



## TOWN COUNCIL MEETING October 6, 2011

**A** quorum being duly present, Council President Frederick Chirigotis called the October 6, 2011, Town Council meeting to order at 7:05 p.m. in the Hearing Room of Town Hall, 367 Main St., Hyannis, MA.

**PRESENT:** Richard Barry, Janice Barton, Ann Canedy, Frederick Chirigotis, James Crocker, Jr., Debra Dagwan, Henry Farnham, Janet Joakim, J. Gregory Milne, James Munafo, Jr., John Norman, Thomas Rugo, James Tinsley

The Pledge of Allegiance was led by President Chirigotis, followed by a Moment of Silence, Tom Lynch, Interim Town Manager, noted the passing of Jim Dunn, a patrolman with the Barnstable Police Department for thirty one years. Our thoughts and prayers are with his family. He was the fabric of our community and we are going to miss him greatly.

Update from Police Chief Paul MacDonald: Chief MacDonald gave an overview of the "Designer Drugs", bath salts, K2 or spice, commonly used terms to describe the new synthetic drugs. These mimic the effects of hard drugs such as cocaine and methamphetamine. These drugs are taken in a variety of ways including snorting, injecting or mixing with food and drink. "K-2, spice, and posh" are designed to mimic the effects of marijuana.

The Police Department has blanketed the town to determine how accessible these drugs are to the local residents. All the locations where the police officers found these drugs for sale voluntarily and immediately removed the drugs from sale in their stores.

Chief MacDonald stated the DEA issued a notice of intent order to move bath salts to the banned list for a period of not less than 12 months to evaluate the drugs. However some of the other designer drugs are already banned, so it is against the law to sell those items. The Police Department will make periodic checks with the stores to make sure the drugs are not being sold.

Ann Canedy thanked the Police Dept. for quick response to the problem.

Councilor Munafo asked the Chief about bath salts, as it is very confusing name. The Chief replied that these "bath salts" are not the same as the items you would use in your bath, "it is just a name."

Councilor Dagwan commended the Police Dept. for their quick response, and appreciated knowing what these drugs look like.

Chief MacDonald gave a presentation on the new "Street Crimes Unit" for neighborhood problem solving. To deter street crimes, we have uniform patrol officers on bikes during the summer months. We opened the Hyannis Police Station to have a permanent police presence in downtown Hyannis. The State Police, the Yarmouth Police, the Sheriff's Department and the Barnstable Police are all working together.

Our goals are to take out of circulation those known criminals and focus on street level crime that directly effects the quality of life for our residents. Since the inception of the Street Crimes Unit on May 1<sup>st</sup> of this year, we have made 203 arrests.

Councilor Tinsley stated that we should all give a round of applause to Chief MacDonald and the department for a job well done, thank you.

#### **PUBLIC COMMENT:**

- Dorothy Hughes made a second request to convene an open town meeting. She stated that Patrick Page has won his case in court. He has followed the chain of command. Why aren't we working with them? The enterprise accounts mean that some parts of this town run on their own. Does Stewart's creek still have a lien on the property?
- Robert Tucker stated he has a lot of questions. In referring to the councilors by number, Mr. Tucker stated that #5 got after #4 and Norman's getting out of sight. We still want answers. Where is the money coming from and the six should pay the money. If you want revenue, go after the excise taxes on the business vehicles.
- Patrick Page stated, "I'm back; I don't want to yell anymore." I am tired of this. Five years ago this all started. We haven't been treated fairly. My land is not for sale. You people are making me crazy. Now I am so angry. I am owed half a million dollars, I have put in these documents twice now.
- Jane Saunders stated "this isn't easy to come here." I owe it to myself and to the people at home who are watching this tonight. We were contacted to have a meeting and we should talk about getting a meaningful resolution to this problem. Then we received a phone call saying we are authorized to offer you money for the assessed value of your land. The land is not for sale. This is my report to the public. Call in and tell your Councilors and management what should happen next. What the heck is going on why you can't follow through with the meeting?

