



TOWN COUNCIL MEETING September 17, 2009

A quorum being duly present, Council President Frederick Chirigotis called the September 17, 2009 meeting to order at 6:37 p.m. in the 2nd Floor Hearing Room of Barnstable Town Hall, 367 Main Street, Hyannis, MA

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

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

Upon motion duly made and seconded it was voted to go in to an Executive Session for the purpose of negotiating a non-union contract and to come out in open session at the end of said Executive Session by 7:00 p.m.

VOTE: Roll Call to go in to Executive Session at: 6:40 p.m. – Unanimous in favor

The meeting resumed at: 7:02 p.m.

PUBLIC COMMENT:

Andre Sampou asked to speak in favor of the Conover restriction. He said that Kris Clark and volunteers have propagated over 1 million quahogs. These are distributed locally. This proposal is a winner for the town. It will enhance the harvest. It will help reduce some of the nitrogen loading. It will preserve a nice vista.

Al Baker feels the miniature golf course on Main St. was a destination and the store that replaced it is nothing. He appreciated Assistant Town Manager Tom Lynch coming to Marstons Mills. He feels anyone who is circulating a petition needs to have the language approved prior to collecting signatures. It is rude to have them collect signatures and get the petition refused. The voting Tuesday was a disgrace; people should exercise their rights.

ACT ON MINUTES

Upon motion duly made and seconded it was voted to accept the minutes of Sept. 3, 2009.

VOTE: Unanimous

Upon motion duly made and seconded it was voted to accept the minutes of Aug. 27, 2009.

VOTE: Unanimous

CHARTER COMMISSION PRESENTATION:

Richard Clark, former Chair of the Charter Commission, came forward. He delivered the final report that is going to be mailed out to all households on October 5, 2009. The commission was elected in 2007 and they are now bringing forward the finished product. A question will be on the ballot on November 3 to vote this up or down. Clark highlighted the changes in the charter.

Former Commission Clerk, Sheila Geiler, explained the facts of the proceedings and their compliance with 43B of MGL. They issued a preliminary report after 16 months. The final report was presented on May 6, 2009.

Former Commission Vice Chair, Sue Rohrbach listed who they met with and who helped them. Marilyn Contreas, from the state, John Klimm, Town Manager and many others were recognized. She said that the commission also hired a number of legal advisors as well. She thanked everyone who came to the public hearings and helped them.

Mr. Clark agreed with Councilor Milne who said the charter is the town's constitution and this is a process for review. There is no perfect document. He asked that residents take a look at the charter, judge it and consider it. It was a great experience.

Councilor Crocker asked what the legal consultants offered. Clark said drafting and re-drafting was a large part of their task. The team that they hired lived up to the commission's expectations. We lived under a \$50,000 budget and got what we needed out of it. It was compromising. This document is down the middle.

Councilor Crocker also asked Ms. Geiler about posting of meetings and the dissemination of documents during the process. Geiler said that all meetings were open and public meetings; plus they had 3 hearings and in all cases the notification requirements were met. They were able to tape the meetings. All records are with the Town Clerk.

Councilor Canedy thanked the commissioners for their service. Should the charter not pass we should tackle some of the issues that you brought forward.

Councilor Milne said if the charter vote passes, then we go into a transition mode. At the ballot box you will be changing the form of government. Clark agreed and said that you would be changing the constitution of the town. You can only vote it up or down. He then explained some of the details of the transition beginning in 2011.

COMMUNICATIONS:

Councilor Farnham reminded residents that not only the Sagamore Bridge has traffic issues; but, Route 6A will have work being done on it beginning next week.

Councilor Milne passed out reasons for convening Executive Session and Open Meeting Law changes. He wants to know (through a constituent) what are the criteria that would not allow someone to speak at a council meeting.

President Chirigotis announced that, as designated in the agenda, the order of business will be the New Business first.

B. NEW BUSINESS

2010-024 ACCEPTANCE OF A \$511,808 GRANT FROM US DEPARTMENT OF JUSTICE

Manager Klimm said these items are from the police department and Chief MacDonald and staff have been able to get a number of grants. Barnstable will get a finger printing machine, community policing monies, and grant administrator.

