

TOWN COUNCIL MEETING
January 19, 2006

A quorum being duly present, Town Council President, Henry Farnham, called the meeting of the Barnstable Town Council to order at 7:00 pm, on January 19, 2006, at the Barnstable Town Hall, 367 Main Street, Hyannis, MA.

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

President Farnham led the Council in the Pledge of Allegiance and a moment of silence. He asked the council's permission to take out of order 2006-069 and all agreed.

Financial Director Mark Milne asked for approval of new Assessor, Jeffrey A. Rudziak. He addressed his background in assessing in which he most recently held the position of assessor in the town of Oxford. Rudziak spoke to the council and stated that his goals are for fair and equitable appraisals, courtesy in service and an open relationship with all.

2006-069 APPOINTMENT INTRO.: 01/19/06

Upon motion duly made and seconded it was voted that:

RESOLVE, that the Town Council confirm the appointment by Town Manager, John C. Klimm, of Jeffrey A. Rudziak, Director of Assessing Department.

VOTE: Unanimous in favor

PUBLIC COMMENT

Susan Bethel stated that the people at the Senior Center care about you and make you feel that you are important. They will help you and you can do things and have fun. They have lunch – I am now in an art class and am a woodcarver. Baby boomers this is the first year for you.

Tom Sullivan said pollution is in an area in between the runways at the airport. The storm water runoff system runs into the two ponds adjacent to the airport. The water is polluted with chemicals and metal (including an airplane). You (town) have a well in that area and Yarmouth has wells too. There is concern on this site. This area is a sitting time bomb.

Paul Drouin is concerned about the use of our roads for the benefit of Nantucket. We have a written agreement with the SSA to reduce the truck traffic and nothing has happened. We need to get some of the trucking out of Hyannis. Those people are destroying our village.

Joan Cullinan is a volunteer at the Senior Center and was surprised how the center is so busy. We have exercise classes, lectures, tax preparation, clubs, computer classes, foot care and other such events. We hope it gets bigger and better.

John Julius said no one has answered his questions regarding capital expenses for the Hyannis water company. Consultants apparently underestimated costs. The attorney and manager did not have any copies of the appraisals on the land. Far too much continues to be unacceptable. We are going to file an appeal on the judge's decision.

Susan Rohrbach, aide for Sen. Robb O'Leary, stated that the Senator wants to make sure that when the Armory is declared surplus that the ownership of it will be in the town's hands. He is working on a lot of legislation at this point.

Allen Trundey has had back surgery and is homeless. He said that we are turned down from the shelter and we need help.

Peter Doiron - war is fine when you never mind. He is a member of citizens for open government. He votes for the person and not the party. All politics is local. Former councilors should not serve on any boards for one year after they leave office. He asked the council to look into legislation to limit ownership?

Alan Burt spoke about the homeless who reside in the woods. I hope that we get the armory or find another place for them. We have made strides.

Lou Gonzaga said there was an email out on COG. We need unification between businesses and people. Cape Cod Commission – when are we going to get rid of it? We don't need the Cape Cod Commission. Turn the armory into a civic association building.

Herbert Greenwald has been observing the Freezer Point issue and stated that he was here to offer services in conflict resolution. WIN/WIN resolutions are what you look for. You need to seek compatible resolutions; maybe we could work on that.

Frank Paparo stated that we have to get out of the Cape Cod Commission.

COUNCIL AND TOWN MANAGER RESPONSE TO PUBLIC COMMENT

Councilor Janice Barton said that "Operation in From the Cold" is a work in progress. We will be looking at these issues. The police are trying to balance the needs of residents and homeless. There are certain public safety and health reasons why homeless people cannot be in various camp areas. The program is in need of money and she hopes other towns will come forward and assist in this effort.

President Farnham thanked her for her work in this regard.