- Patrick Page would you like to ask any questions. You know the people do see it.
- Alan Burt thanked the police department for the great job. Mr. Burt stated he is still very concerned, we had a wonderful town manager. He feels John Klimm resigned due to bullying. I think our council is in trouble. There are many hard feelings. Can this happen again? Mr. Burt did thank everyone for their work.

Closed public comment

**COUNCIL RESPONSE TO PUBLIC COMMENT:**

- Councilor Barry reported he had the opportunity to speak with the Pages. The remedy is for the Pages to go to the Superior Court.
- President Chirigotis stated that the Town Council cannot overrule the Zoning.
- Councilor Rugo said that no one has the right to threaten the people of this council. This type of behavior is not fair to the members or the public present.
- Councilor Munafo reported that the slow down on Stewart's Creek has all been taken care of in the last few weeks and we are ready to move forward.
- Councilor Milne stated that the project at Stewarts Creek has been in the pipeline for years. Town representatives will be meeting with the Army Corp of Engineers to get this project underway in the off season. Councilor Milne asked President Chirigotis if we could get an answer to the liens on the property tonight. Changing the number of years from 20 to 30 years for a smaller payment? Who was authorized to purchase property at Buttonwood Lane? What is going on was there an offer? Was there a mediator? Was there a phone call?
- Councilor Farnham assured Dorothy Hughes that the residents of the town of Barnstable own the airport. As an enterprise fund they do create their own budget, and hire heir own manager
- Councilor Dagwan reported that she and Councilor Farnham are on the Airport Commission. The meetings are open to the public and that they cover all complaints at those meetings. Councilor Dagwan stated that the Airport Commission meets on the third Tuesday of each month, the public can participate.
- Councilor Crocker spoke to the betterment charges. A public notice is sent out the first time without numbers, and then the second notice that goes out has a maximum calculation, and finally when the work is complete there is an exact prorated portion.

- Councilor Tinsley stated that the Airport Commission is ready and willing to listen. He highly recommends that process because it truly works.
- Vice President Barton agreed with Councilor Rugo, emphatically.
- Councilor Milne stated he wanted to clear up a misconception. When Councilor Dagwan said she and Councilor Farnham are on the Airport Commission, they are liaisons to the airport commission. The Charter of 1989 gave an exemption to the library, airport and the school department to leave them autonomous.

### **ACT ON MINUTES**

- Councilor Munafo referred to a recent letter sent out by the Town Clerk to act on the minutes of Dec 1, 2005 with redactions, June 19, 2008 with redactions, September 2, 2010 with redactions, August 21, 2008 with redactions and September 17, 2009.
- President Chirigotis asked has everyone had an opportunity to read those minutes? Have those minutes had amendments or modifications since your reviewed them?
- Councilor Canady wants two dates to remain in executive session Feb. 5 2009 and Feb.26, 2009. Those are not as now being voted on, they are remaining in executive session.
- Also June 21, 2001 and June 6, 2002, are ready to be released and we prepared to move forward.

A motion to release these minutes to the public was made and seconded

#### **VOTE: 12 yes, 1 abstention (Crocker)**

- Councilor Crocker reported that there were changes made to the bottom of page three on the minutes of the September 22, 2011 meeting.
- Vice President Barton asked to postpone the acceptance of these minutes until everyone had a chance to read the changes.

#### **VOTE: Unanimous to postpone**

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

- Councilor Milne asked for an update on the search for an administrative assistant. Councilor Milne asked for an update on the search process on the Town Manager position. He stated he has had contact with JoEllen Daly who has worked previously for the town as an Assistant Town Manager for several years. Her new occupation is to work on search committees to help identify candidates for the Town Manager position. We may need to work with her or someone in that field.

