

SPECIAL TOWN MEETING – WEDNESDAY, OCTOBER 29, 2008
WALTER SILVEIRA AUDITORIUM – ELIZABETH HASTINGS MIDDLE SCHOOL
TOWN MEETING MEMBERS PRESENT 204 – QUORUM REQUIRED 100

Meeting called to order by the Moderator at 7:00 P.M.

The Moderator stated that the warrant had been properly served and that there was a quorum
Voted that the Moderator be relieved from reading each article in its entirety and that he be allowed to refer to the article by number and title only. Seconded.

Town Meeting Members present:	Precinct 1 – 43
	Precinct 2 – 30
	Precinct 3 – 24
	Precinct 4 – 43
	Precinct 5 – 32
	<u>Precinct 6 – 32</u>
	TOTAL 204

ARTICLE 1 – TOWN CHARGES

Voted unanimously:

GENERAL GOVERNMENT

1. Town Accountant
 - a. Salary & Wages - \$4,700.00 – Moved to Passover.

PUBLIC SAFETY

2. Police Department
 - b. Purchase of Services - \$40,000.00 from FY 2009 Tax Levy

VETERANS

3. Veterans Services
 - b. Purchase of Services - \$43,000.00 from FY 2009 Tax Levy
 - c. Supplies - \$830.00 from FY 2009 Tax Levy
 - d. Other Charges/Expenses - \$98,000.00 from FY 2009 Tax Levy

ARTILCE 2 – FUNDING LABOR CONTRACTS

Voted to supplement the appropriations by adoption of Article 4 of the ATM, May 5, 2007 for the purpose of funding the cost if FY 2008 only, of the Collective Bargaining agreement between the Town and the Following Labor groups, said agreement signed and sated prior to this Town Meeting.

1. Police Department – New England Police Benevolent Association, Local 64
 - a. Salaries & Wages - \$249,618.00 - \$166,177.39 from FY 2009 Tax Levy
\$83,440.61 from Surplus Revenue

NOTE: ARTICLE 2 (\$61,830.00) AND ARTICLE 3 (\$187,788.00)

1. POLICE DEPARTMENT

a. SALARIES & WAGES ARE COMBINED

2. Fire Department – International Association of Firefighters, AFL-CIO. Local 1555
 - a. Salaries & Wages – *Moved to Passed Over*

ARTICLE 3 – FUNDING LABOR CONTRACTS

Voted to supplement the appropriations by adoption of Article 4 of the ATM, May 3, 2008 for the purpose of funding the cost if FY 2009 only, of the Collective Bargaining agreement between the Town and the following labor groups, said agreement signed and dated prior to this Town Meeting.

1. Police Department – New England Police Benevolent Association, Local 64
 - a. Salaries & Wages (***See NOTE***)

2. Fire Department – International Association of Firefighters, AFL-CIO, Local 1555
 - a. Salaries & Wages – *Moved to Pass Over*
3. Clerical Union – AFSCME AFL-CIO, Local 851
 - a. Salaries & Wages - \$19,100 - \$1,000.00 from Sewer Revenue
\$1,900.00 from Water Revenue
\$16,200.00 from Surplus Revenue

ARTICLE 4 – UNPAID BILLS OF PRIOR YEARS

Voted unanimously the following sums of money:

1. Coastal Orthopedics - \$556.46 from FY 2009 Tax Levy
2. Southcoast Hospitals - \$345.42 from FY 2009 Tax Levy
3. University Orthopedics - \$275.00 from FY 2009 Tax Levy
4. Hawthorne Medical Associates - \$135.28 from FY 2009 Tax Levy
5. Southcoast Hospitals Group - \$234.95 from FY 2009 Tax Levy
6. Dr. Brian Bowcock - \$445.50 from FY 2009 Tax Levy (Dr. Bowcock abstained from voting)

ARTICLE 5 – ACCEPTANCE OF STATUTE

Voted unanimously to accept M.G.L. Chapter 60, Section 15 entitles “Fees of Collector” by amending the Town of Fairhaven Demand Fees from \$5.00 to \$30.00.

ARTICLE 6 – ACCEPTANCE OF STATUTE

Voted unanimously to accept M.G.L. Chapter 39, Section 23D entitled “Adjudicatory hearings; attendance by municipal board, committee and commission members; voting disqualification.”

