



TOWN COUNCIL MEETING May 3, 2007

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, May 3, 2007, in the 2nd Floor Hearing Room of Town Hall, 367 Main St., Hyannis, MA.

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

Vice President Gary Brown led the Council in the Pledge of Allegiance and moment of silence.

PUBLIC COMMENT

Peter Doiron thanked the town for the cleanup on Route 28. He also made comments on public comment; and feels there is a higher rule – the free exercise of freedom of speech.

John Alden addressed public comment and said very few come down to discuss issues and confront the town. He would like to see some challenging races this fall.

COUNCIL RESPONSE TO PUBLIC COMMENT

Councilor Munafo said we are a representative republic if you are smart enough to keep it.

ACT ON MINUTES

Upon motion duly made and seconded it was voted to approve the minutes of April 26, 2007.

VOTE: 12 yes and 1 abstain (Curtis)

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

Councilor Farnham announced that the clean up on Sandy Neck was most successful.

Councilor Munafo said he has heard more about speeding and accidents – and wants to remind individuals to obey the laws. There is a lot of road work being done and kudos on that.

Councilor Canedy met with staff and business people about Barnstable Harbor. The harbor will be ready to use by the holiday.

Councilor Milne thanked the Manager and staff and others regarding improvements at Bismore Park. He reminded councilors on the upcoming Selectmen/Councilors meeting; and asked what was the purpose of the executive session at the airport last night.

Councilor Barton reported on the School Committee meeting.

Clerk Hutchenrider announced the June 7 candidates' meeting for all who wish to run for office in the fall.

Councilor Chirigotis thanked the town for the road work in Centerville.

Councilor Milne said that the decision on the early meeting (selectmen/council) was to get people out of the meeting by 9 a.m. so they could go to work.

President Joakim stated that on May 11 from 9 a.m. – 1 p.m. will be the Senior Expo at the Senior Center.

**ORDERS OF THE DAY
OLD BUSINESS**

2007-083 - TO SEE IF TOWN COUNCIL WILL VOTE TO AMEND THE ZONING ORDINANCE TO EXTEND THE BOUNDARY OF THE HYANNIS GATEWAY ZONING DISTRICT INTRO.: 02/15/07; 03/01/07; 03/15/07; 04/05/07; 04/26/07; 05/03/07

Upon motion duly made and seconded it was voted that item 2007-083 be postponed (no date certain).

VOTE: 13 yes

Substitute motion

2007-101 - ZONING ORDINANCE FOR POND VILLAGE DISTRICT OF CRITICAL PLANNING CONCERN (PVDCPC) INTRO.: 03/15/07; 04/05/07; 04/26/07; 05/03/07

Public hearing still open from last meeting.

Councilor Canedy said there was some opposition to the original document and those issues were addressed in the substitute motion. There will be 2-acre zoning and a 100 foot setback from the fragile areas (pond and embayment).

Attorney Patrick Butler represents two of the property owners. They had had concerns. They appreciated the help with the language changes – but the document before you is a step backwards. 1) It gutted the special permit provisions; 2) the 100-foot setback from the coastal bank is a problem. (They suggest an RDA and reduce the setback to 50 feet). They have continuing concerns.

Steve Schuman spoke on his own behalf and also felt this was a step backward. He is an advocate of property rights. He is also a strong advocate of zoning which can protect property rights. Support the 2-acre zoning and the bulk regulations. There is nothing new here. Most people in that area are in favor of the 2-acre zoning. The initial legislation was better.

Peter Doiron is all for preserving things, but believes in private responsibility. Let it be a private matter and not a public responsibility.

Bill Cook feels this is the time to act before more development occurs. The fire department does not want more development unless the roads are widened. They do not want to see that. By rezoning this you can preserve the unique qualities of this area.

Len Clark spoke in favor of the ordinance and was concerned with over development near a good shellfishing area. Development has caused a further encroachment onto areas like this. We need a DCPC.

