

TOWN COUNCIL MEETING

November 16, 2006

A quorum being duly present, Council President Henry C. Farnham called the meeting of the Barnstable Town Council to order at 7:00 pm, on Thursday, November 16, 2006.

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

Council President Farnham led the Council in the Pledge of Allegiance and a moment of silence. President Farnham asked the council to allow taking Item 2007-051 out of order. A motion was duly made and seconded to do so.

VOTE: Unanimous

2007-051 ACCEPTANCE OF GIFT FOR \$166,000 FROM THE FRIENDS OF THE COUNCIL ON AGING

Upon a motion duly made and seconded it was

RESOLVED: That the Town of Barnstable hereby accept a gift of \$166,000 from the Friends of the Barnstable Council on Aging. Funds will be used to assist in the construction of the Garden Level and for furnishing and equipment of new addition when the building is complete.

Town Manager John Klimm thanked all the dedicated volunteers who represent a community effort to raise these funds. It is necessary to have partnerships in these financially challenging times. He also complimented the entire staff at the Senior Center under Director Elyse DeGroot.

Director DeGroot showed the design of the Senior Center's Garden Level. David Earhart, President of the Friends of the Council On Aging spoke about the many donations that resulted in the \$166,000 gift. He and Director DeGroot presented a very large mock check to Manager Klimm, President Farnham and Vice President Joakim. Vice President Joakim acknowledged the Council on Aging members who were present.

VOTE: Unanimous

REAL ESTATE TAX EXEMPTION WORKSHOP

President Farnham asked the council to consider changing date of the public hearing on Items 2006-042, 2006-043 and 2006-044 to December 21, 2006 when those items came up later in the agenda. The DOR will not be ready to certify the tax rate by December 7th.

Finance Director Mark Milne gave an overview of Proposition 2 ½ and how the town arrives at its maximum allowable levy. Director of Assessing, Jeff Rudziak explained how the tax rate is set and the impact to both the residential and commercial tax rates under various tax shifting options. (See PowerPoint presentation Exhibit A.) Property values have increase in between 1 to 2% this year.

The following points were made by council and staff:

- The 10% to 20% credit is off the average price of the real estate so that for someone with a lower value property, the tax advantage is much greater.
- The break-even assessment for a resident is \$855,000, above which they will pay more in taxes and below which, less. Residents will pay less than a non-resident.
- The "tax break" is in the adjustment to the assessment, not in the tax rate.
- In order to identify who the second home owners are, the office checks voter rolls, driver's licenses, mailing and property address and the address on the cover copy of the tax return.

- The filing address on a person's tax return is the most accurate indication of the primary residence, which the office will require if there is any question on the validity of the residence.
- Under any factor greater than one, if you live in town and own a home that is assessed at \$900,000 or more you will pay more taxes. The relief is to residents whose homes are assessed less than the break-even amount.
- The savings on the small commercial exemption goes to the property owner not the business tenant. A sole proprietor without at least one employee will not qualify for an exemption.

Director Rudziak explained that the Board of Assessors unanimously voted to ask the council to accept two statutes: Chapter 653, Sec. 40 of the Acts of 1989, allowing the assessors to list the status of new construction as of July 1 as if it existed on Jan. 1; and Chapter 59, Sec. 5(54) Personal Property Exemption which exempts business and residential personal property up to \$10,000 in value. The first would eliminate the up to 18 month delay in taxing new construction, bringing in more revenue. The second would eliminate the listing, tracking and billing small accounts, allowing the more efficient and productive use of staff time.

PUBLIC COMMENT:

John Brennan spoke about the effectiveness, or lack of it, in collecting Income & Expense returns from businesses. He listed and named a number of businesses asking if they were on the non-compliance/fined list. Banks and other businesses should be questioned about why businesses leave. Do businesses leave as a result of increased tax burden or due to other factors such as lack of customers, energy increases, etc.?

Mary Clements spoke about a resident who lived minutes away from the police station and who has been arrested and sent to MCI. "All roads lead to Phinneys Lane the Cop Shop." She gave other examples of illegal activities that occur within a close proximity to the police station. Councilor Curtis raised a point of order because she did not know what this was about. President Farnham explained it was associated with the shelter.

Joanne Kelley spoke favorably on CPC support of the Unitarian Church restoration. They are aware of the separation of church and state but this is about historic preservation for the town. She doesn't want the church to be turned into a B & B, as others have been elsewhere in the country.