Councilor Munafo stated that this is a Federal grant and he will not vote for it. Councilor Crocker asked who is the grant writer. The chief explained that it was a combined effort.

Upon motion duly made and seconded, it was

RESOLVED, that the Barnstable Town Council does hereby accept fiscal year Recovery Act: Edward Byrne Memorial Justice Assistance Grant: Local Solicitation from the United States Department of Justice in the amount of \$511,808.

VOTE: 11 Yes, 1 No (Munafo)

2010-025 ACCEPTANCE OF FY10 STATE 911 DEPT TRAINING GRANT OF \$31,870

Manager Klimm explained that we are receiving this grant to support training costs for E911 and other specialty training. Councilor Crocker asked how this will help. Chief MacDonald said all officers are required to go through the trainings. The Town of Barnstable actually handles more 911 calls than the Sheriff's office.

Upon motion duly made and seconded it was

RESOLVED, that the Town Council hereby accepts a FY10 State 911 Department Training Grant award in the amount of \$31,870 from the Executive Office Public Safety.

VOTE: 12 Yes

2010-026 GRANT ACCEPTANCE – 911 DEPT. SUPPORT & INCENTIVE GRANT

Manager Klimm explained the 911 support and State 911 grant. We receive all categories of calls, fire, police etc. This will help update the center itself.

Upon motion duly made and seconded it was

RESOLVED: That the Barnstable Town Council does hereby accept fiscal year 2010 911 Department Support and Incentive Grant from the Commonwealth of Massachusetts, Executive Office of Public Safety, State 911 Department in the amount of \$177,244.00.

VOTE: 12 Yes

2010-027 AUTHORIZING ACCEPTANCES OF GIFTS FOR THE HYANNIS YOUTH & COMMUNITY CENTER

Manager Klimm said this will allow us to set up the financial account for individuals to contribute to and sponsor the HYCC. Councilor Crocker wanted to know how is the money going to be spent. Finance Director, Mark Milne said it will go through the standard process of the town, start with the manager and go through the town finance department. It will be a side account. We can't use gifts as part of estimated receipts. Crocker would like to see the Town Manager also sign off on the expenditures.

Upon motion duly made and seconded, it was voted to postpone this item to the next Council meeting on Oct. 1, 2009.

VOTE: Unanimous in favor

2010-028 ACCEPTANCE OF A \$10,000 GRANT FROM THE NATURE CONSERVANCY

Councilor Munafo asked what type of corporation or group is The Nature Conservancy. Nina Coleman from Sandy Neck stated that The Nature Conservancy is a non-profit organization and helps in projects like this. The contract has been reviewed and the only thing we have to do is to report back to them on the progress.

Upon motion duly made and seconded it was

RESOLVED: That the Barnstable Town Council does hereby accept a grant from the Nature Conservancy in the amount of \$10,000 for the purpose of invasive species removal work on Sandy Neck Beach.

VOTE: 12 YES

2010-029 GIFT ACCEPTANCE OF \$2,600 FROM WEST BARNSTABLE HISTORICAL SOCIETY FOR ANCIENT GRAVESTONE RESTORATION

Manager Klimm stated that this will caulk and clean stones etc. Councilor Crocker asked if this was enough money for the project. Councilor Farnham said this money was in an account for the purpose of maintaining the cemetery. It is all set to go. DPW Director, Mark Ells said that the Cemetery and S&G department heads have reviewed this and are set to complete the project.

Upon motion duly made and seconded it was

RESOLVED: That the Town Council does hereby accept a gift in the amount of \$2,600.00 from the West Barnstable Historic Society for the restoration of ancient gravestones in the Old West Barnstable Cemetery and that the Town Manager is authorized to enter into contracts and to expend the gift for the purposes specified.

VOTE: 12 Yes

2010-030 APPROPRIATION & TRANSFER ORDER - \$31,831 FROM THE SALE OF THE DECLARED TWO SURPLUS ZAMBONIS

Manager Klimm said we are set to open the HYCC. These zambonis were declared surplus and will not be suitable at the new rink. It was suggested that the language of the item be changed to include zambonis and link them to the project. It was acknowledged that this would be done. Lynne Poyant, Director of Community Services said that she was pleased because the zambonis were sold for \$12,000 more than they were purportedly valued.

