

**TOWN OF BARNSTABLE
TOWN COUNCIL MEETING
August, 6, 2009**

Council President Frederick Chirigotis called the meeting of the Barnstable Town Council to order at 7:00 PM, on Thursday, August 6, 2009, at the Knight Auditorium, Barnstable High School, 744 West Main Street, Hyannis, MA 02601.

PRESENT: Richard Barry, Janice Barton, Ann Canedy, Frederick Chirigotis, James Crocker, Jr., Henry Farnham, Janet Joakim, J. Gregory Milne, James Munafo, 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.

PUBLIC COMMENT

J. Albert Johnson, lawyer, was appalled by the catcalls and insults hurled at the councilors during the June 25th meeting. He believes the audience intimidated the board and hopes this meeting will be respectful.

John Julius asked “what is American?” and then defined not allowing due process, taxing people out of their homes, or local governments stripping people of property rights, as un-American. He announced that he had petitions to be signed if the measures are voted in, because these decisions should be made by the people.

Al Baker said there were many good things about Barnstable. Intentions of speakers are to better the town as are the desires of the Council. Input from both the professionals and the citizenry, who also know what is right, are needed.

Patrick Paige feels he has been held to a higher standard regarding his parcel on Buttonwood Lane with respect to the Wetlands Protection Act. He has numerous photos of the pollution at the YMCA. Mud and debris has flooded Route 6A. He has been advised to sue the town.

Jane Saunders, Patrick Paige’s wife, spoke on the same issue. The DEP and EPA in Boston have been contacted and the issue will be investigated from agencies outside the town. The Town Attorney’s office will no longer take her calls and she has been shut off from all communications. She is appreciative that Police Chief McDonald will communicate with them. The only thing they wished to do was develop the 21 Buttonwood lot fairly.

COUNCIL RESPONSE TO PUBLIC COMMENT

Councilor Crocker asked if the DPW had comments on the YMCA runoff. DPW Director Mark Ells said his office has not received complaints. Complaints may have gone to Mass Highway since the road is state owned, not town owned. Ells will investigate further.

ACT ON MINUTES

Upon a motion duly made and seconded it was voted to accept the minutes of June 2, 2009 as presented.
VOTE: Unanimous (Milne abstained)

Upon a motion duly made and seconded it was voted to accept the minutes of the July 16, 2009 with the following corrections: Councilor Milne said he was the missing “Yes” voter on Councilor Canedy’s amendment proposed for Item 2009-137.

VOTE: Unanimous

Councilor Canedy asked President Chirigotis to announce the votes and minority voters so they could be recorded more easily. Councilor Crocker suggested the council ask for a roll call vote if they wanted one.

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

Councilor Munafo is opposed to having a big agenda during the summer.

ORDERS OF THE DAY

OLD BUSINESS

2010-001 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 YOUTH COMMISSION

Alisha Colucci, BHS, 744 W. Main St., Hyannis, as a member to a term expiring 06/30/2010

Grace Crowell, BHS, 744 W. Main St., Hyannis, as a member to a term expiring 06/30/2010

Roger Santos, BHS, 744 West Main St., Hyannis, as a member to a term expiring 06/30/2010

VOTE: Unanimous

2010-017 APPROPRIATION & LOAN ORDER – SEWER COLLECTION SYSTEM EXPANSION

Upon a motion duly made and seconded a public hearing was opened at 7:30 PM.

VOTE: No objection

Mark Milne, Finance Director; Wayne Miller, Chairman Board of Health; and Susan Rask, Board of Health Member, were present.

Mark Ells gave the rationale and made a PowerPoint presentation (See Exhibit A). Ells said that people both in favor and opposed had questions on the other costs involved. The connection fee is under review. In addition, there are some individual home costs such as the pipe from the house to the sewer. He read an email from the DEP stating that the town has until Aug 7th to file the paperwork. (See Exhibit B).

Wayne Miller said that 20% of the properties within the Phase 2 area have replaced their septic systems in last 5 years. The Board of Health has the ability to grant waivers for up to five years delaying the hookup for anyone with a new system no older than 5 years. Title 5 systems have a limited life span of about 25 years, while the sewer has double the life span. Given that fact, the costs are fairly equivalent. This funding is more equitable and different from the Lake Wequaquet scenario.

Susan Rask served as a member of the former citizen's advisory committee who determined that the area was a priority due to small lots, on which the current systems would not be able to be upgraded.

Councilor Crocker thanked all who have been involved with this program.

The following comments were made by residents within the Phase II area.

