

**TOWN OF BARNSTABLE
TOWN COUNCIL MEETING
September 16, 2010**

Council President Frederick Chirigotis called the meeting of the Barnstable Town Council to order at 7:05 PM, on Thursday, September 16, 2010 at the Barnstable Town Hall, 2nd Floor Hearing Room, 367 Main Street, Hyannis, MA 02601.

PRESENT: Richard Barry, Janice Barton, Ann Canedy, Frederick Chirigotis, Debra Dagwan, Janet Joakim, J. Gregory Milne, James Munafò, Jr., John Norman, Thomas Rugo (9:15), and James M. Tinsley, Jr. (7:35). **Absent:** James Crocker, Jr., Henry Farnham.

President Chirigotis led the Council in the Pledge of Allegiance and a moment of silence. Councilor Barry asked that Katherine Emily Gill, who passed away, be remembered.

PUBLIC COMMENT

Jon Julius thanked Councilor Norman for voting against the \$30,000 appropriation for the “printing of propaganda on sewerage”. Julius has filed a complaint with the Ethics Commission for the use of money that way and hopes for a straight out “no” vote on the override.

Eliza Cox, an attorney from the firm of Nutter, MacLennan and Fish, read a letter from Botsini-Prime, LLC, one of their clients. (See Exhibit A). She gave some background. The subject of the appeal is about the traffic patterns.

Mary Ann Barboza spoke about some of her past issues with the rink and she will continue to fight. Jane Lynn Jackson, one of the two children she brought with her, who use the rink, spoke about the gym use rules she was told when she bought her membership. Children were promised that they could use the gym but in reality they cannot use it at will. Jane Lynn has been asked to show her membership card while witnessing that “white children” are not required to do the same.

Robert Tucker briefly spoke on several subjects including the need to get the money to enforce the occupancy law. Too many people are in apartments over the occupancy limit.

Al Baker suggested letting a public comment speaker continue beyond the time limit if they have pertinent new information.

COUNCILOR RESPONSE

Councilor Canedy agrees on allowing more time to a speaker who might be in the middle of reading a statement or in the middle of a point and that it is wrong to equate a council vote for dissemination of information with a “vote” for the override.

Councilor Milne said there is precedent for funding an educational campaign to aid public understanding of issues. He would like to go back to the 3 minute limit on public comment, unless the agenda is weighty or long. The Airport Commission (as well as the schools and libraries) is exempt from the Charter and the authority of the Town Manager.

Councilor Munafò thinks the best water related information should be sought from the National Academy of Science, whose evaluations are neutral. President Chirigotis said the NAS has been asked to comment on the process – methodology on the development of the TMDLs.

ACT ON MINUTES

Upon a motion duly made and seconded it was voted postpone action on the minutes of September 2, 2010 to the next meeting.

VOTE: Majority in favor (No: Milne, Munafo)

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

- Councilor Barry said that the reason for Katherine's death was that an oversized S'MORES Marshmallow became stuck in her throat. He suggested people throw them away.
- Councilor Munafo commented on the good pre-hurricane planning and preparation. Town Manager John Klimm passed the thanks to the Police Chief, the county and the sheriff's office. The Chief said most of credit goes to the department heads, and IT for updates on the web and TV, fire departments, FEMA, etc. All procedures and equipment were tested 48 hours beforehand.
- Councilor Barton announced several activities. She thanked the Manager and DPW Director for fixing Marstons Mills roundabout; Lynn Poyant and Sally-Ann Imes for organizing two QPR (Question, Persuade, Refer) trainings on suicide prevention. Additional anti-bullying and harassment trainings, organized by the School Department, will be coming up.
- Councilor Milne commented on how much space the media vehicles took up at the Gary Brown Boat Ramp which interfered with people getting their boats out of the water before the hurricane. The Duck Boat might also need to not operate during storm warnings, etc. Manager Klimm said there is a camera on the boat ramp that can be monitored from the town hall and the chief moved the media trucks several times but they continued to return.
- Councilor Joakim asked about signs announcing construction, but no construction taking place. DPW Director Mark Ells said work will be starting soon and he will advise of starting date.
- Councilor Canedy asked the status of Rte. 6 /132 construction and roundabout at Rte.149. Mark Ells said the construction at 6/132 is scheduled and bids are out for improvements at Exit 5 and the roundabout.
- Councilor Milne asked about the status of the Stewarts Creek culvert. Rob Gatewood is in contact with Army Corps of Engineers.