Councilor Milne also extended kudos to Councilor Barton. Milne said many homeless camps are in our neighborhoods here in Hyannis. There has to be a balance. He has empathy for their plight, but also he gets calls from residents in his precinct regarding the homeless camps. There is a liability issue as well with homeless camps on public properties. The town has been sensitive on the issue

and has worked to address all. Regarding Mr. Drouin's comments on traffic to/from Nantucket, what about our embarkation fee? It was meant to deal with issues caused by excessive use. Milne stated that his viewpoint on the airport will not change now that he is the liaison. If any updates on the environmental issues are available we would appreciate them.

Councilor Munafo addressed Mr. Julius' comment on straight and honest answers. We need straight and honest questions. He remembered helping and offering to help and being summarily dismissed. Whether Julius is trying to be sincere or grandstanding is in question with me, he stated.

Councilor Crocker addressed Mr. Sullivan, and said the email had caused concern. Crocker has the same concerns about runoff. It is a big mistake. We have numerous drains that do this. The northern wells are shut off – possibly one might be open but there is more information to be gathered. The well water that is being pumped is not in jeopardy. Regarding John Julius, you asked if we are going to spend \$54M in capital – we are going to spend it – but it is the rate we are going to spend it that is the issue. We are assembling the body that will be charting the course. The attacks are unfair. The first thing is there will be a meter check. The highest users will pay more per gallon than the smaller users. Everything is early in the game and we won't know what will happen yet. Let's get a little further down the road.

Councilor Canedy said the Cape Cod Commission will be reviewing the terminal site and will address the water issues as well. She thanked various speakers for their participation in the public comment segment.

Councilor Rugo said we have agreements with the Steamship Authority and what teeth do we have in it if there is no leverage? Can we sue for damages or are there other avenues of relief?

Manager John Klimm said, as far as the Steamship Authority goes, the year end numbers are out. The freight traffic is now in the 4th year with rising numbers. It is getting worse. We do have an agreement that by 2003 a port would be chosen. By 2008 there would be off-Cape freight going from the alternate port. It is time for us to re-visit this issue; formally ask the governing board to expedite the 2003-08 freight agreement; and have them put out a real RFP (not like the previous RFP which was guaranteed to fail). As far as the embarkation fees, we get about \$80 – 90,000 a year and 25% of that goes to Yarmouth. We may look to see how we can spend that money and where it can go in Hyannis.

As far as the environmental issues, Klimm said he would rather refer those to the airport manager. The issues will be addressed. As far as the water company, we are taking the next step to institutionalize the board to move this forward. To attack the consultants, who are professionals, in a forum when they are not here is not fair. The presentation last spring was for a 10-year plan. The capital number was \$12M. Now we are looking at a plan with a greater number of years, so that figure is a lot higher. We have set up a system. I have never had any say in my water rates before as a Hyannis resident. Now any Hyannis resident can come in and tell the board what they think and the board will work

on setting rates and putting a plan together. I don't believe the board will immediately put in high rates. There was no basis for the legal action on the court case which is why the judge threw it out. You can't compare a 10 year plan to a 50 year plan. Let's form the board tonight and let the residents do their work.

REPORTS FROM TOWN COUNCIL, BOARDS, AND COMMITTEES

Lynne Poyant announced a couple of meetings including one at the Senior Center to discuss the Youth and Community Center. They are looking for community input. She also addressed the Downtown Art Charrette which will be held in February that will discuss public art and possible locations for it.

Vice President Joakim said as far as the Senior Center goes; they have the Council on Aging and the Friends of the Council, who have been working together on long range issues. We want everyone to understand the services.

Councilor Canedy said the council went to the MMA conference and she addressed a session that she attended regarding conservation.

Councilor Curtis said the appointments committee is looking to have folks join committees. The process of resumes and letters can be daunting. Now we are developing an application which will be available.

Councilor Barton said there will be a school facilities manager appointed by the school committee. They are looking to having a superintendent chosen by the 25th. Councilor Rugo pointed out that on the 31st the school budget hearing will be held.

