

TOWN OF BARNSTABLE
TOWN COUNCIL MEETING
November 20, 2008

A quorum being duly present, Council President Janet Joakim called the meeting of the Barnstable Town Council to order at 7:02 pm, on Thursday, November 20, 2008, at the Barnstable Town Hall, 2nd Floor Hearing Room, 367 Main Street, Hyannis, MA 02601.

PRESENT: Richard Barry, Janice Barton, Ann Canedy (7:20), Frederick Chirigotis, James Crocker, Jr., Henry Farnham (7:20), Janet Joakim, Leah C. Curtis, J. Gregory Milne, James Munafo, Jr., Thomas Rugo, James M. Tinsley, Jr. and Harold Tobey.

President Joakim led the Council in the Pledge of Allegiance and a moment of silence.

- **Wequaquet Lake Protective Association Gift Presentation**

Gail Maguire, President, presented a \$2,200 gift for the new herring run gate. Councilor Tom Rugo accepted the check.

PUBLIC COMMENT

- Jon Julius commented on the serious financial times. He feels it is not good to use free cash and reserves to run the town. Barnstable is the fifth wealthiest town with respect to property tax values. The national economy is not to be blamed; the straits are due to running the town on financial reserves. "Change your ways."
- Mary Ann Barboza said that neither the agenda item nor a meeting on the homeless issue, which she requested, has happened. The town spends money to help traffic but not people. She points out that the majority of homeless are born and raised on the Cape and the assumptions about the homeless are not accurate. She would like the council has to come together on this issue.
- Kathy Esen, brought suggestions as to the next right step for the homeless. She suggested a tax audit of the people who run 77 Winter Street and the corporate officers of HAC. There is a need to ask the right questions as well as have the right answers. Homeless people who have no address cannot vote and cease to be citizens.
- Robert Tucker spoke about the numerous cars that are lined up in the Social Security office parking lot; it is taking 2 to 3 hours to file a claim. He has also noted vehicles on the road carrying equipment such as ladders; these vehicles have no business names or plates on their trucks. Jobs are going to foreigners.

COUNCIL RESPONSE TO PUBLIC COMMENT

- Councilor Crocker said the town has a history of anti-growth and now upwards of 30% of the property cannot be used for growth. Revenues are capped by Prop 2 ½ requirements. He pointed out that the School Committee members are also elected officials and they have chosen to use their reserves. The town manager will bring a balanced budget. The Council does not have the right to spend tax money to aid the ills of mankind. There are agencies and funding for that effort.
- Councilor Barton feels the homeless issue is everybody's problem. According to her figures about 22 % of the homeless are from the town.
- Councilor Canedy said that many are concerned with the homeless issue but it is not black and white. The business and social services communities and the administration need to work on solutions. It is not a fair situation for residents, businesses or homeless. This is a regional issue. And we as a Council should get behind fellow Councilor Jan Barton for a regional solution. Many factions need to work on solutions that don't cost money. Right now nobody is being helped. There are two sides to the issue.
- Councilor Milne said people feel that many of the homeless are not from town. The burden is unfair to residents as well as businesses. The town manager has provided much community leadership on the issue, which has been more effective than the voices of 13 individual councilors. Another meeting would be in order.

- Councilor Barry feels the need for an action plan. People are not able to pay taxes and properties may be taken by tax title. Everyone will have to “kick in.” Many of those who are homeless were in state care; now, facilities are closed and they have been sent out on the streets. There needs to be action since talk is cheap.
- President Joakim suggested that people visit other boards of selectmen to make them aware of the problem and enlist their help.

ACT ON MINUTES

Upon a motion duly made and seconded it was voted to approve the minutes of October 16 as written.

VOTE: Unanimous

Upon a motion duly made and seconded it was voted to approve the minutes of November 6, 2008 as written.

VOTE: 12 Yes, 1 Abstention (Crocker)

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

Councilor Chirigotis reported on the joint school committee and council meeting to select a replacement for the position vacated by Peggy Dandridge. Seven extremely well qualified came forward to be interviewed for the one position. He thanked all the candidates and wished them well. Francis MacDonald was appointed to the open seat. Councilor Crocker thanked all for their support on behalf of Mr. MacDonald.