ORDERS OF THE DAY

OLD BUSINESS

Recess 7:50 – 8:08

2010-159 AMMEND CHAPTER 240, ART. 11, ZONING ORDANANCE & MAP

Planning Board Members Present for the continuation of the joint public hearing: Raymond Lang, Chairman; Matthew Teague, Vice Chairman; Paul Curley, Clerk; and Patrick Princi.

The joint public hearing was continued.

Gary Ostrum has been a commercial fisherman for 33 years. He is against the docks but in favor of the proposal to keep all the areas open for shellfishing. There are several thousand shellfish license holders and the commercial shellfishermen live off of these earnings. He explained the detrimental effects on the shellfish cause by docks and boats. Shellfish will suffocate under the boats. Docking will kill the shellfish. The shellfish program is well run with minimum staff. He would hate to see it lost.

Girouard Ganey represents members of recreational shellfishing. He explained how a dingy dock can in time become a dock for two large boats. He is against the piers and docks item which would have negative effects on the town's natural resources. Pilings encourage the growth of invasive species, boats cause impression damage to the shellfish. He gave many examples of the way boats damage shellfish.

Robert Jones, Chairman of the Coastal Zone Management Committee, said if this were a "no brainer" it would have been passed years ago. A compromise by the committee voted to recommend that there be no docks for motorized vessels. However with prohibiting motorized vessels, private property owners

should have some rights which are not in current ordinance. Passage of 2010-159 strips all property owners of the right to have a boat. He suggests passing 2010-160 and defeating 2010-159.

Maryann Scolles supports her house by earnings from shellfishing. She does not support damage to the ecosystem.

Glen Clark, shellfisherman, said Barnstable spends money on supplying shellfish for propagation. He volunteers to move the shellfish to good growth areas. There will not be enough pier free areas to maintain the program. Even dinghy docks will affect the shellfish. Shellfishing can occur in deeper waters.

Andre Sampou, a member of the Barnstable Shellfish Advisory Committee, spoke in favor of 2010-159. He has not seen any scientific papers that say piers have a benign effect on shellfish. Shellfish filter and clean the nitrogen loading in waters. Shellfish must be propagated since there has been no ability for self seeding due to lack of good habitat; the substrate under some piers is muck. In addition, seasonal piers have become large units. He reviewed the proliferation of piers over the years. The protection desired is for just 2% of the habitat. There have been 20 years of plans and committees; it is time to act.

Bob Lucient said the money from existing piers and docks will not decrease, but if the shellfish go away, the revenue will go away. He suggested a Yes vote.

Stewart Rapp, Chairman of the Shellfish Committee, said the charge is to preserve shellfish, which are prudent stewards of the water. The Town has spent money defending lawsuits brought by people wanting to build docks. The ordinance gives anyone the parameters under which their project must comply. Item 2010-160 gives the 27 property owners who might build docks the ability to do so. Vessels with motors can drive over to an inappropriate dock meant for a dinghy. 2010-160 allows structures in areas good for shellfishing and with state permission for propagation to have docks that may be used by motorized boats. He suggested giving the affected property owners a mooring for the boat that they can reach by rowing to it with the dinghy.

Kris Clark pointed out that shellfish filter water and they need to be enabled to grow. Shellfish are not owned by the property owners but by the Commonwealth. Shellfishermen will suffer and quality of life will diminish.

Dave Barry thanked the council. He reiterated that it is 27 people vs. 2,500 people. He would like the council to consider saving a way of life, not just the quahogs.

Councilor Barry made a motion which was seconded to continue the public hearing on 2010-159 to October 7, 1010.

VOTE: 9 Yes, 2 No (Norman, Munafò)

The Planning Board made a motion which was seconded to continue the public hearing on 2010-159 to October 7, 1010.

VOTE: Unanimous

2010-160 AMEND CH. 240, ART. II OF THE ZONING ORDINANCE & MAP

Councilor Barry made a motion which was seconded to continue the public hearing on 2010-160 to October 7, 1010.

VOTE: 9 Yes, 2 No (Norman, Munafò)

The Planning Board made a motion which was seconded to continue the public hearing on 2010-160 to October 7, 1010.

VOTE: Unanimous

NEW BUSINESS

2011-021 ACCEPT GIFT OF SAILBOAT FROM HYANNIS YACHT CLUB

RESOLVED: That the Town Council does hereby accept a gift of a Vanguard Club 420 sailboat designed for the youth competitive sailing class from the Hyannis Yacht Club for the Town's JFK Sailing Program.