John Austin thanked the council for the removal of the bulk regulations. It would have caused a hardship. Good citizenship is needed by all of us. Disagreement should be discussed and not marginalized. We need harmony in the neighborhood.

Andre Sampou has hunted, fished and shellfished in that area. There has been some damage in the three-bay areas. Barnstable Harbor is different and is still pristine. With more development there will be more nitrogen loading. Pass this.

Steve Berglund said we do need the 2-acre zoning. We are between areas that have 2-acre zoning and sewerage, but have neither.

David Munsell admired the previous speakers. He calls it like it is. We have worked on this for 3 years (planning board). These people have paid for a study. We thought we worked on and came up with a good plan. There are people against it. Councilor Canedy could not get councilor support which is why it is watered down. Support this. Watering it down is not the answer.

Christine Froula (name not in census or parcel lookup) from Sheperds Way said that it never seemed possible that there could be more than 40 buildable lots. We believe there is exaggeration. She would like to see 2-acre zoning townwide. A DCPC would put us in the power of the Cape Cod Commission.

Michael Murphy noted houses that have been permitted where they really should not have been permitted. Other villages have 2-acre zoning so what is the problem with giving this area 2-acre zoning?

Roger Boocock said he would be disappointed if nothing was passed to protect this.

Kate Berglund announced that she was a long time resident of the area. She showed a photo of the land with the surrounding water. They are aware of many land owners who would like to build on the property, but some are willing to sacrifice for the sake of the property. The majority are in favor of the DCPC.

Upon motion duly made and seconded, it was voted to go out of the public hearing.

VOTE: Unanimous in favor

Councilor Curtis thanked Councilor Canedy for all of her efforts on this item. Curtis said the residents have been active and want to have 2-acre zoning. She feels 2-acre zoning is important in this area, and will support the item.

Councilor Barry echoed Curtis and added that a while ago Councilor Canedy brought forward 2-acre zoning for the whole of Barnstable. But this is a beautiful spot and the zoning should be changed.

Councilor Tobey lives in Hyannis and is not on a sewerage line. The village is not totally sewerage.

Councilor Milne would like to see the original version prevail. President Joakim said we are voting on the substitute motion. Milne feels the original is stronger. Growth does not make money. This should be a unanimous vote.

Councilor Farnham does not object to making this 2-acre zoning. His issue is with the rest of the proposal (bulk regulations and approval process). He just wants the change in zoning.

Councilor Canedy clarified the content of the item.

Attorney Smith said this is still a DCPC process.

Councilor Barton agrees with the councilors and thanked Councilor Canedy. She will support it.

Councilor Munafo was concerned with the major changes given just before the meeting. When he sees a DCPC he thinks of temporary until zoning can be created.

Councilor Chirigotis has some concerns. He loves the pristine waters of Barnstable Harbor. Perhaps this could be voluntary – put conservation restrictions on your property. More than 2-acre zoning might be difficult. He is in favor of 2-acre zoning.

Councilor Curtis asked if the DCPC is a temporary measure and once the determination is made, it no longer exists.

Councilor Canedy said the DCPC will go away on May 5.

Attorney Smith said some DCPCs are temporary and some are not. The townwide one we had was temporary. With this one, there is the potential that it can be dealt with by the CCC.

John Lipman of the Cape Cod Commission said the CCC said they agreed on this ordinance so the DCPC will go away on May 5. It will be a local regulation.

Councilor Rugo asked about the bulk regulations and Tom Broadrick, Dir. of Planning read the amended version.

Lipman said there would not be a problem if something were removed, as long as it was somewhat consistent with the original order.

Councilor Rugo made a motion, which was seconded to strike (under Bulk regulations) the minimum wetland setback, so that it will revert back to the original.

VOTE: 11 yes 2 no.

A charter objection was raised by Councilor Munafo.

Councilor Canedy apologized to her constituents. She will bring this back.

Attorney Smith wanted it clarified was to what was being voted on. It was recognized that the substitute motion had NOT been brought forward for a vote.

Upon motion duly made and seconded it was voted to accept the substitute motion as amended.

