



The Town of Barnstable Town Council

367 Main Street, Village of Hyannis MA 02601
508-862-4602 • Fax 508-862-4770
email: council@town.barnstable.ma.us

Councilors:
Royden C. Richardson,
President
Gary C. Blazis,
Vice-President

Richard G. Barry
Gary R. Brown
Richard W. Clark
Richard D. Elrick
Robert R. Jones
Audrey M. Loughnane
J. Gregory Milne
Joseph R. Pino
Carl S. Riedell

Administrative
Assistant:
Donald M. Grissom
Town Council
Secretary
Margery L. McCarthy

TOWN COUNCIL AGENDA MARCH 15, 2001 7:00 PM

1. ROLL CALL
 2. PLEDGE OF ALLEGIANCE
 3. MOMENT OF SILENCE
 4. ACT ON MINUTES (03/01/01)
 5. PROCLAMATIONS (NONE)
 6. PUBLIC COMMENT(also encouraged at the end of meeting)
 7. COUNCIL RESPONSE TO PUBLIC COMMENT
 8. PUBLIC HEARINGS – 2001-041, 2001-048, 2001-049 & 2001-064
 9. COMMUNICATIONS FROM ELECTED OFFICIALS, BOARDS, COMMISSIONS AND STAFF
Report on Dock & Pier Criteria (see pages 25-33)
 10. CORRESPONDENCE
 11. PRESIDENT/VICE PRESIDENT COMMUNICATIONS
 12. TOWN MANAGER COMMUNICATIONS
-

OLD BUSINESS (May be Acted Upon)

PAGE #

13. 2001-041 APPROPRIATION AND TRANSFER ORDER FOR A COMPREHENSIVE SCHOOL AUDIT

5

ORDERED That the sum of \$105,000 be appropriated for the purpose of conducting a comprehensive audit of the School Department, and that to meet such appropriation, \$105,000 be transferred from the FY 2000 excess lottery distribution.

14. 2001-048 APPROPRIATION AND TRANSFER ORDER FOR A LONG-RANGE MANAGEMENT PLAN AT SANDY NECK

7

ORDERED

That the sum of \$75,000 be appropriated for the purpose of developing a long-range management plan at Sandy Neck, and that to meet such appropriation, \$75,000 be transferred from the FY 2000 excess lottery distribution.

15. 2001-049 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$356,500.00 FOR THE PURPOSE OF ACQUIRING 12.53 ACRES MORE OR LESS IN MARSTONS MILLS

ORDERED: that the Town Council hereby authorizes the Town Manager to purchase or take by eminent domain, pursuant to and for the purposes set forth in chapter 293 of the Acts of 1998 as amended by section 211 of chapter 127 of the Acts of 1999 and/or chapter 79 of the General Laws of Massachusetts, or otherwise acquire the land on a way off Old Post Road, Barnstable (Marstons Mills) containing 12.53 acres, more or less, being further described as Parcel 1 in a Quitclaim Deed of Ethel M. Pierce to Charles H. Eldridge dated February 12, 1964 and recorded March 11, 1964 in the Barnstable County...(as printed on page 10)

NEW BUSINESS

(TO BE REFERRED TO A PUBLIC HEARING ON APRIL 5)

16. 2001-059 REPEAL OF THE GENERAL ORDINANCE RELATING TO THE REGULATION OF BODY PIERCING

ORDERED

SECTION 1.

That Article LXII of Chapter III of the General Ordinances is hereby repealed.

**NEW BUSINESS (CONT)
MAY BE ACTED UPON**

17. 2001-060 ORDER AUTHORIZING SALE OF PROPERTY AT 1 ELM STREET, HYANNIS

ORDERED

That the Town Council hereby authorizes the sale of all right, title and interest in the property owned by the Town having a street address of 1 Elm Street, Hyannis, shown on Assessors Map 327 as Lot 63 to David Dumont or a nominee under his control for a price of TWO HUNDRED TWENTY-SIX THOUSAND SIX HUNDRED FORTY-FOUR AND NO/100 DOLLARS (\$226,644.00) in accordance with the provisions of a Request

for Proposals dated September 25, 2000 and a Purchase and Sale Agreement dated January 30, 2001 without restrictions, and further to authorize the Town Manager to execute and deliver all documents necessary to complete said sale in accordance with the terms of this Order.

NEW BUSINESS (CONT)

THE FOLLOWING THREE AGENDA ITEMS TO BE REFERRED TO A PUBLIC HEARING ON APRIL 5

18. 2001-061 APPROPRIATION ORDER FOR FY 2001 AIRPORT OPERATING BUDGET

17

ORDERED

That the Town Council hereby appropriate \$328,000 from the Airport's undesignated fund balance for the purpose of funding the FY2001 Airport operating expenses.

19. 2001-062 APPROPRIATION ORDER FOR FY 2001 WORKER'S COMPENSATION MEDICAL BENEFITS

18

ORDERED

That the Town Council hereby appropriate \$200,000 from the Insurance Reserve Fund for the purpose of funding the FY2001 Worker's Compensation insurance expenditures.

20. 2001-063 APPROPRIATION ORDER FOR FY 2001 SCHOOL DEPARTMENT

20

ORDERED

That the Town Council hereby appropriate \$670,535 from available funds for the purpose of funding the FY2001 School Department budget.

**NEW BUSINESS (CONT)
MAY BE ACTED UPON**

21. 2001-064 RESOLVED:

22

The Town Council hereby votes to classify the Town of Barnstable under the Classification Act at a Factor of One for the Fiscal Year 2001, and votes, further, that the Residential Exemption is not adopted for Fiscal Year 2001.

PUBLIC COMMENT

GENERAL DISCUSSION

ADJOURNMENT

NEXT MEETING ON APRIL 5TH

**AGENDA ITEM SUMMARY
2001-041**

TO: Town Council
FROM: John C. Klimm, Town Manager
DATE: December 29, 2000
SUBJECT: Appropriation and Transfer Order for a Comprehensive School
Department Audit

BACKGROUND

The Town Council passed a resolve at the September 7, 2000 council meeting to request the Town Manager and the School Superintendent to look into and bring forward an appropriation order to study the school system, including, but not limited to space needs.

ANALYSIS

A nationwide search was done to find consultants who could perform such a study. It was determined that a consultant with national experience in performing school finance and performance measurement audits combined with an intimate knowledge of the Massachusetts Education Reform funding formula would be contracted with as project manager.

A steering committee comprised of town and school officials was created and met with the project manager to develop the scope of this project. A number of areas have been identified to be included in the study. The scope will be finalized by the end of January 2001 and work is expected to begin in February 2001.

In addition to financial matters, the audit will also include a study of current and future space needs and curriculum. A space-planning consultant will be subcontracted with by the project manager to work with the recently appointed School Building Needs Committee. The project manager will also sub-contract with consultants to perform the curriculum examination. The space needs and curriculum aspects of the audit will be tied into the financial element. The actual cost of this project will not be known until to scope is finalized and the sub-contractors have submitted their proposals.

FISCAL IMPACT

The Town must fund this project from an available resource, which has not already been committed to balancing the FY 2001 budget.

The Town received an additional FY 2000 surplus lottery distribution in the amount of \$282,000 from the State in September 2000. This distribution was not known at the time of approving the FY 2001 budget, therefore, it was not, and could not, be included in our FY 2001 revenue estimates.

In accordance with the Department of Revenue's requirement, this distribution can be appropriated for any purpose once it is in the Town's Treasury. The Town has identified

several projects to be funded with this revenue source with the School audit being one. The unappropriated balance of this revenue source is \$105,000, which is being requested for this project. Any unexpended funds from this contract will revert to free cash.

TOWN MANAGER RECOMMENDATION

The Town Manager recommends approval of the appropriation order.

<u>DATE</u>	<u>ACTION</u>
01/18/2001	REFERRED TO PUBLIC HEARING ON 2/22/01
02/22/01	Referred to Public Hearing on 3/15/01

AGENDA ITEM SUMMARY

2001-048

TO: Town Council
FROM: John C. Klimm, Town Manager
DATE: December 21, 2000
SUBJECT: Appropriation and Transfer Order for a Long-Range Management Plan at Sandy Neck

BACKGROUND

In the early 1990s, the Department of Environmental Protection (DEP) initiated proceedings leading to the requirement of an Order of Conditions for off road vehicle use on Sandy Neck and other barrier beaches, addressing geological processes and wildlife habitat, and especially habitat for shorebirds. An Order of Conditions for vehicle use on the Neck was obtained in 1993. That permit has been in existence until the present and will expire on April 01, 2001.

Over the years, an increasing number of conflicts have developed among the user groups of Sandy Neck in the process of living with the restrictions. This culminated in the commencement of a lawsuit in early 2000 by the cottage owners and other user groups. The complexity of the subject matter of the lawsuit and associated administrative appeals to the Department of Environmental Protection quickly made clear that alternative dispute resolution was appropriate for this case.

The good offices of the Massachusetts Office of Dispute Resolution were engaged and an arduous and lengthy mediation process was successfully concluded by the adoption of a consensus agreement. The focal point of that agreement is the development by the Town of a management plan for Sandy Neck.

The services of the Woods Hole Group have been retained contingent upon appropriation to develop that management plan. This appropriation will fund the contract for the services of the Woods Hole Group.

ANALYSIS

Failure to fund the development plan and its preliminary components will result in the destruction by centrifugal force of the painstakingly - mediated agreement and the parties will have to resort once again to adversary litigation.

More importantly, once the present Order of Conditions expires, if nothing exists to take its place, all vehicles access to Sandy Neck may be in jeopardy.

FISCAL IMPACT

At the time of adopting the FY 2001 budget the town did not know of the scope or cost of this project, therefore, no budget was appropriated. The cost of the project is not expected to exceed \$75,000. The Town must fund this project from an available resource, which has not already been committed to balancing the FY 2001 budget.

