

## TOWN COUNCIL MEETING

June 21, 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, June 21, 2007, at the Barnstable Town Hall, 2<sup>nd</sup> Floor Hearing Room, 367 Main Street, Hyannis, MA.

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

Vice President Brown led the Council in the Pledge of Allegiance and a moment of silence for Charles 'Bucky' Cabral.

### JANE ESHBAUGH COMMUNITY SERVICE AWARD

Jaci Barton, committee member, explained the history of the award. Jane Eshbaugh was the first award recipient for having served on the Recycling Committee, the Board of Health, the Village Vision Plan and the Town Council. Nominations for the award have dwindled over the last several years. Ms. Barton asked for the public's help in obtaining nominations. The villages that have not had recipients are encouraged to nominate people from the village. She thanked the committee members and made a plea for volunteers to serve on the committee. David Richardson of Osterville is the recipient. He and wife Diane were invited to the podium and President Joakim presented the award. (See Exhibit A)

Mr. Richardson thanked all and said a few words. He was honored to be recognized for an award named after someone who set the standards for community service. In recollecting his earlier days as a new Osterville resident, he observed that the friendliness of Osterville and the town had not occurred by accident. The people made an effort to reach out. He and his wife decided to become part of that effort. Neighbors working together have made the difference. He thanked his wife as well for her support.

Councilor Crocker recognized Jeff Eshbaugh, Mrs. Eshbaugh's son, who also thanked everyone.

### PUBLIC COMMENT

Monica Parker from the Hyannis Area Chamber of Commerce thanked the town for its support of the Father's Day car show which was a huge success. It was a terrific community event.

Lucien Poyant explained how a recently published reporter's interview misrepresented his comments, accusing him of criticizing the council. He did not criticize. On the contrary, he feels the job they do is difficult and they do it very well.

Chris Powicki spoke about the energy cooperative on the agenda. He is not in favor of the town joining it. The town will be bound to the county and the town's authority will be overridden. He fears, once signed, the town will not be able to reverse the agreement. It is like signing an irrevocable pre-nuptial agreement. He fears the town's credit rating being damaged, decisions delegated to others and the cost of business rising.

Wayne Souza spoke about the lack of bike paths as well as the lack of pedestrian and biker safety. Lack of sidewalks on Route 6A needs to be addressed. Other safety issues included glass on the roads after an accident not being cleaned up. He understands it is politics: Poli – many, tics – blood sucking creatures. He is looking for someone to do a little more.

Mark Thompson said Mrs. Lorusso asked him to congratulate the town on becoming an All American City.

Jon Julius is disappointed to see that the council is taking a vote for the “council” charter commission. He said the council is missing the deadline for voting to place the petitioned charter commission question on the ballot. President Joakim said the council had a late file item to take that vote. Julius also spoke about a petition regarding the airport hanger located on top of a Zone 1 area.

Robert Tucker spoke about people losing their jobs and not being able to find work. Someone is getting these jobs. He took issue with federal legislation to legalize the status of illegals as it might relate to housing and employment.

Peter Doiron said that at a recent public meeting, the citizens from Arrowhead Drive discussed making their street safe. The meeting was productive because it was run by non-elected people who were listening and serving the public.

John Rush moved to Hyannis because he is disabled and there are good services in this village. He spoke about being thrown out of the Hyannis Public Library recently. The security guard came up to him while he was reading and gave him the policy about the two hour limit. He is currently homeless but not less a citizen; he should be allowed to use the library. He felt he should have been given a list of the library directors and asked someone from the council to intercede.

Mark Halsted, also recently homeless, spoke in support of Mr. Rush. He has had a similar experience. People see the Cape as ‘Camelot,’ so why can’t the person on the street be accepted as a brother. He suggested that each councilor go back the constituents and reinforce that we are all human beings. He appreciates the help of some people on the council.

Alan Burt reported on the giant yard sale which made between \$7,000 and \$8,000. He announced that the Bob Murray Housing With Love walk is July 6 – 15<sup>th</sup>. All are invited to walk – not necessarily 100 miles. He also spoke about a woman who is facing charges for illegal housing and has to sell her rental.

Frank Paparo said four film festivals on the Cape have all been successful. Barnstable could lure them here. He urged the council to use his information and have a film festival. He also volunteered his help. He also said people were not speaking at public comment due to all the rules limiting comments.

#### **COUNCIL RESPONSE TO PUBLIC COMMENT**

Councilor Brown said Route 6A is a state road not a town road and, as such, the town cannot help. However, the town is working on its sidewalks and roads. Mr. Souza should go forward and contact the state.

Councilor Crocker pointed out that tow truck drivers have the responsibility to clean up the glass when they pick up the wreck.

Councilor Canedy said the town is communicating with the state on the Rte. 6A issue.

Councilor Milne said he, Councilor Tobey and President Joakim, along with Hyannis Library board member Chuck Sabbatt, met on the subject of being removed from the library some time ago. There have been other situations where the individuals have been difficult. He trusts that the current citizen was not a behavior issue. Mr. Rush will receive a copy of the library directors.

Councilor Tobey has seen and heard both sides of the story. He said that both President Joakim and Councilor Milne would do excellent follow-up.

President Joakim reminded Mr. Paparo that the rules are based on the state constitution. No one is being prevented from speaking.

The minutes of the June 14<sup>th</sup> meeting will be addressed at the July meeting.

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

Councilor Curtis had the opportunity to attend the first day of the First Tee Program at the Hyannis Golf Course. This program offers golf lessons to kids ages 10 – 15. Barnstable was chosen to be the regional center for the program and children from other Cape towns also attend. The program is really about teaching values, respect, integrity, team work, etc.

Councilor Canedy announced the Hyannis Access Task Force Committee's upcoming meeting. She also reviewed various upcoming activities in Barnstable Village.

Councilor Barry thanked Assistant Town Manager Paul Niedzwiecki for speaking at the Cotuit Civic Association on wastewater issues.

