



TOWN COUNCIL MEETING June 16, 2011

A quorum being duly present, Council President Frederick Chirigotis called the June 16, 2011, Town Council meeting to order at 7:07 p.m. in the 2nd Floor Hearing Room of Barnstable Town Hall, 367 Main Street, Hyannis, MA.

PRESENT: Janice Barton, Ann Canedy, Frederick Chirigotis, James Crocker, Jr., Debra Dagwan, Henry Farnham, Janet Joakim, J. Gregory Milne, James Munafo, Jr., John Norman, Thomas Rugo (7:30 p.m.). **ABSENT:** Richard Barry, James Tinsley was in attendance at the beginning of the meeting left before 8 p.m.

President Chirigotis led the hall in the Pledge of Allegiance, followed by a Moment of Silence. Councilor Henry Farnham from West Barnstable gave a statement regarding the recent loss of Helen Wirtanen. Helen was a member of the first Town Council and she and her family worked long and hard for West Barnstable and the community as a whole. He gave his condolences to her family.

PUBLIC COMMENT

Donna Schultze asked for clarification of what temporary signs are. She asked the building inspector but did not receive an answer. She asked why can one temporary sign be allowed in Osterville, yet others are not appropriate. Why is the building commissioner not taking these down, she asked. She said she did not want our villages to look like sign dumps. (Photos of signs attached as Exhibit A).

Robert Tucker was happy the Bruins won. Go see your Father on Father's Day, don't forget him. He thinks the Police Chief is doing a good job pulling people over.

COUNCIL RESPONSE TO PUBLIC COMMENT

Councilor Canedy asked whether temporary signs should be addressed now. Councilor Canedy will speak with Ms. Schultze and the Vice Chair Barton said she is looking into this as well. Pres. Chirigotis said he will have the Building Inspector, Tom Perry, appear at the next meeting.

ACT ON MINUTES

Upon motion duly made and seconded it was voted to postpone approval of minutes to July 14.

VOTE: 7 yes, 4 no (Munafo, Farnham, Tinsley & Barton)

Town Council Executive Session Review Committee Report

Committee Chair Councilor Munafo brought forward the issue of the release of executive session minutes (see list attached as Exhibit B).

Councilor Canedy stated that she was fine with the first set but not with the second set. Councilor Joakim wants to postpone this as well.

Upon motion duly made and seconded it was voted to move to release the meetings listed from Feb. 27, 2003 through Oct. 21, 2010.

VOTE: 10 Yes, 1 No (Joakim)

Upon motion duly made and seconded it was voted to postpone action on the release of the remaining minutes to July 14, 2011.

VOTE: Unanimous

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

- Councilor Farnham announced the 17th Annual Father's Day Car Show on Sunday. They are close to being booked up with over 300 cars currently registered. He noted that odd-numbered precinct councilors are up for election. He has submitted his signatures and they were approved by the Town Clerk.
- Councilor Canedy said beginning at noon on Friday they will be planting 5 trees on Route 6A. All trees were donated. They will have a ceremony and will honor Helen Wirtanen with the planting of the first tree at the Cape Cod Cooperative Bank in West Barnstable..
- Councilor Milne noted that Councilor Dagwan was elected as Secretary of the Selectmen/Councilors Association. He gave the welcome at Ruth Rusher's Youth Hostel, as they celebrated the new cottages being almost complete. He said many donations went into the completion of this project.
- Councilor Farnham said the West Barnstable Civic Association will have a wine tasting on Route 6A from 5 – 8 p.m on Saturday near Pastiche..
- Vice President Barton said there will be a chicken barbeque on June 25th in Marstons Mills. She made a couple of other announcements, one dealing with waste water infrastructure studies.
- Town Manager John Klimm said that the legislation on the hotel/motel tax piece was heard by committee at the State level. It was reported out favorably and will be debated on the floor soon.
- Councilor Dagwan said she was at the human services committee, and said there is an open house at the Duffy Health Center on June 21. The Mid-Cape Farmers Market will be ongoing at the Hyannis Youth and Community Center. Our Supt. of Schools is leaving and there will be a reception for her tomorrow at the Astro Park in BHS from 3 – 5 p.m.

2 min. recess taken at 7:35 p.m.

President Chirigotis moved to Old Business

ORDERS OF THE DAY

A. OLD BUSINESS

2011-144 INQUIRY PER THE CHARTER, SECTION 2-10 AND COUNCIL RULE 14 INTRO: 6/2/11, 6/16/11
--

Councilor Milne read the rationale. Over the past months, people have asked questions about former Council Assistant Grissom. Since answers remain we must commence into an inquiry. This creates complete transparency. The inquiry would need to be completed in 60days.

