



## TOWN COUNCIL MEETING October 3, 2013

**A** quorum being duly present, Council President Debra Dagwan called the October 3, 2013, Town Council meeting to order at 7:10 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 Grasseti, Michael Hersey, Janet Joakim, John Norman, Thomas Rugo(7:25), James Tinsley, Jr **ABSENT:**

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 to please make their presence known. This session is recorded and broadcast on Channel 18.

Sarah Colvin from Channel 18, Barnstable This Morning and Barnstable Today gave a slide presentation of the top three logos for the, Town of Barnstable's 375th Anniversary. The winning logo was designed by Thomas Lancour, 2nd place by Tabitha Harkin and Dick Vecchione came in 3rd.

### **Presentation from Human services Committee**

Estella Fritzinger and William Doherty from Human Services Committee gave a brief presentation as to the continuing drug issues in Barnstable and Cape Cod as a whole. They were here in an advisory role and recommended; start a regional program and would provide speakers for a workshop.

Councilor discussion ensued, all agreed a workshop would be in order; leaders of different groups come together as one; give a new program time at least 10-15 years, don't give up; looking forward to working on this project.

### **Public Comment**

Opened public comment, seeing no one close public comment

### **Council Response to Public Comment**

None

**ACT ON MINUTES: (Includes Executive Session)**

Upon a motion duly made and seconded it was voted to approve the minutes of the September 12, 2013; September 19, 2013 as written

**VOTED:** September 12, 2013 **PASSED UNANIMOUS**  
September 19, 2013 **PASSED UNANIMOUS**

**Communications from elected officials, boards, committees, staff, commission reports, correspondence and announcements**

Councilors announced - Councilor Rapp Grassetto-Historical Society in Cotuit October Fest; Flu Clinic on October 9th; Councilor Canedy provided a handout and an update on the Charter Review Committee and announced there will be an upcoming meeting; Councilor Dagwan announced the Money Conference and the Revitalizing Civic Education to Empower Youth at the College.

**2013-166 AMENDING THE CODE OF BARNSTABLE GENERAL ORDINANCES- INSERTING CHAPTER 224 VACANT OR FORECLOSING PROPERTIES INTRO: 05/16/13, 07/11/13, 08/01/13, 10/03/13**

Open public hearing on the substitute amendment.

Upon motion duly made and seconded it was moved to a public hearing with the substitute amendment on October 17, 2013

**ORDERED:** That Part I, General Ordinances of the Code of the Town of Barnstable be amended by inserting the following chapter 224.

**“CHAPTER 224**

**Vacant or Foreclosing Properties**

**§ 224-1. Purpose.**

Unsecured and unmaintained vacant properties and foreclosing properties present a danger to the safety and welfare of public safety officers, the public, occupants, and abutters; contribute to blight within neighborhoods and commercial areas; and, as such, constitute a public nuisance. This Ordinance is enacted to promote the health, safety and welfare of the public, to protect and preserve the quiet enjoyment of occupants, abutters and neighborhoods, and to minimize hazards to public safety personnel inspecting or entering such properties.

**§ 224-2. Definitions.**

The following words and phrases, when used in this Ordinance, shall have the following meanings:

**FIRE CHIEF**

The Fire Chief of the Fire District in which any property subject to this Ordinance is located, or his or her designee

**FORECLOSING**

The process by which a property, placed as security for a real estate loan, is prepared for sale to satisfy the debt if the borrower defaults.

**INITIATION OF THE FORECLOSURE PROCESS**

Taking any of the following actions:

- A. Taking possession of a residential property pursuant to MGL c. 244, § 1.
- B. Commencing a foreclosure action on a property in any court of competent jurisdiction, including without limitation filing a complaint in Land Court under the Service Members Civil Relief Act, Public Law 108-189 (50 U.S.C.S. App. § 501-536).
- C. In any instance, where the mortgage authorizes mortgagee entry to make repairs upon mortgagor's failure to do so.