Councilor Munafo announced that the Lighting Study Committee had its first meeting and they hope to report to the council in September.

Councilor Crocker thanked the DPW for addressing the Osterville Civic Associations issues.

President Joakim reviewed the July 4<sup>th</sup> schedule of events throughout the town.

### **ORDERS OF THE DAY OLD BUSINESS**

Item 2007-160 was taken out of order.

Ruth Weil, Director of Growth Management submitted a substitute motion.

### **2007-160 AMENDMENT TO ZONING ORDINANCE – CONTINUING CARE RETIREMENT COMMUNITY OVERLAY DISTRICT**

Upon a motion duly made and seconded it was voted to open a public hearing at 8 PM.

**VOTE: No objection**

Planning Board members present: Marlene Weir, Roy Fogelgren, Raymond Lang, David Munsell and Patrick Princi.

The Planning Board made a motion which was seconded to open the public hearing.

**VOTE: Unanimous**

Ruth Weil gave the rationale. This is not a restrictive 55 or older zoning proposal. The town has been approached about having such communities within the town. There is no prototype, therefore there is flexibility in the ordinance. If it is passed, with a five-acre parcel, a builder can present a concept plan to the planning board. If it fits according to the planning board, the council will be asked to approve, by a 2/3 vote, a map amendment requiring a zoning change. Only then does the planning board consider granting a special permit.

Differences between the original order and the substitute order involved making some of the language less broad, requiring complying with the zoning ordinance, density issues, etc.

Upon a motion duly made and seconded it was voted to close the public hearing at 8:10 PM.

**VOTE: Majority approves**

The Planning Board also made a motion that was seconded to close the public hearing.

**VOTE: Unanimous**

Councilor Barry felt the town should be saving the industrial parks for industry. Other areas should be found for this legislation.

Councilor Canedy thinks it is a positive. It would bring jobs in from maintenance to management. The door has been opened to residential use in the industrial park with affordable housing. This will be attractive and a benefit.

Councilor Curtis wondered about the developers' use of the phrase 'stymied by the current zoning.' She also feels it is a type of housing for a select group of citizens which is changing zoning for certain members of the population. This language is similar to the AHOD and she sees this being supported by some who were not in support of the AHOD. In addition, this type of housing has never come before the housing committee for review.

Director Weil explained that mixed-use development is not favored in the current zoning; currently the zoning addresses only single-use. This is for mixed-use. Such a development may have a gym, dining facility, etc.

Councilor Tobey spoke to the positive aspects: no impact on traffic, jobs are not low-level jobs, etc.

Councilor Milne added that this type development would generate new growth and taxes; it would be a positive cash flow for the town, and school services would not be impacted.

Councilor Crocker feels that Barnstable has not given the seniors, who need assisted living, a chance to stay in town and this is long overdue. He asked about building height and density because the criteria could be met with various heights. Weil referred to the bulk regulations pointing out that any waiver must comply with the criteria and there are a variety of different analyses.

Councilor Brown said this increases the opportunity for other people to buy the houses vacated, which would increase the availability of homes, causing the prices to drop.

Councilor Farnham said this could work anywhere in town with a five-acre parcel. He asked if the ordinance should address wastewater depending on the area, density, number of bedrooms per acre, etc. He feels a garage is a nice amenity. Director Weil said that unless there is a sewer or an AP, it will not be allowed.

Councilor Milne asked about the map. The overlay district could be anywhere in town. A map will be created when a location is determined and then the current zoning map has to be amended. Milne referred to a letter from Laura Shufelt, of the Housing Committee. (Exhibit B) He would like the full housing committee to review it before he votes. He asked about affordability. It appears to allow Ch. 40B relief without the benefit to the town. He will not support this at this time. Milne also didn't think this would be favored by the 132 Committee.

Councilor Chirigotis asked for the definition of developmentally disabled. Weil said the term refers to somebody who is mentally challenged. Town Attorney Robert Smith added that there are a number of symptoms that fall under developmentally disabled. The expectation is that the patient, client will be able to get better with work.

Councilor Barton pursued the affordability issue. Atty. Smith said the inclusionary zoning ordinance would apply.

Councilor Canedy further explained that the 5 acres are contiguous, upland. The garage is above ground and may be multi-level. Parking could be on a lower floor with the building on top. There will be a fiscal impact on water and fire districts. They should be involved in the preliminary planning.

Councilor Tobey is going to need one of those homes. At that time it would free up his home for his grandchildren.

Councilor Crocker thanked Councilor Canedy for really understanding the project and becoming comfortable with it.

Councilor Curtis asked what number of units the developer is planning and can one assume 10% affordability. She does not think 10% affordability is sufficient and it should be spelled out for moderate income elders, etc. Director Weil said the numbers can be addressed when projects come forward. It should be worked out at the point of the special permit. Councilor Milne added that the other units will increase market rate stock and the town will never get to 10%.

Raymond Lang would like to see wording that inclusionary zoning be included at the time of the special permit. If it is written in, it is there; if it is left for the special permit application, it can be negotiated. Curtis asked if the planning board would be negative towards a higher percentage affordable. What if the developer can do the affordable piece, how can you require it if it is not written in? Lang pointed out that affordable housing often gets close to a deal breaker. If it is written in, it should be positive such as 'must provide 10%.'

Ray Fogelgren pointed out that this is a 24/7 operation which will bring in many jobs. The revenue impact is tremendous. If a non-profit operator came in, the tax revenue would be much less. Councilor Milne added in that circumstance a portion could be subject to taxation and those who by the homes/condos would be taxed.

David Munsell would rather have this senior facility than 3 or 4 family homes with children. Ultimately, the council still has to finally approve the zoning change. There are people waiting to come forward and propose something.

