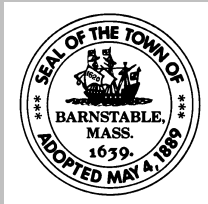


TOWN COUNCIL MEETING



September 4, 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 September 4, 2008, at the Barnstable Town Hall, 367 Main Street, Hyannis, MA.

PRESENT: Richard Barry, Janice Barton, Ann Canedy, Frederick Chirigotis (7:35 p.m.) James Crocker, Jr., Leah Curtis, Henry Farnham, Janet Joakim, J. Gregory Milne (7:12 p.m.), James Munafo, Jr., Thomas Rugo, James M. Tinsley, Jr. **ABSENT:** Harold Tobey

The Pledge of Allegiance was led by President Joakim, followed by a Moment of Silence. President Joakim noted that items 2008-131, 2009-014 and 2009-023 will be postponed.

PUBLIC COMMENT:

Jon Julius wanted to know if the Osterville councilor is related to one of the developers involved in an item the council will be addressing and is he going to recuse himself. As far as he is concerned it is gifted money to the developer. Do you understand the ramifications of 40 more affordable units in the town? There are 34 condos and 29 single family homes for sale and they are affordable. You are gifting a developer. Look and vote no because of the financial constraints on all taxpayers.

Alan Burt thanked the councilors for their service. He has been troubled with the cruel comments toward the President. You should be thanked instead of having the ragtime negativity.

Al Baker asked about going back to the 3 minute rule of public comment. When people have to come a distance they should be able to have 3 minutes. (Pres. Joakim noted that due to the short agenda, he would have 3 minutes). Baker felt that any petition should be correct in every way possible before it goes out to the voters. I would like to believe that it is correct when it comes to me. I think a lot of things have changed – we need to get back to the basics in the town.

COUNCILOR RESPONSE

Councilor Crocker stated that he had abstained from every vote on the issue Mr. Julius brought forward. He did have a second cousin that had an interest in the property, but he no longer does; however, Councilor Crocker still steps away from it.

Councilor Barton said we need all the affordable housing we can get in this town.

Councilor Milne wanted to clarify that there is a legal distinction between abstention and recusal and asked Councilor Crocker if he would state whether he recused himself or abstained. Councilor Crocker said he recused himself on all the votes, except the last vote to postpone, which came up quickly, and he abstained on that one.

BUDGET UPDATE – Town Manager, John Klimm, Asst. Manager Tom Lynch and Financial Director, Mark Milne

See Budget Preview appended to these minutes.

Manager Klimm said that while we continue to face challenges we have time to set forth a budget strategy that is sound.

The preview included: the budget calendar; the budget policy statement, the strategic plan (these are the current ones for the FY09 year); budget analysis, general fund budget chart, (largest percentage goes to schools, police and DPW); and lastly an analysis of the bond rating. There was a question on the AAA status – we still have a AAA rating.

Klimm outlined the strengths:

- Sound residential property tax base
- Good income levels
- Strong financial position and fiscal management
- Moderate debt burden and moderate future capital needs.

Klimm stated that we have concerns for FY10, but we need to make tough decisions and reduce services. The bond companies will not look at this as a bad thing in the bond rating. If we have to make cuts to service levels, those will not be compared. The Town Council will have to provide us with guidance. He recommended: that the council review, modify or amend the strategic plan by Sept. 25; review and amend the budget policy; have the council/school sub-committee work with the school committee to develop a budget strategy. He also recommended that the council ask the CFAC to help on an analysis of the FY10 budget. We want a budget that is structurally sound with no override.

Pres. Joakim stated that the council would be having an additional meeting on Sept. 25 for CPC items and they could also include reviewing the various policies and plans. President Joakim will also send a letter to CFAC on this as well.

Councilor Barry liked the fact that the council and manager will be working with the school committee. He noted that the teachers' contracts are coming due. He said that some really good teachers have lost their jobs, while traditionally we have been giving 2, 2.5 increases etc. He hopes that in contract negotiations everyone takes into consideration that we have a deficit and we can't sustain the increases. Some lose their jobs so others can get more money. We need to tighten our belts. We can't afford to pay more money. We need the quality service. What we care about is the Town of Barnstable.