The Town received an additional FY 2000 surplus lottery distribution in the amount of \$282,000 from the State in September 2000. This distribution was not known at the time of approving the FY 2001 budget, therefore, it was not, and could not, be included in our FY 2001 revenue estimates.

In accordance with the Department of Revenue's requirement, this distribution can be appropriated for any purpose once it is in the Town's Treasury. The Town has identified several projects that could be funded with this revenue source with the Sandy Neck Management Plan being one.

TOWN MANAGER RECOMMENDATION

The Town Manager recommends approval of the appropriation order.

BARNSTABLE TOWN COUNCIL

ITEM NO.:2001-048

INTRO.: 03/01/2001

**APPROPRIATION AND TRANSFER ORDER FOR A LONG-RANGE
MANAGEMENT PLAN AT SANDY NECK**

ORDERED

That the sum of \$75,000 be appropriated for the purpose of developing a long-range management plan at Sandy Neck, and that to meet such appropriation, \$75,000 be transferred from the FY 2000 excess lottery distribution.

BARNSTABLE TOWN COUNCIL

ITEM NO.: 2001-049

INTRO.: 02/22/01

APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$356,500.00 FOR THE PURPOSE OF ACQUIRING 12.53 ACRES MORE OR LESS IN MARSTONS MILLS

ORDERED: that the Town Council hereby authorizes the Town Manager to purchase or take by eminent domain, pursuant to and for the purposes set forth in chapter 293 of the Acts of 1998 as amended by section 211 of chapter 127 of the Acts of 1999 and/or chapter 79 of the General Laws of Massachusetts, or otherwise acquire the land on a way off Old Post Road, Barnstable (Marstons Mills) containing 12.53 acres, more or less, being further described as Parcel 1 in a Quitclaim Deed of Ethel M. Pierce to Charles H. Eldridge dated February 12, 1964 and recorded March 11, 1964 in the Barnstable County Registry of Deeds in Book 1241, Page 23; and appropriate the sum of THREE HUNDRED FIFTY-TWO THOUSAND FIVE HUNDRED AND NO/100 (\$352,500.00) Dollars for said acquisition or taking and related costs and authorize the Town Manager to contract for and expend said appropriation for such purposes and accept any gifts or grants in relation thereto; and to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, is authorized to borrow the sum of THREE HUNDRED FIFTY-SIX THOUSAND FIVE HUNDRED AND NO/100 (\$356,500.00) Dollars for said acquisition or taking and related costs.

Sponsor: Town Manager

RATIONALE: This property is being purchased for aquifer protection. The adjacent COMM wellfield is down/gradient of this parcel. Another important value of this land is as wildlife habitat. Deer, fox and many other types of animals are known to use this area to reach the nearby Marstons Mills River.

FISCAL IMPACT – LAND BANK FUNDS ARE TO BE USED

DATE

ACTION TAKEN

BARNSTABLE TOWN COUNCIL

**ITEM NO.: 2001-059
INTRO.:03/15/2001**

**REPEAL OF THE GENERAL ORDINANCE RELATING TO THE
REGULATION OF BODY PIERCING**

ORDERED

SECTION 1.

That Article LXII of Chapter III of the General Ordinances is hereby repealed.

Sponsor:

Date

Action Taken

Rationale:

A recent court decision has resulted in a determination that body decoration is a protected medium of expression under the First Amendment, thereby making repeal of the local ordinance on body piercing legally advisable.

BARNSTABLE TOWN COUNCIL

ITEM NO.: 2001-060

INTRO.: 03/15/01

ORDER AUTHORIZING SALE OF PROPERTY AT 1 ELM STREET, HYANNIS

ORDERED

That the Town Council hereby authorizes the sale of all right, title and interest in the property owned by the Town having a street address of 1 Elm Street, Hyannis, shown on Assessors Map 327 as Lot 63 to David Dumont or a nominee under his control for a price of TWO HUNDRED TWENTY-SIX THOUSAND SIX HUNDRED FORTY-FOUR AND NO/100 DOLLARS (\$226,644.00) in accordance with the provisions of a Request for Proposals dated September 25, 2000 and a Purchase and Sale Agreement dated January 30, 2001 without restrictions, and further to authorize the Town Manager to execute and deliver all documents necessary to complete said sale in accordance with the terms of this Order.

**AGENDA ITEM SUMMARY
2001-060**

TO: Town Council
FROM: John C. Klimm, Town Manager
DATE: March 5, 2001
SUBJECT: Sale of 1 Elm Street, Hyannis (Former Police Station) to David Dumont

BACKGROUND

This order seeks the Council's final authorization and approval of the sale of the above-described property in accordance with previous discussions and an RFP issued on September 25, 2000.

The subject property is the former police station located at the corner of Elm Street and Willow Avenue in the east end of Hyannis. Following discontinuance as a police station in the late 1970s when the new Police Facility opened on Phinney's Lane, the property was leased to a private entity for use as commercial office space until the death of the principal and the surrender of the property back to the Town in January, 2000.

Since the building's size had by then been greatly outpaced by the growth in the Town's space needs and it was in need of substantial repair, a request for proposals for sale or lease of the property was issued on September 25, 2000.

ANALYSIS

Proposals were submitted by the Federated Church of Hyannis, a Medical Center, and Mr. Dumont. Mr. Dumont's proposed outright purchase at a price of \$226,644.00 represented by far both the greatest return to the Town and the closest match to the evaluation criteria, and was accordingly the highest ranked and unanimous choice of the proposal evaluators. The Federated Church proposed a \$10,000.00 purchase price with a number of community service uses (day care center and swap shop as examples) and the medical center proposed making \$100,000.00 in repairs and improvements over five years to be followed by a long-term lease. Although worthy, the return to the Town from the former was simply too low, and the latter proposal was not in line with the request's stated criteria for a bare minimum future involvement of the Town in the building.

Mr. Dumont has stated an intention to continue the previous use of the property for commercial leases. Since the building is of little or no further use to the Town and the Dumont proposal continues the immediately preceding use without further involvement by the Town, no use restrictions are recommended or sought.

FISCAL IMPACT

Authorization and completion of this sale will result in a credit of \$226,644.00 to the general fund as we seek to catch up with our many neglected and needed capital improvements.

TOWN MANAGER RECOMMENDATION

The Town Manager recommends that the Council approve this Order.

STAFF ASSISTANCE

David Houghton, Assistant Town Attorney

Sponsor:

Town Manager

DATE

ACTION TAKEN

**AGENDA ITEM SUMMARY
2001-061**

TO: Town Council
FROM: John C. Klimm, Town Manager
DATE: February 22, 2001
SUBJECT: FY 2001 Appropriation Order for the Barnstable Municipal Airport

BACKGROUND

The rising cost of jet fuel and the increase in the amount of fuel sold have created the need for a supplementary appropriation at the Airport. Additionally, the Airport has incurred a major unanticipated malfunction to its Kodiak snow blower. Water was allowed to enter into the engine compartment causing significant damage. The warranty has expired on the equipment and management is pursuing the potential that the damage was due to faulty design. The manufacturer has been contacted and Airport management is negotiating with them.

ANALYSIS

The cost of jet fuel in FY2001 has increased nearly 35% per gallon over the FY2000 per gallon amount. Additionally, the airport is projecting an increase in total gallons sold in FY2001. Because of the volatility in the price and the increase in volume, it is estimated that an additional \$300,000 will be needed to purchase jet fuel for the remainder of the fiscal year. To date, the Airport has expended 98% of its budget for jet fuel. Correspondingly, they have obtained 95% of their revenue estimate for jet fuel sales.

The Airport's budget for repairs to equipment is currently \$16,000 with a balance of only \$5,000. The cost of the repairs to the snow blower is \$28,000. It is estimated at this time that the cost of the repairs to the Kodiak snow blower cannot be accommodated within the current operating expense budget of the airport. Additionally, the repairs cannot be postponed until any agreement with the manufacturer is made. Any payment received from the manufacturer will be used to reimburse the Airport's operating expenses.

FISCAL IMPACT

There is no impact to the Town's General Fund budget. The Airport has sufficient funds within its undesignated fund balance to support this request. Furthermore, because the sale of jet fuel more than covers its cost, the additional revenue received beyond what has been estimated will close to the airport's undesignated fund balance at the end of the fiscal year essentially replacing this appropriation.

TOWN MANAGER RECOMMENDATION

The Town Manager recommends approval of the appropriation order after the required public hearing.

STAFF ASSISTANCE

Frank Sanchez, Acting Manager – Barnstable Municipal Airport
Mark A. Milne, Finance Director

BARNSTABLE TOWN COUNCIL

ITEM NO.: 2001-061

INTRO: 03/15/2001

APPROPRIATION ORDER FOR FY 2001 AIRPORT OPERATING BUDGET

ORDERED

That the Town Council hereby appropriate \$328,000 from the Airport's undesignated fund balance for the purpose of funding the FY2001 Airport operating expenses.

AGENDA ITEM SUMMARY
2001-062

TO: Town Council
FROM: John C. Klimm, Town Manager
DATE: February 22, 2001
SUBJECT: FY 2001 Appropriation Order for Worker's Compensation
Medical Benefits

BACKGROUND

The town is self-insured for worker's compensation benefits. Each year an appropriation is made as part of the Town's fixed costs to cover the anticipated Town and School medical benefits and associated management fees and reinsurance policy costs. Compensation paid directly to individuals in lieu of salary while out on workman's comp is charged to the respective department's operating budget with the exception of three long term cases that are charged to this appropriation. The Town maintains an insurance reserve fund to help offset the cost of this program.

ANALYSIS

The Town has experienced an increase in a number of worker's compensation related instances. These occurrences are unpredictable and sometimes require that supplemental appropriations be made to cover the cost. It is anticipated that the Town will need an additional \$200,000 for the remainder of the year. The town budgeted \$300,000 for FY2001 based on its experience over the past five years, which were all below \$300,000 except for one year. The Human Resource and Finance Departments are currently working on evaluating the possibility of changing to a premium-based program. The last time this analysis was done it was determined to be cost prohibitive and we anticipate the same result based on our most recent cost experiences, however, these types of analysis should be periodically reviewed.

