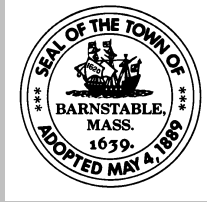


## TOWN COUNCIL MEETING



September 18, 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 18, 2008, at the Barnstable Town Hall, 367 Main Street, Hyannis, MA.

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

The Pledge of Allegiance was led by President Joakim, followed by a Moment of Silence.

### **PROCLAMATION - National Friends of Libraries Week**

Terry Goldstein joined President Joakim recognizing the libraries in our community, as part of the National Friends of Libraries Week, Oct. 19 – 25, 2008. Ms. Goldstein does appreciate the help from the council and the community, but noted they do have to raise monies as well.

### **PUBLIC COMMENT (May be limited to 2 minutes)**

Mary Clements had some questions on the recall. She stated that she had been removed from the podium on two occasions in the spring. She also referred to an article in the Sunday Cape Cod Times, where President Joakim was interviewed. Why did you think the bloggers speaking against you are less than respectful?

Diane Fay from Cotuit noted that she had spoken in April at a meeting on the fact that she would like to see a strong mayor form of government. She received shortly after an email from a councilor, stating she should speak to the councilor before speaking out. She had another opinion which she aired at the Town meeting and after received another email. Today she received another email that came from the councilor. She said that this type of harassment is to cease and desist, or she will take legal action.

Skip Simpson from the Hyannis Area Chamber of Commerce said they do not feel she (President Joakim) should be recalled.

John Alden said the charter commission hopes that a restructure might help this community. There is a lot of negative energy in town.

Stan Goldstein spoke to the budget process and is against using reserves for fixing the budget. We should cut services and not dip into reserves. Reserves are for emergencies.

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

Councilor Farnham agreed with Mr. Goldstein. He did not know who the councilor is who is alleged to have sent emails to Ms. Fay. Fay responded that it was not a man.

### **ACT ON MINUTES**

Upon motion duly made and seconded it was voted to approve the minutes of the September 4, 2008 meeting with the following correction: Councilor Canedy asked that for clarity on page 8, 3<sup>rd</sup> paragraph, 2<sup>nd</sup> sentence, add “to hear ongoing agenda items.”

**VOTE: 11 Yes as amended**

**President Joakim noted that they would be taking things out of order and leaving the Comprehensive Plan to the end of the meeting.**

### **ORDERS OF THE DAY**

<p><b>2009-021    AUTHORIZING THE TOWN MANAGER TO EXECUTE A REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND RUTH M. RUSHER TRUST INTRO: 08/21/08, 09/18/08</b></p>
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Michael Ford, Attorney for the Estate of Ruth Rusher, and its property on Ocean Street, said that Ruth created a trust, and that the Cape Cod Foundation was given the property for the use as a hostel. We need zoning relief in order to go forward. We applied for a Regulatory Agreement, they negotiated with the planning board. A small addition of 950' will be added to one building, otherwise there will be little change. The operation will be subject to an annual license, with this license the agreement could be reviewed. They can have up to 46 beds, 3 for staff. They will deal with the state sanitary codes as well. No one can stay more than 14 days because it is for seasonal, transient use. It will be open April – November and no smoking or drinking will be allowed. He cited a number of other improvements. There have been a series of public hearings on this issue.

Ken Komenda, who is an abutter, noted that he did not receive any notice on this. He owns the Cape Cod Harborhouse Inn (a condo site adjacent to the property). They have put a lot of money in it. They were protected by zoning. They would not have put in that money if they had known a hostel was going next door. You are the guardians of the community – do not allow this to go through. He contacted other hostel abutters, and they said hostels are good neighbors, but they are noisy.

Skip Simpson said the Hyannis Area Chamber of Commerce is opposed to it. They support the concepts but not at this location. It is inconsistent with the plan for this area, with no economic benefit to the community either.

