

**TOWN OF SOMERSET, MA**  
**SPECIAL TOWN MEETING**  
**DECEMBER 10, 2012**  
*(Articles as voted)*

The Special Town meeting of the Town of Somerset was called to order at 7:06 p.m. on December 10, 2012, at the Somerset Berkley Regional High School Auditorium by the Moderator Lucia Casey. The Pledge of Allegiance was lead by the Moderator.

**ARTICLE 1:** To see if the Town will vote to amend its vote on Article 8A of the May 21, 2012, Annual Town Meeting for purposes of the General Budget for Fiscal Year 2013, the appropriation for which was originally voted as follows:

from Taxation: \$21,133,970.00;  
from the Stabilization Fund: \$600,000.00;  
from Undesignated Surplus: \$813,575.00; and,  
from the Municipal Waterways Improvement and Maintenance Fund: \$ 9,030.00;  
for a Total Appropriation of: \$22,556,575.00,

by transferring and appropriating additional sums of moneys from the Stabilization Fund and/or Undesignated Surplus and by reducing the amount of money to be raised from taxation by the equivalent amount.

The Advisory & Finance Committee unanimously recommends that the Town so vote.

**Motion made by Patrick O'Neil that the Town vote to amend its vote on Article 8A of the May 21, 2012, Annual Town Meeting, for the purposes of the General Budget, as follows:**

**by reducing the amount of money to be raised from taxation from \$21,133,970.00 to \$19,133,970.00, a decrease of \$2,000,000.00; and**

**by increasing the amount of money to be transferred from the Stabilization Fund from \$600,000.00 to \$2,600,000.00, an increase of \$ 2,000,000.00.**

**The motion was seconded by Arastou Mahjoory.**

**Discussion follows. After lengthy discussion there is a motion and a second on the floor to move the question. Motion carries by a unanimous vote of the body.**

**The Moderator notes to the voting body that this article must pass by a 2/3 vote.**

**The Moderator calls for a standing vote on Article 1 as written and recommended. Affirmative 156, Negative 0, Motion carries.**

**ARTICLE 2:** To see if the Town will vote pursuant to Massachusetts General Laws chapter 82, section 21, to abandon that portion of Grandview Avenue west of County Street, bounded and described as follows:

Starting at a point in the westerly line of County Street at the northeasterly corner of its intersection with the westerly portion of Grandview Avenue; thence westerly Two Hundred Feet (200'), more or less, along the northerly line of said Grandview Avenue to a point at the westerly terminus of Grandview Avenue; thence southerly Forty Feet (40'), more or less, for the width of the layout of said Grandview Avenue to another point at the westerly terminus of Grandview Avenue; thence easterly Two Hundred Feet (200'), more or less, along the southerly line of said Grandview Avenue; thence northerly Forty Feet (40'), more or less, along the westerly line of County Street to the point of beginning, as shown on a plan entitled "Town of Somerset, proposed layout of Grandview Avenue on the west side of County Street, Feb. 15, 1938", on file with the Somerset Town Clerk's Office.

The Advisory & Finance Committee unanimously recommends that the Town so vote.

**Motion made by Patrick O’Neil that the Town vote to discontinue as a public way that portion of Grandview Avenue as described in Article 2. Motion seconded by Arastou Mahjoory. Discussion by Mr. O’Neil. In the absence of further discussion, the Moderator takes the vote. The Moderator declares a vote in the affirmative, with one negative. Motion carries.**

**ARTICLE 3:** To see if the Town will vote to grant a permanent easement to Massachusetts Electric Company and Verizon New England, Inc., to construct, reconstruct, repair, maintain, operate and patrol, for the transmission of low and high voltage electric current and for the transmission of intelligence and telephone use, lines to consist of, but not limited to, four (4) poles, with wires and cables installed thereon, and all necessary foundations, anchors, guys, braces, fittings, equipment and appurtenances over, across, under, and upon the Town’s land in and near the South Elementary School on the northerly side of Read Street, on such terms and conditions as the Board of Selectmen and School Committee deem appropriate, said easement area to originate from Pole P36, which is located on the southerly side of Read Street, then proceed in a northeasterly direction crossing Read Street over, across and upon Town land to Poles P36-30, P36-31, and P36-32 and also to proceed in a northwesterly direction from Pole P36-30 to Pole 36-75, to become established by and upon the final installation thereof by the grantees, as approximately shown on a MECO sketch entitled “nationalgrid; 700 READ STREET, SOMERSET, MA; EASEMENT SKETCH; SCALE: NTS; DATE: 5/21/2012; DRAWN BY: VAHRAM D.; WR: 7312562”, on file with the Town Clerk’s Office. The easement rights to be granted are over, across and upon a certain parcel of land being more particularly identified as Lot 139 on Assessor’s Map B-7 and also to be shown as New Lot 344 on Assessor’s Map B-5, on file with the Somerset Board of Assessors Office.