FISCAL IMPACT

The insurance reserve has a current balance of \$2,253,000. Approval of this appropriation will leave a balance of \$2,053,000 in the fund.

TOWN MANAGER RECOMMENDATION

The Town Manager recommends approval of the appropriation order after the required public hearing.

STAFF ASSISTANCE

Nancymarie Schwinn, Human Resource Director
Mark A. Milne, Finance Director

BARNSTABLE TOWN COUNCIL

ITEM NO.: 2001-062

INTRO: 03/01/2001

**APPROPRIATION ORDER FOR FY 2001 WORKER'S COMPENSATION
MEDICAL BENEFITS**

ORDERED

That the Town Council hereby appropriate \$200,000 from the Insurance Reserve Fund for the purpose of funding the FY2001 Worker's Compensation insurance expenditures.

AGENDA ITEM SUMMARY
2001-063

TO: Town Council
FROM: John C. Klimm, Town Manager
DATE: February 22, 2001
SUBJECT: FY 2001 Appropriation Order for School Department

BACKGROUND

During the FY2001 budget setting process the Town and School entered into a revenue sharing agreement that would allocate equally any additional revenue from Chapter 70 aid and Phase II Medicaid revenue. Additionally, the school department has incurred some unanticipated expenditures for costs associated with their special education program and are unable to absorb the full impact of these cost within their current established budget.

ANALYSIS

The Town has used an estimate for the FY2001 Chapter 70 aid that more closely coincided with the Governor's proposed budget. The subsequent passage of the State's budget included an additional \$197,404 in CH 70 aid and the Town received \$143,666 in Phase II Medicaid reimbursements in July 2000. These two receipts total \$341,070 with the school's share being \$170,535.

Additionally, the school department has requested an additional \$1 million to fund unanticipated special education costs in FY2001. After several meetings between town and school officials an agreement has been reached to provide the school department with an additional \$500,000 to help offset this unanticipated expense. The total additional amount to be appropriated to the school department is \$670,535.

FISCAL IMPACT

Since the Town has already received approval of its FY2001 proforma tax recapitulation from the Department of Revenue it cannot change its revenue estimates for FY2001 and this additional appropriation must come from other available funds, or "free cash". Since the FY2001 revenue estimates are lower than the anticipated actual receipts, any additional amount will close to the Town's undesignated fund balance at the end of the year and subsequently become part of free cash.

TOWN MANAGER RECOMMENDATION

The Town Manager recommends approval of the appropriation order after the required public hearing.

STAFF ASSISTANCE

Mark A. Milne, Finance Director

BARNSTABLE TOWN COUNCIL

ITEM NO.: 2001-063

INTRO: 03/01/2001

APPROPRIATION ORDER FOR FY 2001 SCHOOL DEPARTEMENT

ORDERED

That the Town Council hereby appropriate \$670,535 from available funds for the purpose of funding the FY2001 School Department budget.

BARNSTABLE TOWN COUNCIL

ITEM NO: 2001-064
INTRO: 3/15/2001

RESOLVED:

The Town Council hereby votes to classify the Town of Barnstable under the Classification Act at a Factor of One for the Fiscal Year 2001, and votes, further, that the Residential Exemption is not adopted for Fiscal Year 2001.

Sponsor: Town Manager

Note: This Resolution is the subject of a Public Hearing on 3/15/2001, and has been advertised for 7:00 p.m.

DATE

ACTION TAKEN

/ /

/ /

**AGENDA ITEM SUMMARY
2001-064**

TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Robert D. Whitty, Director of Assessing
DATE: 3/15/2001
SUBJECT: Allocation of Tax Levy

BACKGROUND

According to Massachusetts General Law, Chapter 40, Section 56, of the Acts of 1982 and Chapter 79 of the Acts of 1983, the Town Council is annually charged with determining the Allocation of Local Property Taxes by the adoption of a residential factor between 1% to 50% and/or the adoption of a residential exemption of not more than 20%. We are furnishing calculations regarding the adoption of a Residential Factor using a Factor of 1%, 25% and 50% and the calculations for the Residential Exemption using percentages of 10% and 20%. Also included are executive recommendations. This analysis pertains to Fiscal Year 2001.

To date the Town's policy has been to select a factor of "1". The residential factor adopted by a community governs the percentage of the tax levy to be borne by residential property owners. If local officials choose a low residential factor, (for example, the statutory minimum of 50 percent) residential property will bear a proportionately lower share of the total levy. A residential factor of "1" will result in the taxation of all property at the same rate.

At the option of Council, an exemption of not more than 20% of the average assessed value of all Class one (Residential) parcels may be applied to residential parcels which are the principal residence of the taxpayer.

Principal residence is ordinarily the residence in which a property taxpayer lives. It is the taxpayer's domicile, that is, his fixed place of habitation, permanent home, and legal residence, as used for state income tax purposes.

ANALYSIS

The major factor involved in the adoption of a higher commercial tax rate hinges on the overall class contribution to the tax levy. Due to the nature of property in Barnstable, the commercial/industrial real estate properties along with the personal property account for approximately 13.25% of the total tax base. In order for the residential sector to receive any substantial decrease, the commercial/ industrial and personal property tax rate would

be maximized. The disparity between the two rates would be so disproportionate that it would create a severe financial impact on the community.

Adoption of the **residential exemption** would affect all non-resident property owners and all residential properties in the higher value ranges. Implementation of this exemption would require the mailing and validation of over 22,000 questionnaires regarding residential status. The Assessing Division would require additional temporary staffing, postage funding and a minimum of four (4) months to validate these questionnaires.

FISCAL IMPACT

The adoption of anything more than a factor of “1” would impact the business sector and would send a negative message to those groups that are actively attempting to revitalize the business community. It would also have a negative effect on the work that is being done in the Town of Barnstable to encourage commercial and light clean industrial growth. Back on May 13, 1999, the Council unanimously voted to support the efforts of the Business Improvement District (BID). To classify a tax rate other than a factor of “1” would undermine the direction which the Council intends to follow.

The pitfalls of the **residential exemption** are borne out by the low number of Massachusetts communities (**11**) which are currently using it. Please note that the non-resident taxpayer now pays a Personal Property Tax on furnishings and fixtures. The additional tax generated by the residential exemption would put an excessive burden on the non-residential taxpayer.

TOWN MANAGER RECOMMENDATION

To approve the resolve as presented, subsequent to the holding of the Public Hearing.

BOARD AND COMMISSION ACTION

Considering the **analysis** and the **fiscal impact**, the Board of Assessors voted on March 13, 2001, to recommend to the Council a factor of “1” and to reject the Residential Exemption clause.

STAFF ASSISTANCE:

The Assessing Staff produced this report.

The Assessing Division prior to the hearing will provide two documents: Levy Shift Analysis and Residential Exemption Analysis.

BARNSTABLE TOWN COUNCIL

**PRELIMINARY REPORT WETLANDS PROTECTION ORDINANCE
REGARDING DOCKS AND PIERS AND DRAFT AMENDMENTS**

TO: Town Council
FROM: Thomas F. Geiler, Director, Regulatory Services
DATE: March 5, 2001
SUBJECT: Preliminary Report of the Joint Review by the Conservation Commission, Shellfish Committee and Waterways Committee on Criteria for Wetlands Permitting of Docks and Piers

EXECUTIVE SUMMARY

On March 23, 2000, the Town Council requested that the Conservation Commission, Shellfish Committee and the Waterways Committee conduct a joint review of criteria and methods to be employed by the Conservation Commission in processing applications for permitting the construction of residential docks and piers. This preliminary report is the product of fourteen (14) worksessions held between April and December of last year which were attended and assisted by respective Committee staff, the Legal Department, members of the public, and several waterfront property owners and their professional representatives.

The initial joint recommendations (with the exception of the Waterways Committee's dissent from the proposed 3.5' shellfish area bottom separation requirement) are to raise three principal presumptions for judging the suitability of particular pier permit applications: (1) given the heavy recreational use all our waterways experience, pier length should not be greater than 100 feet from mean low water; (2) in those areas where recreational boating is particularly constrained, that length should be shortened to not exceeding the 2 foot depth contour; and (3) in recreationally significant shellfish areas, a 100 foot maximum length plus a 3.5 foot separation between a propellor and the bottom should be required. All of the proposed amendments to the local ordinance are summarized in the following tables: the full proposed text is attached, as is a draft map of the proposed recreational boating and shellfish sensitive areas.

**TABLE 1
CRITERIA FOR PIERS OUTSIDE SENSITIVE AREAS**

	A	B
	PRESUMPTIVE GRANT PIER APPLICATION	PRESUMPTIVE DENIAL PIER APPLICATION
1	Shortest of -100' from MLW -1/2 lot frontage (more for shared pier) -maintain 60% open water in narrow	- length from MLW is >100' -length from MLW is >1/2 lot frontage (more for shared pier) -length would result in < 60% open

	waterway	water in narrow waterway
2	35' + back from edge of a channel	Closer than 35' to edge of channel
3	1' or more between keel or operating prop and top of sediment at MLW measured without dredging	1' or less between keel or operating prop and top of sediment at MLW measured without dredging
4	Deck 4' or less in height and 4' or less in width except higher over marsh grass	Deck >4' in height and >4' in width, lower over marsh grass
5	12' or more between pilings along length	<12' between pilings along length
6	Minimum watersheet coverage with ells, tees, etc.	Excessive watersheet coverage with ells, tees, etc
7	Suitable access for traditional passage	Unsuitable access for traditional passage
8	No lead pile caps	Lead pile caps
9	150' + from public launch ramp, public dock, yacht club dock, marked public swim area	<150' from public launch ramp, public dock, yacht club dock, marked public swim area
10	No forced mooring relocation	Forced mooring relocation over harbormaster objection
11	Criteria can be varied for shared piers under suitable circumstances	

**TABLE 2
CRITERIA FOR PIERS INSIDE SENSITIVE AREAS**

	A	B
	PRESUMPTIVE GRANT PIER APPLICATION	PRESUMPTIVE DENIAL PIER APPLICATION
1	- >3.5' prop to sediment top in shellfish area -up to 2' depth contour in recreational boating area	- <3.5' prop to sediment top in shellfish area -beyond 2' depth contour in recreational boating area
2	Seasonal in shellfish area	Permanent in shellfish area
3	Meets criteria in 1 – 10 of Column A, Table 1 except where changes required under 1 and 2 of Column A of Table 2	Does not meet criteria in 1 – 10 of Column A, Table 1 except where changes required under 1 and 2 of Column A of Table 2
4	Criteria can be varied for shared piers under suitable circumstances	

In addition, it is recommended that these criteria and the area designations be reviewed every three years and revised as deemed appropriate, and that the present ordinance be

further amended by striking references to public trust rights and adoption of a two year prohibition on re-submissions after final denials.

