

TOWN COUNCIL MEETING
December 21, 2006

A quorum being duly present, Council President Janet Joakim called the meeting of the Barnstable Town Council to order at 7:00 pm, on Thursday, December 21, 2006.

PRESENT: Richard Barry, Janice Barton, Gary Brown, Ann Canedy, Frederick Chirigotis, James Crocker, Jr. (late), Leah C. Curtis, Henry Farnham, Janet Joakim, J. Gregory Milne, James Munafo, Jr., Tom Rugo (late) and Harold Tobey.

Council President Joakim asked the Vice President Brown to lead the Council in the Pledge of Allegiance and moment of silence.

President Joakim announced that the Sturgis Charter School presentation would be postponed to February.

PROCLAMATION – Homeless Persons’ Memorial Day

Councilor Barton and President Joakim joined Estelle Fritzinger, Chair of the Human Services Committee, at the podium. Councilor Barton read the proclamation (see Exhibit A). Ms. Fritzinger thanked all and encouraged the rest of the towns on the Cape to be as proactive as Barnstable.

Alan Burt explained that the names of the men and women who died on Barnstable streets this year would be read. Mark Halstad, a homeless gentleman, read the names. As each first name was read, Mr. Burt sounded a chime. It is hoped that the number next year will be smaller. The gentleman spoke about the human tragedy of hunger and homelessness. It is a social ill which makes it a political, religious, family and personal ill. Until the nature of the tragedy is understood, it will not go away. Mr. Halstad reminded the public that there is somebody in the community who has no place to sleep but outside. He invited the public to visit the mock camp at the Federated Church that was operating this evening.

President Joakim recognized County Commissioner William Doherty and former town councilor Richard Elrick who will be spending the night at the camp.

PUBLIC COMMENT

Prior to opening the floor for public comment, President Joakim read rule 5F – PUBLIC COMMENT from the council rules, followed by Council Guidelines for Public Comment (See Exhibit B) and new guidelines for public comment.

John Alden spoke about his right to speak at public comment stating that “Democracy is by, of and for the people.” He would find it impossible to sign up by a 4:30 PM deadline since he works off Cape. He feels the council must hear from the taxpayers and he finds the attempt to push public comment away disconcerting.

Peter Doiron said the proposed changes to public comment should be out of order because it was the result of illegal emails. Building walls always fail. He feels it is fear mongering and the council should kill the measure.

Alan Goddard feels he is at a disadvantage having not seen the substitute motion. Splitting the public comment into two sessions, if it means limiting general comments to the second session, is not advantageous. Any new emphasis on a second session needs to be protected with enough time for it to occur. He fears it may come up at too late, and the meeting adjourned before it can occur.

Lou Gonzaga said the nation is founded on debate but there need to be rules. The problem has been that the councilors sometimes attack. He feels the councilors are accessible on a one-on-one basis. He

suggests forgetting the past and starting off as if it were a new day, a new year of working together. He asks that the item be tabled.

Robert Tucker spoke about the new rules on illegal tenants and cars in yards. They are not working. There are still numerous cars in the area. The council voted to stop it, but it hasn't stopped or been enforced. President Joakim suggested he provide the manager's office with details.

John Julius said he was one of the three complainants to the District Attorney about the open meeting law. He has brought many questions up before the council, many of which have been ignored. He asked about the issue of contaminated water in Hyannis as well as the closing of wells, and asked if anyone could say what is being done about it. He suggested they leave the public comment alone. It is unfortunate they would consider making an elderly person who wanted to speak come in at 11 PM.

Frank Paparo said the citizens have a right to challenge their government. He feels the councilors are afraid because they don't like criticism. He pointed out that no one forced anyone to run for the office. Councilors are paid from tax dollars and they work for us. He feels it is a sleazy way to avoid the public comment.

Gabrielle Black spoke in favor of keeping the public comment period as is. Her written statement is attached as Exhibit C.

Mike Turner suggests the item be tabled. The item has created a hornet's nest and is poisoned by what has come before it – the email fiasco. He feels the councilors' work is overwhelming and suggests they consider the possibility of meeting more often. He feels the less said going forward, the better.

Noreen Halford was very upset by the emails. She feels some of the councilors have not kept open minds and they seem to be a clique and have ideologies that they foist on the public. She senses a lack of connection between the council, the public and management. She cites employees of the town going on boondoggles at the public expense. She hopes the council will do better and consider what the people feel. At this point the council has reached a new low.

