

TOWN COUNCIL MEETING
April 21, 2005

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 April 21, 2005 at the Barnstable Town Hall, 367 Main Street, Hyannis, MA.

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

President Brown led the Council in the Pledge of Allegiance and a moment of silence. Brown announced that item **2005-091** – Gift of easement was being postponed by Councilor Barry until May 5. No public hearings will be held this evening.

PUBLIC COMMENT:

Al Baker will miss the Thursday night street festival. The herring run in the Mills is running – there are rules for catching the herring and they are available at the Natural Resources Office on Phinneys Lane. There is a craft fair at Liberty Hall on Saturday. He noted that if all the money on the McShane item were to go into plantings it would make a huge forest on the corner, so he hoped it could be spread out. It is a win win for the town.

William Elkins stated that he has been a resident for over 40 years. Our residences are being threatened by illegal dormitories and he is grateful for the council's willingness to address the issue. These houses are in single family neighborhoods. The owners may not even live there. Many have illegal bedrooms located in such areas as basements and garages and have 6, 8 or 12 cars on the premises. This is throughout the entire town but mostly in Hyannis. The number of cars per bedroom is an excellent start. Two cars per bedroom are too much. First bedroom could have 2 cars and 1 car per bedroom after that. The bedrooms must be legal and the law must be enforced. Any unregistered cars will count. He thanked the council for this effort.

John Julius respectfully asked for 20 – 30 seconds beyond his 4 minutes since he would like some courtesy. He spoke in opposition to the water company acquisition at the price that was agreed upon. His argument was based in part on MGL Ch. 165 Section 5. Many concur that there were 3- 4 years of negotiations. Why didn't you opt to send it to the DTE? The town could get it for cost. There was a consensus that the company could have been bought for \$6.5M. Why weren't the subscribers, the people who will pay off the purchase price, more informed? Your purchase will cheat the Hyannis rate users. BARLACO belongs to the whole town.

Eugenia Fortes stated that it is so expensive to live on the Cape. That is why there are so many cars at residences. It is not good and people have to live. "I am an immigrant." Last meeting she asked and no one answered why we have 5 fire

departments – there should be one. The town would be in much better shape if we did. The bill for this water is high. I have been asking for water for 10 years, but I mind paying for the land. If you won't pay for the land, then I should not pay for Prince Cove. We need more than you are giving us. She complained about the Hyannis councilors.

Lou Gonzaga feels sad about the Main Street festival shutdown. Why does the BID utilize our services through taxation – are they charged? Jobs bring opportunities. Then you won't have to worry about low income homes. Get rid of the Cape Cod commission. Elect a mayor. We paid too much for the water company. The people of Hyannis should be told exactly what they will have to pay. Can you tell us, the rate payers, how much it is going to go up? You work for the people in the community.

Vincent Procaccini bought a home next to a house with 8 bedrooms. The septic was for 6 and the bedrooms are not all legal. The bedrooms in the basement are illegal. We have to address this issue, because it is a problem that is spreading.

Peter Doiron said that the herring is a running and the summer is a coming soon. It is sad curbing Hyannis street festivals. I recall people coming for dances in town and at the beach. The EXXON station at the corner of Bearses Way is hurting because an important entrance has been removed. A police cruiser still sits at B-J's. I am confused about the car issue – what happens if you have company? Thank you for repairing "holey 6A".

Karen Procaccini stated that when she goes out her door there are 12 – 14 cars abutting her home. They are all over the street. I don't have a problem with people living together but we need to see that you follow through on this.

Jack Best said he has been a resident for 38 years. What about the bylaws in the residential neighborhoods? There is a problem and the problem will get far worse than it is. The town has spent enormous amounts of money on land, golf courses, water purchases and some may be good and some not. What about eroding neighborhoods? You need enforceable regulations. If you have breakdown in your neighborhoods, people move away.

