

**TOWN OF STURBRIDGE  
SPECIAL TOWN MEETING WARRANT**



**TANTASQUA REGIONAL HIGH SCHOOL  
MONDAY, JUNE 3, 2013 @ 7:00 P.M.**

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**ARTICLE 48**

**COMMUNITY PRESERVATION ACT – RIVERLANDS**

To see if the Town will vote to appropriate the sum of TWENTY-EIGHT THOUSAND SIXTY AND 00/100 DOLLARS (\$28,060.00) from the Community Preservation Act Fund to rehabilitate the Riverlands property at 51 Holland Road by testing the environmental condition of the property and preparing applicable reports for submission to the Department of Environmental Protection; or take any action in relation thereto.

Sponsor: Community Preservation Committee

**RECOMMENDATION OF THE FINANCE COMMITTEE:**

*To amend the article by replacing the word “and” with a “,” between property and preparing; also adding the words “and commencing remediation” after Department of Environmental Protection, and otherwise approve the article as written. Voted 8 – 0.*

**RECOMMENDATION OF THE BOARD OF SELECTMEN:**

*That the Town vote to approve the article as written. Voted 5 – 0.*

**RECOMMENDATION OF THE COMMUNITY PRESERVATION COMMITTEE:**

*That the Town vote to approve the article as written. Voted 6 – 0.*

*Summary – This article would fund the costs of additional testing and reporting to either achieve site close-out with MassDEP, or, to identify additional required remediation actions at the 51 Holland Road portion of the Riverlands site.*

**VOTE OF THE TOWN MEETING:** There was a substitute motion made by the BOS to read, “To approve Article 48 as written and placed by the Board of Selectmen”. This motion was seconded and the vote was that this substitute motion was defeated as declared by the Moderator. We then reverted to the recommendation of the Finance Committee and the vote of the Town Meeting was to approve the article as recommended by the Finance Committee as declared by the Moderator.

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**ARTICLE 49**

**COMMUNITY PRESERVATION ACT – CONSERVATION RESTRICTIONS**

To see if the Town will vote to appropriate the sum of TEN THOUSAND TWO HUNDRED AND 00/100 DOLLARS (\$10,200.00) from the Community Preservation Act Fund for the purpose of assessing the conservation values of and working with consultants and non-profit organizations with the goal of conveying conservation restrictions on the Town-owned parcels of conservation and/or open space land known as the Riverlands property (located at 51 Holland Road, 55 Holland Road, and 52 Stallion Hill Road), the Heins Farm (located at 200 Leadmine Road), Long Pond (located at 55 Champeaux Road), and the Shepard property (located at 80 Route 15), and to authorize the Board of Selectmen and/or the Conservation Commission, as appropriate, to convey the conservation restrictions on the foregoing parcels of land in accordance with G.L. c. 184, as required by G.L. c. 44B, §12(a); or take any action in relation thereto.

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Sponsor: Community Preservation Committee

**RECOMMENDATION OF THE FINANCE COMMITTEE:**

*To see if the Town will vote to appropriate the sum of TEN THOUSAND TWO HUNDRED AND 00/100 DOLLARS (\$10,200.00) from the Community Preservation Act Fund with the goal of conveying conservation restrictions on certain CPA funded, Town-owned parcels known as the Riverlands property (located at 51 Holland Road, 55 Holland Road, and 52 Stallion Hill Road), the Heins Farm (located at 200 Leadmine Road), Long Pond (located at 55 Champeaux Road), and the Shepard property (located at 80 Route 15), for the purposes of assessing their conservation values and working with consultants and non-profit organizations with respect to the said properties and to authorize the Board of Selectmen and/or the Conservation Commission, as appropriate, to convey the conservation restrictions on the foregoing parcels of land in accordance with G.L. c. 184, as required by G.L. c. 44B, §12(a); or take any action in relation thereto. Voted 8 – 0.*

**RECOMMENDATION OF THE BOARD OF SELECTMEN:**

*That the Town vote to approve the article as written. Voted 5 – 0.*

**RECOMMENDATION OF THE COMMUNITY PRESRVATION COMMITTEE:**

*That the Town vote to approve the article as written. Voted 6 – 0.*

<p><i>Summary – This article would fund drafting and recording of required conservation restrictions for the named parcels acquired through Community Preservation Act funds. The article also allows for the conveyance of the conservation restrictions to non-profit agencies.</i></p>
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**VOTE OF THE TOWN MEETING:** The vote of the Town Meeting was to approve the article as recommended by the Finance Committee as declared by the Moderator.