Patrick Princi feels it is an opportunity to bring in many jobs; there is a low conflict with town resources; the business park is stagnant and this can bring in employees. He has worked with the housing committee diligently on other housing proposals. The planning board has tried to provide as much affordable home stock as it could.

Councilor Farnham explained the economics of purchasing a unit in such a facility and later entering a rental unit that provides greater care.

President Joakim announced that the planning board will discuss the amendment and some changes.

The Planning Board reconvened in the Selectman's Conference Room at 9:00 pm and the Town Council recessed its discussion of this item.

2007-161 was taken out of order

**2007-161 APPROPRIATION ORDER SCHOOL TECHNOLOGY IMPROVEMENTS**

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

**VOTE: No objection**

Town Manager John Klimm gave the rationale.

Upon a motion duly made and seconded it was voted to close the public hearing at 9:04 PM.

**VOTE: No objections.**

Councilor Munafa asked about payments from the telephone bills of money for technology. Bethann Orr, Technology Director explained that these are franchise fees from Comcast. The fees will be used under the direction of Dan Wood, IT Director, to add fiber networking throughout the town. This will connect over 50 town buildings.

Councilor Canedy asked from where these funds are coming. Superintendent Patricia Grenier explained that she would have come forward with this item at the regular budget time but was not comfortable. She wanted to be sure that there would be enough money in the appropriated budget. This is coming from the already allocated monies.

Councilor Crocker asked about the equipment. Grenier said they are replacing 10 year old computers. Orr added that each high school teacher will have an up-to-date laptop and new computers will be installed in the middle school and elementary labs.

Councilor Munafo asked if she was comfortable with the little money left in the savings account. Grenier said she is never comfortable and she will be conservative. However, she can't continue to educate students with the old technology.

#### **2007-161 APPROPRIATION ORDER SCHOOL TECHNOLOGY IMPROVEMENTS**

Upon a motion duly made and seconded it was

**ORDERED:** That the Town Council hereby appropriates \$300,000 for improvements to the School Department's technology equipment and to meet this appropriation that \$300,000 be transferred from available funds.

**VOTE: 13 Yes (ROLL CALL)**

Item 2007-165 was taken out of order.

#### **2007-165 ORDER AUTHORIZING THE TOWN TO JOIN A REGIONAL ELECTRIC GENERATING COOPERATIVE**

Upon a motion duly made and seconded it was voted to open a public hearing at 9:23 PM

**VOTE: no objection**

Attorney Smith gave the rationale. This is a complex agreement and was worked on by Bud Breault, Assistant Director of DPW, David Anthony, Chief Purchasing Agent, and Charles McLaughlin, Assistant Town Attorney. Atty. Smith recommended the council keep the options open. This is an opportunity for municipal participation in a cooperative that will result in cheaper rates and done in a way that explores alternate energy sources. The cooperative needs to be established in order to get IRS approval. Nothing beyond this step will be consummated until the council takes further steps. It is not an irrevocable pre-nup.

Maggie Downing, Assistant County Administrator, made the PowerPoint presentation. (See Exhibit C)

Upon a motion duly made and seconded it was voted to close the public hearing at 9:40 PM.

**VOTE: no objection**

Councilor Canedy asked several questions regarding the cooperative being subject to the town wind ordinance, backing out of the cooperative and financial exposure. Atty. McLaughlin said the primary purpose is to obtain IRS approval. Income must not be taxable to any entity. All expenses to date have been and will be borne by the Cape Light Compact. There will be no additional undertakings or finance of the projects without another council vote. If the council does not like the direction, it can pull the plug at any time without future obligations. The structure of the executive committee gives the town significant say in decisions. Atty. Smith added that there is no applicability to the new wind power ordinance. This cooperative will put the town in the business.

Councilor Munafo said there has been no public outcry at this point, that the town should be an electric company. He has not heard any advantages to going forward. Atty. Smith said it was a policy question. There are about 40 or 50 towns in the electric business and think it is a good deal. Lexington is currently trying to do that. Atty. McLaughlin added that this is a baby step and without it there will be no ability to explore opportunities. Nothing more will go forward without full vetting of the issues. Munafo feels there is no public input and it is a drastic step.

Councilor Crocker asked about the IRS approval and withdrawing from the cooperative. IRS approval will eliminate the tax impact of repackaging the energy. Once the cooperative is in place, the liability stays. Atty. McLaughlin added that there will be project specificity and full disclosure before any

liability goes to the town. Barnstable will have a seat on the executive committee and projects are approved by 3 of the 5 members. After three pass the project, it has to be passed by a majority of the full board – one representative per town. Crocker points out that the town will be 1 out of 5 on the executive board but may be 1 out of 10, or so, on the full board. Atty. Smith explained that liability is generally limited to the individual member’s capitalization. Capitalization could be project specific or bonding capacity. The Cape Cod Compact has a \$500,000 grant and support from the county.

Councilor Canedy confirmed that the cooperative will have to come back to the council before any financial commitment. Councilor Curtis confirmed that nothing more would occur without another vote, which would come after the results of the inquiry of the IRS and DOR. There is no commitment to pledge the town’s credit at this point according to Atty. Smith. Councilor Chirgotis asked about the executive board seats. Three will be permanent: Barnstable, Barnstable County and the Cape Light Compact. The other two will be the next two towns to sign on, and the seats will then become at-large seats.

Councilor Munafo would like to review the copies of the articles of organization and the General Laws.

Councilor Munafo made a motion, which was seconded, to postpone this item to 9/20/2007.

Councilor Canedy said this was going forward just to see if there is a tax advantage. This vote is not a commitment. Councilor Crocker said that now was the time to negotiate the best position for the town, agreeing that it needs time. One can’t negotiate after you have said yes.

On the postponement, Councilor Milne pointed out that this has been in the pipeline for some time. All the vote will do is allow the cooperative to obtain the letters, no more.

