



TOWN COUNCIL MEETING January 20, 2011

A quorum being duly present, Council President Frederick Chirigotis called the January 20, 2011, Town Council meeting to order at 7:00 p.m. in the 2nd Floor Hearing Room of Barnstable Town Hall, 367 Main Street, 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, and James Tinsley.

President Chirigotis led the hall in the Pledge of Allegiance, followed by a Moment of Silence.

Proclamations in honor of years of service:

Senator Robert O'Leary

President Chirigotis read a proclamation for Senator Robert O'Leary (See Exhibit A). Senator Robert O'Leary received his proclamation for serving our community for many years. It was noted on the proclamation that as a Senator, Professor and Commissioner he leaves as his legacy that which is good and wholesome and virtuous – and we thank him from the bottom of our hearts.

Senator O'Leary thanked his staffer, Sue Rohrbach, who was present. He stated that he was overwhelmed and at a loss for words. He has loved the town and it has been a privilege to represent Barnstable. He thanked the councilors as well.

PUBLIC COMMENT

Robert Tucker said he made a difference because the insurance company is going to work with local authorities to look for uninsured vehicles. He feels there is gas gouging.

COUNCIL RESPONSE TO PUBLIC COMMENT

Councilor Canedy will miss seeing the Senator in the post office but is glad she will see Mr. O'Leary at the post office.

ACT ON MINUTES

Upon motion duly made and seconded, it was voted to approve the minutes of January 6, 2011.

VOTE: 11 yes 2 abstentions

COMMUNICATIONS FROM ELECTED OFFICIALS, BOARDS, COMMISSIONS, STAFF,

- Vice President Barton made some Marstons Mills announcements. She also announced an upcoming school workshop.
- Councilor Farnham congratulated the new officers and directors of the West Barnstable Civic Association.
- Councilor Norman announced that Lt. Col Patrick J. McNamara from Marstons Mills received a Massachusetts Medal of Merit.
- Councilor Milne said both of Mr. McNamara’s sons are Eagle Scout.

ORDERS OF THE DAY

A. OLD BUSINESS

2011-14 AMEND ZONING ORDINANCE-NON-CONFORMING LOT AREA EXCHANGE
INTRO: 09/02/10, 12/16/10, 01/20/11

There was unanimous consent to allow this item to be withdrawn at the request of the sponsor.

2011-039 AMEND ZONING ORDINANCE C. 240, ART. III, MAH RESIDENTIAL DISTRICT
INTRO: 12/16/10, 01/06/11, 01/20/11

Upon motion duly made and seconded it was voted by the Town Council to go in to the continued public hearing with the Planning Board to discuss item 2011-039.

VOTE: Unanimous in favor

Upon motion duly made and seconded it was voted by four members of the Planning Board to go in to a joint public hearing with the Town Council to discuss item 2011-039.

VOTE: Unanimous in favor

Attorney Weil noted that the substitute motion as presented brings us in to conformance with the State laws so that the units can be counted. It is a use restriction. It is consistent throughout the document.

Upon motion duly made and seconded it was voted by the Town Council to go out of the public hearing at: 7:23 p.m.

VOTE: Unanimous in favor

Upon motion duly made and seconded it was voted by the Planning Board members to go out of the public hearing at 7:23 p.m.

VOTE: Unanimous in favor

Councilor Canedy asked if this item is specific for this one district. Attorney Weil said it refers to this small district only. (See map Exhibit B)

Planning Board adjourned to the conference room to discuss language in substitute motion.

At 7:25 p.m. the meeting temporarily adjourned, but President Chirigotis moved forward the late file.

2011-051 – AUTHORIZATION STATEMENT OF INTEREST - BARNSTABLE INTERMEDIATE SCHOOL
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Manager Klimm explained the rationale which stated that the Statement of Interest is the Barnstable Intermediate School located at 895 Falmouth Road, Hyannis, MA. He said that there was a small window of opportunity to get this filed.

