

**TOWN OF BARNSTABLE  
TOWN COUNCIL MEETING  
January 8, 2009**

A quorum being duly present, Council President Frederick Chirigotis called the meeting of the Barnstable Town Council to order at 7:00 pm, on Thursday, January 8, 2009, at the Barnstable Town Hall, 2<sup>nd</sup> Floor Hearing Room, 367 Main Street, Hyannis, MA 02601.

**PRESENT:** Richard Barry, Janice Barton, Ann Canedy (7:10), Frederick Chirigotis, James Crocker (7:15), Jr., Henry Farnham, Janet Joakim, Leah C. Curtis, J. Gregory Milne, James Munafò, Jr., Thomas Rugo, James M. Tinsley, Jr. and Harold Tobey.

President Chirigotis led the Council in the Pledge of Allegiance and a moment of silence remembering the recent losses in the Farnham, Butler, and Chase families.

### **Report of the Coastal Resources Committee**

Robert Jones, Chairman of the Coastal Resources Committee was joined by members Dennis Houle, Conservation Committee; Tom Lavin, Special Projects Coordinator; Andre Sampou, recreational shellfisherman; and John Fallon, a property owner. Other members are: Jack Meade, Vice Chairman, Waterways Committee; Stuart Rapp, Shellfish Committee; Peter Maryott, Oyster Harbors Marine; George Gilmore, dock construction industry; John Nawoichik, commercial shellfisherman; Peter Sullivan, marine permitting; Sue Rask, wastewater professional; Patrick Princi, Planning Board; and Christopher Gargiulo, aquaculture grant holder.

Jones provided some background information, reading item 2008-091 which was passed by the council. This item created a temporary recreational shellfish area and a shellfish relay overlay district that included a moratorium on the construction of docks and piers. He reviewed the history of the Camp, Dresser and McKee plan. Their goal is to develop a plan that is simplified and, unlike the current plan, easy to navigate. They envision condensed bullets for strategies and recommendations, as well as including redundancies, to make it easier to follow.

The committee is currently collecting inventory and data. They have adopted the same six goals of the McKee plan and are attempting to use an appendix with digital mapping. The committee will attempt to recognize all the stake holders and acknowledge them in the plan. All the players need to be considered on a fair basis.

Jones feels that all (shellfishing, tourism, etc.) is dependent on water quality. Eighty-five percent of the issues involve water quality. Early recommendations on moorings, etc. have been accomplished. The committee is about to enter the second stage of pulling data together. The final stage will be to provide recommendations. "Protect, preserve and play."

- Councilor Canedy said she had not yet sent the promised letter re enforcement and her opinion on the charge of the Committee which would be expressive of her opinion and not necessarily that of the Council.
- Councilor Tobey thanked the committee.

### **Review of Kmart Plaza Lease**

Attorney Bruce Gilmore spoke about issues concerning the Kmart lease. He gave a history of the lease, which dates back to 1968. It is a public record and available from the Airport. He also gave some history on the jurisdiction of the plaza. It was ultimately transferred by the Department of Defense to the airport for airport purposes. In 1968 a 56 year lease (40 year with an option for a 10 year and a 6 year extension) was approved by town meeting and recorded at the registry. The original lease expired in 2008, and it is in the first extension. The lease has been assigned five times and has sold for millions. The current lessee has a \$10M mortgage on the property.

The current tenant wants an additional extension or a right of purchase. By law, if it is sold it must be to the highest bidder or if leased, to the lessor with the best terms. To do otherwise would be illegal. The council can do nothing but honor the lease. The 1968 judgments may have been flawed, but it was their best understanding.

Gilmore concluded explaining that funds raised by the airport must remain with the airport other than to pay for services billed by the town. In the Retrix suit, they accused the airport of diverting funds to the general fund. However an audit showed it was not true.