Patty Daley asked the council to look at item #7 of the agreement and change the dates to read November 16 – April 14.

Upon motion duly made and seconded it was moved to change the dates in item #7 to read November 16 – April 14.

Said item will read as follows:

7. The Hostel shall operate on a seasonal basis and shall not receive visitors between November 16<sup>th</sup> through April 14<sup>th</sup> of each year, but may be open at its option seven (7) days a week from April 15<sup>th</sup> through November 15<sup>th</sup> in any one year.

**VOTE: Unanimous**

Ford noted that the hostel in Eastham is operating and the neighbors are not against it. Our hostel is in the middle range of size of hostels in the area. We ask for support.

Councilor Curtis asked if this were not to be used as a hostel, is there another plan. Attorney Martha Ramsay said Ruth Rusher was her client. The use as a hostel must not be possible in order for something else to be done with it. The Cape Cod Foundation will have a presence in the management of the assets.

Councilor Crocker asked if it would be liquidated if it not used as a hostel. Ramsay said it would be the Foundation that would make the decision. We did not realize that a hostel would not be a permitted use. There is very little law that directly affects hostels.

Councilor Canedy asked if the operator or developer wants to terminate the contract, do the terms follow the subsequent owner/operator. Ramsay said it would require approval by the Town Manager to change. Canedy said it is an accelerated use of the house is there any anticipated negative impact to the sewer system. Allison Aliessi, the architect said they will meet with the health department. It was not an issue with them after the initial site plan. Atty. Ford said wastewater was never raised during site plan review. It will be up to the Board of Health to decide how many beds will go there. Canedy asked if there is any effort to buffer the adjacent building – the hostel hopes to keep plantings. Canedy asked if there could be a site and noise buffer.

Councilor Farnham asked about the parking space numbers. He said hostels are good, but is this the most appropriate location. Years ago they wanted to put a hotel on the opposite corner – the town then acquired the property. He likes the idea but does not like it at that location.

Atty. Ford said the parking is for 13 spaces and there are 3 extra non-paved overflow units. You are authorizing the manager to issue the agreement and license. The operation could be stopped at any time.

Councilor Munafo noted Ms. Rusher's property was willed for a use that is not allowed. We have taken a lot of effort for assemblage in this area with the walkway to the sea. If we grant relief for this use, it makes it more valuable. We have to look to the future – by making this change we are not giving the higher and best use for this property. It is not wrong, but when neighbors are opposed and with the future to look at – we need to not go forward with this at this time.

Councilor Crocker asked Atty. Ramsay questions about the trust. She said there are funds to develop it and we will be bringing it up to code to meet the hostel requirements. It must be self-sustaining. If we don't have the visitors we may have to do something else. Ramsay said they will not leverage the funds right now. She also said the reason for naming the Cape Cod Foundation was to guarantee local presence with a board of directors

of the foundation. When Hostelling International put out a pro forma, it does contemplate a phase-in on occupancy.

Councilor Curtis feels since it has to be reevaluated every year it is not a bad idea. She feels a home type environment would be more of a positive neighbor than a large hotel next to a condominium. Atty. Ramsay noted that people sometimes feel negatively toward hostels, but said that the people who go to them are scout groups, church fellowship groups, bicyclists and those visitors will spend a lot of money.

Councilor Barton concurs with Councilor Curtis and supports this.

Councilor Canedy asked about the abutters of other hostels. Debra Ruel from Hostellers Int'l, oversees various hostels in the area. Many bicycle groups go from hostel to hostel. We are similarly located in Nantucket. There, our neighbors love us. We have strong support.

Councilor Tobey said we had a small hostel on Route 28. There were no problems. It would be a good addition to our community. He will support.

Councilor Rugo asked about the old hostel on Route 28 and was told it had about 40 units. Rugo is not in favor of this for a number of reasons including the increase in size.