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

VOTE: 9 Yes, 3 No – (Farnham, Milne, Norman)

Upon motion duly made and seconded it was

ORDERED: That the Town Council under its authority vested in the Charter, Section 2-10 and in Rule 14 of the Council Rules authorized an inquiry into all matters pertaining to the resignation of an employee.

VOTE: 6 no 6 yes – Failed.

2011-130 ACCEPTANCE OF A \$1,500 MASS DEPT. OF ENVIRONMENTAL PROTECTION GRANT TO PURCHASE RECYCLING BINS – INTRO: 5/5/11, 5/19/11, 6/2/11, 6/16/11

Town Manager Klimm gave the rationale.

Councilor Munafo asked DPW Super. Mark Ells what are the thresholds? Ells said we had to have a recycling program in operation, but nothing else. We have received this grant before. We don't need any additional requirements.

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

VOTE: 12 Yes

Upon motion duly made and seconded it was

RESOLVED, that the Town Council hereby accepts a grant award in the amount of \$1,500.00 from the Massachusetts Department of Environmental Protection for the purchase of recycling bins and that the Town Manager is authorized to expend the grant monies for the purpose specified therein.

VOTE: 12 yes

2011-131 ACCEPTANCE OF A \$7,500 MASS DEPT. OF ENVIRONMENTAL PROTECTION GRANT TO IMPLEMENT MASS DEP GOALS IN CIP – INTRO: 5/5/11, 5/19/11, 6/2/11, 6/16/11

Town Manager Klimm gave the rationale as written.

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

VOTE: 12 Yes

Upon motion duly made and seconded it was

RESOLVED, that the Town Council hereby accept a grant award in the amount of \$7,500.00 from the Massachusetts Department of Environmental Protection. The funds will be used to implement MassDEP goals for outlining needed capital improvements over a twenty year time horizon at the Water Supply Division, and that the Town Manager is authorized to expend the grant monies for the purpose specified therein.

VOTE: 12 yes

<p>2011-142 APPROPRIATION OF \$2,861,253 FOR COMMUNITY PRESERVATION FUND FY12 DEBT SERVICE INTRO: 6/2/11, 6/16/11</p>
--

Lindsay Counsell, Chair of the CPC gave the rationale as written.

Upon motion duly made and seconded it was voted to go in to a public hearing to discuss this item.

VOTE: Unanimous consent

Upon motion duly made and seconded it was voted to go out of the public hearing at 7:50 p.m.

VOTE: Unanimous consent

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

VOTE: 11 Yes (Tinsley left due to illness)

Upon motion duly made and seconded it was

ORDERED: That the Town Council hereby appropriate \$2,861,253 for the purpose of paying the FY12 Community Preservation Fund debt service requirements, and to meet such appropriation, that \$2,748,759 be provided from current year revenues of the Community Preservation Fund and that \$112,494 be provided from surplus funds reserved for the historic program within the Community Preservation Fund.

VOTE: 11 yes

<p>2011-143 APPROPRIATE AND RESERVE SET-ASIDES FROM COMMUNITY PRESERVATION FUND \$781,252 FOR FY12 EXPENDITURES INTRO: 6/2/11, 6/16/11</p>

Councilor Crocker read the item into the record.

Upon motion duly made and seconded it was voted to go in to a public hearing to discuss this item.

VOTE: Unanimous consent

Mr. Counsell gave the rationale as written.

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

VOTE: Unanimous consent

Councilor Canedy asked if the \$100,000 is the same as it has been in previous years and what is its use. Counsell said it is the same and principal amount is for salaries of \$56,000, professional services \$15,000, they contribute to office expenses, dues and memberships is \$7500, and a set-aside of \$5,000 is for legal expenses.

Councilor Canedy wanted to know if the membership is mandated. "No it is elective", answered Counsell. Canedy noted that the committee is giving the association money but is not necessarily supporting the bills. Canedy hopes the committee will take a position on the current CPA amendment before the legislature.

Councilor Munafo said he thought that 10% was to be allotted for each of the accounts. Mark Milne, Director of Finance explained that when the former land bank program changed to the CPA, the debt service was higher and it was allowed. Milne said it has been this way since we went into the CPA.

Councilor Canedy asked about the debt and when it will be paid off. It will not end until 2025.

Councilor Milne said wouldn't you say that good wisdom took place with aggressive land bank purchasing? Finance Dir. Milne said the CPC and the council did run with this and made many acquisitions and was able to get the bonds at a really low rate.