- Councilor Canedy asked for confirmation that the rent for the lease was set for 56 years and therefore could not be renegotiated.
- Councilor Farnham asked about an FAA sign off. It was not needed for the lease but was required in the deed that dealt with the use of the property. Gilmore would like some legislative assistance to get some of these properties from the airport so they could be used for other public needs. Perhaps legislation could be filed in 2024 to accomplish this.
- Councilor Crocker pointed out that the lease was not bad business for the time. The lease was paying more per month than the land was worth back in the 1960s. It was an astronomical return for the time. Gilmore added that those people should not be unnecessarily criticized.
- Councilor Barton is appreciative for the clarification, so people don't get a mistaken impression that funds can be used elsewhere.
- Councilor Milne asked whether the deed was transferred to the "residents of Barnstable." Gilmore explained that there was an airport commission back then. The Airport Commission is an organ of the Town of Barnstable and the land was deeded to the Town of Barnstable Airport Commission. Jurisdiction or control is in the airport commission. He made an analogy to the School Committee who also has properties. When a school building is voted in excess, the school committee can transfer it to the town. Milne is hoping that there is a hole showing that the FAA doesn't have its teeth in this property. Perhaps an angle might be found, with further legal pursuit that might at least return the \$60,000.
- Councilor Rugo said that "a contract is a contract." Gilmore added that he had sent a default notice about 10 years ago because the property was unsightly and the issue was rectified immediately. Rugo is enthusiastic that when the lease is over the funds might be allocated to the town. He suggested the airport should consider that in their business plan.
- Councilor Crocker pointed out that when a school committee gives real estate back to the town, it is only to facilitate the sale. The money from the sale goes back to the school.

## **PUBLIC COMMENT**

Jon Julius believes the figure was not \$60,000 but over \$100,000. He would like a copy of the lease to send to the AG's office for clarification. He also suggested a plea to Sen. O'Leary to see if there is any way to get the money for the town. Does the lease have a provider clause?

Paula Emerson Faye spoke of statements from the council that the town should not educate minority children. Closing the Hyannis East Elementary School displays to the minority community that Barnstable is a great place for hate.

Mary Ann Barbosa also spoke of the closing of Hyannis East. She asked if this is an attempt to destroy the community so the new recreation center will not be available to the local children. She discussed many issues including the difficulty many minority families will have in transporting children to outlying villages, especially if they miss the school bus. The children will not be welcomed in other communities. Hyannis East receives less funding than other schools and it is the most diverse school.

Graham Silliman, restaurant owner, also commented on the schools. Cape Cod Health Care has said that the quality of the schools is a problem in attracting health professionals. It also affects other businesses. He hired a chef and the discussion revolved around the quality of the schools. Schools are important to both the hourly workers and the professionals. It is a quality of life issue for the whole community. The schools already do a good job but are faced with unprecedented upheaval. He would like attention paid to the balance of upheaval within all the areas the council manages.

Jeff Spillane, a surgeon at CCH, read a statement from physicians and nurses who have children in the schools. The closure will be harmful at the core affecting the vitality of the community. They are supportive of any effort by the council to solve this before the Cape becomes a ghost town. Preservation of basic educational services must be retained.

Robert Tucker feels the town is not getting revenue from many people who have unregistered plates and no driver's licenses. Barnstable is taking all the financial brunt of the homeless. Other towns need to contribute to that expense.

Al Baker said that public comment is to allow for input. He was hurt by the lack of notice of an executive session this evening. He feels issues are not evenly spread out over meeting nights.

Diane Fey said there is a highly paid school administrator who works one day a week in another town. She asks if this (double-dipping) is an Ethics violation. If that person's salary is cut by one fifth, the school could keep another teacher on the payroll.

