.	<b>Permitted Accessory Uses</b>							
G1	Garage for 1 or 2 autos	YES	YES	YES	YES	YES	NO	NO
G2	Vegetable or flower garden	YES	YES	YES	YES	YES	YES	YES
G3	Home Occupation (see Sec. 3500)	YES	YES	YES	YES	YES	YES	BA
G4	Sale of seafood caught by a resident	NO	NO	YES	YES	YES	NO	NO

	of the premises							
G5	Stable	BA	BA	BA	BA	BA	BA	BA
G6	Temporary construction office or shelter	YES	YES	YES	YES	YES	YES	YES
G7	Scientific research or development	BA	BA	BA	BA	BA	BA	BA
G8	Outdoor food dispensing machine	NO	NO	NO	NO	NO	NO	NO
G9	Aircraft landing area	NO	NO	NO	NO	NO	NO	NO
G10	Artist's studio	YES	YES	YES	YES	YES	NO	NO
G11	Other customary accessory uses	BA	BA	BA	BA	BA	BA	BA
G12	Swimming pool	BA	BA	BA	BA	BA	BA	BA
G13	Utility/Garden Shed (120 sq. ft. max.) <sup>1</sup>	YES	YES	YES	YES	YES	NO	YES
G14	Utility/Garden Shed (96 sq. ft. max.) <sup>2</sup>	BA	BA	BA	BA	BA	NO	NO
G15	Adult Entertainment <sup>3</sup>							
	a. Establishment which displays live nudity for its patrons	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	b. Other adult entertainment	No	No	No	Yes	Yes	No	No
G16	Theater	BA	BA	BA	YES	YES	BA	BA
<b><i>G17</i></b>	<b><i>Accessory Dwelling Unit<sup>4</sup></i></b>	<b><i>BA</i></b>	<b><i>BA</i></b>	<b><i>BA</i></b>	<b><i>BA</i></b>	<b><i>BA</i></b>		

<sup>1</sup>A utility/garden shed shall not exceed 120 square feet, nor exceed 9 feet in height from the finished floor to the roof ridge of a gable or gambrel roof or 7 feet to the highest point of any other roof configuration. The lowest point of the shed shall not be elevated more than 6 inches above the highest point of the natural grade within its footprint.

<sup>2</sup>Special Permits may be granted by the Zoning Board of Appeals for the installation of utility/garden sheds that meet at least 50% of the side and/or rear yard setback requirements of the district in which the property is located (Article 2, Section 2560) and at least 50% of building separation requirements (Article 2, Section 2550). Such Special Permits shall only be issued following a Public Hearing wherein the Zoning Board of Appeals determines that the installation of said shed cannot meet the current front, side and/or rear yard setback and building separation requirements. The benefits derived from the issuance of a permit shall outweigh any adverse effects such as hazard, congestion and environmental degradation. The shed shall not exceed 96 square feet, nor exceed 9 feet in height from the finished floor to the roof ridge for a gable or gambrel roof or 7 feet to the highest point of any other roof configuration. The lowest point of the shed shall not be elevated more than 6 inches above the highest point of the natural grade within its footprint. Doors and windows shall not face or open into an area of the standard side and rear yard setbacks of the district in which the shed is located.

<sup>3</sup> Accessory adult entertainment uses are permitted, as indicated in the above table, where the adult entertainment use is accessory to a non-residential use that is either a permitted use or a legally preexisting nonconforming use. All such adult entertainment uses must be located at least 300 feet from any library, school or playground. Said setbacks are to be measured from the nearest points on the property lines of the lots hosting the proposed adult entertainment use and the use triggering the setback requirement. Furthermore, all adult entertainment uses with establishments which display live nudity for its patrons must take place entirely indoors and in such a manner as not to be observable from any abutting property, sidewalk or public way.

<sup>4</sup>***Subject to the requirements of Article 4 Section 4800 of these By-laws.***

(4) Modify Section 4800 Affordable Housing By-Law as follows:

**Section 4800 Affordable Housing By-Law**

1. **Accessory ~~Apartments~~ Dwelling Units.** ~~One (1)~~ accessory dwelling units per lot may be allowed in any residential or commercial zoning district by special permit from the Zoning Board of Appeals, notwithstanding any provisions in the Zoning By-law that may restrict the total number of dwelling units per lot, subject to the requirements, standards and conditions listed below.