Councilor Crocker said we should consider postponement. David Munsell, from the Planning Board stated that the planning board has gone over all these different questions which were handled at meetings and sub committee meetings. What better place for this to be. Hostel users come by bicycle, they walk. It will be an asset. He told of his grandchildren who have used hostels all over the world. Postpone it if it will be turned down. Patty Daley said the planning board unanimously approved this.

Atty. Ford would like to postpone this.

Councilor Tinsley has stayed in hostels over 100 times and said he never created problems. He is a full supporter. The addition is for handicap access. People want to see things done now – the affect for the abutters will be a positive.

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

**VOTE: 10 Yes 1 No (Munafa)**

Councilor Crocker asked for a workshop with the Planning Board so that we could explain everybody's role in the process. I am tired of getting dressed down by people who don't understand their role. President Joakim said they would.

## **NEW BUSINESS**

<b>2009-024</b>	<b>COMMUNITY PRESERVATION FUND APPROPRIATION FOR HOUSING</b>	<b>INTRO:</b>
<b>09/18/08</b>		

Upon motion duly made and seconded it was voted to refer item 2009-024 to a public hearing to be held on October 2, 2008.

**VOTE: 10 yes 1 abstain**

**2009-025 COMMUNITY PRESERVATION FUND APPROPRIATION FOR HISTORIC PRESERVATION ITEM: 2009-025**

Upon motion duly made and seconded it was voted to refer item 2009-025 to a public hearing to be held on October 2, 2008.

**VOTE: 10 yes 1 abstain**

**2009-026 ACCEPT MGL C. 59 §5K AND AMEND THE GENERAL ORDINANCE TO ESTABLISH A PROGRAM FOR A SENIOR CITIZEN PROPERTY TAX WORK-OFF ABATEMENT INTRO: 09/18/08**

Upon motion duly made and seconded it was voted to refer this item 2009-026 to a public hearing on Oct. 2, 2008.

**VOTE: 11 yes**

**2009-027 ACCEPTANCE OF A PORT SECURITY GRANT FROM THE DEPARTMENT OF HOMELAND SECURITY, FEMA IN THE AMOUNT OF \$90,000 AND THE SUPPLEMENTAL APPROPRIATION OF \$30,000 AS MATCHING FUNDS INTRO: 09/18/08**

Upon motion duly made and seconded it was voted to refer item 2009-027 to a public hearing to be held on October 2, 2008.

**VOTE: 11 yes**

**2009-028 ACCEPTANCE OF A GRANT TO THE BARNSTABLE SENIOR CENTER FOR TRANSPORTATION SERVICES FOR THE ELDERLY, FROM ELDER SERVICES OF CAPE COD AND THE ISLANDS. INTRO: 09/18/08**

Lynne Poyant, Director of Community Services, said we have been fortunate to receive this grant for transportation which was applied for by Rose Digregorio.

Upon motion duly made and seconded it was

**RESOLVED, THAT:** The Town of Barnstable hereby accept a grant in the amount of \$6,000.00 to support the ongoing provision of transportation services to local elders and authorize the expenditure of monies for that purpose.

**VOTE: 11 yes**

**2009-029 ACCEPTANCE OF A GRANT TO THE BARNSTABLE SENIOR CENTER FOR A PARENTING GRANDPARENTS SUPPORT GROUP, FROM ELDER SERVICES OF CAPE COD AND THE ISLANDS. INTRO: 09/18/08**

Lynne Poyant said this is a first grant for programs that bring together senior and youth services. A lot of grandparents are caring for their grandchildren. There will be support for the grandparents and support groups for the children. Councilor Canedy asked what the money supports. Poyant said some of the programs have costs.

Councilor Munafo asked if it is a Federal grant and it is, through Elder Services. The grant was written by Madeline Taylor and Sally Anne Imes

Upon motion duly made and seconded it was

**RESOLVED, THAT:** The Town of Barnstable hereby accept a grant in the amount of \$5,000.00 to fund a Parenting Grandparents support group at the Barnstable Senior Center.