BACKGROUND

This agenda item contains the joint recommendations (with one exception) of the Conservation Commission, Waterways Committee and Shellfish Committee regarding suggested criteria and methods to be employed by the Conservation Commission in processing applications for the construction of residential docks and piers. The noted exception is the Waterways Committee's dissent from the 3.5' minimum depth recommendation in designated shellfish areas. These recommendations are respectfully submitted in accordance with the March 23, 2000 charge of the Town Council that the three Committees work together to develop such criteria and that I serve as facilitator of that process.

Residential docks and piers require three principal permits: two local ones, namely an order of conditions from the Conservation Commission under the state Wetlands Protection Act (G.L. c. 131 §40) and the Town of Barnstable Wetlands Protection Ordinance (Article XXVII of Chapter III of the General Ordinances) plus a building permit; and one state permit pursuant to G.L. c. 91 and the regulations promulgated thereunder. The focus of these recommendations is with the Conservation Commission permitting process.

The Council's charge arose out of a recent spate of court appeals of Conservation Commission denials of pier permit applications under the Town's Ordinance. Between 1996 and 1999, the Conservation Commission processed approximately 80 pier applications. Of those, approximately 56 were approved with conditions, and the remaining 24, involving 19 sites, were both denied and appealed to Barnstable Superior Court and the Department of Environmental Protection (some of the sites generated multiple applications, thereby elevating the total number of appeals to approximately 24). All of the denials were for piers in the Three Bay area and were based at least in part on the Commission's determination under the local ordinance that the piers would cause unacceptable significant or cumulative effects upon the wetlands values of shellfish, public trust rights and recreation.

The local ordinance does not further define what is unacceptable or significant. The Commission's hearings records contained statements from residents, interest groups, pier applicants, representatives of pier applicants, and town boards and officials on the effects of piers. These statements, some of which were in conflict, formed the basis of the Commission's denials. In one of the appeal decisions (*William Martin, Trustee v. Town of Barnstable Conservation Commission, Barn. Sup. Ct. C.A. Nos. 97-689 and 98-447*), Barnstable Superior Court Justice Gerald F. O'Neill, Jr. upheld the Commission's denial, but included an Addendum to his Memorandum of Decision and Order in which he pointed out the number of existing moorings and piers in the Three Bay area and questioned how much evidence there was on the effects of additional piers. In another appeal decision, *Fafard v. Barnstable Conservation Commission, 423 Mass.194 [2000]*),

the Supreme Judicial Court of Massachusetts held that the Commission could deny a pier application based on recreational interests, but not on public trust rights. In upholding the Commission's denial, the Supreme Judicial Court quoted the Commission's finding that "the Eel River in the subject reach is enjoyed by many recreational boaters who cruise the river at its end point and return to West Bay," 423 Mass. 194, 206.

In response to the mounting appeals and the *Martin* Addendum, the Council charged the three committees and their respective staffs to work together to develop criteria to be included in the ordinance and applied by the Conservation Commission in determining orders of conditions and denials of residential dock and pier applications under the Commission's jurisdiction. There was active participation at these meetings from members of the three Committees, representatives of waterfront property interests, and the public. The Committees' staff and the Legal Department responded to various technical inquiries. Relevant portions of pertinent documents, such as the Local Comprehensive Plan, Coastal Resources Management Plan of 1990, and the pier regulatory schemes of other communities on Cape Cod were reviewed for applicability and incorporated where deemed appropriate.

ANALYSIS

A number of factors entered into the preparation and submission of the draft recommendations forwarded herewith: (1) all of the sessions involved studious avoidance of either positive or negative assumptions about the effects of piers; (2) the strongest basis for local wetlands-based regulation of piers is protection of recreational shellfish and recreational boating interests; (3) there are a great many variables affecting the impact of piers (a few examples being wind, water depth, orientation and location); (4) technological advances in both recreation and pier construction is continually changing their interrelationship; and (5) the group was charged only with evaluating the wetlands ordinance, leaving out inquiries into other alternatives, such as Area of Critical Environmental Concern and harbor line designations, to name two. Also, private dredging was not considered because the Local Comprehensive Plan (Policy 2.2.4.3, page 2-68) does not favor it unless a substantial public benefit can be demonstrated.

Given the number of variables and strength of recreational standards, it became apparent to the group that the criteria for evaluating pier applications under the local ordinance should be divided into two categories, namely areas where there was or was not special sensitivity to permanent structures. This approach is also in line with the recommendations of the 1990 Coastal Resources Management Plan (see Action 2, page 7-4) for designation of coastal resource management areas. As noted above, the principal recommended criteria are: (1) given the heavy recreational use all our waterways experience, pier length should not be greater than 100 feet from mean low water; (2) in those areas where recreational boating is particularly constrained, that length should be shortened to not exceeding the 2 foot depth contour; and (3) in recreationally significant shellfish areas, a 100 foot maximum length plus a 3.5 foot separation between a propellor and the bottom should be required. Sections 1 through 5, inclusive, of the attached draft Order constitute the group's response arrived at after fourteen (14) worksessions

stretching from April to December of last year. Section 6 incorporates the holding in *Fafard* by removing public trust rights from the wetlands values protected under the Town's wetlands ordinance. As previously noted, the entire draft text is attached and summary tables were set forth in the Executive Summary section above.

It is proposed that the sensitive areas be identified by the Conservation Commission after review of recommendations from the Shellfish and Waterways Committees, which are in turn made with the advice of the deputy shellfish constable and harbormaster, and subject to final Town Council approval. Preliminary designations were developed during group discussions and encompass approximately 43% of the shoreline in the Three Bay area as shown on the draft map forwarded along with this preliminary report. This methodology is suggested in order to create a system of checks and balances to resolve the types of conflicts which have occurred over pier applications in the past.

One of the difficulties manifested by the Superior Court appeals were the uncertainties arising out of the number of alternative proposals brought forward for some proposed pier sites. While design improvements were encouraging, in some cases they gave rise to multiple court appeals. In order to remedy this situation, there is included in the draft recommendations a provision for adopting a two year moratorium following final denial of an application. This provision is modeled on the similar condition imposed on zoning decisions pursuant to G.L. c. 40A § 16.

Finally, in light of the holding in *Fafard*, it is recommended that public trust rights be stricken as an interest protected under our local wetlands ordinance.

In conclusion, the group believes that the proposed criteria are an improvement (not necessarily a perfect one) over the manner in which residential dock and pier applications have been handled in the past. They should produce better guidance for pier applicants, their professional representatives, project abutters, and the public, and should lessen the amount of litigation the preceding method has generated: but given the passions pier applications seem to generate coupled with the continual changes in technology, nothing, obviously, is certain.

All of the participants wish to express their thanks to: the Council for providing this opportunity to review dock and pier procedures; the members of the consulting community for the expert advice and comment they provided; and members of the public who offered their input. It is hoped that the suggestions contained herein prove helpful to the Council, the affected boards and officials, applicants and their representatives, and the community as a whole.

STAFF ASSISTANCE

Thomas F. Geiler, Director, Regulatory Services
David Houghton, Assistant Town Attorney
Robert Gatewood, Conservation Administrator
Daniel Horn, Harbormaster/Director, Marine and Environmental Affairs
Thomas J. Marcotti, Deputy Shellfish Constable

DRAFT

**ORDER AMENDING THE TOWN OF BARNSTABLE WETLANDS
PROTECTION ORDINANCE REGARDING DOCKS AND PIERS**

ORDERED

That the Wetlands Protection Ordinance, Chapter III, Article XXVII of the General Ordinances of the Town of Barnstable, be and hereby is amended as follows.

SECTION 1

By adding the following paragraph at the end of Section 6.

“No application for a permit which has been finally denied shall be acted upon favorably within two years unless the Commission by a two thirds vote first determines that specific and material changes have occurred in the conditions other than construction specifications upon which the previous unfavorable action was based.”

SECTION 2

By adding the following Section 6A.

“Section 6A. PRESUMPTIVE APPROVAL PRIVATE RESIDENTIAL DOCKS AND PIERS. Notwithstanding any other provision of this article, the Commission shall presume that docks, piers and their appurtenances accessory to single family residences, and the construction thereof over tidelands, are permissible with conditions, and are not likely to have an unacceptable significant or cumulative effect upon the wetlands values protected by this ordinance, provided the following criteria are met:

1. the length (including deck, T, ramps, floats, dolphins, or tie-off piles) does not extend beyond the shortest distance of either (a) one hundred feet from mean low water, (b) one-half the lot’s frontage measured at mean high water or the combined frontage of adjoining lots erecting a shared pier, (c) thirty-five feet away from the edge of a channel, or (d) where the watersheet narrows to a width of less than five hundred feet between two foot depth contours, the Commission may determine another suitable length by taking into consideration the impact of a present or future opposing structure on maintaining sixty percent of the distance between two foot depth contours at mean low water unobstructed;
2. there will be at least one foot without the necessity of dredging between the sedimen top at mean low water and the lowest part of all floats, vessels and propulsion systems;
3. as designed and constructed,

- a. the deck is four feet or less in height above mean high water and four feet or less in width, except if the pier crosses marsh vegetation the height is at least one and one-half times the width of the deck,
 - b. floats, “tee” or “ell” extensions, dolphins and tie-off piles occupy minimum watershed coverage but in no event greater than two hundred square feet,
 - c. all pilings are spaced at least twelve feet apart in length,
 - d. there are no lead pile caps, and
 - e. provisions for suitable passage are incorporated consistent with traditional lawful activities in the area, easements or restrictions of record, and other pier criteria;
4. structural components (including decks, “tees,” “ells,” ramps, floats, dolphins, or tie-off piles) and vessels berthed at the pier are beyond one hundred fifty feet from a public boat ramp, public dock, yacht club dock, or marked public areas meant to confine swimmers for safety purposes;
 5. moorings are required or forced to be relocated over the harbormaster’s objection; and
 6. all requirements of Section 6 and Section 6B are met;

provided, however, that the Commission may vary any of the above conditions in suitable circumstances for shared piers.