Councilor Barton reported on a meeting of the Cape and Islands Regional Council on the Status of Women. They have a bill co-sponsored by Senators Robert O’Leary and Therese Murray to establish a commission in the town.

Councilor Barry said the town manager signed a petition to have abandoned dingys removed.

Councilor Milne attended the Economic Summit 2, sponsored by the Cape Cod Chamber of Commerce and the Cape Cod Young Professionals. He also spoke of the exodus from the Cape of people under 40. He reminded the public of the Barnstable-Falmouth game on Thanksgiving.

ORDERS OF THE DAY

OLD BUSINESS

2009-033 APPROPRIATION AND LOAN ORDER \$2,704,862.00 TO ACQUIRE 65,608 SQUARE FEET OF LAND, ASSESSORS MAP 312 AS PARCEL 011 TO BE ASSOCIATED WITH THE CONSTRUCTION OF A NEW ACCESS ROAD INTO THE AIRPORT

Upon a motion duly made and seconded it was

ORDERED: that the Town Council hereby ratifies and confirms its vote passed on November 6, 2008 authorizing the Town Manager to purchase, take by eminent domain under chapter 79 of the General Laws of Massachusetts, or otherwise acquire for airport, transportation, parking and highway purposes a parcel of land located at 191 Airport Road, Barnstable (Hyannis) Massachusetts, described as Town of Barnstable Assessors' Parcel No. 312011, and further described as Lots 1, 2, 3, and 4, containing 65,608 square feet of land, more or less, as shown on a plan of land entitled "Plan of Land in Hyannis, Barnstable, Mass. for Cape Investment Trust" by Charles N. Savery, Inc., Registered Engineers and Surveyors, dated January 16, 1972, recorded with Barnstable County Registry of Deeds in Plan Book 271, Page 33, a copy of which is filed with the Town Clerk, and to appropriate a total sum of \$2,704,862.00 for these purposes and other related expenses, and to meet this appropriation, that \$2,094,862 be transferred from Project # 0191A, and that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow \$610,000, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes and to accept any grants or gifts in relation thereto.

Councilor Chirigotis gave the rationale.

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

2009-035 APPOINTMENTS

Upon a motion duly made and seconded it was

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

BARNSTABLE ECONOMIC DEVELOPMENT COMMISSION

Andrew P. Maker, 2715 Main Street, Barnstable, 02630 as a member to a term expiring 06/30/2010

BARNSTABLE HOUSING COMMITTEE

Merrill Blum, 94 Water View Circle, Centerville, 02632 as a member to a term expiring 06/30/2010

STEAMSHIP AUTHORITY

Robert O'Brien, 41 Deacon Court, Barnstable, 02630 representing the Town of Barnstable, to a term expiring 12/31/2009

Councilor Curtis gave the rationale. Robert O'Brien's term is for one year.

VOTE: Unanimous

2009-039 CONSERVATION RESTRICTION BETWEEN THE MCCOWAN COTUIT TRUST-1992 AND THE BARNSTABLE LAND TRUST, INC.

Upon a motion duly made and seconded it was

RESOLVED, that the Town Council approve the conservation restriction between McCowan Cotuit Trust-1992, grantor, and Barnstable Land Trust, Inc., grantee, over 1.57 acres of land located at 1372 Main Street, Map 33 Parcel 46 in Cotuit, Massachusetts for the purpose of preserving open space.

Jaci Barton, Executive Director of the Barnstable Land Trust gave the history of the property and rationale (See Exhibits A & B). The family could merge the lots to save on taxes. However, they have decided to seek the conservation restriction instead. This option is of interest for many reasons including the 200 feet of beachfront on Nantucket sound. It is a valuable piece of property which should be protected.