Councilor Milne explained he recalled seeing the school being rebuilt in 2000. Supt. Patricia Grenier explained that this is part of the process and we have to prioritize the buildings. We are low on their concern lists. They are concerned about districts that are over-crowded. She still files a statement yearly.

Supt. Grenier added that there was faulty construction in 2000. There have been problems with the renovation – flashing was put in backwards. The construction company went bankrupt. The state has put in different safeguards now.

Councilor Barry said that we have had problems because we have to take the lowest bidder. Maybe we need to petition the legislators to change the procurement laws. Maybe take one of the 3 lowest bids instead of the lowest.

Councilor Farnham can remember the overrides for the high and middle school ten years ago. It is discouraging that now we have to deal with the same problems again. We need a motion to have the legislature look at the prevailing wage regulations and change them. He asked President Chirigotis to create a resolution for our legislators to address this.

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

VOTE: Unanimous in favor

Upon motion duly made and seconded it was

RESOLVED: Having convened in an open meeting on January 20, 2011, the Town Council of the Town of Barnstable, in accordance with the Town's charter, by-laws, and ordinances, authorizes the Superintendent to submit to the Massachusetts School Building Authority the Statement of Interest dated January 11, 2011, for the Barnstable Intermediate School located at 895 Falmouth Road, Hyannis, MA 02601, which describes and explains the following deficiencies and the priority category for which the Town of Barnstable may be invited to apply to the Massachusetts School Building Authority in the future: repair of the roof; removal, evaluation and replacement of the Efis wall system; removal, re-flashing and replacement of impacted windows; removal of VCT tile floors; waterproofing of the cement deck and reapplication of flooring at an intermediate school, which is a Priority 1 project (replace or renovate a building which is structurally unsound or otherwise in a condition

seriously jeopardizing the health and safety of school children, where no alternative exists); and hereby further specifically acknowledges that by submitting this Statement of Interest, the Massachusetts School Building Authority in no way guarantees the acceptance or the approval of an application, the awarding of a grant or any other funding commitment from the Massachusetts School Building Authority, or commits the Town of Barnstable to filing an application for funding with the Massachusetts School Building Authority.

VOTE: 13 Yes

2011-039 AMEND ZONING ORDINANCE C. 240, ART. III, MAH RESIDENTIAL DISTRICT INTRO: 12/16/10, 01/06/11, 01/20/11

Ray Lang, Chairman of the Planning Board announced that the Planning Board unanimously voted to recommend approval of the substitute motion for item 2011-039 to the Town Council for adoption. (See Planning Board attached as Exhibit C)

Upon motion duly made and seconded it was

ORDERED that: The Code of the Town of Barnstable, Chapter 240, Article III, MAH Residential District, Section 240-16.1 is hereby amended by striking Section 240-16.1 in its entirety and substituting in its place the following:

240-16.1. MAH Residential District.

- A. Purpose. The purpose of this section is to authorize by special permit privately initiated affordable housing by for-profit or not-for-profit organizations that:
 - (1) Provide for residential development in a manner that is consistent with existing neighborhood development in terms of density and housing types; and
 - (2) Authorize an increase in the permissible density of housing in a proposed development, provided that the applicant shall, as a condition for the grant of said special permit, provide housing for persons of low or moderate income.

- B. Principal permitted uses. The following uses are permitted in the MAH District:
 - (1) Single-family residential dwelling (detached).

- C. Special permit uses. For the purposes of this section, the Planning Board shall be the special permit granting authority. The following uses are permitted as conditional uses in the MAH District, provided that a special permit is first obtained from the Planning Board subject to the provisions of § 240-125C herein and subject to the specific standards for such special permit uses as required in this section:
 - (1) Multifamily affordable housing developments connected to the municipal sewage collection system.

- D. Bulk regulations.

