



SPECIAL TOWN MEETING

MONDAY, NOVEMBER 7, 2005 AT
6:00 P.M.

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Meeting Called to Order. Town Moderator Mary-Jo Avellar convened the meeting at 6:00 p.m. on Monday, November 7, 2005 in the Town Hall Auditorium and then and there recessed the meeting to the Provincetown High School Gymnasium, in accordance with MGL C. 39, §10, due to the elevator being out of service in Town Hall.

Town Moderator Mary-Jo Avellar reconvened the November 7, 2005 Special Town Meeting at 6:10 p.m. in the Provincetown High School Gymnasium.

PRELIMINARY MOTIONS

(1) Board of Selectmen Chair Cheryl Andrews moved that the Town vote to waive the reading of the warrant.

Motion Passed.

(2) Cheryl Andrews moved that the Town vote to grant permission to speak at the November 7, 2005 Special Town Meeting to the following persons who are not registered voters of the Town of Provincetown: Dennis Clark, *Recreation Director*; Elizabeth Hartsgrove, *Licensing Agent*; Alexandra Heilala, *Town Accountant*; John W. Giorgio, Esq., and other attorneys of the firm of Kopelman & Paige, P.C., *Town Counsel*; Beau Jackett, *Information Systems Director*; Michelle Jarusiewicz, *Acting Assistant Town Manager*; Maxine Notaro, *Permit Coordinator*;

Motion Passed.

(3) Cheryl Andrews moved that on all matters to come before the November 7, 2005 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. *Wastewater Optimization and Expansion - Borrowing Authorization.* To see if the Town will vote to appropriate and borrow the sum of \$1,500,000, 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 for capital modifications and repairs to Phase I of the sewer system, 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 and the Town Manager]

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

FINANCE COMMITTEE RECOMMENDS: 9-0-0

WATER & SEWER BOARD RECOMMENDS: 4-0-0

BOARD OF HEALTH RECOMMENDS: 3-0-1

Borrowing: 2/3's vote required under MGL C.44

[Cheryl Andrews](#) moved that the Town vote to approve Article 1 as printed in the warrant.

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

Article 2. *Conveyance of Property Adjacent to PHS Annex to Provincetown Center for Coastal Studies.* To see if the Town will vote pursuant to G.L. c. 40, §§15 and 15A, to transfer three parcels of real property from the School Committee for school purposes to the Board of Selectmen for the purpose of conveyance: 7R Holway Avenue, identified on Assessors Map as 07-4-065-B (Parcel B), 9R Holway Avenue, identified on Assessors Map as 07-4-065-C (Parcel C), a portion of a parcel of land identified on Assessors Map as 07-4-070, which portion contains approximately 1,935 square feet and is shown as "D" on the sketch plan on file with the Town Clerk (Parcel D); together with the easements appurtenant to Parcels B and C and together with a pedestrian access easement in the remainder of the land identified on Assessors Map as 074-070 (the "Grace Hall Lot"), provided that the proceeds from said conveyance shall substantially reduce or eliminate the School Department's debt service obligation pursuant to the vote under Article 7 of the April 1, 2002 Special Town Meeting which provided that half of the local debt service cost for the SBA-reimbursable PHS and VMES school building projects "shall be paid from the school department through one or more of the following ways . . . (3) the sale or lease of the annex;" and to authorize the Board of Selectmen to convey said parcels and easements, together with the parcel of land with the former school building thereon located at 5 Holway Avenue identified on Assessors Map as 07-4-065-A (Parcel A), to the Provincetown Center for Coastal Studies, Inc., for minimum consideration of \$50,000 and otherwise on such terms and conditions as the Selectmen deem to be in the best interest of the Town, or take any other action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 4-0-1

FINANCE COMMITTEE RECOMMENDS: 9-0-0

SCHOOL COMMITTEE RECOMMENDS: 4-0-0

Disposition of Land: 2/3's vote required

[Cheryl Andrews](#) moved that the Town vote to approve Article 2 as printed in the warrant.

