

TOWN COUNCIL MEETING

August 19, 2004

A quorum being duly present, Town Council President, Gary Brown, called the meeting of the Barnstable Town Council to order at 6:00 pm, on August 19, 2004 at the Barnstable Town Hall, 367 Main Street, Hyannis, MA.

PRESENT: Richard Barry (late), Janice Barton, Gary Brown, Ann Canedy, James Crocker, Jr., Leah Curtis, Henry Farnham, Janet Joakim, J. Gregory Milne, James Munafo, Jr., Royden Richardson, Tom Rugo (late) and Harold Tobey.

President Brown led the Council in the Pledge of Allegiance and a moment of silence.

President Brown noted the recent passing of Ruth Rusher and Adolph ‘Dolph’ Richards, both in their 90s, who helped give Hyannis its ‘nautical yankeeness.’

PUBLIC COMMENT

Alan Goddard of Hyannis spoke on three items: 1. The Pilot House proponents are seeking a temporary shelter. He felt it should not be sited in downtown Hyannis since Hyannis already shoulders its share of social services. Other villages need to take the lead. 2. The changing traffic patterns into the town hall parking lot will require signage and supervision of the curbing which does not allow a left into town hall. He heard that DPW is considering retaining the access by removing a hedge and installing a retaining wall next to the post office. The retaining wall deserves serious consideration. In general he is against closing the roadway. 3. There is no place in the regulatory agreement that addresses abutter’s rights. Currently there is an appeals process through the ZBA. How will the agreement work for a disgruntled abutter and who will the abutter sue? The agreement must speak on this so the abutter’s rights are protected.

Al Baker of Marstons Mills wonders how the public can influence the council on projects into which they have no input right now. He feels the town is different and it will be more different. “What have we done to my town?” Tourists don’t come down to see more tall buildings. The Walkway To The Sea is nice and clean but that is all it is. The parking lot changes will have an impact, especially if there is an accident. Sometimes nice improvements, if they are not what most people want, will fail. He felt the council’s job was to figure out the right thing to do for their constituents and all the town’s citizens. What can an everyday citizen do to influence the councilors? He also congratulated Councilor Munafo because it is hard to stand up and do what is right.

Dom Gautreau of Centerville invited the council and the general public to a meeting on Sept. 2 at 4 PM to look at the property assessments for the town and the Commonwealth. The problem is wider than the town and the Cape. Several states have ‘Save Our Homes’ amendments in their constitutions. Ken Wilkinson, a lead appraiser in Florida and active in the passage of such an amendment that caps assessment values, will address the public. Gautreau would like all to get as much information from someone who has done it. It may take several years and a constitutional amendment.

Sen. Robert O’Leary encourages the council to approve the Community Preservation Act. It will double revenues to the land bank without increasing fees or local and state taxes. Its passage opens up an existing fund that is currently not available to the town. It will double revenues and give more flexibility on its use, including for affordable housing.

Hillary Green discussed the status of the Pilot House. What has been achieved here? The leadership has been in support of homeless yet the Pilot House is gone. She feels the homeless also need to be near all the services that others enjoy – medical services, etc. – which are in Hyannis. She asks about incremental funding and the shelter plan at Mildred’s. It appears to her

that there is no shelter plan or substitute for the Mildred's location. She asks that the council please refocus as a group and get back to helping people who need a roof over their heads.

Dawn Burt of Centerville is also worried about the plight of the homeless. Her parents were working poor and always opened their home to people in need, giving love and compassion to those less fortunate. She feels too many people care too much about their own needs and pleasures. The youth need adult role models to be examples of caring. She asks the council to do the right thing.

Alan Burt is ashamed that as a resident, who volunteers at a church shelter, that he has to tell people that there is no place for them and that there is nothing he can do. Town leaders have demonstrated commitment and need help from other towns. However the town needs to get the Pilot House up and running as an example to the other towns. Imagine many towns each with a Pilot House. The Pilot House was incredibly effective; now the homeless are back to the woods and some of them are dying out there. He asks the council to take a 'no tolerance' stand and get the Pilot House up and running.

Sharon Brilliant is homeless, or houseless, as she prefers to say. There is a need for overnight parking for houseless people with cars. She was ticketed at a public parking lot where she left her car overnight. She has had to try to find parking lots where she can leave her car. She does not sleep in it. The car is registered, she pays excise tax, and an extra \$100 on the insurance for garaging the car in Hyannis. She asks the council to consider a special parking permit for the few who are in her situation.

John Brennan had three items: 1. On the golf course, he asked if bond counsel has offered an opinion on item 107 and will it appear on a future agenda. 2. On the property classification, he asked when the sub-committee would be taking a final vote and making a recommendation to the council. 3. He invited the public and councilors over age of 50 to join him at the Academy of Lifelong Learning at Tilden Art Center on 8/21 from 1-4 pm.

Marcel Poyant of Osterville asked for clarification on traffic overlay article which was pulled at last meeting and not on this agenda. He hopes it is no longer applicable and the council will clarify that the moratorium is no longer in existence.

Sue Rohrbach is disappointed that the purchase of the Hyannis Golf course is not on the agenda. She feels it is important for open space, water protection, and traffic considerations. It will be creating a park in center of town that is accessible to all. She urges the council to think of the impact in the future. People will look back and ask 'how did we miss this?' Let the purchase happen.

Jim Julius also spoke about the golf course. He asked in July for all to take a step back because it was a \$9.2 M purchase. In the early '90s the course was not profitable. In the next 30 days he urges the council to take a good look at a certified appraisal and financials from a certified accountant before spending the money. He suggests they do the taxpayers a favor and take a solid look at what the course is doing now. He feels there are important issues that are not being addressed. He is looking forward to leadership from the town manager, which he has not seen. Also, eminent domain does not belong on the table and it should be off the table for good and forever.