Upon motion duly made and seconded it was voted to refer this item to a public hearing to be held on October 1, 2009.

VOTE: Unanimous in favor

2010-031 APPROVE THE AMENDED & RESTATED CONSERVATION RESTRICTION CONOVER & ACCEPT A GIFT OF AN ACCESS EASEMENT TO THE TOWN

Jackie Barton, from the Barnstable Lane Trust made a presentation on this restriction. She gave a brief history. In 2000 the council approved a conservation restriction here. She showed a variety of maps. The land is classic pitch pine forest. It gives up the right to build a

permitted dock and retires the building envelope. The town will be able to tend to the shellfish nursery off shore.

Kris Clark said the shellfish propagation area is a one of a kind and serves West Bay. She brought a couple of large photos of the area. Our quahog propagation has grown. Councilor Crocker questioned the boundary. George Dallas, legal counsel for Mrs. Conover noted that there are places on the beach that will be dry for 24 hours. The line is the BVW and that is at the base of the bluff.

Councilor Rugo asked what would be the alternative. Kris Clark said we have to seek permission from property owners to use their land. She explained that it is our primary nursery. Councilor Munafo asked how long do we lay the nets out to dry. Clark said 3 or 4 weeks.

Jackie Barton said that Mrs. Conover would see about a \$25,000 tax reduction. Councilor Munafo said her reduction is an increase in the rest of our taxes for us to hang out nets.

It is the only nursery and provides clams for around the town. It is back breaking work said Ms. Barton.

Councilor Farnham stated that lugging nets is a monumental effort and Kris has built a good program. This will prevent the building of a house and a dock. The overall benefit merits our voting for this.

A motion was made and seconded to amend:

I move that the amendments to the foregoing restriction and easement be approved subject to and to take effect upon further amendment to include complete, free and unconditional access of others, including the public.

Attorney Dallas (Mrs. Conover's attorney) said that if that amendment is adopted we will build a house and this will not take place. Attorney Houghton gave some more description of the boundaries.

VOTE: On amendment for unconditional access - 4 yes, 7 no - FAILED

Recess at 8:21 p.m.

Reconvened: at 8:35 p.m. Councilor Crocker is clear on the issue.

Councilor Joakim is disappointed that we set aside land that saves people tax money, and yet there is no public access.

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

VOTE: Unanimous in favor.

Upon motion duly made and seconded it was

RESOLVED, that the Town Council approve the Amended and Restated Conservation Restriction between Catherine M. Conover (grantor), and Barnstable Land Trust, Inc., (grantee), over approximately 26.97 acres of land on Grand Island, Osterville, Map 070, Parcels 017-003, 018 and 022 and Map 071, Parcel 024, for the purposes of preserving open

space and water quality and providing access to the Town of Barnstable for purposes relating to the care of the Town's shellfish grants and further that the Town accepts the gift of a perpetual access easement from Catherine M. Conover for purposes relating to the care of the Town's shellfish grant in West Bay.

VOTE: 7 Yes 4 No

The following is inserted into the minutes for mapping and historical purposes:

