



Town of Barnstable Town Council

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TOWN COUNCIL MEETING AGENDA January 3, 2013

A quorum being duly present, Council President Debra Dagwan called the January 3, 2013, Town Council meeting to order at 7:00 p.m. in the Hearing Room of Town Hall, 367 Main St., Hyannis, MA.

PRESENT: Janice Barton, Ann Canedy, Frederick Chirigotis, James Cote, Jennifer Cullum, Debra Dagwan, June Daley, Jessica Rapp Grasseti, Michael Hersey, Janet Joakim, John Norman, Thomas Rugo, James Tinsley, Jr.

The Pledge of Allegiance was led by President Dagwan, followed by a Moment of Silence. Councilor Canedy remembered Prescott Wright a waterman, a sailor, and a builder of boats.

President Dagwan introduced Kevin Murphy, Chairman of the Falmouth Board of Selectmen, who delivered a presentation of Falmouth oysters. Murphy stated that the Barnstable team again beat the Falmouth team in the Thanksgiving Day football game.

PUBLIC COMMENT:

Christine Greeley of West Yarmouth read a statement from the Hyannis Park Civic Association regarding the moratorium on the Medical Marijuana Zoning under new business. She asked the Councilors not to rush into the implementation of the zoning. Please vote on behalf of the moratorium. (Exhibit A)

Closed public comment.

Councilor Tinsley responded that this is going to be referred to the planning board.

ACT ON MINUTES:

Upon motion duly made and seconded it was voted to approve the minutes of the December 20, 2012.

VOTED: UNANIMOUS

**2013-001 AMENDING C.240, ART III, §240-35.f (2) OF THE ZONING ORDINANCE
INTRO: 07/12/12, 10/04/12, 10/18/12, 11/15/12, 01/03/13**

Upon a motion duly made and seconded this item was opened to a continued public hearing and voted to continue the public hearing at the request of the Hyannis Water Board

VOTE: Unanimous - moved to a public hearing on January 17th

**2013-057 AMENDING PART I OF THE GENERAL ORDINANCES, CH. 112,
ARTICLE 1, PROTECTION OF HISTORIC PROPERTIES,
PROCEDURES & DELAY NOTICE INTRO: 12/20/12, 01/03/13**

Upon a motion duly made and seconded it was moved and seconded to amend the first sentence of §112-3E by inserting a comma after the word "Commission" and by adding the phrase "unless the building is not significant,"

Voted (Amendment): 13 Yes

Opened the public hearing; no comments; closed public hearing.

Councilor comments and questions:

- Are you extending the time?
- Does the applicant have the option of 18 months or less?
- The commission has the option to delay up to 18 months
- Perhaps 18 months is too long, maybe the hold should be 12 months.

A motion was made and seconded to amend the verbiage to "substitute the hold option to 12 months instead of 18 months."

Discussion continued:

- Looks as if the reliance is on the commission, period of time is too long
- Specifically on historic structure or a building 75 years or older.
- Did the owner make every effort to preserve it
- Concerned about the person who purchases a property to demolish it

Voting on the motion to amend verbiage to "substitute the hold option to 12 months instead of 18 months.

**VOTE: 4 Yes, (Canedy, Norman, Rugo, Tinsley)
9 No**

Discussion continued:

- Applicants pay a filing fee, do we have an idea what those fees will encompass
- Reduce the administrative burden (Joanne Miller Buntich, Dir. of Growth Management joined the discussion)
- Updated in Munis every year.
- Does this ordinance apply to properties within the Old Kings Highway Historic District?
- Should an effort be made that the regulations be the same on the north side of

- town
- Hyannis Main Street Historic District can prevent a building from being demolished
- Is there a process to challenge the designation

Town Attorney Ruth Weil explained there is a fall back position under Chapter 249 Section 4, where an appeal is available. It is a record appeal in which the court will review the decision to see if it was fair.