**2. Requirements and Standards**

A. ~~The~~ **An** accessory dwelling unit shall be subject to ~~an affordable housing~~ **a housing** restriction, for a term of ~~perpetuity or the longest period allowed by law~~ **twenty years**, that limits rental rates and resale prices, limits eligibility for occupancy and purchase, and provides a right of first refusal to the Town of Provincetown.

**Affordable Housing** Accessory dwelling units shall be available for rental at a cost (including utility allowances)

not exceeding 30% of annual income for a household at or below 65% of the Barnstable County median income; or available for ownership at a cost (including mortgage interest, principal, taxes, insurance and common charges if any, but excluding utilities) not exceeding 30% of annual income for a household at or below 65% of the Barnstable County median income. Eligibility for occupancy shall be limited to households whose income is at or below 80% of Barnstable County median income.

Median Income Community Housing dwelling units shall be available for rental at a cost (including utility allowances) not exceeding 30% of annual income for a household at or below 80% of the Barnstable County median income; or, available for ownership at a cost (including mortgage interest, principal, taxes, insurance and common charges if any, but excluding utilities) not exceeding 30% of annual income for a household at or below 80% of the Barnstable County median income. Eligibility for occupancy shall be limited to households whose income is at or below 100% of Barnstable County median income.”

*Middle income community housing dwelling units shall be available for rental at a cost (including utility allowances) not exceeding 30% of annual income for a household at or below 120% of the Barnstable County median income; or, available for ownership at a cost (including mortgage interest, principal, taxes, insurance and common charges if any, but excluding utilities) not exceeding 30% of annual income for a household at or below 120% of the Barnstable County median income. Eligibility for occupancy shall be limited to households whose income is at or below 150% of Barnstable County median income.*

B. The accessory dwelling unit shall be located within the principal structure or ~~a garage~~ an existing or ~~other existing~~ new freestanding structure.

C. The Inspector of Buildings and Health Agent shall have inspected an existing structure ~~the premises~~ for compliance with public safety and public health codes.

D. A special permit application shall include a certification of the amount of rent to be charged or the sale price, as applicable, for each accessory dwelling unit and the income of each occupant household. For rental accessory dwelling units, each year thereafter on the first of July, holders of special permits granted pursuant to this section shall submit to the Zoning Board of Appeals or its agent as designated in the special permit a certification of annual rents charged and the income of occupant household(s) for the most recently completed fiscal year of the holder and as of July first. Forms for this purpose shall be provided by the Town or its agent. Rents may be adjusted annually in accordance with Department of Housing and Community Development Local Initiative Program Regulations and Guidelines, or regulations and guidelines or a similar state program having the same purpose.

~~3. Amnesty. Owners of lots containing an accessory dwelling unit (i) for which there does not exist a validly issued variance, special permit, building permit or occupancy permit, (ii) that is/are not legally pre-existing, non-conforming use(s) or structure(s), or (iii) is/are not otherwise in compliance with the Zoning By-law may apply for a special permit under this section.~~

#### 4. Procedure.

A. The property owner shall complete and submit an application for a special permit to the Zoning Board of Appeals in accordance with the Provincetown Zoning Board of Appeals Rules and Procedures.

B. The property owner shall obtain a compliance certification as provided by Section 5120 to allow the change in use.

C. The property owner shall obtain a certificate of occupancy prior to occupancy of the accessory dwelling unit.

D. The property owner shall deliver to the Provincetown Local Housing Partnership an executed and acknowledged ~~affordable~~ housing restriction or, for ownership accessory dwelling unit an executed and acknowledged covenant whereby the property owner agrees to convey the accessory dwelling unit subject to a certain ~~affordable~~ housing restriction attached as an exhibit to the covenant, in either case approved as to form by town counsel, before a compliance certification pursuant to Section 5120 may issue for the accessory dwelling unit. If the compliance certification is denied, the instrument shall be returned to the property owner; if the

compliance certification is granted, the instrument shall be recorded by the Board of Selectmen. No occupancy permit shall be issued for any accessory dwelling unit without evidence of recordation of the ~~affordable~~ housing restriction and the subordination of all mortgages.

E. Failure to comply with any provision of this Section 4800 may result in fines established in Section 5140 of the Provincetown Zoning By-laws.