VOTE: 12 yes 1 no (Barry)

TEXT OF ITEM AS AMENDED IS AS FOLLOWS:

“NOW THEREFORE, THE TOWN COUNCIL OF THE TOWN OF BARNSTABLE MASSACHUSETTS DO ORDAIN AS FOLLOWS:

ORDERED:

SECTION 1

That Chapter 240, Article II of the Zoning Ordinance, Section 240-6 the Zoning Map, is amended by creating a new zoning district known as R-2C which covers the area shown on a reference map entitled “Proposed Pond Village DCPCs 1 and 2, Draft Map” and described as follows: the northerly boundary is Cape Cod Bay/Barnstable Harbor; the easterly boundary includes those parcels on the east side of Scudder Lane; the southerly boundary includes those parcels on the south side of Rte. 6A from the Scudder Lane intersection to the Railroad Overpass; and the westerly boundary follows the property line of the so-called Blair parcel up to the Mass Audubon parcels to Barnstable Harbor.

SECTION 2

That Chapter 240, Article III of the Zoning Ordinance is hereby amended as follows by adding a new Section 240-12, Pond Village (Barnstable) District of Critical Planning Concern (PVDCPC) R-2C. Pond Village is located north of Route 6A in the vicinity of Scudder Lane, Calves Pasture Lane and Hinckley Pond. The district includes those parcels on the easterly side of Scudder Lane and on the southerly side of Rte. 6A from the Railroad Overpass to the Scudder Lane intersection. The purpose of this ordinance is to allow more appropriate land use development to preserve and contribute to the historic, agricultural and/or maritime character of the Pond Village Neighborhood. The ordinance enables the review of development as it relates to pedestrian access and outdoor public spaces to the waterfront and /or pondfront. This ordinance is intended to be used in conjunction with other regulations already adopted by the town, including historic district regulations, site plan review and other local ordinances designed to encourage appropriate land use and environmental protection.

Section 240-12. Pond Village (Barnstable) District of Critical Planning Concern (PVDCPC) R-2C

- A. Principal permitted uses. The following uses are permitted in the R-2C District:
 - (1) Single-family residential dwelling (detached).
- B. Accessory uses. The following uses are permitted as accessory uses in the R-2C District:
 - (1) Family apartments (see section 240-47.1).
 - (2) Keeping, stabling and maintenance of horses subject to the provisions of Section 240-11B(2).
 - (3) Home occupation (see Section 240-46).
 - (4) Renting of rooms to not more than three non-family members by the family residing in a single-family residence.
 - (5)

Special permit uses. The following uses are permitted as special permit uses in the R-2C District provided that a special permit is first obtained from the Board.

- (1) Keeping, stabling and maintenance of horses in excess of the density provisions of 240-11B(2)(b) herein, either on the same lot or adjacent lot as the principal building to which such use is accessory.
- (2) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy but only as an accessory use. (See *new proposed* Section 240-44.1)

Open Space Residential Developments. (See Section 240-17)

Bulk regulations:

Minimum lot area, contiguous upland (square feet)	87,120
Minimum lot frontage (feet)	20
Minimum <i>front yard setback</i> (feet)	30
Minimum <i>side and rear yard setback</i> (feet)	15
Maximum <i>building height</i> in feet	30
Maximum building height in stories	2 ½

Grandfathering. Within the R-2C District, any lot that met the minimum lot area and minimum lot frontage requirements of the RF-1 or RF-2 Districts respectively, prior to the effective date of the Pond Village DCPC nomination of August 26, 2005 as specified in the Cape Cod Commission Acceptance Decision dated September 15, 2005 shall not be subject to R-2C minimum lot area.

Since the original Charter Objection was raised at an inappropriate spot, Councilor Munafo again raised a Charter Objection.

This will come back at the next regular meeting which is scheduled for the night of the 17th.

SUBSTITUTE

2007-117 - COMMUNITY PRESERVATION FUND APPROPRIATION FOR HISTORIC PRESERVATION	INTRO.: 04/05/07; 04/26/07; 05/03/07
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Manager Klimm gave the rationale on this item. (See attached). He stated his full support was behind this.

