



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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March 14, 2023

James Goudie, Town Clerk
Town of Wenham
28 William Fairfield Drive
Wenham, MA 01984

**Re: Wenham Special Town Meeting of October 1, 2022 -- Case # 10745
Warrant Article # 4 (General)**

Dear Mr. Goudie:

Article 4 - We approve Article 4 from the October 1, 2022 Wenham Special Town Meeting.¹

Note: Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

Nicole B. Caprioli

By: Nicole B. Caprioli
Assistant Attorney General
Municipal Law Unit
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Worcester, MA 01608
(508) 792-7600 ext. 4418

cc: Town Counsel Lauren F. Goldberg

¹ On January 23, 2023, by agreement with Town Counsel under G.L. c. 40, § 32, we extended the deadline for our review of Article 4 for an additional 30-days until February 23, 2023. On February 22, 2023, we placed Article 4 on "hold" until such time as we received from the Town all of the documents necessary to conduct our review pursuant to G.L. c. 40, § 32. On March 6, 2023, we received a completed by-law submission from the Town and assigned the submission a new 90-day deadline (June 4, 2023).

**RECORD OF ACTION AND CERTIFICATION OF
SPECIAL TOWN MEETING
SATURDAY, OCTOBER 1, 2022
BUKER ELEMENTARY SCHOOL**

On the afternoon of Saturday, October 1, 2022, Roger Smerage Town Moderator started the Special Town Meeting by thanking the residents and department heads for coming and organizing the meeting. Mr. Smerage informed those attending that the meeting was being recorded and would be broadcast live on the local cable channel. Mr. Smerage reminded those attending the rules of town meeting: voter cards would be used, the floor tellers were standing by should a hand count be required, and all discourse on articles would be kept respectful and under three minutes in duration.

Mr. Smerage introduced those in attendance: members of the Select Board Dianne Bucco and Gary Cheeseman, the Finance and Advisory Committee Jim Purdy, Susan Mchlin, Scott Schonoberger, Diedre Perotti, members of the School Committee Dana Allara, Jennifer Carr, Julia Campell, and Amy Kunberger, Superintendent Eric Tracy, Town Counsel KP Law, Town Administrator Steve Poulos, and Executive Assistant to the Town Administrator Michelle McGovern. A thank you was given to Board of Registrars Pat Purdy Hilly Ebling, and Christine Burns, as well as Dorothy Goudie, Chris Petrou, Judith Brubrinki, and Stevie Quinn for their assistance as volunteers.

A moment of silence was held for the recent victims of Hurricane Ian and the victims of the war in Ukraine.

Senator Bruce Tarr and Representative Jamie Belsito were recognized by the Moderator and shared remarks on the goings-on on Beacon Hill. Senator Tarr spoke on the current informal session, an economic development bill in a Conference Committee, the continued robust tax returns, and concluded with an update on legislation relating to Wenham's transition from a three to five person Select Board. Representative Belsito shared information about funding received for a new GIS system, monies allocated to the improvement of West Wenham Park, and thanked everyone for coming out to Special Town Meeting.

The Special Town Meeting was called to order at 1:29 PM when Interim Town Clerk Patt Brown informed the Moderator a quorum of 120 voters was achieved.

Before the Meeting could be underway a Temporary Clerk was appointed after an uncontested election of the meeting itself. James Goudie was declared Temporary Clerk and sworn in by Town Moderator Roger Smerage.

Mr. Smerage gave a brief outline of the Articles before the Special Town Meeting and clarified that, contrary to the information printed in the Warrant Book, the Articles required only a simple majority to pass not a two-thirds majority.