- Pat Kehoe feels, instead of sewers, Stewart's Creek needs to be cleaned of tires and other debris as well as dredged to improve water flow. She has put in a Title 5 septic and still paying for it. She said it was criminal to ask for another \$20,000.
- Dan James was opposed to this due to its cost. After learning the pros and cons, he is now convinced to go forward with these plans. He urges a positive vote. "We cannot afford not to."
- Dawn Mathius would like clean drinking water before sewers. She asked if the hotel was on town sewerage. It is. She suggested that since the hotel's fertilizer runoff could be responsible for the poor water quality, might the hotel be responsible for some of the payments. She cannot get help on the clean water issue and invited councilors to come take a look. On the water line

replacements, Ells said the town has received stimulus money for it. The town is trying to accomplish both. She is second on the list for pipe replacement.

- Leanne D (?) was in favor of the project. The creek smells when the weather is hot. She has put her septic replacement on hold hoping this would happen. She would prefer a fixed rather than a floating price. Ells believes the estimates are conservative. The town can set a fixed price with the overage paid by town. Councilor Crocker explained that once it is on the title the price will not go up. Councilor Canedy pointed out that the town cannot give a fixed price by law until after the bid process.
- Roberta March is in favor of the sewers. She too was concerned about cost and had questions on how the cost was measured. Ells said the cost is per property. Dr. Miller said his board will look at waivers for newer systems and waivers for hardship. Ms. Rask explained other options such as a state income tax credit of up to \$6,000 and a county septic loan program that can loan the money at 5% interest. Rask said if Ms. March's septic failed, she would have to replace it with a build-up which would cost \$25,000.
- Paul Wasilewski described how things have changed since the 1950s. The whole town should be sewerized. The State should mandate that all towns on the Cape be sewerized.
- Al Lucien has rental properties in the area and has not raised the rent in several years. He will have to raise the rent if this goes through. His tenants cannot afford it.
- Yolanda Kehoe said leaky septic systems are not the cause. According to the Mass. Estuary Study, the nitrogen level is below the allowable amount. Pollution is due to the stagnation of water not leaky septic. Ells said the project had to do with the ability to site Title 5 on the lots. The study is being done by the town. The culverts will be opened, however the work has not been started by Corps of Engineers. It is currently scheduled for the fall of 2010.
- JoAnn Crippic said she can't afford the sewer but can't afford not to tie in. She urges council support. She has had mail since 1993 saying it was coming.
- Judy Barron (?) said the council had voted against this so why is it being revisited. Everyone had a chance to speak. She is against the cost of it.
- Marvin Blank is in favor of the project. It is the obligation of the town to approve this. Ells explained that the Federal stimulus money is not totally out since the town has been given until Aug 7th to file.

The following comments were made by residents within the Phase I area.

- Milton Berglund urged the council to support this item. *E. coli* contamination cannot be prevented by individual septic systems alone. Federal and State sewer mandates will be upon the area if this is not done. Title 5 not the long run answer. He suggested a possible deferment of the cost until the property is sold. It is a necessary public project and sewers are a part of it.
- Shirley Holmes reviewed her impressions of the Phase 1 meeting. There should have been more discussions on keeping the cost low, and discussions should have occurred before the vote. She has three properties and asked the council to vote with conscience because it will cost money.
- Unidentified speaker supports extending sewers to keep water and beaches safe. If the sewers are delayed it will be more expensive later on.
- Laura Brown read from her email. She suggested a no vote so questions can be answered and then the item reconsidered.
- Barbara Burke is in favor.
- Gale Clear said they need town sewers to stop the contamination and avoid beach closings.
- Jeff Coombs is in support. It doesn't look right or smell right. Something needs to be done and the time for action is now.
- Michael Abodeely thanked Director Ells for his clarifications and urges voting yes on Phase 2. He pointed out that the town could be sued due to not following environmental laws.
- Kevin Burke urges voting in favor and hopes something can be worked out for those who cannot afford it. It is economically viable since the improvement will increase the value of the property and it will only cost more in the future.
- Sarah Holmes asked for a no vote on Phase two and a revisiting of Phase 1. She put in a Title 5 septic because she was told that never would there be sewers on her road. She feels she should not have to spend another \$20,000 to replace a new septic system.
- Tom Holmes thought he asked the right questions two years ago and put in a new septic. This will be spending more money for a family and children with expenses that older people don't have. He should not pick up the tab for everyone.

- Patty ? said the money is being offered at a time when people cannot pay their bills. She is convinced that the area needs to be dredged to drain the ecology that's grown. The sewer system will not clear the creek. Clean the creek then determine what the septic systems are doing.
- Mary Ann McParland is against this because she cannot afford it. She also spoke of the tiny culvert that cannot clean the creek.
- Jim Winchinski said the project was long overdue but financially irresponsible. Continue it!