Alan Burt met with Steven Brown, of the County Human Services Department and shared a few facts from their studies on the needy population of Cape Cod. There are almost 70,000 homeless on the Cape. He asked whether there are enough buildings for people to buy or rent that are truly affordable. He would like the council to look at innovative ways to address this. He gave Councilor Barton the report on a CD.

Jeffrey Plattner also spoke in favor of funding the CPC appropriation for the Unitarian Church. He reviewed all the community functions that occur at the church and hopes the council will support this item.

Lou Gonzaga spoke about being 'business user friendly.' Massachusetts is rated 49th out of 50 on being user friendly by Forbes Magazine. Barnstable is rated 176th in the state for cost of doing business and 179th for taxes. He recalls when Main St "used to be packed." The town cannot start taxing businesses. He also feels it is great that the Unitarian Church is doing what it is supposed to do, but they should sign the church over to the town in order to receive the grant.

John Brady is a member of the church and says the language of the CPA says churches qualify for such funding. Churches have to comply with other laws, for example regarding handicap accessibility. Churches are not exempt due to the separation of church and state.

Vincent Procaccini spoke on the issue of overcrowding. Despite the new ordinance, the house next to his still has multiple cars and numerous unrelated people living in it. They are starting to retaliate

against his family. When he calls the town hall, he gets excuses such as there is no engineer, they do not work nights, etc. Manager Klimm took down his address.

Peter Doiron spoke of hate on the council – the council’s no place for hate. He likened the denial of due process to a person who applied for a committee appointment, because of who he knew, to the actions of the 1935 House Un-American Activities Committee. He also commented on the airport, Exit 6 ½, compensation for councilors, beating Falmouth and Happy Thanksgiving.

John Julius asked a councilor to apologize to a citizen. President Farnham ended the comment because it was hearsay. Mr. Julius said he was not against affordable housing but against building extra affordable units that the town may not need. Too many affordable units may result in more children in the schools and more school expense. He wondered how Ruth Weil, Director of the Growth Management Department, and the state could come up with the number of affordable units required when the town assessor cannot.

Frank Paparo felt the last speaker had his constitutional right voided. He should have the right to say what he needs to. Mr. Paparo spoke about the lack of action from town hall or the BID relating to Verizon closing its Hyannis office and moving people elsewhere. Why not lure jobs that pay more than \$7.00 an hour he asked. He also said the single-party government in the State House will lift Prop 2 ½ law.

John Alden said nothing is accomplished by blasting people. The town has to learn to work together. Maybe things have to be changed, but has to be done together.

Rick Presbry is proud of the town and the police department for what they are doing on Fresh Holes Road to raise the quality of life of the residents. It is giving people some sense of safety.

Upon a motion duly made and seconded it was voted to close the public comment.

VOTE: Unanimous

COUNCIL AND TOWN MANAGER RESPONSE TO PUBLIC COMMENT

President Farnham explained that the No Place For Hate was a private organization not a town committee. The Charter requires the council to establish its own pay scale but the council would like to change that.

Councilor Milne has no interest in making decisions regarding a stipend. The council asked its legislative delegation to do something about the \$50 fines for failure to file an I & E statement. He felt there was no ambiguity in the ballot question on the tax rate. Regarding the Unitarian Church, he has an issue in giving public funds to a religious institution. There are many similar projects from other religious institutions. He would support it if they could set a policy about funding all religious institutions.

Councilor Crocker said the manager took an aggressive step to speak to Verizon. It is hard to deal with large national corporations. There was effort on behalf of the town and town residents who work there.

Councilor Canedy added that the conversation with Verizon is continuing. She feels the Unitarian Church issue is not a matter of treating every religious organization equally. This is an historic building and they will be treating all historic buildings similarly. \$1M has been spent in churches throughout the state. The church is valuable because it is on the oldest road in the country and a tourist draw. Barnstable Village is anchored by that church the Trayser Museum and the court house.

Councilor Barry read from the state constitution prohibiting grants, etc. to churches that are not publicly owned or supervised. Town Attorney Robert Smith said this is the anti-aide amendment; however there is a federal law, the Religious Land Use and Institutionalized Persons Act (RLUIPA) that states that if we do anything for a private organization we can’t discriminate towards a religious

organization. He added that now actual church worship services are taking place in school buildings, which was prohibited before. The ACLU would litigate this at the drop of a hat and the Attorney General of the Commonwealth will not defend the state constitution against the RLUIPA.