The Advisory & Finance Committee unanimously recommends that the Town so vote.

**There is a motion and a second on the floor to waive the reading of Article 3. Voted unanimous in the affirmative.**

**Motion made by Patrick O’Neil that the Town vote to authorize the granting of the permanent easement and related rights described in Article 3 for the purposes described therein. Motion seconded by Arastou Mahjoory. Discussion by Patrick O’Neil. With the absence of further discussion, the Moderator takes the vote. Motion carries by unanimous vote as declared by the Moderator**

**ARTICLE 4:** To see if the Town will vote to amend the Town’s Consolidated Personnel By-law, Table I–Wage & Salary Groups, by deleting the position of “Board of Health/Conservation Agent” under Grade 7.

The Advisory & Finance Committee unanimously recommends that the Town so vote.

**Motion made by Arastou Mahjoory that the Town vote to amend Table I (Wage & Salary Groups) of the Consolidated Personnel By-law by making the changes set forth in Article 4. Motion seconded by Patrick O’Neil. Discussion by Mr. Mahjoory. With the absence of further discussion, the Moderator takes the vote. Motion carries by unanimous vote as declared by the Moderator.**

**ARTICLE 5:** To see if the Town will vote to amend the Town’s Consolidated Personnel By-law, Table I–Wage & Salary Groups, by inserting the position of “Assistant to the Coordinator–Council on Aging” under Grade 3 as a permanent part-time position (“PPT”).

The Advisory & Finance Committee unanimously recommends that the Town so vote.

**Motion made by Arastou Mahjoory that the Town vote to amend Table I (Wage & Salary Groups) of the Consolidated Personnel By-law by making the changes set forth in Article 5. Motion seconded by Patrick O’Neil. Discussion by Mr. Mahjoory. With the absence of further discussion, the Moderator takes the vote. Motion carries by unanimous vote as declared by the Moderator.**

**ARTICLE 6:** To see if the Town will vote to adopt the following “By-law Concerning Discharges to the Municipal Storm Drain System” as mandated by federal law and regulation:

**Section 1. Purpose**

Increased and contaminated storm water runoff is a major cause of: impairment of water quality and flow in lakes, ponds, streams, rivers, wetlands and groundwater; contamination of drinking water supplies; alteration or destruction of aquatic and wildlife habitat; and flooding.

Regulation of illicit connections and discharges to the municipal storm drain system is necessary for the protection of the Town of Somerset’s water bodies and groundwater, and to safeguard public health, safety, welfare and the environment.

The objectives of this by-law are:

1. to prevent pollutants from entering the Town of Somerset’s municipal separate storm sewer system (“MS4”);
2. to prohibit illicit connections and unauthorized discharges to the MS4;
3. to require the removal of all such illicit connections;
4. to comply with state and federal statutes and regulations relating to storm water discharges;
  
5. to establish the legal authority to ensure compliance with the provisions of this by-law through inspection, monitoring, and enforcement; and,
  
6. to establish the legal authority to prevent pollutants and allow connections to the Town’s MS4 through regulations adopted by the Planning Board.

**Section 2. Definitions**

For the purposes of this By-law, the following shall mean:

**AUTHORIZED ENFORCEMENT AGENCY:** The Town of Somerset Planning Board (“the Board”), its employees or agents designated to enforce this by-law.

**BEST MANAGEMENT PRACTICE (BMP):** An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of storm water runoff.

**CLEAN WATER ACT:** The Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.) as hereafter amended.

**DISCHARGE OF POLLUTANTS:** The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.

**GROUNDWATER:** Water beneath the surface of the ground.

**ILLICIT CONNECTION:** A surface or subsurface drain or conveyance, which allows an illicit discharge into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this by-law.

**ILLICIT DISCHARGE:** Direct or indirect discharge to the municipal storm drain system that is not composed entirely of storm water, except as exempted in Section 8. The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or a Surface Water Discharge Permit, or resulting from firefighting activities exempted pursuant to Section 8 of this by-law.

**IMPERVIOUS SURFACE:** Any material or structure on or above the ground that prevents

water infiltrating the underlying soil. Impervious surface includes without limitation roads, paved parking lots, sidewalks, and rooftops.

**MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM:** The system of conveyances designed or used for collecting or conveying Storm water, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Somerset.

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT:** A permit issued by United States Environmental Protection Agency or jointly with the Commonwealth that authorizes the discharge of pollutants to waters of the United States.

**NON-STORMWATER DISCHARGE:** Discharge to the municipal storm drain system not composed entirely of storm water.

**PERSON:** An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

**POLLUTANT:** Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into any sewage treatment works or waters of the Commonwealth. Pollutants shall include without limitation:

- (1) paints, varnishes, and solvents;
- (2) oil and other automotive fluids;
- (3) non-hazardous liquid and solid wastes and yard wastes;
- (4) refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
- (5) pesticides, herbicides, and fertilizers;
- (6) hazardous materials and wastes; sewage, fecal coliform and pathogens;
- (7) dissolved and particulate metals;
- (8) animal wastes;
- (9) rock, sand, salt, soils;
- (10) construction wastes and residues; and,
- (11) noxious or offensive matter of any kind.

**PROCESS WASTEWATER:** Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.

**RECHARGE:** The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

**STORMWATER:** Storm water runoff, snow melt runoff, and surface water runoff and drainage.

**SURFACE WATER DISCHARGE PERMIT.** A permit issued by the Department of Environmental Protection (DEP) pursuant to 314 C.M.R. 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.

**TOXIC OR HAZARDOUS MATERIAL or WASTE:** Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under M.G.L. chapter 21C and chapter 21E, and the regulations at 310 C.M.R. 30.000, et seq., and 310 C.M.R. 40.0000, et seq.

**WATERCOURSE:** A natural or man-made channel through which water flows or a stream of water, including a river, brook or underground stream.

**WATERS OF THE COMMONWEALTH:** All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

**WASTEWATER:** Any sanitary waste, sludge, or septic tank or cesspool overflow, and water that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

### **Section 3. Applicability**

This By-law shall apply to flows entering the municipally owned storm drainage system.

### **Section 4. Authority**

This bylaw is adopted under the authority granted by the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Procedures Act, and pursuant to the regulations of the federal Clean Water Act found at 40 C.F.R. 122.34.

### **Section 5. Responsibility for Administration**

The Board shall administer, implement and enforce this by-law. Any powers granted to or duties imposed upon the Board may be delegated in writing by the Board to employees or agents of the Board.

### **Section 6. Regulations**

The Board may promulgate rules and regulations to effectuate the purposes of this By-law. Failure by the Board to promulgate such rules and regulations shall not have the effect of suspending or invalidating this by-law.

### **Section 7. Prohibited Activities**

**Illicit Discharges.** No person shall dump, discharge, cause or allow to be discharged any pollutant or non-storm water discharge into the municipal separate storm sewer system (MS4), into a watercourse, or into the waters of the Commonwealth.

**Illicit Connections.** No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

**Obstruction of Municipal Storm Drain System.** No person shall obstruct or interfere with the normal flow of storm water into or out of the municipal storm drain system without prior written approval from the Board.

### **Section 8. Exemptions**

Discharge or flow resulting from firefighting activities.

The following non-storm water discharges or flows are exempt from the prohibition of non-storm waters provided that the source is not a significant contributor of a pollutant to the municipal storm drain system:

- (1) Waterline flushing;
- (2) Flow from potable water sources;
- (3) Springs;
- (4) Natural flow from riparian habitats and wetlands;
- (5) Diverted stream flow;
- (6) Rising groundwater;
- (7) Uncontaminated groundwater infiltration as defined in 40 C.F.R. 35.2005(20), or uncontaminated pumped groundwater;
- (8) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
- (9) Discharge from landscape irrigation or lawn watering;
- (10) Water from individual residential car washing;
- (11) Discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
- (12) Discharge from street sweeping;
- (13) Dye testing, provided verbal notification is given to the Board prior to the time of the test;
- (14) Non-storm water discharge permitted under a NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
- (15) Discharge for which advanced written approval is received from the Board as necessary to protect public health, safety, welfare or the environment.

#### **Section 9. Emergency Suspension of Storm Drainage System Access**

The Board may suspend municipal storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the Authorized Enforcement Agency may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

#### **Section 10. Notification of Spills**

Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to the municipal drainage system or waters of the

Commonwealth, the person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately

notify the municipal fire and police departments and the authorized Enforcement Agency. In the event of a release of non-hazardous material, the reporting person shall notify the Authorized Enforcement Agency no later than the next business day. The reporting person shall provide to the Authorized Enforcement Agency written confirmation of all telephone, facsimile or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

### **Section 11. Enforcement**

The Board or an authorized agent of the Board shall enforce this By-law and regulations, orders, violation notices, and enforcement orders hereunder, and may pursue all civil and criminal remedies for such violations. This includes costs borne by the Board which were directly associated with the investigation that led to the discovery of the illicit discharge.