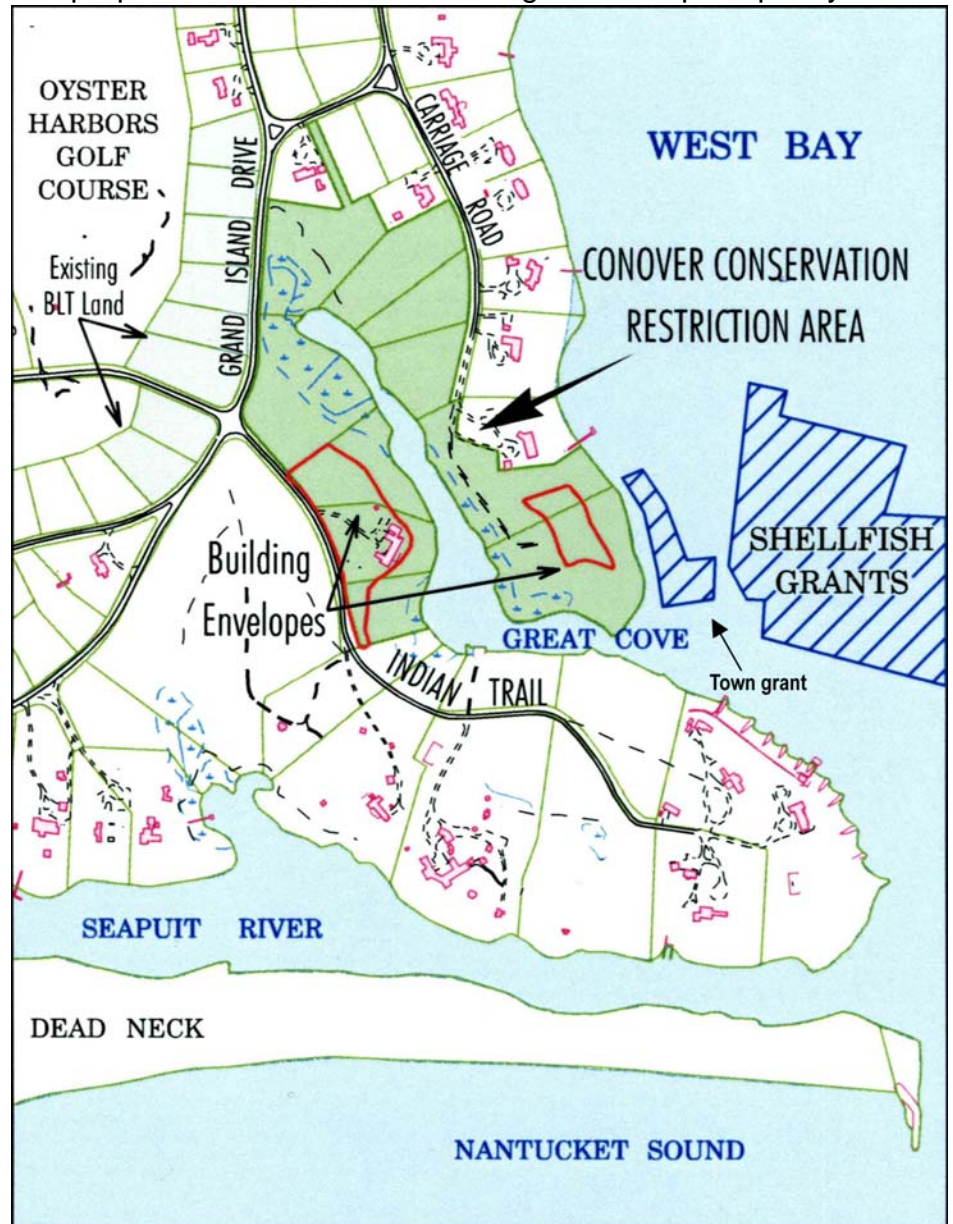
The amendments to the conservation restriction also provide a mechanism for granting an access easement to the Town. The perpetual easement has been agreed to in principle by the Town Manager and Assistant Town Attorney, David Houghton. The easement will grant to the Town a limited right of access to the beach area as described below.

Goal: Provide access to the beach area on West Bay to service the Town's shellfish grant that is the Town's only nursery for growing out seed clams.

The area proposed for access falls within the Managed Landscape Area B of the conservation restriction which is seaward of the building envelope, along the eastern boundary of the property.

Access details:

- 1) The beach would provide a work area for the Town of Barnstable's Department of Natural Resources staff and volunteers under staff supervision for laying out, drying and reclaiming nets and for the temporary storage of cages and gear when planting and harvesting.
- 2) Access with gear is by water. No overland access.
- 3) Activities are limited to the beach between the base of the bluff and mean low water within the Managed Landscape Area B of the original Conservation Restriction.