- Councilor Farnham said at the last meeting the town assessor explained that it would have an effect on taxes. Farnham prepared financials in conjunction with information from the assessor. (See Exhibit C) This is a benefit for the owners, no one else. He sees a significant decrease in tax revenue which can't continue to be given away. He is not in favor.
- Councilor Canedy, as liaison to the Land Acquisition Committee supports their recommendation. The Land Acquisitions Committee does not easily approve conservation restrictions. They approved this one because it aggressively addresses additional septic loading, preservation of waterfront, removal of a dock and protection of the Three Bays. This option encourages people to remain in their homes by reducing additional tax burden created by implementation of Residential Exemption. It could be construed as a private property rights issue and allows people to determine the destiny of their own property.
- Councilor Munafo asked about the impact. Finance Director Mark Milne said the town will lose revenue in the year of grant as abatement; it eventually becomes a tax increase to other properties. However, this increase will not impact the tax rate by one penny. Munafo feels it is a difficult time for everyone. The owners should combine the lots, not get a restriction. He cannot support the item.
- Councilor Curtis said it was important, at the right time, to preserve property with historical value to the community. In this case, the owners are part time residents. She will not vote in favor at this time. If she can't walk on it (the beachfront), no one else can. Ms. Barton feels it is a public benefit – especially giving up a dock. It is an option to preserve the land.
- Councilor Barry added that it was in his precinct and a beautiful piece of property. He suggested negotiating the public access. There would be more of a tax break to the owner and it would

provide a good amount of beach access for the public. This is 200 feet and other public beaches are not much larger. There are 12 miles of beachfront in Cotuit and the public has very little use of it. He finds it difficult to consider giving a tax benefit to someone's second home on the water. Barton explained that the owners have said they don't mind the public using the beach, but public access may mean use of all the property. Barry suggested talking to them again.

- Councilor Canedy asked whether only the public use of the beach could be renegotiated with the owners. The landowners are giving up the right to build a second house which reduces negative environmental impact.
- Councilor Milne hopes it passes with the improvement.
- Crocker asked what the owners would do with the barn if they merged the lots. Ms. Barton said the barn could become a house. Crocker does not see the owner giving very much.
- President Joakim asked if the town could make it into a public access in the future. Barton explained that the owner would need to agree and the current two lots could be sold individually.
- Councilor Chirigotis does not see giving a tax break when teachers are being laid off.

It was agreed to recess this article until later in the meeting to give Ms. Barton and the owner's attorney an opportunity to consider the public access.

The council did not consider Item 2009-040 at this time.

Councilor Chirigotis recused himself for the next item.

2009-041 APPOINTMENT TO A BOARD/COMMITTEE/COMMISSION

Upon a motion duly made and seconded it was

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

HUMAN SERVICES COMMITTEE

Roy Richardson, CHIP's Homes, 9 Park Avenue, Centerville 02632, to a term expiring 06/30/2011

VOTE: Unanimous

Councilor Chirigotis returned.

NEW BUSINESS

2009-043 APPOINTMENTS

Upon a motion duly made and seconded this item was referred to a second reading on December 4, 2008.

Councilor Curtis gave the rationale

VOTE: Unanimous

2009-044 GENERAL CODE AMENDMENT – NON-CRIMINAL VIOLATIONS

Upon a motion duly made and seconded this item was referred to a public hearing on December 4, 2008.

VOTE: Unanimous

Recess 8:23 PM – 8:30 PM

A motion was made and seconded to postpone Item 2009-039 to the December 4, 2008 meeting.

VOTE: 11 Yes, 2 No (Rugo, Chirigotis)

A motion was made and seconded to postpone Item 2009-040 to the December 4, 2008 meeting.

VOTE: 11 Yes, 2 No (Chirigotis, Munafu)

2009-045 ALLOCATION OF TAX LEVY FY09 – TAX FACTOR

Upon a motion duly made and seconded it was voted to open a public hearing on this item at 8:31 PM.

VOTE: No objection

Jeff Rudziak, Director of Assessing, gave the rationale. The median value has dropped 6%; the overall value is down 1.44%; there is a 1.5% increase in the commercial and a 7% increase in the industrial values. He made a PowerPoint presentation. (See Exhibit D).