**Civil Relief.** If a person violates the provisions of this By-law or of regulations, permits, notices, or orders issued hereunder, the Board may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

**Orders.** The Board or an authorized agent of the Board may issue a written order to enforce the provisions of this By-law or the regulations hereunder, which may include: (a) elimination of illicit connections or discharges to the MS4; (b) performance of monitoring, analyses, and reporting; (c) an order that unlawful discharges, practices, or operations shall cease and desist; and, (d) remediation of contamination in connection therewith.

If the enforcing person determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Somerset may, at its option, undertake such work, and expenses thereof shall be charged to the violator.

Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town of Somerset including administrative costs and costs associated with the initial investigation, which led to the discovery of the illicit discharge. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Board within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Board affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in M.G.L. chapter 59, section 57, after the thirty-first day at which the costs first become due.

Any property owner who violates any provision of this By-law, or of any regulation, decision, permit or order issued pursuant to this By-law shall be punished by a fine or civil penalty of not more than Two Hundred Dollars (\$200.00) . Each day or portion thereof during which a violation continues shall constitute a separate offense. If the property owner violates more than one provision of this By-law or any condition of an approval issued hereunder, each provision, or condition, so violated shall constitute a separate offense.

**Entry to Perform Duties Under this By-Law.** To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Board, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this by-law and regulations hereunder, and may make or cause to be made such

examinations, surveys or sampling as the Board deems reasonably necessary.

Appeals. The decisions or orders of the Board shall be final. Further relief shall be by appeal to a court of competent jurisdiction.

Remedies Not Exclusive. The remedies listed in this by-law are not exclusive of any other remedies available under any applicable federal, state or local law.

### **Section 12. Severability**

The provisions of this by-law are hereby declared to be severable. If any provision, paragraph, sentence, or clause of this by-law or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this by-law.

### **Section 13. Transitional Provisions**

Residential property owners shall have 30 days from the effective date of the by-law to comply with its provisions provided good cause is shown for the failure to comply with the by-law during that period.

The Advisory & Finance Committee unanimously recommends that the Town so vote.

**Motion made and seconded on the floor to waive the reading of Article 6. Motion carries by nearly unanimous vote with one Negative.**

**Motion made by Donald Setters that the Town vote to approve the “By-law Concerning Discharges to the Municipal Storm Drain System”, as set forth in Article 6. Motion seconded by Mr. Mahjoory. Discussion by Mr. Setters, and others on the floor.**

**A motion is made and seconded on the floor to amend Article 6 by eliminating the word “salt” in Section 9, (15) under definitions as a hazardous material. Discussion. Motion to move the question and a second on the floor. Vote taken by the Moderator on the motion to amend. Voted nearly unanimous in the negative, motion fails as declared by the Moderator.**

**Further discussion on the motion to accept Article 6 as written.**

**Motion made and seconded on the floor to move the question. Motion carries as declared by the Moderator by a nearly unanimous voice vote. The Moderator calls for a vote on Article 6 as written and recommended. Voted nearly unanimous in the affirmative. Motion carries as declared by the Moderator.**

ARTICLE 7: To see if the Town will vote pursuant to Massachusetts General Laws chapter 30B, section 15(g), to authorize the Somerset Trustees of the Public Library to dispose of tangible property no longer useful to the Library, including but not limited to books and audio and video recordings, at less than fair market value to the Friends of the Somerset Public Library, Inc., said organization having received a tax exemption from the United States by reason of its charitable nature.

The Advisory & Finance Committee unanimously recommends that the Town so vote.

**Motion made by Donald Setters that Town vote pursuant to Massachusetts General Laws chapter 30B, section 15(g), to authorize the Somerset Trustees of the Public Library to dispose of tangible property, as set forth in Article 7. Motion seconded by Mr. Mahjoory. Discussion by Mr. Setters. In the absence of further discussion, the Moderator takes the vote. Voted unanimous in the affirmative. Motion carries.**

ARTICLE 8: To see if the Town will vote to accept the provisions of Massachusetts General Laws chapter 64G, section 3A, to authorize the imposition of a local excise tax upon the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house, or motel located within the Town of Somerset by any operator of such a facility at a rate of six per cent (6%) of the total amount of rent for each such occupancy. No such excise shall be imposed

if the total amount of rent is less than Fifteen Dollars (\$15.00) per day or its equivalent or if the accommodation is exempt under the provisions of Massachusetts General Laws chapter 64G, section 2. Said tax will take effect on the first day of the calendar quarter following thirty (30) days after acceptance, or of such later calendar quarter as the Town may designate. The Advisory & Finance Committee recommends by majority vote that the Town so vote.