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

Article 3. *General By-law Amendment - Establish Economic Development Council and Economic Development Permits.* To see if the Town will vote to amend the general bylaws of the Town to add section 5-15 as follows:

15-15. Economic Development Council and Economic Development Permits

1. There shall be an Economic Development Council to advise the Board of Selectmen on the development of strategies consistent with the Local Comprehensive Plan which will foster a sustainable year-round economy for Provincetown. The council shall consist of seven members appointed by the Board of Selectmen. When first established, the terms of the members shall be for one, two or three years and so arranged that the terms of approximately one third of the members will expire each year, and their successors shall be appointed for a term of three years.
2. Members of the council shall have education and experience in one or more of the following fields: tourism and visitor services, arts and culture, retail, general business, education, health care, commercial fishing and aquaculture, and housing and construction; and the council as a whole shall include persons with education and experience in several of these fields. In fulfillment of its mission, the council shall actively solicit ongoing input from businesses, organizations, and interested individuals.
3. The Selectmen may appoint up to two alternate members who may be designated by the chairman or chairman pro tem to act in the place of a regular member who is absent or unable to act upon any matter that comes before the council.
4. The Board of Selectmen is hereby authorized to issue economic development permits. The Board shall adopt guidelines, hereinafter referred to as "Permit Guidelines", for such economic development permits after consideration of the recommendations, if any, of the council. Applications for an economic development permit shall be filed in the Office of the Board of Selectmen, whereupon the Town Manager shall without undue delay refer the application to the council for its review and recommendations. The Board shall consider its guidelines and the recommendations, if any, of the council, with respect to each permit application. Economic development permits may be used to qualify for such preferences and permits as may be established by the Town or its boards or officers by guidelines, regulations or bylaws having as their purpose fostering year-round economic development. Each property for which an economic development permit is granted shall be deemed a public service use under Section 3 of Chapter 157 of the Acts of 2000. Economic development permits may require the execution of an agreement, a covenant or other recordable instrument that ensures the continued use of the property in question for purposes consistent with the Permit Guidelines and the conditions pursuant to which the economic development permit was issued.
5. For the purpose of fostering a sustainable year-round economy, the council shall develop and recommend to the Board of Selectmen guidelines for the issuance of economic development permits, shall review applications referred to the council for economic development permits, and shall make recommendations to the Board of Selectmen relative to said economic development permit applications.
6. The Board of Selectmen may acquire in the name of the town by gift or grant, or by purchase with funds that may be appropriated or otherwise available for such purpose, covenants with respect to real property, or enter into agreements with respect to real property, for such term of years as the Selectmen deem appropriate, the purpose of which is to ensure that said property shall be used for purposes consistent with the Permit Guidelines and the conditions pursuant to which the economic development permit was issued. Such agreements or covenants shall be enforceable by the Board of Selectmen, which may amend or release any such agreement or covenant if the Board of Selectmen deems such amendment or release to be in the best interest of the Town.

Or to take any other action relative thereto.

[Requested by the Board of Selectmen]

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

ECONOMIC DEVELOPMENT COUNCIL RECOMMENDS: 5-0-0

FINANCE COMMITTEE HAS NO RECOMMENDATION

Cheryl Andrews moved that the Town vote to amend the general bylaws of the Town to add section ~~45~~ 5-15, Economic Development Council and Economic Development Permits, as printed in the warrant with the following changes: Strike the numbering of 15-15 for the entire section and replace with 5-15, and in Section ~~45~~ 5-15-5, strike the word "shall" and insert in place thereof the word "may" in two places, so that said section reads as follows:

5. For the purpose of fostering a sustainable year-round economy, the council shall develop and recommend to the Board of Selectmen guidelines for the issuance of economic development permits, ~~shall~~ *may* review applications referred to the council for economic development permits, and ~~shall~~ *may* make recommendations to the Board of Selectmen relative to said economic development permit applications.

Jonathan Sinaiko moved to amend motion by including the following sentence to item 1: The Council will also work aggressively with the School Committee to find ways to increase enrollment in the Provincetown Junior High School and High School.

Motion Passed.

Motion As Amended Passed.