Zoning District	Minimum Lot Area (square feet)	Minimum Lot Frontage (feet)	Minimum Lot Width (feet)	Minimum Yard Setbacks ¹ (feet)			Maximum Building Height ² (feet)
				Front	Side	Rear	
MAH	87,120	200	—	60	30	30	30

NOTES:

¹For developments within an existing structure previously used as a nursing or convalescent home, yard setbacks shall be the setback to the existing building footprint or the setbacks stated above, whichever is less.

²Height shall be measured from the grade plane to the plate.

- E. Density requirements. The total number of residential units allowable within a multifamily affordable housing development shall not exceed eight per acre of upland; provided, however, that within the redevelopment of an existing structure previously used as a nursing home or convalescent home which is 100% affordable, the total number of residential units allowable shall not exceed 16 per acre of upland.
- F. Affordable units. At least 25% of the dwelling units shall be affordable units, subject to the following conditions:
 - (1) All affordable units shall remain affordable, as defined herein, in perpetuity. A use restriction shall assure this condition. The use restriction shall be structured to survive any and all foreclosures.
 - (2) The continuing enforcement of the use restriction through subsequent resale of the affordable units shall be the subject of a monitoring agreement.
 - (3) The use restriction and the monitoring agreement shall be drafted in compliance with the Local Initiative Program (LIP), guidelines promulgated thereunder. The use restriction and the monitoring agreement shall be subject to review and approval by the Planning Board and approved as to form by the Town Attorney's office prior to the issuance of any building permits for any dwelling unit.
 - (4) The affordable unit shall conform to all Department of Housing and Community Development (DHCD) standards that must be met to qualify these units for inclusion in the DHCD Subsidized Housing Inventory (SHI).
 - (5) A right of first refusal upon the transfer of such affordable units shall be granted to the Town or its designee for a period of not less than 120 days after notice thereof.
 - (6) Affordable units shall not be segregated within the MAHD. The affordable units shall satisfy the design and construction standards and guidelines of the Local Initiative Program-with regard to distinguishability from market rate units (with the exception that development under this section providing off-site inclusionary housing in conjunction with a senior continuing care retirement community shall not be required to provide services offered within the senior continuing care facility). It is the intent of this section that the affordable units shall be eligible for inclusion in the DHCD Subsidized Housing Inventory as LIP units.
 - (7) Where the Planning Board finds that an applicant for a special permit under § 240-29 of the SCCRCOD (Senior Continuing Care Retirement Community Overlay District) can satisfy its inclusionary requirement under Chapter 9 by

providing off-site, affordable units, affordable units created under this section may be used to fulfill this off-site inclusionary requirement.

- (8) Affordable units shall obtain occupancy permits issued at the rate of one affordable unit for every four market rate units. When the multifamily affordable housing development is proposed to satisfy the inclusionary requirements for a senior continuing care retirement community, phasing shall be as determined by the SPGA.
- (9) In computing the number of required affordable units, any fraction of a unit shall be rounded up, and the result of this computation shall be the number of affordable units required to be built within the MAHD. Affordable units shall only be located within any development permitted under this provision. This standard is not subject to variance.
- (10) No occupancy permit shall be granted unless the affordable dwelling units have been approved by the DHCD as eligible for the Affordable Housing Inventory under the Local Initiative Program (LIP) Guidelines.
- 11) When a multifamily affordable housing development is proposed to satisfy the inclusionary requirements for a senior continuing care retirement community proposed or permitted under the provision of § 240-29 of this Code, such multifamily units shall not be required to provide an additional 10% of Inclusionary units as a result of the multifamily affordable housing development but shall at a minimum provide the number of affordable units required by § 240-29 of this Code.

G. Decision. The Planning Board may grant a special permit for a MAHD where it makes the following findings:

- (1) The proposed MAHD complies with all applicable subdivision rules unless otherwise waived by the Board.
- (2) The proposed MAHD complies with the Zoning Ordinance and the requirements of this section.
- (3) The proposed MAHD provides affordable units consistent with the requirements set forth herein.
- (4) The proposed MAHD does not cause substantial detriment to the neighborhood.