Upon motion duly made and seconded it was voted to go in to a public hearing for the purpose of discussing 2007-117 at 8:47 p.m.:

VOTE: Unanimous in favor

Peter Doiron is supportive of the project. Why not do all the 150 years – who else has a copy and what happens to the original.

Lucy Loumis from the Sturgis Library stated that they have a complete copy of all papers on microfilm. The originals are at the Antiquarian Society in Worcester. We have a new set of microfilm that can be used. These will be digitized.

Attorney Houghton said there will be a contract restriction with the recipient.

Councilor Canedy said this compliments what the Town Clerk is doing. And, is supported by a matching grant and contribution from the Barnstable Patriot. This benefits all libraries and citizens. Ms. Loumis said there was limited funding for this phase which is why we are not doing all the records.

Upon motion duly made and seconded, it was voted to go out of the public hearing.

VOTE: Unanimous in favor – at 8:52 p.m..

Upon motion duly made and seconded it was moved to accept the substitute motion as the main motion.

VOTE: Unanimous

Upon motion duly made and seconded, it was:

ORDERED: that, pursuant to the provisions of G. L. c. 44B, the sum of Twenty Thousand and No/100 (\$20,000.00) Dollars be appropriated and transferred from the amount set aside for “Unrestricted” CPA funds in the Community Preservation Fund on June 15, 2006 under agenda item number 2006-144 for the purpose of preserving the historic Barnstable Patriot newspaper by digitizing ancient copies, to be bound by restrictions, easements or other security for public benefit.

VOTE: Roll Call - 13 yes

2007-118 - ORDINANCE FOR WAIVER OF FEES FOR CONSTRUCTION WORK ON THE HYANNIS YOUTH AND COMMUNITY CENTER INTRO: 04/26/07; 5/03/07

Upon motion duly made and seconded it was voted to go in to a public hearing for the purpose of discussing 2007-118 at: 8:57 p.m.

VOTE: Unanimous in favor

Manager Klimm explained the rationale to the council.

Upon motion duly made and seconded, it was voted to go out of the public hearing.

VOTE: Unanimous in favor

Councilor Barry moved the question and it was seconded.

VOTE: 13 yes

Upon motion duly made and seconded it was:

ORDERED: Notwithstanding the provisions of any other ordinance of the Town regarding Schedules of Fees, the Hyannis Youth and Community Center construction project shall hereby be exempt from payment of such fees.

VOTE: 13 YES

2007-139 - HYANNIS YOUTH AND COMMUNITY CENTER UTILITY EASEMENTS INTRO: 04/26/07; 05/03/07
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Manager Klimm explained that this will help save money and the utility easement is needed.

Upon motion duly made and seconded, it was voted to move the question.

VOTE: 10 Yes 2 No

Upon motion duly made and seconded, it was:

ORDERED: That the Town Manager be authorized to acquire by purchase or take by eminent domain, for the purpose of providing access and installing utilities, an easement containing 745 square feet, or 0.17 acres, more or less, and being shown on a plan entitled "Plan Showing Proposed Access Easement at #166 Stevens Street: Scale: 1" = 40', March 9, 2007, in Barnstable (Hyannis) MA, As Made By the D.P.W. Survey Section," a copy of which plan is on file in the Town Clerk's office; execute and record any and all necessary documents in relation thereto; and that the Town Manager is authorized to accept any gifts or grants in relation thereto.

VOTE: 11 Yes 2 No

NEW BUSINESS

2007-141 - TO SEE IF THE TOWN COUNCIL WILL AMEND GENERAL ORDINANCE RELATIVE TO A REVISED GROUND WATER PROTECTION OVERLAY DISTRICT MAP INTRO.: 05/03/07

Upon motion duly made and seconded, it was voted to refer this item to a public hearing to be held on June 7, 2007.