Article 4. *Zoning By-law Amendment - Create a Growth Management Surplus Gallonage Pool available for reallocation for year-round economic development.* To see if the Town will vote to amend the zoning bylaw of the Town as follows:

1. Amend Section 6100 by inserting in the last clause after the words "encouraging affordable housing development" the words "and year-round economic development", so that Section 6100 shall read as follows:

The purpose of this Article is to maintain the rate of development in the Town at a level which will allow the Town to provide in a planned and rational manner adequate public services and facilities to meet the needs of its current and future population without overburdening the Town's natural resources or the capacities of existing and planned public facilities, particularly with respect to provision of potable water, wastewater disposal, and solid waste disposal. The regulations provided in this Article are designed to effectuate the purposes of zoning in :

- facilitating adequate provision of water, drainage, sewerage, and other public health safety and welfare requirements;
- protecting and enhancing the character of the community and its historical and natural resources; and
- ensuring that the rate of development does not overly burden the capacity of the Town to absorb the costs of meeting water, sewerage and waste disposal service demands in light of both fiscal constraints and limited availability of natural resources; while at the same time, encouraging affordable housing development and year-round economic development, and minimizing hardship to persons of limited incomes who live, or may choose to live, in the town.

2. Amend Section 6200-1 by inserting after the words in the first paragraph "which will result in an increase" the words ", no change, or a decrease" and by inserting after the words in the first paragraph "Title 5 Design Flow" the words "(pursuant to 310 C.M.R. 15.203 (2) through (6))", and by numbering the second paragraph of Section 6200-1 as Section 6200-2, thereby removing it from

Section 6200-1, so that Section 6200-1 in its entirety shall read as follows:

Except as provided below this Growth Management By-law shall apply to all new construction, including new structures and enlargement, alteration or renovation of existing structures, to all new uses, and to all expansions, changes, or alterations of existing uses, which will result in an increase, no change, or a decrease in Title 5 Design Flow (pursuant to 310 C.M.R. 15.203 (2) through (6)) as determined by the Health Agent.

3. Amend new Section 6200-2, formerly the second paragraph of Section 6200-1, by inserting after the words “or for the enlargement” and after the words “for any new use or any” the word “reduction,” and by deleting the last word “either”, so that new Section 6200-2 shall read as follows:

No building permit shall be issued for a new structure or for the enlargement, reduction, renovation or alteration of an existing structure and no occupancy permit shall be issued for any new use or any reduction, expansion, change or alteration of an existing use for which no building permit is required; until and unless:

4. Amend new Section 6200-2(a) by deleting new Section 6200-2(a) in its entirety and substituting therefor the following text:

The Health Agent determines the amount, if any, by which Title 5 Design Flow will increase or decrease as a result of the proposed structure or use. In making determinations of Title V Design Flow, the Health Agent shall apply the definitions of Fixed Standing and Seats as defined in Article 1, where applicable; and

5. Amend new Section 6200-2(b) by deleting new Section 6200-2(b) in its entirety and substituting therefor the following text:

In the event the Health Agent determines the amount of Title 5 Design Flow will increase, the property owner obtains a Growth Management Allocation Permit sufficient to allow the increase.

6. Amend former Section 6200-2 by renumbering it Section 6200-4.

7. Amend Section 6200-3 by renumbering it Section 6200-5 and by inserting as a new Section 6200-3 the following text:

If the Health Agent determines under Section 6200-2a that a decreased Title 5 Design Flow will result, then during a two-year period following the issuance of the building permit or occupancy permit for such structure or use, no Growth Management Allocation Permit will be required for any subsequent change in such structure or use that increases its Title 5 Design Flow up to and including the Title 5 Design Flow amount so determined by the Health Agent prior to the decrease in Title 5 Design Flow, unless the owner has abandoned the prior use or intensity of use. Such abandonment shall occur by wholly changing such use to a different principal use, or by issuing a written statement or covenant to the Town expressly abandoning the prior use or intensity of use.

8. Amend Section 6200-4 by renumbering it Section 6200-6 and by deleting the words “subparagraph d” and replacing them with the words “subparagraph b”.

9. Amend Section 6200-5 by renumbering it Section 6200-7.

10. Amend Section 6300-1 by capitalizing the first letter in each of the words “affordable housing” and each of the words “community housing permits” and by inserting at the end of the only sentence the words “or Economic Development Permits awarded by the Board of Selectmen”, so that Section 6300-1 shall read as follows:

Application for a Growth Management Allocation Permit may be made in writing to the Permit Coordinator only after having first applied for all other permits, (except building and occupancy permits), licenses, special permits, variances, determinations and/or orders of conditions for the proposed construction and/or use as deemed

necessary by the Permit Coordinator including, if applicable, Affordable Housing and/or Community Housing Permits awarded by the PLHP or Economic Development Permits awarded by the Board of Selectmen.