Councilor Curtis is concerned about the issue of enforcement related to the overcrowding. The law is not worth the paper it is written on if it can't be enforced. Why is it not working? She respects everyone's first amendment rights but questions whether they supercede the deliberations of the legislative body. Public accusations and name calling are not a positive step to achieving goals.

Councilor Barton explained that the No Place For Hate Committee is not an official town committee, not a private committee, but an independent committee. It is affiliated with the Youth Commission and has members from other town committees. She feels the town is far away from having too much affordable housing. We now have 6.4% of the minimum required.

Manager Klimm said he has statistics regarding the income statements and will forward them at the next meeting. He has received complaints during the first month of the new ordinance. He will be addressing Mr. Procaccini's situation in the morning.

REPORTS FROM TOWN COUNCIL, BOARDS, AND COMMITTEES

Laura Shufelt, Chairman of the Housing Committee and Director Weil explained how the affordable housing is counted by the state relative to Chapter 40B projects. There are 1,291 affordable units by the state count. The total number of housing units is 25,018, less 4,752 seasonal units equals the 20,266 units that the percentage affordable is based upon. The 1,296 affordable units divided by 20,266, times 100 equals 6.4 percent. The number presented at the last meeting was a raw list of properties and had duplicates. They submitted a letter from the assessor (See Exhibit B). The town is 740 units away from 10%.

According to the 2000 Census, 42% of the people qualify for affordable housing. Assessors only count owner-occupied year-round residences. This is a lower figure than the actual occupied units. Councilor Crocker pointed out that the census is based on yearly income not net worth, which is undetermined and does not relate. Are there any ways to obtain better information from the federal census? Staff explained that it is a standard to use the federal census figures. Councilor Curtis worked for the census in 2000 and explained that it is a universal form.

President Farnham asked if Section 8 certificates are counted, Chairman Shufelt said 400 families on a waiting list for affordable housing and the waiting time is three years. Five hundred are housed already. The numbers refer to all rentals but not all Section 8s. There is no way to estimate who is waiting for purchase units. The amnesty program has added 103 units to the affordable rental stock.

ACT ON MINUTES

Upon motion duly made and seconded it was voted to approve the minutes of November 2, 2006.

VOTE: 10 Yes, 2 abstentions

ORDERS OF THE DAY

OLD BUSINESS

2007-036 COMMUNITY PRESERVATION FUND APPROPRIATION FOR UNITARIAN CHURCH PRESERVATION

Upon a motion duly made and seconded this item was referred to a public hearing on December 7, 2006.

VOTE: Unanimous

2007-038 APPOINTMENTS

Upon a motion duly made and seconded it was

ORDERED that the Barnstable Town Council appoints the following individuals to a multiple member board/committee/commission:

COMPREHENSIVE FINANCIAL ADVISORY COMMITTEE APPOINTMENT:

William S. Brower, 890 Santuit-Newtown Road, Marstons Mills, MA 02648, term expires 06/30/2007

HOUSING COMMITTEE APPOINTMENT:

Michael F. Schulz, 81 Meadow Lark Lane, Osterville, MA 02655, term expires 06/30/2008

RECREATION COMMISSION APPOINTMENT:

Rene M. King, 192 Zeno Crocker Road, Centerville, MA 02632, term expires 06/30/2008

VOTE: Majority in favor.

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 December 21, 2006.

VOTE: 11 Yes, 1 No (Curtis)

NEW BUSINESS

**2007-047 ORDER AUTHORIZING SALE OF BUILDING SHOWN ON ASSESSORS MAP
183, PARCEL 005, LOT 001 0 SANDY NECK, BARNSTABLE**

Upon a motion duly made and seconded it was

RESOLVED: that the Town Manager is authorized to dispose of by sale on behalf of the Town all right, title and interest in a surplus Town building having a street address of 0 Sandy Neck, Barnstable, shown on Assessors Map 183 as Parcel 005 Lot 001 for a price to be determined by competitive bid, and to execute and deliver any and all documents necessary to complete the sale in accordance with the terms of this Order.

Manager Klimm gave the rationale. It would be a win-win for all parties involved. The town acquired the Nickerson property through the Nature Conservancy but was required to move the building. It would allow the town to dispose of the building, if various parties can agree, and avoid a major appropriation request of the council. Councilor Canedy agrees it is the least expensive and least obtrusive. Councilor Crocker asked if there would be a competitive bid. Yes. Klimm explained that there are some restrictions because the building has to remain in the general area since it is historical. Just the building will be sold and moved from town-owned land.