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

VOTE: Unanimous consent

Upon motion duly made and seconded it was

ORDERED: That, pursuant to the provisions of G. L. c. 44B § 6, for the fiscal year ending June 30, 2012, the following sums of the annual revenues of the Community Preservation Fund be set aside for further appropriation and expenditure for the following purposes: Two Hundred Twenty Seven Thousand and Eighty Four Dollars and No/100 (\$227,084) for open space; Two Hundred Twenty Seven Thousand and Eighty Four Dollars and No/100 (\$227,084) for historic resources; Two Hundred Twenty Seven Thousand and Eighty Four Dollars and No/100 (\$227,084) for community housing; and that the sum of One Hundred Thousand and No/100 (\$100,000.00) Dollars be appropriated from the annual revenues of the Community Preservation Fund to be expended under the direction of the Town Manager, or the Community Preservation Committee with the prior approval of the Town Manager, for appraisal, title search, hazardous materials assessment, consulting services, and pre-development costs, and administrative expenses, and to assist in the development and performance of contracts for community preservation.

VOTE: 11 yes

<p>2011-148 ORDER AUTHORIZING THE TOWN MANAGER TO EXECUTE A SUBSTANTIAL AMENDMENT TO THE REGULATORY AGREEMENT- 89 LEWIS BAY, LLC INTRO: 6/16/11</p>

Attorney David Lawler represented his client, Charles Doe, who owns the old Greenery Nursing Home at the end of South Street. It was taken over by a partnership in about 2005-

6, and they entered into a regulatory agreement in 2007. They added a 4th floor, with plans for 42 condominiums plus office space. Times were different, he noted.

This property was converted and Lawler was present due to the mitigation. There was approximately \$1M in on-site construction mitigation. They purchased two drug houses and tore them down – that was \$500,000. Then they constructed new sidewalks and added lighting and plantings. The monetary mitigation is another \$430,000. None of these improvements have been done.

This agreement started out with 3 partners and now only one remains, Mr. Doe. Lawler identified the renovations and construction that he has fostered in Hyannis. Lawler noted that the agreement was a partnership signing the agreement but now it isn't. Due to that they are seeking reduction in the money mitigation. He said he thinks the time for a lot of this mitigation is over. He asked the council to re-examine this.

Councilor Milne said the public has notice of an idea to reduce the mitigation by \$100,000, but now there is discussion of elimination of the mitigation. He felt there needs to be notice to the public. I don't believe we can continue this discussion.

Attorney Lawler said the item before the council is a recommendation from the planning board. The application before the planning board was for full elimination of the fees. There was clear public notice.

Councilor Milne needed clarification.

Joanne Buntich, Director of Growth Management pointed out that in the planning board's memo they stated that the application was to eliminate the mitigation; and it is also stated in the Council's rationale of this item.

Councilor Canedy noted that any discussion could flow out on this. She disagreed with her fellow councilor.

Councilor Munafo made a motion, which was seconded to amend the agreement in the section after Now, therefore, 1. Paragraph #4 by striking \$150,000 towards streetscape improvements within the layout of South St, and by striking \$30,000 toward pedestrian improvements within the layout of School Street; leave the \$150,000 toward water supply improvements.

Councilor Canedy asked about the specifics of the water supply improvements. Lawler said he did not know but assumed it would just go to the water company. He said they are water company customers and they do pay a water bill.

Councilor Farnham asked about the building now and what it hopes to have in it. Lawler said 42 condos and business units so 45 condos will be for sale. Farnham asked how many have been sold. Lawler said less than 10 are sold or in the process of selling. Farnham noted that Mr. Doe is a really good person and we think highly of him. He would like to see the town defer fees to sale time. It works better for the developer. He would prefer not to do a front end penalty. Farnham said you may be stuck paying something; but suggested that the council do it as the units sell.

President. Chirigotis noted that the council had an amendment on the floor.

Councilor Canedy moved to postpone this to the next meeting. Councilor Milne agreed,

Councilor Munafo withdrew his amendments, and the second was withdrawn as well.

Upon motion duly made and seconded it was voted to postpone this item to July 14.

VOTE: UNANIMOUS

WORKSHOP WITH THE TOWN COUNCIL SOLAR SUB-COMMITTEE

Richard Elrick of the Solar Sub-Committee explained the purpose of this workshop which is to discuss the proposed solar energy use at the capped landfill. He identified and thanked many of the individuals on the committee and those with the engineering company as well as Town of Barnstable staff.