SECTION 3

By adding the following Section 6B.

“Section 6B. PRESUMPTIVE DENIAL DOCKS AND PIERS. Notwithstanding any other provisions of this article, the Commission shall be presumed empowered to deny permits for docks, piers and their appurtenances accessory to single family residences, and the construction thereof over tidelands, for failure to avoid or prevent with adequate conditions unacceptable significant or cumulative effects upon the wetlands values protected by this ordinance if one or more of the following criteria are met:

1. non-compliance with any or all of the criteria set forth in Section 6 and Section 6A except as otherwise modified under subsections 2 and 3 of this section 6B;
2. (a) if located where recreational boating has been identified as having particular spatial requirements after consideration by the Commission of any recommendations made by the Waterways Committee upon the advice of the Harbormaster based on wind conditions, tide patterns, current patterns, wave patterns, opposing shoreline distances and orientation, public access locations, and recreational craft characteristics, and (b) the length would extend beyond the two foot mean low water contour;

3. (a) if located where suitable recreational shellfish habitat has been identified within a reasonable distance of recognized public access after consideration by the Commission of any recommendations made by the Shellfish Committee upon the advice of the Deputy Shellfish Constable based upon shellfish relay programs, documented historic patterns of recreational shellfish catch within 10 years, or other documented reasons, (b) is designed as permanent rather than seasonal installation, and (c) within the length requirements under section 6A(1) there would be less than three and one-half feet without the necessity of dredging at mean low water between the sediment top and the operating propellor arc or jet nozzle for any vessel berthed at the dock; and
4. if the pier fails to comply with all the requirements of this section 6B when located in an area covered under both subsections 2 and 3;

provided, however, that the Commission may vary any of the above conditions in suitable circumstances for shared piers; and provided further that the Commission identifies the presence of conditions under Sections 6B(2) and (3) on maps subject to the approval of the Town Council, filed with the Town Clerk and the Commission, and reviewed and revised at least every three years.

SECTION 4

By adding to Section 14, Definitions, the following in appropriate alphabetical order:

“Channel - a route identified by the harbormaster as established for the passage of watercraft whether by customary use or under federal, state or municipal authority.”

“Dock or Pier - a combination of assembled materials that are used as access to the water and extending below the reach of mean high water, including but not limited to, the following:

- a) elevated open, pile supported structure including gangways, floats, extensions, including “ells” and “tees,” dolphins, outhaul piles, and attendant pilings;
- b) floating dock or pier; and
- c) float, dock or pier installed for seasonal use, whether fixed or floating.”

SECTION 5

By adding at the beginning of Section 11 the words “Except as otherwise provided in Sections 6A and 6B,” and by substituting the word “or” for “and” between the words “significant” and “cumulative,” said Section 11 as amended to read as follows:

“Except as otherwise provided in Sections 6A and 6B, the applicant shall have the burden of proving by a preponderance of credible evidence that the work proposed in the application will not have an unacceptable significant or cumulative effect upon the wetland values protected by this ordinance. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions. ”

SECTION 6

By striking from Section 1 the words “public trust rights in trustlands” and from Section 14 the definition of “Public Trust Rights.”

BARNSTABLE TOWN COUNCIL MINUTES MARCH 1, 2001

A quorum being duly present, Town Council President, Royden Richardson, called the regular meeting of the Barnstable Town Council to order at 7:08 p.m., on March 1, 2001, at the Barnstable Town Hall, 367 Main Street, Hyannis, MA.

PRESENT: Richard Barry, Gary Blazis, Gary Brown, Richard Clark, Richard Elrick, Robert Jones, Audrey Loughnane, Gregory Milne, Joseph Pino, and Royden Richardson and Carl Riedell.

President Richardson led the attendees in the Pledge of Allegiance followed by a moment of silence.

Upon motion duly made and seconded it was voted to postpone approval of the minutes of February 22, 2001 to March 15th

VOTE: Unanimous

PUBLIC COMMENT

President Richardson isolated three issues: the airport, Hy-Line and the DCPC and polled the audience to see how many would speak and how much time could be reasonably allotted to each speaker. He began with comments on the airport and referred to a list of speakers

On Airport

Wendy Northcross, of the Cape Cod Chamber of Commerce opposes the ordinance. It will cause a reduction in transportation options for those who take AM flights, a reduction in service to business travelers, a decrease in work hours for airline staff, and a decrease in opportunity to attract clean high-tech businesses to the area. In addition there will be reductions in spin-off businesses such as restaurants, car rentals etc. Restriction of the flight times is irresponsible. It requires further study.

Mary Finnegan, a VP at Coleman Air, has never received a noise complaint in 10 years. They have a slot at LaGuardia, which was hard to get, at 7 AM with only a half hour window. If their flight out is not early enough to make that window, they will have to discontinue AM service and possibly total service to Hyannis. They employ 30 to 60 people, and have been in the community for 10 years. She felt the airport commission has worked hard to solve the issue. The town doesn't need an ordinance.

Ron Semprini, the proprietor of The Café at the airport, said there will be a negative impact on businesses that provide airline service. He will forfeit 18 to 20 % of his business that occurs between 5:45 AM and 7 AM. People work all night to deliver services to the Cape. He called for a rejection of 2001-047 and presented a letter and 320 signatures in opposition, which was given to the council's administrative assistant.

President Richardson read a letter from Rep. Atslalis expressing concern over the ordinance. He is concerned for the citizens living in Hyannis but also feels concern for those who use the airport to get to and from jobs. He hopes the council rejects it.

Steve Volukas, a pilot, lives near the airport. He felt the airport commission was being asked to violate federal law, which could jeopardize airport funding. He also hopes the resolve is rejected.

Hank Farnham, Hyannis Chamber of Commerce, said they support the airport. The weekly harangue is tiresome. The airport is a significant economic engine with payroll of \$50 M.

Dan Wolf, who is with Cape Air/Nantucket Airlines, pledged his support to continue to work with the communities. This resolution short-circuits that process and is not in the best interest of a successful process.

Barbara Ryder, Manager of Cape Air/Nantucket Airlines, is able to get the opinions of the local traveling community. Many rely on early morning departures to get to jobs and meetings. Scaling back the flight times will not help local laborers make a living.

Tom Gaynor, a resident of Yarmouth and an employee of Cape Air, had the same problems when he worked at Green Airport. They were resolved in a way as not to affect early AM departures. The council should take alternate plans under consideration.

Larry Gualtieri explained all the accommodations that have been made by the airport such as ceasing maintenance at night, taking a longer flight plan, etc. These changes cost the company money. The ordinance will hurt the employees who use the air for travel.

Chris Blair from South Yarmouth and Cape Air/Nantucket Airlines said the AM passengers are working people who support the local economy.

Steve Mitch, a senior aviation planner hired by the airport commission, reviewed the Aviation Noise Abatement Policy 2000, explaining that it limits airport proprietors from making airspace decisions. The court did not uphold the noise curfew in Westchester County. Also, the state statute speaks for 3-year terms. There is a need for institutional memory and continuity.

Michael Dunning, an airport commissioner, spoke on the one-year term. It takes a year to get a feel for the job. It is impossible to learn the job in a year. He assured all that the commission was listening and concerned with public comment, even though they may not be able to “roll over.”

Richard Hallett stated that residents are victimized while the airport turns a profit. The noise disturbance and other ills have no recourse. He has over 800 complaints. He feels the public deserves a fair shake from Barnstable and the airlines should go to Boston. Let commuters take two boats to the islands that will take 200 people each. Eliminate the small island hoppers for larger high-tech planes.

Marilyn Carberry, who is an alternate to the Airport Commission and on the Yarmouth Advisory Board, suggested the council should balance economy vs. quality of life. Barnstable can have a voluntary restriction on take offs and landings. Other communities around the country have done this.

Bob Lesnick of West Yarmouth felt there had been many years of talking. He called the Westchester County airport and there have been no complaints. The use of low noise aircraft, impact fees, etc. has been successful in controlling noise.

Eugenia Fortes asked why the people buy houses knowing the airport is there. If they are unhappy it's their own fault they should not have bought.

Mary Florio came from off Cape and did not know how busy the airport was. She came down to make sure the neighborhood was quiet in the middle of winter. There were few early AM low-flying, loud aircraft. The airlines have a responsibility to provide quieter aircraft that do not pollute water, air and soil.

Tom Nelson owns 2 companies, one on the Cape and one on Nantucket. He flies employees every day. Both airlines are safe and get the people where they need to be. He was concerned about the safety of the employees. If flights are held until 7 AM, there will be a backlog of people. You will see plane after plane taking off, not to mention the traffic of people arriving all at once. Now they space it to keep it safe.

Marion Lesnick explained that the Martha's Vineyard airport has a noise curfew.

John Eustitis has had a company for 9 years on Nantucket. There are 300 people who commute daily and they cannot be put on a ferry. The amendment is wrong. Everyone needs to work together.