## **COUNCIL RESPONSE TO PUBLIC COMMENT**

- Councilor Tobey agrees with Ms. Barboza's issue. He feels that closing a bilingual school servicing minority kids is not good. He will speak in favor of keeping it open. He has to complain but has no solution.
- Councilor Barry has a child in the Cotuit Elementary School. While there have been mistakes with union contracts, etc., schools are not being closed to pick on minorities or punish kids, but to deal with the infrastructure needs of the schools. The physical condition of the Marstons Mills West School is the best of any in town. Pulling the race card is not the way to solve the problem. People need to stick together as one community.
- Councilor Barton said that some other towns have contributed to Operation In From The Streets. Right now the school situation is a tough situation with depleting funds, which may be depleted more on both the school and town sides. People need to deal with the facts rather than the emotions and try to make the best of a terrible situation. She asked for documentation on the percentage of funding for each school and a confirmation of bilingual education in all schools. She said the school superintendent needs support for the wonderful job she is doing.
- Councilor Joakim worked for 4 years at Hyannis East and feels the issue isn't race but need. She pointed out that the youth center was funded partly because of the demographics of the area. She also explained that many of the children living in the most incredible circumstances reside in that area. They rely on a hot breakfast and lunch at school, which may be their only hot meals; they don't have transportation if they miss the bus, etc. It has been such an important place for the children. While some people think that there are hidden funds, there are none to use. All have been making cuts across the board. It is a difficult time.
- Councilor Farnham said the Kmart Plaza lease started at \$7,500 per year when it was first signed and it is on file at the registry of deeds. It is clear and easy to read. A poor educational system is a negative impact on its economy. He clarified that there has been tremendous funding of the schools, not chronic underfunding. He suggested that rather than beat us, the public should beat on the legislators.
- Councilor Curtis concurs and understands the emotional impact of the change. There will be some community schools closed and she supports those hard decisions until there is a Plan B to replace the Plan A. The challenge is to develop programs for ALL the children in all schools. This speaks to the quality of education not the buildings occupied.
- Councilor Munafò said that the council's woes are just beginning. They will do the due diligence and create a budget that is the best they can short of a Proposition 2 ½ override. Regarding the lease, the opinion that the money does not belong to the airport is personal preference. It is not so.
- Councilor Crocker observed that the medial community just went through much greater cuts. He did not think twice about bringing his mother to CCH despite the cuts. This is not the first time the school budget is being cut. All have something at risk and he will not lose focus.
- Councilor Canedy thinks Hyannis East is unique. She suggested the possibility of combining Hyannis East and Hyannis West. It will still be a neighborhood school next to the youth center. She liked the idea of a Blue Ribbon committee to look at reasons of how and why the town is at this place as well as to work with the school board, etc. The Town cannot give more money to

the schools as the schools currently receive 68 cents of every dollar. All other options should remain on the table.

- Councilor Milne feels the neighborhood has given a soul to that school. It may be a benefit to have children from a lower economic area dispersed among students of all economic levels. He would like more details of proceeds from the sale of the Grade 5 school; details of the breakdown of the \$3M savings from closing the two schools; a comparison of how the town approached the reserve savings compared to the school's approach.
- Councilor Rugo said the school committee will accept a budget and deliver it to the council, who will then begin its deliberations. The council will have to decide whether to cut budgets for mowing, etc. and divert the funds to the schools. He would like to see the schools funded at a greater percentage.

## **ACT ON MINUTES**

Upon a motion duly made and seconded it was voted to accept the minutes of December 18, 2008 as written.

**VOTE: Unanimous**

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

Lynne Poyant gave a power point presentation on the status of the Hyannis Youth and Community Center. (See Exhibit A) Interest by a professional hockey franchise, the Hyannis Storm Franchise, could gain the town \$100,000 per year with no cost to the town.

- Councilor Munafo asked about a beer/wine concession. No this will be a non-alcoholic facility.
- Councilor Farnham asked the level of ticket prices. Poyant said adult will be \$10, children, \$8. It is a feeder league below the Providence Bruins.
- Councilor Crocker asked if the lease will include a parking schedule and busing. There could be thousands of people and the parking lot will be inadequate without this.
- Councilor Milne felt given that everything else in the business plan is solid, the \$100,000 could go back to the town. Recreation Director David Curley said the \$100,000 is not surplus. If the team pulls out or fails they would still be selling the ice time for holding other events. Milne said he hopes nobody wants to see the area of Hyannis East become a parking lot for the rink.
- Councilor Tobey sees the \$100,000 as money to help the business plan, not extra money.

