



## TOWN COUNCIL MEETING May 5, 2011

**A** quorum being duly present, Council President Frederick Chirigotis called the May 5, 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, Frederick Chirigotis, James Crocker, Jr., Debra Dagwan, Henry Farnham, Janet Joakim, J. Gregory Milne, James Munafò, Jr., John Norman, Thomas Rugo and James Tinsley (9:15 p.m.).

**Absent:** Ann Canedy

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

### **Cape Cod Commission Update—Executive Director Paul Niedzwiecki**

Paul Niedzwiecki stated that there were three initiatives: Wind, waste water and economic development on which he wanted to briefly update the council.

He touched on a few items in each initiative. He addressed various marine sites that were being looked at for turbines; stated that the total price tag for Cape Cod for wastewater could approach \$8 billion, which is an unaffordable number; and stated the broadband initiative is one of the biggest pieces to come to this area.

Patty Daley spoke to solid waste disposal. They are looking at all options other than the Bourne Landfill and SEAMASS. They have a national search out for other options; and are turning to recycling. The responses are due in June from the search and then they will proceed with contract negotiations.

Councilor Milne noted that Barnstable was looking at recycling and solid waste. He asked if the Commission had any evidence that shows curbside pickup improves recycling? Daley said it depends upon how you set up the curbside pick up. The Commission is looking for a grant for a person who would work with towns on Pay as You Throw and other programs.

Councilor Milne asked Niedzwiecki if there are programs for financing. Niedzwiecki said the financing is up to the towns. The Cape is a place of haves and have nots. The finance structure you use may have drastic consequences to year round residents.

Councilor Farnham stated that in the past the council had been given a report on things that have been done for the Town of Barnstable by the Commission, and wondered if there was a new one. Niedzwiecki said that he will provide it.

### **PUBLIC COMMENT**

Al Baker made a couple of announcements. Dave Curley will be retiring after many years in recreation. He will be greatly missed. Baker also thanked Councilor Norman for fixing the Burgess Park parking lot.

Robert Tucker asked about taking care of a property in Hyannis. Take care of your mother on Mother's Day.

### **ACT ON MINUTES**

Upon motion duly made and seconded it was voted to postpone approval of the minutes of March 17, 2011 to the 19<sup>th</sup>.

**VOTE: Unanimous in favor of postponing**

Upon motion duly made and seconded it was voted to approve the minutes of April 7, 2011 as written.

**VOTE: 10 Yes 1 Abstain**

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

Len Gobeil, chairman of the Marty Flynn Scholarship Fund., explained how taxpayers have donated money to the fund. They had \$7,000 to give out this year.

Jan Cliggott was with him and handed out the checks to: Benjamin Anthony, Nicholas Atcheson, Jennifer Do'Olympio, Damaris DosSantos, Christopher Harding, Jacklyn Harding, Kevin Harrington, Matt Kohler, Andrea Levesque, Arianna Levesque, Athena Levesque, Lauren Logan, Peter Markarian, Brittany Pond, Christina Remie, Hudson Sealey, and Ryan Swimm. (Please see Exhibit A)

Councilor Munafo said the Ex. Session Sub Committee was reporting out 50 of the executive session minutes. We feel the minutes are worthy to be released. Pres. Chirigotis said if you have no problem – please identify them by date. He thanked the other members of the committee Councilors Norton and Milne.

The following meetings were identified to be released: 11//30/95; 12/04/97; 12/18/97; 2/12/98; 6/11/98; 8/20/98; 11/5/98; 11/19/98; 12/3/98; 1/28/99; 2/11/99; 4/15/99; 5/13/99; 6/24/99; 7/15/99; 9/23/99; 10/7/99; 10/14/99; 10/28/99; 11/4/99; 11/18/99; 12/2/99; 2/17/00; 4/27/00; 5/11/00; 7/20/00; 8/19/00; 11/2/00; 12/7/00; 1/4/01; 1/18/01; 2/21/01; 5/17/01; 6/28/01; 8/16/01; 9/20/01; 10/4/01; 10/18/01; 12/6/01; 12/17/01; 1/3/02; 1/17/02; 1/31/02; 4/4/02; 6/20/02; 7/19/02; 10/17/02; 11/7/02; 11/21/02; 12/5/02; 4/21/11 and 4/26/11.

(See report attached as Exhibit B)/

**VOTE: To release these minutes – 11 YES**

Councilor Farnham asked President Chirigotis if we were going to have a process for the timely release of executive session minutes in the future. Councilor Crocker said that possibly with the new law and a place holder in the agenda we will do better in the future.