Patricia Allen has runway lights in her back yard. Flights take off every 5 to 10 minutes. She can't understand what they mean by spacing. She has been on a plane as one of two passengers. There is an effort to fly around Nantucket but not Hyannis. There has to be a reasonable balance. The airport must be "stewards of the environment." She expressed surprise that chamber is not more concerned.

Ms. Bronson explained that many employees are restricted by daylight. Those in the construction fields need to at the job by 7 AM.

Al Smith felt the town manager does not need the responsibility of supervising the airport manager. He asked the council to not move the airport management from the commission, which is a volunteer citizen body, to the town manager, who is responsible to a political body.

Wendy Moore is an 11th generation Cape Codder, whose family owns property that abuts airport. She felt homebuyers should have more foresight in purchasing. The town must keep airport working at its best and there should be no change of control or terms of the commission.

Mr. Spiro from the Cape Cod Technical Council, which is a 300 member organization, established to promote a technical industry on the Cape, said they rarely take issue on public policy but hope this issue can be worked out.

On Hy-Line

David Scudder of Hy-Line has been appreciative of the council's past support of his requests before the Steamship Authority and hopes they will do so again.

On DCPC

President Richardson assured all that there would be an opportunity for discussion of the issues and determination of solutions. He understood the response to the suddenness of the vote. Councilors and the manager's office are available to them. The process needs to be as broad and as interactive as possible. He asked Town Attorney Robert Smith to summarize activities at the Cape Cod Commission and the Superior Court.

Smith did so. Judge Nickerson denied two appeals for preliminary injunctions regarding the commission meeting. The commission has received the DCPC application and heard requests for more public input. The Barnstable delegate to the commission suggested a continuance for more discussion. The continuance prolongs the 36-hour window of the full moratorium until the commission meets again in two weeks. Klimm was concerned that the process be expedited and not have a full moratorium, but the ramifications of today's course of action will mean a longer full moratorium. From the consensus of the meeting, it made sense to have a fuller discussion. The three public hearings have been compressed. The first meeting will be with a group selected by the Homebuilder's Association to obtain input on building caps and exclusions, exemptions to be included to make it fair, etc. In a two-week period the town will address the sense that there has not been enough public input.

John Fallaci spoke from the board of directors of the Homebuilders' Association. They would have been opposed had they known. They wanted to be part of the process before hand, not after. He had to inform a client that he could not begin building. This client has one-year left on a variance and it might be that her lot becomes an unbuildable lot. He felt it was not fair. The problems are existent and to make someone be responsible for past ills is wrong.

John Julius said Councilor Clark was the only one to get credit for voting no. There was no grace and consideration to the taxpayers. He felt it was done in the wee hours without any consideration. Klimm's office said the item was not on the agenda. A moratorium is unlawful, unreasonable, and discriminatory. He asked the council to remember all the laborers who will be out working in 15-degree weather.

Larry Nicholas said the council needs to make a fair and honest decision. There were two hours of advocates voicing opinions, but none from the other side. Now we have two weeks to hash it out.

Peter Kenny was not going to say it was a bad job or a done deal, or lacked public participation, or the DCPC did not appear on any document last week. The town's delegate to the commission was embarrassed. The draft opinion of the Cape Cod Commission was received on Friday the 23rd. Was it written before the council voted? The judge felt there was irreparable injury.

Donald Parks, a local contractor, felt last week's action was a hoodwinking. The actions now keep people from earning a living. He suggested the council should overturn the vote.

Christine Avery thanked council for having the wherewithal to take this stand.

Laura Shufelt applauds the council for taking this stand and nominating the town as DCPC. It allows the town to take a time out. It is the best tool available.

Brian Dacey owns 45 lots to be developed and within 4 months the majority of his employees will be unemployed. Small builders are being denied the right to make a living. There are no large development or large parcels of land left. What is the issue?

He felt it was all about a bureaucratic conspiracy. He has been involved in the community and has had dirt kicked on him. It is about environmentalist vs. industrialist, but it will affect small builders who only build a few lots a year. So many restrictions have been added that make the cost of housing high. He sat on the smart growth committee for nine months, every issue was brought up, but what came out was 2 acre zoning. He felt this vote for a moratorium was behind closed doors. The DCPC never came up in the smart growth committee. People are suffering right now, pulled off the job on Friday for 14 days. The building community wants to cooperate, but behind closed doors you have a war.

Marcel Poyant felt the town manager should be ashamed at the manner in which it was handled. Council should be ashamed too. This has polarized the different factions. Congratulations to Councilor Clark for speaking out last week. He felt many people had been hurt by this vote and hopes it will not happen again.

Jacques Morin felt he could talk strategies *ad infinitum*; but the principles of the council must be open and democratic. Some councilors worked on various parts of the DCPC before last week's meeting. He hopes the council reads these signals of sending it back to them for dialogue. He felt if the council wanted large-scale affordable housing, they should not alienate these that can help. There needs to be common understanding and common goals to reach the requirements of affordable housing. He will be sending the council a letter outlining some other thoughts and hopes in a few weeks people will be happy, a meeting of the minds will have occurred, or the town will have withdrawn the DCPC.

Tom Lynch applauds the nomination of a DCPC. It will allow citizen input on growth. Doing nothing is not an option. People are arguing for the *status quo*. The issue of the effects of growth was central to many debates over the last year; many issues were raised at two workshops on options, including how a DCPC would operate. This wasn't done behind closed doors. It was not improper. It was a tough vote, but the right vote. It is a process to determine the type of community we want.

Paul Revere explained the preliminary injunction process. The Cape Cod Commission attorney said there was no irreparable injury. However, the judge said he would not accept the argument that it has not occurred. The commission is giving the council the opportunity to withdraw. He suggested they could just as easily vote to withdraw.

Kim Cardo proposed the council retract its nomination until more public dialogue occurs. The DCPC did not appear on the town council's agenda. How many workers will be put out of work at this moment by last week's decision? She did not feel there would be a "run" on building permits. Where is the justice to exercise the liberty to develop my land?

John Kenny said the Cape Cod Commission had the choice to accept, continue or deny. They chose to continue. He feels the Cape Cod Commission controls the town and there is no right to vote. There is no process to withdraw. The council has abrogated its authority to a non-elected board. The issue will not resolve in two weeks, or 60 days. Sending this to the commission means you can't trust the public. He suggests telling the grandfathered people that they can build by withdrawing the DCPC. There is time, no rush to build. He will support a sensible cap or an override, if the council is up front about it.

Arlene Wilson felt there were problems with rushed information passed on to the Cape Cod Commission on the DCPC. If the staff report had been adopted as is, much

construction would not have been allowed. She felt a lottery was not fair. There is not enough time to make all the corrections. The process is lengthy and involves the Assembly of Delegates and County Commissioners. Only way to get out, is to go through the same process again. She hopes the council reconsiders the action.

Sue Rohrbach said it was good to hear people speaking from the heart. Knows the hard work it takes to come to these decisions. The Cape Cod Commission has given the town the opportunity for more ideas. The real issue is can the town afford to continue its present rate of growth. She read results of a survey supporting public desire for controlled growth. She suggests continuing with the process and having a fair dialogue.

John Green feels sad because of the late decision without public discussion or consideration of the landowner. It was nefariously carried out. It was government by division and political chicanery. In his opinion, no public opinion equals bad government. There is a waning trust and fairness in the government.

Eugenia Fortes felt it was unfair of the developers to say it was underhanded. It was not. They only come once in awhile. "It is unfair and they know it." She feels the town needs housing badly, affordable housing, and needs to do something about the growth. Morin wants to build 56 houses on 4 or 5 acres of land; he forgot a school. The developers are making money and will turn the town into Nantucket.

E. J. Brown has been in business since 1968. It is a family profession. What is the DCPC? He doesn't know and needs a chance to explore it. When a builder goes out of business, there are spin-offs that also go out of business. Individuals deserve the right to build on their piece of land.

John Knowlton is dog-tired after working 12 hours a day. Council actions awakened the silent majority in this town. He was fortunate to pick up a permit Thursday morning. He had searched 2 years to find a piece of land. In Nantucket the billionaires are kicking out the millionaires. The public was given no notice. This issue has created panic among the working poor in this town. He suggested the council move to retract. He didn't want the Commission to get more into our lives. If Town of Barnstable falls all the rest will follow the example.

Cynthia Cole said the councilors were brave souls. It is a difficult time for every one. Growth is tapping the infrastructure, schools, town coffers, etc. It cannot continue this way. The proposal does not stop renovation or redevelopment. It is an opportunity to build up and move away from sprawl.

Steve Pickle has all his permits and has to close on March 9, due to a mortgage commitment. However, the bank will not give him the loan because he has no building permit. He tried to play by the rules and now he cannot get a building permit before March 9th. He has invested \$80,000 and all will be in jeopardy. He is upset not at what you did, but how you did it. The community has to work collaboratively to solve the problems of the Cape. Amnesty is a stopgap measure.

Greg Ashworth, builder, pointed out that the public opinion survey was 303 people. What were the demographics? The council has been called "brave." They need to take another brave step and recall it until we get equity.

Don Crocker hopes the council takes a long hard look, reassesses, and withdraws the nomination. It will become a trickle-down economic situation.

Gary Lopez read statistics from Cape Cod Trends. He feels these people were disingenuous and double-talking. Growth management is really 8%, which is all that is left. Where were you years ago? Turning it over to the Cape Cod Commission, who double speak was a draconian, Machiavellian move. The council didn't consider the economic impact when you made the decision. Who's getting hurt and why?

COUNCIL RESPONSE TO PUBLIC COMMENT

Councilor Clark made his comments last week. He feels the process is wrong, the presentation flawed, and tonight's demonstration shows a public lack of faith. His opinion has not changed.

Councilor Milne wished more people exemplified the citizenship of Ms. Fortes. It is a participatory government. The town manager is selected by a majority of the council. "Despite how some people feel, I have to do what I think is right." The growth issue has been band-aided. He feels if there were a town meeting, the majority of citizens would support the council view.