ACT ON MINUTES

Upon motion duly made and seconded it was voted to approve the minutes of January 5, 2006:

VOTE: 12 yes 1 abstention

ORDERS OF THE DAY

OLD BUSINESS

2006-057 - ORDER TO AMEND ADMINISTRATIVE CODE BY INSERTING SECTION 241-38A HYANNIS WATER BOARD INTRO.: 12/15/05; 01/19/06
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Councilor Munafo moved and it was seconded to move to adopt the substitute text as presented in a document named "Substitute Text".

President Farnham said there are several points that the civic association recommended and he gave a brief overview of their concerns such as the manager would make the original appointments and the usual council appointments process would take over after that.

Upon motion duly made and seconded it was voted to go in to a public hearing for the purpose of discussing 2006-057.

VOTE: Unanimous

Paul Drouin said the Hyannis Civic Association has always backed the purchase of the water company so we can be in charge of our future. We have worked in the system to try to get something that was agreeable to everyone – he thanked the manager for allowing everyone the extra time and meetings. He likes the original text. He wants the original draft since he never saw the late filing until this evening. This is not what we negotiated. President Farnham said the draft in the packet is the original.

John Kenney, President of the Chamber of Commerce questioned business property participants. Is that real estate owners or business owners? He would like it to be clarified. If not an owner how about a representative; like Cape Cod Health care? He would like two owners or representatives of businesses, two residents and two at large, a business owner and resident. Usage is about 50/50 resident/commercial – so equity would be good.

President Farnham said it would be real estate owner and not business owner.

Councilor Curtis questioned representative? Kenney said how do you identify Cape Cod Hospital or Cape Cod Health Care; they might want a representative to be put on the board. CCH is the biggest user of water.

Lou Gonzaga, as a member of the group who worked on this, said we all thought about the ratepayers. There should be 5 members – 3 residents and 2 businesses. There will be open meetings. He thinks the appointments should be for 3 years and then look at electing them. He would like to see the Barlaco land returned to the water company.

Deb Krau spoke as a member of the civic association and as part of the water board. All the other water boards are made up of all voters of the villages. We would like them to be residents. We believe there are many talented businessmen who live here and work here. It always comes down to rates – there are many issues out there that are going to be discussed. The legislation was well constructed.

Joseph Chili – I am a business person and resident of this community. The main concern the civic association has is that 75% of the payers (residents) pay from the lower rate scale. More checks come from the residents than the businesses. The civic association wants the greatest protection of costs for the residents. Have your watchdogs be business owner/residents. Business people can augment their income when residential rate payers can't.

Peter Doiron said some of the wells are in Barnstable village. He supports the civic association. We should look to the residents; we don't want to skew it too much toward the business community. Leave it to citizens and get the citizens here.

Arthur Kimber has been a resident since 1981 and is thankful that the council acquired the water company. He supports the 5 member board with all members residents: 3 private citizens and 2 business community residents.

Cynthia Cole appreciated comments from all. She pointed out that the business community, on top of fees for sewer and others have just incurred a new split tax rate, and an increase by the fire district. It seems that business people, who are in this community, should be considered as part of this community. She feels the language should reflect owners of a Hyannis business or commercial property located in Hyannis. Business owners' rates will be going up and they should be fairly represented.

Paul Sullivan thanked the Town Manager and the President of the Council for their support on this.

Upon motion duly made and seconded it was voted to go out of the public hearing at: 8:58 p.m.

VOTE: Unanimous in favor

President Farnham said he has been working with the civic association and the chamber. What he tried to do was put down a compromise for discussion. Businesses had paid a discounted rate before and now they won't. This is an advisory board to the manager and council and we will be looking hard at all issues. It is not a water commission. He is sensitive to good quality drinking water. He appreciates concessions made. Three residents and two business property owners provide a greater audience to draw from. He would not necessarily feel that way with a business owner.

Councilor Brown wanted it noted that: 1) the businesses outspend the homeowner. They may be a smaller percent but spend more. He believes in no taxation without representation. If I am doing business here I should have a right. 2) He would prefer to leave the appointments with the Town Manager; it is an executive decision. There was no problem cited by anyone with his original appointments.

