



## TOWN COUNCIL MEETING January 17, 2008



A quorum being duly present, Council President Janet Joakim called the regular meeting of the Barnstable Town Council to order at 7:00 pm, on January 17, 2008, at the Barnstable Town Hall, 367 Main Street, Hyannis, MA.

**PRESENT:** Richard Barry, Janice Barton, Ann Canedy, Frederick Chirigotis, James Crocker, Jr., Leah Curtis, Henry Farnham, Janet Joakim, J. Gregory Milne, James Munafo, Jr., Thomas Rugo and James M. Tinsley, Jr., Harold Tobey.

The Pledge of Allegiance was led by President Joakim, followed by a Moment of Silence with Vice President Frederick Chirigotis honoring Richard Warren who died this past week. (see attachment "A" highlighting the former teacher and "Four Seas" ice cream parlor owner).

### **Joint Meeting with School Committee (in accord with Section 6-1 of the Town Charter)**

Financial Director Mark Milne gave a power point presentation on the FY2009 financial outlook and budget planning process (See Attachment "B").

School Committee members present were: Ralph Cahoon, Tom McDonald, Debra Dagwan, Patrick Murphy and Peggy Dandridge. Supt. of Schools Patricia Grenier and Asst. Supt. Glen Anderson were also in attendance...

### Highlights:

- The town has a AAA rating as of Feb. 2007
- It doesn't mean we have sufficient resources to provide all services.
- Director Milne reviewed the key financial ratios.
- He summarized the reserves
- He reviewed the General Fund Revenue Structure which totaled \$127,923,308.
- The new property tax growth for 2008 showed an increase of \$1.2 million (for a one time 18 month period of growth).
- Steady growth is shown in excise taxes
- There is a decline in local aid.
- Investment income has increased – but FY08 investment rates are declining
- He reviewed expenditure assumptions for the next 10 years.
- To recap – we can provide services as they are today but with no new services except for the youth center.
- Savings will be used annually to fund a portion of the operating expenses and no overrides are expected.
- The town is looking at continuing the road improvements, other capital improvements, debt financed capital improvements, and operating capital
- Milne reviewed school enrollment and net school spending requirements
- Student required spending increases faster than the decline in enrollment.
- There was a review of the savings accounts and the revenue sharing agreement.

Councilor Barton asked about SPED costs. Milne said costs are higher in that category and we are required to spend it.

Councilor Curtis asked about the state insurance plan and could we join. Milne said retired teachers are in that. Cape Cod Municipal Health group is competitive; but 70% of employee union contracts must agree in order to join. The CCMH is analyzing this.

Councilor Milne asked about the retirement system and if the County is joining the state system. Milne said yes, and it is hopeful we will get a better return, and help to save some money in the future. He asked if the school was planning to stay within their allocation.

School Committee Chair Cahoon said we will fall within the budget allocation amount; but the committee has not worked on the budget as yet. The Supt. will present the budget to them in 2 weeks.

Councilor Munafo asked about the debt per capita. Milne said it is based on the total census.

Councilor Farnham asked about the trust fund contribution and the infrastructure repairs. Milne said extra general fund reserves do go into the capital trust fund. When we have huge growth we put it into capital. If we can get new growth we can take advantage of it again.

School Committee Member Dagwan asked about the Federal fund rate. Milne said the Federal Reserve rate is what the Feds set on a 6 month basis. Supt. Grenier stated that legally teachers do not have to give notice on retirements, but so far she knows that 20 teachers will be retiring.

#### **PUBLIC COMMENT:**

Mary Clemmons encouraged citizens to attend the Charter Commission meetings.

Robert Tucker handed a card out relative to stray cats. He addressed overcrowding in homes.

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

None

#### **ACT ON MINUTES**

Upon motion duly made and seconded, it was voted to approve the minutes of December 20, 2007. (Councilor Canedy asked to change "respond" to "correspond" on page 2, and further on to change "said to go" to "suggested that".