A motion was made and seconded to move the question

Voted: 13 YES

Upon a motion duly made and seconded it was

ORDERED:

That Chapter 112, Article I, of the Code of the Town of Barnstable (Protection of Historic Properties) is hereby amended as follows:

Section 1:

By Deleting § 112-3 Procedures in its entirety and replacing it with the following:

§112-3 Procedures.

- A. No permit for the demolition of a building which is a significant building as defined in §112-2 herein shall be issued other than in conformity with the provisions of this article as well as in conformity with the provisions of other laws applicable to the demolition of buildings and the issuance of permits therefore generally.
- B. Any person who intends to file an application for a permit to demolish a building which:
 - (1) has been listed or is the subject of a pending application for listing in the National Register of Historic Places or is listed in the Massachusetts Register of Historic Places; or
 - (2) which is over 75 years of age, shall first file a notice of intent to demolish a significant building with the Town Clerk, and in addition, shall complete the review process established in §112-3A through I herein. The Town Clerk shall forthwith transmit copies of each duly filed notice of intent to the Commission and the Building Commissioner. At the time of filing an application or request, the applicant shall pay a filing fee to be determined annually by the Town Manager to cover costs and expenses associated with this article.
- C. The Commission shall prepare and have available for distribution a notice of intent to demolish a significant building, which shall contain at least the following information:
 - (1) The applicant's name, address, if different in such property;
 - (2) The owner's name and address, if different from that of the applicant's;
 - (3) The address or location of such property;
 - (4) Assessor's map and parcel number;
 - (5) A brief description of such property; and
 - (6) An explanation of the proposed use to be made of the site of such property.
- D. Where an applicant has filed a notice of intent to demolish a building that is over 75 years of age which neither has been listed nor is the subject of a pending application for listing on the National Register of Historic Places nor has been listed on the Massachusetts Register of Historic Places, the Commission Chair or Chair's designee in consultation with the Growth Management Department Staff, shall, within 21 business days of the filing of the notice of intent, file with the Town Clerk an initial determination in writing as to whether or not the building is a significant building in accordance with any criterion set forth in §112-2,

definition of "significant building," subsection A and B. A determination that a building is not a significant building shall be transmitted by the Commission to the applicant, to the Building Commissioner and to the Town Clerk, and the applicant shall not be required to take any further steps prior to filing for a demolition permit. This determination shall be in effect for 24 months from the date of determination filing with the Town Clerk. After 24 months have elapsed, a new determination shall be required.

- E. The Commission, **unless the building is not significant**, shall hold a public hearing on each such notice of intent within 65 days after the date the notice intent is filed with the Town Clerk, and shall give notice thereof by publishing the date, time, place and purpose of the hearing in a local newspaper at least 14 days before such hearing, and also within seven days of said hearing, mailing a copy of said notice to the applicant and to all property owners within 300 feet of the subject property's boundaries. The Commission may require the applicant to post the Commission's notice form on the subject building and/or property. This form shall be visible from the nearest public way. Within 21 days from the close of the public hearing, the Commission shall file a written determination with the Town Clerk as to whether the demolition proposed will be detrimental to the historical, cultural or architectural heritage or resources of the Town of Barnstable.
- F. If after such hearing, the Commission determined that the demolition of the significant building would not be detrimental to the historical, cultural or architectural heritage or resource of the Town, the Commission shall so notify the applicant, the Building Commissioner and the Town Clerk. Upon receipt of such notification, the Building Commissioner may, subject to the requirements of the State Building Code and any other applicable laws, ordinances, rules and regulations, issue the demolition permit.
- G. If the Commission determines, that the demolition of the significant building would be detrimental to the historical, cultural or architectural heritage or resources of the Town, such building shall be considered a preferably preserved significant building.
- H. Upon a determination by the Commission that the significant building, which is the subject of the application for a demolition permit, is a preferably preserved significant building, the Commission shall notify the applicant, the Building Commissioner, and the Town Clerk, and no demolition permit may be issued until 18 months after the date of such determination by the Commission is filed with the Town Clerk.
- I. Notwithstanding the preceding sentence, the Building Commissioner may issue a demolition permit for a preferably preserved significant building at any time after receipt of written advice from the Commission to the effect that either:
 - (1) The Commission is satisfied that there is no reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate and restore such building, or
 - (2) The Commission is satisfied that the owner has made continuing, bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate and restore the subject building, and that such efforts have been unsuccessful.
- J. The Commission's determination shall be in effect for 24 months from the date of determination filing with the Town Clerk. After 24 months have elapsed, a new determination shall be required.