Councilor Barry read a letter from Mimi McConnell, who could not attend. A copy of the letter can be found as Exhibit D.

COUNCIL AND TOWN MANAGER RESPONSE TO PUBLIC COMMENT

Councilor Canedy asked that the letters be distributed. They will be included with the clerk's minutes.

Councilor Munafo tried to address Mr. Julius. President Joakim said there would be no addressing individuals by name.

Councilor Milne feels there is a gift coming. He is concerned that the item was discussed at the council's last meeting without it being a first reading. He pointed out that Council Rule 15 sets what can be acted upon at a first reading and what requires a second reading. Rule changes require a second reading therefore the discussion on Dec. 7th and tonight's discussion are out of order. He also addressed the open meeting law. He would also like a response to manganese contamination of the water as well as Noreen Halford's comment on the police department audit. President Joakim said the audit will be discussed in February when the police come before the council

Mark Ells addressed the issue of the contaminated wells. The report was about the equipment and infrastructure that the town acquired when it purchased the water company. The secondary contaminations of manganese and iron were also inherited. Neither are health issues but a water quality issue. They are being managed with the addition of a food-grade compound. This happens within all water supplies. On the issue of volatile organics, Ells explained that there is an air scrubbing system which was in place prior to the ownership. They continue to monitor the wells. They will close down a well before anything becomes a public health issue.

Councilor Crocker asked Noreen Halford for clarification about the misappropriations for travel. She was speaking about newspaper articles on the former chief of police.

REPORTS FROM TOWN COUNCIL, BOARDS, AND COMMITTEES

Councilor Barry spoke about the Conservation Board considering the potential closing of the public vehicle access at the Crocker Neck area due to abuse by youth. Many people enjoy the neck and would lose out. Perhaps they will consider closing the gate overnight. His concern is that there may not be vehicle access and people will lose moorings. The Three Bay Committee came out with a report of the role of shellfish in the area, where some people would like to build docks.

Councilor Milne said members of the Barnstable Historic Commission, whose session before the council is coming up, felt left out of the discussion of creating an historic development plan. He suggested a meeting could be set before the 1/4/2007 council meeting to bring them up to date.

Councilor Curtis said the appointments committee reviewed openings and they will advertise them in January.

Councilor Barton reported that the Human Services Committee would like input from liaisons of various town committees.

Councilor Canedy said she would contact people who are interested in the Barnstable Harbor meeting if they contact her.

President Joakim said that the CPC is coming before the council in January. They are putting things on hold to prepare for the meeting and they would appreciate questions from the council in advance so they can address those issues. Growth Management and the Council on Aging are also working on a package and training for committee members.

Paul Niedzwiecki said the property management of the GMD is doing work on mapping the ways to the water. They have identified 110 ways to water, some have different easements and these are being outlined. Regarding audits, Niedzwiecki explained that they annually audit different departments. This year it was the PD and there will be a benchmarking to compare our department with others in other towns.

ACT ON MINUTES

Upon motion duly made and seconded it was voted to approve the minutes of December 7, 2006.

VOTE: Unanimous

ORDERS OF THE DAY

OLD BUSINESS

Upon a motion duly made and seconded it was voted to refer:

2007-042 ALLOCATION OF TAX LEVY,

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
and

2007-044 ADOPTION OF CHAPTER 59, SECTION 5 (54) PERSONAL PROPERTY EXEMPTION to a public hearing on January 18, 2006.

VOTE: Unanimous

President Joakim will ask for a brief review of this issue because it has been awhile since the workshop.

2007-052 – COMMUNITY PRESERVATION FUND APPROPRIATION FOR NICKERSON COTTAGE PRESERVATION

Upon a motion duly made and seconded it was voted to postpone this item to February 1, 2007.

VOTE: Unanimous

2007-055 TOWN COUNCIL RULE CHANGE RE: AGENDA ORDER OF BUSINESS AND AMENDMENT TO PUBLIC COMMENT

Councilor Farnham made a motion which was seconded to read Substitute Motion B into the record. There was no objection.

SUBSTITUTE MOTION – 12/21/2006 B

Upon a motion duly made and seconded it was

RESOLVED.

SECTION 1.