**VOTE: Unanimous in favor as amended**

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

Councilor Canedy announced a grant award to the Barnstable Historic Society.

Councilor Munafo announced the Hyannis Fire District meeting; and asked for an update on DPW projects. Mark ELLS, DPW Director said there is traffic light work on Main Street due; There is a gravity sewer line clog on South St. and Ocean St. and that is being fixed.

Vice President Chirigotis announced the Charter Commission meetings, and Centerville Civic Association meeting.

Councilor Curtis asked about a study on what is needed to be done to the Town Hall building. ELLS said there was an evaluation completed and he will review it with councilors. Curtis was wondering about the leaks, etc.

Councilor Barton reported on goals for Operation in From the Streets, and No Place for Hate activities for Martin Luther King's birthday.

Councilor Crocker thanked the DPW team and Manager for moving forward on the Youth Center.

Lynn Poyant, Dir. Of Community Services announced the ground breaking for the Youth Center at the Kennedy Rink.

Councilor Tobey noted the importance of the Martin Luther King march and hopes this year's march will be the best.

**ORDERS OF THE DAY  
OLD BUSINESS**

**Upon motion duly made and seconded it was voted to take item 2008-068 out of order in order to accommodate the large number of people in attendance for that item.**

**VOTE: 10 Yes 3 No**

<b>2008-068 - CREATING A RECREATIONAL SHELLFISH AREA AND SHELLFISH RELAY OVERLAY DISTRICT INTRO: 12/06/07, 01/17/08</b>
---

Councilor Barry gave the rationale. He addressed the various projects that the town has spent money on – but protecting the waters for shellfishing and recreation costs the town nothing. There are over 2,000 recreational and 49 commercial shellfish licenses issued. He gave the history of this proposal; and stated that the overlay district will support the needs of the citizens.

He read various sections from the Code dealing with docks and adverse affects on the shellfish in that area. Docks can be and are harmful. We are trying to protect 114 acres. People do not own the water. Your personal property rights end at the mean low water.

Stuart Rapp, chair of the Town of Barnstable Shellfish Committee, gave a history on this issue. He talked about intrusion of structures into the shellfish habitat. There was a pier committee created, along with a tri-committee. There was a significant amount of work and a plan created to protect certain shellfish areas. The Conservation Commission adopted the map and use it to help them allow or disallow the building of docks in that area. Structures are still being built in the shellfish habitat.

Cotuit beachfront had a ban. The overlay is designed to protect a shellfish relay area and significant shellfish habitat.

Upon motions duly made and seconded the continued joint public hearing of the Planning Board and Town Council was opened again by unanimous votes of both boards at: 8:36 p.m Planning Board members in attendance: Patrick Princi, Steve Shuman, Marlene Weir, David Munsell, Raymond Lang.

Steve Shuman of the Planning Board explained the item in detail and the changes made to it.

**Public comments:**

- Robert Silva asked for a moratorium on the building of docks. He was concerned about the turbidity issues and the adverse impact of the docks on the shellfish in that area.