Pam Burkley, Director of the Cape Organization for the Rights of the Disabled and Associate Commissioner for Disabilities, asked for the council's support on the Pilot House issue. The public looks to its leaders to help move things along that we consider important. Help look for a plan that works. They have resorted to secrecy at this point to avoid the negativity. She feels it is wrong to be buying a golf course when there are people who have no place to sleep tonight.

Kris Clark of West Barnstable echoes Sue Rohrbach, in her support of the golf course. Land that contributes to well waters will be considered as important in the future as oil wells are now. She suggests the council approach the process with integrity. She also announced the annual West Barnstable Village festival this Saturday.

Tina Carey of Centerville asked about the sewerage treatment plant. She wanted to know where the money was coming from, where it was going to be, would there be a town-wide vote on it, do people on Wequaquet and Long Pond have a voice on hooking up, and should people on the water be required to be Title 5 compliant. She understands that the lakes people will contribute \$21 M, \$1 B is for the treatment plant, and another \$185 M will be spent for capital improvements in next 5 years. Where is the money coming from? We are spending \$10 M on a golf course, while we own hundreds of acres. She asks if a few acres could be given to people for the Pilot House. She feels the town has lots of land, but its priorities are out of line.

ACT ON MINUTES

President Brown opted to postpone action on the minutes pending some clarification of language. There were no objections.

COUNCIL RESPONSE TO PUBLIC COMMENT

President Brown asked DPW Director Mark Ells to respond to Mrs. Carey. Ells said he was not clear on which newspaper article said \$1 B. It might have been a generalization on the long-term total cost as nitrogen loading is addressed on Cape Cod. He is not bringing forward any projections that are in the billion dollar range. As for Title 5 systems on the lake, whether they will have to connect is a question. They have title 5 systems in already in areas where they are not the preferred way to do it long-term. There are innovative technologies on how to do this on site. He will have to lay out the alternatives, identify what the problems are and whether the technology will address them. He has looked at options from all over the world.

President Brown clarified that the golf course money is not town funds. \$5 M will come from the land bank and the remaining \$4.5 M from receipts. None of that money can be used for any other purpose.

Town Manager John Klimm responded to Mr. Poyant on the moratorium. He is planning to bring forward a work plan that represents the work that would have been done had there been a moratorium. The work still has to be done. The moratorium is not going to happen.

Councilor Barton thanked various people in the audience. She extended an invitation for an update on the Pilot House. Klimm mentioned a few components of the Pilot House location issue. They have been working with human services people. There is \$3 to \$4 thousand available this year for homeless programs that was not available last year. Barnstable has been active in advocating for the resources. The town did come up with acreage for it at the airport which has been identified, thanks to the Airport Commission. A short term license has been issued to Cheryl Bartlett. The council did do exactly that – come up with resources for human services. He met this past Friday on plans for the construction of Pilot House. It is unfortunate that something so successful is not currently in operation. Whenever he has been asked for specifics, the town has come up to the plate and responded.

Councilor Milne wondered about the status of using the old Quonset huts from the jail as part of a temporary solution. He was struck by Al Baker's point – what can a citizen do to influence one's councilor. He prefers to think that all councilors are everyone's representatives. However, how they can be influenced by the public is a good question. He suggested the possibility of using the charter provision for periodic town meetings to explore how people influence the council, how town ticks – power, priority, decisions. Regarding Mr. Gautreau's assessment

issue, can it be videotaped and played? On golf course, he suggests keeping communication open.

Councilor Richardson commented on the plight of homeless and Pilot House. The town has stepped to the plate in various ways; however, it seems to have fallen short to accomplish this. The Airport Commission has come through. There have been no announcements every time a parcel comes up as a solution because people come up with why it will not work. The Human Service committee has put in place a person accustomed to the regulatory process. Persistence is the name of the game.

Councilor Crocker asked for a clarification on the status of the golf course and of bond council's opinion. Klimm explained that bond counsel said because of the unusual steps that occurred they suggested a confirmation by another vote. He will be meeting with golf course people and planning to bring it back to the council. Crocker responded to Mr. Goddard, who spoke on the appeals process. This is the first step in a lengthy process. On the homeless, Crocker echoes the council's involvement as exceptional. Also, he can't say enough about the airport's involvement. They have nothing about this in their charter yet they have dealt with the homeless issue.

Councilor Farnham explained with regard to the classification committee vote, that they were unable to meet this week and will establish another date. What is the current plan for traffic flow through the parking lot? Status of human services needs a study committee. Richardson explained the human services committee, will be reorganizing. Farnham also added that the assessment committee will be meeting shortly. They tried meeting with the three towns who have a split tax rate but only one of the three was willing to have a conference call. They have not been able to organize a meeting with the communities. The Sept. 2 committee meeting is being hosted by BEAR and will cover how another state deals with it.

Mark Ells explained the plan to modify the entrance and exits of driveways around the JFK Museum and the town all. He met with concerned business and towns people and decided the library side driveway will become an exit and the one next to post office will be closed temporarily. This will occur after Labor Day and he will get feedback to see how it actually is working. If they need to look at alternatives, this will create time delays and modification of the bid documents. He will be communicative and provide plans and descriptions of the pilot plan and either go forward or come up with alternatives.