Attest: _____

James Goudie, Temporary Town Clerk

**RECORD OF ACTION AND CERTIFICATION OF
SPECIAL TOWN MEETING
SATURDAY, OCTOBER 1, 2022
BUKER ELEMENTARY SCHOOL**

**Article 4: Clarification of the Term Limits on Certain CPC Members by
Amending Paragraph 2 of the Community Preservation By-law**

To see if the Town will vote to amend the General By-laws, subsection 5-34 Community Preservation Committee, by inserting the bold italic language and deleting the strike through language, as follows: “(2) ~~As of 2016,~~ **Members of multiple-member bodies shall be designated by such body for a three-year term or such shorter term for which the member serves on such **multiple-member** body, and, in the case of at-large members appointed by the Select **Board** ~~men~~, for three-year terms. Any **at large** member appointed for two full three-year terms shall be ineligible for reappointment until after the next succeeding Annual Town Meeting. Any vacancy on the Community Preservation Committee shall be filled for the unexpired term by the entity responsible for the original appointment.”**

Recommendation of the Select Board: 2-1-0

Vote Needed: Simple Majority

Motion: Gary Cheeseman, Chair of the Select Board moved to approve Article 4 as set forth in the Warrant. The motion was seconded by the audience.

Action: Mr. Waddell approached the microphone.

Motion: Mr. Waddell motioned to amend the motion to read as follows: Members of multiple-member bodies shall be designated by such body for up to a three-year term on the Community Preservation Committee. Such members shall not be designated for a term longer than the term being served on the designating committee. At-large members appointed by the Select Board shall be appointed for three-year terms. All committee members, not elected to a represented body shall be ineligible for reappointment after serving six consecutive years. No term shall extend beyond six consecutive years. The six-year term limit will reset after a citizen has been off the Community Preservation Committee for one full year.

The motion was seconded by the audience.

Action: Mrs. Bailey approached the microphone.

Motion: Mrs. Bailey moved to amend the last three sentences of the amendment put forth by Mr. Waddell to read as follows: Any at-large member after serving 10 consecutive years shall be ineligible for reappointment until after the succeeding Annual Town Meeting. Any vacancy on the Community Preservation Committee shall be filled for the unexpired term or the resigning member.

The motion was seconded by Mr. Waddell himself.

**RECORD OF ACTION AND CERTIFICATION OF
SPECIAL TOWN MEETING
SATURDAY, OCTOBER 1, 2022
BUKER ELEMENTARY SCHOOL**

**Article 4: Clarification of the Term Limits on Certain CPC Members by
Amending Paragraph 2 of the Community Preservation By-law (Cont'd)**

Action: Town Counsel informed the Meeting that by-laws such as this limiting the term of a representative appointed by another board or committee could not be approved by the Attorney General due to Chapter 44B section 5 of Mass General Law.

Leo Maestranzi approached the mic. He inquired about what would happen if a Committee unanimously moved to appoint a member in conflict with this proposed by-law, and shared his disapproval of the proposed amendments.

Harriet Davis spoke on the difficulty in finding new members for the CPC and shared some of her own experiences as a former member and chair. She also shared disapproval of the proposed amendments, instead requesting that the meeting allow Committees and Boards appoint as Mass General Law has identified.

Gary Cheeseman, speaking as a citizen and not as Chair of the Select Board, shared his disapproval of the proposed amendments.

Seeing no further comments, the Moderator moved to vote on the amendment to Mr. Waddell's proposed amendment as put forward by Mrs. Bailey. The motion passed by majority at 2:46 PM after a preliminary vote by cards and a second clarifying vote wherein citizens stood with their cards raised.

The Moderator then moved to vote on the amendment to Article 4 as proposed by Mr. Waddell and amended by Mrs. Bailey. The motion to amend Article 4 as amended passed by majority at 2:47 PM.

Article 4 as Amended: Members of multiple-member bodies shall be designated by such body for up to a three-year term on the Community Preservation Committee. Such members shall not be designated for a term longer than the term being served on the designating committee. At-large members appointed by the Select Board shall be appointed for three-year terms. Any at-large member after serving 10 consecutive years shall be ineligible for reappointment until after the succeeding Annual Town Meeting. Any vacancy on the Community Preservation Committee shall be filled for the unexpired term or the resigning member.

