



TOWN COUNCIL MEETING
November 2, 2006

A quorum being duly present, Town Council President, Henry Farnham, called the meeting of the Barnstable Town Council to order at 7:00 pm, on November 2, 2006 at the Barnstable Town Hall, 367 Main Street, Hyannis, MA.

PRESENT: Richard Barry, Gary Brown, Ann Canedy, Frederick Chirigotis, James Crocker, Jr. (7:50 p.m.), Henry Farnham, Janet Joakim, J. Gregory Milne, James Munafò, Jr., Tom Rugo and Harold Tobey. **ABSENT:** Janice Barton, Leah Curtis

President Farnham led the Council in the Pledge of Allegiance and a moment of silence.

- **R. E. TAX EXEMPTIONS WORKSHOP** – Postponed – Rescheduled for November 16, 2006. Instead a presentation on the Wastewater Facilities Plan was brought to the council by DPW Director, Mark Ells.

Attached hereto is a copy of the power point presentation and the draft Executive summary of the Wastewater Facilities Planning Project marked "A".

The draft plan, impact report and project change was submitted to MEPA/CCA on October 16, 2006. The reports were filed, as required, in the Environmental Monitor on October 25, 2006. A joint hearing with MEPA/CCA and the town will be held on Nov. 14, 2006 at 7:00 p.m. at Town Hall. A decision is to be made by the EOEA Secretary and is due by Dec. 1, 2006.

Currently the sewerage area is basically in Hyannis with a small area extending into Barnstable. There are about 3300 residential and a little over 1,000 commercial customers. This summer (with a high groundwater condition) they found that the models were conservative in the simulation of effluent recharge. They are now able to submit the draft WWFP/EIR/DRI with an adaptive management approach.

Councilor Milne asked about the use of the McManus property. Ells said they will evaluate the property, but sand beds would probably be used, it is yet to be determined. Ells said we may move from 2.5 to 3.5 or 3.7 mgd. How much additional sewerage will be coming forth? Ells said hopefully it will expand to where we need to go and have identified, but we need the customers. They hope to protect the current rate payers.

Councilor Canedy asked about Barnstable areas. Ells said that nutrient management was recognized as a project that was not being evaluated. There is no downside of this. We have the best treatment. Those areas will be deferred to the future. Ells said there are other areas and ways that they may consider to try to maximize our use. There are other sites they are looking at.

Councilor Tobey said we are very fortunate to have Mr. Ells involved in this. This has moved well under his tutelage and we are glad to have you. .

President Farnham reminded all that the tax exemption workshop, along with items 2007-042, 2007-043 and 2007-044, with their public hearings, will be postponed to the 16th and then voted on Dec. 7th.

PUBLIC COMMENT:

Alan Burt asked what can you do for housing. He suggested holding a workshop on the housing crisis. Is there a way for CPA funds to supplement rentals for those who need it? He was concerned about the criticism toward Chief Finnegan. He gave an update on the Overnights program. (See B attached).

Gilbert Brinckerhoff from the Unitarian Church in Barnstable asked for support for the church repairs.

Carol Horgan of the Barnstable Elderly Disabled Taxation Committee said the committee met and wanted to explain some of the problems with residential exemption. We have given about \$5900 to help qualified people, who really needed help with their taxes. She said they received less money this year. The committee felt that many did not donate because of the increase on the 2nd home owners, as well as the rising cost of insurance. When you think about reclassifications, there are a lot of unintended problems from the residential exemption.

Lou Gonzaga noted that many of the same problems that existed in 1940 are still a problem today. We need to get jobs for the homeless. Barnstable County should give more support for the homeless and their housing; the town of Barnstable should not have the bulk of the burden. The county gets a large amount of money from grants.

John Alden suggested individuals sign the charter review petition that is going to be at the elections on Tuesday. He was thankful for the help in the Fresh Holes Road area.

Peter Doiron told people to vote – use it or lose it. He spoke about the 3 minute rule and how politicians can speak longer than others. He commended Mr. Ells. He noted that harsh words between the councilors were passed at the last meeting; noting “squid” and some of its synonyms.

John Julius alleged some misrepresentation of our affordable housing count. He stated there are 1,525 affordable units out of 15,000 dwellings; therefore, we should have achieved our 10%. He asked the council and manager to contact Mr. Bill Reault in Boston. There is no crisis on affordable housing. You have to link the housing with jobs. It is time for a better government. Please sign the charter petition.