That the Rules are hereby amended by striking out Rule 5E and inserting in place thereof the following:

“RULE 5E - ORDER OF BUSINESS.

At every regular meeting of the Town Council, the order of business shall be as follows:

1. Roll Call
2. Pledge of Allegiance
3. Moment of Silence
4. Public Comment – only for agenda items
5. Act on Minutes
6. Order of the Day
 - A. Old Business
 - B. New Business
7. Public Comment - General
8. Communication from Elected Officials and staff.
9. President/Vice President Communications
10. Town Manager Communications
11. Adjournment”

Councilor Farnham explained that it keeps the majority of the agenda focused on the orders of business and adds a public comment period as #4 for comments on agenda related items (#6) and adds a second public comment as item #7 for general issues. He feels it gives the public the ability to communicate as well as allowing the council to get through the items in a more orderly fashion. The proposed change is not about stifling or eliminating public comment, but about getting the council to do their work more efficiently.

Robert Smith, Town Attorney, commented on whether the item had its first reading. Tonight’s motion is far reduced from the original item. The agenda just gives notice of the subject matter (as did the old town meeting warrant) so as long as the motion is within the scope of the agenda item it is ok. He then read the letter from Atty. Schack regarding the open meeting violation relative to emails. (See exhibit D). Smith said former President Farnham did put the discussion out there and did receive several responses. He suggested that Mr. Schack’s offer of training be accepted.

Councilor Curtis supports the overall framework. Having orders of the day in this position will give the council the ability to address the issues before them. Her concern is how to accommodate members of the public who have a general comment and who also may have a genuine hardship about staying late. Farnham said all the councilors are all available to be contacted individually so it is not a hardship about not getting their issues before the council. It is more an issue of getting on the TV.

Councilor Milne asked if this was considered a late file. Smith said that it is substitute motion within the scope of the first item. It is closer to the original rules than the original rule change. Milne disagreed, feeling that the original item did not have a first reading on 12/7. This piece of legislation is poisoned since there has been no light shed on the existing emails. Using the proper council procedure (reference to Exhibit B) should work fine. Boards of Selectmen take public comment at the beginning of their meetings as well as have town meetings.

Councilor Canedy is not comfortable because she is just seeing the substitute motion tonight. She also heard the public comments about mutual respect and common courtesy and sees the president able to control the tone of the public comment. This forum is important and public comment is instructive and informative. She supports the president's opening remarks and would like to give it a try.

Councilor Barton shed some light on her response to the email. She sent her response understanding that it would be public and looked forward to discussing it.

Councilor Munafo asked Smith if the DA could have fined the council. Smith said not the individual councilors, and only after a hearing and prosecution. Munafo feels this item covers the spirit and intent of the charter. The item provides specifically for both comments related to items and general comments. He would support.

Councilor Chirigotis pointed out that it is a new day and a new year. With emphasis on civility and common courtesy, people can work together. He feels the substitute motion is not a great change and moving the council response further down is excellent. Given the evening's talk of a new day, and the addition of rules of behavior as part of the agenda, Chirigotis feels the agenda can be kept it as is.

President Joakim would eliminate #7 and return to combining the two public comments. She would not support the item as it is.

Councilor Canedy pointed out that the current rule does not say 'must' but "may make an appointment to speak."

Councilor Barry thinks the whole thing is terrible. If more people came weekly there would be more ideas. While he doesn't like to be yelled at, he knows it is politics. The council should not make people like Eugenia have to sit to the end of all the other deliberations in order to speak. It would affect not just older citizens. He feels a need to cut down on the amount of time people waste and will not support the substitute motion.

Councilor Milne pointed out that most of the agenda items require a public hearing so to limit the first public comment to agenda items may be redundant. He would rather have the public hearing be contiguous with the item, where you will still have public comment. He would like to let the current rules work.

Councilor Curtis would like to offer a friendly amendment to combine all the public comment at #8 and put responses after Orders of the Day.

Councilor Farnham said he is trying to create a better plan for the business of the meeting. He would like to see the proposal go forward.

A motion was made and seconded to move the question.

VOTE: 10 Yes (more than 2/3)

On Item 2007-055 – Substitute Motion B (12/21/2006)

VOTE: 4 Yes, 9 No – motion fails (Roll Call – Yes: Brown, Farnham, Rugo, Toby)

2007-057 ORDER AMENDING THE ADMINISTRATIVE CODE RELATING TO PUBLIC COMMENT

Upon a motion duly made and seconded to withdraw this item.