Councilor Barry also works 16-17 hour days. The bottom line is a need to do something about the town. He can say he felt he made the right call on this one. There is only a little piece of the pie left. The school just voted pay increases, they deserved it but the numbers can't sustain it. It was not designed to take away people's livelihood. He would like an addition to his home, but can't get a builder until the fall. He cares about the kids that aren't born yet.

Councilor Brown will have an open mind on meetings that are coming up, but is not changing his vote.

Councilor Jones spent 10 years in construction. He knows the problems and that labor with no work means no pay. He voted with the idea that we should open dialogues. This has created an urgency to come to a meeting of the minds and resolve that we can make this work. He liked Dacey's comment on willingness to work. Some of the comments were unfair, but it goes with the territory. No one wants to vote anyone out of a job. He is looking at 15 to 20 years down the road. We need to take charge today or it will not be an enjoyable place to live. He will keep the decision, but will sit down and work.

Councilor Elrick said that no one is calling anyone a bad person. The building cap won't stop building. It extends the lifetime to the building community. There is no choice; if nothing were done, Barnstable would be a nightmare scenario in the future. He doesn't need a survey, just talk to the people. This will hurt, but there is a need to tailor the cap to minimize that hurt. He pointed out that the process of the DCPC was separate from the building cap. The council has an obligation to move forward with the building cap regardless of what happens with the DCPC. Builders will take a hit and he is sorry for that. It was a difficult choice, but feels he made the right decision.

Councilor Blazis is not sure it was the right thing to do; only time will tell. He is disappointed at the vote this afternoon. He wanted a one-day moratorium, which can't be done now. Some can afford to hold off, others can't. Yet, the town can't afford to keep bringing more people in. No one wants a proposition 2½ override. He would like to see some kind of grandfathering for some people who might lose money invested in lots. He pleads with people to come with a dialogue, keeping in mind the town, with an additional \$8 M in school budget requests, etc. He wants a two-month window to work something out, or in two months the Cape Cod Commission will be out of the picture. Again, he doesn't know if it was a mistake, but will live with it for the moment.

Councilor Pino is here for the interest of the whole town, not just the builders in the audience. He wished the builders had taken the initiative to do the right thing when they had the opportunity, before state mandates. The council has been trying to deal with affordable housing for some time. People who cannot afford the house prices are not necessarily people who don't want to work. The rush to get permitted in order to be grandfathered has hurt any attempt to create zoning. The council asked the manager and staff to deliver the tools needed. The council is trying to be responsible to the community, not put anyone out of business. He would like to see builders come forward, work toward community agreement, and come up with solutions to the dilemma. Nantucket is what is about to happen on Cape Cod.

Councilor Riedell was on vacation last week. He was shocked when he returned and has spent many hours on this. He too will speak from the heart. He doesn't really think it was the right thing to do, however, it will not be turned over tonight. Starting Wednesday, if not sooner, we figure how this will be done justly. Mr. Pickle had a real story and there are probably more who will have hardships. He will not ignore it. The council will come up with an equitable way to rectify it this year. This will affect him as well. There will probably be quite a few who will have to be let go. It will not hurt him or Mr. Dacey personally. When the council comes up with what it needs, we will get out of it. He is willing to break the law tomorrow. If a boiler or water heater lets go, he will fix it anyway. We believe in our hearts that there has to be some controls. We have been going hog wild.

Councilor Loughnane heard about boilers not being able to be fixed and asked for clarification. Attorney Smith said there is a provision in Cape Cod Commission Act to allow permits in the event of a natural emergency. He felt the town could work out issuing an emergency permit. Loughnane said she sees the impacts of development week-in and week-out. The council has finally started to address growth. She had a packet that named a DCPC as a growth management tool. It was not a shock. If you don't nominate a DCPC there would be rush on permits; if the caps are too high, we do not control growth. In this way, growth is spread over more years, to give the town time to deal with the ramifications – roads, schools. She will stick with her vote. She had been concerned about single lot owners. Now is the time to put all the concerns in the mix and make the cap so that it accommodates the issues.

Richardson thanked all who took the time to come and to speak stating that the comments have our attention. The council has a responsibility to the town and to the speakers this evening. Hopes there will be near unanimous support for what comes out.

Recess from 9:50 to 10:14

Clark moved and seconded not going past 11
Jones would like to see where we are at and make it at 11. Jones prevailed.

Upon motion duly made and seconded it was voted to go into a public hearing on **Items 2001-042, 2001-043 and 2001-044** at 10:15 PM.

VOTE: Unanimous

Klimm introduced Lindsay Counsell from the Land Bank Committee who spoke on the Smith Street parcel, item 2001-042. They have worked out an arrangement with the water company and the Land Bank approves the purchase.

Klimm spoke on 2001-043, hoping the council will vote to acquire the parcel. It is in the best interest of the town and makes a better affordable housing plan. There is a desire by the landowner to negotiate a partner with the town. He has worked with Councilor Riedell on it. The town should issue an RFP for the current owner and others who want to submit a proposal to develop the parcel. He has correspondence from the Osterville Village Association on it.

Councilor Riedell hopes the parcel will be supported. He tried to negotiate in a friendly way with no success. It is an excellent entrance to the Darby property, protects the wellhead, etc. It is the beginning of showing the town what can be done in the way of affordable housing.

Councilor Loughnane asked the town manager to explain the easement. There is an existing easement in the language, which can be extinguished if the land is taken by eminent domain.

Lindsay Counsell spoke on 2001-044. The property is 6 acres and is part wetland. It gives the town more land in a congested portion of Centerville.

Eugenia Fortes is happy if both are taken. The Smith St. property was well kept until the family died.

John Sweeney, owner of the property on Old Mill Rd., has been working closely with the housing commission and the town manager. He has offered an easement over his land to their property, for nothing. Why spend the money if you don't have to?

Upon motion duly made and seconded it was voted to go out of the public hearing at: 10:26 PM.
VOTE: Unanimous

A motion was made and seconded to take 2001-044 out of order.
VOTE: Unanimous

2001-042 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$104,500.00 FOR THE PURPOSE OF ACQUIRING .52 ACRES MORE OR LESS IN HYANNIS

Upon a motion duly made and seconded it was **ORDERED**: that the Town Council hereby authorizes the Town Manager to purchase, pursuant to and for the purposes set forth in chapter 293 of the Acts of 1998 as amended by section 211 of chapter 127 of the Acts of 1999, take by eminent domain for open space purposes pursuant to the provisions of said chapter 293 as amended by section 211 of chapter 127 and chapter 79 of the General Laws of Massachusetts, or otherwise acquire the land having a street address of 156 Smith Street, Barnstable (Hyannis), containing .52 acres, more or less, as further described in a Quitclaim Deed of Mildred Holder to George H. Jones, Jr. and Bettenia Jones, husband and wife, as tenants by the entirety, dated and recorded August 28, 1962 in the Barnstable County Registry of Deeds in Book 1170, Page 348; and appropriate the sum of ONE HUNDRED FOUR THOUSAND FIVE HUNDRED AND NO/100 (\$104,500.00) Dollars for said acquisition or taking and related costs and authorize the Town Manager to contract for and expend said appropriation for such purposes and accept any gifts or grants in relation thereto; and to meet this appropriation, the Town Treasurer, with the approval of the

Town Manager, is authorized to borrow the sum of ONE HUNDRED FOUR THOUSAND FIVE HUNDRED AND NO/100 (\$104,500.00) Dollars for said acquisition or taking and related costs.

Councilor Jones is hoping the council will see that Hyannis needs it. The people have asked him about the town buying it.

VOTE: 10 Yes, 1 No (roll call)

A motion was made and seconded to take 2001-043 out of order.

VOTE: Unanimous

2001-043 AUTHORIZATION FOR TAKING OF LAND AND GRANT OF EASEMENT IN OSTERVILLE BY EMINENT DOMAIN AND APPROPRIATION IN THE AMOUNT OF \$136,000.00 IN FURTHERANCE THEREOF

Upon a motion duly made and seconded it was

ORDERED: that the Town Council hereby authorizes the Town Manager to take by eminent domain for assembly of land to be added to other land for future construction of buildings for affordable housing and/or general municipal purposes pursuant to the provisions of chapter 79 of the General Laws of Massachusetts, or otherwise acquire the land located at 459 Old Mill Road in Barnstable (Osterville), Barnstable County, Massachusetts containing 2.8 acres, more or less, shown as Parcels 1 and 2 on a plan of land entitled "Plan of Land Located at 459 Old Mill Road, Osterville, MA (Barnstable) prepared for Starboard LLC October 25, 2000" and recorded in the Barnstable County Registry of Deeds in Plan Book 561, Page 17, a copy of which is filed with the Barnstable Town Clerk's Office; and raise and appropriate, transfer and appropriate from available funds, or borrow pursuant to clause 3 of section 7 of chapter 44 of the General Laws of Massachusetts the sum of ONE HUNDRED THIRTY-SIX THOUSAND AND NO/100 (\$136,500.00) Dollars for said taking and related costs; and further to authorize the Treasurer, with the approval of the Town Manager, to borrow pursuant to clause 3 of section 7 of chapter 44 of the General Laws of Massachusetts the sum of ONE HUNDRED THIRTY-SIX THOUSAND AND NO/100 (\$136,500.00) Dollars for said taking and related costs; and further to authorize the Town Manager to grant an easement covering 3,228 square feet, more or less, to the northerly abutter to the above described property, as shown on the above mentioned plan.

Councilor Riedell said the Osterville Village Association Board of Directors unanimously voted in favor of the affordable housing purpose stated for this parcel.

VOTE: Unanimous (roll call)

A motion was made and seconded to take 2001-044 out of order.