The following comments were made by residents from other areas of town.

- Jon Julius had not heard the numbers regarding costs at the last meeting. He suggested the lack of communication on issues is done by design. Votes should be in the hands of the voters. People deserve other alternatives.
- Al Baker was in favor of bringing this item back before the council. There should be a way to lower the costs and make it more palatable to the home owner.
- Carl Perlmutter feels all estuaries on Cape Cod should have sewers. He finds it hard to believe that these conditions have been allowed to exist. "Let's keep the Cape as the best place."
- Rob Anderson said since there was no hope of salvaging the subsidy and too many questions have yet to be answered. It may be an opportunity to step back. The council could consider incorporating alternative technologies. He spoke of an alternate system that would cost \$10,000 less a \$6,000 tax credit. A county dredge could be used to open up the channel. He suggests voting it down now.
- Gail Maguire, President of the Wequaquet Lake Protection Association, urges approval. She hopes the council will have the courage to do what is best and the foresight to plan ahead for future generations. Title 5 systems do not remove the majority of the nitrogen or phosphorous. The town's comprehensive wastewater plan has been quite thorough. "Move forward or waste time and money."
- Nancy Keene is in favor of the project. She suggests finishing what was started. She feels the process has been disgraceful. Sewers will protect waters better than septic systems. People need to be accountable for all the homes built.
- Hid Welsh is in favor. Cape Cod has no reservoirs, no desalination plant; it is totally dependent on groundwater. There is no completely safe Title 5; the system may be leaching improperly. The Cape suffers droughts that decrease level of water; buildings add to the consumption. Older homes are on lots that would not be allowed by permit today. It should be a no brainer. "Even birds don't foul their own nests."
- Ellen Crowley is not against sewers. She is opposed to the high cost that only 300 families have to pay fully. Ells explained that a 100% betterment has been the financial policy since 1988 when former grant programs were eliminated. The Corps project replacing culverts is about to go to bid and is a separate project from the sewer.
- Eric Schwaab feels this is not being done to protect the water since drinking water was never made a priority. Phase 1 is not a done deal since there has been no money received. It can be rescinded. He pointed out that the pump house on West Main St. connects to nothing and feels the town is drunk on federal stimulus money. He suggested banning commercial fertilizers on golf courses and building decentralized systems on town land. He suggested rescinding various votes as well as the town contributing to the betterments.
- Dorothy Hughes feels the process is flawed. She suggested examining alternate methods. Why was Phase 1 not removed when Phase 2 failed to be adopted? She referred to this as "endless pick-pocketing."
- Tina Carey asked some questions about the WPC plant. Ells said nitrogen removal at the plant is treating down to 5 ppm, which required slowing down the rate the water moved through. There is no identifiable plume from the discharge. For comparison, Rask added that private septic systems treat to 50-60 ppm. Carey added that cost is about \$30,000 per household. People cannot afford it. She urges a no vote.
- J Albert Johnson asked if the town would be facing immediate law suits if this does not occur.

Other miscellaneous speakers.

- Kate Diver spoke on behalf of several people who had already gone home. They are against the sewer which they do not need and can't afford. There are no failed systems in her neighborhood so they should not have to spend \$20,000. Water quality should be paid for by entire community because it is a community responsibility. She suggested a general tax on all citizens.

- Lorraine Doherty Mitchell said Stewart's Creek has always smelled. She wanted a sewer and thinks everyone should pay for it.
- Brenda Haskins also does not have the money.

Upon a motion duly made and seconded the public hearing was closed at 9:39 PM.