**VOTE: 5 Yes, 7 No**

Councilor Brown made a motion to move the question. Councilor Milne asked for a roll call. Councilor Crocker asked for a clarification of the vote and whether he might want to have a charter objection. A charter objection was made, prior to a vote on moving the previous question. Atty. Smith said that the Charter objection was in order. Item 2007-165 will be taken up at the next meeting.

#### **2007-160 AMENDMENT TO ZONING ORDINANCE – CONTINUING CARE RETIREMENT COMMUNITY OVERLAY DISTRICT**

The Planning Board returned to the main hall at 10:16 pm and the discussion of this item continued.

A motion was duly made and seconded to replace the original motion with the substitute motion.  
**VOTE: Unanimous**

A motion was duly made and seconded to amend Item 2007-160 as follows:

Section 240.29.2 Definitions:

**Continuing Care Retirement Community.** After last sentence add the following sentence, “Other than nursing home beds, the SCCRCOD shall meet the Town’s Inclusionary Ordinance, Chapter 9 of the Barnstable Code, requiring that 10% of the units be affordable as “affordable” is currently defined under Chapter 9.”

**VOTE: Unanimous**

A motion was duly made and seconded to amend Item 2007-160 as follows:

#### **Several Scrivener’s Errors**

Between 240-29 and 240.29.1, Strike Section 1.

In 240.29.10 in subparagraphs f, g, h strike SCCROC and replace it with SCCRCOD.

**VOTE: Unanimous**

**2007-160 AMENDMENT TO ZONING ORDINANCE – CONTINUING CARE RETIREMENT COMMUNITY OVERLAY DISTRICT**

Upon a motion duly made and seconded it was

**ORDERED:**

**SENIOR CONTINUING CARE RETIREMENT COMMUNITY OVERLAY DISTRICT**

**SECTION 1**

That Chapter 240, Article III of the Zoning Ordinance, is amended by adding a new Section 240-29 Senior Continuing Care Residential Community Overlay District as follows:

**SECTION 2**

**240-29 Senior Continuing Care Retirement Community Overlay District - SCCRCOD**

**240-29.1: Purpose:** The purpose of this section is to encourage the development of residential communities designed to offer shelter, convenience, services and personal medical care, including nursing facility services, to senior persons while providing adequate and economical provision of streets, utilities and public spaces and preserving the natural and scenic qualities of the open areas. These facilities may offer a continuum of care, ranging from independent living to assisted living and nursing home care that reflects the changing needs of their residents.

**240.29.2: Definitions:**

**Applicant:** The person or persons, including a corporation or other legal entity, who applies for approval of a Senior Continuing Care Retirement Community Overlay District (SCCRCOD) hereunder. The Applicant must own, or be the beneficial owner of, all the land included in the proposed SCCRCOD, or have authority from the owner(s) to act for the owner (s) or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site.

**Assisted Living Units:** Residential living units in which supportive services are offered for individuals who need assistance in activities of daily living.

**Building Height:** Building height shall be measured as the vertical distance from the grade plane to the average height of the highest roof plane that also has the highest ridge line.

**Building Story:** The vertical distance from top to top of two successive tiers of beams or finished floor surfaces; and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

**Continuing Care Retirement Community:** A facility which may include a wide range of housing types including studio, one, two, and three, bedroom apartments, townhouses, duplexes, clusters or single family homes and which offers a continuum of services ranging from in-home services to on-site nursing home care. The facility may include independent living units, assisted living units and skilled nursing home facilities. The facility may include accessory uses for the benefit of the residents which accessory uses are subordinate and incidental to the Continuing Care Retirement Community as determined by the Town of Barnstable Planning Board. Other than nursing home beds, the SCCRCOD shall meet the



Town's Inclusionary Ordinance, Chapter 9 of the Barnstable Code, requiring that 10% of the units be affordable as "affordable" is currently defined under Chapter 9.

**Grade Plane:** A reference plane representing the average of the finished ground level adjoining the building at all exterior walls. The reference plane shall be established by using the lowest points of grade within the area between the building and a point six feet from the building.

**Senior Person:** Person aged 55 or older or in the case of a couple, one spouse must be over the age of 55. It may include a developmentally disabled adult person under the age of 55.

**Special Permit Granting Authority:** For the purposes of this section, the Barnstable Planning Board shall be the Special Permit Granting Authority.

**Comment [PC1]:** We need to ascertain if this works with the typical CCRC model.

**Nursing or Convalescent Home:** A facility for the assistance, maintenance, care, treatment or recuperation of mentally or physically handicapped, injured, invalid, convalescent or chronically ill persons on a full- or part-time basis, licensed by an appropriate governmental authority.

**Visitability: Shall mean that a dwelling unit has:** a) no steps between the exterior walking surface and interior first floor level; b) one external door at least three (3) feet wide; c) all first floor passage doors at least 2 feet 8 inches wide; and d) at least one toilet room on first floor.

**240-29.3: Senior Continuing Care Retirement Community Overlay District:** The SCCRCOD is an overlay district that allows a continuing care retirement community as a use by special permit and which overlay district may be superimposed on any parcel(s) of five (5) acres or more of contiguous upland in any zoning district deemed appropriate as determined by the Town of Barnstable Planning Board. Where the SCCRCOD authorizes uses not otherwise allowed in the underlying district, the provisions of the SCCRCOD shall control.

**240.29.4: Location:** The SCCRCOD is to be shown on the Official Zoning Map of the Town of Barnstable.

**240.29.5: Concept Plan:** Prior to the rezoning of any property for inclusion in the SCCRCOD and as part of a petition for such rezoning, a schematic plan, called for purposes of this Section, a "Concept Plan", shall be filed by the applicant with the Planning Board for review at least twenty-one (21) days prior to a regularly scheduled meeting of the Planning Board. The Concept Plan shall be consistent with the provisions of this SCCRCOD ordinance. In deliberation on approval of a Concept Plan, the Planning Board shall give consideration to the Town of Barnstable Local Comprehensive Plan. The purpose of the Concept Plan is to ensure that the overall development scheme is consistent with Town policies and plans; adequately protects natural resources; provides safe traffic circulation consistent with the adjacent roadway network that also ensures adequate access to the development; and to ensure that the development is arranged to provide maximum protection of its residents from nuisance and hazard.