Frank Paparo said the sewer systems should have been installed over 30 years ago. You should do the whole town. He felt Ms. Joakim should have identified herself when she participated in an advertisement for Senator O’Leary. Get railroads down here.

Nancy Clark, the chairperson of the Historical Commission noted that the commission recommended that the Community Preservation funds be used to support the repairs to the Unitarian Church. She also said that they recommended a restriction on the property in perpetuity.

Upon motion duly made and seconded it was voted to close the public comment at 7:58 p.m.

VOTE: 11 Yes

COUNCIL AND TOWN MANAGER RESPONSE TO PUBLIC COMMENT

Councilor Munafo reminded the public that the No Place for Hate Committee is not a council committee; it is private. He appreciated Mr. Julius's information.

Councilor Milne requested that the town follow up on the counts that Mr. Julius presented. He also wanted to know if homes, such as seasonal homes are counted. He also thanked Mr. Paparo for being willing to pay \$10,000 to get sewerage on his street.

President Farnham said it would be helpful to get accurate affordable housing counts. He asked Ruth Weil, the Director of Growth Management if he could get a count on the aggregate stock. She said that she will respond in a couple of weeks.

President Farnham also stated that Ms. Rohrbach represented Senator O'Leary and our legislators and their representatives have historically been allowed to speak without a time limitation, which is why she was allowed to speak longer.

REPORTS FROM TOWN COUNCIL, BOARDS, AND COMMITTEES

Councilor Tobey said that there was quite a bit of activity on Fresh Holes and Hiram Road, when DPW and the police were present to help clean up the neighborhood. We are working in the right direction.

Councilor Brown said Sgt. Sweeney led such a drive a number of years ago on General Patton Drive and it has stayed basically in a good way. He encouraged the Fresh Holes Road residents to keep up their neighborhood now.

ACT ON MINUTES

Upon motion duly made and seconded it was voted to approve the minutes of October 5, 2006 with the following corrections: (See "C" attached).

VOTE: 11 as amended

Upon motion duly made and seconded it was voted to approve the minutes of October 19, 2006. (Councilor Canedy noted that John Grebe, from Yarmouthport was the name of the individual who spoke in public comment.)

VOTE: 11 yes

ORDERS OF THE DAY

OLD BUSINESS

Upon motion duly made and seconded, it was voted to take 2007-039 and 2007-040 out of order.

VOTE: 11 yes

2007-039 - RESOLVE REGARDING CONFLICT OF INTEREST DISCLOSURE BY ROBERT O'BRIEN, BUDGET ANALYST FOR THE TOWN OF BARNSTABLE INTRO.: 11/02/06

Upon motion duly made and seconded it was:

RESOLVED: that the interest of Robert O'Brien, Budget Analyst for the Town is hereby found to be not likely to interfere with the objective performance of his Personnel Advisory Board duties in the best interest of the Town, and is hereby exempted.
VOTE: 11 Yes

2007-040 - RESOLVE REGARDING CONFLICT OF INTEREST DISCLOSURE BY SHEILA GEILER AS A MEMBER OF THE TEMPORARY CLERICAL POOL FOR THE TOWN OF BARNSTABLE INTRO.: 11/02/06

Upon motion duly made and seconded it was:
RESOLVED: that the interest of Sheila Geiler as a member of the temporary clerical pool for the Town is hereby found to be not likely to interfere with the objective performance of her Zoning Board of Appeals duties in the best interest of the Town, and is hereby exempted.
VOTE: 11 Yes

2007-017 - APPOINTMENTS INTRO.: 09/21/06; 10/05/06; 11/02/06

Upon motion duly made and seconded, it was voted:
That the Barnstable Town Council appoints the following individuals to a multiple member board/committee/commission:

PERSONNEL ADVISORY BOARD REAPPOINTMENT:
Robert O'Brien, 41 Deacon Court, Barnstable, MA 02668, term expires 06/30/2009

ZONING BOARD OF APPEALS (ALTERNATE) REAPPOINTMENT:
Sheila Geiler, PO Box 771, Hyannis, MA 02601, term expires 06/30/2009
VOTE: 11 yes

2007-035 - AMENDMENT TO THE GENERAL ORDINANCES -- BASIC AWARENESS ORDINANCE INTRO.: 10/19/06; 11/02/06

Upon motion duly made and seconded it was moved to act on and vote on the second amended version of this item as presented by Councilor Crocker.