H. Relation to other requirements. The submittals and special permit required herein shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this Zoning Ordinance.

I. Definitions. As used in this section, the following terms shall have the meanings indicated:

AFFORDABLE UNIT — A dwelling unit reserved in perpetuity for rental or ownership by a “qualified affordable housing unit purchaser or tenant” as defined under §9.2 of the Code, and priced to conform with the standards of the Massachusetts Department of Housing and Community Development (DHCD) for ownership units set forth in the Local Initiative Program Guidelines, in order that such affordable units shall be included in the DHCD Subsidized Housing Inventory.

APPLICANT — The person or persons, including a corporation or other legal entity, who applies for issuance of a special permit for construction of a private-initiated affordable

housing development (MAHD) hereunder. The applicant must own, or be the beneficial owner of, all the land included in the proposed MAHD, or have authority from the owner(s) to act for the owner(s) or hold an option or contract duly executed by the owner(s) and the applicant giving the latter the right to acquire the land to be included in the site.

MULTIFAMILY AFFORDABLE HOUSING DEVELOPMENT (MAHD) — A development of multifamily residential dwelling(s) including required affordable units, and permissible accessory structures authorized by special permit from the Planning Board as set forth herein.

NURSING OR CONVALESCENT HOME — Any dwelling or building with sleeping rooms for people who are housed or lodged with meals and nursing care for hire, as licensed by the Massachusetts Department of Public Health under MGL c. 111 § 71, as amended.

USE RESTRICTION – A restriction ensuring the continued affordability of a dwelling unit. A use restriction is a deed restriction or other legally binding instrument in a form consistent with Department of Housing and Community Development (DHCD) Local Initiative Program (LIP) guidelines which runs with the land and is recorded with the relevant registry of deeds or land court registry district, and which effectively restricts the occupancy of a Low or Moderate Income Housing unit to Income Eligible Households during the term of affordability. A Use Restriction shall contain terms and conditions for the resale of a homeownership unit, including definition of the maximum permissible resale price, and for the subsequent rental of a rental unit, including definition of the maximum permissible rent. A Use Restriction shall require that tenants of rental units and owners of homeownership units shall occupy the units as their principal residences.

VOTE: ROLL CALL – 13 YES

2011-040 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION INTRO: 01/06/11, 01/20/11
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Upon motion duly made and seconded it was:

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

HUMAN SERVICES COMMITTEE

Estella Fritzinger, Executive Director, Community Action Committee of Cape Cod and Islands representative member, 115 Enterprise Road, Hyannis, to a term expiring 6/30/2012

Coreen Brinckerhoff, Cape Organization for Rights of the Disabled representative member, 106 Bassett Lane, Hyannis, to a term expiring 6/30/2013

Heidi Nelson, Executive Director, Duffy Health Center representative member, 105 Park Street, Hyannis, to a term expiring 6/30/2013

Reverend John Holt, United Methodist Church, 57 Pond Street, Osterville, as a member to a term expiring 6/30/2012

A. Roy Fogelgren, Cape Cod Council of Churches, 320 Main Street, Hyannis, as a member to a term expiring 6/30/2013

Mary Pat Messmer, CEO, Cape Cod Child Development representative member, 83 Pearl Street, Hyannis, to a term expiring 6/30/2011

Merrill Blum, Veterans' Outreach Center representative member, 163 North Street, Hyannis, to a term expiring 6/30/2012

Royden Richardson, President, Cape Head Injured Persons' Housing and Education representative member, 9 Park Avenue, Centerville, to a term expiring 6/30/2011

Bill Doherty, Barnstable County Commissioner, Main Street, Barnstable, as a member to a term expiring 6/30/2011

VOTE: Unanimous in favor

2011-042 APPROPRIATE & TRANSFER \$70,000 FROM AIRPORT RESERVE FUND FOR STAGE II ENVIRONMENTAL RISK ASSESSMENT - INTRO: 01/06/11, 01/20/11
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Bud Breault, Airport Manager gave the rationale.