Councilor Munafo said people forget that many employees also get a COLA of 3% on top of the 2 % so it is more like 5% increases. We have to look for appropriate ways of keeping services and a good bond rating.

Councilor Barton asked where the teachers' union stands on the cost of living etc. Jeff Morassi, president of the Barnstable Teachers Association, noted that the teachers do

not get a COLA. He did say that step increases are given. However, that depends upon whether you are maxed out on your years of service.

Councilor Crocker stated that contract negotiations are not black and white. Often times they offer things in one category in exchange for something else, but we are not in a position to get involved. Barnstable still has AAA rating.

Manager Klimm said that our contracts are not open. He also said that if the council wishes to discuss such issues, the school management should be given notification. The School Superintendent and the School Committee are looking hard at the costs.

Councilor Rugo stated that this is not the proper time to discuss contracts without the Superintendent present.

Morassi noted that many teachers, who are maxed out on their steps are making less each year due to rising insurance costs.

Councilor Canedy commended the Manager and Council President on sending the rating information out ASAP. You have asked the school sub committee to have a strategic plan - Klimm said he can't speak on where the school committee is on planning, but we need to work together and maybe the subcommittee could do some groundwork to outline the challenges. Canedy said we need to apply for grants and look for other opportunities.

Councilor Milne thanked the Manager as well; he agrees with avoiding an override. He is on the subcommittee and looks forward to meeting. Potentially can we look at privatizing parts of the Town of Barnstable? Maybe privatizing legal, since we are spending money on outside council maybe we can explore this. Also maybe we need to give up village-based facilities. Maybe we need to hand it over to the fire districts...such as the libraries. We need to boldly look at some of these things.

Discussion ended at 7:48 p.m.

ACT ON MINUTES

Upon motion duly made and seconded it was voted to approve the minutes of August 21, 2008, with the following correction from Councilor Munafo, on page 2, 4th paragraph from the bottom, insert "has visited the Senior Center and the problem is real."

VOTE: Unanimous in favor as amended

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

Councilor Munafo asked Mark Ells about road work, guard rails on Smith St., and issues on air conditioning at Senior Center (he said there was excellent communication on this last issue).

Mark Ells, DPW Director, stated that there would be a press release regarding construction on Pitchers Way, (drainage work, grinding and repaving of the road) which will take from the fall to spring to complete. The guard rail on Smith Street is still under review by Highway. On such cases, we work to see if there is an insured party responsible for the damage. Ells agreed that there was good communication on the Senior Center. The systems do function, at times they may not be used to the optimum level, but we will continue to monitor, and bring in those that initially set it up to review it again.

Councilor Canedy asked about the Millway Bridge. Ells said they were aware of the cracking and as a precaution, the state was asked to come down and do an inspection. He believed they came to look at the bridge this week. He will bring the report to the manager/council.

Councilor Barry asked about the work on School Street, Cotuit. Ells said it is designed and a bid package has been prepared. Some work may occur this fall and further work in the spring.

Councilor Barry announced that there will be a waste water management conference at the Waquoit Reserve. We are not eligible for funds so we need to get a plan going. We hope to have a sit down workshop in October and I would encourage this to happen. There are other towns that are way ahead – so we need to get there. Ells said that Mark Milne is one of the speakers at that seminar. Ells also said we have a plan completed and we have put in a form for funds; what we don't have completed is the nutrient management plan. We have to look at all the pieces on this and go forward with a comprehensive plan. We have 5 embayments, and it takes time to move through that. We are ready to move forward.

Ells added that there are many issues on the Massachusetts estuary projects – they have worked out some. He plans to do some updates and would like a workshop in the future. Councilor Rugo said we might want to have this particular type of budgeting included in our strategic plan; we don't want to lose the funding.

Councilor Milne asked Ells about his participation on the water protection collaborative. Ells said our embayments do not have political boundaries so that we will have to work with the adjacent communities. In the collaborative we deal with education, work with the communities on comprehensive plans, and the financing aspects. We have to look at larger Federal earmarks. We have to make sure that everyone is doing their part.