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**ARTICLE 50  
TRANSFER OF FUNDS – WATER DEPT. COSTS  
(9/10 Vote Required)**

To see if the Town will vote to transfer the sum of SEVENTEEN THOUSAND EIGHT HUNDRED FIFTY-THREE AND 00/100 DOLLARS (\$17,853.00) from the Water Fund Balance to fund additional maintenance and overtime costs incurred in FY12, or take any action in relation thereto.

Sponsor: Finance Director

**RECOMMENDATION OF THE FINANCE COMMITTEE:**

*That the Town vote to approve the article as written. Voted 9 – 0.*

**RECOMMENDATION OF THE BOARD OF SELECTMEN:**

*That the Town vote to approve the article as written. Voted 5 – 0.*

<p><i>Summary – This article would transfer funds to cover extraordinary overtime costs for the water department operations. These costs are related to the power outages due to the October 2011 snowstorm and Hurricane Irene.</i></p>
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**VOTE OF THE TOWN MEETING:** The vote of the Town Meeting was unanimous in approving the article as written as declared by the Moderator.

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**ARTICLE 51**  
**UNPAID FY12 BILLS – WATER DEPARTMENT**  
*(9/10 Vote Required)*

To see if the Town will vote to transfer from the Water Fund Balance the sum of ONE THOUSAND SEVEN HUNDRED FIVE AND 65/100 DOLLARS (\$1,705.65) to pay an outstanding invoice to the Hampshire Council of Governments for electricity, or take any action in relation thereto.

Sponsor:      Town Accountant

**RECOMMENDATION OF THE FINANCE COMMITTEE:**

*To amend the article by replacing the word “to” with “from” after the word invoice and before the phrase “the Hampshire Council of Governments”, and otherwise approve the article as written. Voted 7 – 1.*

**RECOMMENDATION OF THE BOARD OF SELECTMEN:**

*That the Town vote to approve the article as written. Voted 5 – 0.*

<p><i>Summary – These invoices were not submitted timely for payment in FY12. The services and/or supplies were received by the Town and payment is due.</i></p>
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**VOTE OF THE TOWN MEETING:** The vote of the Town Meeting was unanimous in approving the article as amended by the Finance Committee as declared by the Moderator.

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**ARTICLE 52**  
**TRANSFER FROM FREE CASH**

To see if the Town will vote to transfer the sum of ONE HUNDRED EIGHTY THOUSAND AND 00/100 (\$180,000.00) from free cash to the WWTP Project Account #31580 for costs associated with the town-wide Comprehensive Wastewater Management Plan update filed with the Mass. Dept. of Environmental Protection, or take any action relative thereto,

Sponsor:      Town Administrator

**RECOMMENDATION OF THE FINANCE COMMITTEE:**

*That the Town take no action on this article. Voted 7 – 0 – 1.*

<p><i>The Finance Committee recommends no action on this article since it goes against longstanding Town practice related to payment for sewer related costs. The study’s purpose is to determine areas of Town into which the existing sewer system can be extended or areas of Town that would allow for alternative treatment of wastewater. In essence, those steps would allow the expansion in the number of users of the sewer system in order to lower the cost for all of the users of the sewer system. In a simple example, if there are 5,000 households using the sewer system that costs \$1,000,000 to run, each household would pay \$200 as its share of the costs. In turn, if you expand the system to 10,000 households, the shared cost per household would be \$100.</i></p>
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<p><i>At the Annual Town Meeting in 2006, the exact same question was posed to the Townspeople in Article 29. At that time, funding was sought and approved from the Sewer Fund Reserve. Several other engineering studies undertaken to add neighborhoods to the sewer system have also been funded through the Sewer Fund Reserve rather than free cash (e.g., Woodside Circle in December 2004).</i></p>
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<p><i>When the Finance Committee asked the Town Administrator why the amount of \$180,000 was being sought from free cash, the answer was to lessen the impact of the rising sewer rates on ratepayers.</i></p>
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**RECOMMENDATION OF THE BOARD OF SELECTMEN:**

*That the Town vote to approve the article as written. Voted 3 – 1 – 1.*

*Summary – This article would fund costs associated with the town-wide Comprehensive Wastewater Management Plan filed with the Mass. Dept. of Environmental Protection outlining all current and potential sewer use districts. This article would remove this study from being paid only by existing sewer rate-payers.*

**VOTE OF THE TOWN MEETING:** There was a substitute motion made by the TA/BOS, “To approve the Article 52 as written and placed by the Board of Selectmen”. This motion was seconded and the vote of this substitute motion was overwhelmingly defeated. The vote of Town Meeting was that no action be taken on this article.