VOTE: Unanimous

**2007-048 GRANT FROM BJ'S WHOLESALE CLUB TO BARNSTABLE SENIOR
SERVICES FOR \$6,400.00.**

Upon a motion duly made and seconded it was

RESOLVED: That the Town of Barnstable hereby accept a grant from BJ's Wholesale Club in the amount of \$6,400 to support the ongoing provision of adult supportive day programming at the Town's Adult Supportive Day program.

Manager Klimm said it was pretty straightforward. Councilor Rugo stated that he feels BJs pays low wages, offers no benefits, and there is much turnover of employees.

VOTE: Unanimous

2007-049 LOAN ORDER RECISSION

Upon a motion duly made and seconded it was **ORDERED,**

That the amount of \$14,516,767 of unissued loan authorizations be rescinded as follows:

Council Order Number	Amount Authorized	Rescinded Amount	Reason
1990-052 WWTP Improvements	200,000.00	200,000.00	Surplus used
1991-038 WWTP Improvements	1,900,000.00	1,900,000.00	Surplus used
1993-120 WWTP Improvements	2,953,000.00	1,191,309.00	Surplus used
1997-163 Landfill Closure	7,891,793.00	751,862.00	Project under budget
1999-118 Reconstruction of taxiway Delta to north ramp; T-Hangar development; radio transmission recording device; and interim terminal building improvements	392,375.00	392,375.00	Project under budget and surplus used
1999-151 Landbank appraisal services	100,000.00	100,000.00	Surplus used
1999-170 Land acquisition of herring run at Indian Lakes Development Trust	703,500.00	703,500.00	Purchase not made
2000-011 Land acquisition of 7.33 acres in West Barnstable	72,500.00	72,500.00	Surplus used
2000-015 Locust Street sewer extension	22,675.00	22,675.00	Betterments assessed
2000-111 Permit and Design Costs for New Terminal \$500,000; Rehabilitate Portion of Main Ramp \$205,000; T-Hangar Construction \$150,000; New Fuel Storage Tanks \$250,000; Land Purchases \$125,000	1,230,000.00	1,080,000.00	FAA & MAC funded
2000-148 Airport Safety Area Study	125,000.00	125,000.00	FAA & MAC funded
2001-015 Red Lily Pond subsidence dredging	410,000.00	410,000.00	Federal grant received
2001-035 Landbank title and hazardous material release report services	35,000.00	35,000.00	Surplus used
2001-055 Authorization for purchase or taking by eminent domain of 7.62 acres more or less of land in Marstons Mills	245,000.00	245,000.00	Purchase not made
2001-087 Main St. Hyannis Streetscape	3,830,000.00	2,000,000.00	PWED Grant received
2001-088 Airport Runway 33 Safety Area Construction	980,000.00	980,000.00	FAA & MAC funded
2001-116 Land acquisition of .52 acres more or less in Hyannis	30,000.00	30,000.00	Surplus used
2002-008 Airport terminal permit and design cost	125,000.00	125,000.00	Project revised
2002-009 Construction of a new T-Hanger at the Barnstable Municipal Airport	75,000.00	75,000.00	Project revised

2002-010 High School renovation and construction	162,500.00	500.00	Project under budget
2002-115 Land purchase located off Braggs Lane, Barnstable Village	2,002,046.00	2,046.00	Project under budget
2002-082 Airport Runway 6 and 24 Safety Area	3,250,000.00	3,250,000.00	FAA & MAC funded
2003-029 Airport land acquisition	325,000.00	325,000.00	FAA & MAC funded
2004-109 13.43 Acres More or Less in Marstons Mills	250,000.00	250,000.00	Project revised
2004-110 10.2 Acres More or Less in Marstons Mills	250,000.00	250,000.00	Project revised
Total	27,560,389.00	14,516,767.00	

Finance Director Milne gave the rationale. He is asking to clean up the balance sheet and rescind the authorizations not needed. With respect to the last two items, there was a subsequent loan order that combined the two projects making these loan orders not needed.

VOTE: Unanimous

2007-050 ZONING ORDINANCE DEFINITIONS AND ENFORCEMENT

Upon a motion duly made and seconded it was voted to refer this item to the Planning Board who will bring back the results to the council by the first week of February.

Councilor Crocker would like to include a date of return. Ruth Weil said it would be going to the subcommittee next Tuesday and could come back to the council in late January or early February. She felt it was an issue that is more complex than it seems. It is a time consuming process to compare the definitions among the various codes.