VOTE: Unanimous in favor

2007- 142 - COMMUNITY PRESERVATION FUND APPROPRIATION FOR HISTORIC RECORDS PRESERVATION INTRO.: 05/03/06

Upon motion duly made and seconded it was voted to refer this item to a public hearing to be held on June 7, 2007.

VOTE: Unanimous in favor

LATE FILE

2007-150 - SUPPLEMENTAL APPROPRIATION AND LOAN ORDER FOR THE HYANNIS YOUTH AND COMMUNITY CENTER INTRO.: 05/03/07

Upon motion duly made and seconded it was voted to refer this item to a public hearing on May 24, 2007.

VOTE: 12 yes 1 no (Curtis)

LATE FILE

2007-151 - RESOLVE DESIGNATING CERTAIN COUNCILORS TO REPRESENT THE TOWN OF BARNSTABLE AT THE NATIONAL CIVIC LEAGUE'S ALL AMERICAN CITY AWARD COMPETITION. INTRO: 05/03/07

Manager Klimm explained the rationale and the reasoning behind the resolve.

Councilor Canedy wants to know the cost and how many staff are going. Klimm will prepare the information for her. He said that hopefully the costs are going to be funded by a private fundraiser. He will give a financial report.

Councilor Brown asked about the timing.

Upon motion duly made and seconded it was

RESOLVED:

That the Town Council hereby designates Councilors: Tobey, Barton and President Joakim to represent the Town of Barnstable at the National Civic League's American City Awards Competition.

VOTE: 13 yes

Upon motion duly made and seconded it was voted to go into a committee of the whole

VOTE: 13 yes

BUDGET PRESENTATIONS:

At 9:26 p.m. Town Manager Klimm thanked the council for being allowed to present the FY08 budget in a relaxed format. He thanked the staff, specifically Mark Milne and Robert O'Brien for their efforts. The budget cycle begins in October and it ends in May.

He further explained the full budget preparation and acceptance process by both the town and the school.

Financial Director Mark Milne gave an overview of the proposed FY2008 operating budget (see attached copy of the power point presentation).

Councilor Munafo asked about where the growth came from other than the new growth. Milne said new growth has been on a steady decline. We do have new construction growth – but it is too early to define what the value of that will be. So they are estimating new growth – plus the 2 ½% allowed. Milne was asked if there is any negotiation afoot on the 60/40 split on reimbursements (60 for school and 40 for town). Klimm said that there are many areas with capital needs and building maintenance that have been deferred. Should we look at the reduction of student population and approach technologies and building repairs?. We decided to stay the course for another year. Munafo asked a question about what is the salary reserve. Milne said that it is money set aside in anticipation of contract negotiation settlement.

Councilor Crocker asked about the public road monies. Milne said in order to fund public roads we set aside a sum of money from new growth and are dedicating it to capital. We want to hold the trust fund harmless. We needed to find additional funds.

Attorney Smith said the salary reserve account serves a purpose. We have to maintain a strategy. Munafo asked if the council is giving up rights to review contracts approved by Manager Klimm, by approving the monies now. It was explained that the function is under the Town Manager by MGL Ch. 151.

Councilor Farnham asked about the capital trust fund and transfer. Milne said in FY06 we had excess money in debt service (no bond) and we had to withdraw from there. We had a

returned appropriation, so we are putting the money back into the capital program. We had several that had remaining balances and after 3 years they were not encumbered and we put those monies back into the capital trust fund. Farnham also asked for a comparison of the budgets between town and school for a number of years. (Another slide answered that question).

Councilor Farnham asked questions about the county retirement. Milne was not aware of the unfunded liability number for the county. He did state that there was a possibility that the local retirement systems might have to join the state if they are not making enough money.

Councilor Rugo asked about the reduction in enrollment in schools. It was confirmed that there was a reduction, but energy costs were higher and there was no savings. Also the cost of health insurance and personnel is higher. What is the status of the state threshold? Milne gave an update. Rugo thinks the 60/40 split is good. Milne said when we close out 2007 we will then generate savings and it should replenish what we use. This won't happen for ever.