11. Amend Section 6300-3 by capitalizing the first letter of the word “permits”.

12. Amend Section 6300-5 by inserting as a new Section 6300-5 the following text:

The Health Agent shall, two years after a determination of decreased Title 5 Design Flow and provided that such Title 5 Design Flow has not increased during the two year period, assign the difference in gallonage between the prior, higher Title 5 Design Flow and the current Title 5 Design Flow to a “Surplus Gallonage Pool.” In the event a property owner abandons the prior use or intensity of use pursuant to Section 6200-3, the Health Agent shall immediately assign the difference in gallonage between the prior, higher Title 5 Design Flow and the new Title 5 Design Flow to a “Surplus Gallonage Pool.”

13. Amend Section 6500 by inserting as a new “General Use Category 5” the following text:

GENERAL USE CATEGORY 5

5a Economic development pursuant to an Economic Development Permit.

14. Amend Section 6600 by renumbering Section 6600-3 as Section 6600-4 and by inserting as a new Section 6600-3 the following text:

Gallonage in the Surplus Gallonage Pool at the end of each calendar year shall be available for allotment in subsequent calendar years to General Use Category 5.

15. Amend Article 1 by inserting the following definition:

Economic Development Permit shall mean an economic development permit awarded by the Board of Selectmen pursuant to Section 15-15 of the General By-laws.

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

[Requested by the Board of Selectmen]

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

PLANNING BOARD RECOMMENDS: 4-0-0

BOARD OF HEALTH RECOMMENDS: 4-0-0

FINANCE COMMITTEE HAS NO RECOMMENDATION

Zoning Amendment: 2/3’s vote required

David Nicolau moved that the Town vote to amend the zoning bylaw of the Town as printed in the warrant, with the following changes:

(1) In item number 7, add the phrase, “whichever is earlier,” so that item number 7 reads as follows:

Amend Section 6200-3 by renumbering it Section 6200-5 and by inserting as a new Section 6200-3 the following text:

If the Health Agent determines under Section 6200-2a that a decreased Title 5 Design Flow will result, then during a two-year period following the issuance of the building permit or occupancy permit, *whichever is earlier*, for such structure or use, no Growth Management Allocation Permit will be required for any subsequent change in such structure or use that increases its Title 5 Design Flow up to and including the Title 5 Design Flow amount so determined by the Health Agent prior to the decrease in Title 5 Design Flow, unless the owner has abandoned the prior use or intensity of use. Such abandonment shall occur by wholly changing such use to a different principal use, or by issuing a written statement or covenant to the Town

expressly abandoning the prior use or intensity of use.

(2) In the first sentence of item number 10, delete the word “only” and insert in place thereof the word “first”, so that the sentence now reads:

Amend section 6300-1 by capitalizing the first letter in each of the words “affordable housing” and each of the words “community housing permits” and by inserting at the end of the first sentence the words “or Economic Development Permits awarded by the Board of Selectmen”.

(3) In the first line of item number 12, delete the numbers “6300-5” and insert in place thereof the numbers “6300”, so that the first line of item number 12 reads as follows:

12. Amend Section 6300 by inserting as a new Section 6300-5 the following text:

(4) In item number 15, delete the numbers “15-15” and insert in place thereof the numbers “5-15”, so that item number 15 reads as follows:

Amend Article 1 by inserting the following definition:

Economic Development Permit shall mean an economic development permit awarded by the Board of Selectmen pursuant to Section 5-15 of the General By-laws.

Motion Passed. (2/3’s Vote Declared)

Article 5. Zoning By-law Amendment: Outside Display. To see if the Town will vote to amend the Provincetown Zoning By-laws, Section 3420 Outside Display as follows, with added text shown in underline and deleted text shown in strikethrough:

3420 Outside Display In all districts of town there shall be no mechanical display or exhibit, or display of any type of merchandise or wares, for the purpose of advertisement, sale, barter, or exchange, or as an inducement thereof, outside of, upon, or against any building or screened or open porch, or booth, or cart, or contiguous land, or premises unless a Special Permit for said display is first granted by the Board of Zoning Appeals, or specifically excepted as hereinafter provided. Effective April 1, 1990, all exterior displays or exhibits must have a Special Permit from the Zoning Board of Appeals.