Councilor Milne updated the council on the Solar Sub Committee. He thanked the councilors and others on the project of putting panels on the capped landfill. He said there will be a few more meetings but they will then bring the issue to the council. It may come forward as a late file on May 19.

Councilor Milne also noted that there has been some turmoil lately and asked for data on councilor attendance at the State of the Town Address. That event is not posted, is not in the charter, and is really our employee's event. The media noted that he was not on the stage. Attendance is optional. It is not that critical that councilors are in attendance.

Pres. Chirigotis said attendance is not taken.

Councilor Dagwan said the State of the town event is important and we are voted in to represent this town – and we had honorable recipients of awards. It would have been important to show respect. It is my opinion but there is no attendance taken or reason for us to have to be there. We should take it upon ourselves to attend. We should stand together and work together.

**ORDERS OF THE DAY**  
**A. OLD BUSINESS**

**It was noted that Councilor Canedy was ill and not present.**

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| <b>2011-046 AMEND THE ZONING ORDINANCE – OPEN HOUSE SIGN REGULATIONS -<br/>INTRO: 01/20/11, 05/05/11</b> |
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Councilor Crocker gave the rationale and addressed the issue. He is in the trade (real estate) and explained some of the details in the item. He feels that it is fair.

Upon motion duly made and seconded it was voted to go in to a public hearing for the purpose of discussing said item 2011-046.

**VOTE: Unanimous consent**

Jacques Morin said the amendment to the sign code began in January. There was a concern about open house signs. So a group got together with Growth Management and addressed the concerns. He hoped that the council would vote favorably on this.

Upon motion duly made and seconded it was voted to go out of a public hearing at 8:00 p.m.

**VOTE: Unanimous consent.**

Councilor Milne asked if it is allowed for a directional street sign to be placed on a corner. Councilor Crocker said it falls under 274 open house and directional signs. The signs are to be in the right of way and can't obstruct.

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

**VOTE: Unanimous**

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Upon motion duly made and seconded it was

**ORDERED**, that Chapter 240, The Zoning Ordinance of the Town of Barnstable, Article VII, Sign Regulations be amended by adding the following:

**Section 240-60 Definitions** is amended by adding the following:

**§ 240-60 Definitions.**

**OPEN HOUSE SIGN** – A temporary sign to be displayed only for real estate open house events where real estate professionals such as brokers or agents are present at the open house. Such signs shall not exceed 24” by 24” in size and may be two sided a-frame or panel signs.

**OPEN HOUSE DIRECTIONAL SIGN** – A temporary sign to be displayed only for real estate open house events staffed by real estate professionals such as brokers or agents. Such directional signs shall not exceed 24” by 24” in size, may be two sided and shall display a directional arrow in addition to any other sign display.

**Section 240-61 Prohibited Signs** is amended by adding the following:

**§ 240-61 Prohibited signs.**

- A. Add “and at the entrance to subdivisions where developed and undeveloped lots are offered for initial sale” before the phrase “and except official flags of nations or administrative or political subdivisions thereof.”

**§ 240-74 Temporary Signs** is amended by adding the following:

C. Real Estate Signs

(1.)Open House Sign

- a. Shall only be placed for display sixty (60) minutes before and shall be removed within sixty (60) minutes after the open house event
- b. Shall not obstruct pedestrian and/or vehicular traffic or be otherwise considered, at the discretion of the Building Commissioner or public safety officials, to be a public safety risk.
- c. Shall not be placed in any area that obstructs or otherwise intrudes into areas containing memorials or monuments. Open House signs are prohibited on a traffic island where such memorials or monuments are located.

(2.)Open House Directional Sign

- a. Shall only be placed for display sixty(60) minutes before and shall be removed within sixty (60) minutes after the open house event
- b. Shall only be displayed to assist motorists in finding an Open House that is concurrently displaying an Open House Sign.
- c. Shall not obstruct pedestrian and/or vehicular traffic or be otherwise considered, at the discretion of the Building Commissioner or public safety officials, to be a public safety risk.
- d. Shall not be placed in any area that obstructs or otherwise intrudes into areas containing memorials or monuments. Open House signs are prohibited on a traffic island where such memorials or monuments are located.

(3.)Subdivision Off Premise Directional Sign

- a. Shall be displayed only during period of time when developed or undeveloped lots in the subdivision are offered for initial sale by developer and shall be removed once such initial sales are complete.

- b. In accordance with Section 240-85 prior to installation shall be permitted by the Building Commissioner for the specific subdivision. Evidence of ownership, lease or other arrangement allowing installation and display at the proposed location shall be provided to the Building Commissioner with the sign permit application.
- c. Shall not obstruct pedestrian and/or vehicular traffic or be otherwise considered, at the discretion of the Building Commissioner or public safety officials, to be a public safety risk.
- d. Shall be located within reasonable proximity to the boundary of the subdivision.
- e. Shall not exceed three (3) feet by five (5) feet.
- f. Shall remain subject to approvals of all applicable historic boards or commissions.