**240.29.5.1:** The Concept Plan shall include:

- a. A schematic site development plan showing in general, the location and square footage of all proposed buildings, general site grading, parking, landscaping, roads, walkways and access ways, open space, wetlands, lighting and signage;
- b. A general breakdown of building types: single family, two family, multi family and accessory structures, including total number of bedrooms for the entire development;
- c. A schematic subdivision plan(s), if applicable;

- d. Specific floor plans, building plans or other detailed construction documents are **not** required at the Concept Plan stage.

**240.29.5.2:** The Barnstable Planning Board will notify the public of the time and date of the public meeting on the Concept Plan. Thereafter, the Barnstable Planning Board shall determine that (i) the Concept Plan has been approved; or (ii) the Concept Plan has been approved subject to modifications; or (iii) the Concept Plan has been disapproved. The Barnstable Planning Board shall provide to the applicant in writing the reasons for any denial of approval of the Concept Plan. The determination of the Barnstable Planning Board of the approvability of the Concept Plan shall be the basis for a recommendation to the Town Council for the rezoning petition.

**240.29.6: Map Amendment:** In order for approval of a SCCRCOD the applicant, after first having received a decision from the Planning Board on the approvability of its Concept Plan, must file a petition for the amendment of the Town of Barnstable Zoning Map for inclusion of the subject parcel(s) within the SCCRCOD.

**240.29.7: Application for Special Permit.** After successful rezoning of a SCCRCOD, an application for a special permit shall be submitted to the Planning Board within six months from the effective date of such rezoning. The Planning Board may grant extensions for the time of filing for a special permit as may be deemed appropriate due to the size and scope of the proposed development. The application for special permit shall be submitted on forms furnished by the Planning Board, accompanied by the following:

- a. A site plan in accordance with the Town of Barnstable site plan review regulations §§240-98 through 240-105 indicating the planned location of buildings and their use, off-street parking areas, driveways, easements, walks, the location, type and height of walls, and the extent of landscaping or other treatment for the protection of adjacent properties;
- b. Building plans and elevations for all buildings and structures as may be required to fully describe the project.
- c. A tabulation of the areas of the proposed site elements, (including footprints and gross floor area), including total number of buildings, number of bedrooms, accessory structures; parking structures and surface parking areas (square footage and number of parking spaces) and stormwater management areas.
- d. Information pertaining to the proposed entity that is to manage the SCCRCOD and the type of operating agreement contemplated.
- e. If a subdivision is proposed, then all documents as required for the subdivision shall be reviewed during the Special Permit process.
- f. A narrative detailing the services to be provided to the residents and the staff to be employed to provide those services.
- g. Description of all proposed accessory structures and uses.
- h. Building phasing schedule, if applicable.
- i. Description of any green building construction techniques being used including a description of how maximum water and energy efficiencies will be achieved.
- j. A landscape plan signed and stamped by a Massachusetts certified landscape architect.
- k. Proposed signage, consistent with the requirements of the underlying zoning district.
- l. Plans detailing provision for wastewater disposal.
- m. Description of any infrastructure improvements that may be necessary to provide for the project.
- o. Additional information as may be required by the Planning Board as reasonably necessary to making the determinations required by this section.

**240.29.8: Joint Cape Cod Commission Review**

- a. Upon a determination by the Building Commissioner that an application for site plan review for a development requiring a special permit under the SCCRCOD constitutes a Development of Regional impact (DRI) under Section 12(h) of the Cape Cod Commission Act, 1990 Mass. Acts, Ch. 716, a referral shall be made to the Cape Cod Commission, accompanied by a request that a joint review process of the proposed development be established between the Cape Cod Commission and the Planning Board.
- b. The joint review process shall include joint hearings between the Planning Board and the Cape Cod Commission, as feasible.

**240.29.9: Standards:** In order to be eligible for consideration for a special permit, the proposal must contain parcels included in the SCCRCOD and shall meet all of the following standards:

- a. **Compliance with Applicable Regulations and Standards:** In the case of a subdivision, all plans and development shall comply with all applicable standards of the Planning Board's Subdivision Rules and Regulations, including such waivers as may be granted by the Planning Board.
- b. **Bulk Regulations:** For all lots within the SCCRCOD the minimum lot area shall be 217,800 sq. ft. of contiguous upland. For all lots and buildings within the SCCRCOD, the density, minimum lot frontage, property line and road layout setbacks, minimum building height and number of stories and minimum building separation requirements of the underlying zoning district shall apply unless the Planning Board finds that a waiver of any of those requirements is beneficial to create a SCCRCOD which better preserves open space without creating adverse environmental or aesthetic impacts or facilitates the delivery of services to senior persons or provides benefits which outweigh any detriments or provides sufficient mitigation to offset impacts.
- c. **Parking:** parking shall be provided as follows:

Comment [JB2]: JMB parking draft based on survey

SCCRCOD Uses	Minimum	Guest Space
Independent Living Dwelling Unit	.75 per dwelling unit	.5 per dwelling unit
Assisted Living Dwelling Unit	.5 per dwelling unit	.5 per dwelling unit
Skilled Care Facility	.5 per bed	.5 per bed
Employee – Dwelling Unit Administration	.75 per 5 dwelling units	N/A
Employee – Skilled Care Facility	.5 per bed	N/A

- d. **Waiver of Parking Requirements:**  
The Planning Board may waive the number of parking spaces required for the above listed uses upon a finding that the applicant has provided a parking demand analysis that adequately demonstrates alternate parking requirements for the proposed use or combination of uses.
- e. **Parking and Loading Design Standards.**
  - 1. Any above grade parking or loading facility should be screened from public view to the extent necessary to eliminate unsightliness. Screening may consist of landscape materials, topographic feature, residential buildings or any combination of these. In the alternative the parking facility may treat exterior walls with architectural features typical of the development it serves. Above ground, multi-level parking garages are discouraged.
  - 2. Outdoor storage shall not be permitted.