- Peter Sampou gave a typewritten presentation (See attached item “C”); he has a PHD in Biological Oceanography. He said the turbidity can have a deleterious effect on juvenile shellfish.
- Dr. Mark Orkell (Erkell?) stated that these are productive shellfish grounds and are the cream of the crop. Docks and vessels attached to them are detrimental. The public has the rights to the waters, so docks are trumped by the Commonwealth laws of rights to the waters.
- Betty Silva said shellfishing provides sustenance and it is also a recreational activity for families. She is concerned for the future – we protect plovers, why not shellfish.
- Stan Negus showed pictures of a dock in a former prime shellfish area (See Attachments “C”), and it has been totally destroyed by prop dredging. Barnstable has lost many acres; many in the 3-Bays area. This deterioration must stop and the overlay proposal impacts only 114 acres.
- Laura O’Neill born in 1913 said she would think it unfortunate if children would not see in the future where the shellfish come from. That would not be good. You would look back and say you should never have done it that way.
- Robert Tucker says that he now knows why they stopped piers in RI.
- Carol Horgan says no one has ever done anything as far as enforcing existing laws. She urged the council to consider whether you need an extra layer or enforce the rules that already exist.
- Donna DiFlorio spoke of property rights – where was the council on rights when it came to 1 to 2 acre zoning. Shellfish are living breathing animals and more will die without this ordinance.
- Fred Dempsey enjoys shellfishing for the recreation and the food values. He reminded the council that 2000 licenses translates into 4000 possible voters – think about passing the item.
- Joe Garodnick noted the loss of shellfishing when dredging was done for a large dock off Seapuit Road. He has noted over the years the loss of scallops and much of the soft shell clams – areas are now closed. Please help maintain the Barnstable quahog.
- Andre Sampou noted that this is about protecting our coastal resources – especially its shellfish. He showed 20 years of words developed by boards and committees – but nothing has been done to put these into play. Piers in the bays have doubled.
- Bob Lucent is new to the town. Please take the time, and put this vote forward.
- Pete Jasin thanked all the individuals who have worked on this. The people of the Commonwealth have the rights to the shellfish. We have lost a lot due to pollution. We need to take this for our children and our future.
- Matt Ostrowski quoted the Town Manager as stating that the natural resources have declined.
- Les Hemmila thanked the councilors for supporting this. It is getting bad when you go out and find more and more piers and less area to shellfish.

- John Hopkins is concerned with the rights of the property owners who don't have docks. It will affect property owners' rights to build and noted a loss of possible future taxation.
- Len Clark asked if this a done deal? This is the public hearing. He addressed the rights of home owners on the water vs. the shellfishermen, and noted there would not be a loss of value to the homes.
- Lou Gonzaga feels this is a no-brainer. People come to Cape Cod for clams and oysters and many times they are no longer from here.
- Stuart Rapp said lack of enforcement has concerned the Shellfish Advisory Board as well. You can eliminate it by approving the overlay district. The water belongs to all of us – when a home owner puts a dock in the water, they take away the rights of the people.

Upon motions duly made and seconded by both the Town Council and the Planning Board the public hearing was closed by a unanimous vote of both boards at approximately 9:25 p.m...

- Councilor Farnham said that this is about the environment, economy and entertainment. He is convinced that we need the courage to do the right thing and vote yes.
- Councilor Milne said docks are not a right but a privilege. We have a gift of the shellfish and have already abused it. We are here to protect the public trust.
- Councilor Crocker said those properties are protected by the state of Massachusetts and the DEP – all of the permits that we got are over State owned land. Yet we want to put in an ordinance without telling the State. Crocker said the problem is not the docks but the large props. We are putting an ordinance over land we do not own. He wants to stop hydraulic dredging for clams; and create a harbor management plan (work with state and boards).
- Councilor Barry said Osterville is one of the few areas that is open year round. Barry said the State does not want to get involved with this issue because it appeared to be a “cat fight”. The council creates policy. He explained the number of meetings that were held as part of the process. Arlene Wilson said if you want to prohibit docks you need to support the zoning.
- Councilor Crocker stayed away from the meetings but he gave his concerns to Mr. Shuman.
- Councilor Canedy said this ordinance has been fully vetted and is the compromise document, it had full public hearings. This document is the compromise and all the different changes are compromise positions. We noted the loss of areas to allow growth of some of the adjacent landowners. She noted a prior document created by Friends of West Bay area and the issues they raised at the time of its creation support the ordinance. They addressed among other things the quality of life considerations, and the rights to the waters, which would be taken by exclusive use. The documents dealt with floating devices; but transfer the words floating devices to docks and you can see the similarity. No one has a right to damage a precious public resource for their own use.
- Councilor Chirigotis said the Waterways Committee had asked for a Shellfish Committee member to attend one of their meetings but no one did. He feels we need to be cleaning the water. No one is talking about denitrification. Councilors need to present their item factually and politely. We need to be careful how we present an ordinance and how it affects all of us.
- Councilor Munafo wants to know how the GPI was determined; as well as a few other concerns about the ordinance. He addressed large props vs small props, and sail boats. Docks are not bad. We need to protect your property rights.