**VOTE: 10 yes 1 no (Munafo)**

#### **LATE FILE**

#### **2009-030 – APPOINTMENT**

A motion was made and seconded to suspend the rules and act on this in order for the committee to be able to vote.

**VOTE: Unanimous to suspend**

Upon motion duly made and seconded it was:

**RESOLVED, THAT** the Town appoint the following individuals to a multiple-member board/committee/commission:

#### **MID-CAPE CULTURAL COUNCIL**

Joline Diehl, 63 Snowcreek Drive, Hyannis, to a term expiring 06/30/2011

J. Richard Kirk, 7 Brookshire Rd., Hyannis, to a term expiring 06/30/2011

Joan F. Mullane, 96 Lincoln Rd., Hyannis, to a term expiring 06/30/2011

**VOTE: 11 Yes**

#### **2009-031 – APPOINTMENTS**

Upon motion duly made and seconded it was voted to refer this item for a second reading.

**VOTE: 11 yes to refer**

Councilor Crocker asked for a motion which was seconded to turn the chair over to Vice President Chirigotis. President Joakim left the room.

Councilor Crocker then made a motion, which was seconded as follows:

I move, pursuant to Section 8-8-(c) of the code of the Town of Barnstable, and upon the receipt of a certificate from the Town Clerk that a sufficient petition for recall has been filed, THAT: the warrant and notice for meetings be issued in due form, notifying and warning the inhabitants of Precinct 6 of the Town of Barnstable, qualified to vote in elections, to meet in their polling place on October 30, 2008, between the hours of 7:00 a.m. and 8:00 p.m., then and there to give in their votes on the following question:

“Shall Janet S. Joakim, Precinct 6 Town Councilor, be recalled?”

YES

NO

Crocker said that yes we could prepare statements that this precinct has a history of voting on Tuesday and Monday, but we are looking at an option for having it on a Thursday. Thursday is Council Day in Barnstable. The Council could do valuable work in a workshop and inform our constituents of the outcome of the vote. The town's legal counsel could be available to inform the public of what is next.

Councilor Canedy has an issue with the date as well as the cost. Town Clerk Linda Hutchenrider explained that there would be additional costs no matter what the date.

Town Attorney Ruth Weil said that there is no discretion on this issue, a date must be set.

The clerk stated that she was going to attempt to have workers from outside the precinct so there would be no conflicts. She also noted that the 30<sup>th</sup> was not a good date but the 28<sup>th</sup> or the 4<sup>th</sup> of Nov. would be best.

Upon motion duly made and seconded it was moved to amend the item to have the election on October 28, 2008.

**VOTE: 5 Yes 5 No – it was defeated**

A motion was made to reconsider but needed to be made by someone on the prevailing side.

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

On the main motion to set the date for Oct. 30th:

**VOTE: 6 yes 4 no**

The clerk stated again that it was not a good date; Councilor Rugo called the matter closed.

Councilor Farnham asked for a vote for reconsideration and did not get a second.

## **OLD BUSINESS**

<b>2009-008 AMEND ZONING ORDINANCE, ARTICLE III. DISTRICT REGULATIONS, §240-39. SHOPPING CENTER REDEVELOPMENT OVERLAY DISTRICT INTRO: 06/19/08, 07/17/08, 08/21/08, 09/18/08</b>
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Planning Board Members Present: Paul Curley, Raymond Lang, David Munsell, Felicia Penn, Patrick Princi, Nancy Trafton, Marlene Weir, Steven Shuman

Upon motions duly made and seconded it was voted to go in to a joint public hearing with the Planning Board for the purpose of discussing 2009-008.

**VOTE: Unanimous in favor by Council to go into the hearing**

**VOTE: Unanimous in favor by Planning Board to go into the hearing**

Atty. Michael Ford gave the rationale on this issue which deals with the districts near the mall. He reviewed the various technical corrections. This applies to an area that is currently

a parking lot and it will hopefully house a bank with a drive-through. The set backs will be changed to attempt to stop parking in the front of all structures,

Patty Daley said when you drive down that section of Route 28 all you see is parking. This area would put more buildings near the street and funnel the parking to the rear of the buildings.