VOTED: 13 YES, ROLL CALL

2013-058 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION INTRO: 12/20/12, 01/03/13
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Upon a motion duly made and seconded it was

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

LIBRARY COMMITTEE

Robert Anthony, 104 Old Stage Road, Centerville, as a member with a term expiring 12/31/2013

Patricia Giammasi, 7 Lester Circle, Centerville, as a member with a term expiring 12/31/2013

Stanley Goldstein, 12 Trudy Lane, Cotuit, as a member with a term expiring 12/31/2013

Elaine Grace, 8 Apollo Drive, West Barnstable, as a member with a term expiring 12/31/2013

Justin Grimes, 75 Grove Street, Cotuit, as a member with a term expiring 12/31/2013

Theodore S. Housman, Jr, 69 Captain Loring Lane, Barnstable, as a member with a term expiring 12/31/2013

John Jenkins, 361 Parker Road, West Barnstable, as a member with a term expiring 12/31/2013

Kenneth Jenkins, 184 Flume Avenue, Marstons Mill, as a member with a term expiring 12/31/2013

Joan Kenney, 112 Redwood Lane, Hyannis Port, as a member with a term expiring 12/31/2013

Judy Todd, 46 Peach Tree Road, Marstons Mills, as a member with a term expiring 12/31/2013

Gail Nightingale, 32 Sunset Lane, Osterville, as a member with a term expiring 12/31/2013

Gloria Rudman, 50 Waterman Farm Road, Centerville, as a member with a term expiring 12/31/2013

Cyndy Shulman, 1529 Race Lane, Barnstable, as a member with a term expiring 12/31/2013

VOTED: 13 YES

<p>2013-059 APPROPRIATION & TRANSFER \$40,000 FROM SURPLUS GOLF ENTERPRISE FUNDS TO PURCHASE COURSE MOWING EQUIPMENT INTRO: 12/20/12, 01/03/13</p>

Director of Community Services Lynne Poyant, introduced the rationale regarding the purchase of mowing equipment versus renting mowing equipment, and introduced, Bruce McIntyre, Director of Golf Operations.

Opened public hearing; no comments; closed public hearing.

Councilor discussion:

What is the lifespan of the mowing equipment? About 7 years.

A motion was duly made and seconded to move the question

VOTE: Unanimous

Upon a motion duly made and seconded it was

ORDERED: That the sum of \$40,000 be appropriated for the purpose of funding the acquisition of golf course greens mowing equipment and to meet this appropriation, that \$40,000 be transferred from surplus funds within the golf course enterprise fund, and that the Town Manager is authorized to contract for and expend the appropriation made available for this purpose.

VOTED: 13 YES, roll call

<p>2013-061 ACCEPTANCE OF A PORT SECURITY GRANT FOR \$90,000 AND APPROPRIATION OF \$30,000 IN MATCHING FUNDS INTRO: 12/20/12, 01/03/13</p>

Joe Gibbs, Assistant Harbormaster and Mooring Officer, and Dan Horn, Harbormaster, were introduced by Lynne Poyant, Director of Community Services, regarding the expansion of the camera project at the water front. The tapes from said cameras are reviewable.

Opened public hearing; no comments; closed public hearing.