Councilor Crocker amended the item by adding “who will bring the results back to the council by the first week of February.”

On 2007-050 as amended above.

VOTE: Unanimous

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

Councilor Curtis shared her recent trip to visit our twin city, Barnstaple in Devon England. She met with the mayor and town clerk as well as several members of their town council. She spent two afternoons with them. Their job is to assess the needs of their community and make recommendations to the district council. Their council consists of 24 members for a community of 31,000. Barnstaple is the oldest borough to be recognized by the monarchy. They were the first town to be given a Fair, which positively impacted their economy. All gifts from our town are hanging or displayed in the Mayor’s chambers.

Councilor Tobey thanked the councilors, police, DPW and all others who supported the endeavor to go into the Fresh Holes and Hirammar areas. He went to a meeting at the Hyannis East Elementary School where about 50 residents and children came to hear a police presentation. There has been a real improvement in the area. People are calling the police, baking cookies for them, etc.

Councilor Canedy reported that Land Acquisition Committee has reviewed 3 properties: in Cotuit, Hyannisport and Marstons Mills. She attended the CPC seminar in Harwich and announced a second workshop on 11/29.

Councilor Joakim reminded all about the Barnstable-Falmouth football game Thanksgiving Day. The parade is the day before at 1 PM on Main Street.

Councilor Milne said the bet of cranberries and quahogs is on. A meeting focused on the 725 Main St Park will occur at 7PM on Monday 11/20. The Christmas Party for the Cape Cod Selectmen and Councilors will take place at the Old Yarmouth Inn.

Councilor Brown agrees on the fine work done at the Fresh Holes area. He referred to a letter from John Tobin, Boston City Council, District 6, (See Exhibit C) who wants support to redirect an additional 1% of the meals tax directly to cities and towns, asking the council to support it.

Councilor Barton said “Operation In From The Cold” is starting again as “Operation In From The Streets.”

Councilor Crocker offered a resolve to support Councilor Tobin’s idea of redirecting 1% of restaurant meals tax to cities and towns.

Councilor Canedy said she did not know enough about it to vote for a resolve. She wanted to wait until more was known and asked the town manager to get some information. Klimm explained that Councilor Tobin wants 1% of the sales tax to stay within the community where it is raised and not extracted in total. He is trying to put together a coalition of communities that send a lot of sales tax revenue to the state. Klimm can’t think of any reason not to support it. Councilor Barton said Tobin was planning to file the bill shortly and is time sensitive.

A motion was made and seconded to move the question.

VOTE: Unanimous

A motion was made and seconded to authorize the council president and the town manager to write a letter to Councilor Tobin in support of his legislative action.

VOTE: 11 Yes, 1 Abstention (Rugo)

President Farnham announced the tree lighting on Dec. 3 at the West Barnstable Village green.

Manager Klimm thanked Councilor Tobey for his kind words to the staff who worked on the Fresh Holes project. Klimm said Tobey forgot to thank one person, himself. Klimm also announced the upcoming ninth Citizens’ Leadership Academy. There is still space. To date, 240 residents have graduated from the academy.

PUBLIC COMMENT

John Julius thanked Councilor Milne for questioning the number of seasonal homes. Does anyone on the council want to challenge the number of seasonal homes? He has every right to question that number and expects that the leadership would get the true number. There are a few thousand signatures on the charter petition. People know the problems and the arrogance.

Frank Paparo said the council, the manager and the assistant manager better start talking to the public. Why did the public not hear from the town manager about the meeting with Verizon? He reminded all that the public pays all the salaries. Early councils used to invite the public here. This council needs to do this or the public will have a mayor.

Robert Tucker asked about posting the permit to find out who legally lives in the house.

Lou Gonzaga thinks there are some flaws in the rental ordinance when it comes to dealing with eviction and the ordinance needs to be revised. Is it fair to fine them while they are waiting for the eviction process to occur? Councilors Brown and Tobey have shown leadership – the police and the town are not the enemies. The landlords should be the ones that pay for cleanup, not the town. They are collecting the rent.

A motion was made and seconded to close the public comment.

VOTE: Unanimous

Councilor Tobey felt it was the entire board that supported the clean up. Everyone reaches out to the community. He suggests that the people with negative comments join a committee and help not throw mud in their faces. It's depressing when all you hear is negative, negative, negative.

Upon a motion duly made and seconded it was voted to adjourn the meeting at 10:20 PM.

VOTE: Unanimous

Respectfully submitted,

Lucia Fulco,
Assistant Town Clerk