

TOWN COUNCIL MEETING
October 21, 2004

A quorum being duly present, Town Council President, Gary Brown, called the meeting of the Barnstable Town Council to order at 7:00 pm, on October 21, 2004 at the Barnstable Town Hall, 367 Main Street, Hyannis, MA.

PRESENT: Richard Barry, 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, and Harold Tobey.

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

The President announced that the Scudder/Mooring Lounge property items will be taken off the agenda this evening.

PUBLIC COMMENT

Al Baker from Marstons Mills is still concerned with the homeless. He was wondering if some vacant buildings could be used to help them on a temporary basis. Take a close look when you aim to change zoning – especially spot zoning. The LCP will be discussed Nov. 3 at the Burgess House.

Attorney Robert Smith introduced Attorney Bill Butler – who will work in collaboration with Smith regarding the legal issues for the schools. He is very well informed on school issues and law. Butler said that he is looking forward to the collaboration and is excited about the opportunity to be an in-house attorney for the school department. It will be efficient and effective.

Eugenia Fortes has watched the meetings, and is not happy with the homeless issue. You knew winter was coming and no one has done anything about it. On the split tax rate item she warned the councilors that home owners will not forget you at the polls. In the Bible they speak of “feet of clay” – we have so many on the council. You were going to represent the people and not your friends. There will be a committee to pick the new superintendent of schools, and that is a big item. We have had 2 search committees and they were lousy. A black woman came in second 2 times and never came in first. Do not discriminate. If a black person can't be a superintendent of schools here, she knows a black woman who is president of Brown University.

John Julius said the split tax rate won't go away. Michael Daley wrote an article in the Patriot recently after he was hired by the town to do a study. He came out last week and attacked members on the committee. The next time he does a study and is paid a fee, he should take a neutral position and remain objective. He had no right to make those attacks after taking tax payers' money. He heard about a resolve on the tax rate. He thanked Ann Canedy who he felt has shown true leadership.

Cynthia Cole thanked everyone for the vote on the tax rate. The Community Preservation Act (CPA) has been explained by a committee – it takes our tax dollars and brings more dollars back to the community. It does not raise taxes. She had a pamphlet which she distributed to the councilors explaining the CPA. The Board of the BID voted to support the CPA. She said that Main Street is very busy and many crews are working. The work will end during the holiday season and will resume in the late winter. Safe Trick or Treat is happening on Main Street...it will be on Sunday from 2 p.m. – 5 p.m.

John Ladner thanked the CFAC and the council who invited them to participate in a discussion recently. We had an excellent exchange at the workshop. He explained that a municipal stabilization fund would be an annual assessment, while a capital exclusion override would occur whenever you have a need for a project. Another issue is that you need to answer some questions such as: Are we going to address public roads alone; or, are we going to do anything about private roads? You do need to consider the private roads in your policies as well. He stated that the roads improvement plan is of major importance and the council has to look at all the town projects and decide where the roads are on this list of priorities.

Sandy Lenney asked people to vote yes on the Community Preservation Act. If it passes, we might have some money for the completion of parks (such as the former Gulf Station) and, we could help the Burgess House and other similar areas. It is a win/win situation.

ACT ON MINUTES

Upon motion duly made and seconded it was voted to accept the minutes of Oct. 2, 2004 as printed.

VOTE: Unanimous in favor.

COUNCIL RESPONSE TO PUBLIC COMMENT

President Brown told Ms. Fortes that something is being worked on for the homeless.

Councilor Milne said Attorney Smith addressed the in-house school attorney. Milne said that Supt. McDonald found that \$250,000 was being spent yearly, but this in-house attorney will cost less than ½ of that amount. Relative to the CPA – we will have an opportunity at our workshop to have a factual presentation on the Community Preservation Act.

Councilor Joakim said that the committee, who is picking the superintendent, is being chosen by the school committee not the town council. Joakim noted that Mr. Daley has the right of freedom of speech.

Councilor Munafo said Ms. Fortes alluded to the fact that we are all rich now; he would not have to work three jobs if he was. And, as far as voting to favor your friends, Munafo said he does not have any friends so therefore he is not backing any of them.

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

Councilor Crocker said thanks to the school for hiring an in-house attorney.

Councilor Richardson said that it is encouraging to see the ways the town and school can work together.

