



TOWN COUNCIL MEETING March 7, 2013



A quorum being duly present, Council President Debra Dagwan called the February 7, 2013, Regular 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, James Cote, Jennifer Cullum, Frederick Chirigotis, Debra Dagwan, June Daley, Jessica Rapp Grassetti, 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.

An announcement was made by President Dagwan regarding the meeting being televised live and questioning if anyone was actively taping the session.

Commonwealth Award—Creative Community

Town Manager Thomas Lynch represented the Town on Feb. 19 when the town was recognized as a Creative Community at the State House. He addressed those who helped the town in its coordination of the programming of arts and culture, as well as the organizations that have partnered with us.

Goals:

- Art district – attract more
- More economic businesses
- Partnerships
- More artists living and working in Barnstable

Kennedy trail, artists' shanties, concerts, outdoor events, Guyer Barn and other such things were identified as part of this. Lynch showed a video on Barnstable – A Creative Community...

He thanked the Cultural Council for the award.

Cape Cod Rail Trail, Bicycle Network Implementation—with an update presentation

Lindsay Counsell gave a brief overview of the Bikeway network plan in the Town of Barnstable.

Joseph D. Magni, Jr., from Vanasse Hangen & Brustlin, showed a PowerPoint that detailed the bike path through the town. He explained what the typical path would look like and the route it would take. Single phase project would cost about \$11million. If it was a two phase project it would create Phase 1 at \$6.4m and Phase 2 at \$4.6. Then if that is too expensive it could be made into a 3 phase project.

Magni explained the development project scenario which, if it goes as projected, the construction would take place 2018 to 2020.

Counsell identified the future council actions that would be required from development funding, land transfers and easements, to permitting, etc.

Council discussion followed with questions and comments from Councilors: Canedy, Dagwan, Rugo, and Cullum:

- Does the bike trail pose a problem with adjacencies to well fields? Counsell said they would not be in the well zone.
- Will this link to downtown Hyannis via Willow Street – no this is dealing with east to west.
- There was support from two councilors including the use of CPC funds

Manager Lynch asked for information on the legislative support. Susan Rohrbach, who represented Sen. Dan Wolf, stated they are supportive of the plan. She said the Senator feels that once the trail is completed from Bourne to P-town it will be an international biking destination.

Solid Waste Update

Assistant Town Manager Mark Ells gave a follow up on the January workshop.

- He addressed the Covanta (formerly SEMASS) presentation
- About 1/3 of our residents use the landfill
- Two-thirds of the residents do not use the landfill.
- He spoke with all the haulers (6) –
 - Haulers were asked:
 - Do they offer recycling – Yes they do but it is not mandated.
 - The town is looking at a reporting ordinance on recycling and they said they would all take part in a workshop on it.
 - Could they give the recycling numbers from Barnstable residents – they couldn't because the town's waste was co-mingled and they had difficulty in trying to report.

See Exhibit A for:

A tentative schedule of tipping fee contracts

A tentative schedule for recycling program

The results of a transfer station questionnaire.

Discussion followed with questions and comments from Councilors: Canedy, Hersey, Rugo, Cullum, Dagwan, Daley, and Norman

- Questions asked on Yarmouth's landfill and it's going out to contract vs. Barnstable and the differences in the way we would have to contract.
- The vendors who pick up trash now do they come to our transfer station – no – they go to the one in Yarmouth or many times deliver directly off-Cape.

- How many stickers are issued - 2012 – 9200 plus stickers were purchased – about 11,000 customers
- Approximately 1,800 go just to recycle
- What about curbside pick-up...the town is willing to look at anything.
- Could we require in a contract that the haulers dispose of the waste at a certain place? Possibly. Covanta would have a base tonnage for each town...if you create a better recycling program and the waste goes down – they will readjust the tonnage without penalty.

Haulers are: Allied, Cavossa, Global, Macomber, Pina and Waste Management.

PUBLIC COMMENT

Jackie Counsell spoke in support of the bike trail.

Laurie Brown was looking for answers about betterments charged for sewer around Stewarts Creek. There are still questions. She asked about rates for borrowing on the betterments.