**RECORD OF ACTION AND CERTIFICATION OF
SPECIAL TOWN MEETING
SATURDAY, OCTOBER 1, 2022
BUKER ELEMENTARY SCHOOL**

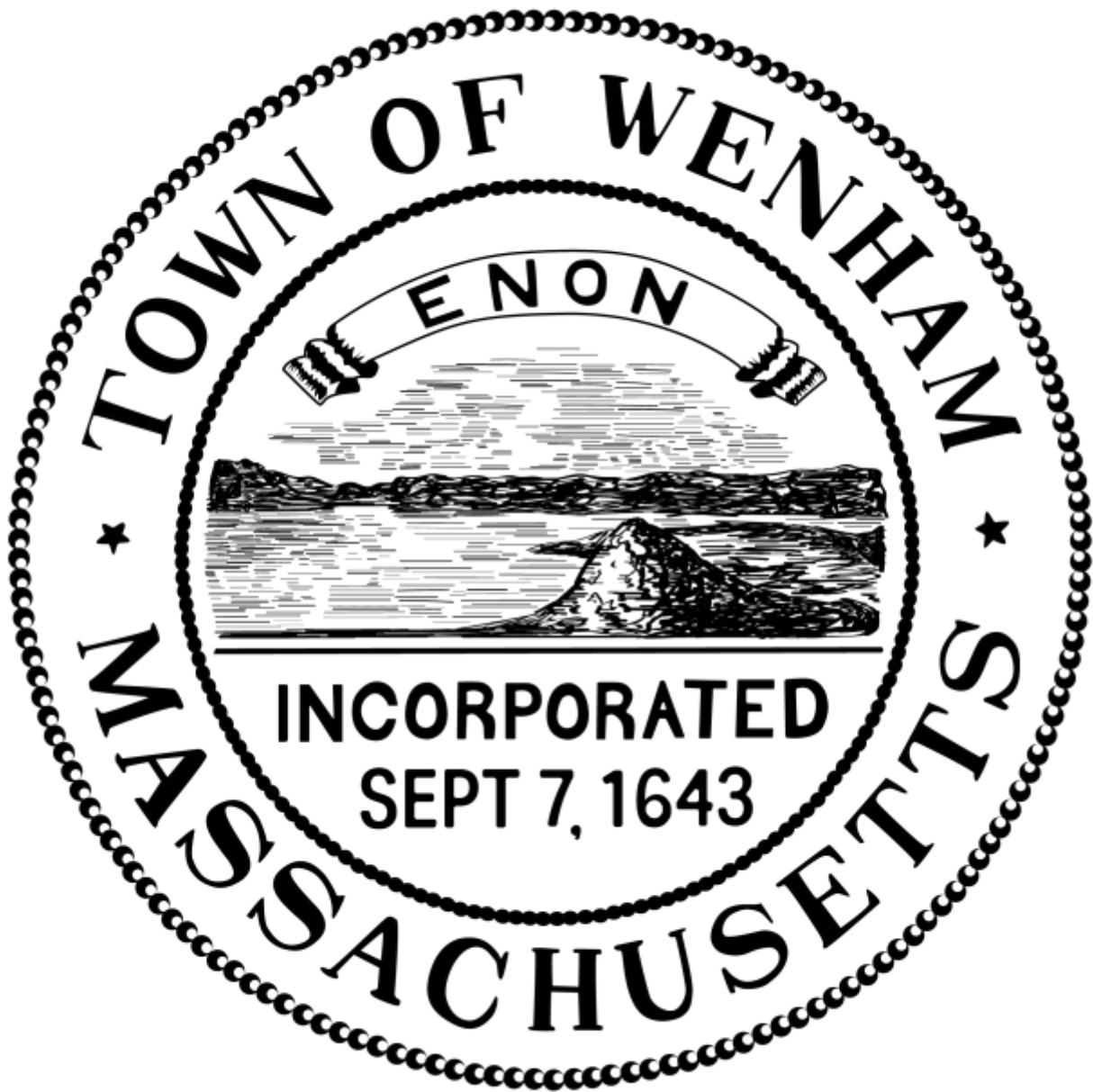
**Article 4: Clarification of the Term Limits on Certain CPC Members by
Amending Paragraph 2 of the Community Preservation By-law (Cont'd)**

Action: Andrew Ting approached the microphone and asked what would happen if the AG struck down Article 4 as could be passed by Town Meeting. Town Counsel informed the Meeting that the proposed by-law would not take effect until after being approved by the AG, thus if rejected the Town would carry on in accordance with the current un-edited by-law.