Councilor Barton said there are copies of the TEM report on the schools and it will be distributed to all libraries. She reminded the audience that October is Domestic Violence Awareness Month and there will be an open house at the Independence House tomorrow – Oct. 22. She said the Town of Barnstable was given an award for the Year of Our Youth.

Councilor Barry suggested that residents look at that school report – since it suggests for one thing, closing Cotuit Elementary School.

Councilor Milne said in that report also recommends one of the two schools in Hyannis should close – people should be aware. Milne announced a transportation workshop. Milne asked about the search committee for the superintendent; they want one councilor to work with them. He wants to know who is the councilor. Milne asked if the assessors assess differently for properties on private vs. public roads.

President Brown said Councilor Richardson, who is the liaison to the school committee, asked to be the council representative. Brown concurred and Ralph Cahoon, chair of the School Committee, made it official.

Councilor Richardson said that we do not plan to endorse every element of the TEMS report on the schools. The town and schools will be working together on it.

Councilor Barton said the TEMS report is out there for people to look at it – they are going to work from it – not adopt it. It is not a finished document.

PRESIDENT/VICE PRESIDENT COMMUNICATIONS

Vice President Farnham said that Bill Butler is a consummate educational attorney. He is bright and is very nice to deal with on all issues.

TOWN MANAGER COMMUNICATIONS

Town Manager John Klimm said that Mr. Matheson (Director of Assessing) will be presenting something on the assessing shortly. Klimm also wanted to welcome Attorney Butler and said he is excited and enthusiastic. We will be visiting the HR issue as far as consolidation this evening, and we will now be collaborating with the schools on legal. It will save money. Regarding the CFAC, he thanked the members for their hard work. Their work is appreciated. The meeting last week was a first step on public/private roads and we need to look at how we take the next step. There are policy issues we need to work on in our strategic planning. We are continuing community meetings. We are looking to see how we can be more effective. We want to talk to and work with the people in Hyannis. We want their participation.

Vice President Farnham asked Manager Klimm if he could provide the council with an updated list of the town's needs, so that we can focus on priorities and what the staff needs. Klimm said they will be happy to provide that. Klimm said that it becomes important for the staff to know what your priorities are. We are trying to get a better sense of what you are looking to support.

ORDERS OF THE DAY OLD BUSINESS

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

President Brown announced that this item was indefinitely postponed.

2004-114 AMEND THE ZONING ORDINANCE BY ADDING THE FOLLOWING NEW SPECIAL DISTRICT PROVISION SECTION 3-1.8, PRIVATE INITIATED AFFORDABLE HOUSING DEVELOPMENT

President Brown announced that this item was indefinitely postponed.

2004-115 AMEND THE ZONING MAP BOUNDARY LINE OF THE RESIDENTIAL C1 ZONING DISTRICT AND THE B BUSINESS ZONING DISTRICT IN HYANNIS

President Brown announced that this item was indefinitely postponed.

2004-117 BL-B ZONING MAP AMENDMENT

President Brown announced that this item was withdrawn.

2005-016 ORDERED THAT: SECTION 1 PART II OF THE ADMINISTRATIVE CODE IS HEREBY AMENDED BY STRIKING OUT SECTION 26.00 THROUGH SECTION 26.03 INCLUSIVE, SECTION 14.00 THROUGH SECTION 14.03 INCLUSIVE, SECTION 35.00 THROUGH SECTION 35.03 INCLUSIVE, AND SECTION 5.01 THROUGH 5.14 INCLUSIVE AND INSERTING IN PLACE THEREOF THE FOLLOWING:

Upon motion duly made and seconded, it was voted to go into a public hearing for the purpose of discussing 2005-016.

VOTE: Unanimous

Christina Avery asked the council to please consider this carefully. She said that this item appears to create a recreation and youth board. What had confused her was the fact that it seemed as if that board would have commissions under it. Those are already taken care of by the commissions that are there. Isn't this just adding more time and more people to what is already being done? She feels that the names of the commissions and boards are confusing. Councilor Barton explained about the boards and what their functions would be. They would work on long-range strategies. She said nothing is changed, just the word "youth" is added.

Eugenia Fortes asked if it is going to be a community center for the whole town or just Hyannis. This center has grown so big it is not just for Hyannis. It will be a center for those who can afford to pay for it.