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**ARTICLE 53**

**TRANSFER OF FUNDS – SEWER DEPT. COSTS**

To see if the Town will vote to transfer the sum of FOUR HUNDRED EIGHTY-EIGHT THOUSAND FIVE HUNDRED FIFTY-SIX AND 00/100 DOLLARS (\$488,556.00) from the Sewer Fund Balance to the WWTP Project Account #31580 to cover costs associated with the WWTP project that were ineligible for funding through the Mass. Water Pollution Abatement Trust, or take any action in relation thereto.

Sponsor: Finance Director

**RECOMMENDATION OF THE FINANCE COMMITTEE:**

*That the Town vote to approve the article as written. Voted 7 – 1.*

**RECOMMENDATION OF THE BOARD OF SELECTMEN:**

*That the Town vote to approve the article as written. Voted 5 – 0.*

*Summary – This article will serve to fund cover costs associated with the WWTP project that were ineligible for funding through the Mass. Water Pollution Abatement Trust. The final amount required is dependent upon the outcome of Article 52 above.*

**VOTE OF THE TOWN MEETING:** The vote of the Town Meeting was unanimous in approving the article as written as declared by the Moderator.

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**ARTICLE 54**

**CIVIL FINGERPRINTING BY-LAW**

To see whether the Town will vote, as authorized by Chapter 256 of the Acts of 2010, and incorporated into the Massachusetts General Laws as Chapter 6, Section 172 B1/2, to establish a new Chapter 7.80 in the General Bylaws, which Bylaw would enable the Police Department to conduct State and Federal fingerprint Based Criminal History checks for individuals applying for certain occupational licenses as follows:

**7.80 CIVIL FINGERPRINTING BYLAW**

**7.81: Purpose and Scope**

This by-law authorizes the Police Department to conduct state and national fingerprint based criminal history checks for individuals applying for specific licenses in Town to enhance public safety, as authorized by Massachusetts General Laws Chapter 6, Section 172B½. To carry out the criminal history checks authorized by this by-law, the Police Department shall be

authorized to use state and Federal Bureau of Investigation (“FBI”) records, provided, however, that such records shall not be disseminated to unauthorized entities and shall be maintained and disclosed in accordance with all applicable law.

The by-law further authorizes the Board of Selectmen, in consultation with the Chief of Police, to promulgate regulations to implement this by-law, which may include, but shall not be limited to establishment of submission deadlines, procedures for making recommendations to the licensing authority or making a licensing as a result of the criminal history check, procedures for assessing, correcting or amending any such record, criteria for fitness determinations, security of information obtained and penalties for failure to comply with this by-law.

### **7.82: Criminal History Check Authorization**

The Police Department shall, as authorized by Massachusetts General Laws Chapter 6, Section 172B½, conduct State and Federal Fingerprint Based Criminal History checks for individuals and entities, including the “responsible manager” listed on the license application, for the following licenses:

- Solicitors and Peddling or other Door-to-Door Salespeople, in accordance with the licensing requirements set forth in General Bylaw 7.00
- Pawn Dealers
- Hackney and Livery Drivers, and
- Ice Cream Truck

At the time of fingerprinting, the Police Department shall notify the individual being fingerprinted that the fingerprints will be used to check the individual's criminal history records and obtain the individual's consent. After the applicant completes a consent form, provides his/her fingerprints and the appropriate fee, the Police Department shall transmit the fingerprints it has obtained pursuant to this by-law to the Identification Section of the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Services (“DCJIS”), and/or the FBI or the successors of such agencies as may be necessary for the purpose of conducting fingerprint-based state and national criminal records background checks for the license applicants specified in this by-law.

The Town authorizes the Massachusetts State Police, the DCIS and the FBI and their successors, as may be applicable, to conduct fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this by-law. The Town authorizes the Police Department to receive and utilize State and FBI records in connection with such background checks, consistent with this by-law and its implementing regulations. In accordance with its implementing regulations, the Police Department shall communicate the results of fingerprint-based criminal record background checks to the appropriate governmental licensing authority within the Town.

### **7.83: Use of Criminal Record by Licensing Authorities**

Licensing authorities of the Town shall utilize the results of fingerprint-based criminal record background checks for the sole purpose of determining the suitability of the subjects of the checks in connection with the license applications specified in this by-law. A Town licensing authority may deny an application for a license on the basis of the results of a fingerprint-based criminal record background check if it determines that the results of the check render the subject unsuitable for the proposed licensed activity. The licensing authority shall consider all applicable laws, regulations and Town policies bearing on an applicant's suitability in making this determination.