2010-032 GIFT AND GRANT OF A CONSERVATION RESTRICTION-67 PILOT'S WAY

Councilor Canedy gave a brief overview of this item. She noted that we do not have the ability to change the terms. Arlene Wilson, who represents the bank, said this is 7 acres of about a 12 acre parcel. This is a red maple swamp and is assessed for \$228,000, but the house lot which is part of this property has a house on it and can't get an occupancy if the restriction is not accepted.

Wilson represents Community Bank (the seller). Town Attorney Ruth Weil explained that this goes back to 2004/5 and was a variance that was appealed. This is part of an agreement for judgment. Canedy said there is a willing buyer, it is partially constructed and we are in better position for tax benefit if this can be sold and taxes collected.

Councilor Joakim asked if there is a time restriction, she felt she did not have enough information. Wilson thought the council had a map of the area. The house has been foreclosed on and is 99% complete.

Recessed at 8:50 to 8:55 p.m.

- Councilor Joakim apologized but felt that the council needs to have more information and she moved to postpone this item until Oct. 1. (it was seconded).
- Councilor Crocker said this has to be passed in order for anyone to occupy the home. This is not as confusing as it appears. You can't hold up a closing.
- Councilor Milne agrees and reminds the council we are the policy setting board – we are not the administration. What we are picking apart is the work of the Town Manager and Legal. Trust the staff in doing their work and what they are doing. This is not policy.
- Councilor Rugo questioned why do we have to issue a conservation restriction? What are we gaining? Councilor Barry noted that by passing this the town will make more money by collecting taxes. It is a win win. People want to buy the house – let's do it.
- Councilor Farnham said this is common sense. This is an easy vote for yes.
- Councilor Canedy said this house has been on the market for a long time and they now have a willing buyer.
- Attorney Houghton said that what is being gifted is the conservation restriction. It is a form of ownership but we will not be the owner.
- President Chirigotis passed the gavel to Vice President Tobey and said this item did not go to the Land Acquisition committee. If this had gone through that committee, we would not have these questions.

A motion was made and seconded to move the question.

Councilor Canedy said the Land Acquisition Committee is comfortable not voting on it because it was put together by a legal matter.

VOTE: on moving the question - Unanimous

VOTE: on motion to postpone - 5 Yes 6 no - FAILED

A motion was made and seconded to move the main motion.

VOTE: Unanimous

Upon motion duly made and seconded it was

RESOLVED, that the Town Council hereby accepts the gift and grant of a Conservation Restriction from the Community Bank of 1265 Belmont Street, Brockton, Massachusetts on the land shown on Assessors' Map 217 as Parcel 30 and on Map 237 as Parcel 4, being a portion of the property having a street address of 67 Pilot's Way, Barnstable, to be held exclusively by the Barnstable Conservation Commission pursuant to G. L. c. 40 § 8C, in accordance with the terms of an Agreement for Judgment between Gordon Starr and Sherri Greene-Starr and the Town of Barnstable Zoning Board of Appeals dated July 20, 2004; and authorize the Council President and Town Manager to sign any documents in furtherance thereof.

VOTE: 9 YES 2 NO – ROLL CALL (JOAKIM AND MUNAFO)

A. OLD BUSINESS

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

Upon motion duly made and seconded it was voted to go in to a public hearing for the purpose of discussing 2010-013.

VOTE: Unanimous in favor

- Lindsay Counsell said that this was brought forward to the CPC. The building is over 100 years old and the exterior has not received the maintenance it needs. We have to work from the outside in. He explained the funding.
- Mark Ells gave a power point presentation. We have worked on windows, doors and mechanicals. We have issues and cannot defer. The roof, gutter, drain spouts and brick need to be fixed.
- Michael Teller from the architectural firm of CBI Consulting detailed the work that is to be done: slate roof replacement, replacement of copper, masonry and windows need to be addressed. He explained the history of the structure and the needs.
- Laura Cronin does not want to see the town use the CPC funds. There is no doubt that the building needs repair. What would it cost to do normal repair and balance that. Look at not funding it through CPC funding.

Upon motion duly made and seconded it was voted to go out of the public hearing at: 9:26

VOTE: Unanimous in favor

- Councilor Munafo noted that this item that we are discussing is the substitute text in the agenda.