### 5. Scope and Validity of the Bylaw.

Nothing in this Section 4800 shall nullify or exempt any property or use from any other provisions of these By-laws or other Town regulations. The invalidity of any provision of this Section 4800 shall not invalidate any other section or provision hereof, nor shall it invalidate any building permit, occupancy permit or special permit issued in reliance on said section or provision prior to the determination of its invalidity.”

or take any other action relative thereto; the original copy of this zoning by-law change is on file for public inspection in the Town Clerk’s Office.

*[Requested by the Planning Board]*

**PLANNING BOARD RECOMMENDS: 3-0-0**

**BOARD OF SELECTMEN RECOMMENDS: 3-0-0**

**HOUSING AUTHORITY RECOMMENDS: 5-0-0**

**LOCAL HOUSING PARTNERSHIP RECOMMENDS: 4-0-0**

**FINANCE COMMITTEE HAS NO RECOMMENDATION**

### *Zoning Amendment – 2/3’s vote required*

Howard Burchman moved that the vote to approve Article 10 as printed in the warrant, with the following amendments:

Under Article 10 (4):

A. In the first paragraph of **2. Requirements and Standards**, A., insert the words “*at least*” immediately before “*twenty*”, insert the word “*and*” before the words “limits eligibility for occupancy and purchase”, and strike the words “and provides a right of first refusal to the Town of Provincetown” so that the amended paragraph appears as follows:

A. ~~The *An*~~ accessory dwelling unit shall be subject to ~~an affordable housing~~ *a housing* restriction, for a term of ~~perpetuity or the longest period allowed by law~~ *at least twenty years*, that limits rental rates and resale prices, *and* limits eligibility for occupancy and purchase. ~~and provides a right of first refusal to the Town of Provincetown.~~

B. In **3. Amnesty**, retain **3. Amnesty**, and further, delete “shall” and replace with “*may*”, and delete “within two (2) years of the effective date of this section; otherwise the provision of this section shall not apply to such lots” so that **3. Amnesty** reads as follows:

**3. Amnesty.** Owners of lots containing an accessory dwelling unit (i) for which there does not exist a validly-issued variance, special permit, building permit or occupancy permit, (ii) that is/are not legally pre-existing, non-conforming use(s) or structure(s), or (iii) is/are not otherwise in compliance with the Zoning By-law shall *may* apply for a special permit under this section ~~within two (2) years of the effective date of this section; otherwise the provision of this section shall not apply to such lots.~~

C. In the final sentence of **4. Procedure**, D, insert the word “*permanent*” immediately before the word “occupancy” and strike the words “and the subordination of all mortgages” at the end of the sentence, so that the final sentence of **4. Procedure**, D, reads as follows:

No *permanent* occupancy permit shall be issued for any accessory dwelling unit without evidence of recordation of the ~~affordable~~ housing restriction ~~and the subordination of all mortgages.~~

**Motion Passed. (2/3<sup>rd</sup>’s Vote Declared)**

**Article 11. *Expand Recycling Committee Scope to Include Renewable Energy.*** To see if the Town will vote to amend its vote under Article 35 of the March 12, 1990 Annual Town Meeting, as amended, by renaming the town board created thereunder as the “Provincetown Recycling and Renewable Energy Committee;” or to take any other action relative thereto.

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

**BOARD OF SELECTMEN RECOMMENDS: 3-0-0**

**RECYCLING RECOMMITTEE RECOMMENDS: 4-0-0**

**CONSERVATION COMMISSION RECOMMENDS: 3-0-0**

**FINANCE COMMITTEE HAS NO RECOMMENDATION**

Richard Olson moved that the Town vote to amend its vote under Article 35 of the March 12, 1990 Annual Town Meeting, as amended, by renaming the town board created thereunder as the “Provincetown Recycling and Renewable Energy Committee.”

**Motion Passed.**

**Article 12. *FY 2007 Budget Adjustments.*** To see what amendments the Town will vote to make to the Fiscal Year 2007 operating budgets and enterprise funds established under Articles 2 and 6 of the April 3, 2006 Annual Town Meeting and what sums the Town will vote to raise and appropriate or transfer from available funds therefor; or to take any other action relative thereto.