- President Chirigotis responded that the sub committee is appointed to find an administrative assistant for the Town Council.
- Vice President Barton reported that the sub committee met Tuesday night. The meeting agenda was posted as a public meeting and actually had two members of the public at the meeting. The first criterion is to work on a job description which they have started. Vice President Barton asked if there were any further questions?
- Councilor Munafo asked what authority are we using to put in place an acting Town Manager. Just where do we stand? Are we putting the cart before the horse?
- Attorney Weil spoke to the questions regarding the Charter. What the Charter does state is there should be no time when the position of the Town Manager is not covered. The appointment was for an interim Town Manager position until December 15, 2011. Under the terms of the agreement with John Klimm, he is on leave. The Council designated Thomas Lynch to perform the duties of the Town Manager until December 15, 2011.
- Councilor Farnham asked that the meeting minutes reflect what we did and why we did it.
- President Chirigotis, asked to have the meeting minutes reflect the wording as read by Councilor Rugo as follows: (handout)
 

“I move that the Town Council, acting under the provisions of the Charter of the Town of Barnstable, hereby designates \_\_\_\_\_ with an address of \_\_\_\_\_, \_\_\_\_\_, MA \_\_\_\_\_, to perform the duties of the Town Manager as outlined in Sections 4-2 and 4-3 of the Charter for the Town of Barnstable until December 15, 2011. The appointment is effective September 30, 2011.”
- Councilor Rugo reported that he wanted to correct a statement he made regarding backing out the Town Manager’s vacation and sick pay from the total payout figure for the Town Manager. We could have required that he take his vacation during his absence so that vacation pay should be put back into this figure. I cited the \$230,000 dollars in the executive meeting using my phone as a calculator, but removing the sick/vacation pay.
- Councilor Farnham thought the reason we would have backed out the costs of sick and vacation time is that they would have to be paid.
- Councilor Crocker stated his concern about how this process works and exactly what happens. He requested we look at the 15 to 20 people who

have been dismissed, specifically at the accrued vacation and sick time. How was that handled? We could have forced him to take vacation time as we have in past practices. We should take a better look at our practices when we hire someone for this position, and limit the amount of carryover time. When we look at moving forward to hiring a new manager we should look at the sick leave policy as well.

- Councilor Joakim stated that she didn't know that some of these people were dismissed. As we approach the end of the contract, we prepare for that in our budget every year. "I don't think we should talk about people who were dismissed, I am very uncomfortable."
- Interim Town Manager, Tom Lynch stated he sent an email to the Finance Director to get a figure based on the agreement that was passed by this Council. We have a very busy agenda in front of us. Now you are asking us to go back and look at 20 people, this is a one time situation. If we take the next two weeks to put together these figures, this will effectively stop all the other work that needs to be done by the finance manager, at a very busy time of year. What we would be doing is to suspend the work of the Finance and HR departments to do a thorough analysis over the past twelve years.
- Councilor Crocker reported that there is a groundswell of people who want to know what is going to happen. We need to know the answers. We need to all know to speak in one voice.
- Interim Town Manager Tom Lynch reported that generally when a department head leaves, there is a gap in the time between when they leave before we have hired another person. So the salary savings are there to cover the costs of payouts.
- Councilor Crocker stated we are not breaking new ground here. By going back to look at these 15 to 20 people it may give us a history.
- President Chirigotis said this is the first time we have ever done this with a Town Manager. Completely different circumstances exist, with the other employees.
- Councilor Rugo stated he certainly read the letter. No you can't do this. We do not have the time to spend doing this. That is my vote. No!
- Councilor Canady said she hoped you all are finished with the politics. Mr. Klimm chose the four people to be on this committee. That is odd, isn't it, because four people could tie? There was a Town Attorney and a Human Resource officer in that meeting.

- Point of order, no Town Attorney participated in this negotiation.
- The vote of the sub committee stated that the meeting minutes of the two meetings could become public upon the signing of the agreement. They should be released.
- Councilor Barry asked if we could move to the orders of the day...

## **ORDERS OF THE DAY**

- Debra Dagwan thanked the members of the Council for their support of a very successful event sponsored by the NAACP. Best Buddies was also a very successful and highly supported event this summer. She congratulated Mr. Sawyer for sitting on the CPC. Debra spoke about many successful events that were carried out this year, and upcoming events.
- Councilor Farnham spoke about the Hyannis Area Chamber of Commerce event. He mentioned it was a good thing for his fellow Councilors to attend.
- Councilor Tinsley asked everyone to mark their calendars to attend a Candidate's Night October 18<sup>th</sup>. Questions from the public will be allowed. Support your library.
- Councilor Dagwan reported that at the next Selectman and Councilors meeting, the discussion will be about the health care changes. A reminder to all that October 15, 2011 is National Register to Vote day.
- Councilor Crocker stated that on November 1, 2011 a debate has been organized and that James Cote will be in attendance.
- Councilor Farnham reported that Precinct 11 is having a debate on October 18, in West Barnstable.