COUNCIL RESPONSE TO PUBLIC COMMENT

Councilors: Canedy, Dagwan, Chirigotis, Rugo, Norman, Barton and Cullum questioned Attorney T. David Houghton on the Stewart's Creek issue:

- Do we have flexibility in what we charge for interest? Finance Director Mark Milne stated that the rate charged is automatically 5% or it could be voted as 2% above the town's borrowing rate.
- How was it decided to charge per dwelling unit - 2010-017 allowed for a choice to be made at a later time; when it was filed in 2011 it was stated per unit.
- Asked if it was an agenda item - there was discussion and unit method was preferred...but all methods were kept open.
- Who instructed you to put the word in? Council approved doing it in June but the manager signed the order in February of 2011.
- It was remembered that if charged by frontage the betterments would greatly vary – per unit was fairer.
- If residents knew in the beginning – they would not be complaining now. Hope we can get to the bottom of this.
- It was signed by the Town Manager.
- Definition of the unit – (duplex – should have 2 stubs instead of 1) some with 1 stub are getting charged as two.
- How many duplexes have 1 stub vs. 2?
- Instead of looking at why we made the decision, if it needs to be remediated for people, how we can help.
- A unit is a dwelling unit – two dwelling units (a duplex) are how it is calculated.
- If we change this to help some it will all have to be refigured. We need to look at what is the right thing to do.

ACT ON MINUTES (Includes Executive Session)

Upon motion duly made and seconded it was voted to approve the minutes of February 28, 2013 with the following corrections/amendments

(Canedy – page 2 communications 1st paragraph 3rd sentence – add - and revisit our decision on the Barnstable Shelter).

VOTE: 12 yes 1 no

VOTE: Passed

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

- Councilor Janet Joakim – Senior Center – will hold St. Patrick's Day dinner Thursday.
- Councilor Daley – Wheldon Wine Tasting cancelled until Monday March 11, 4 – 7 at Hyannis Golf course. Swift family – daughter had a liver transplant – there is a fund Hannah Swift Fund at TD Bank in Centerville to help the family.
- Councilor Canedy noted a large puddle on Willow Street and wanted to know the problem. DPW Supervisor Daniel Santos stated they went to pump it down to see what the problem is but did not have the answer as yet.
- Councilor Barton – looking for herring counters in Marstons Mills.
- Councilor Tinsley – that area on Willow St does have a continuous problem.
- Councilor Chirigotis – tomorrow at 3 pm is the wake for Anthony Beverly at Doane Beal & Ames.

ORDERS OF THE DAY

A. OLD BUSINESS

2013-060 AMENDING ZONING ORDINANCE, CHAPTER 240, ARTICLE II, §240-125b (1) (e)—USE VARIANCES WITHIN 300 FEET ALONG ROUTE 6A SCENIC HIGHWAY - INTRO: 12/20/12, 3/7/13

Upon motion duly made and seconded it was voted to refer this item to a public hearing to be held on March 21, 2013.

VOTE: 13 yes

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: 1/3/13, 2/28/13, and 3/7/13
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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 this item.

VOTE: Passed

The following amendment was introduced as part of the item:

Adding the phrase “relating to Ballot Question 3” after the word “activities” in both the title of new section “240-129” and under paragraph A of “240-129 so that 240-129 as amended shall read as follows:

240-129 Temporary moratorium on the establishment and permitting of medical marijuana treatment centers and associated activities relating to Ballot Question 3

A. There shall be a temporary moratorium on the use of land or structures in the Town for the siting of one or more medical marijuana treatment centers and associated activities, relating to Ballot Question 3.

Joanne Miller Buntich – explained the reason for the moratorium and the timing. We feel that we can get the job done within the time allotted.

Christine Greeley from Hyannis Park – there are concerns about the siting of the centers. She is urging the moratorium. Yarmouth is seeking a moratorium as well. She has spoken with several state agencies. DPH will first meet in April. Hyannis Park is concerned about the siting that it does not belong around the hospital with parking and residential areas. This is a business operation and not a medical operation. It is a large business enterprise. Hyannis Park Civic Association – appreciates the moratorium and hopes it is places in a more appropriate area. See Exhibit B

Linda Bolliger – fully supported the moratorium. The current proposal is dangerously vague. The well being and safety of patients and residents should be the main direction.

Discussion ensued with questions and comments from Councilors: Rugo, Barton, Cullum, Canedy, Chirigotis, Tinsley, Dagwan and Barton:

- + Is it correct that until the regulations are in place there will be no licenses? Attorney Ruth Weil said the registrations may involve the local boards of health. They cannot dispense yet.
- + Weil said if the town looks for appropriate sites – it could take up to 180 days. This is a rational approach. Unique use – manufacturing, growing and selling in the same facility which is new. Some towns are looking at longer moratoriums.
- + If they have a note from their doctor they could grow their own? Attorney Weil – there is something that would be allowed.
- + DPH has a lot of work to do and the moratorium is the only way to go
- + It is not just the planning – but the accessory and auxiliary issues – we have to look at the smoking issues on beaches etc. There is more than zoning.
- + The law was passed in this town and in the state – there are no standards of care as far as medical marijuana. It is a controlled drug – how does a doctor prescribe it.
- + Moratorium is a good thing – we need time.
- + Concern about the training for dispensing marijuana. Are there any states that use “licensed” dispensers not registration? Buntich said registration is in the law.
- + Buntich said this is a zoning land use regulation...so some of the issues will never be addressed in this item. 67% town wide voted for this.
- + DPH will circulate draft regulations and then there will be a final use regulation.