Frank Paparo congratulated the council on not taking its pay raise. You did the right thing. You have a serious problem. There are additions being built with no permits – you know that it is happening but you do nothing. You must do something. The fire department went into a building with illegal bedrooms recently. People should have to abide by the law. If there is no permit, it needs to come down. If this problem was in Barnstable or other villages – it wouldn't happen.

COUNCIL RESPONSE TO PUBLIC COMMENT:

Pres. Brown agreed that there is a problem. This item regarding restriction of automobiles is a Band-Aid. It is also a health hazard, so he will attack the cars. We know that we are going to need a new tower for the water company and clean up another area. What we do not know is how many miles of piping need to be cleaned

up. We do not own it – so we do not have those figures because we can't explore that. The prices will be going up no matter who owns it. He addressed Mr. Doiron's concern about about the airport. He said the gentleman is barred from the Falmouth airport and that is where he lives. He wants to land in Barnstable. He is obviously not doing something right. So he supports the manager's decision. Prince Cove will make us money – it is an enterprise account, and it will not come out of the tax dollars.

Vice Pres. Farnham thanked all for their comments. We realize the issues of overcrowding. This will be a beginning of a clean up action. The town needs the citizens to blow the whistle on these places. So if you know of a possible violation, let us know, bring in proof if you have it like photographs.

Councilor Curtis addressed the illegal boarding houses and stated that it is spreading into the other villages as well. It is a whole town issue. We are working with the Town Manager and hope to see significant issues brought forward during the budget, such as the enforcement. Hopefully we will have more information in the next couple of months. If we have regulations on the books and we are not enforcing them, why do we have them? Regarding Mr. Julius' desire for a law suit – my only question is who are you suing? You are the town of Barnstable.

Councilor Barry told the audience to contact Linda Edson and tell her where there are illegal apartments. We are proposing to add enforcement people. The next thing will be where are these people going? The big issue is we need a comprehensive plan. We need to look at the units we have and see about getting them counted. I am concerned about the people who need housing. Fire districts were created to get emergency vehicles to the citizens rapidly. The BARLACO land is being paid for by the whole town. The water company will be paid for by the rate-payers.

Councilor Joakim said she would appreciate it if speakers do not attack people's professions. Despite what you think, we are here to try to serve you and we listen. There were engineers and studies involved in the purchase of the water company. It is more than cars – everything you say is right – the town is responding. At one residence the town could not get all the way in. Neighbors called in the complaint. My precinct has a lot of this going on. It is a huge issue. The car issue will start fixing it. It will put a Band-Aid on it.

Councilor Richardson acknowledged that a lot has been said. He told people to call 508-862-4670 to share your concerns. During public comment we see many people regularly and much of the information is helpful, but other comments are their own opinions. There are a lot of people doing good things. Consolidation has come up so many times. There is no evidence that consolidation will save any money. The manpower is still needed. If a study is done – it might show that it would be best to just keep it this way. He is willing to talk to anyone if they have a problem.

Councilor Munafo defended Councilor Tobey and wanted him to be added to the good councilor list. We have heard a lot about poor neighbors. Whether it is about trespass,

parking of large trucks, multiple cars, we have forgotten how to be civil to one another. I am reluctant to write a law to tell you to be a good neighbor – but if I have to I will. He would like to see our current laws enforced first. We will get beat up whichever way we go, and regarding the water company, it could be by the same people. He was disappointed about the street festival not going to take place. If we can't put on an event and do it safely, then that is what we have to look at.

Councilor Tobey said the item on the vehicles is an excellent idea. It has been an issue for many years, this is not something new. I look behind me and there are like 8 cars behind my house, he noted. It is a serious issue. We need to try to rectify this and it is not going to be easy. I'll settle for second best councilor in Hyannis.