Pres. Joakim said we need to look and watch out for changes in the formula. Milne said we will have more money and it will gradually grow.

Councilor Barton addressed the reduction in students and relationship to costs.

Councilor Barry asked about special ed going up 30%. Why the increase? Milne said it is the high cost of outside residential placements which are the reason behind it.

Councilor Milne said he disagreed with the no control over utilities. He cited what we have done in the past trying to meet certain thresholds. Is there an analysis on the improvements and any cost savings? Klimm said when the school department comes forward we will ask the school to prepare such a document.

Councilor Crocker asked about refinancing of debt to get AAA rating. Milne said we did refinance recently and refinanced \$38M. Debt is at 4.5% rate.

BARNSTABLE MUNICIPAL AIRPORT

Manager Klimm introduced Doc Mosby and Frank Sanchez from the Airport. He explained that the airport will generate enough revenue to fund the expenditures.

Mosby reminded all that this is an enterprise fund, it is self supporting, supported by user fees and grants – there is no tax burden on the citizens.

Councilor Milne asked about revenue on leases. Mosby stated that these numbers are through March and not a full year. Milne asked how much money has gone out for legal expenses on the lawsuit. Mosby does not have the full figures now – but explained how it is paid. Milne asked if they had considered a hybrid. Mosby said they will look at the state contract. When questioned on a raise, Mosby said he has not received a raise in 3 years.

Councilor Crocker again reminded all that no taxpayer revenue is used on the airport. Mosby said the council looks at the budget, but compliance inspections are completed (audits) by the Mass Aeronautics Com. and Federal commissioners.

Councilor Farnham asked about the terminal and where that was. Mosby said Chairman Kimber wants to wait and see what the state vote is in June. Then we will have a better picture.

DPW

Manager Klimm thanked the division heads and summarized some changes in DPW. There has been an attempt to try to be responsive to the additional requests for assisting DPW and raising their budget to a level that will allow for additional services.

He then introduced Mark Ells as superintendent of the division, who gave a presentation on the budget and an overview of the divisions.

Councilor Curtis asked about the money on the roads committee and what are we going to do with the private roads. She also asked about the condition of this municipal building (town hall) and the maintenance of it.

Klimm said that he has attended some of the roads committee meetings. He stated that they are trying to support the DPW more. Right now we have about \$100,000 that we are designating to DPW without crippling other departments.

Councilor Tobey commended Mark Ells and Mark Milne. Every year the entire staff needs to be thanked.

Councilor Munafo suggested that the Manager put something in the budget every year that we can cut so we can exercise that process. Munafo asked about any increases at Seamass. Ells said we have contracts through 2014 and we are also looking at contracts now. He said there are concerns at Seamass; but we also looked at other options and try to plan for all events. Right now we are looking good.

Councilor Farnham said his constituents are excited about possible improvements to the community building and selectmen's building. Klimm gave a short presentation on the Hyannis Water Company and the issue with the Hyannis Fire District.

Councilor Chirigotis said this is the dialogue that shows why you receive such awards for budget presentation.

Councilor Crocker acknowledged the good work of the DPW.

Councilor Milne appreciated the manager's comments and explanation of how the DPW has been short-changed budget wise in the past. How much are we looking at decreasing the inventory of the town-owned buildings? Also he asked what percentage do private haulers bring in.

Klimm said we are trying to take a close look at the facilities. They were looking to see if the villages would take over the community buildings. We are working in that regard.

Ells said we have capital funds and other funds for Town Hall. We will go through the list and see if we can proceed in the future on repairing the town hall building. The landfill serves about 1/3 of the total residents. They also track their revenues and expenditures so they can react if not enough revenues are forthcoming.

President Joakim reminded everyone that the adult social day care center in Centerville at the community building is a municipal use.

ADJOURNMENT

Upon motion duly made and seconded, it was voted to: **ADJOURN.**

ADJOURNED at: 11:45 p.m.

Respectfully submitted,

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

NEXT FY08 OPERATING BUDGET WORKSHOP MAY 10TH.