Councilor Canedy asked, since the civic association has not seen this and it sounds like it is still in negotiation, is anyone looking for postponement? No was the response. Canedy discussed the business vs. resident issue. Nothing is set in stone, she reminded everyone. Go along with this for a year and if they can't get the proper representation then expand if necessary. She agrees with Councilor Brown, she wants to see the manager be the appointing authority. She would like to see it in a less political realm.

Councilor Milne stated that we have an executive function – not advisory or regulatory. He was amazed that we are talking about nitty gritty. You will not keep a fine town manager if we become mini managers. The board that he (manager) put together was good and well-balanced. He appoints a balanced board. If you all look at your 2006-057 that was put in your envelope last week, he would make a suggestion to use this version. He would vote to kill the substitute motion.

President Farnham said it changes business Hyannis resident to business town resident – that is the only difference.

Councilor Barton asked if this is an advisory committee; she wants definition as to what is it. President Farnham said the town council and manager have final oversight over the board. It is technically an advisory board.

Councilor Crocker asked a technical question of Mark Milne. In the 2nd paragraph it discusses the demise or sale of properties. One says sale and/or lease monies would go into capital outlay for debt reduction. He asked for clarification. Milne said current sale of real estate has to be used for future real estate purchases. Either version needs a re-write, Crocker felt. Attorney Smith said if property is sold it requires the proceeds to go to retiring debt that was used to acquire the property initially and then into a capital account. Smith said it specifically says to the extent allowed by law. Crocker said lease and sale have two different accounting purposes.

Councilor Rugo moved to take out the substitute text, add the original text, strike town council and put in town manager, and add “and/or debt reduction of the division.”

Councilor Crocker noted that on the floor is the substitute text. Other suggestions for language changes were made.

Upon motion duly made and seconded it was moved to postpone this item.

Councilor Curtis felt that the timeliness was important and it should not be postponed.

A motion was made and seconded to move the question.

VOTE: To move – 12 yes 1 no.

On the motion to postpone.

VOTE: To postpone for two weeks 4 yes 8 no

A small group of councilors removed themselves from the chamber for the purpose of solidifying the language in the text. They returned with Substitute Text B which was the text originally presented this evening with minor amendments.

Councilor Munafo stated that it is confusing that what is being created is a quasi legislative body and these appointments should go through the town council and appointments committee. The people are protected through the legislative branch. This is not about the Town Manager and his ability to appoint – he has done a good job. There is nothing wrong with the way he is doing it, it is fine. We are being asked to formalize what the manager has more or less put together. In 3 years we will not be voting these people in. The appointments process should be followed. The manager had the initial appointment. We do get thrown under the bus on many occasions.

Councilor Joakim feels the council should go with the civic association's wants. She thinks that there should be a business owner who lives in the town of Barnstable.

Councilor Curtis said she expected that the manager would come back annually and report said review to the town council. Bottom of page....friendly amendment – add after administrative code “and report on said review to the town council”. Councilors concurred.

Councilor Canedy said any changes to this administrative code section could be brought forward by any councilor at any time. Councilor Crocker agreed.

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

VOTE: Unanimous to move

Upon motion duly made and seconded it was

ORDERED:

SECTION 1. The Administrative Code is hereby amended by inserting, after section 241-38, the following section:

241-38A Hyannis Water Board

There is hereby established a Hyannis Water Board, which shall consist of five members who are ratepayers of Hyannis Water, the water supply operation administered by and through the Water Supply Division of the Department of Public Works, appointed by the Town Manager for three-year overlapping terms. Two members of said Board will be resident owners of Hyannis business property located in Hyannis Water, and three members of said Board shall be residents of Hyannis in the area served by Hyannis Water. Said board shall be responsible for the oversight of the Water Supply Division of the Department of Public Works, and shall have the authority, subject to the authority and responsibility of the Town Manager and the Town Council under the Charter, to: 1), review and approve the operating budget for the division; 2), review and approve the capital outlay plan and budget for the division; 3), organize itself into subcommittees as needed; 4), review and approve the rate schedules for the division; 5) prepare an inventory and master plan for all assets of the water supply division including all real and personal property acquired from the Connecticut water company in the course of the acquisition which will conclude in the year 2006; and, 6), make any recommendations to enhance the performance and operation of the division which, in their opinion, are appropriate.