**VOTE: Roll Call – 11 YES**

**2011-047 AMENDMENT TO ZONING ORDINANCE – SIGN REGULATIONS - INTRO:  
01/20/11, 05/05/11**

Councilor Barton read the rationale.

Upon motion duly made and seconded it was moved to amend this item by replacing the language under 240-72 Trade Flags with: Trade flags may be displayed by a business use located in a non-residential zoning district or trade flags may be displayed by a pre-existing non-conforming business use along the portion of Phinneys Lane from Attucks Lane to Kidd's Hill Road and along Route 6A from Sandwich/Barnstable line to the Barnstable/Yarmouth line.

**VOTE: Unanimous in favor.**

Upon motion duly made and seconded it was voted to go into a public hearing for the purpose of discussing 2011-047.

VOTE: Unanimous consent

Gail Nightingale, Pres. of Osterville Village Association said they had asked to have just antique flags at a diminished size of 2 x 3 and we put in – this I would ask you to vote on the size and it just being antique flags. (Section F)

Upon motion duly made and seconded it was voted to go out of the public hearing at 8:10 pm.

**VOTE: Unanimous consent.**

Councilor Crocker said that some choices were made. He explained the issue as it pertains to Osterville.

**Upon motion duly made and seconded it was:**

**ORDERED**, that Chapter 240, The Zoning Ordinance of the Code of the Town of Barnstable, Article VII, Sign Regulations be amended as follows:

**Section 1:**

Amend Section 240-60 Definitions, by changing part of the definition of a Trade Flag. That definition that now reads:

TRADE FLAG – Any sign consisting of lightweight fabric that is affixed to a pole displaying letters, designs or icons exemplary of the business displaying the flag. Such images shall be consistent with the historic heritage and character of Hyannis. Trade flags are not counted towards the amount of signage allowed.

is to be changed to read:

TRADE FLAG – Any sign consisting of lightweight fabric that is affixed to a pole displaying letters, designs or icons exemplary of the business displaying the flag. Such images shall be consistent with the historic heritage and character of the village or neighborhood in which it is displayed.

**Section 2:**

Amends Section 240-61 Prohibited signs, by changing Paragraph ‘A’ of that section that now reads:

- A. “Any sign, all or any portion of which is set in motion by movement, including pennants, banners or flags, with the exception of trade flags in the HVB and except official flags of nations or administrative or political subdivisions thereof.”

To read;

- A. “Any sign, all or any portion of which is set in motion by movement, including pennants, banners or flags, with the exception of trade flags pursuant to § 240.72 and except official flags of nations or administrative or political subdivisions thereof.”

And, in the event that TC Item# 2011-046 has been adopted Section 240-61 Prohibited signs, Paragraph ‘A’ will then read after the adoption of this Item as follows:

- A. “Any sign, all or any portion of which is set in motion by movement, including pennants, banners or flags, with the exception of trade flags pursuant to § 240.72 and at the entrance to subdivisions where developed and undeveloped lots are offered for initial sale and official flags of nations or administrative or political subdivisions thereof.

**Section 3:**

Amends Section 240-71 Signs HVB District, Subsection E, by deleting in its entirety Paragraph 1 Trade flag, of that Subsection E and re-enumerate the remaining three paragraphs 2, 3 and 4 to 1, 2 and 3.

Subsection E that now reads:

- E. Open/closed sign, business trade figures or symbol, trade flag or location hardship signs: Subject to §240-85, Permit required; identification stickers.

To read;

- E. Open/closed sign, business trade figures or symbol, or location hardship signs: Subject to §240-85, Permit required; identification stickers.

**Section 4:**

Amends Section 240-72 (that is now a reserved section) by inserting a new Section 240-72 to be titled Trade Flags and is to read as follows;

**§240.72 Trade Flags.** Trade flags may be displayed by a business use located in a non-residential zoning district or trade flags may be displayed by a pre-existing non-conforming business use along the portion of Phinneys Lane from Attucks Lane to Kidd’s Hill Road and along Route 6A from Sandwich/Barnstable line to the Barnstable/Yarmouth line.