Councilor Crocker said that he met with the Town Manager as well as representatives from the board of health, police and others to work on the item. He also showed a first draft of an overlay map and what this could look like. There is still work to be done in order to be able to manage the ordinance, he added.

Crocker said the map (See attached map marked "D") has a key and he explained the colorations and what they meant. He also thanked Attorney T. David Houghton for his assistance.

Town Manager John Klimm said this item will provide information in a helpful application so the public can be more informed. Items such as traffic incidents, hazardous materials,

sex offenders etc. would be recognized. It would all have to be organized and put into a friendly format. This town is not assuring that these zones are not safe or other areas are safe, so there will be disclaimers on the information.

Upon motion duly made and seconded it was voted to go in to a public hearing for the purpose of discussion the above item 2007-035.

VOTE: 11 yes

Upon motion duly made and seconded it was voted to go out of the public hearing at: 8:16 p.m.

VOTE: 11 yes

Councilor Canedy said understanding what Councilor Crocker is trying to do, she still has problems with liability issues and disclaimers can't eliminate them. What if you don't list all sites, or all the offenders? There is also a lag time to get it on the website. Does a lag time possibly create a liability? This has not been tested in Massachusetts and she would not want it tested in Barnstable.

Councilor Barry thinks it is an excellent idea. We are trying to protect our children so bring it on.

Councilor Chirigotis said that a website will not merely make us safe. Mr. Crocker's proposal is not a guarantee but an attempt to get the information out there. It will not necessarily be 100% correct at all times. As long as this is regularly updated there should not be a liability.

Councilor Munafo thought this was merely a tool for parents. I am just looking at this as an informational tool and a help.

Councilor Milne asked about fiscal impact. It sounds like there is data work. We should monitor the fact that fiscal impact should be included on all items. Manager Klimm agreed that the fiscal impact should be on every item. There is a possibility that this may be expanded but right now we are looking at a simple system that will be transferred to IT to manage. Klimm noted that there will need to be time for formats of the site; but as long as it is a foundation we should be able to do it within the budget.

Councilor Rugo asked if the town attorneys have an opinion on this issue. Town Attorney Robert Smith focused on reliance. Unless we make an explicit reference to have the public rely on us, the sovereign immunity act protects us. With a prohibition of where people could live, that might be a problem. But the dissemination of information does not concern him.

Councilor Joakim spoke about the level 2 or 3 sex offenders who can no longer move into these areas unless they are related. This is where we may run into a civil rights problem. Smith said there are 3 levels and he deferred to Chief Finnegan. Finnegan said information on level 1 offenders will not be available, only level 2 and 3 offenders. Both Chief Finnegan and Dept. Chief Tamash feel this is good and will work together on this.

Councilor Chirigotis said whether an offender lives ¼ or ½ mile from an area of concern is a problem for him, because what is a safe distance? People have cars and are transient. This is not a guarantee of safety.

President Farnham said this helps people protect their children instead of having the “scumbags” protected.

Upon motion duly made and seconded it was voted that:

SECOND AMENDMENT TO THE GENERAL ORDINANCES

ORDERED: That the General Ordinances of the Code of the Town of Barnstable be amended as further set forth herein.

SECTION 1 The Code of the Town of Barnstable, General Ordinances, is hereby amended by inserting the following in Chapter 147, Peace and Good Order, after Article III, section 147-7.

“ARTICLE IV

CHILD SAFETY INFORMATION AND AWARENESS ORDINANCE

§ 147-8 Title

This ordinance shall be known as the “Barnstable Active Safety Information for Child Awareness Ordinance” and may be referred to by the acronym “BASIC.”

§ 147-9-8 Purpose

The purpose of this ordinance is to advance the public safety and welfare of the residents of the Town of Barnstable by making certain environmental information and controls available for the benefit of children and those who care for children.

§ 147-10-9 Definitions

“CHILD,” a person under the age of 16.

“RESIDENCE,” the place of abode of a person.

§ 147-11 Information

(A) The Town will make available by publication on its web site and in one of its offices, public records that chronicle areas where hazardous materials as defined in section 2 of chapter 21E of the General Laws of Massachusetts have been released and the status of remedial actions updated semi-annually until final response actions have been taken and thereafter maintain the record of such final response for a period of three (3) years.