Councilor Milne announced the upcoming Selectmen-Councilors' Association meeting.

Councilor Curtis stated that we have several openings on some committees and will be updating the list on the website. Currently, there are 3 openings on CFAC, 2 out of 5 for the Golf Committee, 3 openings on the housing committee, and 3 openings on the water quality committee.

Councilor Crocker thanked the Town Manager for his efforts watching Dowses Beach, and his help with the terns and the seaweed. We lost about 1/3 of the beach for use. COMM got a boost to a AAA rating as well. They went out to bid for the Osterville Fire

Station with a very low rate. COMM and Hyannis deliver the same water. COMM has spent a lot of money recently for various improvements (\$2.6 M) it takes a lot of money to run a good water company. We have to put money back into Hyannis – we have to spend money on this.

ORDERS OF THE DAY OLD BUSINESS

2008-131 COMMUNITY PRESERVATION FUND APPROPRIATION FOR COMMUNITY HOUSING IMPROVEMENTS INTRO: 05/01/08, 05/15/08, 06/19/08, 07/17/08, 08/21/08, 09/04/08

Councilor Crocker recused himself from voting on this item.

President Joakim called for a vote to postpone this item to Oct. 2, 2008, noting that the item may come back amended.

Councilor Canedy made a motion, which was seconded to table this item.

VOTE: 3 Yes (Milne, Farnham, and Canedy) 8 No

Upon motion duly made and seconded, it was voted to postpone this item to Oct. 2, 2008.

VOTE: 8 Yes 3 No (Milne, Farnham and Canedy)

2009-013 TO SEE IF THE TOWN COUNCIL WILL ACCEPT G.L. C.39, §23D AND AMEND THE GENERAL ORDINANCE TO ADOPT PROCEDURES FOR ABSENTEE MEMBERS OF BOARDS AT ADJUDICATORY HEARINGS INTRO: 07/17/08, 08/21/08, 09/04/08

Upon motion duly made and seconded, it was voted to amend the item: at the end of Section 37-8, paragraph (3) strike the period and add the following: “and (4) provided that no other member of the same board, committee or commission sitting on the same matter has invoked this provision.”

Councilor Munafo gave the rationale

Town Attorney Ruth Weil said this is a legally tenable amendment. She does not anticipate multiple members missing at multiple meetings. Councilor Rugo said if it is a problem, then we can get rid of it.

Councilor Barry said if a popular person passes away and two other members want to go to the funeral, maybe we need to state that no more than 2 people instead of the 1 person. Munafo said we have never had this before and he feels it puts a proper perspective on this.

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

VOTE: 11 Yes, 1 (Milne) No

VOTE ON THE AMENDMENT: 10 Yes, 2 No on the amendment (Farnham and Rugo)

Upon motion duly made and seconded it was:

ORDERED, that:

SECTION 1: Section 23D of chapter 39 of the general laws is hereby accepted.

SECTION 2: Chapter 37 of the General Ordinance is hereby amended by inserting the following after Section 37-7:

§37-8. Absentee Members of certain Boards, Committees and Commissions

In accordance with Massachusetts General Laws Chapter 39, section 23D, an absentee voting member of any of the boards, committees and commissions of the town of Barnstable holding an adjudicatory hearing shall not be disqualified from voting solely on the basis of missing a single session so long as the following criteria are met: (1) the absentee voting member shall be absent from no more than a single session of the hearing at which testimony or other evidence is received; (2) prior to voting, the absentee member shall certify in writing that he has examined all evidence received at the missed session, and watched the video recording of the missed session, or, if no video recording is available, then has listened to the audio tape or reviewed a verbatim transcript of the missed session; and (3) the absentee member shall certify in writing which evidence was reviewed, and the written certification shall be made part of the record, and shall be filed with the Town Clerk and (4) provided that no other member of the same board, committee or commission sitting on the same matter has invoked this provision.

VOTE: Roll Call 12 YES

THE FOLLOWING IS A COPY OF THE MULLIN RULE AS WRITTEN IN MGL

M.G.L.A. 39 § 23D

§ 23D. Adjudicatory hearings; attendance by municipal board, committee and commission members; voting disqualification

(a) Notwithstanding any general or special law to the contrary, upon municipal acceptance of this section for 1 or more types of adjudicatory hearings, a member of any municipal board, committee or commission when holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that he has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing. Nothing in this section shall change, replace, negate, or otherwise supersede applicable quorum requirements.