Seeing no further comments, the Moderator moved to vote on Article 4 as amended. The vote passed by majority at 2:48 PM.

Attest: _____

James Goudie, Temporary Town Clerk



TOWN OF WENHAM

By-Laws

2019

By-Laws of the Town of Wenham

The invalidity of any portion or provision of this bylaw shall not invalidate any other portion or provision thereof.

XXII. COMMUNITY PRESERVATION ACT/COMMUNITY PRESERVATION COMMISSION

Chapter 1 Establishment

1. There is hereby established a Community Preservation Committee consisting of nine voting members pursuant to Massachusetts General Laws Chapter 44B. The Committee shall consist of the following members:
 - One member of the Historic District Commission as designated by the Commission
 - One member of the Housing Authority as designated by the Authority
 - One member of the Planning Board as designated by the Board
 - One member of the Recreation Commission as designated by the Commission
 - One member of the Conservation Commission as designated by the Commission
 - Four at-large members to be designated by the Board of Selectmen
2. Beginning with appointments made on or after 2016, upon the expiration of any representative member's term, that member's successor shall be appointed by the applicable commission, authority, or board for a three-year term or such shorter term for which they serve on the commission, authority, or board, which will begin on July 1 of each respective year and, in the case of at-large members appointed by the Selectmen, in order to establish a three year staggered change in at-large members, two members shall be appointed for two-year terms expiring in 2018, and two members shall be appointed for three-year terms expiring in 2019. Thereafter, all appointments shall be for three-year terms. Any member appointed for two full three-year terms shall be ineligible for reappointment until after the next succeeding annual town meeting. Any vacancy on the Community Preservation Committee shall be filled by the commission, authority or board that designated the member who creates the vacancy by designating another member in accordance with Section (1) above for the unexpired term.
(Amended at the Annual Town Meeting 4/2/2016 and accepted by the Attorney General 7/12/2016) Effective 7/19/2016 when posted
3. Should any commission, authority or board designating a member for the Community Preservation Committee cease to exist for whatever reason the Board of Selectmen will determine the appropriate alternative designating commission, authority or board.

Chapter 2. Duties

1. The Community Preservation Committee shall study the needs, possibilities and resources of the town regarding community preservation. The committee shall consult with town boards and others including, but not limited to, the Historical Commission, the Housing Authority, the Planning Board, the Conservation Commission, and the Recreation Commission in conducting such studies. As part of its studies the Committee

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shall hold one or more public informational hearings on the needs, possibilities and resources of the town regarding community preservation possibilities and resources, notice of which shall be posted publicly, including on the Town's web page, and published for each of two weeks preceding a hearing in a newspaper of general circulation in the town. The Committee will file an annual report on its activities to the Town Clerk.

2. The Community Preservation Committee shall make recommendations to the Town Meeting for the acquisition, creation and preservation of open space; for the acquisition, rehabilitation, restoration and preservation of historic resources; for the acquisition, creation and preservation of land for recreational use; for the creation, preservation and support of community housing; and for the rehabilitation or restoration of such open space, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the Community Preservation Committee shall recommend, wherever possible, the reuse of existing buildings, or construction of new buildings on previously developed sites.

3. The Community Preservation Committee may include in its recommendations to the Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation, but for which sufficient funds are not then available in the Community Preservation Fund to accomplish that specific purpose, or to set aside for later spending funds for general purposes that are consistent with community preservation.

Chapter 3. Requirements for a quorum and cost estimates

The Community Preservation Committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the Community Preservation Committee shall constitute a quorum. The Community Preservation Committee shall approve its actions by majority vote. Meetings will be held in accordance with the open meeting law. Recommendations to the Town Meeting shall include their anticipated costs.

Chapter 4. Amendments

The Community Preservation Committee shall, from time to time, review the administration of this By-law, making recommendations, as needed, for changes in the By-law and in administrative practice to improve the operations of the Community Preservation Committee. The first review shall be completed at least by November 1, 2008 and subsequent reviews shall be completed in no more than five-year intervals. This Bylaw may be amended from time to time by a majority vote of the Town Meeting, provided that the amendments would not be in conflict with Chapter 44B of the Massachusetts General Laws.