Licensing authorities of the Town are hereby authorized to deny an application for any license specified herein and in the implementing regulations, including renewals and transfers of said licenses, from any person who is determined unfit for the license due to information obtained pursuant to this by-law. Factors that shall be considered in making a determination of fitness shall include, but not be limited to, whether the record subject has been convicted of, or is under pending indictment for a crime, that bears upon the subject's ability or fitness to serve in that capacity, including any felony or a misdemeanor that involved force or threat of force, possession of a controlled substance, or sex-related offense.

**7.84: Fees**

The fee charged by the Police Department for the purpose of conducting fingerprint-based criminal record background checks shall be one hundred dollars (\$100) for each fingerprinting and criminal history check. A portion of the fee, as specified in Massachusetts General Laws Chapter 6, Section 172B½, shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund, and the remainder of the fee may be retained by the Town for costs associated with the administration of the fingerprinting system.

**7.85: Effective Date**

This by-law shall take effect after compliance with Massachusetts General Laws Chapter 40, Section 32 have been met.

or take any other action relative thereto.

Sponsor: Chief of Police

**RECOMMENDATION OF THE FINANCE COMMITTEE:**

*That the Town take no action on this article. Voted 7 – 1.*

*Although the intent behind this bylaw appears to be beneficial, the way it is enacted via the bylaw leaves the Finance Committee with several concerns.*

*The language of the bylaw allows the licensing authorities of the Town to use the results of this background check in making its decision. Is it appropriate that members of the licensing authority see the legal history of an applicant? Instead, we believe the bylaw should only allow the licensing authorities to set the criteria for which a license can be granted or denied. Using that criteria, the Police Department could simply provide a Yes or No answer as whether the applicant meets the criteria set forth by the licensing authorities.*

*In the event an application is denied, this bylaw does not define an appeals process for the applicant. Further, the bylaw does not discuss the disposition of these records once they are obtained. Should the detailed history of the applicant be destroyed once the appeal process deadline expires, or should it be retained for some specified length of time?*

*The bylaw also fails to specify if it is applicable only the first time an applicant applies for a license or for each subsequent renewal as well.*

**RECOMMENDATION OF THE BOARD OF SELECTMEN:**

*That the Town vote to approve the article as written. Voted 5 – 0.*

*Summary – This article would allow the Town to conduct fingerprinting of applicants for the above-named licenses for the purpose of conducting a fingerprint based state and national criminal background check.*

**VOTE OF THE TOWN MEETING:** There was a substitute motion made by the Board of Selectmen as proposed by Police Chief Ford. The substitute motion read, “Move that Article 54 be approved as printed in the warrant and amended by the following changes to Section 7.82: Criminal History Check Authorization:

**7.82: Criminal History Check Authorization**

The Police Department shall, as authorized by Massachusetts General Laws Chapter 6, Section 172B½, conduct State and Federal Fingerprint Based Criminal History checks for individuals ~~and entities, including the “responsible manager”~~ listed on the license application, for the following licenses, including renewals and transfers thereof:

- Solicitors and Peddling or other Door-to-Door Salespeople, in accordance with the licensing requirements set forth in General Bylaw 7.00
- Pawn Dealers
- Hackney and Livery Drivers, and
- Ice Cream Truck

At the time of fingerprinting, the Police Department shall notify the individual being fingerprinted that the fingerprints will be used to check the individual's criminal history records and, prior to such fingerprinting, obtain the individual's consent. After the applicant completes a consent form, provides his/her fingerprints and the appropriate fee, the Police Department shall transmit the fingerprints it has obtained pursuant to this by-law to the Identification Section of the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Services (“DCJIS”), and/or the FBI or the successors of such agencies as may be necessary for the purpose of conducting fingerprint-based state and national criminal records background checks for the license applicants specified in this by-law.

The Town authorizes the Massachusetts State Police, the DCJIS and the FBI and their successors, as may be applicable, to conduct fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this by-law. The Town authorizes the Police Department to receive and utilize State and FBI records in connection with such background checks, consistent with this by-law and its implementing regulations.

In accordance with its implementing regulations as adopted pursuant to Section 7.81 of this bylaw, the Police Department shall communicate the results of fingerprint-based criminal record background checks only to the appropriate authorized governmental licensing authority within the Town, as necessary. The Town's regulations shall also provide that The State and FBI criminal history obtained pursuant to this by-law is confidential, will not be disseminated to unauthorized entities, shall be stored in a secure and confidential manner and shall be destroyed pursuant to DCJIS requirements.” And to insert the word “decision” into the previous section after the words, “licensing authority or making a licensing “decision” as a result of the .....

There was much discussion on this article which eventually prompted Randy Redetzke to make a motion to move the question. This motion was seconded and carried. The vote of the Town Meeting was to approve the article as amended by the substitute motion as declared by the Moderator.