- Bill Putman spoke about how extra business taxes would drive people off the Cape. He is not in favor of split tax rates. It clobbers small people who are important on the Cape.
- David Lawlor represents a number of small business owners, many of which are truly hurting. He is not in favor of raising the taxes on them. It would be irresponsible. He feels the council is elected to make decisions on the town as a whole. The damage done outstrips the benefit.
- Jon Julius explained that a number of businesses on Main Street paid fewer taxes this year than eight years ago. Where have taxes gone down elsewhere? This is an assessing problem. Residential home owners have seen taxes go up. He is in favor of increasing business taxes and farming out the assessing of businesses.
- Skip Simpson, Chairman of the Hyannis Area Chamber of Commerce, feels the barrier to economic expansion should be lowered; this will increase the value of the commercial tax base. A split tax does not achieve community goals. He supports a Factor of 1.
- Mary Clements can understand and argue on both sides. The town should entertain again the notion of eminent domain.
- Maurice Wyman owns the Burger Kings in town. His taxes have never gone down in 38 years. Business will pass it on in the cost of goods to the consumer, who will still pay.
- Cynthia Cole, Hyannis Main Street Business Improvement District, said the assessments of properties have almost doubled since the BID was created. No taxes have gone down to her knowledge on Main Street.
- Deborah Converse, CEO Hyannis Chamber of Commerce, agrees that most businesses do not see a decrease in taxes. It is a disincentive of businesses to locate here with a split rate. Businesses are part of a sustainable and vibrant community.

Upon a motion duly made and seconded it was voted to close the public hearing at 9:03 PM.

VOTE: No Objection

- Councilor Milne explained that this is a mandated annual requirement for the council to accomplish. About 1/3 of the towns statewide do practice a split tax. It was a non-binding referendum on the ballot and the public was clear on wanting tax relief. He feels the council is beholden to respect that. The split could be a modest tax of 1.15 and that, with the residential exemption would be a benefit.
- Councilor Farnham feels it is a pass-through tax. Seventy percent of the towns have not adopted it because it is an unfair tax. Some businesses have had their taxes go down. He believes the town has gone backwards in its commercial tax base after the creation of the Cape Cod Commission.
- Councilor Crocker will support factor of 1.
- Councilor Curtis will vote against it and support a split tax in a smaller range of about 1.15. It will be passed on to many consumers, not just a few.
- Councilor Barry is concerned about the state of the economy and does not want to burden the business community. He would support factor of 1 at this time.
- Councilor Canedy said 67% of constituents townwide voted in favor of the split tax. She would like to do more research on the percentages and numbers in view of drastic change in economy to make a better decision. She would like all councilors to reexamine their position especially on the residential tax exemption because of the economic downturn and suggested that the vote be postponed to a second reading and vote. In the past, the tax rate issue has had first and second readings.
- Councilor Tinsley has had substantial input from the precinct. His people have wanted a factor of 1. He will support it.

A motion was made and seconded to move the question.

VOTE: 10 Yes, 3 No (Milne, Canedy, Rugo)

A motion was made and seconded to amend the item by deleting "Board of Assessors recommends a tax factor of 1" from the text of the resolve.

VOTE: 12 Yes, 1 No (Munafu)

2009-045 ALLOCATION OF TAX LEVY FY09 – TAX FACTOR (as amended)

Upon a motion duly made and seconded it was

RESOLVED that the Town Council hereby votes to classify the Town of Barnstable under the Classification Act at a Factor of 1 (one) for the fiscal year 2009.

VOTE: 9 Yes, 4 No (roll call) (Canedy, Curtis, Milne, Rugo)

2009-046 ALLOCATION OF TAX LEVY FY09 – RESIDENTIAL EXEMPTION

Upon a motion duly made and seconded it was voted to open a public hearing on this item at 9:30 PM.

VOTE: Unanimous

A motion was duly made and seconded to amend this item by removing “Board of Assessors recommends that the residential exemption not be adopted,”

VOTE: 12 Yes, 1 No (Munafu)

Upon a motion duly made and seconded it was voted to close the public hearing at 9:31 PM.

VOTE: No Objection

- Councilor Milne asked if the council was ready to take away a tax break that has been given to residents for the last three years and give them a tax increase. He hopes the exemption is not revoked and is in favor of keeping it at 20 percent.

A motion was made and seconded amend the item by striking “up to” from the text of the resolve.