<p><b>2012-005 ADOPTION OF THE TOWN OF BARNSTABLE MULTI-HAZARD MITIGATION PLAN – INTRO: 8/4, 9/8, 9/22/11, 10/06/2011</b></p>
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Joanne Buntich gave the rationale. We may need to postpone this until the next meeting as I still have some unanswered questions.

Upon motion duly made and seconded it was voted to postpone to the next meeting.

**VOTE: Unanimous, to Postpone to next meeting.**

**2012-020 APPROVAL OF THE GRANT OF THE CONSERVATION RESTRICTION ON OSTERVILLE-W. BARNSTABLE RD, MARSTONS MILLS, MAP 125, PARCEL 002  
INTRO: 9/8, 9/22/11, 10/06/2011**

Jaci Barton gave the rationale, with an excellent slide show of Shubael Pond. (See Exhibit A).

Councilor Crocker asked how did we arrive at two cars?

Jaci Barton replied that seemed to be reasonable. More parking spaces are available, the conservation allows for the parking of two cars, plus there is parking on the side of the road all the way in to Shubael Pond.

Councilor Crocker wanted to be sure the record reflects that particular piece. We should be clear that along the road into Shubael Pond parking is available on the side of the road.

Councilor Farnham asked about the land acquisition from years ago, did it get bogged down? Jaci Barton replied that yes it did get bogged down; but we were able to move forward again.

Councilor Munafo stated that the property is gorgeous, but are you asking us to have the taxpayers pay a portion of the Sutherland's taxes? Asking the residents to pay someone else's taxes for them is out of the limits.

**Move the question seconded, unanimous**

Upon motion duly made and seconded it was

**RESOLVED**, that the Town Council approve the grant of a Conservation Restriction from Kenneth Sutherland (grantor) to Barnstable Land Trust, Inc. (grantee), over approximately 27.32 acres of land on Osterville-West Barnstable Road, Marstons Mills, Map 125 Parcel 002, for the purposes of preserving open space, water quality, and scenic views and that the Town Council also approve a grant of a public parking easement to the Town of Barnstable for up to two spaces over a portion of the property not subject to the Conservation Restriction.

**VOTE: 11 yes, 2 no (Tinsley, Munafo)**

**2012-026 AUTHORIZE THE TOWN MANAGER TO EXECUTE A  
SUBSTANTIAL REGULATORY AGREEMENT-WAYNE KURKER, HSR  
REALTY TRUST – INTRO: 10/06/11**

AMENDMENT # 1 TO REGULATORY AGREEMENT



HSR REALTY TRUST, WAYNE KURKER TRUSTEE FOR PROPERTY  
ADDRESSED 90 HIGH SCHOOL ROAD EXTENSION AND 67 WINTER  
STREET, HYANNIS

This modification to a regulatory agreement ("Agreement") is entered by and between the developer, HSR Realty Trust ("Developer") and the Town of Barnstable ("Town"), a municipal corporation, on this \_\_\_ day of \_\_\_\_\_, 2011 pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Section 168 of the Barnstable Code;

WITNESS:

WHEREAS the Developer has undergone at least a public hearing on the Agreement amendment application and received a majority vote from the Planning Board recommending the following substantial amendment on September 12, 2011;

WHEREAS the Developer has undergone a second public hearing on the Agreement amendment application before the Town Council and received a majority vote approving the Agreement amendment on \_\_\_\_\_, 2011;

WHEREAS, the 2010 Regulatory Agreement remains in full force and effect except as modified herein;

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto hereby acknowledge to the other, the Developer and the Town do enter into this Agreement, and hereby agree and covenant as follows: that the regulatory agreement dated April 1, 2011 and recorded at the Barnstable Registry of Deeds, Book #\_\_\_\_\_, Page \_\_\_ be amended as follows:

Existing Paragraph 24

All new signage shall be in compliance with the zoning regulations and the Design and Infrastructure Plan and will require permits from the Building Division.