Al Baker said it is a town-wide center – the villages don't have centers. He said he hopes you don't add another layer of bureaucracy. Think about this a little more. Don't add more to what we have.

See "B" attached for comments made by Joe O'Brien, Vice Chair of the Recreation Commission. He has worked with recreation since 1982. Please table this for further discussion. If you can't table it – please vote against it. Two out of the three commissions that would make up or be a part of the new board have not been involved in any of the process on this. Bring us all together to discuss the pros and cons. He feels that the new board will just add another layer of bureaucracy to this.

See "A" for comments made by Clyde Takala, the Chairperson of the Recreation Commission. Takala said that they recommend that the commissions should not be combined. He said that we were never told about the article prior to the meeting. This has come in through the back door. We represent the people of the town. Do not create a new commission. We look forward to working with you. We hope this is not a done deal.

NOTE: Attachment "C" is a letter from Jeff Avery of the Recreation Commission who could not attend the meeting.

Steve Brown, who is the Chairman of the Youth Commission, spoke in favor of the item. We have golf, recreation and youth – and all can function separately; but it is important for all the commissions to work together. His little red wagon brings forward the hope of pulling together. This board would be an incentive for the boards to work together.

A motion was made and seconded to go out of the public hearing.

VOTE: Majority

A recess was taken to briefly discuss possible actions at 8:22 p.m.
The meeting reconvened at 8:28 p.m.

Attorney Smith stated the consensus was that it should be postponed to a time certain – a workshop was discussed as a vehicle for possible change. He deferred to Councilor Barton.

Councilor Tobey, as liaison to recreation, said he does find some support for this, but not a majority. He was asked to request that this be tabled. He respects the Recreation Commission's request and asked that it be tabled to a date certain.

Councilor Canedy also wanted a public workshop with all the commissioners, and the councilors.

Councilor Curtis said the Appointments Committee urged Councilor Barton to go forward with this. If there are members of the Recreation Commission who want to meet with the councilors that would be fine. Curtis, however, wants to know what the Recreation Commission wants. She feels there is a need to change, but we are willing to work with you.

Councilor Crocker made a motion to move this item to the second meeting in November.

Councilor Richardson hoped the groups could work together. Councilor Milne suggested that Jemma Lambert work as a facilitator with the commissions and some councilors. He suggested having it separate from the council workshops. Klimm said the staff recognizes that the reorganization of committees is the council's issue. He said the staff has no opinion on this. Klimm also said that having Jemma or anyone involved in this, to play the role of facilitator is not right. He suggested someone like Councilor Curtis instead.

Councilor Barton said she has informed David Curley and Jemma Lambert all along the process.

Councilor Rugo moved the question, which was seconded.

VOTE: Majority favored moving the question.

Upon motion duly made and seconded, it was voted to postpone this item to Nov. 18.

VOTE: 12 yes 1 no.

2005-017 STUDY OF RESIDENTIAL AND SMALL BUSINESS TAX EXEMPTIONS

Councilor Tobey presented the rationale as written in the agenda. Councilor Richardson pointed out that the previous committee did hold public hearings. There was very little participation on the issue. He feels that the committee did let us know.

Councilor Tobey said this is a study that we want to put forward. He could not back the split tax and these are elements that were missing from the initial study.

Councilor Milne also said that we did have public hearings before. Everyone was clear and people were very clear and followed through.

Milne suggested a number of amendments: 1) Ask the Town Manager to appoint the members, not the council. You end up with a political football, have the manager do it. 2) Include the split tax rate as a part of this. He said that in looking at the other cities and towns who use the small residential or business exemption, they don't do it without a split tax rate. 3) He also wanted to include a workshop with the council. He does not want the council to have the leadership role on the committee.

Councilor Joakim asked the committee about the small business exemption – she is concerned about people in her precinct. We need to bring all of the information forward. She doesn't have a problem.

Councilor Tobey stressed that he was attempting to make this a simple study addressing the exemption issue. His mistake was trying to keep it simple. By keeping it simple it will accomplish everything that everyone is talking about. He can't support the amendments.

Councilor Curtis asked about balanced representation. Vice President Farnham said he had initially created a proposal on an economic strategy for the town regarding tax credits and other options for a tax policy. It was too extensive. He recommended individuals from various financial departments of the town as well as CFAC, planning, zoning, council on aging, etc. If you look at the rationale, the break even point for residential is about \$715,000; over that assessed amount you will not get a break. Two-thirds of the homeowners would benefit. He tried to focus on the small business owners so they would get a break.