Upon motion duly made and seconded it was voted to go in to a public hearing for the purpose of discussing this item.

VOTE: Unanimous

Upon motion duly made and seconded it was voted to go out of the public hearing at: 7:47 p.m.

VOTE: Unanimous

- Councilor Canedy asked if securing an environmental study was subject to procurement laws and whether the previous efforts had been subject to independent review.
- Bud Breault said recent changes in procurement laws included environmental engineers, as included in exemption for "engineers", and they are not required to go out to bid but have in the past. Horsely and Whitten won that bid.
- Breault and Joe Longo and from Horsley Whitten stated that the consultant's work was subject to Cape Cod Commission review and had been independently reviewed by request of the Yarmouth selectmen. The independent reviews found that the consultant's work had been satisfactory.
- Councilor Milne asked if we are going to resolve sediment questions. Mr. Longo said that that is the intention. Mr. Breault is hopefully optimistic and hopes it will go well.
- Councilor Dagwan asked when it will start and end. Breault said we will start as soon as possible and it will be done in 6 months.

- Councilor Canedy asked if there will be a report in laymen's terms once complete – Yes.

A motion was made, seconded and it was unanimously voted to move the question.

Upon motion duly made and seconded it was:

ORDERED: that the sum of Seventy Thousand Dollars and no cents (\$70,000.00) be appropriated for the purposes of funding a Stage II Environmental Risk Assessment (ERA) for the Upper Gate Pond and Lewis Pond as required by the Massachusetts Contingency Plan (MCP), 310 CMR 40.0000; and that to meet this appropriation, \$70,000 be transferred from available funds within the Airport Reserve Fund, and that the Town Manager is authorized to contract for and expend the Appropriation made available for this purpose, and be authorized to accept any grants or gifts in relation thereto.

VOTE: ROLL CALL – 13 YES

2011-043 APPROPRIATE & TRANSFER \$92,000 FROM AIRPORT RESERVE FUND FOR FUNDING A DRAFT & FINAL ENVIRONMENTAL IMPACT REPORT (EIR) - INTRO: 01/06/11, 01/20/11

Airport Manager Bud Breault gave the rationale on this item.

Upon motion duly made and seconded it was voted to go in to a public hearing for the purpose of discussing this item.

VOTE: Unanimous

Upon motion duly made and seconded it was voted to go out of the public hearing at: 7:58 p.m.

VOTE: Unanimous

- Councilor Tinsley asked about the cost after reimbursement – it will be about \$2,500.
- Councilor Crocker asked how we may get it back to the reserves. Breault said we will use our reserves to start it; we will submit grant applications and ask for reimbursement; and then it will be recertified by the DOR so we can use it again.

A motion was made, seconded and it was unanimously voted to move the question.

Upon motion duly made and seconded

ORDERED: that the sum of Ninety-Two Thousand Dollars and no cents (\$92,000.00) be appropriated for the purposes of funding the development of a Draft and Final Environmental Impact Report (EIR) as required by the Massachusetts Environmental Policy Act (MEPA) for the Town Council and Cape Cod Commission mandated Master Plan and for the Development Agreement with the Cape Cod Commission both of which will establish future development and redevelopment parameters for the Barnstable Municipal Airport; and that to meet this appropriation, \$92,000 be transferred from available funds within the Airport

Reserve Fund, and that the Town Manager is authorized to contract for and expend the Appropriation made available for this purpose, and be authorized to accept any grants or gifts in relation thereto.

VOTE: ROLL CALL – 13 YES

B. NEW BUSINESS

2011-044 ACCEPTANCE OF A \$1500 CAPE COD CHAMBER MINI-TOURISM GRANT – INTRO: 01/10/11

Town Manager Klimm gave the rationale as written.