A Special Permit for Outside Display may be issued for a period of three calendar years after filing an application with the Board of Zoning Appeals and a copy thereof with the Town Clerk. The Special Permit shall specify the number and generic type (e.g. clothing, children's toys, newspapers and magazines, lawn care machinery, etc.) of items to be displayed and the location thereof indicated on a drawing or plan; any change in content (i.e. different generic items) shall require a new Special Permit.

The Special Permit may be granted by the Board of Zoning Appeals only if it finds all of the following:

~~(a) only upon its written determination that~~ The proposed display does not create any adverse effect due to hazard or congestion;

(b) The proposed display is consistent with and does not cause any adverse impacts to the character of the surrounding neighborhood;

(c) The proposed display is an adjunct display to, and for representative merchandise or wares of, a retail sales, service or restaurant establishment located on the same premises;

~~(b) only if the display is set back a distance of ten (10) feet from the front property line and/or any street line;~~

~~(e) (d) only if a~~ A majority of abutters within a 300 foot radius have not submitted a petition objecting to the proposed display; and

~~(d) (e) only if t~~ The proposed display has not been opposed by a petition signed by 150 voters.

The Special Permit may be renewed for succeeding three year periods, however violations may be considered as a basis for non-renewal.

Exceptions:

A. Bazaars or functions for charitable purposes by organizations existing in Town for a minimum of one year may be excepted for periods not exceeding one week in any one year by any one applicant provided that application is made to the Board of Selectmen and a license for said activity is granted.

~~B. The sale of food and/or beverages served at table with seating provided for patrons, provided that application is made to the Board of Selectmen and a license for said activity is granted.~~

~~C. B.~~ The sale of art produced by working artists at the time and point of sale, including caricatures and portraits, provided that application is made to the ~~Board of Selectmen~~ Police Department and a license for said activity is granted.

~~D. C.~~ This By-Law shall not apply to artists working in public ~~while not engaged in commercial activity.~~ Further, ~~this and~~ shall not be construed as to prohibit an artist from selling work in progress, subject to Licensing Board approval. ~~And be it resolved that the Licensing Board will develop and institute a licensing policy for sidewalk artists consistent with the licensing of other vendors in Provincetown.~~

~~E. D.~~ The displaying and selling of commodities (excluding food and beverage) by businesses and residents during the weekend (Saturday and Sunday) in May, ~~except Memorial Day Weekend,~~ of the "Monumental Yard Sale", which shall be under the sponsorship of a local businesspersons' organization; and an inventory sale during Columbus Day Weekend (Saturday, Sunday, and Monday) in October. No displays or sales shall take place within or upon public land, sidewalks or roadways. Displays and sales shall only appear upon property of the participants, whether jointly or independently. Displays and sales shall not impede pedestrian traffic or cause concerns for the public's safety.

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

[Requested by the Planning Board]

PLANNING BOARD RECOMMENDS: 4-0-0

BOARD OF SELECTMEN RECOMMENDS: 4-0-1

FINANCE COMMITTEE HAS NO RECOMMENDATION

Zoning Amendment: 2/3's vote required

Howard Burchman moved that the Town vote to amend the Provincetown Zoning By-laws, Section 3420 Outside Display as printed in the warrant except that in Exception B the words "Licensing Board" shall replace the words "Police Department".

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

Article 6. FY 2006 Budget for Economic Development Council. To see if the Town will vote to transfer from available funds the sum of \$5,000 to fund operating expenses for the Economic Development Council for FY 2006, or to take any other action relative thereto.

[Requested by the Economic Development Council and the Town Manager]

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

FINANCE COMMITTEE RECOMMENDS: 7-2-0

PLANNING BOARD RECOMMENDS: 4-0-0

ECONOMIC DEVELOPMENT COUNCIL RECOMMENDS: 5-0-0

Keith Bergman moved that the Town vote to transfer from the 175 Planning Board budget established by Article 2 of the April 4, 2005 Annual Town Meeting the sum of \$5,000 to fund operating expenses for the Economic Development Council for FY 2006.

Motion Passed.