3. These requirements are in addition to the parking and parking lot landscaping requirements of the underlying zoning district.

f. **Visitability** The applicant shall provide that all of the dwelling units, shall be visitable as determined by the SPGA.

g. **Design Standards:**

1. All buildings in the layout and design, including landscaping, the placement of pedestrian sidewalks and parking, shall be an integral part of the development and have convenient access to and from adjacent uses.
2. Primary landscape treatment shall consist of a combination of indigenous grasses, trees and shrubs commonly found on Cape Cod and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Planting areas should be designed to serve as stormwater treatment areas often known as rain gardens.
3. Existing significant trees and natural vegetation shall be retained to the maximum extent possible. A minimum of one tree with a three-inch minimum caliper is required to be planted within the front setback for every 30 feet of frontage of property
4. All landscaped areas shall be continuously maintained, irrigated, and organically fertilized.
5. All stormwater shall be treated as appropriate and discharged on site and shall incorporate low impact techniques for stormwater discharge.
6. Minimum recommended light levels established by the Cape Cod Commission Technical Bulletin 95-001, DRI Standards and Submittal Requirements for Exterior Lighting Design shall apply. Site lighting, security lighting and architectural/landscape lighting shall provide illumination levels appropriate for the designed activity without exceeding minimum requirements
7. There shall be an adequate safe and convenient arrangement of pedestrian circulation facilities, sidewalks, roadways, driveways, off-street parking and loading space. Buildings and vehicular circulation open spaces shall be arranged so that pedestrians moving between buildings are not unnecessarily exposed to vehicular traffic.

**Comment [PC3]:** We discussed incorporated the DIP, but in reviewing it, it is very downtown Hyannis specific.

h. **Impact Analysis:** The applicant shall provide additional data and analysis requested by the Planning Board to enable the Board to assess the fiscal, community and environmental impacts of the proposed development. At its discretion, the Planning Board may impose reasonable fees upon the applicant for the hiring of outside consultants and the provisions of G.L. c. 44 §53G shall apply thereto.

**240.29.10: Decision:** The Planning Board may grant a special permit for a SCCRCOD where it makes the following findings:

- a. The SCCRCOD complies with all applicable Subdivision Rules and Regulations, except as they may be waived by the Board;
- b. The SCCRCOD does not cause substantial detriment to the neighborhood;
- c. The SCCRCOD is consistent with the Town of Barnstable Local Comprehensive Plan;
- d. The SCCRCOD provides an effective and unified treatment of the development on the project site making appropriate provision for environmental protection, the preservation of scenic features, sensitive habitat and other amenities of the site and the surrounding areas;
- e. The SCCRCOD is planned and developed to harmonize with any existing or proposed development in the surrounding area.
- f. The applicant has provided mitigation that sufficiently addresses the impacts of the SCCRCOD.
- g. The SCCRCOD provides services which are tailored to the needs of senior persons and may include meals, housekeeping, transportation, health care services and personal care

assistance and the benefits of the development for the residents and the community outweigh the detriments.

- h. The SCCRCOD complies with the standards established in Section 240.29.9 except as they may be waived by the Board based upon a finding that the waivers granted do not jeopardize health and safety and do not diminish environmental and aesthetic protections.

**240.29.11 Transferability:** The special permit for the SCCRCOD shall be transferable upon the prior written approval of the Planning Board.

| **VOTE:** Adopted 12 Yes, 1 No (Milne) (roll call)

**2007-148 APPROPRIATION ORDER COMPREHENSIVE WATER QUALITY STUDY**

Upon a motion duly made and seconded it was voted to open a public hearing at 10:22 PM

**VOTE: no objection**

Manager Klimm gave the rationale

Upon a motion duly made and seconded it was voted to close the public hearing at 10:22 PM.

**VOTE: no objection**

Councilor Farnham said it is a priority and he is in favor of preserving the lake. He asked what sort of remediation cost might occur. Thomas Geiler, Director of Regulatory Services, said it would depend on what the study determines. The current study is 15 years old and needs to be updated with more accurate information. He does not want to start treating haphazardly.

Councilor Munafo asked if the study has been initiated. Rob Gatewood, Conservation Administrator, said it has begun with the start of spring. It is a six month process through the fall. The data will be analyzed after that.

Councilor Curtis asked if this will help with other lakes as other requests come up. She expects to see that this is a list. Councilor Chirigotis supports the study. Councilor Canedy also wants assurances that the information can be applied to other pond and lakes. Mr. Gatewood said a subset of the study will be a comprehensive look at the ponds across town and result in a priority ranking. Councilor Rugo asked the council for support. Water quality has decreased; it is an important resource.

A motion was made and seconded to move the question.

**VOTE: Majority in favor**

**2007-148 APPROPRIATION ORDER COMPREHENSIVE WATER QUALITY STUDY**

Upon a motion duly made and seconded it was

**ORDERED:** That the sum of **\$50,000** be appropriated for the purpose of funding a comprehensive study of water quality, algae blooms, exotic plant growth and best remedial measures to define, protect and restore where necessary, the health of the Town's largest fresh water lake (Wequaquet), and to meet this appropriation, **\$50,000** be transferred from available funds, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes, and be authorized to accept any grants or gifts in relation thereto.

**VOTE: Unanimous (roll call)**

**2007-156 APPROPORATION ORDER FY 2007 AIRPORT CAPITAL BUDGET**

Upon a motion duly made and seconded it was voted to open a public hearing at 10:31 PM

**VOTE: no objection**

Airport Manager Doc Mosby gave the rationale.