Proposed Amended Paragraph 24

Signage shall not exceed 100 SF for the portion of the premises occupied by Ford of Hyannis, Inc., d/b/a Balise Ford, providing relief from § 240-67.B of the Zoning Ordinance, and shall otherwise comply with zoning regulations and the Design and Infrastructure Plan/

**WITNESS WHEREOF**, the parties have hereunto caused this Agreement to be executed, on the day and year first above written.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_  
Town of Barnstable

By: John C. Klimm

Barnstable Town Manager

\_\_\_\_\_  
HSR Realty Trust

By: Wayne Kurker

Trustee

- Let the record reflect Councilor Tinsley stepping out to recluse himself from this discussion and vote.

- Debra Dagwan introduced the item and Joanne Buntich gave the rationale.
- Councilor Crocker asked if this document is going to be recorded with empty spaces.
- Ruth answered that before this document is recorded she will fill in all the blanks.
- Councilor Munafo asked if this is new business.
- Ruth responded that there are contracts, which follow the Cape Cod Commission Act, and mirror the two thirds vote. This is a public hearing under the ordinance and this can go forward tonight. (Rule 168)
- Joanne Buntich responded to a question that this is site specific. Joanne Buntich stated that Balise Ford is going to stay in this location.

Opened to public hearing open  
Closed public hearing

- Councilor Farnham stated that there seems to be many signs on this property. Jeffrey Ford responded that the body shop is a separate building with a separate sign and entrance.
- Councilor Munafo stated that we need new language in the witness section; it needs to be revised to take out John Klimm's name. Councilor Munafo made a motion to amend the contract to Town of Barnstable, by substituting Thomas Lynch, Interim Town Manager. The motion was seconded and a unanimous vote followed.

Motion made to move the question, seconded and a unanimous vote followed.

Upon motion duly made and seconded it was

**VOTE: 12 yes (Tinsley recluse)**

**Interim Manager Tom Lynch Communication:**

Tom stated that the budget process is underway, the signage is up on West Main Street advising the residents of night construction work that will begin in two weeks; and a new feature will be added to the enews.

Tom reported to the Council that he would like to work on the following agenda over the next weeks:

Balanced Budget

Close FY11 in Munis, Audit FY11, Auditors are currently on site.

Set the Tax Rate  
Conduct a public hearing on Fees: December 6<sup>th</sup>  
Municipal Health Care Reform Act: CCMGH  
Increase Citizen Involvement  
Adopt A Spot  
Hyannis Water Board Administrative Code Amendment: October 20<sup>th</sup>  
Granby Regulatory Agreement November 3<sup>rd</sup>  
Complete the Annual Report and Union Contract Negotiations

Councilor Canedy stated that she had an occasion to email Interim Town Manager Tom Lynch and she asked when she may get a response from the parties involved. Tom responded that he would check on this again and get back to her next week.

**2012-027 ACCEPTANCE OF \$843 GIFT FROM LIFE RANK SCOUT JEFFREY CLARK – INTRO: 10/06/11**

Councilor Crocker mentioned a point of information, there was no sponsorship noted, Councilor Crocker asked to be the sponsor.

Rob Gatewood Conservation Administrator for the Town of Barnstable introduced Jeffrey Clark's accomplishments to the Town Council. Jeffrey Clark of Troop 52, while working to earn his merit badge, raised \$843 to donate to the town.

Upon motion duly made and seconded it was

**RESOLVED**, That the Town Council hereby accepts a gift from Life Rank Scout Jeffrey Clark in the amount of \$843.00 to purchase a message board for the Otis Atwood Conservation Area and that the Town Manager is authorized to expend the gift for the purpose specified.

**VOTE: Unanimous**

**ADJOURNMENT**

Upon motion duly made and seconded it was

**VOTED: to adjourn.**

**Adjourned: at 9:38 p.m.**

Respectfully submitted,

Ann M. Quirk, CMC  
Assistant Town Clerk-Town of Barnstable  
NEXT REGULAR MEETING: October 20, 2011

Exhibit A Sutherland CD

Exhibit B Wording as read by Councilor Rugo regarding Interim Town Manager