Attorney Ford said that the curb cut for Blanchard's will be closed. Access will be through the lights.

Councilor Munafo said there is an easement for the Holiday Inn and asked if the entrance to the parking lot would remain. Ford said when the permit was granted for the mall area, we were required to have an interconnect. It will remain open.

Councilor Rugo asked about future expansion of the mall. Ford said the rights were exercised for 7 years – the permit has expired. So expansion at the mall would require going to Cape Cod Commission. The mall cannot expand without going through the Board of Appeals. The Bank is going where Blanchard's is currently. Ford said the Council would approve a zoning change to enable the opportunity to have a drive through.

Councilor Curtis asked if you are proposing a drive through, this item would resolve the technical conflict and allow you to apply for permission to have one. Is that correct? Yes. this is just to resolve the technical conflict.

Councilor Crocker asked for a definition of what are the areas between the lines on a map that was displayed. Ford explained the parameters of the requests and the uses in front of and between the lines. Crocker wanted it noted that the changes to the zoning map would affect all the parcels with frontage on Route 28, not just the liquor store portion.

Councilor Munafo asked why drive-throughs were eliminated. Ford said it was not thought out when the SCROD district was created. Munafo said there are areas where they do not want drive-throughs. Ford said in Highway Business, they are allowed by special permit – and that is what we are asking for.

Councilor Farnham said it would be a good location for the bank to move.

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

**VOTE: Unanimous in favor by Council**

**VOTE: Unanimous in favor by Planning Board**

Patrick Princi of the Planning Board said they are in full support and approves this as proposed. This was submitted in writing to the Town Clerk.

Upon motion duly made and seconded it was:

**ORDERED** that:

Section 1. That the Zoning Ordinance, Article III. District Regulations, §240-39. Shopping Center Redevelopment Overlay District, Section F. Permitted and prohibited uses, is hereby amended as follows:



By adding the following language to §240-39 F. (2)(f):

“except that a drive-through bank shall be permitted in so much of the Shopping Center Redevelopment Overlay District, as lies within the underlying Highway Business District, subject to the special permit provisions of §240-39M.”

So that as revised subsection (f) shall now read:

“(f) Drive-through restaurant or drive-through bank, except that a drive-through bank shall be permitted in so much of the Shopping Center Redevelopment Overlay District, as lies within the underlying Highway Business District, subject to the special permit provisions of §240-39M.”

Section 2. That the Zoning Ordinance, Article III. District Regulations, §240-39. Shopping Center Redevelopment Overlay District, Section M. Special permit provisions, is hereby amended as follows:

By adding the following new sentence to §240-39M. (1)(a):

“ In addition, no building permit or occupancy permit shall be issued for a drive-through bank unless the Zoning Board of Appeals has issued a special permit or a modification of a special permit issued under this section, approving such use, subject to the provisions of this §240-39M.”

Section 3. That the Zoning Ordinance, Article III. District Regulations, §240-39. Shopping Center Redevelopment Overlay District is hereby amended by deleting §240-39 G. (1)(e) in its entirety and inserting in place thereof, the following new (e):

(e) Minimum front yard setback (at perimeter of the redevelopment area): 30 feet

[1] One hundred feet along Route 132/Iyanough Road.

[2] One hundred feet along the easterly side of the roadway which would be created if Independence Drive were extended from its existing terminus on the northerly side of Route 132 along its current trajectory across Route 132 and the redevelopment area.

[3] Within one hundred feet of Route 28/Falmouth Road, the minimum setback shall be twenty feet, but there shall be a maximum setback of fifty feet.