(b) By ordinance or by-law, a city or town may adopt minimum additional requirements for attendance at scheduled board, committee, and commission hearings under this section.

2009-014 COMMUNITY PRESERVATION FUND APPROPRIATION & TRANSFER IN THE AMOUNT OF \$108,000 FOR COMMUNITY HOUSING INTRO: 07/17/08, 08/21/08, 09/04/08

Upon motion duly made and seconded it was voted to postpone this item until October 2, 2008.

VOTE: Unanimous in favor

2009-016 - AN ORDER AMENDING THE ADMINISTRATIVE CODE TO PROVIDE FOR INTERIM APPOINTMENTS ON REGULATORY BOARDS/COMMITTEES/COMMISSIONS INTRO: 07/17/08, 08/21/08, 9/04/08

Councilor Chirigotis said that it could be possible for interim appointments to be made for emergency purposes.

Councilor Crocker said that President Joakim and legal did a good job in their work and help on the recent appointments. It looks like a balanced board (ZBA). We have great people. This is the reaction to an extreme action. We did our work and resolved our own problems. We had to make difficult decisions. I am proud of all of us. I am not going to support this – this is not necessary.

Councilor Chirigotis said that recent experience shows when they turn out in great numbers and are great candidates it is a great thing. But, we can't guarantee that in all instances. The hard work was to sift through and come up with a consensus on who we would appoint. We were lucky.

We don't serve here because this is fun, added Councilor Crocker. These people came forward – this works when it is supposed to work – you, Fred, ran the committee and it worked.

Councilor Milne agrees with Councilor Crocker. Let's never have a mass resignation again. Let's have all branches take a look at what caused this and think of ways to solve the problems. Councilor Chirigotis asked him to stick to the point.

Councilor Farnham respected Councilor Crocker's opinion; but the 5 members who sponsored this did it as a proactive measure. Should it happen again, the boards would be able to continue functioning. Please allow it to be a tool in our quiver. The sponsors feel it is important to keep the town's business moving forward.

Councilor Munafo said there is an expectation of a travesty or disaster in our future, so we are creating a convenience in government. If it did happen, we could amend at that time to allow us to do it.

Councilor Rugo reminded the council that this happened in August. We had applicants who were waiting for decisions and were fortunate that they cooperated with the town.

Councilor Barry said that Councilor Rugo stated it correctly. We were discussing that we needed to be able to get someone in to do the job. We should be looking at and anticipating a disaster – if it does happen, we will have the tool.

Councilor Curtis concurred with Barry and Rugo. We need to protect the Town of Barnstable. There could be a time when a board doesn't meet its quota, and this is to protect the public and the town, please support.

Councilor Canedy did not know if it remedies the situation. If there was a mass resignation, there would have to be a continuum of members. Attorney Weil said there was only one case that had to start over.

Councilor Crocker told the councilors to think if this was in place a year ago – what board would we be looking at now?

Upon motion duly made and seconded it was

ORDERED, that Section 241-8(C) of the Town of Barnstable Administrative Code be hereby amended by adding the following at the end of the second sentence: "...except when vacancies occur involving a majority of the members of a multiple member board which conducts adjudicatory hearings, the Town Council may make interim appointments for a period not to exceed six months while permanent members are sought to fill the remainder of the term." Section 241-8 (C) to read after amendment as follows.

"C. Term of office. The terms of office of multiple-member boards are arranged so that 1/3 of the terms, as nearly as is possible, shall expire each year. A vacancy shall be filled by the Town Council for the remainder of the term, except when vacancies occur involving a majority of the members of a multiple member board which conducts adjudicatory hearings, the Town Council may make interim appointments for a period not to exceed six months while permanent members are sought to fill the remainder of the term. Length of office is three years, except as noted. Appointments are effective the first of July, and expire the 30th of June. Numbers of members for boards will vary. The Town Council shall annually evaluate all members subject to reappointment. Members may be removed for cause, subject to an investigation and hearing by the Town Council, pursuant to the Charter, Section 2-10".