VOTE: 10 Yes, 3 No (Canedy, Curtis, Munafu)

- Councilor Munafu feels the equitable thing is a fair tax and he would return to a fair tax for all.
- Councilor Crocker pointed out that there is an ability to make an adjustment to the 20% or vote against it. This is a burden on some of the residents causing some to seek restrictions, etc. to decrease the burden. If property value has gone down, those who have the tax break will already have it through the downward reassessment.
- Councilor Farnham added that the Cape is at bottom of the food chain of state reimbursements. This is a little pass-through that really benefits those who need it. He will support.
- Councilor Canedy feels it is taxation without representation because the majority of the people who it adversely affects cannot cast a vote. It also encourages an increase in applications for conservation restrictions to decrease taxes. Many are land-rich, money poor and are being taxed out of their homes. She will not support.
- Councilor Curtis cannot support it also feeling it is taxation without representation.

President Joakim gave the gavel to Vice President Chirigotis in order to participate.

- President Joakim is concerned that five people in her neighborhood have lost their homes (values of about \$250,000) in last six months. The people who are struggling need this sort of relief. If one does the numbers the effect is under \$100 of added tax for a \$1M home. This is a savings and should not be taken away at this time. Crocker pointed out that everyone is struggling not just one class.
- Councilor Milne pointed out that there are inequities with how the state gives out aid. For example, lottery tickets are not allowed to be sold in the town of Harvard, yet they are given a distribution of lottery funds from the state. This is one way to fight back and give the residents something.
- Councilor Tinsley said the council is the ‘representation,’ so there is no ‘taxation without representation.’ A majority of the constituents will benefit and he will support it.

A motion was made and seconded to move the question.

VOTE: 11 Yes, 2 No (Munafu, Canedy)

2009-046 ALLOCATION OF TAX LEVY FY09 – RESIDENTIAL EXEMPTION (as amended)

Upon a motion duly made and seconded it was

RESOLVED that the Town Council hereby votes to adopt a Residential Exemption and a percentage of 20% for the fiscal year 2009.

VOTE: 9 Yes, 4 No (roll call) (Canedy, Crocker, Curtis, Munafò)

President Joakim returned to her role as president.

A motion was made and seconded to amend Item 2009-047 by removing “Board of Assessors recommends that the commercial exemption not be adopted.”

VOTE: Unanimous

A motion was made and seconded to amend Item 2009-047 by deleting the word “not” from the text of the item.

VOTE: Unanimous

2009-047 ALLOCATION OF TAX LEVY FY09 – SMALL COMMERCIAL EXEMPTION

Upon a motion duly made and seconded it was voted to open a public hearing on this item at 9:52 PM.

VOTE: No objection

Upon a motion duly made and seconded it was voted to close the public hearing at 9:53 PM.

VOTE: No objection

2009-047 ALLOCATION OF TAX LEVY FY09 – SMALL COMMERCIAL EXEMPTION – as amended

Upon a motion duly made and seconded it was

RESOLVED that the Town Council hereby votes to adopt a Small Commercial Exemption for the fiscal year 2009.

VOTE: 2 Yes, 11 No (roll call) (Munafò, Rugò)

TOWN MANAGER COMMUNICATIONS

Town Manager Klimm distributed information about the “no dinghy” regulation, which he recently approved. It relates to the Ropes Beach area of Cotuit. Both the Conservation Commission and the Department of Marine and Environmental Affairs were involved. (See Exhibit E) He also provided copies of the fee increase requests from various departments. (See Exhibit F)

Councilor Farnham asked whether the abandoned dinghies could be auctioned, with proceeds going to Marine and Environmental Affairs.

Joe Gibbs, Mooring Officer, said there were many options for the abandoned dinghies, once the junk was removed. Auctioning them would be an option.

Councilor Chirigotis feel the town bears the burden and should be able to use any monies obtained to defray its expenses. In addition, he suggested requiring dingy stickers so when the dinghy is abandoned the town would know who to assess.

ADJOURNMENT

Upon motion duly made and seconded it was voted to adjourn the meeting at 10:00 PM.

VOTE: Unanimous

Respectfully submitted,

Lucia Fulco
Assistant Town Clerk