Councilor Curtis questioned the money for the Community Action Committee. Klimm said it has been received. Klimm heard that \$300 to \$400 of new money had been appropriated by the Assembly of Delegates this year for homeless issues. Curtis feels it is important to have a tangible sense of where the money is going. In addition, Mr. Baker's comment made her stop and think. She struggles with the size of the town; all have responsibilities to many people in a very large area. The council is responsible first to the town and to our constituents. Making the communication flow is part of the job. She hopes it is a two-way street. We are the fifth largest town in the Commonwealth.

Councilor Barton thanked Mark Ells for his responsiveness and the DPW for the signs.

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

Councilor Richardson asked the town manager or town attorney for the status of the wind farm. Klimm heard the decision will be made after the summer. Richardson suggested the council reaffirm its opposition before a decision is made. President Brown will bring it up again.

Councilor Tobey received information from MEPA on the proposed Exit 6 ½. Can the council get on the list before the 8/25 deadline? Klimm said funding for Exit 6 ½ should come from the legislature, but they missed getting on the TIP (Transportation Improvement Projects) list. It is not wise to rely on the TIP as a primary source of funding but it makes sense to have it as a dual strategy. Mark Ells will explain. Tobey felt the sense of the council was to have the project on the list.

Mark Ells, DPW Director said Exit 6 ½ will be included on the TIP list. Highway projects on the list have access to federal funding. Barnstable is not on the list yet but he is looking to obtain plans and costs, which must be available before the project can be programmed in for funds. After the plans are complete, the town will be assigned a number by Mass. Highway, then send a letter to have it included. Right now it is not on the agenda for the 25th. Tobey hoped it would have moved forward faster.

Councilor Joakim on the issue of political signs said it was a non-partisan issue and signs should be up 30 days before the election.

Councilor Munafo, referring to a letter from the town clerk, was in disagreement. It is just a policy within the town which is often used as if it were a law. It does not supercede the first amendment. He also asked the town manager what is being done regarding better communication with committees.

Crocker passed on praise to the DPW through Ells and also to Town Attorney Smith and Assistant Town Attorney Ruth Weil for their efforts.

Councilor Milne did not receive the documents on Exit 6 ½. He also wanted to know the status of the Quonset huts belonging to the county jail that were to be used for housing. He announced the upcoming dedication of the Eugenia Fortes Beach.

Councilor Barton announced Marstons Mills Village Day on Sept 12th.

Councilor Canedy announced the Barnstable Village Civic Ass'n. meeting on Aug. 23. While Canedy agrees that the first amendment supercedes the political sign policy, she will comply with it.

Councilor Richardson pointed out that the council spent a long time in discussion about the placement and timing of signs. People felt keenly about the appearance of the town.

Councilor Farnham reminded the public of the DPW project on Service Road in West Barnstable. It is a major repair job and there will be delays as well as times when the road will not be useable. He also reiterated the West Barnstable festival this Saturday.

President Brown read the political sign letter from the town clerk (see Exhibit A). He congratulated Ells on the work accomplished on the school preparations. The town is ticketing cars to prevent people leaving their cars in the town lot and then taking a taxi to the boat.

TOWN MANAGER COMMUNICATIONS

John Klimm said the next Citizens' Leadership Academy will begin on Wednesday Sept 8. With this class, the town will have over 130 residents who have participated and including the people participating in the Citizen's Police Academy, there are over 500 participants. He is in the finalizing process of granting a lease for the JFK Museum. The town will be receiving over \$57,000 in rent. He will be finalizing least for the rental of the Trayser Museum as well.

Councilor Crocker thanked Dave Curley, Recreation Director for his department's efforts in resolving the beach parking issues.

ORDERS OF THE DAY

OLD BUSINESS

2004-109 – Appropriation and Loan Order in the Amount of \$250,000.00 for the Purpose of Acquiring 13.43 Acres More or Less in Marstons Mills, Assessors Map 58, Parcel 12

A motion was made and seconded to open a public hearing on this item at 7:52 PM.

VOTE: Unanimous

Councilor Curtis read the following amendment which was seconded:

“After the words ‘June 30, 2005’ add the following:

‘; and that the Town Manager is authorized to grant conservation restrictions to be held by the Barnstable Land Trust in furtherance of the aforesaid.’”

Councilor Munafo removed his Charter Objection.

Jaci Barton, Barnstable Land Trust, said the BLT voted to support the purchase of the Eldredge and Archibald properties and voted to support the funding of the purchase. She explained the importance of these purchases. It is also a herring run and families come to view the herring. This would provide acres and acres for passive recreational use for the town. She hopes the council will support the efforts of the Land Bank Committee

Lindsay Counsell gave the rationale. He explained that the land bank funding is for the public benefit. It is dedicated for land purchases and cannot be used for any other purposes. These parcels fit 10 of the 14 criteria that the land bank uses to evaluate properties. The town is fortunate that these have not already been developed.

Al Baker, chairman of the River Committee, said they were in favor. It is another portion of the watershed. He urges the council to support the item.

A motion was then made and seconded to close the public hearing at 8:03 PM.