VOTE: Unanimous

- Councilor Milne said that in Quincy every home was sewered; they paid through the nose and it is the best thing they did. He has been threatened by a recall if he votes yes. He pointed out that 42 of the parcels are at the point of failure very soon and 14 systems are 2 or 5 years old. There are three times more properties that will require action and for many homeowners, installing a Title 5 septic will need mounding. It will cost much more. Sewering will be the least costly solution. He will fight for aid for those who cannot afford it.
- Councilor Joakim feels a sewer betterment policy will be needed. She wants to see the sewer happen. Eventually, the entire town will be on sewers and some will cost much more. She would like to know more about allowing delaying hookups, tax exemptions, and the granting of waivers. Ells explained that he can delay the hookup, but the council must decide to delay the betterments. People with some variances have been approved for more elaborate septic systems, which is what they need and will have to install if there are no sewers. These are not cheap.
- Finance Director Mark Milne spoke on homeowner financing. The Barnstable County Loan Program is available to amortize the hookup cost to sewer; a state income tax credit up to \$6,000 is available based on eligibility; there is a property tax deferral program including betterments for residents 65 or older who have lived in Massachusetts for at least 10 years and owned a house for at least 5 years; a Clause 18 exemption, which is not used very much and is the sole decision of the Board of Assessors, may be used in extreme cases.
- Councilor Munafo said his mind has not been changed. The vote will create hardship and the council has not come up with a way to minimize it. He doesn't like the idea of losing the subsidy, but he cannot support it.
- Councilor Crocker likened this to a road issue where everyone had to pay a share. Septic systems will not get cheaper. Septic installations are especially difficult on small lots that may require two perk tests, etc. He described his experiences in installing septic systems.
- Councilor Canedy reviewed some of the common comments, including financing and communications. A process needs to be formulated that includes public input. She will vote yes again but strongly suggests expansion of the committee to discuss funding mechanisms, including the option of a town wide sewer tax.
- Councilor Farnham feels this is inevitable and a one-time opportunity to subsidize the cost. West Barnstable has no sewer or water. It would be difficult to ask West Barnstable to pay for sewers elsewhere.
- Councilor Barry is concerned about the financial impact in such a poor economic situation.
- Councilor Tinsley said the project was supported by various civic associations and citizens' groups. This is a "when" not an "if" and an emotional gut feeling. If the town is sued, it will be more money. The decision will be just as tough 2 or 3 years down the road. He is in support.

A motion was duly made and seconded to move the question.

VOTE: Unanimous

2010-017 APPROPRIATION & LOAN ORDER – SEWER COLLECTION SYSTEM EXPANSION

Upon a motion duly made and seconded it was

ORDERED, That the sum of \$3,300,000 be appropriated for the purpose of funding the sewer collection system expansion at Stewart's Creek – West Side (Phase II); and that to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, is authorized to borrow \$3,300,000, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes and to pursue funds from the state Revolving Loan Program and other funding mechanisms and be authorized to accept any grants or gifts in relation thereto, subject to the approval of the Town Council, and that betterments or any of the methods for sewer assessments be assessed.

VOTE: 10 Yes, 2 No (No: Barry, Munafo) (Roll Call)

2009-011 APPROPRIATION & LOAN ORDER – WIND TURBINE & PHOTOVOLTAIC INSTALLATION AT HYANNIS WPC FACILITY

Mark Ells gave the rationale and made a PowerPoint presentation. (See Exhibit C)

Upon a motion duly made and seconded a public hearing was opened at 10:32 PM.

VOTE: Unanimous

Upon a motion duly made and seconded it was voted to continue the public hearing on September 3, 2009.

VOTE: Unanimous

2010-012 DCPC IMPLEMENTING REGULATIONS – CRAIGVILLE BEACH DISTRICT

Upon a motion duly made and seconded a joint public hearing with the Planning Board was opened at 10:40 PM.

VOTE: Unanimous

Planning Board Members Present: Ray Lang, David Munsell, Paul Curley, Matthew Teague.

A motion was duly made and seconded to open a joint public hearing by the Planning Board.

VOTE: Unanimous

Joanne Buntich gave the rationale. She reviewed the amendments from Planning Board, the Long Beach Homeowners Association and the Building Commissioner, as well as other changes outlined in the Substitute Text Dated August 6, 2009. (See Exhibit D)

A motion was duly made and seconded at 10:55 PM to continue the meeting past 11 PM and to end at midnight.

VOTE: 11 Yes, 1 No (Munafo)

Eliza Cox of the Long Beach Road Ass'n., said the association conditionally supports the item based on acceptance of the amendments they suggested.

Jack Driscoll, President of the Long Beach Road Ass'n. has a background in the environmental area and is a property owner. This amendment balances the environment with the concern for property value. He is in favor as long as all the amendments are approved.

Christina Weldon is saddened that the process has been so contentious. There has been anger towards the residents of Long Beach who pay lots of taxes, pay to nourish the beach, pay to dredge the river, and constantly come up with the money. They are good stewards of the land.

Mary ? has no objection to the amendments. Unfortunately, there has been too much information that has not been shared.

Barbara Hughes wondered if a voluntary tear down will now allow for expansion after the teardown.

Steve Brown, President of the Red Lily Pond Ass'n., which, he said, exists because of the water. The association has voted in support of this item. He summed it up with the words "water view."