ARTICLE 7 – ACCEPTANCE OF DEED

Voted unanimously to authorize the Board of Selectmen to accept a deed to the Town of Fairhaven for a parcel of land (Map 29A Lots, 037-042 approximately 18,000 s.f.) at Austria Avenue from the Estate of Lillian Freeman and Rita Phildis and any other current owners of the property, which is subject to a tax taking held by the Treasurer for unpaid 2006 to 2008 taxes in lieu of foreclosure, subject to and in compliance with Massachusetts General Law Chapter 60, Section 77C.

ARTICLE 8 – SPECIAL LEGISLATION

Voted unanimously to authorize the Board of Selectmen to petition the General Court to enact special legislation which will allow the Town to assess as a betterment to those affected properties, the costs incurred by the Town to provide design and construction data to the Federal Emergency Management Agency in order to credit the Fairhaven portion of the New Bedford hurricane barrier with protection of certain areas of the Town of Fairhaven from flood hazard.

The costs incurred by the Town to provide such data shall include all engineering, legal and other professional fees, and all other expenses related thereto.

The betterments shall be assessed to each effected parcel on the basis of the assessed value of the improvements on such parcel, and in the case of unimproved, buildable parcels on the basis of the aggregate value of improvements upon all improved parcels assessed hereunder, expressed as a per square foot average of the aggregate improved land area assessed hereunder.

The special legislation will take effect upon passage without further ratification by the Town.

ARTICLE 9 – STREET LIGHT PURCHASE

To see if the Town will vote to authorize the Board of Selectmen to purchase municipal streets lights from Com Electric d/b/a NSTAR Electric for the price of \$. All agreements would have to conform to lighting services and tariffs approved by the Massachusetts Department of Telecommunications and Energy (DTE). *Moved to Pass Over*

ARTICLE 10 – SEWER DEVELOPMENT FEE REFUND

Voted unanimously the sum of \$4,000.00 by transferring \$4,000.00 from Sewer Retained Earnings to refund Kathleen Costa for a sewer development fee.

ARTICLE 11 – AMENDMENT TO TOWN BY-LAW

Voted unanimously to amend the Town by-laws by deleting from the Town code §§ 169-15 to 169-19 and inserting in their place the following:

“Part 4 Driveway and Sidewalk Construction
[Adopted 5-4-1996 ATM by Art. 35
(Ch. XXXIX of the 1934 Bylaws)]

§ 169-15. License and Permit required. [Amended 6-7-2003 ATM by Art. 12]

A. No person shall engage in the construction, upgrade or extension of any driveway or sidewalk, which is, in whole or in part, in the layout of a public way who is not licensed to perform such work by the Board of Public Works; and no person shall perform or allow another to perform such work, without first obtaining a permit from the Board of Public Works or its designee. The Board of Public Works shall annually license contractors to perform such work, providing they have the demonstrated capacity and knowledge of proper construction methods for driveways and sidewalks, as determined by the BPW. Permits shall be issued for a period of not more than six months but may be renewed upon written request and approval.

B. Permits will be issued jointly to the property owner and the contractor, both of whom will be responsible for compliance with rules, regulations and permit conditions. The Board of Public Works shall issue a permit as soon as practical following receipt of a completed application, or shall render a decision in writing, specifying the reasons for denial of said permit. A permit denial shall be based upon consideration of public safety or the protection of private and public property, using the design standards adopted pursuant to §169-19.

C. The Board of Public Works shall report to the Building Department the name of any person determined to have been in violation of this Part 4 two or more times in the twelve months prior to such report. The Building Department shall establish a procedure requiring the applicant for a building permit to certify that no part of the work which is the subject of the building permit application, will be performed by a person who has been so reported by the Superintendent.

§ 169-16. Application for permit.

The application for a permit shall be accompanied by a plan of the proposed driveway or sidewalk showing its layout, finish grades, material and construction techniques and sufficient crosscut views to detail the underlayment and any variations in underlayment through the layout and by a certificate showing that the applicant is bonded and insured to protect the interests of the Town in its public ways.

The Superintended of Public Works may request any other information or documentation that he deems necessary to make a decision based upon the design standards enacted pursuant to §169-19.

§ 169-17. Prohibited acts. The following shall be violations of this Part 4:

- A. Construction of a driveway or sidewalk in a public way without a permit or by an unlicensed contractor.
- B. Removal of Town curbing without a permit.
- C. Removal of Town sidewalk without a permit.
- D. Construction not in compliance with the permitted plan.
- E. Failure to return to the Board of Public Works granite curbing and granite blocks removed from the site.
- F. Failure to install protective safety barriers.
- G. Failure to provide temporary paving the same day as the excavation.
- H. Failure to call the BPW at least 48 hours in advance to schedule inspection of construction work
- I. Failure to post signs as required by the BPW

§ 169-18. Violations and penalties.