Councilor Barton applauds the commitment to support the community.

Councilors Joakim and Farnham announced upcoming activities in their villages.

Councilor Barry stated that the current proposal was for full-day kindergarten, and it is free. The Cotuit gas station was bought by a grant.

Councilor Crocker said the town is trying to attract such opportunities for the rink but not at the expense of the children. Curley explained that youth hockey numbers, for both boys and girls, are not down. He has a commitment from BYH to use five times more ice time. They will be using less ice time at other facilities.

Councilor Barton said that in her various committees they have been discussing ways to help the town's young people. A bill is waiting for the Governor's signature and will create a Cape & Islands Committee on the Status of Women.

Councilor Crocker complimented the Police Chief on an excellent presentation.

Councilor Munafo invited anyone from the west side of Hyannis, who wanted their opinions heard, to contact him.

Councilor Milne thanked Tom Lynch for his efforts on setting up a meeting on the homeless issue. He also questioned a subcommittee meeting that was posted as open and then went into executive session. President Chirigotis explained that the meeting, in open session, as is required, made a roll call vote to go into executive session.

## **ORDERS OF THE DAY**

### **OLD BUSINESS – None**

### **NEW BUSINESS**

#### **2009-057 CONTRACT AUTHORIZATION FOR SCHOOL TRANSPORTATION**

Upon a motion duly made and seconded it was

**RESOLVED**, that the Town Council authorizes the award of a contract for regular and extracurricular school transportation to First Student, Inc., as approved by the School Committee on December 9, 2008 for a term of 36 months beginning July 1, 2009 and ending June 30, 2012, with an option on the part of the School Committee, to extend the term for an additional 24 months beginning July 1, 2012, and ending June 30, 2014

Councilor Barton gave the rationale. Copies of the bid specifications were distributed. (See Exhibit B)

- Councilor Canedy asked if the company will provide drivers for special needs students and drivers with first aid capability. In addition, she was concerned about the language stating “reserve” rather than “demand” the right to require same. Attorney William Butler confirmed the language. Authority from the Mass Dept. of Public Health is required to administer EpiPens.
- Councilor Crocker asked about drivers, buses, fuel adjustment and council approval to extend for the additional 2 years. Butler explained that drivers are employees of the company but the school committee must approve them and can veto drivers. Buses will be new at the start of contract.
- David Anthony, Chief Purchasing Officer, said the town will fill the buses with town’s fuel in order to take advantage of the town’s bulk contract rates and the savings on sales tax. The tracking system in place will allow monitoring of fuel usage to make sure it is being used for town purposes. Anthony explained that the option to extend in the contract, as written, does not require separate council approval. Crocker would like the council to have a say in the extension. Councilor Munafò pointed out the contract language which said the council would approve the extension. Butler pointed out that the vote to approve the last 2 years is what is requested at this time. No municipal agency may enter into a contract longer than 3 years without council approval.
- Superintendent Patricia Grenier explained that the council votes the school budget as a lump sum and the school committee decides how to spend it. Att’y. Butler said there was a non-appropriation clause already in the contract. According to Butler, if the vote to allow the extension were taken at a later date, the contract would have to be rebid. The pricing is based on the potential for a 5 year contract, not the guarantee of it. Regarding the urgency to sign, Anthony said the award needed to be affirmed in January. Crocker observed that it could be taken up at the next meeting.
- Councilor Milne asked if the school committee will continue to pursue the in-house option. He is open minded and would like to know if it is advantageous. The school committee is interested in finding the best deal. In-house buses could be used for other town projects, during summers for activities, rentals, etc. However, the research could not be completed in the time remaining on the current contract. Milne appreciated the “out-of-the-box” approach to busing.
- Councilor Canedy asked if Councilor Crocker’s concerns were addressed. Crocker said “no.” Canedy then asked Att’y. Butler about some changes that would reflect Crocker’s concerns; Butler didn’t think any modifications of the contract could be made at this late date. Anthony stated that the school committee cannot vote on the potential of extending the next 2 yrs; only the council can do that. Canedy asked if the council would have a voice in whether the busing went in-house. Response: Yes