Roy Richardson said group has never been able to reach consensus. He feels the changes do not do what a DCPC was intended to accomplish. The Centerville dredging was funded by the Council. He suggested that the amendments are carefully reviewed to see if they are appropriate. It sounds as if the amendments are taking the DCPC in the other direction.

Alice Brown is concerned about the amendments and suggests looking at them carefully. She is concerned that the people who show up on a given evening have such an effect. She suggests studying the issues to make informed decisions. She hopes that everyone will count equally as the Council decides.

Roberto Dimarco is an attorney representing a resident of the Short Beach neighborhood. He said there was a problem with the lack of notice. He also pointed out that personal aspiration leave issues to subjective votes. The Law must be predictable, without subjective issues that leave power in the hands of individuals. He feels it needs more thought.

Charles Ohr is in favor of restrictions that support the character without taking away fundamental rights. Three properties have an issue which involves zoning and building codes. He feels a DCPC was unnecessary. Would you vote for it in your neighborhood?

Mark Hobrun? said there was no give and take until the very end. The process has been poorly run. He feels there are other ways to preserve character without DCPCs. Neighborhood conservation commissions should be encouraged.

George McPhetres (?) from Elliott Road spoke for the silent majority in the community as well as for the environment, which does not have its own voice. Nothing should disturb the character of the Long Beach. No *McMansions* after hurricanes. He urged people to look carefully and not conclude that last minute amendments should be considered.

Jim Lang supports this item, without feeling he is taking rights from his neighbors, after seeing the evolution of the Trade Winds.

Peter Buffington is in strong support; however, the timely presentation was less than perfect.

Andy Myers feels it is a fair compromise and will support the DCPC with the amendments.

Shirley Fisher feels this is an appropriate balance between the two extremes – property rights vs. environmental issues.

Sharon O'Malley Monahan said if the amendments are honored she will support it. The area got there due to poorly enforced zoning laws. Zoning regulations should apply with or without the DCPC.

Burt Tongsberg (?) said he followed the rules to a tee and still got denied.

A motion was duly made and seconded to continue the joint public hearing on September 3, 2009.
VOTE: Unanimous

The Planning Board made a similar motion which was seconded to continue the joint public hearing September 3, 2009.

VOTE: Unanimous

2010-013 APPROPRIATION & LOAN ORDER – COMMUNITY PRESERVATION NEW TOWN HALL

Upon a motion duly made and seconded this item was continued to September, 17, 2009.
VOTE: Unanimous

2010-014 APPROPRIATION & TRANSFER ORDER – SCHOOL DEPARTMENT FACILITY AND TECHNOLOGY

Mark Milne gave the rationale. Gary Blau of the Department of Revenue said this was an appropriate use of the funds.

Upon a motion duly made and seconded a public hearing was opened at 11:55 PM.
VOTE: Unanimous

No speakers.

Upon a motion duly made and seconded the public hearing was closed at 11:55 PM.
VOTE: Unanimous

A motion was duly made and seconded to move the question.

VOTE: Unanimous

Substitute Text

2010-014 APPROPRIATION & TRANSFER ORDER – SCHOOL DEPARTMENT FACILITY AND TECHNOLOGY

Upon a motion duly made and seconded it was

ORDERED: That the Barnstable Town Council hereby appropriates \$337,000 for school department facility and technology infrastructure and hardware upgrades and to meet the appropriation that the town transfers \$337,000 from the sale of real estate account where the proceeds from the sale of the Grade 5 School building are held in accordance with state law.

VOTE: 12 Yes (Roll Call)

2010-003 APPROPRIATION & TRANSFER ORDER TO FINALIZE COASTAL RESOURCES MANAGEMENT PLAN

Town Manager John Klimm gave the rationale.

Upon a motion duly made and seconded a public hearing was opened at 11:59 PM.

VOTE: Unanimous

No speakers.

Upon a motion duly made and seconded the public hearing was closed at 11:59 PM.

VOTE: Unanimous

Councilor Munafo made a Charter Objection.

B. NEW BUSINESS

2010-016 APPROPRIATION & TRANSFER \$137,500 FROM COMMUNITY PRESERVATION FUND SET ASIDE FOR OPEN SPACE

Upon a motion duly made and seconded this item was referred to a public hearing on September 3, 2009.

VOTE: Unanimous

2010-018 REGULATORY AGREEMENT FOR A 132-ROOM HOTEL – HILTON GARDEN INN

Upon a motion duly made and seconded this item was referred to a public hearing on September 17, 2009.

VOTE: Unanimous

A motion was duly made and seconded to adjourn the meeting at 12:05 AM.

VOTE: Unanimous

Respectfully submitted,

Lucia Fulco
Assistant Town Clerk