Upon a motion duly made and seconded it was voted to postpone this item to October 7, 2010

VOTE: No objection

2011-022 ACCEPT \$400 DONATION FROM DR. RICHARD H. SADOWSKI

Upon a vote duly made and seconded it was

RESOLVED: That the Town of Barnstable hereby accepts a donation of \$400 from Dr. Richard H. Sadowski of Sandwich to the Natural Resources Program of the Marine and Environmental Affairs Division for the purpose of continuing the education of youth about the native turtle population.

Lynne Poyant, Director of Community Services gave the rationale. Russ Keyes, Natural Resources Officer, explained how the children raise the turtles in their classrooms and at the end of the year release the turtles at Sandy Neck. The program is very popular with the kids.

Councilor Munafo asked where the funds would go. They are given directly to the Natural Resources Program.

A motion was duly made and seconded to move the question.

VOTE: No objection

On Item 2011-022

VOTE: Unanimous

2011-023 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION

Upon a motion duly made and seconded it was

RESOLVED, that the Town Council appoints the following individual to a multiple-member board/committee/commission:

COMMUNITY PRESERVATION COMMITTEE

Rene M. King, 192 Zeno Crocker Road, Centerville, as a Recreation Commission representative member to a term expiring 6/30/2013

A motion was duly made and seconded to suspend the rules and vote on this item this evening.

VOTE: 10 Yes, 1 No (Canedy)

A motion was duly made and seconded to move the question.

VOTE: No objection

On Item 2011-023

VOTE: Unanimous

TOWN MANAGER REVIEW

President Chirigotis passed out a list of areas for possible public discussion as a precursor to the Town Manager's evaluation. (See Exhibit B)

As this is the first time the town is required to have a public discussion of the town manager's professional competence, President Chirigotis created the list as a starting point for stimulating the discussion. There will be an opportunity to flush out the items in the written evaluation which is done in Executive Session.

- Councilor Munafo said the Manager shows a forte in budget preparation and finances. However, he has concerns in how the manager recruits and hires supervisors, etc.

- Councilor Canedy said he was innovative in seeking out grants and has gone out on a limb to secure funding for the bulkhead project and others. He has been generous with his staff time and his own time. Canedy would like more regularly scheduled opportunities – weekly, biweekly, etc. - to talk to the manager about their concerns. She also has an issue with not being able to interact directly with staff. Klimm has excellent communications on important and emergency issues.
- Councilor Joakim feels the list provided seems to apply to the town manager. Communication has improved since the town manager has been here. Within the framework of this guide, he is professionally competent.
- Councilor Barton agrees; the manager’s professional competence is outstanding,
- Councilor Canedy agrees. The Council has given up many responsibilities and he has picked up on them. He has taken up things that were left as a void by council. However, she feels he is not supportive of some of the committees, their positions, or need for staff help. Committees feel adrift with no needed strategies on which to work.

While the Charter does not mention a public review, recent law requires a public competence discussion. Milne asked about some other opportunity for those absent councilors to respond. Chirigotis said there was one review and it has been on the agenda. The written review will occur in executive session. Milne said the written document encourages much more specifics while this feels more general.

- Councilor Milne feels it is hard to evaluate how the manager supervises employees. Questions asked at meetings may not be answered by the manager or the department head.
- Councilor Rugo pointed out that the Council is part time at best. The town’s successes speak for the manager. The government is working. The manager has lasted so long because of his success.
- Councilor Tinsley said the manager is proactive in fiscal planning, some of which requires difficult planning. Budgets are as good as business budgets; people can read and understand them. He is excellent in the area of communication – not knowing something is due to the person’s lack of seeking. He is glad to have Manager Klimm.
- President Chirigotis pointed out the balanced budgets even with cuts. The budget annually wins awards for clarity, etc.
- Councilor Canedy would like to see some manager time regularly set up with her and or anyone else who might like that.

Councilor Milne would like to see what he wrote last time. Chirigotis said whether it was possible would have to be determined by Legal. The written evaluation would occur in executive session.

Ruth Weil, Town Attorney attempted to explain what should occur in executive session. Extensive discussion occurred on what is mandated to be done in executive session and whether the unfilled out document automatically remains public if it is passed out in open session. This is new terrain. Weil suggested that it might be better to pass out any documents in executive session. She needs to get a determination.

Councilor Joakim made the following motion: I move we go into Executive Session to comply with the provision of any general or special law, (here the public records law) and not to reconvene in Open Session.

VOTE: 9 Yes, 2 No (Roll Call) (10:10 PM)

Respectfully submitted,

Lucia Fulco,
Assistant Town Clerk