VOTE: Unanimous

As amended:

2004-109 – Appropriation and Loan Order in the Amount of \$250,000.00 for the Purpose of Acquiring 13.43 Acres More or Less in Marstons Mills, Assessors Map 58, Parcel 12

Upon a motion duly made and seconded it was

ORDERED: that the Town Council hereby authorizes the Town Manager to purchase or otherwise acquire 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, land and interests in land in the Town of Barnstable (Marstons Mills) further described in a deed recorded in the Barnstable County Registry of Deeds in Book 5695, Page 293, together with appurtenant rights of record, subject, however, to a reserved life estate with right of reverter; appropriates the sum of TWO HUNDRED FIFTY THOUSAND AND NO/100 (\$250,000.00) Dollars for said acquisition or taking and related costs; authorizes the Town Manager to contract for and expend said appropriation for such purposes and accept any gifts or grants in relation thereto; to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, is authorized to borrow the sum of TWO HUNDRED FIFTY THOUSAND AND NO/100 (\$250,000.00) Dollars for said acquisition and related costs; provided, however, that a purchase and sales agreement and fundraising is completed by June 30, 2005; and that the Town Manager is authorized to grant conservation restrictions to be held by the Barnstable Land Trust in furtherance of the aforesaid.

Councilor Curtis pointed out letters of support that have been given to the council.

Councilor Munafo asked about appraised values. Counsel said they were in the range of \$800,000 to \$900,000. They have appraisals to back it up and are comfortable with the value. Munafo commented on the sustainability. As the town spends the money from the land bank, it is losing tax revenues to the town. Can the town financially sustain putting more land into open space? He feels the council needs to take a look at that.

Councilor Canedy recommends a positive vote on this one item and the next one.

Councilor Richardson had shared Munafo's concerns, but learned of the great benefit of open space. It keeps the expenses of town services down, especially this kind of open space which will increase property values of the surrounding areas.

Councilor Crocker had a question on the amendment. Due to the cooperative nature of the purchase, why we are giving up the rights - conservation restriction - to someone else like the BLT. Jaci Barton explained that the town owns the land and BLT holds the restriction. It is needed to satisfy their donors that the money is in fact going towards conservation purposes.

On the amendment:

VOTE: Unanimous

On the item 2004-109 as amended (see above).

VOTE: Unanimous

2004-110 – Appropriation and Loan Order in the Amount of \$250,000.00 for the purpose of Acquiring 10.2 Acres More or Less in Marstons Mills, Assessors Map 58, Parcels 11-1-7, 19 and 20 and Map 59 Parcel 14

A motion was made and seconded to open a public hearing on this item at 8:12 PM.

VOTE: Unanimous

Councilor Curtis read the following amendment which was seconded:

“After the words ‘June 30, 2005’ add the following:

‘; and that the Town Manager is authorized to grant conservation restrictions to be held by the Barnstable Land Trust in furtherance of the aforesaid.’”

Councilor Munafo removed his Charter Objection.

Counsell said the same values hold for this parcel. The tax income from the parcels is not lost to the town. It is spread out among the rest of the tax payers. Actually the town saves money by putting land in Conservation.

A motion was then made and seconded to close the public hearing at 8:15 PM.

VOTE: Unanimous

As amended:

2004-110 – Appropriation and Loan Order in the Amount of \$250,000.00 for the purpose of Acquiring 10.2 Acres More or Less in Marstons Mills, Assessors Map 58, Parcels 11-1-7, 19 and 20 and Map 59 Parcel 14

Upon a motion duly made and seconded it was

ORDERED: that the Town Council hereby authorizes the Town Manager to purchase or otherwise acquire 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, land and interests in land in the Town of Barnstable (Marstons Mills) further described as Lots 1-7 on plan of land recorded in the

Barnstable County Registry of Deeds in Plan Book 464, Page 17 and deeds recorded in Book 13128, Pages 60 and 62, together with appurtenant rights of record and the fees in streets and ways shown on said plan; appropriates the sum of TWO HUNDRED FIFTY THOUSAND AND NO/100 (\$250,000.00) Dollars for said acquisition or taking and related costs; authorizes the Town Manager to contract for and expend said appropriation for such purposes and accept any gifts or grants in relation thereto; to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, is authorized to borrow the sum of TWO HUNDRED FIFTY THOUSAND AND NO/100 (\$250,000.00) Dollars for said acquisition and related costs; provided, however, that a purchase and sales agreement and fundraising is completed by June 30, 2005 ; and that the Town Manager is authorized to grant conservation restrictions to be held by the Barnstable Land Trust in furtherance of the aforesaid.

On the amendment:

VOTE: Unanimous

On the item 2004-110 as amended (see above).

VOTE: Unanimous

The council recessed from 8:17 to 8:25 PM.

President Brown announced that the council will move the next three items (2004-113, 114, and 115) into the record and one public hearing will be held for all jointly with the Planning Board.

2004-113 - Amend the Zoning Ordinance by Adding the Following Provision to the RC-1 Residential C-1 Zoning District as a New Sub-Section 3-1, 4 (4)(b), as Follows

A motion was made and seconded to open a public hearing on this item at 8:29 PM.

VOTE: Unanimous

2004-114 – Amend the Zoning Ordinance by Adding the Following New Special District Provision Section 3-1-8, Private Initiated Affordable Housing Development

A motion was made and seconded to open a public hearing on this item at 8:29 PM.

VOTE: Unanimous

2004-115 - Amend the zoning Map Boundary Line of the Residential C1 Zoning District and the B Business Zoning District in Hyannis as Follows

A motion was made and seconded to open a public hearing on this item at 8:29 PM.

VOTE: Unanimous

Present for the Planning Board were Chairman Roy Fogelgren, Raymond Lang, Robert Stahley, Patrick Princi, Steve Shuman and Felicia Penn.

The Planning Board also opened the public hearing on all three items.

VOTE: Unanimous

Tom Broadrick, Director of Planning, explained that a private party has initiated these zoning amendments. Item 113 is a special permit change; item 114 sets the requirements and item 115 is the change to the map. He explained the location of the area on the zoning map. All it does is allow the RC zoning district to be complete and aligned with property lines instead of splitting a property in half. A ¾ vote will be required only on the map.