Councilor Barton echoed Councilor Barry. We have to balance the housing issue. If anyone has any issues please contact the council office regarding things in Marstons Mills. Regarding the street festivals, she said instead the rink will be open on Thursday nights as well. We are trying to work on some other events. On the fire districts, we have a committee and are going to look at it again. This committee does not have any pre-conceived notions. There are representatives from all of the districts and they are looking at it with an open mind. The fire districts are separate legislative bodies. We do not have the authority over the districts.

Councilor Milne said the economic fabric of our community is a byproduct of actions and inactions from town meeting that has put us in a position where housing is not available and accessible for a workforce that is necessary for this peninsula. Young people leave here because there are no jobs that will support a family here. Some people are irresponsible – but there is a much more in depth problem. He asked for a legal opinion from the attorney regarding a possible lawsuit on the water company acquisition. He was emotionally attached to the street festival. He feels that if the resolve had at least been voted on it might have made a difference. The cost was really what put the festival out of business.

Councilor Canedy said she supported the street festival too. She asked Councilor Richardson what office was the phone number in where the people are to call - he said the number is in the regulatory office. She supports Pres. Brown's efforts on the automobiles, but she suggested the leadership have a sub-committee to look into cars on lots and other zoning issues. Some of the problems are with absentee landlords and many do not know what is going on at their property. You can address light trespass as well.

ACT ON MINUTES:

Upon motion duly made and seconded it was voted to approve the minutes of April 7, 2005 with the following correction: page 2 under response – change boxing to wrestling history.

VOTE: Unanimous as amended

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

Councilor Richardson, on behalf of the appointments committee, is looking for conservation commission applicants. There are 3 positions that need to be filled. Also the Hyannis Main St. Waterfront Historic District needs a position filled. We have tried to develop affordable housing in several villages. The greatest need is for families with children. Most are being built for the elderly. There are needs in that area, but for now we have enough. We need the family housing.

Councilor Tobey thanked the manager for attending the Hyannis Library gathering to announce the opening of the literacy center funded by a Verizon grant.

Councilor Barton reminded everyone about nominations for the Jane Esbaugh Community Service Award.

Councilor Curtis supported Richardson on the affordable housing issues. There is a real need for housing to allow the young people to continue to live on the Cape. She feels that developments should have 25% instead of 20% affordable. The housing committee takes this matter seriously. The personnel committee has been meeting regarding reclassification of positions and other issues.

Councilor Munafo was at a constituent's house regarding light trespass. This property had 500W halogen lights on the back of the house and the light was serious. Again be a good neighbor. We might have to do something legislatively. Munafo contacted Mr. Julius to try to give him assistance and Julius summarily dismissed it.

Councilor Milne wants to pursue a conservation restriction for the BARLACO property and make it friendly to Exit 6 ½. He asked the President to update the public on what we view a liaison to be. Do they have a strong role/weak role? He wants to know who the liaisons are to the different boards. He said the Town of Yarmouth wrote a letter (which he did not get for a couple of months). They asked that a voting member from Yarmouth be added to the Airport commission. They are prepared to be a partner. Please consider this seriously.

Pres. Brown said each liaison decides what his/her role will be. They are all listed on the town website. As far as the letter from Yarmouth, the council was not sent the letter. They faxed a copy. We are in negotiations. The airport is an enterprise account and there are some legal issues. There are different opinions out there. It is not allowed in our administrative code. There is a lot going on here, sir. All of the issues have to be looked at. This is not a simple letter; you will all be kept up to date.

PRESIDENT/VICE PRESIDENT COMMUNICATIONS:

President Brown gave an apology to the Hyannis Fire Department, who was part of the color guard at the State of the Town Address. He had erroneously labeled them as being from the Barnstable Fire Department.

TOWN MANAGER COMMUNICATIONS:

None.

ORDERS OF THE DAY

2005-075 AN ACT INCREASING THE PENALTY FOR FAILURE TO MAKE A WRITTEN RETURN IN CONNECTION WITH THE VALUATION OF CERTAIN REAL ESTATE INTRO.: 04/21/05

Councilor Tobey presented the rationale on this item. Councilor Joakim said that this item came out of the committee relative to the split tax rate. In order for assessing to assess commercial properties, they need an income report filed. There were about 575 properties that did not have the necessary report filed, which assists the assessors. This item needs to go to the state house for approval.