Councilor Canedy supports Milne. Councilor Rugo said the resolve allows for a split tax rate study. He supports the amendments and made a motion, which was duly seconded, to move the amendments.

Upon motion duly made and seconded it was moved to amend the item to have the Town Manager appoint the committee.

VOTE: 12 yes 1 no (Crocker)

Upon motion duly made and seconded it was moved to amend the item by inserting that no councilor shall take a leadership role

VOTE: 9 no 4 yes Roll Call - Defeated

Upon motion duly made and seconded it was moved to amend the item by being explicit that it would include the split tax rate.

VOTE: 10 yes 3 no

Upon motion duly made and seconded it was moved to hold a minimum of one workshop with the council as a requirement.

VOTE: 10 yes 3 no

Councilor Munafo said he was not in favor of this. Slow down! Look at the article and put something together that is balanced. There is no rush to get this accomplished at this time.

Upon motion duly made and seconded it was moved to table this item to the second meeting in Nov.

VOTE: 11 no 2 yes - Defeated

In the future, Councilor Barry wants any proposed amendments on paper ahead of time. He does not like late files and amendments such as this, he wants to be prepared. President Brown concurred.

There was discussion on a charter objection. Attorney Smith said a charter objection is not allowed on a resolution. Munafo disagreed and said a charter objection is useable

on any matter. Smith said the charter objection is for measures only. Smith confirmed that it needed to be a “measure”, and resolutions are not measures.

The chair (President Brown) agreed with Attorney Smith.

The chair was challenged.

A yes vote would support the chair. A no vote would disagree with the chair.

VOTE: 10 agreed with the chair - 2 disagreed with the chair - 1 abstention.

Upon motion duly made and seconded it was voted that:

BE IT RESOLVED,

That the *Town Manager* is hereby authorized and directed to appoint an ad hoc Taxation Committee made up of balanced representation, to study and recommend, as part of a long term economic strategy for the Town of Barnstable, application of: (a) a residential exemption and, (b) a small commercial exemption and (c) a *split tax rate*. Said study would analyze the affect of changing the tax burden on various classes of real property.

The analysis of residential property will include the number of second homes and number of primary homes exceeding the residential exemption threshold, and determine the resulting tax impact under the different options provided by adopting a residential exemption. The state’s small commercial exemption offers limited benefit to business tax payers. The Taxation Committee will study the overall cost of doing business in Barnstable and also review the various incentive and assistance programs the town offers to its businesses. In addition, the committee will include a breakdown of commercial property by type and value.

The mission of the Taxation Committee will be to recommend to the town council a fair and meaningful long term program of tax relief to residents and small businesses via utilization of state tax options and town programs through a reasonable tax and fee payment structure.

The Taxation Committee *will hold at least one workshop with the town council* and will provide a finished report of its recommendations to the town council pertaining to the Residential Exemption, Small Commercial Exemption, *Split Tax Rate*, and any town wide programs that might benefit our tax payers by September 8, 2005.

VOTE: 10 yes 3 no as amended

2005-018 APPOINTMENTS

INTRO.: 10/07/04; 10/21/04

Upon motion duly made and seconded it was voted:

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

AIRPORT COMMISSION

Michael A. Dunning, 399 Old Jail Lane, Barnstable, MA 02601 term to expire 06/30/2007

Larry F. Wheatley, 608 Old Post Road, Cotuit, MA 02635 term to expire 06/30/2007

VOTE: 13 yes

CONSENT CALENDAR

The following two items were pulled from the consent calendar: 2005-024 and 2005-013. Said items to be taken up singularly.

Upon motion duly made and seconded and by consent of the Town Council, it was voted to approve the following actions on these items:

2005-019 ORDINANCE FURTHER REGULATING ALARM SYSTEMS WITH IN THE TOWN OF BARNSTABLE

Item 2005-019 was referred to a public hearing on November 4, 2004 by consent.

**2005-020 MEMORANDUM OF UNDERSTANDING BETWEEN THE MUNICIPAL AND SCHOOL ELECTED BODIES
INTRO.: 10/21/04**

RESOLVE:

That the Town Council endorse the memorandum of understanding for the consolidation of School Personnel and Municipal Human Resources as written and approved by the School Committee September 21, 2004 and hereby does consolidate the same pursuant to Chapter 71 Section 37M of the Massachusetts General Laws.