Mark Bobrowski, an attorney from Concord, Mass. was invited to speak in his role as the mediator involved in the appeal proceedings before the Housing Appeals Commission (HAC). This was initiated by the Jacques Morin, developer of Settler's Landing, a Chapter 40B project, which was denied by the Zoning Board of Appeals. Bobrowski identified all the parties and their representatives. He explained the desire of the petitioner to reduce the density; hence, they

submit the zoning changes. Through the mediation, 168 units have been reduced to 49 units, 20 of which will fall under 40B with 25% affordable, and the other 29 will fall under 40A, with 20% affordable. A total of 15 will be affordable. The mediation plan needs a zoning change to accommodate the 40A portion. Currently pending at the ZBA is another 96 unit project at Schooners Pass. It can be withdrawn and be reduced to 29 units. They have one more piece which is to go before the Cape Cod Commission; hence the settlement agreement has not been signed.

Item 113 describes the PI-AHD, which is not an overlay district and not a zoning change, but it provides the ability to create a district that is affordable under the LIP (Local Initiative Planning) program. The Planning Board will be responsible for setting rules and regulations for the plan submitted. Bobrowski reviewed the salient points of item 114. He feels it is a pretty straightforward plan.

He feels this is a good plan and apologizes to the housing committee which was overlooked. He had excellent cooperation from the regulatory departments.

Councilor Tobey asked about Section 5 F. This means that the affordable units must be interspersed through the development.

Councilor Barry asked why the drop in affordable units to 20% occurred. The 25% affordable is the 40B standard and subject to a cap on the profit. Because of the reduction in density, the developer argued that he needed to make it financially feasible, hence the percentage is smaller under the Ch. 40A portion. With a Chapter 40A development, the town does not receive any of the profits because there is no regulatory cap.

Councilor Curtis asked about Section 5 H and the rounding down. The 20 % is 5.8 units so it is rounded down to 5 or up to 6. Parties agreed that it be rounded down to 5. Curtis also asked about finances - town sewerage, etc. Finances will be available on the 40B portion at the hearing. Finances on the 40A portion are private and closely held.

Councilor Richardson expressed concern with the housing committee being left out. It is unacceptable to him. The town is not getting a big favor in terms of density if it approves this. The town does not want to create substandard neighborhood; parking, no sidewalks, reduction on thickness of pavement, etc. are concerns. It needs to be talked out further. Bobrowski explained that the 20' lot frontage has to do with *cul-de-sac* lots. Pavement thickness is a request to the planning board and not determined definitely at this time. Richardson pointed out that designs have been beautiful, but 20 years later the materials have not worn well. Bobrowski felt this was a uniquely designed article unlike a subdivision in which there is no quality control. This requires an overall special permit with house plans submitted to the planning board.

Councilor Milne asked who decided who the participants were. Bobrowski explained the decision happened at the housing court in Boston with the four entities present. The original petition started with 56 homes, the ZBA came back with 36 homes. The petitioner re-filed with 168 units and the ZBA denied it. Milne also pointed out that the town has "hit its numbers" regarding levels of affordable housing. If the town denies this, what recourse does the developer have at this time?

Councilor Farnham felt this was a precedent setting event. There have been 12 to 15 mediation sessions. Rounding down creates 17% at Schooner Village. It should be rounded up. Twenty percent rounded up is a better feature and more favorable to the town. He hopes this is not the final step.

Raymond Lang said there would be special regulations for submission of the special permit plan. The planning board would tell the applicant what it needs. Could the planning board require

deed restrictions as part of the submission? Usually it occurs at the time of application for the building permit.

Felicia Penn has concerns about parking and public safety. The plan needs attention in the final process. The sidewalk issue is an important and she would like sidewalks.

Robert Stahley felt it was a good alternate to 40B but is concerned that the Barnstable Housing Committee had been left out. He would like to see it included.

Councilor Crocker said that Atty. Bobrowski was quite a stand up guy for taking the heat on missing the housing committee. Had Bobrowski known, he would have insisted on it. Crocker confirmed on the map that this was taking residential houses out of the business zone and squaring off the hotel. He also asked if the PI-AHD was just for this project. Broadrick said it was the only RC zone. There is no 'as of right' in this item. It just opens up the possibility of applying for a discretionary special permit. There is no waiver of planning board authority and it would give a great amount of control to the board on the special permit process. Crocker asked what the Cape Cod Commission might feel about the split use on a single lot. There were no predictions from Bobrowski only that they have decided they will go to the Commission. Smith can speak on the town's position.

Smith, in response to Milne, explained that the town has achieved a ¾% increase within a year, which gives the town a year's respite, but it is temporary. Smith went through a process in mediation in good faith and was proud to have been a part of it. It is a very creative solution. He also felt a good faith obligation to point out the hard work on this. It is a compromise in which everyone gets something. He suggests continuing the public hearing to the second meeting in Sept. A request of the council to vote to advocate the position of the parcel split would be appropriate.

Atty. Freeman would like to see them vote the items this evening. They are all set to call the Cape Cod Commission. If not this evening, perhaps the vote could occur on Sept 2.

Councilor Crocker pointed out that if the development does not get a DEP acknowledgement, it is going nowhere. Smith said the town is still on a moratorium on sewer extensions. The septic permit connection may not be deemed an extension. Crocker said they have to go over town property. Smith felt to discuss any further would require an executive session.