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

**BOARD OF SELECTMEN RECOMMENDS: 3-0-0**

**FINANCE COMMITTEE RECOMMENDS: 7-0-0**

Keith Bergman moved that the Town vote to make the following amendments to the Fiscal Year 2007 operating budgets and enterprise funds established under Articles 2 and 6 of the April 3, 2006 Annual Town Meeting:

(1) to reduce the following available funds and appropriations

135-A	Town Accountant	\$ 5,000
136-B	Information Systems	10,386
169-A	Licensing	5,000
240-A	Inspections	17,800
421-A	DPW Administration	12,500
423-A	DPW Snow & Ice	33,738
511-B	Health Inspector	2,050
910-B	Retirement/Insurance/Fringe Benefits	140,000
		\$
	<i>Sub-total</i>	<b>226,474</b>

(2) To increase the following appropriations:

131-B	Finance Committee Reserve Fund	\$ 17,400
135-B	Accounting Expenses	21,700
136-A	MIS Personal Services	10,386
141-A	Assessor Salaries	2,000
151-B	Legal Expense	57,000
161-A	Town Clerk	730

169-B	Licensing	250
171-B	Conservation Commission	300
180-B	Historic District Commission	1,200
190-A	DPW Bldgs & Grounds	36,500
210-A	Police Salaries	25,000
210-B	Police expenses	10,540
240-B	Inspections	19,700
241-A	Community Development	9,000
296-A	Shellfish	2,380
423-B	DPW Snow & Ice	6,225
431-A	DPW Solid Waste	3,513
440-A	DPW Wastewater	2,235
512-A	Public Health Nurse	95
651-B	Beautification	320
	<i>Sub-total</i>	<u>\$226,474</u>

**Motion Passed.**

**Article 13. *Home Rule Petition - Charter Amendment – Residency Requirements for Certain Paid Town Officials.*** 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 special act to read as follows:

SECTION 1. The Charter of the Town of Provincetown which is on file in the office of the Archivist of the Commonwealth as provided in Section 12 of Chapter 43B of the General Laws is hereby amended by amending Chapter 7, Article 1, Section 7-1-2 to read as follows: “The town manager shall be a resident of Provincetown, or shall become a resident within six months following his or her appointment, *unless excused by vote of the Board of Selectmen.*”

SECTION 2. Said charter is hereby further amended by deleting Chapter 8, Article 1, Section 8-1-1, which currently reads as follows: “The director of the department of public works, the police chief, and the fire chief shall be residents of Provincetown, or shall become residents within three months of assuming office.”

SECTION 3. This act shall take effect upon its passage.

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 to take any other action relative thereto.

*[Requested by the Board of Selectmen]*

**BOARD OF SELECTMEN RECOMMENDS: 3-0-0**

**CHARTER ENFORCEMENT COMMISSION RECOMMENDS: 2-1-0**

**FINANCE COMMITTEE HAS NO RECOMMENDATION**

**Thomas Steele moved to indefinitely postpone Article 13.**

**Motion to Indefinitely Postpone Does Not Pass.**

**Michele Couture moved that the Town vote to instruct its senator and representative in the General Court to file a home rule petition for a special act to read as printed in the warrant. Motion Does Not Pass.**

**Article 14. *Refile Home Rule Petition: Relocation and Alteration of High Pole Hill Road***

**Layout.** To see if the Town will vote to instruct its representative in the General Court to file a home rule petition for a special act entitled, "An Act Relative to Relocation and Alteration of Layout of High Pole Hill Road in the Town of Provincetown," to read as follows:

SECTION 1. Notwithstanding the provisions of sections 21 through 24 of chapter eighty two of the general laws, the board of selectmen of the town of Provincetown may from time to time relocate and alter the layout of High Pole Hill Road, a public town way laid out by the selectmen, reported for acceptance on October 25, 1853 and accepted by the town of Provincetown on November 15, 1853, and further laid out by the selectmen, reported for acceptance on January 27, 1862 and accepted by the town of Provincetown on February 10, 1862, said relocation and alteration to become effective upon vote of the board of selectmen that public convenience and necessity require such relocation and alteration, and filing of an order of relocation and alteration and plan of relocation and alteration with the town clerk, and no acceptance by vote of the town meeting is required under this act, provided that the necessary land or interest in land for such relocation and alteration is acquired by gift or purchase under this act, or by eminent domain if a waiver of appraisal and damages is given by the owner of the land affected by said taking, and further provided that the acquisition of the necessary land or interest must be accomplished within one year of the filing of the order of relocation and alteration and plan with the town clerk or said relocation and alteration shall be void, but may be re-voted under this act.