- Councilor Barry asked if we could look at substituting, for instance asphalt roofing instead of slate, then it would leave money in CPC. Director Ells said we can try to provide alternatives.
- Councilor Farnham said that asphalt roof and alternative guttering system would be an alternative; there are not a lot of options. He asked if Ells could come back with some alternative estimates. Ells said yes, but again it would be a short term fix vs. a long term. It would cost less but have to be replaced more often.
- Councilor Joakim thanked the Com. Preservation Com. She suggested that we should get together with them again in the near future.
- Councilor Crocker asked about the brick. He was told that there will be full pointing and rebuilding of it and what is behind it. Instead of steel under the brick they will use precast concrete, a true masonry arch or another type of precast element.
- Councilor Munafo said we are looking to spend \$3M on the outside of the building, what about the interior.
- Ells said that no figures have been estimated on the interior.

Upon motion duly made and seconded, it was voted to postpone this item to Oct. 1

VOTE: Unanimous in favor

2010-016 APPROPRIATION & TRANSFER \$137,500 FROM COMMUNITY PRESERVATION FUND SET ASIDE FOR OPEN SPACE
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Upon motion duly made and seconded it was voted to postpone this item to Oct. 1.

VOTE: Unanimous in favor.

Councilor Canedy respectfully withdrew item 2010-021 – dealing with the bulkhead.

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

Attorney John Kenney, who represents Stuart Bornstein gave the overview on the proposed 132 room Hilton Garden Inn. The properties to be developed are located on Iyanough Road. (Former Corcorans). This property is eligible for a regulatory agreement. This agreement will contribute \$100,000 cash mitigation: \$50,000 landscape improvements on north side of Route 28: \$50,000 will be given to the Hyannis Youth and Community Center. The developer will also upgrade the existing 8" water main to a 12" water main from the site to the 16" water transmission main at the corner of Mary Dunn Way and Brooks Road, estimated by the town to cost a minimum of \$360,000.

There will be new revenue of \$250,000 and over the first 20 years it will generate over \$6M in tax revenues. It will create 200 plus construction jobs and the developer is committed to hiring local. It will also bring in permanent year-round jobs.

A shuttle bus will be available for individuals to come from the airport and go to the hotel and downtown, etc. There will be site improvement and lush landscaping around the entire area. The hotel has a smaller footprint than what is there. There will only be 1% increase in traffic. The developer will eliminate existing wide-open full access driveways along Route 28. They will have some off-site parking as well.

The hotel will be a "green" hotel and the costs for that will be in excess of \$1,000,000. Multiple rain gardens and storm water management design, solar panels, wood from organic and managed forests, recycled building materials, white membrane roofing, etc. are part of this. The project has already generated interest by neighboring property owners to invest in the renovation and updating of their properties if this hotel is built.

Ralph Biggers is the architect and stated that he designed this structure. He said it needed a strong architectural character. They are using dormers, sloped roofs, bricks, etc.

Karen Whitman is the director of development for Hilton Corporation. She explained the Hilton Garden concept.

Dan Ojala pointed out that the location is close to the transportation center, the airport, and the green. He showed again that the new structure will take up a smaller footprint than what is currently there. It will greatly improve the looks of the whole area. He reviewed the site plan. He explained the other areas and dimensions that are in question and what relief they are seeking.

Randy Hart is a traffic expert who addressed the fact that there will be one right hand turn into the front of the facility. The rest of the traffic will come into the area on Spring Street. There should not be any or minimal traffic volume increases. They reviewed the areas around the rotary, Yarmouth Road and Spring Street and feel the increase will not be noticeable.

Anthony Caputo registered fire engineer looked at the water issues and had to study what will be in the building as far as the sprinklers, etc. There is a problem with the existing building. To avoid any future problems in the area, Mr. Bornstein will have the pipe size increased.

Upon motion duly made and seconded it was moved to extend the meeting past 11 p.m.

VOTE: 5 yes 6 no

Upon motion duly made and seconded it was voted to continue this item to Oct. 15, 2009.

Vote: Unanimous

ADJOURNMENT:

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

ADJOURNED: at 11:04 p.m.

Respectfully submitted,

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