"Any person who violates any provision of this by-law shall be subject to a fine of \$100 for each offense, except the performing or allowing the performance of work without a permit or by an unlicensed contractor for which the fine shall be \$300 for each offense. Each day the violation exists shall constitute a separate offense until a faithful restoration of the public way to its former condition is completed or unless otherwise agreed to by the Board of Public Works or its designee.

Fines shall be applicable to both the property owner and the contractor, as determined by the Board of Public Works.

Fines shall be recovered by indictment, or on complaint before the District Court, or by non-criminal disposition in accordance with section 21D of chapter 40 of the general laws.

The Board may also revoke the license of permitted contractors found in violation of this bylaw, according to its rules and regulations.

"§169-19 Design Standards

The Board of Public Works may impose reasonable restrictions, requirements, rules, regulations, conditions, size and opening limits, or standards (collectively "Design Standards ") for the construction of a driveway."

And to see if the Town will vote to amend §1-6 D(S) (Non-Criminal Disposition) of the Town by-laws by deleting section (b) in its entirety and adding in its place the following:

"(b) Fine: \$100 for each offense, except performing, or allowing unlicensed contractors to perform, work shall be \$300 for each offense."

ARTICLE 12 – AMENDMENT TO TOWN BY-LAWS

Voted unanimously, as amended, to amend Chapter 145 (Waterways, Moorings, and Boat Usage) of the Town Code by adding the following section:

“§145-16 Waterways Users Fee

1. Boat owners using the waters of Fairhaven, MA will be subject to a Waterways User Fee. The Waterways User Fee is a fee used to help offset the cost of operating services provided by the Town of Fairhaven, MA. Services include, but are not limited to, dredging, maintenance projects, fire, emergency, police security, boater education, environmental protection, enforcement and harbor management services. Additional services may be provided as the need arises.

2. All boats using the waters of Fairhaven, MA for more than 14 days per year (calendar year) are subject to the Waterways Users Fee in Fairhaven, MA. Exceptions to the Waterways Users Fee are boats that are on trailers put in and taken out for each occasion of use, boats less than 16ft. in length, boats belonging to the Town of Fairhaven or used by the Town of Fairhaven, or any other boat used for law enforcement by government agencies and any boat within the waters of Fairhaven for service work provided by a Fairhaven marine service company.

The fee schedule is based on a per foot charge on boats overall length as determined by the Harbormaster and is set at \$1.00 per foot for residents and \$4.00 per foot for non-residents as defined herein. This Waterway Users Fee is a yearly fee and is due by June 30th of each calendar year, or immediately after the 14 day benchmark is met if after June 30th of the current calendar year. The Board of Selectmen, in consultation with the Harbormaster, may amend these fees from time to time.

3. Facilities providing services such as mooring space, docking, slips or summer in and out services shall, as a condition of their permit to operate as a business in Fairhaven, MA, notify all of their customers of this required fee to the Town of Fairhaven, MA, when signing a contract or agreements that allows them to keep their boat in the Town of Fairhaven qualifying them for the Waterway users Fee under the guidelines as described herein.

4. Payment is to be made in person or via U.S. Mail to the Town of Fairhaven, Office of the Tax Collector. For those paying in person, a Waterways User Fee sticker application will be made available by the Office of the Tax Collector. The office of the Tax Collector will upon payment provide a sticker which is to be affixed to the port side stern area of the boat. If payment is made via mail, the boat owner must provide the following information:

- a. Name of owner
- b. Address of owner
- c. Telephone number
- d. Registration Numbers/Documentation Nmbers
- e. Year manufactured

- f. Length
- g. Color
- h. Place boat kept during the season

In addition, the boat owner must provide a Self Addressed Stamped Envelope to receive a sticker via the mail. Checks will be considered receipt of payment for those made via mail. (Do not send cash as a payment.)

The Town of Fairhaven’s Office of the Tax Collector is located at 40 Center Street, Fairhaven, MA 02719.

5. Violators will be subject to a fine in the amount of 120% of the Water User Fee due the Town of Fairhaven, not to exceed \$300.00. Once paid, the Waterway User Fee will be considered paid and a Waterways User Fee sticker will be provided. Fines shall be recovered by indictment, or on complaint before the District Court, or by non-criminal disposition in accordance with section 21D of chapter 40 of the general laws.