In addition, the division shall be entitled to, to the extent permissible by law, to having the proceeds of any sale or change of use of property acquired in the acquisition of the Barnstable Water Company by the Town of Barnstable dedicated to the capital outlay budget of the division, debt reduction then to the operation thereof.

The town manager shall annually cause a review to be completed with respect to the provisions of this section of the administrative code, and report on said review to the Town Council.

SECTION 2. Section 241 - 47.25 of the Administrative Code, as amended by the adoption of Agenda Item 2005-126 on September 8, 2005, is hereby amended by striking out subsection 241 - 47.25 (D) and inserting in place thereof the following new subsection:

- D. Interrelationships.
(1) Town Manager.

In respect to the vast majority of activities, significant interaction is necessary.

- (2) Other departments.

As the Department services most departments, interaction is recurring, dependent upon the specific activity to be undertaken.

- (3) Multiple-member boards.

The Department provides technical and administrative support to the Public Works Commission, the Hyannis Water Board, the Water Pollution Control Board, and the Road Committee.

VOTE: 11 yes 2 no roll call

2006-060 - APPROPRIATION ORDER FOR FY 2006 AIRPORT OPERATING BUDGET INTRO: 01/05/06; 01/19/06
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Upon motion duly made and seconded it was voted to go in to a public hearing for the purpose of discussing 2006-060.

VOTE: Unanimous

Airport Manager Quincy "Doc" Mosby explained the amounts of money that are to be spent: \$71,500 is to fund completion of the airport financial analysis; \$105,000 to fund jet fuel tax levied by the D.O.R.; \$500,000 to fund increased cost of fuel; \$50,000 completion of the airport guidance document; \$115,000 to fund airport's share of repair of Engineered Material Arresting System and \$4,000 to fund emissions study. The study will have scientific data that will prove or disprove the emissions complaints.

Peter Doiron wished we could get taxes back as well. Are you going to go after the \$115,000? Noise abatement is still an oxymoron. He also said he understands that there is a meeting tomorrow that is closed.

Upon motion duly made and seconded it was voted to go out of the public hearing at: 10:07 p.m.

VOTE: Unanimous

Councilor Curtis asked for explanation of \$50,000 demolition of Mildred's and \$25,000 to fund minimum standards, which were also listed. Curtis felt it would be nice to get some of the outcomes from the studies. Councilor Milne asked about the Mildred's issue again and what is happening to the site.

President Farnham ruled that his question was out of the context of the item.

Milne challenged the ruling of the chair.

VOTE: 2 no – 11 yes in favor of the chair

Mosby said the \$50,000 is to pay for the demolition of Mildred's (former Chowder House restaurant). He said when the last tenants left there was damage to the building and the building then became a liability, because homeless were going in there. Pipes froze and further damaged the building. Then they found asbestos in the building. We didn't want to put another business there due to a possible exacerbation of more traffic problems. We decided to tear it down. We worked with the town and saved about \$75,000 doing it ourselves.

Councilor Crocker said we had this discussion before and all discussion on this property is on hold. Mosby said that we are going to chase after the \$115,000 from the people who damaged the arrestor system. Milne said there have been complaints in the Spring Street area and asked if some of the emissions monitors could go in that area as well. Mosby said the engineers have analyzed the issue and figured out where the monitors will go.

Upon motion duly made and seconded it was

ORDERED: That the Town Council hereby appropriates \$870,500 from the Airport's savings account for the purpose of funding the FY2006 Airport operating expenses.