Chapter 5. Severability

In case any section, paragraph or part of this By-law be for any reason declared invalid or unconstitutional by any court of last resort, every other section, paragraph or part shall continue in full force and effect

Chapter 6. Effective Date

This vote shall take effect and this Bylaw shall be submitted to the Attorney-General of the Commonwealth only upon certification that a majority of voters have approved a ballot question accepting sections 3 to 7, inclusive, of Massachusetts General Laws Chapter 44B. Upon approval of this Bylaw by the

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Attorney General of the Commonwealth, the Board of Selectmen shall request the Historic District Commission, the Housing Authority, the Planning Board, the Conservation Commission, and the Recreation Commission to designate a member to serve on the Community Preservation Committee. The Board of Selectmen will designate four at-large members of the Community Preservation Committee.

XXIII. ANIMAL CONTROL BYLAW

A. Administration

Section 1: The Board of Selectmen shall annually appoint an Animal Control Officer who shall be responsible for the enforcement of this bylaw and the General Laws relating to the regulation of animals.

Section 2: For purposes of this bylaw and Massachusetts General Laws, Chapter 140, section 157, the Board of Selectmen shall be the Hearing Authority.

B. Animal Control

Section 1: The provisions of M.G.L. c.140 applicable to animal licensing and tagging are hereby incorporated herein.

Section 2: The fee to license an intact male or female dog will be \$15.00. The fee to license a spayed female or neutered male dog will be \$10.00. Personal kennels for four dogs will be \$50.00, five to ten dogs \$100.00, and more than ten dogs \$150.00. The fee to license a commercial kennel will be \$200.00, provided that no commercial kennel license shall be issued or renewed until the Animal Control Officer has inspected and approved the premises. No fee is imposed for domestic charitable corporation kennel licenses operated exclusively to protect animals from cruelty, neglect, abuse, or for relief from suffering.

Section 3: In addition to the license fees required by Section 1, there shall be assessed a late charge of twenty-five dollars (\$25.00) with respect to any dog that is not licensed before January 31st of each year.

Section 4: No dog collected under the provisions of this Bylaw, or the provisions of Massachusetts General Laws, Chapter 140, as amended, shall be released unless it has been licensed as required by this Chapter.

Section 5: The owner or keeper of a dog found in violation of this Bylaw or the provisions of Massachusetts General Laws, Chapter 140, as amended, which has been impounded, shall pay fees equal to the expenses incurred by the Town for the collection, initial handling, and daily care (if applicable) of such dogs. These fees shall be established by the Board of Selectmen, in accordance with Massachusetts General Laws, Chapter 140, as amended.

Section 6: No dog may be allowed to run free in public parks, schoolyards, recreation areas, or cemeteries.

Section 7: Any person may make a written complaint to the selectmen that any dog owned or kept within the Town is a Nuisance Dog or a Dangerous Dog, as those terms are defined in M.G.L. Chapter 140, Section 157.

ARTICLE TEN:

Community Preservation Act-Community Preservation Comm.

To See if the town will vote to amend the Wenham Bylaws by adopting the following new Section XXI to be entitled "Community Preservation Committee," and to read as follows:

Section XXI. Community Preservation Committee

Chapter 1. Establishment

- (1) There is hereby established a Community Preservation Committee consisting of nine voting members pursuant to Massachusetts General Laws Chapter 44B. The Committee shall consist of the following members:
 - One member of the Historic District Commission as designated by the Commission
 - One member of the Housing Authority as designated by the Authority
 - One member of the Planning Board as designated by the Board
 - One member of the Recreation Commission as designated by the Commission
 - One member of the Conservation Commission as designated by the Commission
 - Four at-large members to be designated by the Board of Selectmen
- (2) The term for the first-appointed Community Preservation Committee will begin on January 1, 2006, ending on May 31, 2008. Subsequent terms will begin on June 1 of each year and will be for two years. Any vacancy on the Community Preservation Committee shall be filled by the commission, authority or board that designated the member who creates the vacancy by designating another member in accordance with Section (1) above for the unexpired term.
- (3) Should any commission, authority or board designating a member for the Community Preservation Committee cease to exist for whatever reason the Board of Selectmen will determine the appropriate alternative designating commission, authority or board.