Elrick noted that this is one of many different sites and the Town's project will be one of the largest. Once operational, it will meet 50% of the town's electrical use. He said that this will be on the top of a capped landfill that will then become highly productive.

Councilor Milne thanked the members of the committee. He felt it was the finest committee he had worked on. This process was a model. He too thanked Attorney McLaughlin for his work in lobbying, as well as former Councilor Elrick and David Anthony.

Attorney McLaughlin said Bob Smith's vision was to note there was a change in the air as far as energy. He explained how the idea of a cooperative started years ago with Maggie Downey and the county. We have all learned a lot. The council noted that David Anthony is the representative on the Cape Light Compact.

Scott Ridley outlined his presentation (See Exhibit C). The opportunity for this type of energy saving development came when Mass DEP gave a ruling on the use of closed landfills; He explained solar renewable energy certificates, net-metering credits, tax incentives to name a few.

American Capital Energy Company from Chelmsford, MA is offering turnkey services or contracts to finance, build, own and operate projects. He noted the structure of the proposal and risks and contract guarantees as well.

Representatives from American Capital Energy explained their interest in building the array at the landfill. They affirmed that Barnstable's will be the largest of 10 to be built on the Cape.

Councilor Munafo asked about the life-span. The representatives stated that when they are 25 years they are producing possibly at a rate of 80%. They can still live more years.

Attorney McLaughlin introduced over a cell phone, Attorney Kevin Batt. He said the committee truly pushed for further improvements on the agreements. He addressed the agreements and some of the protections and benefits flowing in a positive manner to the town. He hopes it is a WIN/WIN for everyone.

Elrick said he hopes that the council will think positively on this.

Councilor Farnham said the presentation was interesting. He asked the councilors who were on the committee if they had any other comments. He thanked Scott Ridley and noted that he had recently authored a book.

Councilor Norman said as a member of the committee he wants a sense of where the council sits on this. He noted that there is a slight time frame. We are competing with other towns and if there is a problem, he would like to know it. He felt that the committee was very thorough on this process.

A motion was made (but not seconded) to suspend the rules and read it in to the record and vote.

Councilor Munafo had one other thought and asked about vandalism. Elrick said we have a secure site and it is fenced in. The Mass DEP requires fencing.

Attorney Ruth Weil cautioned the council and said that under your rules, since this is a lease, you can't waive the rules. You need a second reading.

2011-145 AUTHORIZING THE TOWN MANAGER TO FURTHER NEGOTIATE AND TO EXECUTE A PROJECT DEVELOPMENT AGREEMENT WITH CVEC, INC. INTRO: 6/16/11

Councilor Milne read the item into the record.

Upon motion duly made and seconded it was voted to refer this item to July 14, 2011.

VOTE: 11 YES

It was noted that Scott Ridley's book is called, "Morning of Fire", about the first Captain who made the expedition around Cape Horn, and he was from Harwich.

2011-146 APPROPRIATE FROM COMMUNITY PRESERVATION FUND, \$1,680,500 TO ACQUIRE PROPERTY ON 21 RAILWAY BLUFFS, HYANNIS FOR OPEN SPACE & RECREATION INTRO: 6/16/11

Upon motion duly made and seconded it was voted to refer this item to a public hearing on July 14, 2011.

VOTE: 10 Yes, 1 No (Crocker)

2011-147 APPROPRIATION OF \$375,000 FOR PARK REVITALIZATION, RIDGEWOOD PARK IN HYANNIS INTRO: 6/16/11

Upon motion duly made and seconded it was voted to refer this item to a public hearing.

VOTE: 10 Yes, 1 No Dagwan

Upon motion duly made and seconded it was voted to go into Executive Session to conduct contract negotiations with non-union personnel, Town Manager John Klimm, and to reconvene in Open Session.

VOTE: Roll Call – 8 Yes, 2 No (Chirigotis, Dagwan) – Joakim had left the hall.

Vote made at approximately 9:45 p.m.

The council came out in to open session but lacked a quorum. The clerk asked for a vote to adjourn.

Upon motion duly made and seconded it was

VOTED: To adjourn.

ADJOURNED: at 10:56 p.m.

Respectfully submitted,

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

NEXT REGULAR MEETING: July 14, 2011

LIST OF DOCUMENTS:

- 1) PHOTOS ON PAPER OF SIGNS IN OSTERVILLE
- 2) LIST OF EX. SESSION MINUTES
- 3) LANDFILL SOLAR PROJECT – POWERPOINT
- 4) SOLAR INFORMATION PACKET