Councilor Barton asked if Melissa Hersch wrote the grant – yes.

A motion was made, seconded and it was unanimously voted to move the question.

Upon motion duly made and seconded it was

RESOLVED: That the Town Council hereby accept the grant award in the amount of \$1,500.00 from the Cape Cod Chamber-Mini Tourism Grant.

VOTE: 13 yes

2011-045 AMEND THE GENERAL ORDINANCES, ART 1 §1-6 CHAPTER 1, GENERAL PROVISIONS AND CHAPTER 237, §237-1 WETLANDS PROTECTION – INTRO: 01/20/11

Upon motion duly made and seconded it was voted to refer this item to a public hearing on Feb. 3, 2011

VOTE: 13 yes

2011-046 AMEND THE ZONING ORDINANCE – OPEN HOUSE SIGN REGULATIONS – INTRO: 01/20/11

Upon motion duly made and seconded it was voted to refer this item to the planning board.

VOTE: 13 yes

2011-47 AMEND THE ZONING ORDINANCE – TRADE FLAG SIGN REGULATIONS – INTRO: 01/20/11

It was noted that open house signs are different from other signs. It was requested of Joanne Buntich to have a clean copy as part of our agenda. Red lined documents should be informational only.

Upon motion duly made and seconded it was voted to refer this item to the planning board.

VOTE: 13 Yes

**2011-048 REAPPOINT MEMBERS TO A BOARD/COMMITTEE/COMMISSION – INTRO:
01/20/11**

A motion was made and seconded to suspend the rules and allow passage of this item this evening.

VOTE: 12 yes – 1 no (Canedy)

Upon motion duly made and seconded, it was voted to refer this item to a second reading.

VOTE: 12 yes 1 abstain

**2011-049 AMENDING THE ADMINISTRATIVE CODE – GOLF COMMITTEE – INTRO:
01/20/11**

Councilor Crocker asked if the golf committee had input. He feels they need to be involved. Pres. Chirigotis will invite them to the second reading.

Upon motion duly made and seconded it was voted to refer this item to a second reading

VOTE: Unanimous in favor

**2011-050 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION – INTRO:
01/20/11**

A motion was made by Councilor Crocker and seconded to bifurcate this item. He felt the golf committee nominees should be tabled until the issue over whether the council will vote to add golf committee members is settled.

Councilor Canedy moved to table the golf committee appointments and move the Agriculture Committee appointment to the next meeting.

Councilor Farnham asked to waive the rules and vote on the Agriculture Committee candidate because they are short staffed.

On the motion to bifurcate.

VOTE: Unanimous.

Councilor Canedy withdrew her motion to table and move.

On the motion to waive the rules and vote on the Agriculture Commission.

VOTE Unanimous

Upon motion duly made and seconded it was voted to appoint to the AGRICULTURAL COMMISSION: Melissa R. Caughey, 35 Fox Hollow Lane, Osterville, as a member, to a term expiring 6/30/2013.

VOTE: Unanimous.

Upon motion duly made and seconded it was voted to table the Golf Committee until the matter on the number of people is settled.

VOTE: 12 Yes – 1 No Tinsley

TOWN MANAGER COMMUNICATIONS

Town Manager John Klimm announced the MMA conference in Boston where he hopes to hear about local aid. He met with Kevin Howard who was in charge of the Arts Foundation. Next week begins the Citizens Academy. We are finalizing the Capital budget.

Councilor Tinsley asked about Gov. Patrick he will be in Barnstable on Saturday and at MMA tomorrow.

Debra Dagwan thanked all the organizations who participated in events dealing with the life of Dr. Martin Luther King.

ADJOURNMENT

Upon motion duly made and seconded, it was
VOTED: To adjourn.

ADJOURNED: at 8:20 p.m.

Respectfully submitted,

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

NEXT MEETING: February 3, 2011