### **MAINTENANCE**

Keeping property in good sanitary condition and repair, including without limitation the following: securing the property by locking and boarding of buildings, draining or covering swimming pools and fencing the immediate areas surrounding swimming pools; and removal from the property of perishable food items, dangerous substances or chemicals, animal litter, debris, trash, indoor items such as furniture, appliances, plumbing fixtures and bedding not kept in a building and snow from adjacent sidewalks

### **MORTGAGEE**

The creditor, including, but not limited to, service companies, agents, lenders in a mortgage agreement, and any successor in interest and/or assignee of the mortgagee's rights, interests or obligations under the mortgage agreement.

### **OWNER**

Every person, entity, service company, property manager or real estate broker, who or which, alone or severally with others:

- A. Has legal title to any real property, including but not limited to a dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park; or
- B. Has care, charge or control of real property, including but not limited to any dwelling, dwelling unit, mobile dwelling unit, or parcel of land, vacant or otherwise, including a mobile home park, or any administrator, administratrix, executor, trustee or guardian of the estate of the holder of legal title; or
- C. Is a mortgagee of any such property who has initiated the foreclosure process as defined in this Ordinance; or
- D. Is an agent, trustee or other person appointed by the courts and vested with possession or control of any such property; or
- E. Is an officer or trustee of the association of unit owners of a condominium? Each such person is bound to comply with the provisions of these minimum standards as if he were the owner. However, "owner" shall not mean a condominium association created pursuant to MGL c. 183A to the extent that such association forecloses on or initiates the foreclosure process for unpaid assessments due or owing to the association; or
- F. Every person who operates a rooming house; or
- G. Is a trustee who holds, owns or controls mortgage loans for mortgage-backed securities transactions and has initiated the foreclosure process?

### **PROPERTY**

Any real property, or portion thereof, located in the Town, including municipally owned and commercial properties, and buildings or structures situated on the property; provided,

however, that "property" shall not include property owned or under the control of the Commonwealth or the United States of America.

## **VACANT**

Any property not currently legally occupied and not properly maintained and secured, but not including any property unoccupied on a seasonal basis only and properly secured and maintained while so unoccupied.

### **§ 224-3. Registration and maintenance requirements for foreclosing properties.**

- A. Any mortgagee of foreclosing property shall, unless exempt from such actions by Massachusetts General Laws, within 15 days of the initiation of the foreclosure process, provide written notification to the Building Commissioner and the Fire Chief of the status of such property, including in such notice the names, addresses, telephone numbers and email addresses of the mortgagee's employees or representatives responsible for conducting the foreclosure, including mortgagee entry to make repairs, and the owner or person in control of the property; the location of the property; whether the property is vacant, and if so the length of time of the vacancy, both past and estimated for the future, to the best of the owner's or mortgagee's knowledge or belief; and the nature of the contents of the building.
- B. Any mortgagee of foreclosing property shall maintain the property as required by and in accordance with the provisions of subsections (A) and (B) of section 224-4, unless exempt from such actions by Massachusetts General Laws.

### **§ 224-4. Registration and maintenance requirements for vacant properties, including foreclosing and foreclosed properties.**

- A. When the Building Commissioner, upon receipt of a complaint or other information and after making inquiries, determines that a property is vacant as defined herein, the Commissioner shall proceed as follows.
  - 1. If the property is foreclosing or has been foreclosed and the mortgagee has entered to make repairs or exercised any incidents of possession or ownership, including without limitation resort to mortgage provisions for preservation of the property, changing locks, or payment of utilities or taxes,, the Commissioner shall require compliance within the time provided in section 224-3 if necessary and with subsection (B) of this section 224-4 within thirty days unless exempt from such actions by Massachusetts General Laws.
  - 2. If the property is not foreclosing, or a mortgagee has not become the owner at foreclosure, the Building Commissioner shall then inform the owner of the requirements of subsection (B) of this section 224-4 and require that the owner submit a plan within thirty (30) days for bringing the property into compliance with subsection (B) within thirty (30) days of submission of the owner's plan, or such additional time as the owner may request and which the Commissioner determines to be reasonable.
  - 3. The Commissioner may waive the provisions of subsections (1) and (2) if the property is a nuisance or danger pursuant to G. L. c. 139 and procedures promulgated there under.

