



Annual Town Meeting

MONDAY, APRIL 7, 2008 AT 6:00
P.M.

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Meeting Called to Order. Town Moderator Irene Rabinowitz convened the Annual Town Meeting at 6:00 p.m. on Monday, April 7, 2008 in the Town Hall Auditorium and hearing no objection decided to hold the Special Town Meeting first. Town Moderator Irene Rabinowitz entertained a motion made by Doug Johnstone to move the meeting to the Provincetown Veterans Memorial Elementary School, in accordance with MGL C. 39, §14, based upon an engineers report that the Auditorium is not suitable to accommodate Town Meeting. Motion Passed. Town Moderator Irene Rabinowitz adjourned the meeting to the Veterans Memorial Elementary School.

Town Moderator Irene Rabinowitz reconvened the April 7, 2008 Special Town Meeting at 6:10 p.m. in the Veterans Memorial Elementary School.

Preliminary Motions:

Mary-Jo Avellar moved that the Town vote to waive the reading of the warrant.

Motion Passed.

Mary-Jo Avellar moved that the Town vote to grant permission to speak at the April 7, 2008 Special Town Meeting to the following persons who are not registered voters of the Town of Provincetown: Russell Braun, *Building Commissioner*; Glenn Enos, *Police Prosecutor*; Jane Evans, *Health Agent*; Elizabeth Francis, *Assistant to VMES Principal*; John W. Giorgio, Esq., and other attorneys of the firm of Kopelman & Paige, P.C., *Town Counsel*; Jasmine Hadley, *Provincetown High School Student*; Alexandra Heilala, *Town Accountant*; Beau Jackett, *Information Systems Director*; Michelle Jarusiewicz, *Grant Administrator*; Linda Koelbel, *Director Special Education, School Department*; Amy Lawson, *Housing Specialist*; Sean McArdle, *New England Police Benevolent Representative*; Maxine Notaro, *Permit Coordinator*; Dr. Floriano Pavao, *PHS Principal*; Domenic Rosati, *Parking Lot Manager*; Warren D. Tobias, *Acting Chief of Police*; and Betty White, *Administrative Assistant for Business and Finance, School Department*.

Motion Passed.

Mary-Jo Avellar moved that on all matters to come before the April 7, 2008 Special Town Meeting, requiring a two-thirds vote by statute, that a count need not be taken unless the vote so declared is immediately questioned by seven or more registered voters.

Motion Passed.

Article 1. FY 2008 Budget Adjustments. To see what amendments the Town will vote to make to the Fiscal Year 2008 operating budgets and enterprise funds established under Articles 2 and 5 of the April 4, 2007 Annual Town Meeting and what sums the Town will vote to raise and appropriate or transfer from available funds therefor; or to take any other action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 4-0-0
FINANCE COMMITTEE RESERVES RECOMMENDATION: 9-0-0

Mary-Jo Avellar moved that the Town vote to make the following amendments to the Fiscal Year 2008 operating budgets and enterprise funds established under Articles 2 and 5 of the April 4, 2007 Annual Town Meeting:

(1) to reduce the following available funds and appropriations

ATM07	6-3	Community Center Alarm	205
ATM07	6-6	Hydraulic Sander	1,925
	145-B	Treasurer Expense	4,300
	421-A	DPW Administration	60,000
	421-B	DPW Expenses	36,520
	431-A	Solid Waste Personnel	13,000
	431-B	Collections	15,000
	810-B	Tax Title	9,000
			<hr/>
			\$ 139,950

(2) To increase the following appropriations:

113-B	Elections	2,000
141-A	Assessor Salaries	5,800
145-A	Treasurer Salary	4,300
151-B	Legal Expense	20,000
190-A	Bldgs & Grounds	25,000
190-B	Bldgs & Grounds Expenses	30,000
240-B	Inspections	5,000
296-A	Shellfish	5,100
422-A	Highway Personnel	31,250
422-B	Highway Expenses	10,000
512-A	Nurse	500
541-A	COA Salary	1,000
	subtotal	139,950

Motion Passed.

Article 2. Wastewater Optimization and Expansion – Borrowing Authorization.

To see if the Town will vote to appropriate and borrow the sum of \$200,000 for additional connections and economic development expansion of the sewer project; with said sum to be expended under the direction of the Town Manager and the Director of Public Works 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 and the Town Manager]

- BOARD OF SELECTMEN RECOMMENDS: 4-0-0**
- FINANCE COMMITTEE RECOMMENDS: 9-0-0**
- BOARD OF HEALTH RECOMMENDS: 3-0-0**
- WATER & SEWER BOARD RECOMMENDS: 3-0-0**
- PROVINCETOWN HOUSING AUTHORITY RECOMMENDS: 4-0-0**

Borrowing Authorization - 2/3's vote required

Michele Couture moved that the sum of \$200,000 be appropriated to pay costs of the development of plans and specifications needed for the optimization and expansion of the Town's Sewer Systems, including the payment of all other costs incidental and related thereto, including without limitation all costs defined under C. 29C, §1 of the General Laws, said sum to be expended under the direction of the Town Manager and the Director of Public Works; that to meet this 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 cost of this project 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.