Article 7. *Rescind Unused Borrowing Authority.* To see if the Town will vote to rescind unused borrowing authority, as follows:

4-01 ATM 5-6 Replace Fire Vehicle 190 \$26,000.00

4-02 STM 1 Cape End Manor Care Campus (Site Y) 500,000.00

4-02 ATM 4-4 Police Station Building HVAC 28,000.00

4-02 ATM 4-5 Marine Department Patrol Boat 22,000.00

4-03 ATM 4-1 Replace Fire Rescue 197 10,000.00

4-04 ATM 4-2 Replace Police Vehicles 111.00

or to take any other action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

FINANCE COMMITTEE RECOMMENDS: 9-0-0

Simple majority vote, per Town Counsel

Keith Bergman moved that the Town vote to rescind unused borrowing authority, as printed in the warrant.

Motion Passed.

Article 8. *Funding Article Amendments.* To see if the Town will vote to amend certain votes of prior town meetings as follows:

1. To amend Article 4, Item 7 of the April 7, 2003 Annual Town Meeting, by expanding the scope of said article to include the purchase of a new chipper and other departmental equipment for the Department of Public Works, so that said article reads as follows: "to appropriate and borrow the sum of \$130,000 to be expended under the direction of the Town Manager and the Director of Public Works for the replacement of the recycling vehicle and the tractor trailer for the Transfer Station for the Department of Public Works, *for the purchase of a new chipper and other departmental equipment for the Department of Public Works*, and costs related thereto; and that the Treasurer, with the approval of the Board of Selectmen, is authorized to borrow said sum under and pursuant to Chapter 44, Section 7(9), of the General Laws, or any other enabling authority, and to issue bonds or notes of the Town therefore;"

2. To amend the source of funding for Article 8, Item 4 of the April 4, 2005 Annual Town Meeting, so that said article reads as follows: "to *raise and appropriate* the sum of \$50,000 to be expended under the direction of the Town Manager and the Director of Public Works for street and sidewalk maintenance and repairs, and costs related thereto;"

3. To amend the source of funding for Article 10 of the April 4, 2005 Annual Town Meeting, so that

said article reads as follows: “to transfer from Foundation Reserve Award the sum of \$121,000 and to raise and appropriate the sum of \$79,000, for a total of \$200,000 to fund the twenty-seventh biweekly pay period for municipal employees in FY 2006.”

or to take any other action relative thereto.

[Requested by the Town Manager]

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

FINANCE COMMITTEE RECOMMENDS: 9-0-0

Borrowing authorization: 2/3’s vote required under MGL C.44 (Item 1)

Keith Bergman moved that the Town vote to approve Article 8 item 1 as printed in the warrant.

Motion Passed. (2/3’s Vote Declared)

Keith Bergman moved that the Town vote to approve Article 8 item 2 as printed in the warrant.

Motion Passed.

Keith Bergman moved that the Town vote to approve Article 8 item 3 as printed in the warrant.

Motion Passed.

Article 9. *FY 2006 Budget Adjustments.* To see what amendments the Town will vote to make to the Fiscal Year 2006 operating budgets and enterprise funds established under Articles 2 and 3 of the April 4, 2005 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: 5-0-0

FINANCE COMMITTEE RECOMMENDS: 9-0-0

Keith Bergman moved that the Town vote to make the following amendments to the Fiscal Year 2006 operating budgets established under Article 2 of the April 4, 2005 Annual Town Meeting to reduce use of the property tax levy by \$157,000 as follows:

(1) by reducing the following FY 2006 budgets by the following amounts:

910-B Insurance/Retirement/Fringe benefits – expenses, by \$23,000

123-B Town Manager – expenses, by \$10,000

192-A DPW Buildings & Grounds – personal services, by \$30,000

for a total of \$63,000; and

(2) by transferring the following article balances totaling \$94,000 to reduce the amount raised and appropriated to fund operating budgets for budget Division II, Finance, for FY 2006:

\$9,000 from 4/4/05 ATM Article 11, *Amendments to Personnel By-law/Classification and Compensation Plan*,

\$10,000 from 4/4/05 STM Article 15, *Wastewater System Monitoring/Enforcement*; and

\$75,000 from 4/4/05 STM Article 7, *Apply PHS Energy Rebate to Reduce SBA Debt Service*;

for a total of \$94,000.

Motion Passed.

Article 10. *Massachusetts Highway Department Chapter 90 Funds for Road and Sidewalk*

Construction and Repairs. To see if the Town will vote to appropriate funds available from the Massachusetts Highway Department in the amount of \$82,596 for the undertaking of road and sidewalk construction and repairs under the provisions of Section 34(2)(a) of Chapter 90 of the General Laws, or to take any other action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

FINANCE COMMITTEE RECOMMENDS: 9-0-0

Michele Couture moved that the Town will vote to appropriate funds available from the Massachusetts Highway Department in the amount of \$82,596 for the undertaking of road and sidewalk construction and repairs under the provisions of Section 34(2)(a) of Chapter 90 of the General Laws.