**Motion made by Arastou Mahjoory that the Town vote to accept the provisions of Massachusetts General Laws chapter 64G, section 3A, to authorize the imposition of a local excise tax, as set forth in Article 8. Discussion by Mr. Mahjoory and others on the floor. In the absence of further discussion, the Moderator takes the vote. The Moderator declares that the motion carries by majority vote. There is a challenge of the declaration by the Moderator on the floor by 7 voting members. The challenge carries and a standing vote is taken by the Moderator. After a standing vote, the Moderator declares that the motion carries with 95 in the affirmative, 22 in the negative.**

**ARTICLE 9:** To see if the Town will vote pursuant to Massachusetts General Laws chapter 44B, section 16 (a), to amend its prior votes under Article 43 of the May 21, 2012, Annual Town Meeting and Question 4 at the November 6, 2012, State Election accepting chapter 44B of the General Laws, otherwise known as the Community Preservation Act, so as to accept an additional exemption under section 3(e) of said chapter 44B for \$100,000 of the value of each taxable parcel of class three, commercial property, and class four, industrial, property as defined in section 2A of M.G.L. chapter 59.

Moderator Lucia Casey appoints Mr. Arthur Frank as the Assistant Moderator for this article due to a conflict.

**Matthew Aspden requests a point of order following the reading of this Article by the Moderator. The Moderator allows point of order. Mr. Aspden states that “Article 9 is seeking a Town meeting vote, allegedly pursuant to MGL ch. 44b sec 16(a), to approve an amendment to the COA for a commercial exemption. MGL ch. 44b Sec 16(a) provides a pertinent part as follows: ‘At any time after imposition of the surcharge, the legislative body, (in this case town meeting), may approve and the voters may accept an amendment to the amount and computation of the surcharge, or to the amount of the exemption or exemptions, in the same manner and within the limitations set forth in this chapter...’**

**Section 4 of chapter 44 B subsection (a) reads as follows ‘upon acceptance of section 3 to 7 (CPA), and upon the assessor’s warrant to the tax collector, the accepted surcharge shall be imposed.’ As of this date, the assessor’s office has yet to issue a warrant to the tax collector and the surcharge is yet to be imposed. The obvious reason for this provision is that the voters should see the surcharge prior to amendment.**

**In light of the above, any vote on an amendment of the COA prior to the imposition of the surcharge is in violation of the statute, illegal and voidable. I will be requesting that the moderator declare Article 9 out of order and that no vote be taken.**

**The Assistant Moderator, Mr. Frank, states that after consultation with Town Counsel he determines that Article 9 is out of order.**

**Mr. Setters makes a motion to appeal this ruling, there is a second on the floor. Discussion by Mr. Setters and others on the floor. Mr. Setters asks that the body to appeal the Moderators decision and act on this article tonight, place the referendum on the next election warrant and await a ruling from DOR on its legality. Mr. Aspen further notes that adoption of an amendment must be done “after the imposition of the by law”. Town Counsel is asked to comment and states that he agrees that it is premature. Following research, this has never been done in the Commonwealth and DOR has no formal opinion. The attorney Mr. Brown spoke to at DOR agreed that this action would be premature. Further discussion.**

**There is a motion on the floor and a second to move the question. Vote taken by the Moderator to move the question. Motion carries by a nearly unanimous vote in the affirmative.**

**The Moderator takes a vote on the motion to appeal (The Moderator explains to the body that the motion before them is “shall the decision of the Moderator stand as the judgment of the Town meeting. A “yes” vote will uphold his decision, a “no” vote will overturn his decision. The Moderator declares that the appeal is overruled and the decision of the Moderator is sustained and Article 9 is determined to be out of order by the voting body.**

**The Moderator entertains a motion to dissolve the Special Town Meeting of December 10, 2012. There is a motion and a second on the floor. Voted unanimously to dissolve the Town Meeting at 8:51 p.m.**

**Attendance: 171**

**A true copy attest:**

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**Dolores Berge, Town Clerk**