Councilor Curtis said this relates to business property owners and the act increases the penalties for failure to file. It goes from \$50 to \$500. This must be changed at the state level. Councilor Canedy asked if it was per property and yes it is.

Vice President Farnham said that he agrees with the increase in the fine; but disagrees with the second penalty. This is computed if they file late. He asked if this will affect the law for the entire Commonwealth. Yes. Farnham said the new additional penalty would be high. He did the math, and cautioned councilors to think of the properties in the cities. If you pass it with this penalty you will not get it through the legislature. He likes section 1 but not 2.

Councilor Joakim said this would go into a state committee and that section may or may not stay there. She thinks we should go for the most.

Vice President Farnham said this might create real value – it will get people to reply better. He thinks the second part makes the fine extreme.

Councilor Curtis said no business owner needs to pay a fine. You will be fined only if you do not comply with the current law. To avoid any fine, all you have to do is fill out the form and send it in in a timely manner.

Paul Matheson, Director of Assessing, said that this issue has come across the state. It is part of MGL Ch. 59 Section 38D and needs compliance. There are problems everywhere. We need the filing to establish value. This information is not just requested from businesses, in some circumstances, residential homeowners are asked to fill out the form. You need to think about that too.

Upon motion duly made and seconded it was:

RESOLVED, that the general court is hereby petitioned to enact a law essentially as follows:

AN ACT INCREASING THE PENALTY FOR FAILURE TO MAKE A WRITTEN RETURN IN CONNECTION WITH THE VALUATION OF CERTAIN REAL ESTATE.

SECTION 1: Section 38D of Chapter 59 of the general laws is hereby amended by striking out the word "fifty" appearing in line 16 of said section as it appears in the 2002 official edition, and inserting in place thereof, the words "five hundred".

SECTION 2: Said section 38D of chapter 59 of the general laws is hereby further amended by and inserting at the end thereof the following new paragraph:

"If an owner or lessee of real property fails to submit such information in the form prescribed and within ten days of the time a penalty under the preceding paragraph is incurred, in addition to that penalty and any other penalties, there shall be added to the real property tax an amount equal to one-tenth of one percent of the assessed value for the year immediately preceding the assessment year for which the information is sought. Said amount shall be assessed for each day during which such failure continues, to a maximum of one percent of the value of the property as aforesaid, provided, however, that the board of assessors informed said owner or lessee that failure to so submit such information would result in said penalty."

VOTE: 6 yes 5 no - Passed

2005-083 THAT THE TOWN COUNCIL ACCEPTS A GIFT OF \$4,000 FROM JOHN MCSHANE TO BE SPENT ON TREE REPLACEMENT INTRO.: 04/21/05

Councilor Curtis said a tree was cut down on McShane's property and he is giving money to have the trees replaced, and will also spend some money to help repair the Burgess Property.

Councilor Richardson said tomorrow is Arbor Day so this is very appropriate.

Councilor Barton asked if anything could be added to the surrounding area. A friendly amendment was proposed that after Mills add "and the surrounding area."

Upon motion duly made and seconded it was

RESOLVED: That the Town Council accepts the offer of a gift of \$4,000 from Mr. John McShane, to be spent on tree replacement at the corner of Lovell's Lane and Route 149 in Marstons Mills and the surrounding area.

VOTE: Unanimous

2005-090 APPROPRIATION ORDER IN THE AMOUNT OF \$27,000.00 FOR THE PURPOSE OF ACQUIRING 18.90 ACRES ON SANDY NECK, ASSESSORS MAP 183, LOT 5 INTRO.: 04/21/05

Upon motion duly made and seconded it was voted to send this item to a public hearing to be held on May 5, 2005.