David Munsell from the Planning Board said that he is offended by the fact that people are now questioning the ordinance. This is an insult. You people have to do your homework and read the literature and talk to someone ahead of time. But, don't grandstand at a meeting.

Councilor Munafo said we received it Tuesday. President Joakim said you have had the document for two weeks.

Planning Board member Shuman moved that the Planning Board accept the item as printed in the agenda.

**VOTE: 5 in favor – that is a verbal report and a written will follow**

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

**VOTE: Majority in favor**

Upon motion duly made and seconded it was:

**ORDERED:**

**Section 1.** The zoning ordinance is hereby amended by adding the following new section:

### **§240-37.1 Recreational Shellfish Area and Shellfish Relay Area Overlay District**

#### **A. Purpose.**

(1) The purpose of this section is to protect the general public's interest in the recreational harvesting of shellfish by creating a Recreational Shellfish Area and Shellfish Relay Area Overlay District within said overlay zoning district.

(2) The purposes of the Recreational Shellfish Area and Shellfish Relay Area Overlay District include:

- (a) Maintaining public access along the shore and to shellfish and shellfish beds, whether existing or potential, for the purposes allowed by law; and,
- (b) Prohibiting docks and Piers in coastal waters designated as significant shellfish habitats by the Division of Marine Fisheries or local shellfish officials.

#### **B. Establishment of district.**

In order to implement the purposes of this section, the Recreational Shellfish Area and Shellfish Relay Area Overlay District is hereby established and shall be considered as superimposed over any other districts established by this chapter as amended from time to time. The Recreational Shellfish Area and Shellfish Relay Area Overlay District shall include those areas shown on the map entitled "Recreational Shellfish Area and Shellfish Relay Area Overlay District" dated October 9, 2007, filed with the Town Clerk, up to and including the area seaward of the mean high water line, which map, together with all explanatory material thereon, is hereby incorporated in and made part of this chapter.

#### **C. Overlay District Map.**

The boundaries of the Recreational Shellfish Area and Shellfish Relay Area Overlay District established by this section are shown on the Official Zoning Map, § 240-6A, Identification of Zoning Map, as amended with a file date of August 30, 2000.

#### **D. Prohibition.**

Within the Recreational Shellfish Area and Shellfish Relay Area Overlay District, the construction and/or installation of docks and piers is prohibited, unless such dock or pier has the benefit of a valid Order of Conditions issued prior to August 17, 2007, and receives all other necessary local, state and federal permits, in which case the construction and/or installation and maintenance of said dock or pier shall not be prohibited.

**E. Reestablishment of damaged or destroyed nonconforming docks or piers.**

The reestablishment of a lawful preexisting nonconforming dock or pier which has been destroyed or damaged by fire, acts of nature or other catastrophe shall be permitted pursuant to § 240-95 A (1) and B, provided that such reestablishment shall not include the use of toxic materials, and, for the purposes of this section, the pursuit of construction continuously to completion shall mean that construction shall be completed within one year of receipt of all required permits. The redeployment of a lawful preexisting nonconforming seasonal dock or pier is permitted.

**F. Expansion of existing docks or piers.**

For the purposes of Article VIII, Nonconformities, the expansion of an existing dock or pier located within the Recreational Shellfish Area and Shellfish Relay Area Overlay District shall be deemed to be substantially detrimental and shall be prohibited.

**G. Definitions.**

The terms “dock” and “pier” shall be used interchangeably for the purposes of these regulations and shall mean the entire structure of any pier, wharf walkway, bulkhead, or float, and any part thereof, including pilings, ramps, walkways, float, tie-off pilings, dolphins and/or outhaul posts, that is located on a bank (inland) (310 CMR 10.54), land under water bodies and waterways (310 CMR 10.56), land under the ocean (310 CMR 10.25), land under a salt pond (310 CMR 10.33), rocky intertidal shore (310 CMR 10.31), or that portion of a coastal beach (310 CMR 10.27) seaward of the mean high water line. Notwithstanding the above, either a swimming float or work float, kept at a mooring, that receives a permit from the Harbormaster and is not connected with the shore, is not a float subject to these regulations.