Atty. Chuck Sabbatt represents three neighborhoods surrounding the areas, Cobblestone, Castlewood, and Bayberry developments, with respect to Settler's Landing. Residents support this zoning amendment and revision. It has been a hard and long process. Clients are satisfied that the agreement addresses the issues. He heartily endorses this resolution and the development. He requests postponement of the vote to Sept 2. The parties have reached agreement in principle but some details need to be nailed down and there is no written settlement agreement. Yes they want it and urge adoption but want the agreement in writing. This is the proposal to create the mechanism of making a permit available, not granting it. Sabbatt submitted a letter with 55 signatures. (Exhibit B)

Laura Shufelt spoke about the lack of input of the Housing Committee. She summarized a letter she had sent to the council. The town has to get the public benefit – 20% is a minimum public benefit while giving the developer the great asset of increased density. She recommends a remand back to mediation with the housing committee at the table.

John Julius spoke in defense of Jacques Morin. Morin built Bayberry Place which is one of the premier communities. He is an exceptional builder and it will be built with quality.

Tom Lynch, Executive Director of the Barnstable Housing Authority and liaison to the housing committee, feels this can be a model and an effective way to create affordable housing. The town will have a tool to allow increased density. This also means increased profits for the developer. What is he getting for that value? The town is being sold a little short. Right now there is no solid agreement with the town or residents. Are there things in the agreements that allow the developer the option to walk away? Are there strings? The town will not know until the agreements are complete. He reviewed all the items that the town has given up, such as no cap on profits, sewer, frontage, relaxing comparability, etc. How can you be sure that the town has the best deal without the financials?

Councilor Munafo asked Bobrowski what would happen if the mediation fell apart. The developer could resume the hearing on the 186 unit proposal. All rights have been reserved.

An unidentified speaker (no name provided) said she sent out a petition to the various neighborhoods. The height density of the project does not fit into the neighborhood. They currently have about 3 houses to the acre. The 96 units would be too much density.

Councilor Curtis asked why the items were before them if no settlement agreements have been signed and the Commission is an issue. Smith said the consideration is the council's adoption of the law. They could rescind it, but it would take time. The council should not adopt it until the agreement is signed. There is no point to stopping the hearing, because it has been informative and time well spent.

Councilor Curtis moved to continue the public hearing on Items 113, 114, and 115 at least to Sept 2 and possibly longer to allow the parties involved and any other departments who need to have input, look at the recommendations, up to 30 days.

After some discussion of the variables a motion was made and seconded to continue the public hearing to September 2 and if information is not available to continue to September 23.

VOTE: Unanimous

The Planning Board moved and seconded the same motion.

VOTE: Unanimous

A motion was made and seconded to take Item 2004-128 out of order.

VOTE: Unanimous

The same motion was made and seconded by the Planning Board.

VOTE: Unanimous

2004-128 – Former Grade 5 School Planned Unit Development Overlay District, Zoning Amendment

A motion was made and seconded to open a public hearing on this item at 9:54 PM.

VOTE: Unanimous

The same motion was duly made by the Planning Board.

VOTE: Unanimous

Broadrick introduced the item and passed out a map of the area.

Peter Cross, a member of the committee established to deal with the disposition of the Grade 5 School in Hyannis, gave the rationale. The committee felt it would be remiss if it did not keep the open space. The current zoning is not favorable to development. The intention was to promote competition to get the best return. Revenue would go back to the capital fund of the school department. There are people interested in it for private as well as school uses. The

committee would like the zoning overlay to encourage interest in sending proposals. The overlay will indicate that this is what we want to see and nothing more. The developer cannot do anything else. Interested parties either qualify or they don't.

Councilor Joakim asked what will protect the field. They divided the parcel into 5 pieces, the building, the Mets field, the softball field, the tennis field, the piece along the marsh. Ultimately the council has final say. They are advisory and after this they go away. Cross feels the fields and open space should stay, except for maybe the softball field that has fallen into disarray.

Councilor Rugo asked about the tennis fields. They have been used this summer and he would like to see this continue.

Councilor Milne asked if it passes will we be placing emphasis on highest and best use or limiting an applicant.

Klimm explained that the goal in bringing it together was to have people who live in the area make a decision on a possible use. Will it bring money back to school without selling out their quality of life? There is no mandate that it has to be the highest and best use.

Councilor Crocker said this is talking about recapturing as much money as possible by taking no setbacks and allowing coverage of 100%. This has thrown everything into the parcel. The door is open wider than he has ever seen it.

Broadrick explained that the RFP will be issued so developers can weigh the different opportunities that can occur. To encourage someone to do that, the committee needed to make many of the possible uses available. That was the rationale. Trying to make it so developer could be creative.

Councilor Crocker doesn't think retail should be included. "It feels like the wild, west." Cross doesn't see retail as a primary use. There is nothing wrong with a small store or two for the residents, as an ancillary use not a primary use. They have identified the 5 or 6 acres that the school is on as the parcel to be sold. Main building is in terrible repair. Open space is not going to go.

Councilor Richardson asked if the overlay would be maintained. Broadrick said it would. If the property were resold, the new owner could do something else. That is how the zoning occurs now. A sold property no longer belongs to the town. Other overlay districts the town has done have had themes. This seems flexible; maybe it should be more theme oriented.

Councilor Milne felt there should be no setback up against the ball field for example. Broadrick explained that the intention was not to fully develop the entire parcel but apply the district to the parcels that are all owned by the town. The only two pieces to be sold are the school and possibly the ball fields. The lot issues are internal to the sold lots. After the RFP it still has to go to the planning board and the council for approval.

Councilor Joakim suggested that perhaps a councilor act as a liaison.