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

Article 3. Water Department Block Grant. To see if the Town will vote to appropriate and borrow the sum of \$50,000 to be expended under the direction of the Town Manager, the Director of Public Works and the Grant Administrator for the repairs required for filtration at Knowles Crossing, 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 take any other action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 4-0-0

FINANCE COMMITTEE RECOMMENDS: 8-1-0

WATER AND SEWER BOARD RECOMMENDS: 3-0-0

BOARD OF HEALTH RECOMMENDS: 3-0-0

Borrowing Authorization - 2/3's vote required

Austin Knight moved that the sum of \$50,000 is hereby appropriated to pay costs of water system repairs required for filtration at Knowles Crossing, including the payment of all other costs incidental and related thereto, said sum to be expended under the direction of the Town Manager the Director of Public Works and the Grant Administrator; that to meet this 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, §8(7c) and/or C.29C of the General Laws, or any other enabling authority, and to issue bonds or notes of the Town therefor.

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

Article 4. *Fund Collective Bargaining Agreements.* To see what sums the Town will vote to raise and appropriate or transfer from the 2009 tax levy, or transfer from available funds to fund the collective bargaining agreement reached with the Town and the IBPO; or take any other action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 4-0-0

FINANCE COMMITTEE RECOMMENDS: 9-0-0

Michele Couture moved that the Town vote to raise and appropriate the amount of \$167,000 from the FY2009 tax levy to fund the collective bargaining agreement reached with the Town and the IBPO.

Motion Passed.

Article 5. *Aerial Photographs to Aid in Correcting Assessor's Maps/GIS Flyover.* To see if the Town will vote to raise and appropriate or transfer from available funds the sum of \$23,000 under the direction of the Board of Selectmen and Principal Assessor for the purpose of taking aerial photographs of the town in order to replot buildings onto the Assessors Maps, or to take any other action relative thereto.

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

BOARD OF SELECTMEN RECOMMENDS: 4-0-0

FINANCE COMMITTEE RECOMMENDS: 9-0-0

BOARD OF ASSESSORS RECOMMENDS: 3-0-0

Lynne Davies moved that the Town vote to transfer from the Overlay Surplus Account the amount of \$23,000 for the purpose of taking aerial photographs of the town in order to replot building onto the Assessor's Maps.

Motion Passed.

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

13-2-6 EXCESSIVE MUSICAL AND OTHER NOISE.

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

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

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

Amplification devices or similar equipment, includes, but is not limited to: phonograph, radio,

television, stereo, record player, tape player, cassette player, compact disk player, digital music player, "boom box", loud speaker, or other sound amplification device.

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

- a) In any residential district, as defined by the Zoning By-law, in excess of 45 dBA between the hours of 11:00 p.m. and 7:00 a.m. the following day, or in excess of 55 dBA at all other hours, measured at a distance from fifty (50) feet from the point of origin of the noise; and
- b) In any commercial district, as defined by the Zoning By-law, in excess of 65 dBA between the hours of 11:00 p.m. and 7:00 a.m. the following day, or in excess of 75 dBA at all other hours, measured at a distance from fifty (50) from the point of origin of the noise.

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

- a) In any residential district, as defined by the Zoning By-law, in excess of 45 dBA between the hours of 11:00 p.m. and 7:00 a.m. the following day, or in excess of 55 dBA at all other hours, measured at a distance from fifty (50) feet from the point of origin of the noise; and
- b) In any commercial district, as defined by the Zoning By-law, in excess of 65 dBA between the hours of 11:00 p.m. and 7:00 a.m. the following day, or in excess of 75 dBA at all other hours, measured at a distance from fifty (50) from the point of origin of the noise.

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

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

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

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

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

event and has approved as to form the application for a waiver with the understanding that once the event is in process, complaints could arise necessitating action on the part of the Police, i.e., immediate consultation with the applicant to ameliorate the sound conditions if the complaints are numerous and clearly justified in the discretionary opinion of the responding Police. The application for a temporary waiver affects all public events likely to produce sound levels that will affect the average person in a negative manner and in no instance will a waiver application be considered by the Licensing Board less than 60 days preceding any event. Applicants may receive more than one waiver in a year but the Licensing Board may recall any applications during the event year if complaints exceed the benefit to the public as determined by the Licensing Board as advised by the Police Department. The Licensing Board may suspend, modify or revoke any temporary waiver if it determines that an applicant has violated the terms or conditions of the waiver.

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

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

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

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

or to take any other action relative thereto.

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

**BOARD OF SELECTMEN RECOMMENDS TO INDEFINITELY POSTPONE: 4-0-0
FINANCE COMMITTEE HAS NO RECOMMENDATION**

[Sharon Lynn moved that the Town vote to indefinitely postpone action on Article 6.](#)

Motion Passed.

Article 7. Prior Year Bills. To see if the Town will vote to raise and appropriate or transfer from available funds the amount of \$376.31 for the purpose of paying prior year unpaid bills; or take any other action thereto.

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

**BOARD OF SELECTMEN RECOMMENDS: 4-0-0
FINANCE COMMITTEE HAS RECOMMENDS: 9-0-0**

Prior Year Bills – 9/10's vote required

[Mary-Jo Avellar moved that the Town vote to transfer from ATM03, Art 4-9 \(Paving Cemetery Roads\) the sum of \\$370.92 for the purpose of paying the following prior year bills:](#)

Water Enterprise Fund \$227.42

Buildings & Grounds (cemetery) \$115.10

Buildings & Grounds (library) \$ 28.40

[These bills were received after the close of FY2007.](#)

Motion Passed Unanimously.

[Mary-Jo Avellar moved to dissolve Special Town Meeting.](#)

Motion Passed.

[Special Town Meeting dissolved at 7:24 p.m. on April 7, 2008.](#)