VOTE: Roll Call 8 Yes 4 no (Canedy, Crocker, Milne, Munafa)

2009-018 REAPPOINTMENTS – INTRO: 08/21/08, 09/04/08
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Upon motion duly made and seconded, it was

RESOLVED, that the Town reappoint the following individuals to a multiple-member board/committee/commission:

AGRICULTURAL COMMISSION

J. Timothy Friary, 241 Commerce Rd, Barnstable; to a term expiring 06/30/2011

COMMUNITY PRESERVATION COMMITTEE

Lindsey Counsell, 1183 Old Stage Rd, Centerville; to a term expiring 06/30/2011

VOTE: 12 yes

2009-022 TRANSFER AND APPROPRIATE \$220,000 OF UNEXPENDED BOND PROCEEDS FOR THE RE-CONSTRUCTION OF THE WEST BAY BULKHEAD – INTRO: 08/21/08

The Town Manager gave the rationale as presented in the agenda. He hopes to get the work underway before next summer. This is one of the few areas of public access that has been closed off. We have tried to be creative in the funding sources.

Councilor Farnham thanked him for the Sandy Neck sidewalks and asked when they will be done. Director Ells said that the work is being done in conjunction with the other efforts out there. He can get a timetable; but the sidewalk is tied into the parking lot project. Farnham asked if there are other bulkhead issues. Ells said the Hyannis bulkhead, the Gary Brown boat ramp, and Pleasant Street; beyond those he is not aware of any others. This one is (West Bay) unsafe.

Councilor Munafo asked what is the useful life of such a repair?. Ells said it depends upon materials; hopefully, 30 or more years. Munafo asked if there is anything else we can do to extend the life more. Ells said you have to put in a solid asset and then maintain it. The maintenance is built in and we will make sure that it doesn't prematurely deteriorate.

Councilor Tinsley asked about the Stevens St. sidewalk. Ells said it is tied in with the Youth Center project, when we complete that it will be done.

Councilor Canedy asked about the financial issue regarding Barnstable Harbor and when it will be addressed. Ells said he will report shortly.

Upon motion duly made and seconded it was

RESOLVED, that the Town Council hereby votes to discontinue the sidewalk projects appropriated originally under council order numbers 2003-085 and 2007-094 and approves the transfer of \$130,000 from 2003-085 and \$90,000 from 2007-094 for the purpose of re-constructing the West Bay bulkhead.

VOTE: 12 Yes Roll Call

B. NEW BUSINESS

2009-023 APPOINTMENTS – 09/04/08

Upon motion duly made and seconded it was voted to postpone this item.

VOTE: 12 yes

2009-026 - APPOINTMENT

Late file

Upon motion duly made and seconded it was voted to accept the late file and suspend the rules to allow the council to vote on said item.

VOTE: Unanimous in favor

Councilor Curtis stated that this is an extraordinary young woman. She is a sophomore at BHS; is involved in sports, is the vice president of her class, is on the honor roll, loves math and human anatomy, and wants to be a physician. Our Governor appointed her to the State-Wide Youth Council. Lauren is a candidate to replace a recent graduate.

Upon motion duly made and seconded it was

RESOLVED: That the Town appoint the following individual to a multiple-member board/committee/commission:

Barnstable Youth Commission

Lauren Logan, 136 Whitmar Rd., Cotuit, to a term expiring 06/30/2011.

VOTE: 12 yes

Councilor Crocker asked if we could ask Attorney Weil about the current petition. Attorney Weil stated that under 8-8 of the charter there is a recall petition, the registrar has reviewed the petitions as well as the Town Clerk. The Town Council upon receipt of the certification sends a notice of the receipt of the certificate to the person being recalled. She recommended that the Town Council administrator do that function. On Sept. 18th the Town Council will set the election which must fall 45 – 60 days from the certification of the Town Clerk. Weil suggested that the council just have the administrator send out the notice.

ADJOURNMENT

Upon motion duly made and seconded, it was voted to adjourn at:

8:52 p.m.

ADJOURNED.

Respectfully submitted,

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