Penn explained that it is just for the purposes of allowing the RFP process to happen. They are going fishing to find who has the best ideas about this parcel and have made it broad enough. Once the RFPs are in, the specifics will come into play.

Shuman said this gives the developer the ability to be creative. If the plans are not acceptable the council can say no. Cross has had lots of experience in Killington, VT with PUDs. The item will be giving the planning board the ability to set the mitigation within the project.

Butler, who served as chairman of the Horace Mann charter school, complemented the committee for their work and especially for their dedication to putting the funds back to the schools. He supports the article because there is a need to do something creative. One needs an open mind and forward thinking when using land use tools. This has a host of excellent design standards. In addition, the special permit vote of the planning board would have to be a supermajority. He is glad the money is going to the school, feels utilizing the committee was a tremendous approach and complements Tom Broadrick for his innovative thinking.

A motion was then made and seconded to close the public hearing at 10:35 PM.

VOTE: Unanimous

The Planning Board also duly voted to close the public hearing at 10:35 PM.

VOTE: Unanimous

Councilor Barton is aware of the intent and need for flexibility, however, it could set a precedent. Could it be covered by a regulatory agreement or by just an RFP? Broadrick explained that the current zoning can only allow 2 or 3 things. No one will respond under those circumstances because you can't propose what the zoning will not allow.

The Planning Board moved their meeting to the Selectman's Conference Room to discuss their recommendation.

Councilor Barton was concerned about setting a precedent. Broadrick said it was not precedent setting because the council doesn't have to do it elsewhere. These acres are outside any of the other Hyannis zoning.

Councilor Canedy asked if there will be any possibility of a convention center, hotel or stadium. No. The plan is to have five lots split out of the 22 acres. Only two parcels, which may be no more than 14 acres, will be sold. There would not be enough space for those options.

Councilor Crocker asked how the planning board gets to issue the special permit. Broadrick explained that the ZBA gives relief for uses that do not comply with existing zoning. There are special permits allocated to the ZBA but PDAs are usually through planning board. Crocker felt looking at interactions of mixed use projects are not usually before the planning board. Planning developments such as open space village developments are usually through the planning board.

The members of the Planning Board returned to the council meeting. Chairman Fogelgren made the board's report to the council (See Exhibit C). The Planning Board, by unanimous vote, recommends the acceptance and adoption of Item 2004-128.

A motion was made to move the question.

Councilor Crocker made a charter objection.

President Brown announced that the item was postponed to the next council meeting on September 2.

2004-118 – General Amendment – Regulatory Agreement

A motion was made and seconded to open a public hearing on this item at 10:50 PM.

VOTE: Unanimous

Councilor Munafo made a charter objection

Attorney Smith said the charter objection has been used up on this item and not available at this time. Munafo disagreed saying he thought the charter objection was only to stop a vote and the prior charter objection was not what was used to postpone the meeting.

President Brown ruled the charter objection out of order. Councilor Munafo posted an objection.

Paul Niedzwiecki, Assistant Town Manager made the presentation via a slide show (See Exhibit D)

A motion was made and seconded to extend the meeting past 11 PM.

VOTE: Unanimous

Councilor Tobey left the meeting.

Noreen Halford from Osterville spoke against the regulatory agreement. A high level advocacy for eliminating rules makes it easier to make wrong things happen in a big way. She urges the council to support local businesses owned by constituents, not the large corporations. Zoning changes encourage large scale development. Large developers want the small business owner out of the way. She feels the town seems to be advocating this. Items like this one accelerate this kind of development. Hassles disappear when large developers show an interest. Some members of the BID have contributed to their own demise.

Marcel Poyant spoke in favor of the regulatory agreement. He feels it is a step in the right direction. He would like to see an enterprise zone that would be free from the Cape Cod Commission. A bargaining chip to encourage the commission to accept the regulatory agreement might be that the town could seek an exemption of the downtown from commission review.

Paul Bishons, owner of 500 Main St., supports the regulatory agreement. He feels the downtown is better in the hands of downtown than the Cape Cod Commission.

William Belden as chairman of the Barnstable Economic Development Commission said his committee voted unanimously in favor of the regulatory agreement. He hopes it is possible that once the commission signs on to a regulatory agreement with the town, they are no longer a part of the process.

Tina Carey asked how this would affect the small property owner. She had various questions on the text of the agreement. For example, is the three stories by right and what does the single family dwelling exemption mean. She wanted an explanation of how it all fits together. Niedzwiecki explained that a single-family home could go through the existing process. This agreement boils the process down to the basics instead of dealing with each piece individually. Is this a way to reintroduce eminent domain? That is not part of the plan right now, Niedzwiecki responded. Klimm said the community thought it should be broken down because it was a large package to put on the table all at once.

Skip Simpson, owner of the Anchor Inn on South Street, is in favor. The commission does not encourage business in the downtown area.

John Kenny, a board member of the Chamber of Commerce, said they voted to support the regulatory agreement. It will give the business community relief from the burden of the regulatory process. He encouraged the council to vote in favor.

Al Baker said he was not sure it is the best thing since sliced bread. He hears concerns from the outside. It may not be what the people really want and he questions if the pieces of the puzzle represent all the people.

Jim Cook, General Manager of Four Points Hyannis Resort, spoke in favor of it. It is a critical first step of a process towards improvement. Information has been made available through many venues and he appreciates it. He asks the council to vote in favor.

Gay Black said this one (agreement revision) has not altered the intent of the original which was unacceptable in 2000. She had questions on several sections. Regulations are there for the safety and protection of public, yet the council is increasing density. It should be under the category of 'zoning without checks and balances.' There is no right of appeal - a binding contract.