Upon a motion duly made and seconded it was voted to close the public hearing at 10:34 PM.

**VOTE: no objection**

Councilor Crocker asked how we missed the mark. Manager Mosby said it was based on Nantucket Electric's information at the time, but bids came in higher than expected.

A motion was made and seconded to move the question.

**VOTE: Unanimous**

**2007-156 APPROPRIATION ORDER FY 2007 AIRPORT CAPITAL BUDGET**

Upon a motion duly made and seconded it was

**ORDERED:** That the Town Council hereby appropriates the sum of \$35,000 for the connection of airport communication and surveillance systems to fiber optic lines and to meet this appropriation that \$35,000 be transferred from the airport's surplus funds.

**VOTE: 12 Yes, 1 No (Milne) (ROLL CALL)**

**2007-157 ORDER FOR BALLOT QUESTION AMENDING TOWN CHARTER – NINE MEMBER TOWN COUNCIL**

Upon a motion duly made and seconded it was voted to open a public hearing at 10:37 PM.

**VOTE: no objection**

Councilor Crocker gave the rationale.

Peter Doiron thought it would cause confusion among voters in the fall. The non-binding language should be kept in. It is an interesting point although he does not subscribe to it. He is planning on running for Charter Commission.

Upon a motion duly made and seconded it was voted to close the public hearing at 10:40 PM.

Councilor Milne asked about the 15 precincts. This was not a charter commission. The number of voters in town has gone down according to the Secretary of State's office.

Assistant Town Clerk Lucia Fulco explained that population, based on the Federal Census, determines how many precinct there will be, not the number of registered voters. The 2010 Census will show an increase in population.

Councilor Milne agrees with increasing the number of representatives that each voter elects. The voter now has the power of 1/13<sup>th</sup>. This proposal will give voters the power of 5/9<sup>th</sup>. This is ownership, but voting for charter commissioners is also ownership. He would prefer the nine charter commissioners deal with this subject when they are elected.

Councilor Crocker thought it was presumptuous to suggest that only the charter Commission should go forward. The charter commission might not want to review the whole charter but just parts of it.

A motion was made and seconded to move the question.

**VOTE: Unanimous**

**2007-157 ORDER FOR BALLOT QUESTION AMENDING TOWN CHARTER – NINE MEMBER TOWN COUNCIL**

Upon a motion duly made and seconded it was

**ORDERED,** that the Town clerk place on the Ballot for the November 6th, 2007 regular municipal election, the following non-binding question:

"Shall the Town Council petition the general court for an amendment to the town charter establishing a town council composed of nine (9) members for four-year terms, four

members to be elected at large and five members to be elected from districts initially to be composed of three (3) precincts?

YES

NO

**VOTE: 10 Yes, 3 No**

Item 2007-166 was taken out of order

**2007-166 ORDER ESTABLISHING AN AGRICULTURAL COMMISSION**

Upon a motion duly made and seconded this item was referred to a second reading on July 19, 2007.

**VOTE: Unanimous**

**2007-158 ORDER ACCEPTING MGL CH. 44, S 55C – MUNICIPAL AFFORDABLE HOUSING TRUST FUND AND AMENDING ADMINISTRATIVE CODE**

Upon a motion duly made and seconded it was voted to open a public hearing at 10:49 PM

**VOTE: no objection**

Manager Klimm gave the rationale.

Upon a motion duly made and seconded it was voted to close the public hearing at 10:50 PM.

**VOTE: no objection**

Councilor Canedy asked if the \$1M was from the Harry's project *in lieu* of affordable housing. Director Weil said it was the Trade Winds project in Centerville. Farnham explained what this acceptance is about and how the action of the trust is independent of further votes. Councilor Barry asked if this is separate from the CPA funds. Laura Shufelt said the trust could accept CPA funds if the council so voted. Councilor Munafo asked about other options that were available besides a trust. Atty. Smith said the legislature has given this enabling act to limit options. He doesn't like it but has to live with it. Munafo asked how receiving funds for mitigation are different from other funds. Smith explained that the receipt of gifts is different. Mitigation money is currently sitting in the attorney's escrow account.

A motion was made and seconded to extend the meeting beyond 11 PM.

**VOTE: 12 Yes, 1 No**

Councilor Canedy made a motion, which was seconded, to postpone Item 2007-158 to July 19, 2007.

**VOTE: 2 Yes, 11 No**

**2007-158 ORDER ACCEPTING MGL CH. 44, S 55C – MUNICIPAL AFFORDABLE HOUSING TRUST FUND AND AMENDING ADMINISTRATIVE CODE**

Upon a motion duly made and seconded it was

**ORDERED,**

**SECTION 1:** Section 55C of chapter 44 of the general laws is hereby accepted.

**SECTION 2:** The Administrative Code is hereby amended by inserting at the end of Section 241-47.1.(t) the following:

(u) To administer the provisions of Section 55C of Chapter 44 of the General Laws, in a manner which is not inconsistent therewith. In so doing, the Town Manager shall be aided, in his discretion, by a Board of Trustees appointed by him in a manner consistent with paragraph (b) of said Section 55C. Furthermore, the powers to be exercised hereunder shall, consistent with paragraph (c) of said Section 55C, include the exercise of powers thereunder for the purpose of sound and prudent economic development as well as the purposes recited in said Section 55C.

**VOTE: 12 Yes, 1 No (Farnham)**

**2007-159 APPOINTMENTS**

Upon a motion duly made and seconded it was ordered  
That the Barnstable Town Council appoint the following individuals to a multiple member  
town board/committee/commission.