B. Any owner or mortgagee of a vacant property having taken ownership or possession as provided in subsection A (1) of this section 224-4 shall also comply with the following within the time periods set forth in subsection A.

- (1) Register the property as a mortgagee irrespective of entry into ownership or possession as a mortgagee as provided under section 224-3(A).
- (2) As may be required by the Fire Chief for commercial property, file one set of space utilization floor plans for any buildings on said property with the Fire Chief and one set of said plans with the Building Commissioner and certify space utilization plans as accurate twice annually, in January and July.
- (3) Remove from the property, to the satisfaction of the Fire Chief, hazardous material as that term is defined in MGL c. 21K, as that statute may be amended from time to time.
- (4) Secure all windows and door openings and ensure that the building is secured from all unauthorized entry continuously in accordance with the United States Fire Administration, National Arson Initiative Board-up Procedures or provide twenty-four-hour on-site security personnel on the property.
- (5) Post "No Trespassing" signs on the property.
- (6) Ensure that structures are maintained in sound condition.
- (7) Maintain lawns and shrubs free from excessive overgrowth.
- (8) Drain all water from the plumbing and turn off all electricity between September 15 and June 15 of each calendar year to guard against burst pipes and fires.
- (9) Maintain the property in accordance with the Barnstable Zoning Ordinances the definition of "maintenance" in this Ordinance ,and any other provision of this Ordinance; and dispose of trash, debris and pools of stagnant water as provided in Chapter 54 of the Town of Barnstable General Ordinances concerning the maintenance of property.
- (10) Maintain all fences around swimming pools or install fences as required by Chapter 210 of the Barnstable General Ordinances and maintain existing fences or install fences around spas.
- (11) Provide the Fire Chief and Building Commissioner with the name, local address, telephone number and email address of a responsible person if different from the person named in the registration under section 224-3(A) who can be contacted in case of emergency and cause the name and contact number to be marked on the front of the property as may be required by the Fire Chief or Building Commissioner.
- (12) Maintain liability insurance on the property and furnish the Building Commissioner with a copy of said certificate of insurance.

A mortgagee of foreclosing property shall additionally, provide the following:

- (13) a cash or surety bond in the sum of not less than \$10,000, to secure the continued maintenance of the property throughout vacancy or the foreclosure process until the property is sold or transferred and remunerate the Town for any expenses incurred in inspecting, securing, marking or making such building safe, a portion of which shall be retained by the Town as an administrative fee to fund an account for expenses incurred in inspecting, securing, and marking said building and other such buildings that are not in compliance with this Ordinance, and such bond or bonds for all other vacant or foreclosing properties it owns in the Town;

- (14) schedule inspections with the Building Commissioner and Health Director, who may at his or her discretion include the Fire Chief, within a reasonable time after notification under subsection A (1) in order to confirm that the land and interior of all structures comply with the provisions of this Ordinance and/or identify the provisions with which the property does not comply and establish a program to bring the property into full compliance; and
- (15) Notify the Building Commissioner in writing when the property is sold or transferred.

**§ 224-5. Signs and markings.**

When required pursuant to this Ordinance, signs or markings shall be applied on the front of the property, and elsewhere as the Fire Chief or Building Commissioner may require, and shall not be placed over doors, windows or other openings. All signs/markings shall be visible from the street and, when requested by the Fire Chief or Building Commissioner, shall be placed on the sides and rear of the property. Signs/Markings shall be a minimum of 24 inches by 24 inches, with lines of two-inch width, and shall have a reflective background, or be painted with reflective paint in contrasting colors. Signs/Markings shall be applied directly on the surface of the property and shall state the date of posting and the most recent date of inspection by the Fire Chief and Building Commissioner.