Upon motion duly made and seconded it was voted:

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 one hundred eighty (180) 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 relating to Ballot Question 3.

- A. There shall be a temporary moratorium on the use of land or structures in the Town for the siting of one or more medical marijuana treatment centers and associated activities relating to Ballot Question 3.
- B. 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.
- C. The moratorium shall be in effect through and including January 1, 2014 or until one hundred eighty (180) 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.
- D. 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.
- E. 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.
- F. Unless extended, continued or modified by a subsequent action of Town Council, this section shall cease to be effective January 2, 2014 or one hundred eighty (180) days after the effective date of the final regulations promulgated by the Department of Public Health relating to Ballot Question 3, whichever occurs first."

VOTE: 13 yes roll call - approved as amended

2013-077 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION - INTRO: 2/28/13, 3/7/13

Upon motion duly made and seconded it was **RESOLVED**, that the Town Council appoint the following individuals to a multiple-member board/committee/commission:

COUNCIL ON AGING

Josephine Melpignano, 35 Bay View Road, Barnstable, as a member to a term 6/30/2016

HOUSING COMMITTEE

Richard Plaskas, 19 Staysail Circle, Marstons Mills, as a member to a term 6/30/2015

JANE ESHBAUGH COMMUNITY SERVICE AWARD COMMITTEE

William O'Neill, 361 Megan Road, Hyannis, as a member to a term 6/30/2014

ZONING BOARD OF APPEALS

Brian Florence, 126 Laurie's Lane, Marstons Mills, from an associate member to a member to a term 6/30/2015

David A. Hirsch, 463 Elliott Road, Centerville, as an associate member to a term 6/30/2016

VOTE: 12 yes 1 no (Canedy)

NEW BUSINESS

**2013-79 FUND TO THE CAPITAL TRUST FUND - INTRO: 3/7/13
APPROPRIATION AND TRANSFER ORDER--\$7,000,000 FROM THE GENERAL**

Upon motion duly made and seconded it was voted to refer this item to a public hearing on March 21, 2013.

VOTE: 13 yes

2013-080 ACCEPTANCE OF \$17,500 EMERGENCY MANAGEMENT PERFORMANCE GRANT - INTRO: 3/7/13

Chief Paul McDonald – gave the rationale – stated some of the radios are over 25 years old. 11 new radios will be bought.

Upon motion duly made and seconded it was

RESOLVED: That the Barnstable Town Council does hereby accept the FFY11 Emergency Management Performance Grant awarded to the Barnstable Police Department from the Massachusetts Emergency Management Agency in the amount of \$17,500.

VOTE: 13 yes

**2013-081 ACCEPTANCE OF \$18,900 BUREAU OF JUSTICE ASSISTANCE GRANT -
INTRO: 3/7/13**

Chief McDonald again gave the rationale.- this will purchase 21 bullet proof vests.
Councilor Barton – thanked Anne Spillane for applying for the grant.

Upon motion duly made and seconded it was

RESOLVED: That the Barnstable Town Council does hereby accept \$18,900 Federal Fiscal Year 2012 Bulletproof Vest Partnership Program grant awarded to the Barnstable Police Department from the Bureau of Justice Assistance.

VOTE: 13 yes

**2013-082 APPROPRIATION ORDER OF \$50,000 FUNDING A PLANNING PROCESS TO
STUDY THE NOVEL AND COMPLEX ISSUES OF SITING MEDICAL
MARIJUANA TREATMENT CENTERS - INTRO: 3/7/13**

Upon motion duly made and seconded it was voted to refer this item to a public hearing to be held on March 21, 2013.

VOTE: 13 yes

TOWN MANAGER COMMUNICATIONS

Town Manager Thomas Lynch addressed:

- E-permitting demonstration at the county
- Met with CFAC –
- HYCC will have hockey East tournament this weekend (women's)
- Storm debris at landfill until March 24

Nemo update given by Mark Ells, Asst. Town Mgr – the storm damage has put us in the second step to receive 75% reimbursement. Private homes – may qualify for individual assistance.

President Dagwan reminded all to set your clocks forward this weekend....workshop on March 14th

ADJOURNMENT

Upon motion duly made and seconded it was

VOTED: to adjourn.

ADJOURNED: at 9:27 p.m.

Respectfully submitted,

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

Attachments:

A - Solid Waste reports

B - Notes and emails from Christine Greeley

C - Copy of PowerPoint on Bikeway

NEXT REGULAR MEETING: March 21, 2013