**YOUTH COMMISSION APPOINTMENTS:**

Benjamin Farrell, BHS, 744 West Main Street, Hyannis, MA 02601, term expires 06/30/2009  
Dan Fortunato, BHS, 744 West Main Street, Hyannis, MA 02601, term expires 06/30/2009  
Michael O'Connell, BHS, 744 West Main Street, Hyannis, MA 02601, term expires 06/30/2009  
Robyn Pitera, BHS, 744 West Main Street, Hyannis, MA 02601, term expires 06/30/2008  
Christine Farber, Advisor, 290 West Main St., Hyannis, MA 02601, term expires 06/30/2009  
Reid Hall, Advisor, BPD, PO Box B, Hyannis, MA 02601, term expires 06/30/2010

Councilor Canedy asked if the adults lived in Barnstable and why no addresses. Ms. Farber lives on  
West Main Street and Ms. Hall's street address cannot be given because she is a member of the Police  
Department.

Councilor Crocker inquired about the grade level of the BHS students.

**VOTE: Unanimous**

**2007-162 COMMUNITY PRESERVATION FUND SET-ASIDES AND APPROPRIATION  
ORDER FOR ADMINISTRATIVE EXPENSES**

Upon a motion duly made and seconded it was voted to open a public hearing at 11:02 PM

**VOTE: no objection**

Upon a motion duly made and seconded it was voted to close the public hearing at 11:03 PM.

**VOTE: Majority in favor**

Manager Klimm gave the rationale.

Councilor Munafo asked for what any leftover expense money would be used. Laura Shufelt said this  
is an annual approval and any funds left over are put back into unrestricted funds and cannot be used  
for administrative expenses next year.

**2007-162 COMMUNITY PRESERVATION FUND SET-ASIDES AND APPROPRIATION  
ORDER FOR ADMINISTRATIVE EXPENSES**

Upon a motion duly made and seconded it was ordered

**ORDERED:** That, pursuant to the provisions of G. L. c. 44B § 6, for the fiscal year ending  
June 30, 2008, the following sums, or sums equaling ten percent (10%) of the annual revenues  
of the Community Preservation Fund if a different amount, be set aside for further  
appropriation and expenditure for the following purposes: Four Hundred Eighty Six Thousand  
Eight Hundred Ten and NO/100 (\$486,810.00) Dollars or ten percent (10%) for open space but  
not including land for recreational use; Four Hundred Eighty Six Thousand Eight Hundred Ten  
and NO/100 (\$486,810.00) Dollars or ten percent (10%) for historic resources; Four Hundred  
Eighty Six Thousand Eight Hundred Ten and NO/100 (\$486,810.00) Dollars or ten percent  
(10%) for community housing; and that the sum of One Hundred Fifty Thousand and NO/100  
(\$150,000.00) Dollars be appropriated from the annual revenues of the Community  
Preservation Fund to be expended under the direction of the Town Manager, or the Community



Preservation Committee with the prior approval of the Town Manager, for appraisal, title search, hazardous materials assessment, consulting services, and pre-development costs, and administrative expenses, and to assist in the development and performance of contracts for community preservation.

**VOTE: 13 Yes (ROLL CALL)**

**2007-163 APPROPRIATION ORDER COMMUNITY PRESERVATION FUND DEBT SERVICE**

Upon a motion duly made and seconded it was voted to open a public hearing at 11:05 PM.

**VOTE: no objection**

Manager Klimm gave the rationale.

Upon a motion duly made and seconded it was voted to close the public hearing at 11:06 PM.

**No objection**

Councilor Munafo asked for comparisons. Finance Director Mark Milne said county receipts are down. So far, the town has been receiving 100% of the receipts since joining the CPA program. They may go down to 85% as more towns adopt the act.

**2007-163 APPROPRIATION ORDER COMMUNITY PRESERVATION FUND DEBT SERVICE**

Upon a motion duly made and seconded it was

**ORDERED:** that the Town Council hereby appropriate \$3,055,079 for the purpose of paying the FY08 Community Preservation Fund debt service requirements, and to meet such appropriation, that \$2,464,098 be provided from current year revenues of the Community Preservation Fund and that \$591,611 be provided from surplus funds in the Community Preservation Fund.

**VOTE: 13 Yes (ROLL CALL)**

**LATE FILE**

**2007-169 ORDERED THAT A QUESTION TO ASCERTAIN THE WILL OF THE VOTERS OF THE TOWN OF BARNSTABLE WITH RESPECT TO THE FORMATION OF A CHARTER COMMISSION BE PLACED ON THE BALLOT AT THE REGULAR TOWN ELECTION**

President Joakim said this question will go on the ballot whether or not it is voted on by the council.

A motion was made and seconded to move the question.

**VOTE: Majority not in favor.**

Councilor Milne made an amendment to add the language of the required ballot question.

**VOTE: 1 Yes, 12 No**

**2007-169 ORDERED THAT A QUESTION TO ASCERTAIN THE WILL OF THE VOTERS OF THE TOWN OF BARNSTABLE WITH RESPECT TO THE FORMATION OF A CHARTER COMMISSION BE PLACED ON THE BALLOT AT THE REGULAR TOWN ELECTION**

Upon a motion duly made and seconded it was

**ORDERED:** It is hereby ordered that a question to ascertain the will of the voters of the Town of Barnstable with respect to the formation of a Charter Commission pursuant to section 3 of article 89 of the amendments

to the Constitution of the Commonwealth, be placed on the ballot at the regular town election to be held on Tuesday, November 6, 2007.

**VOTE: Unanimous**

#### **TOWN MANAGER COMMUNICATIONS**

Manager Klimm announced the upcoming session of the Citizen's Leadership Academy. This will be the 10<sup>th</sup> Academy. He discussed the financial aspects of the recent trip to the National Civic League Conference. (See Exhibit D) In addition, the group will attend a session in DC before the Congress. There should be sufficient monies to cover all the costs.

Assistant Town Manager Paul Niedzwiecki updated the council on the issue of traffic.

Upon a motion duly made and seconded it was voted to adjourn the meeting at 11:25 PM.

**VOTE: Unanimous**

Respectfully submitted,

Lucia Fulco,  
Assistant Town Clerk