**Section 2.** The official zoning map of the Town of Barnstable is hereby amended by adding a Recreational Shellfish Area and Shellfish Relay Area Overlay District as shown on the map entitled “Recreational Shellfish Area and Shellfish Relay Area Overlay District”, dated October 10, 2007.

**VOTE: Roll Call – 8 Yes, 4 No, 1 Abstain (no votes cast by Crocker, Munafo, Tinsley and Tobey) – (abstain cast by Chirigotis) – Did not pass needed 2/3's**

**Upon motion duly made and seconded it was voted to reconsider**

**VOTE: Majority in favor**

Councilor Rugo, asked for an explanation of the abstention vote. Councilor Barry asked for a positive vote. This is about rights.

There was a question raised as to the reconsideration vote and the proponents changed to have it be from the prevailing side.

Councilor Curtis reminded all that the public opponents did not overwhelmingly come out – where on the other hand there was a large group of proponents. We need to make the decision.

President Joakim asked if this ordinance could be appealed. Town Attorney Ruth Weil explained that you would need a use variance, but it is a difficult road to hoe but you can appeal.

Councilor Milne thanked all for the reconsideration. He made a mistake in his past because he listened to only one councilor on a vote.

Councilor Munafo talked about protecting property rights – the defeat was right.

Councilor Barton agreed with Councilor Curtis and thanked the Planning Board and people who came out.

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

**VOTE: Majority in favor**

**Reconsideration vote on item 2008-068**

**Vote: Roll Call 7yes 6 no (No votes – Chirigotis, Crocker, Munafo, Rugo, Tinsley, Tobey)**

Upon motion duly made and seconded it was voted to reconsider a second time.

**VOTE: Majority**

Councilor Canedy stated that one of the oldest rights to citizens is the right to the water.

A motion was made but not seconded to move the question.

Councilor Rugo moved to amend to allow for the harbormaster to approve property owners to allow to them to petition the said harbormaster to allow for docks (Clerk did not get the whole motion and asked for it in writing).

A break was taken for the amendment and clarification of rules.

When the meeting reconvened, Councilor Barry announced that there appears to be a compromise that may lead to a solution. He said he was not going to present the amendment at this time, but in essence it will affect all property owners and they shall have the right to an outhaul and a deep mooring; perhaps this is not dead in the water. At that time Councilor Barry made a motion to postpone this item 2008-068 to the second meeting in February, it was seconded.

**VOTE: 12 Yes 1 No to postpone**

President Joakim announced that **2008-057 – Amendment to Zoning Ordinance – Senior Continuing Care Retirement Community Overlay District** would be moved to February 7<sup>th</sup> and **2008-077 – Amendment to the Zoning Ordinance & Zoning Map by Creating a Multi-Family Affordable Housing District** would be moved to the second meeting in February with the approval of the council.

**VOTE: No objection to postponing to dates certain**

**NEW BUSINESS**

**2008-074 - ACCEPTANCE & TRANSFER ORDER - LAND MANAGEMENT AND WILDFIRE GRANT**

Town Manager Klimm gave the rationale.

Upon motion duly made and seconded it was:

**RESOLVED AND ORDERED**, that the Town Council hereby accepts a Cape Cod Cooperative Extension Wildfire Assessment and Preparedness Program Land Management and Wildfire Grant in the amount of \$5,000 to continue reducing fuel loadings along the residential interface areas in Barnstable, along the Barnstable/Sandwich town line, and within a firefighter and public safety zone.

**VOTE: Unanimous**

**Upon motion duly made and seconded it was voted to take items 2008-081 and 2008-082 out of order.**

**VOTE: Majority in favor.**



Upon motion duly made and seconded it was also voted to extend the time of adjournment past 11:00 p.m. in order to complete the agenda.