SECTION 2. The board of selectmen of the town of Provincetown may acquire by gift from the Cape Cod Pilgrim Memorial Association of Provincetown, a Massachusetts non-profit corporation, its successors and assigns (the "Association"), the fee ownership interest or an easement for all purposes for which public ways are used within the town of Provincetown within the layout of High Pole Hill Road, as such layout may change from time to time, and may accept a deed of such fee or such easement subject to a restriction whereby the board of selectmen is obligated to further alter the layout of High Pole Hill Road to another reasonably convenient location if requested to do so by the Association and if the Association grants to the town of Provincetown the necessary easement or fee within the layout of High Pole Hill Road as so further altered and bears the design and construction cost of such further alteration.

SECTION 3. The board of selectmen of the town of Provincetown in connection with the alteration of layout of High Pole Hill Road from time to time, may, for such consideration as the selectmen shall deem appropriate, which may be nominal consideration, release to the owner of the underlying fee in the land within said layout all right, title and interest of the town of Provincetown in said land and, if the land within said layout is held in fee by the town of limitation the land shown as "West Approach — East Approach" on the plan titled "Plan of Land in Provincetown," prepared by George F. Clements., CE., dated January 21, 1938, filed with Land Registration Office on April 11, 1938 as Plan No. 16813A, notwithstanding the requirements of sections 15 and 15A of chapter 40 of the General Laws.

SECTION 4. Said Association may grant to the town of Provincetown the fee ownership interest or an easement for all purposes for which public ways are used within the town of Provincetown within the layout of High Pole Hill Road, as such layout may change from time to time, notwithstanding that the land within said layout is part of the land granted to the Association by the Commonwealth of Massachusetts by deed dated February 8, 1960, recorded with the Barnstable County Registry of Deeds in Book 1071, Page 23, pursuant to chapter 421 of the acts of 1959 and such conveyance, or the use of a portion of such land as a public town way rather than a free public parking area shall not cause all or any portion of such land to revert to the Commonwealth, notwithstanding the provisions of said act.

SECTION 5. Nothing in this act shall prevent the town of Provincetown from acting with respect to High Pole Hill Road as provided under sections 21 through 24 of chapter eighty two of the general laws G.L. c.82, §§21-24 should the town prefer to proceed under general law and, should the town proceed under general law, nothing shall prevent the town from exercising its power of eminent domain under chapter 79 of the general laws with respect to said High Pole Hill Road.

SECTION 6. This act shall take effect upon its passage.

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 to take any other action relative thereto.

*[Requested by the Town Manager]*

**BOARD OF SELECTMEN RECOMMENDS: 3-0-0  
FINANCE COMMITTEE HAS NO RECOMMENDATION**

Keith Bergman moved that the Town vote to approve Article 14 as printed in the warrant.  
**Motion Passed.**

**Article 15. *Refile Home Rule Petition: Transfer 0.09 Acres of 100 Alden Street to the School Committee for playground purposes.*** To see if the Town will vote as follows: Whereas Article 2 of the October 25, 2004 Special Town Meeting voted to transfer from the Board of Selectmen for playground purposes to the School Committee for playground purposes a portion of the property located at 100 Alden Street, identified on Assessors Map as 08-2-26, being part of the playground known as Manuel V. Motta Athletic Field, the portion to be transferred being .09 acres at the northwest corner of said Motta Field, and whereas said transfer requires authorization from the General Court; therefore, the Town votes to instruct its representative in the General Court to file a home rule petition for a special act to read as follows:

SECTION 1. Notwithstanding the provisions of Chapter 270 of the Acts of 1953 or any other general or special law to the contrary and Article 97 of the Amendments to the Massachusetts Constitution, the town of Provincetown is hereby authorized to transfer from the board of selectmen for playground purposes to the school committee for playground purposes a 3,841 +/- square-foot portion of Manuel V. Motta Athletic Field, shown as Parcel 3 on a plan entitled, "Plan of Land in Provincetown as Surveyed for Town of Provincetown Cape End Manor," prepared by William N. Rogers, dated September 2005, which plan is on file with the Town Clerk's office and hereby incorporated by reference.

SECTION 2. This act shall take effect upon its passage.

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 to take any other action relative thereto.

*[Requested by the Town Manager]*

**BOARD OF SELECTMEN RECOMMENDS: 3-0-0  
FINANCE COMMITTEE HAS NO RECOMMENDATION**

Keith Bergman moved that the Town vote to approve Article 15 as printed in the warrant.  
**Motion Passed.**

**Mary-Jo Avellar moved to dissolve Special Town Meeting. Motion Passed.**

**Special Town Meeting dissolved at 7:13 p.m. on April 9, 2007.**