Chapter 2. Duties

- (1) The Community Preservation Committee shall study the needs, possibilities and resources of the town regarding community preservation. The committee shall consult with town boards and others including, but not limited to, the Historical Commission, the Housing Authority, the Planning Board, the Conservation Commission, and the Recreation Commission in conducting such studies. As part of its studies the Committee shall hold one or more public informational hearings on the needs, possibilities and resources of the town regarding community preservation possibilities and resources, notice of which shall be posted publicly, including on the Town's web page, and published for each of two weeks preceding a hearing in a newspaper of general circulation in the town. The Committee will file an annual report on its activities to the Town Clerk.
- (2) The Community Preservation Committee shall make recommendations to the Town Meeting for the acquisition, creation and preservation of open space; for the acquisition, rehabilitation, restoration and preservation of historic resources; for the acquisition, creation and preservation of land for recreational use; for the creation, preservation and support of community housing; and for the rehabilitation or restoration of such open space, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the Community Preservation Committee shall recommend, wherever possible, the reuse of existing buildings, or construction of new buildings on previously developed sites.

- (3) The Community Preservation Committee may include in its recommendations to the Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation, but for which sufficient funds are not then available in the Community Preservation Fund to accomplish that specific purpose, or to set aside for later spending funds for general purposes that are consistent with community preservation.

Chapter 3. Requirements for a quorum and cost estimates

The Community Preservation Committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the Community Preservation Committee shall constitute a quorum. The Community Preservation Committee shall approve its actions by majority vote. Meetings will be held in accordance with the open meeting law. Recommendations to the Town Meeting shall include their anticipated costs.

Chapter 4. Amendments

The Community Preservation Committee shall, from time to time, review the administration of this By-law, making recommendations, as needed, for changes in the By-law and in administrative practice to improve the operations of the Community Preservation Committee. The first review shall be completed at least by November 1, 2008 and subsequent reviews shall be completed in no more than five-year intervals. This Bylaw may be amended from time to time by a majority vote of the Town Meeting, provided that the amendments would not be in conflict with Chapter 44B of the Massachusetts General Laws.

Chapter 5. Severability

In case any section, paragraph or part of this By-law be for any reason declared invalid or unconstitutional by any court of last resort, every other section, paragraph or part shall continue in full force and effect

Chapter 6. Effective Date

This vote shall take effect and this Bylaw shall be submitted to the Attorney-General of the Commonwealth only upon certification that a majority of voters have approved a ballot question accepting sections 3 to 7, inclusive, of Massachusetts General Laws Chapter 44B. Upon approval of this Bylaw by the Attorney General of the Commonwealth, the Board of Selectmen shall request the Historic District Commission, the Housing Authority, the Planning Board, the Conservation Commission, and the Recreation Commission to designate a member to serve on the Community Preservation Committee. The Board of Selectmen will designate four at-large members of the Community Preservation Committee.

Or take any other action relative thereto.

MOTION THE BOARD OF SELECTMEN MOVES THAT THE TOWN VOTE TO AMEND THE WENHAM BYLAWS BY ADOPTING SECTION XXI TO BE ENTITLED "COMMUNITY PRESERVATION COMMITTEE," WHICH INCLUDES CHAPTERS 1 THROUGH 6 OUTLINING THE ESTABLISHMENT, DUTIES, REQUIREMENTS FOR A QUORUM AND COST ESTIMATES, AMENDMENTS, SEVERABILITY AND EFFECTIVE DATE AND ALL SECTIONS RELATIVE THERETO.

MOVED AND SECONDED BY THOMAS TANOUS, SELECTMAN

SIMPLE MAJORITY REQUIRED

TOTAL REGISTERED VOTERS: 2557

QUORUM: 5% OF 2557 = 128

PRESENT: 222

VOTER CARDS

NO TELLERS

MOTION DECLARED COMFORTABLY PASSED

ATTEST:

Frances Harte Young
Frances Harte Young, Wenham Town Clerk