VOTE: 13 yes unanimous vote

2006-065 - APPOINTMENTS INTRO.: 01/05/06; 01/19/06
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Upon motion duly made and seconded it was voted:

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

LAND ACQUISITION & PRESERVATION COMMITTEE

Lindsey Counsell, 1183 Old Stage Road, Centerville, MA 02632 term expires 06/30/2007

Tom Mullen, PO Box 551, Barnstable, MA 02630, term expires 06/30/2008

VOTE: Individual votes were taken on each appointment:

Counsell – 10 yes (3 councilors out of the room)

Mullen - 6 yes – 3 no – 1 abstain

Both were approved.

NEW BUSINESS

2006-064 - TRANSFER ORDER IN THE AMOUNT OF \$29,800 FOR THE PURPOSE OF FUNDING THE LEASE/PURCHASE OF THE SNOW & ICE OPERATIONS OFFICE TRAILER INTRO.: 01/19/06

ORDERED: that the Town Council hereby transfers the sum of \$29,800 from the remaining balance from Council Order 98-099 Capital Improvement Plan Items, for the purpose of funding costs associated with the relocation of Highway Division Snow & Ice Operations office to a temporary trailer, to an account designated by the Town Manager.

VOTE: Majority in favor

2006-066 - TO DEVELOP ZONING FOR ASSESSOR'S MAP 332, LOT 10-1, 770 INDEPENDENCE DRIVE INTRO.: 01/19/06

Upon motion duly made and seconded it was voted to refer this item to a joint public hearing with the Planning Board on February 2, 2006.

VOTE: 11 yes

2006-067 - APPROVAL OF NINETY-NINE YEAR LEASE FOR CONSTRUCTION OF AFFORDABLE HOUSING ON A 7 ACRE PARCEL IN WEST BARNSTABLE ADJACENT TO THE YMCA INTRO.: 01/19/06

President Farnham announced that this item was postponed to February.

2006-068 - EXEMPTION OF AN INTEREST UNDER THE CONFLICT OF INTEREST LAW INTRO.: 01/19/06

Attorney Smith explained the act of exempting certain employees who also serve on committees.

Upon motion duly made and seconded it was voted that:

RESOLVED: That the interest of Lindsey Counsell, as Director of Environmental Services within the Department of Growth Management, Thomas K. Lynch, as Executive Director of the Barnstable Housing Authority and Kris Clark, as Shellfish Technician are hereby found to be not likely to interfere with the objective performance of their duties in the best interests of the Town in following positions and are hereby exempted:

Lindsey Counsell: Community Preservation Committee and Land Acquisition and Preservation Committee

Thomas K. Lynch: Community Preservation Committee

Kris Clark: Land Acquisition and Preservation Committee

VOTE: Unanimous in favor

2006-070 - APPOINTMENTS INTRO.: 01/19/06

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

VOTE: 9 yes (4 councilors out of the room)

Late File

2006-071 – APPOINTMENTS Intro.: 01/19/2006
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Upon motion duly made and seconded it was voted to move this item to a second reading.

VOTE: 9 yes (4 councilors out of the room)

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

Councilor Joakim invited all to the adult day center open house to celebrate their 8th anniversary in Centerville. She also reminded residents about the Heart & Soul event at the Senior Center, and the visioning meeting for Centerville sponsored by the Centerville Civic Association. Joakim also announced her recent meetings with Sen. Murray and Sal DeMassi. She emphasized that we have a lot of educating to do to remind them and others that we are not rich because of “mansions on the shore”.

Councilor Canedy announced that representative from the police department would be joining them at the Barnstable Civic Association to discuss traffic issues.

Councilor Milne announced the upcoming general meeting of the Hyannis Civic Association.

Councilor Barton judged a school Geography Bee and congratulated the winner, Mike Casey. She said the kids did a great job.

President Farnham reported on his morning meeting with the Osterville Business and Professional Association. He also reminded everyone about the workshop on sewers next Thursday.

Councilor Curtis noted that the council is working on the strategic plan and will continue to meet.

ADJOURNMENT

Upon motion duly made and seconded it was voted to adjourn.

ADJOURNED: at 10:30 p.m. by a unanimous vote

Respectfully submitted,

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