6. Any person aggrieved by any decision of the Harbormaster hereunder may file an appeal with the Fairhaven Board of Selectmen by delivering such appeal, in writing, to the Town Hall within 15 days of the decision of the Harbormaster. Such ruling shall state specifically the nature of the decision and the reason the person is aggrieved.

8. Definitions:

Residents

- 1. A registered voter in the Town of Fairhaven, MA.
- 2. A person who is domiciled in the Town of Fairhaven, MA.
- 3. A person who pays real estate taxes to the Town of Fairhaven, MA.
- 4. A spouse or dependent of any of the above.

Facility

Any business in Fairhaven providing marine services, slips, mooring or any summer seasonal storage and operates by permit issued by the Town of Fairhaven, MA.

Summer Seasonal In and Out Services

Any business that provides a service that allows a boat owner to remove or put in their boat each time of use within the coastal waters of Fairhaven, MA.

Docking/Slips

Space made available to boat owners to secure their boat.

Moorings

Any type of device that allows a boat to be tied up to it, providing a position to secure the boat within the coastal waters of Fairhaven, MA.”

“Noncriminal Disposition of Violations”:

“§145-16 Waterway User Fees

(a) Enforcing Person(s): Any duly appointed Town of Fairhaven Harbormaster, Assistant Harbormasters, or their appointees.

(b) Fines: 120% of the Water User Fee due the Town of Fairhaven, not to exceed \$300.00.”

ARTICLE 13 – HOWLAND ROAD ALTERATION OF LAYOUT

Voted unanimously to authorize the Board of Selectmen to accept by gift, acquire by purchase, take by eminent domain or in any other manner acquire upon such terms and conditions as the Board of Selectmen deems advisable, the fee interest in one certain parcel of land for the purposes of increasing the corner radii at the intersection of Howland Road and Sycamore Street; and to, appropriate the sum of \$5,000.00 by transferring \$5,000.00 from Chapter 291D of the Acts of 2004 for this purpose; and to determine how such an appropriation shall be raised, whether by taxation, transfer from available funds, including without limitation G. L. Chapter 90 roadway funds, borrowing or otherwise, and if by borrowing, to authorize the issuance of bonds or notes by

the Town, or to take any other action relative thereto, the description of the parcel to be acquired is as follows:

Parcel 1-T-1

A certain parcel of land now owned by Charles and Maria Sourmaidis or formerly of Manny & Bob's Service, Inc., located at the northwest corner of Howland Road and Sycamore Street, identified as Assessor's Map 19, Lot 243A, located in the Town of Fairhaven, bounded and described as follows:

LAND TAKING PARCEL 1-T-1

BEGINNING AT A POINT IN THE NORTHERLY SIDELINE OF HOWLAND ROAD, SAID POINT BEING N 01°32'40" W SEVEN AND 620/1000 (7.620) METERS (25.00') DISTANT FROM BASELINE STATION 5+26.35; THENCE NORTHEASTERLY TWELVE AND 383/1000 (12.383) METERS (40.63') BY A CURVE TO THE LEFT HAVING A RADIUS OF SEVEN AND 880/1000 (7.880) METERS (25.85') BY LAND OF MANNY & BOB'S SERVICE, INC.(MAP19/LOT243A)TO A POINT IN THE WESTERLY SIDELINE OF SYCAMORE STREET; THENCE S 01°34'43" E SEVEN AND 885/1000 (7.885) METERS (25.87') BY SAID WESTERLY SIDELINE OF SYCAMORE STREET TO A POINT IN THE NORTHERLY SIDELINE OF HOWLAND ROAD; THENCE S 88 27'20" W SEVEN AND 885/1000 (7.885) METERS (25.87') BY SAID NORTHERLY SIDELINE OF HOWLAND ROAD TO THE POINT OF BEGINNING, SAID PERMANENT EASEMENT CONTAINS THIRTEEN AND 344/1000 (13.344S.M.) (144 S.F.).

ARTICLE 14 – TOWN CHARGES

To see if the Town will vote to raise and appropriate, borrow or transfer from available funds a sum of money to fund additional salary and operating expenses for the following departments. Said sum to be added to previously voted appropriations for FY 09, or to take any other action relative thereto.

UNCLASSIFIED

1. Stabilization Fund - *Moved to Pass Over*

ARTICLE 15 - OTHER BUSINESS

None

Motion to adjourn sine die at 8:35 P.M. Seconded.

Eileen M. Lowney, Town Clerk