**VOTE: Roll Call – 2/3’s – 10 yes**

<b>2008-163 ADOPTION OF THE TOWN OF BARNSTABLE COMPREHENSIVE PLAN 2008 INTRO: 06/19/08, 07/17/08, 08/21/08, 09/18/08</b>
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The item was opened and Atty. Ruth Weil said the planning board held more than one public hearing – this is not an official public hearing. You can ask for public input.

President Joakim announced that they are opening discussion.

Councilor Canedy stated she had previously presented a couple of amendments for Section 8, where, for instance, she wanted one sentence removed that was editorial.

Joanne Buntich from Growth Management said they have received amendments from Councilor Canedy, some from W. Barnstable, some from Councilor Curtis and we continue to find things to change. We don’t incorporate them and after this discussion this evening

we would like to make a list of all the amendments to look at them as a whole.

Councilor Crocker is grateful for the time everyone has put into it and feels it is far better than the other LCP. Crocker is supporting Canedy's amendment. He said there will be additions to the one-year action plan. He wonders if you are being over zealous with the 42 goals for the implementation. The goal for the first year is to go through with the named items and see what can reasonably be accomplished. Councilor Crocker thinks you need to pick out things that can be accomplished. He addressed traffic and sewer policies – we need to have a discussion. Are these the best policies we need to adopt.

Finance Director Mark Milne said under Prop. 2 ½, we can only raise the levy limit 2 ½% plus new growth. New growth has been important to us because 2 ½ does not get us enough money to meet fixed costs. We need to be careful in how it will affect land use policies. You have to consider the long-term use of land policies. I don't have statistics for you in land use. New property taxes are critical to us balancing our budget. Crocker cited differences in the trip generation neutral theory. The implication of the neutral positions affects the zoning. These regs will impact our real estate.

President Joakim asked if there is a place that these limitations are necessary. Joakim feels there are areas that do need these regulations. Crocker said we might have to make choices.

Councilor Crocker said we need to give the committee direction on whether we can support all these initiatives. He is looking for feedback too.

Joanne Buntich appreciates that the council is getting into this. The adoption of this plan creates a work plan . Traffic neutral policy is limited to certain roadways. There is another way to be traffic neutral and still expand use. Trip generations – they are the bane of our existence.

As far as sewer neutral – we were aware that other communities have started to look at this. The environmental bond bill has recently passed and will open the door for funding. How much sewage can we treat with the existing plant etc. Running parallel to this is the estuaries program . To get on the bond bill for funding we have to have a sewer neutral policy. We think the density transfer is going from developed to development .

Manager John Klimm said he wanted to applaud Councilor Crocker on the fact that these are complex issues. It is not just about land use or other policies. The traffic neutral policy is specific on arteries. The planning board has tried to address issues – your constituents #1 issue is traffic congestion. The board is attempting to do that. He agrees that there is the ability presently to make tough choices, unfortunately some of our former board members did not believe they had that. If you want the boards to have flexibility on a given case, you need to give them clarity that will allow them to have the flexibility to vote on things. What are you going to do about traffic, nothing, something, or something in between?

Councilor Crocker said that “shall adopt” means we will do it. How it is written is how it is going to come back to us. He is clear on what it says; if we say we are with you it says we

are going to do it. He is not buying language that could be interpreted two ways.

Crocker said there are more boards who understand what they are to do than those who do not.

Councilor Curtis said the whole wastewater issue is major and we must deal with it. Costs are growing on these needs. She feels the plan is great and needs to be reviewed yearly, "I think we need to stop growing – and pause." We can talk about the good things we have done to promote growth. If we don't deal with infrastructure needs in years ahead it could be non-productive because we can't or won't be able to meet our needs. I hope we can use the information. Curtis said, "thank you."

Pres. Joakim said on Oct. 16 we are having a sewer/wastewater workshop. Joakim said any ideas or changes you want to present, please give to Ms. Buntich.

**ADJOURNMENT**

Upon motion duly made and seconded, it was voted to adjourn at 10:02 p.m.

**ADJOURNED.**

Respectfully submitted,

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

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