VOTE: Unanimous

2005-091 RESOLVE ACCEPTING GIFT OF EASEMENT, OYSTER PLACE ROAD, COTUIT, ASSESSORS MAP 35, LOTS 89, 90 AND 101 INTRO.: 04/21/05

Action on this item was postponed to May 5, 2005.

2005-092 ORDER ADOPTING AN ORDINANCE TO LIMIT THE NUMBER OF AUTOMOBILES PER RESIDENTIAL DWELLING INTRO.: 04/21/05

Upon motion duly made and seconded it was voted to refer this item to a second reading on May 5, 2005.

VOTE: Unanimous

PUBLIC COMMENT:

Mr. Proccaccini said he would not want to put anyone out on the street, but what happens to the people living in the basement? What if there was a fire? How many people have to die because of illegal rooms?

Mr. Julius said that he cares about people and thanks all the councilors. I don't want to be a leader in a lawsuit. I want the vote rescinded. He reminded the councilors about MGL 165 Section 5. You should have been able to buy this 3 years ago for \$6.5 M, now you pay \$11M. I am not fighting with anyone I am just trying to help people in Hyannis. I hope there is something here you can see. I want the vote rescinded. You can get it for a lot less. I am disappointed. You can call me any time you wish.

Mr. Gonzaga said there should have been due diligence done on the water company purchase.

Ms. Fortes said that there are so many cars in some yards; she knows of places on her own street. There is a need for survival, we need housing. The money the fire departments make should come to town hall. She was one of the first housing committee representatives. We need more affordable housing.

Mrs. Elkins said she hopes there will be more people coming at the time the council votes on the auto ordinance. Families are not in these overcrowded houses. Most of the people are young people, not families. The town does inspect, but there are no follow ups. We are good neighbors. However, some who move in do not have a good neighbor policy.

William Elkins said that the vote on the water company was an excellent vote. These houses don't have kids, these are cash cows. There are 10 – 18 people living in these houses and they pay good money per week. It is a great business. Are you willing to sacrifice the neighborhoods for these cash cows?

Frank Paparo said people keep their lights on because you have thieves breaking into homes. Let the people keep their lights on. Don't do a light ordinance. Be the town that you want to be. I want to be proud of this town.

Councilor Joakim said we have been accused of not doing research. We did a lot of research and a lot of studies.

Councilor Richardson said Councilor Barry is right...we need family housing and space.

Vice Pres. Farnham said we had many business plans and models prepared by professionals prior to the vote on the water company. We had a capital assessment plan. The council spent many hours over many days studying this. This was not done on the spur of the moment.

Councilor Munafo said Mr. Julius said our conversation was not summarily dismissed. He said that his offer for help was summarily dismissed. I did not lie.

LATE FILE

2005-093 – RESOLVE AUTHORIZING THE MANAGER TO PETITION FOR LEGISLATION VALIDATING ORDERS PASSED BY THE TOWN COUNCIL.

Upon motion duly made and seconded it was voted to refer this item to a second reading.

VOTE: Unanimous

The Town Attorney, Robert Smith stated that he had just celebrated his 26th anniversary with the town. He said in all the years he has never seen an acquisition more thoroughly studied by the council. You saw to it that you got the best advice from Palmer and Dodge and they are the foremost experts on acquisition of water companies. It was done right. It is difficult to suspend judgment. Mr. Julius is a citizen. He recommended that the council release all the minutes of the council's debate in the executive sessions. Smith is not concerned about a lawsuit. They don't have the grounds for legal error. Mr. Julius just disagrees with the decision. There is no legal reason for the action.

Upon motion duly made and seconded the executive session minutes dealing with the acquisition of the Barnstable Water Company are opened.

VOTE: Unanimous in favor

ADJOURNMENT:

Upon motion duly made and seconded it was voted at 9:25 p.m. to go into a committee of the whole to discuss the budget and council priorities.

VOTE: Unanimous in favor

Respectfully submitted,

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