**§ 224-6 Properties with certificate of compliance: continuing duty to comply.**

Upon satisfactory compliance with the applicable provisions of sections **224-3** through and including **224-5**, the Building Commissioner shall issue a certificate of compliance. Said certificate shall be valid for the length of the vacancy or initiation of foreclosure, foreclosure, and vacancy following foreclosure; provided, however, the certificate shall be subject to continued compliance with the provisions of this Ordinance. No owner of a vacant property and no mortgagee required to maintain a foreclosing property as provided in this Ordinance shall allow said property to become or remain unsecured, or to contain an accumulation of rubbish, or to contain excessive overgrowth, or to have a stagnant pool of water, or otherwise fail to comply with this Ordinance.

**§ 224-7. Properties without certificate of compliance: notice and order to obtain certificate of compliance.**

If it appears that any vacant or foreclosing property is unregistered, unsecured, contains rubbish, contains excessive overgrowth of vegetation or a stagnant pool or pools of water, the Building Commissioner, upon being informed of such vacant or foreclosing property without a certificate of compliance with this Ordinance, shall cause notice to issue to the owner as defined in this Ordinance of the status of the property, the requirements to register and secure the property, remove rubbish or overgrowth, abate stagnant pools of water and maintain the property in compliance with this Ordinance and order said person to obtain a certificate of compliance. If any person fails to comply with said order, the Building Commissioner and agents thereof may commence civil proceedings to obtain injunctive relief or court orders, including recovery of any unreimbursed expenses incurred by the Town to enter the property to inspect, secure and clean the property and, remove any pools of stagnant water, together with the costs of the Town's response as a municipal charges lien as provided in G. L. c. **40 § 58**.

**§ 224-8. Expenses for court-ordered inspection, securing and cleaning of property.**

The Building Commissioner may demand reimbursement for the expenses incurred by the Town for actions taken to inspect and secure the property, clean the property, and remove any stagnant pools of water, rubbish, overgrowth of vegetation and snow under a court order obtained pursuant to section **224-6**.

- A. The Building Commissioner shall provide the owner or mortgagee with a written statement of all associated costs.
- B. In the case of foreclosed or foreclosing properties only, if the owner as defined in this Ordinance fails to pay or reimburse the Town within 30 days of notice of expenses the Town may immediately seek to obtain the proceeds from the surety given pursuant to **§ 224-3(B)(13)**.
- C. In the case of vacant property not foreclosed or in foreclosure, if the owner fails to pay or reimburse the Town within 30 days of notice of expenses, the Building Commissioner shall provide the owner a second written statement of costs. If the owner fails to pay or reimburse the Town within 10 days of receipt of the second notice, the Building Commissioner may proceed as provided in subsection (D) of this section 224-7.
- D. If there is no surety, or the Town's expenses exceed the amount of the surety the Town may, as part of any court order sought pursuant to section 224-6 or by a separate civil action, seek to recover the balance due for reimbursement of its expenses incurred pursuant to this section and establish a lien on the property to be recorded in the Barnstable County Registry of Deeds or Land Registration District as applicable,

**§ 224-9. Notices.**

Notices required pursuant to this Ordinance shall be served in the following manner:

- A. Personally on any owner as defined in this Ordinance or on the contact person specified pursuant to **§ 224-3(A)** and (B) as applicable; or
- B. Left at the last and usual place of abode of any owner, or contact person as specified pursuant to **§ 224-3(A)** and (B) as applicable, if such place of abode is known and is within or without the commonwealth; or
- C. By certified or registered mail, return receipt requested, to any owner, or the contact person specified pursuant to **§ 224-3(A) and (B) as applicable**.