Klimm said the Planning Board process is open and public hearings would occur. Regulatory agreements must come before the council and there will be a public hearing. If there is a zoning change, it requires 2/3 vote of the council.

Pat Butler passed out a copy of the development agreement for Cape Cod Healthcare and he has been involved in others. He supports this effort; it is innovative and forward looking. Many people say the process is too cumbersome, too unpredictable, etc. If anything happens in a development agreement, it needs a 2/3 vote. This will provide an opportunity to do more of the right things. Small local business will use this option which will coordinate better with the Cape Cod Commission process. What is the cost if you don't use this process?

Caroline Garbutt said it is better than the one proposed 4 years ago, but doesn't pass muster. It mixes oranges and apples because it transfers development rights. Schools should be included. She had various issues with some of the language. She felt it would destabilize small business.

Peter DeMartino from Heritage House said it took him from 1994 to 1998 to close on the property he purchased. He served on the BID and is active in the town. He urges the council to support this item.

Ronnie Aboudi from Centerville and Hyannis said the council represented us (the public). He was promised by Klimm that there would be a chance to sit down and understand it. He said he just wants to understand it. "Give us a chance and listen to us, then vote it in."

Cynthia Cole of the BID had letters of support from property owners and businesses. She submitted a letter (See Exhibit E). None of the property owners are big developers. She read the names off. It is about protecting the small ones since only the large ones can make it through the Cape Cod Commission.

Upon a motion duly made and seconded it was voted to close the public hearing at 11:55 PM.

VOTE: Unanimous

Councilor Farnham made a motion which was seconded to amend item 2004-118 with the text dated 8/19. (See Exhibit F)

On the amendment,

VOTE: 10 Yes, 2 No

Councilor Canedy moved that the item be continued because it was much too important to vote on "when we are dead." It was seconded.

Councilor Farnham made a Charter Objection. President Brown said it will be postponed. Councilor Richardson requested a Point of Order asking if this item was already objected to before. It has been.

The motion to postpone the item to Sept. 2 was voted.

VOTE: Majority in favor (No count was announced and there were no objections to the postponement.)

Councilor Munafo suggested that if Brown removed his previous ruling, this Charter Objection would be in order. Brown replied that the Charter Objection holds because the amendment has changed the item.

2005-003 – Approval of Section 298 of Chapter 149 of the Acts of 2004, Community Preservation Act As Modified

Upon a motion duly made and seconded it was

RESOLVED: Section 298 of chapter 149 of the Acts of 2004, the “Massachusetts Community Preservation Act,” as modified by said section 298, is hereby approved, and the Secretary of the Commonwealth is hereby requested to place an appropriate question on the ballot for the November 2, 2004 state election to ascertain the will of the voters of the Town as to their approval of the same.

VOTE: Unanimous

The council took a one minute recess to allow changing of the videotape.

2004-127 – Appointments

Upon a motion duly made and seconded it was ordered

That the Barnstable Town Council appoints the following individuals to a multiple member board/committee/commission:

AIRPORT COMMISSION

Robert L. O’Brien, 41 Deacon Court, Barnstable, MA 02630 term to expire 06/30/2006

BOARD OF ASSESSORS

Alan Donheiser, PO Box 213, Cotuit, MA 02635 term to expire 06/30/2007

PUBLIC WORKS COMMISSION

Paul J. Canniff, 106 Hayes Road, Centerville, MA 02632 term to expire 06/30/2005

VOTE: Unanimous

2004-129 Appropriation and Loan Order Community Septic Management Program

Upon a motion duly made and seconded it was voted to postpone this item to Sept. 2, 2004

VOTE: Unanimous

2005-001 APPOINTMENTS

Upon a motion duly made and seconded it was voted to refer Item 2005-001 to a second reading on Sept. 2, 2004

VOTE: Unanimous

2005-002 – Acceptance of a United States Department of Education Grant Award From the Fund For the Improvement of Education (FIE) Program in the Amount of \$993,499.00.

Upon a motion duly made and seconded it was

RESOLVED: that the Town Council hereby accept a United States Department of Education Grant award from the Fund of Improvement Education (FIE) Program in the amount of \$ 993,499.00 for the purpose of funding educational and recreational programs for the youth of Barnstable.

VOTE: Unanimous

2005-004 – Amend Chapter III of the Ordinance by Striking Out Article XXXV and Replace With Amended Article XXXV

Upon a motion duly made and seconded this item was referred to a second reading on September 2, 2004.

VOTE: Unanimous

2005-005 – Amendment to Administrative Code Limiting Service on Multiple Member Boards to Not More Than Four Consecutive Terms

Upon a motion duly made and seconded this item was referred to a second reading on Sept 2, 2004

VOTE: Unanimous

2005-007 – Consolidation of School and Municipal Finance

Upon a motion duly made and seconded it was

RESOLVE: That the Town Council endorse the memorandum of understanding for the consolidation of School and Municipal Finance as written and approved by the School Committee August 10, 2004 and hereby does consolidate the same pursuant to Chapter 71 Section 37M of the Massachusetts General Laws.

VOTE: Unanimous

Councilor Canedy requested a Point of Order pointing out that in the agenda this item was listed as a first reading. She believed she was voting on moving it to a second reading. President Brown said the agenda was in error; the item was to be acted on. They had sufficient discussion with the school committee on this and it was ready for a vote. He offered to revote the item if anyone had concerns. No one did.

Upon motion duly made and seconded it was voted to adjourn at 12:15 AM.

VOTE: Unanimous

Respectfully submitted,

Lucia Fulco,
Assistant Town Clerk