VOTE: Unanimous

2001-044 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$153,000 FOR THE PURPOSE OF ACQUIRING 6.14 ACRES MORE OR LESS IN CENTERVILLE

Upon a motion duly made and seconded it was

ORDERED: That the Town Council hereby authorizes the Town Manager to acquire by purchase for the purpose of open space and passive recreation as specified in Chapter 293 of the Acts of 1998, a parcel of land located at Route 28, Centerville, Barnstable county, Massachusetts, consisting of 6.14 acres of land, more or less, being shown as Parcel 4 on Town of Barnstable Assessors' Map 168 and as described in a deed recorded with Barnstable County Registry of Deeds in Book 3387, Page 275, and to meet this appropriation the Town Treasurer with the approval of the Town Manager is authorized to borrow \$153,000.00 for the purchase and related costs and that the Town Manager is authorized to contract for and expend the appropriation made available for this purpose and to accept any gifts or grants in relation thereto.

VOTE: Unanimous

OLD BUSINESS

2001-047 RESOLVE ON QUALITY OF LIFE FOR CITIZENS

Upon a motion duly made and seconded it was

RESOLVED:

Whereas the Mission Statement of the Town of Barnstable reads as follows, “ Our mission is to provide quality municipal services consistent with our budget policy to address the needs of our Citizenry. We strive to efficiently and effectively promote, preserve and protect the quality of life and the special character of our unique seaside community”, and

Whereas the quality of life of our residents is of utmost importance to the elected officials of our town, and

Whereas noise pollution contributes to the intolerable conditions of sleep deprivation and sleep disruption of our residents and those of nearby towns,

Therefore, be it resolved, that the Airport Commission be notified of the concerns of the elected officials of the Town of Barnstable and that it is our opinion that every effort should be made to create a voluntary early morning schedule of flights' plan which excludes all non-emergency flights, not commence until 7 a.m.

And be it further resolved that the Town Council endorses such a plan and looks forward to working with the airport in order to fulfill this objective.

Councilor Loughnane is willing to make friendly amendment by adding, “which excludes all non-emergency flights.” People constantly complain about the early AM flights, yet people have to use the flights to get to places of business. She would like to see if there is some meeting ground in the middle. The resolve is not telling you what you have to do, but to please work on it and listen. There is a silent group of people out there. She is asking the council to ask the Airport Commission to look into a voluntary system. They exist all over the country and have environmental fees attached. Landing fees are higher between 10 PM and 7 AM, there are leases, etc. There needs to be a meeting of the minds and progress.

Councilor Pino is not sure he wants to support a resolve but wants to know about the economic impacts to resolving the complaints. He suggests the council request the impact study of the airport manager.

Councilor Clark urges caution. Thirteen people recommended it not be adopted due to the impact on people who need to get to work. The council should not set policy based on a few people who lodge most of the complaints. He urges it not be adopted.

Councilor Brown lives closer than any councilor to the airport. The planes do not bother him. Maybe the owners of the homes paid less for their homes, because of the proximity to the airport. The first 200 people who called the complaint line were from Yarmouth. Currently the airport has just installed a piece of equipment to track height of planes for Yarmouth. The majority of the people are not upset. Vote it down.

Councilor Elrick cannot support the item but will be watching the next phase of the airport commission work. Hopes the effect will be felt.

Councilor Riedell will vote in favor. It tells us what we want to hear. The amendment takes out the strings, it does no harm.

Councilor Loughnane feels it will not put 1900 people out of work. We are sending a message to make things work. The airport affects Yarmouth wells. They are neighbors, and frustrated.

**On 2001-047, shown above as amended.
VOTE: 3 Yes, 8 No (roll calls)**

NEW BUSINESS

2001-052 ADMINISTRATIVE CODE AMENDMENT RELATING TO THE TERM OF OFFICE OF THE AIRPORT COMMISSION UNDER SECTION 3.01

Upon a motion duly made and seconded it was
ORDERED

SECTION 1.

That Part II of the administrative code established under Part 5 of the Charter is hereby amended by striking out section 3.01 and inserting in place thereof the following:

3.01. Composition; Term of Office

There shall be an Airport Commission consisting of seven members, appointed for one year terms.

SECTION 2.

The terms established by section one shall apply to the positions of all members of the airport commission, whether they have been appointed before or after the effective date of this order. Terms of the members of the airport commission appointed prior to the effective date of this order shall expire on June 30, 2001, and those members shall be subject to re-appointment or replacement consistent with this order.

Councilor Clark felt the decision to amend how we appoint one board is draconian. He will not support it.

Councilor Barry agrees.

Councilor Brown asked if it was legal. Does the FAA have guidelines on this? Smith said that while the statutes call for 3-year terms, communities could change the arrangement under their charter. The council has the ability under Part 5 of Charter to do so. It is legal. It is not a charter amendment, but a provision allowed under the existing charter.

Councilor Jones felt it was a poor precedent to set and he will not support it. He would rather work out commission problems collectively.

Councilor Milne thanked the airport staff for allowing him to get involved. He asked President Richardson for his rationale. He wanted to hear Richardson's comments. Richardson read the rationale from the agenda. Milne would like to see the long promised workshop.

Councilor Pino agrees with Clark that it could be misused as a tool in the future. However, to not use the tools available within the charter and within the law is not wise. The problem at the airport has escalated. Micromanaging has taken over by some airport commission members. He was upset that an airport commission member threatened to use \$10,000 of his money to thwart the charter commission proposal, which changes the airport structure by putting the airport manager under the town manager. He will support this and would like to ask for two resignations.

Councilor Blazis took over the chair so Richardson, who sponsored the item, could speak.

Richardson felt that although his suggestion is out of the ordinary, it is important that we do it. He has reached out a number of times in the last years on a variety of issues. The comment always comes back that the council has nothing to say about it anyway. He has tried to build a team and it hasn't always worked out. It is an important commission and essential to the town. Annual appointments will help strengthen the commission. He asked for approval.

Councilor Milne added that it still gives the option to reappoint when the one-year terms are up.

VOTE: 6 Yes, 5 No (roll call)

A motion was made and seconded to continue the meeting until it is over.

VOTE: Unanimous

2001-053 AN ORDER PROPOSING A CHARTER AMENDMENT TO THE VOTERS OF THE TOWN TO PROVIDE FOR MAKING CERTAIN CHANGES IN THE ADMINISTRATION OF THE MUNICIPAL AIRPORT

Upon a motion duly made and seconded it was voted to refer this item to a public hearing on April 5, 2001.

VOTE: Unanimous

2001-054 AUTHORIZATION FOR PURCHASE OR TAKING BY EMINENT DOMAIN OF 1.58 ACRES MORE OR LESS OF PROPERTY IN MARSTONS MILLS AND APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$1,250,000.00 IN FURTHERANCE THEREOF

Upon a motion duly made and seconded it was voted to refer this item to a public hearing on April 5, 2001.

Ed Shillinglaw represents the owner, who is willing to work with the town. No one has contacted them. It will be expensive for the town to run a marina. It will be very well done by the owner. Running it will cost the town money as well. His client is willing to work with the town.

VOTE: Unanimous

2001-055 AUTHORIZATION FOR PURCHASE OR TAKING BY EMINENT DOMAIN OF 7.62 ACRES MORE OR LESS OF LAND IN MARSTONS MILLS AND APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$245,000.00 IN FURTHERANCE THEREOF

Upon a motion duly made and seconded it was voted to refer this item to a public hearing on April 5, 2001.

VOTE: Unanimous

2001-056 RESOLUTION THAT THE TOWN COUNCIL PARTICIPATE IN THE ADOPT-A-CLASSROOM PROGRAM IN THE MAIN STREET LEARNING PROGRAM AT THE BARNSTABLE HORACE MANN CHARTER SCHOOL

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council adopt one (1) of the fifth grade classes to participate in the Main Street Learning Program in the Horace Mann Middle School. This will link the Council and its youth in how town government functions. The children will have direct access to the Council and Chair as well as some part of its legislation.

Councilor Blazis explained that this is an opportunity for businesses on Main Street to adopt a class. The town is the biggest business on Main Street and would be interested in doing this.

VOTE: Unanimous

President Richardson appointed Councilor Blazes to work on this along with Councilor Milne.

2001-058 A RESOLVE ENDORSING AND SUPPORTING THE BUSINESS PLAN OF HY-LINE CRUISES.

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council endorses and supports the business plan of all grandfathered Passenger Ferry operations in private ownership, currently operating out of our harbors a fast ferry in excess of 100 passengers to incorporate a larger and more technologically advanced high speed ferry to service the island of Nantucket. Said plan is to reduce Hyannis Harbor traffic by the elimination the scheduled trips of a 440 passenger ferry, and to incorporate these passengers into a new and larger high-speed ferry. The Council furthermore instructs the Council President to convey to the Steamship Authority our support of all grandfathered Passenger Ferry operations in private ownership, currently operating out of our harbors a fast ferry in excess of 100 passengers business plan and urges them to make whatever policy changes that are necessary to effectuate their plan.

Councilor Loughnane would be more comfortable if it were in generic language. It is hard as a council to separate out a particular business.

Councilor Jones said the town has a precedent of supporting specific businesses via TIFs, Tax Increment Financing. Hy-Line has to operate under the SSA. Town support will help.

Councilor Clark made the following generic friendly amendment, replacing the words “Hy-Line” with “all grandfathered Passenger Ferry operations in private ownership, currently operating out of our harbors a fast ferry in excess of 100 passengers.” Councilor Jones accepted the friendly amendment.

On Item 2001-058 as amended and printed above.

VOTE: Unanimous

PUBLIC COMMENT

Steve Volukas was disappointed at the second airport vote. The noise issue has been a big issue. He feels there is a hidden agenda. He gave several examples of instances to discredit the airport by the dissident group.

GENERAL DISCUSSION

Attorney Smith pointed out that the council was collectively in an historic position in the town, to be both fair and loosen up zoning. It is a remarkable difference from what has occurred before. He expressed confidence that it will come out fair in the end

A motion was made and seconded to adjourn the meeting at 11:17 PM.

VOTE: Unanimous

Respectfully submitted,

Lucia Fulco
Assistant Town Clerk