- Councilor Farnham said the contract states that the school committee can operate its own buses. What does it mean? It refers to the short buses, the special education buses and the fleet of 13 buses that already operate in-house with employee drivers.
- Councilor Crocker feels the contract baited the bus company to suggest there could be a 5 year potential. Anthony reiterated that the bidder understands the only guarantee is for 3 years.
- Councilor Munafo said if the bus contract was a “deal breaker,” the only option to the council would be to vote down the entire budget. Butler agreed. Munafo would have liked to be able to read the contract prior to the vote and could do so if the vote were taken at the next meeting.

Councilor Munafo made a motion, which was seconded, to postpone the vote on Item 2009-057 to Jan 22, 2009.

Chairman Cahoon said there might be an issue with timeliness – there is a 45 day window for approval from the date the school committee met on 12/9/08. Anthony would have to check with the IG’s office on the dates.

Councilor Munafo withdrew the motion.

A motion was made and seconded to move the question.

**VOTE: Unanimous**

**On Item 2009-057**

**VOTE: 11 Yes, 2 No (roll call)**

**2009-058 APPROPRIATION & TRANSFER ORDER FY09 PARKING ENFORCEMENT**

Upon a motion duly made and seconded this item was referred to a public hearing on January 22, 2009.

**VOTE: Unanimous**

**2009-059 SNOW & ICE OVERDRAFT ORDER**

Upon a motion duly made and seconded it was

**ORDERED**, that the Town Council hereby appropriates the sum of \$54,400 for fiscal year 2009 parking enforcement expenses, and to meet this appropriation that \$54,400 be transferred from available funds within the Bismore Parking Special Revenue Fund.

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

**LATE FILE**

**2009-060 APPROPRIATION COMMUNITY PRESERVATION FUND FOR COMMUNITY HOUSING**

Upon a motion duly made and seconded this item was referred to a public hearing on January 22, 2009.

**VOTE: Unanimous**

**TOWN MANAGER COMMUNICATIONS**

Town Manager John Klimm commented on the use of the “savings accounts.” He asked Finance Director Mark Milne for a 5-year snapshot of how it has been used. The municipal side is between \$1M to \$2 M short, but there are savings. The municipal side is not in a budget crisis; the school is. Several years ago a partnership with respect to the surplus was established. Both were to be allowed to keep their respective surpluses and put them into a “savings” account. Each side has decided how to use their savings accounts independently. The schools get 60% and the town gets 40% of all new revenues. From now on the municipal budget will not be based on use of savings. Manager Klimm will ask the school superintendent if she will release a similar 5-year snapshot.

On Dec 31 the town received a notice from the Governor’s Office regarding President-Elect Barack Obama’s economic stimulus package. The Governor asked every city and town to submit projects to his office, in order to be considered for funding, by Jan 8<sup>th</sup>. Klimm formed a team which has been working

night and day to have a package ready. The team isolated \$577 M of potential projects and submitted them to the Governor, in great detail – by deadline. “Talk about the audacity of hope!” No matter how much money the state gets, projects which have not been submitted will not be considered.

Barnstable’s Task Force on individual homelessness received a \$1,000 grant from the Cape Cod Community Foundation to fund a visit from an expert on homelessness.

Vice President Tobey made a motion to go into Executive Session to conduct a strategy session in preparation for negotiations with non-union personnel and to conduct contract negotiations with non-union personnel and not to reconvene in Open Session. The motion was seconded.

**VOTE: Unanimous (Roll Call)**

Respectfully submitted,

Lucia Fulco  
Assistant Town Clerk