(B) The Town will make available by publication on its web site and in one of its offices, public records on motor vehicle collisions on ways within the Town updated semi-annually.

(C) The Town will make available by publication on its web site any reports received by the Health Division from the Commonwealth of Massachusetts Department of Public Health of the presence of Eastern Equine Encephalitis within the Town for a period of thirty (30) days.

§ 147-12 Controls

(A) The Town will post a sign on any of its property listed for publication under section 147-11(A) containing a summary of the published information.

(B) Following each data update completed pursuant to section 147-11(B), the Town will review motor vehicle traffic rules, regulations and improvements for the purpose of considering amendments or additional improvements designed to alleviate the occurrence of future similar incidents.

(C) No person designated as level 2 or 3 under the provisions of G. L. c. 6 § 178K(2) in whole or in part by reason of a sexual offense against a child shall take up residence apart from a person related by blood or marriage within the first degree of kindred within the Town within 2,000 feet of the boundaries of land containing a facility with the principle purpose of providing services to a child.

(D) A person does not commit a violation of subsection (C) if any of the following apply:

- (1) The person is required to serve a sentence at a jail, prison, juvenile facility or other correctional institution or facility; or;
- (2) The person had already established residence as of the effective date of the prohibitions.

§ 147-13 Enforcement

Violations of Section 147-12 shall be punishable by a fine of \$300.00 per day.

§ 147-14 Severability

The invalidity of any section or provision of this Article shall not invalidate any other section or provision thereof. “

SECTION 2

The provisions enacted in sections 147-8-14 of Article IV of Chapter 147 shall take effect ninety (90) days following their adoption by the Town Council.”

VOTE: Roll Call - 11 yes

NEW BUSINESS

<p>2007-037 – ACCEPTANCE OF GRANT TO BARNSTABLE SENIOR CENTER FOR TRANSPORTATION SERVICES FOR THE ELDERLY-FROM ELDER SERVICES OF CAPE COD AND THE ISLANDS INTRO.: 11/02/06</p>
--

Manager Klimm said that this offers a vital link for seniors, since it provides transportation for medical appointments. Elyse DeGroot, Director from the Senior Center was present as well. Councilor Crocker asked her how many are served. Ms. DeGroot stated that they provide about 5,000 rides around Barnstable and Sandwich. There are about 275 seniors who utilize the van. The van service also helps them provide transportation for other needs of the seniors as well as medical.

Councilor Chirigotis stressed the need of this in the senior community.

Upon motion duly made and seconded it was voted:

RESOLVED: that the Town of Barnstable hereby accept a grant in the amount of \$6,000.00 to support the ongoing provision of transportation services to local elders, and authorize the expenditure of monies for that purpose.

VOTE: 11 yes

2007-038 - APPOINTMENTS -	INTRO.: 11/02/06
----------------------------------	-------------------------

Upon motion duly made and seconded it was voted to refer this item to a second reading.

VOTE: 11 yes to refer to Nov. 16

2007-041 - ORDER TO INCREASE THE COMPREHENSIVE FINANCIAL ADVISORY COMMITTEE MEMBERSHIP FROM SEVEN MEMBERS TO NINE MEMBERS
--

INTRO.: 11/02/06

Councilor Munafo said that originally this committee had 9 members, but then it was reduced to 7, when the requests for their services decreased. Now with increased vigor and activity on the committee, they feel that they need to increase the number back to the original 9 members.

Upon motion duly made and seconded it was

ORDERED: that Paragraph A of §241-18 of the Administrative Code is hereby amended by striking out the word "seven" and inserting in place thereof the word "nine".

VOTE: 11 Yes

2007-042 - ALLOCATION OF TAX LEVY	INTRO.: 11/02/06
--	-------------------------

2007-043 - ADOPTION OF CHAPTER 653, SECTION 40 OF THE ACTS OF 1989 WHICH AMENDS MGL CHAPTER 59, SECTION 2A (a), ASSESSMENT OF NEW CONSTRUCTION

INTRO.: 11/02/06

2007-044 - ADOPTION OF CHAPTER 59, SECTION 5 (54) PERSONAL PROPERTY EXEMPTION
--

INTRO.: 11/02/06

All three of the above items (2007-042, 43 and 44) were postponed to November 16, 2006.