VOTE: Unanimous

2007-058 ORDER AMENDING SECTION 220-10 OF THE GENERAL ORDINANCES

Upon a motion duly made and seconded it was voted to open a public hearing on 2007-058 at 9 PM.

VOTE: Unanimous

Councilor Farnham explained the need for the word “regular” so that other outside meetings may or may not be televised. All regular meetings will be televised but televising would be optional for special meetings. This only applies to the school committee and council.

Upon a motion duly made and seconded it was voted to close the public hearing at 9:02 PM.

VOTE: Unanimous

2007-058 ORDER AMENDING SECTION 220-10 OF THE GENERAL ORDINANCES

Upon a motion duly made and seconded it was

ORDERED,

That section 220-10 of the general ordinances is hereby amended by inserting after the word “all” and before the word “meetings” in the first line as it appears in the Barnstable Code, the word “regular”.

Councilor Munafo suggested that the language needed to be specific.

A motion was duly made and seconded to postpone this item to the next council meeting on January 4, 2007.

VOTE: Unanimous

NEW BUSINESS

2007-062 RESOLVE GRANT ACCEPTANCE FOR \$4,000 FROM FRIENDS OF THE OLD SCHOOL HOUSE

Upon a motion duly made and seconded it was

RESOLVED: that the Town of Barnstable hereby accept a grant in the amount of \$4,000 to support the ongoing provision of meals at the Adult Supportive Day Program.

Lynn Poyant spoke on the item on behalf of Elyse DeGroot, Director of Senior Services. Rose Digregorio wrote the grant.

VOTE: Unanimous

2007-063 LOAN ORDER FOR REFUNDING BONDS

Upon a motion duly made and seconded it was voted to refer this item to a public hearing on January 4, 2007.

VOTE: Unanimous

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

Councilor Milne asked why the councilors are being asked to sign an employee handbook since they are not employees. He asked about the minutes to a strategic planning session that he was not able to attend. He would like to have them. In the past the strategic planning session was taped and replayed. He would like to return to that habit. President Joakim will ask Human Resources Director William Cole to answer the handbook question. The strategic plan should be getting out for council input after the first of the year. Councilor Curtis did not recall minutes, only the draft plan. The last two years the meetings were posted and members of the public did attend.

Lynne Poyant said a draft of the new plan was sent to Councilor Farnahm. She is waiting for comments to finalize the document.

Councilor Tobey would like some response to the articles in today's newspaper regarding the illegal apartments. Paul Niedzwiecki said he and several others went in to inspect them. The owner went through the amnesty program and received a grant for the new stove. The renters should not be subjected to sub-standard conditions. He feels the town has not been heavy handed.

Councilor Farnham would like a report on the various suits that might have been filed by members of the blog known as COG. Smith thinks it was just one, which they appealed. He has not heard of any more.

Councilor Milne asked Atty. Smith about the Retrix lawsuit and who is representing the town. He replied that it was Scott Lewis and Tom Leahy, experts in aviation law.

PRESIDENT/VICE PRESIDENT COMMUNICATIONS

President Joakim will be making some changes to the agenda to help keep track of what needs to be done on each item.

Vice President Brown wished all a happy holiday.

TOWN MANAGER COMMUNICATIONS

Paul Niedzwiecki said the manager's office will be naming a performing arts feasibility committee to explore the possibilities of a performing arts center in Hyannis.

PUBLIC COMMENT

Peter Doiron thanked the council for the discussion and debate. He offers them his *agape*. He also is published in the Patriot and doesn't vilify people on the blog.

Lou Gonzaga wished all a Merry Christmas. He would like to get rid of the Cape Cod Commission. Now with a Growth Management Department, the town can move to create jobs.

Robert Tucker doesn't feel he can get the names of the illegal apartment owners (first comment period).

Noreen Halford would like to see a concerted effort to reduce property valuations and taxes.

Frank Paparo thanked the council for defeating the public comment measure and thanked the two councilors who said the people have the right to speak. He doesn't want to see all the youth who we "grow" leave because there are no jobs that pay well.

Upon a motion duly made and seconded it was voted to adjourn the meeting at 9:30 PM.

VOTE: Unanimous

Respectfully submitted,

Lucia Fulco,
Assistant Town Clerk