**§ 224-10. Review of provisions.**

There shall be a review of Chapter 224 within one (1) year of its effective date for consideration of retaining, modifying, or repealing this Ordinance. enacted and effective on or before said date. "

**VOTE: Unanimous continue to a public hearing on October 17, 2013**

<b>2014-023    APPROPRIATION AND TRANSFER \$175,000 FROM THE CAPITAL TRUST FUND FOR SAND NOURISHMENT DUE TO STORM DAMAGE AND CREATION OF SANDY NECK PARKING LOT STABILIZATION PLAN INTRO: 09/19/13, 10/03/13</b>
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The rationale was given by Lynne Poyant Community Services Director.

Upon a motion duly made and seconded it was

**ORDERED:** That the sum of \$175,000 be appropriated for the purpose of funding a sand nourishment project at Sandy Neck Beach; and to meet this appropriation, that \$175,000 be transferred from the Capital Trust Fund, and that the Capital Trust Fund be reimbursed from the Sandy Neck Enterprise Fund Reserve upon the Division of Local Service's certification of the said enterprise fund's reserve.

**Roll call VOTE: 13 Yes**

**2014-024 ACCEPTANCE OF DISTRESSED PROPERTIES IDENTIFICATION AND REVITALIZATION GRANT IN THE AMOUNT OF \$60,000 Introduced: 10 /3/2013**

Thomas K Lynch, Town Manager gave the rationale.

Upon a motion duly made and seconded it was

**RESOLVED:** That the Town Council does hereby accept the grant award in the amount of \$60,000 from the Office of the Attorney General for the purpose of identifying bank or creditor owned (REO) distressed and vacant foreclosed properties so that they can be returned to residential use and that the Town Manager be authorized to contract for and expend the grant funds for the purpose stated herein.

**VOTE: Passed Unanimous**

**2013-025 RESOLVE ON AN EXEMPTION FOR BARNSTABLE CONSERVATION COMMISSIONERS JOHN ABODEELY AND PETER SAMPOU OF AN INTEREST UNDER THE CONFLICT OF INTEREST LAW UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 268A §19 INTRO: 10/3/13**

Rationale given by Dennis Houle, Conservation Commission

Upon a motion duly made and seconded it was.

**RESOLVED:** That the interest of Barnstable Conservation Commissioners John Abodeely and Peter Sampou in the setting of permit fees for the Town of Barnstable Shooting Range is hereby found not to be so substantial as to interfere with the objective performance of their duties in the best interest of the Town.

**VOTE: Passed: Unanimous**

**2014-026 RESOLUTION IN SUPPORT OF MAINTAINING LOCAL CONTROL OF BARNSTABLE HOUSING AUTHORITY INTRO: 10/03/13**

Rationale given by Sandra Perry, Executive Director of Housing Authority

Councilor Discussion

- How close are we to losing local control, what are the risks
- Contact our legislators and local Representatives
- Extremely important to keep local control

Upon a motion duly made and seconded it was.

WHEREAS, The Barnstable Housing Authority (BHA) was established by vote of this Towns Board of Selectmen in October 1948, following our forefathers determination " that a housing authority is needed in the Town of Barnstable for the purpose of providing low-rent housing for families of low income, " and



WHEREAS, The core Mission of the BHA soon evolved into providing local families with access to and opportunities for “clean, safe and affordable” housing ; and

WHEREAS, The BHA has met this challenge , pursuing an aggressive program of property acquisition and construction over time, which has resulted in the construction of 327 units of federally and state assisted housing in the Town to support local elderly, disabled and low income families; and

WHEREAS, The BHA also administers federal and state assisted housing voucher programs, making 536 additional units of market rent housing affordable for and accessible to local low income families; and

WHEREAS, The BHA has endeavored to further address the needs of its Resident Families by providing access to 39 local affordable rental units under its Rental Acquisition Program (RAP) with an additional 12 affordable rental units currently in construction; and

WHEREAS, The BHA's ability to meet Families, Elderly and Disabled Residents needs has been enhanced by BHA personnel's detailed and intimate knowledge of the local community and its resident's; and