APPROVED BY CONSENT.

2005-021 RESCISSION OF APPROPRIATION AND LOAN ORDER NUMBERS 2004-109 AND 2004-110

Item 2005-021 referred to a second reading by consent.

**2005-022 APPROPRIATION AND LOAN ORDER FOR THE PURPOSE OF ACQUIRING 13.43 ACRES MORE OR LESS IN MARSTONS MILLS, ASSESSORS MAP 58, PARCEL 12
INTRO.: 10/21/04**

Item 2005-022 was referred to a public hearing on November 4, 2004 by consent.

2005-023 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$500,000.00 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
INTRO.: 10/21/04**

Item 2005-023 was referred to a public hearing on November 4, 2004 by consent.

2005-028 – APPOINTMENTS

Item 2005-028 was referred to a second reading by consent.

**2005-029 – ORDER AUTHORIZING GRANT OF EASEMENT ON MAIN ST.,
HYANNIS, ASSESSORS MAP 308 PARCEL 72**

Item 2005-029 was referred to a second reading by consent.

**2005-025 – ZONING ORDINANCE AMENDMENT ALLOWING AS-OF-RIGHT
DEMOLITION AND REBUILDING ON NON-CONFORMING LOTS OF 10,000 OR
MORE SQ. FT.**

Item 2005-025 was referred to a joint public hearing on November 18, 2004 by consent.

**2005-026 – ZONING ORDINANCE AMENDMENT ALLOWING FAMILY
APARTMENTS AS ACCESSORY USES TO A SINGLE-FAMILY OWNER OCCUPIED
DWELLING**

Item 2005-026 was referred to a joint public hearing November 18, 2004 by consent.

**2005-013 RESOLVE TO PROCLAIM THAT THE TOWN OF BARNSTABLE FOCUS
THEIR ATTENTION ON THE POTENTIALLY SERIOUS HAZARDS
ASSOCIATED WITH PESTICIDES
INTRO.: 10/21/04**

Councilor Milne just wanted to simply explain this item.

Councilor Munafo said that he has concerns on proclaiming May 27 as Rachel Carson day. He reminded the councilors that many are dying from malaria and other such diseases because of the lack of pesticides. He said many people are not delighted with her efforts. He would prefer a James Otis Day that is directly tied to us instead of honoring someone like this.

Councilor Milne said Maine has embraced this.

**RESOLUTION PROCLAIMING MAY 27TH
RACHEL CARSON DAY**

WHEREAS, worldwide exposure to pesticides is greater than most people realize; and

WHEREAS, more than 3 billion kilograms of pesticides are spread on the earth annually, exposing both human and wildlife populations to chemicals, with potentially serious repercussions for life everywhere; and

WHEREAS, more than 40 years ago, the well-known writer, scientist and ecologist Rachel Carson alerted America and the world to the potential hazards of pesticides in her landmark book Silent Spring. Despite the warning, the quantity of pesticides used in our country has continued to grow over the years and poses a potential threat to all life forms; and

WHEREAS, it is again time to increase public awareness of the potentially serious dangers of using excessive amounts of pesticides; now, therefore, be it

RESOLVED, that we, the members of the Barnstable Town Council, do proclaim that May 27 is Rachel Carson Day throughout the Town of Barnstable, Massachusetts, in honor of her prophetic work, and urge the citizens of Barnstable to focus their attention on the potentially serious hazards associated with pesticides; and be it further

RESOLVED, that we, the members of the Barnstable Town Council, invite citizens throughout Barnstable to observe May 27, the birth date of Rachel Carson, by refraining from using pesticides on that day and ask the citizens of Barnstable for their cooperation in seeking alternative methods of pest management.

Proclaimed this date October 21, 2004, in Barnstable, Massachusetts

VOTE: 10 yes 3 no

2005-024 ACCEPTANCE OF DEEDS

Item 2005-024 was not voted on. Councilor Crocker said that we have a lot to discuss on this.

Upon motion duly made and seconded it was voted to go into an executive session for the purpose of discussing possible land acquisitions and not to reconvene in open session.

VOTE: Roll call 13 - Yes

Respectfully submitted,

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