Councilor discussion:

- Where does the money come from
- Why isn't it coming out of the Marina Enterprise fund (these cameras are for the entire town-not just the Marina)
- Can we use the Embarkation fee money (no that is limited to specific agencies)
- Happy to see some camera's down at the town docks
- Who will be watching the cameras (Public Safety Agencies and all are recorded)
- Is this a fixed camera or is it panning (both types of cameras)
- Do the cameras have night vision capability (no too expensive)
- Overtime patrols early in the morning, nighttime patrolling was taken into account
- Thanked Mr. Gibbs for writing these grants for the benefit of the town
- Overtime staffing, of about 7,500 hours, working with the resources available
- Can we use some creative financing here

A motion was duly made and seconded to move the question

VOTE: unanimous

Upon a motion duly made and seconded it was

ORDERED: The Barnstable Town Council does hereby accept a Port Security Grant from the Department of Homeland Security, FEMA in the amount of \$90,000 and that the amount of \$30,000 in matching funds is hereby appropriated from available funds,

and further, that the Town Manager is authorized to contract for and expend these funds in accordance with the grant.

VOTED: 13 YES, Roll Call

2013-063	AUTHORIZE THE COUNCIL PRESIDENT TO ACCEPT \$27,575 REMEDATION GRANT TOWARD SURVEY & DESIGN-HYANNIS HARBOR, BOAT PUMP-OUT FACILITY INTRO: 01/03/13
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Town Manager, Thomas Lynch, gave the rationale regarding a no pump-out zone to minimize discharge of both treated and untreated boat sewage into the coastal waters. This deals with commercial boats.

Councilor discussion:

- What is the fine if a boat owner is caught discharging in the sound, (up to \$10,000 per incident).
- Pleasure boats can be pumped out at facilities in Nantucket Sound and the Harbor
- Aimed for the south end of the harbor (size limitation at Bismore Park)

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

Voted: Unanimous in favor

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council does hereby authorize the Town Council President to accept a grant from the Coastal Pollutant Remediation Grant Program in the amount of Twenty Seven Thousand Five Hundred Seventy-Five Dollars and 00 Cents (\$27,575.00), for the survey and design of a stationary pump-out station for commercial vessels, located to serve vessels which operate out of Hyannis Harbor.

VOTED: Unanimous in favor

2013-064	AMENDING THE GENERAL CODE, CHAPTER 76,-SCHEDULE OF FEES INTRO: 01/03/13
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Upon motion duly made and seconded this item was moved to a public hearing on January 17th.

VOTED: Unanimous to move to a public hearing on January 17th

2013-065	AMENDING CHAPTER 240 OF THE ZONING ORDINANCE TO ESTABLISH A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND PERMITTING OF MEDICAL MARIJUANA TREATMENT CENTERS AND ASSOCIATED ACTIVITIES INTRO: 1/03/13
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A motion was duly made and seconded to correct a typo to 2013-065, and to move this item to the planning board:

Section 1

WHEREAS, the citizens of Massachusetts, by passage of Ballot Question 3 on November 6, 2012, approved a referendum question that created a law regulating the cultivation, distribution, possession and use of marijuana for medical purposes, which law takes effect on January 1, 2013;

WHEREAS, this law as passed allows a new land use Medical Marijuana Treatment Centers and other supporting activities that are not expressly regulated under Chapter 240;

WHEREAS, The Town's related land use regulations currently in effect are not adequate for the appropriate regulation of medical marijuana treatment centers and associated activities, nor do they provide sufficient definitive criteria with which the Town's Building Commissioner, Site Plan Review, Board of Health and/or the Zoning Board of Appeals can properly evaluate and condition the siting and design of this new use;

WHEREAS, the law requires the State Department of Public Health to issue regulations regarding implementation of the law within 120 days of January 1, 2013 and said regulations will not be promulgated by January 1, 2013;

WHEREAS, the regulations to be promulgated by the State Department of Public Health are expected to provide guidance and further regulation regarding the siting of medical marijuana treatment centers;

WHEREAS, the regulation and siting of medical marijuana treatment centers raises novel and complex legal, planning and public safety issues;

WHEREAS, the Town needs time to study and consider the regulation and siting of medical marijuana treatment centers so as to address such novel and complex issues;

WHEREAS, there is concern among Barnstable residents and public officials about the lack of Department of Public Health regulations which regulations will be a necessary part of the Town's planning analysis;