WHEREAS, Through partnerships and creative collaboration with local government and social service agencies, including the Barnstable Senior Center, the Visiting Nurses Association, Elder Services of Cape Cod and the Islands, Cape Organization for the Rights of the Disabled and many others, the BHA has enhanced its ability to provide Resident Elderly and Disabled Families with access to critical services; and now be it

RESOLVED: That the Town of Barnstable in recognition of the Barnstable Housing Authority's extraordinary accomplishments in our Community, supporter the continued operation of local public housing authorities throughout the Commonwealth of Massachusetts; and, be it further

RESOLVED: That the Town transmit copies of this resolution to members of the Barnstable's state legislative delegation and to the House and Senate Chairman of the Joint Committee on Housing to make this known to all Committee Members.

SPONSOR: Town Manager Thomas K. Lynch at the request of Barnstable Housing Authority

Adopted this \_\_\_\_\_ day of \_\_\_\_\_ 2013, by the Town Council of the Town of Barnstable.

**VOTE: Passed Unanimous**

<b>2014-027 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION INTRO: 10/3/13</b>
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Upon motion duly made and seconded it was voted to move this item to a second reading, with the amendment to remove Michael Dunning, from the Sandy Neck Governing Board.

RESOLVED, that the Town Council appoint the following individuals to a multiple-member

board/committee/commission.

#### COUNCIL ON AGING

Katherine Lee Evans, 2321 Meetinghouse, Way West Barnstable as a member to a term expiring 6/30/2015

Herbert Bodenseik, 58 Loomis Lane, Centerville as an alternate member to a term expiring 6/30/2015

#### SANDY NECK GOVERNING BOARD

Thomas O'Neil, 58 Holway Drive, West Barnstable as a member to a term expiring 6/30/2015

Michael Dunning, 339 Old Jail Lane, Barnstable as a member to a term expiring 6/30/2016

#### SHELLFISH COMMITTEE

Kevin Flaherty, 739 Rt 149, Marstons Mills as a member to a term expiring 6/30/2014

#### YOUTH COMMISSION

Nicole Neville, 545 Scudder Ave Hyannis as a member to a term expiring 6/30/2016

#### ZONING BOARD OF APPEALS

George Zevitas, 77 Winding Cove Road, Cotuit as a regular member from an alternate member to a term expiring 6/30/2016

Herbert Bodensiek, 58 Loomis Lane, Centerville as an alternate member to the Zoning Board of Appeals to a term expiring 6/30/2015

#### **VOTE: PASSED UNANIMOUS**

<b>2014-028 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION</b>
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<b>INTRO: 10/3/13</b>
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Upon motion duly made and seconded it was

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

#### **SHELLFISH COMMITTEE**

Robert Lancaster 21 Hannah Circle Cotuit as a member to a term expiring 6/30/16

#### **VOTE: 11 YES, 1 NO(CANEDY)voted to move a second reading (Rugo out of room)**

#### **TOWN MANAGER COMMUNICATIONS**

- Attended the ICMA Conference in Boston with Assistant Town Manager Mark Ells
- Met with the Superintendent per charter, reviewed budget, agreed to keep 60/40 split
- Attended the Back to Business Bash held by the Young Professionals
- Made a site visit to the dog park at Hathaway's Pond, applied for a grant through the Stanton Foundation
- Ridgeway Park moving forward on this project
- Went to the opening of Kohl's, created 126 new jobs, welcome to the community
- Silent Spring gave an update on emerging contaminants
- Attended the Solid Waste forum
- Will be meeting with Conservation regarding the shooting range to review the proposed regulations

**ADJOURNMENT:**

Upon a motion duly made and seconded it was

**VOTED to adjourn.**

**Unanimous**

**Adjourned at 8:50 PM**

Respectfully submitted,

Susan Greenlaw

Acting Assistant Town Clerk – Town of Barnstable

NEXT REGULAR MEETING: October 17, 2013