2007-045 - ACCEPTANCE OF A FY 2007 GRANT FROM THE ARTS FOUNDATION OF CAPE COD (AFCC) IN THE AMOUNT OF \$2,500.00	INTRO.: 11/02/06
---	-------------------------

Manager Klimm said that this will help in our signage program for the Harbor Your Arts program.

Upon motion duly made and seconded it was:

RESOLVED: That the Town Council hereby accepts the grant award in the amount of \$2,500 from the Arts Foundation of Cape Cod Grant Program.

VOTE: 11 yes

2007-046 - SNOW AND ICE OVERDRAFT ORDER
--

INTRO.: 11/02/06

Financial Director Mark Milne said that this is the annual housekeeping order. It is done every year. Councilor Munafo said that we get beat up about it as far as not appropriating enough money and instead doing it this way. He realized that this is a tool, but he asked for an explanation of the snow and ice removal appropriation. Milne said that because of nature, we cannot predict how much money we will need for snow and ice removal services. The DOR allows only this item to be budgeted in this manner. There is no mechanism to predict what we will spend. DOR said spend what you need this year and the following fiscal year the bill for those services will be the first bill you pay off.

If we appropriate more than the \$122,000.000 we would have to decrease other expenditures in order to pay for it. This is deficit spending. Munafo thanked him, and added that we are protecting other services to the community and perhaps saving jobs as well. Councilor Crocker noted that there is an extraordinary swing in the amount of money spent on this program from year to year. President Farnham had asked Manager Klimm to increase the budget amount to \$250,000.00 but Klimm feels the amount budgeted should be \$1.00.

Upon motion duly made and seconded it was:

ORDERED: That pursuant to Chapter 44, Section 31D MGL, which provides for the ability of the Town to incur liability and make expenditures for any fiscal year in excess of appropriation for snow and ice removal; the Town Council approves expenditures in excess of available appropriation for snow and ice removal for fiscal year 2007, subject to further approval action by the Town Manager

VOTE: 11 yes

PUBLIC COMMENT

John Julius said the numbers (1,525 units) were provided by Mr. Reault. Also he is going to follow this up with a certified letter to Manager Klimm and will request an official housing audit. He cares about people in the town and the hardworking people in the community. Help the people who pay the bills.

Mary Clemens commended Councilor Crocker on his ordinance. She identified an area of concern around 77 Winter Street and other areas near the Sturges Charter School. She was thankful.

Lou Gonzaga said the Unitarian Church is private. Churches do do good things and historically were charged to do that. The town should not pay to rehab the church. They should be raising funds from the community. We will have all the other churches asking for help as well. We need to focus on the town buildings that need help. Church and state should be separated on this. We attack each other too many times. Be civilized and let's work together.

Frank Paparo said there is someone who put something on the CapeCog blog and it is a hate crime. We are to be a no hate town.

COMMUNICATIONS FROM ELECTED OFFICIALS, BOARDS, COMMISSIONS AND STAFF, CORRESPONDENCE AND ANNOUNCEMENTS

President Farnham noted in response to John Julius, that Rick Presbrey lives in Marstons Mills not Sandwich.

Councilor Munafo talked about election monitors and vote counting systems and with a suggestion from President Farnham will look at what is offered at the MMA conference.

Councilor Crocker attended a couple of meetings and saw the new Superintendent of Schools, Patti Grenier. He was very impressed by her.

Councilor Brown noted that at 10 a.m. on Nov. 11 there will be the annual Veterans Day Parade. He will vote for any candidate who can explain and act on why Hyannis and Yarmouth pay more for gas than anyone else. It is ridiculous. Discussion followed.

Councilor Milne would like to challenge Councilor Joakim and Manager Klimm on heading for cars that use vegetable oil. He noted that parking in the Armory should be available for staff on Election Day to help with Town Hall voting.

Town Clerk Linda Hutchenrider reminded everyone to vote on Tuesday November 7.

TOWN MANAGER COMMUNICATIONS

Manager Klimm stated that as a result of our council workshops, the Growth Management division is dissecting the recommendation to look at the ZBA ordinances and Con Com regulations for conformity and improvements. Work that is being done on those is to be back to the council in January.

ADJOURNMENT.

Upon motion duly made and seconded, it was voted to adjourn.

VOTE: 9:08 p.m.

ADJOURNED: at

Respectfully submitted,

Linda E. Hutchenrider, MMC/CMMC
Town Clerk/Town of Barnstable