**VOTE: 11 Yes 2 No**

**2008-081 - ACCEPTANCES OF GIFTS TO INSTALL PLAYGROUND EQUIPMENT IN WEST BARNSTABLE**

Lynne Poyant, Director of Community Services, gave the rationale and thanked the individuals involved in the Luke Vincent Powers Foundation. Manager Klimm thanked Councilor Farnham and David Curley as well.

Upon motion duly made and seconded it was:

**RESOLVED**, that the Town Manager is authorized to accept gifts and grants for the purpose of creating a "boundless" playground located adjacent to the Barnstable Lombard Field, 2377 Route 149, West Barnstable.

**VOTE: Unanimous in favor**

**2008-082 - AUTHORIZATION TO ENTER INTO LEASE WITH LOMBARD TRUST FOR THE BOUNDLESS PLAYGROUND IN WEST BARNSTABLE.**

A question was raised on the wording of the authorization and Ms. Poyant explained that it was worded appropriately and that the Lombard Trust trustee, Judge Joseph Reardon, is in favor of the project.

Upon motion duly made and seconded it was:

**ORDERED**, that the Town Council hereby authorizes the Town Manager to enter into a lease for nominal rent for a term not to exceed ninety-nine (99) years between the Lombard Trust and the Town of Barnstable for property adjacent to the Barnstable Lombard Field, having a street address of 2377 Route 149, West Barnstable, and to execute and deliver any documents related thereto on behalf of the Town.

**VOTE: Unanimous in favor**

**2008-076 - AMEND SCHEDULE OF FEES, CHAPTER 76 OF THE GENERAL CODE**

Upon motion duly made and seconded it was voted to refer this item to a public hearing on February 7, 2008.

**VOTE TO REFER: Majority in favor**

**2008-078 - ACCEPTANCE OF ARTS FOUNDATION OF CAPE COD GRANT**

Upon motion duly made and seconded it was:

**RESOLVED**, that the Town Council hereby accepts the grant award in the amount of \$2,000 from the Arts Foundation of Cape Cod.

**VOTE: Unanimous in favor**

**2008-079 - ACCEPTANCE OF FY08 TRAFFIC ENFORCEMENT GRANT**

Chief McDonald stated that Sgt McKenna wrote the grant.

Upon motion duly made and seconded it was:

**RESOLVED**, that the Town Council hereby accepts a Traffic Enforcement Grant award in the amount of \$10,000 from the Governor's Highway Safety Bureau.

**VOTE: Unanimous in favor**

**2008-080 - ACCEPTANCE OF FY08 STATEWIDE EMERGENCY TELECOMMUNICATIONS BOARD TRAINING GRANT**

Upon motion duly made and seconded it was

**RESOLVED**, that the Town Council hereby accepts a FY08 Statewide Emergency Telecommunications Board Training Grant award in the amount of \$26,100.00 from the Executive Office of Public Safety.

**VOTE: Unanimous in favor**

At this point, Attorney Weil explained to the councilors that the rules of the council are silent on the number of reconsiderations allowed per item.

Upon motion duly made and seconded it was voted to go into Executive Session for the purpose of discussing land acquisition at 11:10 p.m. with the intend to come back into open session at the conclusion of said Executive Session.

**VOTE: Roll Call – 12 Yes 1 No**

**\*EXECUTIVE SESSION\***

**At 11:36 p.m. the Town Council reconvened.**

**LATE FILE**

**2008-083 – COMMUNITY PRESERVATION FUND APPROPRIATION AND TRANSFER TO ACQUIRE .95 ACRES MORE OR LESS FOR OPEN SPACE, ASSESSORS MAP 311, PARCEL 042 AND ASSESSORS MAP 311, PARCEL 024**

Upon motion duly made and seconded it was voted to refer the above item to a public hearing to be held on Feb. 7, 2008.

**VOTE: Majority in favor**

**ADJOURNMENT**

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

**ADJOURNED: at 11:38 p.m.**

Respectfully submitted,

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