WHEREAS, the Town needs time to address the potential impacts of the law and the impending state regulations on local zoning requirements;

WHEREAS, the Town needs time to undertake a planning process to consider potential amendment of the Town's Zoning Ordinance regarding the siting of medical marijuana treatment centers and other uses related to the regulation of medical marijuana;

WHEREAS, the Town intends to adopt a temporary moratorium on the use of land and structures in the Town for the siting of medical marijuana treatment centers, so as to allow the Town sufficient time to engage in a planning process to address the direct and secondary effects of siting such centers in the Town and to enact zoning amendments in a manner consistent with sound land use planning goals and objectives. Such moratorium shall be in effect through and including January 1, 2014 or until ninety (90) days after the effective date of the State Department of Public Health final regulations relating to Ballot Question 3, whichever occurs first.

NOW THEREFORE, and consistent with the rationale provided above and consistent with the Town's powers and authority under the Massachusetts Zoning Act and the Town's coincident obligations thereunder, the Town adopts the following temporary moratorium with respect to the permitting of Medical Marijuana Treatment Centers and associated activities.

Section 2.

That Chapter 240, Article XIII of the Zoning Ordinance is hereby amended by adding a new §240-129 as follows:

"§240-129 Temporary moratorium on the establishment and permitting of medical marijuana treatment centers and associated activities.

A. No building permit, special permit, variance, site plan approval decision or other permit may be issued under this zoning ordinance for the purpose of establishing a medical marijuana treatment center or associated activities.

B. The moratorium shall be in effect through and including January 1, 2014 or until ninety (90) days after the effective date of the final regulations promulgated by the State Department of Public Health relating to Ballot Question 3, whichever occurs first.

C. During the moratorium period, the Town shall undertake a planning process to address the potential direct and secondary impacts of siting one or more medical marijuana treatment centers in the Town and shall review and consider the Department of Public Health regulations regarding the siting of such centers and related uses, and shall consider proposing the adoption of zoning amendments to address the potential direct and secondary impacts of siting one or more medical marijuana treatment centers and related uses in the Town.

D. Zoning amendments resulting from the aforementioned study process shall be deemed to be continuations of this moratorium and not new zoning amendments. Applications for permits submitted after the first publication of the notice of the public hearing which results in the adoption of this moratorium but before the moratorium's effective date, shall be administered according to established procedures until the effective date of this moratorium, and if a permit or other relief is granted prior to such effective date, it shall be subject to the effectiveness of this moratorium and shall be issued at the peril of the permit applicant and/or recipient. During the moratorium, any application shall be denied on the basis of this moratorium. In no event shall any permit

or other relief sought after the first publication of the notice of the public hearing create or result in any protections with respect to the land, its uses or structures upon it.

E. Unless extended, continued or modified by a subsequent action of Town Council, this section shall cease to be effective January 2, 2014 or ninety (90) days after the effective date of the final regulations promulgated by the Department of Public Health relating to Ballot Question 3, whichever occurs first."

VOTED: Unanimous to move to planning board

TOWN MANAGER COMMUNICATIONS

- Meetings regarding school safety are continuing
- Capital improvement plan
- Next Friday 10-year forecast
- Received \$25,000 grant from Patrick Butler Foundation to provide scholarships.
- Sandra Perry was asked to carry on with the Barnstable County Consortium.
- Sidewalk cleaning issues.
- One year ago established customer service line.
- Invitation to Lobby revitalization at the Barnstable Senior Center

Assistant Town Manager, Mark Ells explained that the Senior Center had a septic backup earlier today, and had to close. If all goes well it will be open tomorrow (January 4th).

ADJOURNMENT

Upon motion duly made and seconded it was unanimously

VOTED: To adjourn.

ADJOURNED: at 8:20 P.M.

Respectfully submitted,

Ann M. Quirk, CMC
Assistant Town Clerk/Town of Barnstable

Next meeting January 17, 2013

Attachments:

- A. Medical Marijuana Moratorium email from Rachel Youngling
- B. 2013-XXX – red lined item regarding 2013-057 which had been emailed prior to meeting