Motion Passed.

Article 11. *Approval of Land Court Petition: 48B Bradford Street.* To see if the Town will vote to authorize the Board of Selectmen to consent to a pending Petition for the approval of a plan filed in the Commonwealth of Massachusetts, Land Court, Department of the Trial Court Case No. 15435, as petitioned by Provincetown landowner, Richard Baxter Baumgartner, to correct the description of the northern boundary of Lot 8 on Land Court Plan No. 15435-A due to a past scrivener's calculation error. A copy of the Land Court Plan to be numbered 15435-G (correcting this scrivener's error) is on file with the Town Clerk's Office and incorporated herein by reference, as well as on file with the Massachusetts Land Court in the above referenced case, prepared by Slade Associates, Inc., which plan of land is entitled "Plan of Land in Provincetown Showing the Remainder of Lot A As Shown On L.C.P. 15435-A Scale 1" = 20 ft. February 25, 2005 Slade Associates, Inc., Registered Land Surveyors, Rt. 6 & Pine Point Rd., Wellfleet, MA 02667," or to take any other action relative thereto.

[Requested by Christopher J. Snow and others]

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

FINANCE COMMITTEE RECOMMENDS: 9-0-0

Disposition of land: 2/3's vote required

- Charles Silva moved that the Town vote to amend Article 11 to insert the following language at the beginning of the article:

That the Town vote "to accept the alteration of layout of Bradford Street as shown in the plan hereinafter referenced, and to authorize the Board of Selectmen to consent to a pending Petition . . ."

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

Article 12. *Local Regulation of Dogs.* To see if the Town will vote to accept G.L. c.140, §147A, relative to local regulation of dogs, or to take any other action relative thereto.

[Requested by the Town Manager]

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

FINANCE COMMITTEE RECOMMENDS: 9-0-0

ANIMAL WELFARE COMMITTEE RECOMMENDS: 4-0-0

Keith Bergman moved that the Town vote to accept G.L. c.140, §147A, relative to local regulation of dogs.

Motion Passed.

Article 13. *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 Board of Selectmen and the Town Manager]

BOARD OF SELECTMEN RECOMMENDS: 4-0-1**FINANCE COMMITTEE HAS NO RECOMMENDATION**

Richard Olson moved that the Town vote to approve Article 13 as printed in the warrant.

Motion Passed Unanimously.

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 Board of Selectmen and the Town Manager]

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

FINANCE COMMITTEE HAS NO RECOMMENDATION

Cheryl Andrews moved that the Town 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 printed in the warrant.
Motion Passed Unanimously.

Article 15. *Refile Home Rule Petition - Charter Amendment - Historic District Commission as Regulatory Board.* 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 3, Article 4, section 3-4-9, to read as follows:

“No person shall serve simultaneously as a member/alternative member of more than one of the following regulatory town boards: conservation commission, board of health, ~~historical commission~~ *historic district commission*, licensing board, planning board or zoning board of appeals.”

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]

BOARD OF SELECTMEN RECOMMENDS: 5-0-0

CHARTER ENFORCEMENT COMMISSION RECOMMENDS: 3-0-0

FINANCE COMMITTEE HAS NO RECOMMENDATION

Sarah Peake 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 Passed Unanimously.

Article 16. *Non-Binding Resolution: Fireworks on Fourth of July.* To see if the Town will vote in a non-binding resolution to establish the Fourth of July fireworks celebration on the fourth of July, 2006 in keeping with tradition, or to take any other action relative thereto.

[Requested by Austin Knight and others]

BOARD OF SELECTMEN RESERVES RECOMMENDATION: 5-0-0

FINANCE COMMITTEE HAS NO RECOMMENDATION

Austin Knight moved that the Town vote in a non-binding resolution to establish the Fourth of July fireworks celebration on the fourth of July, 2006 in keeping with tradition.
Motion Passed.

Cheryl Andrews moved to dissolve Special Town Meeting.

Motion Passed.

Special Town Meeting dissolved at 8:06 p.m. on Monday, November 7, 2005.