Trade Flags are subject to §240-85 and to the following:

- A. Trade flags shall not be displayed in conjunction with Location Hardship Signs, Open/Closed Signs, or Trade Figure or Symbol.
- B. Trade flags are not counted towards the amount of signage allowed.
- C. Trade flags shall be attached at the primary public entrance, to the façade of the building in which the business is located.
- D. One (1) Trade Flag per business establishment is permitted. For structures with common entrances leading to multiple business establishments, only one (1) trade flag is allowed per common entrance.
- E. The dimensions of any Trade Flag shall not exceed three (3) feet x five (5) feet.
- F. In the Osterville BA District, the display of trade flags shall be limited to antique stores and the dimensions of trade flags shall not exceed two (2) feet x three (3) feet.

**VOTE: Roll Call - 11 Yes as amended**

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| <b>2011-082</b>                                  | <b>APPROPRIATION &amp; LOAN ORDER-\$1,050,000 WATER SUPPLY ENTERPRISE FUND</b>             |
| <b>CIP – INTRO: 03/17/11, 04/07/11, 05/05/11</b> |  |
| <b>2011-083</b>                                  | <b>APPROPRIATION ORDER -- \$170,000 WATER SUPPLY ENTERPRISE FUND</b>                       |
| <b>CIP – INTRO: 03/17/11, 04/07/11, 05/05/11</b> |  |
| <b>2011-136</b>                                  | <b>TRANSFER ORDER - \$166,000 FOR THE MAHER WATER TREATMENT FACILITY – INTRO: 05/05/11</b> |

**Town Manager Klimm gave a rationale on 2011-082, 083 and 136.**

The first is on piping, the second on upgrades and the third on the Maher well. He thanked the Hyannis Water Board for their work. Klimm introduced Deb Krau the Chair of the Water Board who noted that the system is 100 years old. She said that it started April 14, 1911.

Krau noted that recently they have completed 4.6 miles of piping and also have had to replace the hydrants, gate valve and other things in the process. They are looking to do Stevens St., High School Rd. and do some cleaning and relining of Sea Street.

She noted the needs to enlarge the 1913 main on Greenwood Ave., and the emergency repair to the treatment facility. She said the media is no longer usable and we need this up and running. We have to start as soon as you vote.

Upon motion duly made and seconded it was voted to open a public hearing on 2011-082, 2011-083 and 2011-136.

**VOTE: Unanimous consent**

Derek Silliman supported the items because the infrastructure needs to be updated .

Upon motion duly made and seconded it was voted to close the public hearing at 8:27 p.m.

**VOTE: Unanimous consent**

Councilor Norman asked if we ever thought of putting a person on the job with an engineer. Ms Krau said we do have someone on staff and they will work on those changes. We do have to go outside on this one. Norman asked about water quality. The Mahar wells are not pumping and wont be until the treatment center is up and running. We are undertaking a full water quality study.

Councilor Crocker explained that if gate valves are falling apart these are major. Ms. Krau said that we have the oldest pipe and a 6 inch pipe was huge, part of Hyannis is in a 2 inch pipe – we do flush the pipes but they have build up in them. This pipe replacement program is essential. We have to get going.

DPW Director Mark Ells explained the loan and subsidy.

Councilor Munafo asked how these are being paid for. Ms. Krau said that she sent information on all the projects to the councilors.

Councilor Milne asked what kind of a rate increase has been in existence since the town acquired the water company. Krau said she does not have it and it is hard to explain since the structure was changed. On average the cost has gone up about 7% a year. We have been playing catch up on an old system. Most people are paying less than a dollar a day for the water.

Upon motion duly made and seconded it was voted to move item 2011-082.

**VOTE: Unanimous consent**

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| <b>2011-082    APPROPRIATION &amp; LOAN ORDER-\$1,050,000 WATER SUPPLY ENTERPRISE FUND</b><br><b>CIP – INTRO: 03/17/11, 04/07/11, 05/05/11</b> |
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Upon motion duly made and seconded it was

**ORDERED:**

That the sum of \$1,050,000 be appropriated for the purpose of funding the pipe replacement and upgrade program for the Hyannis Water System as outlined in the FY 2012 - FY 2016 Capital Improvement Plan as recommended by the Town Manager; and that to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, is authorized to borrow \$1,050,000, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes and be authorized to accept any grants or gifts in relation thereto.

**VOTE: Roll Call - 11 yes**

Upon motion duly made and seconded it was voted to move item 2011-083.

**VOTE: Unanimous consent.**

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| <b>2011-083    APPROPRIATION ORDER – \$170,000 WATER SUPPLY ENTERPRISE FUND</b><br><b>CIP – INTRO: 03/17/11, 04/07/11, 05/05/11</b> |
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Upon motion duly made and seconded it was

**ORDERED:**

That the sum of \$170,000 be appropriated for the purpose of funding the design of water main upgrades on Scudder Avenue, Hyannis as outlined in the FY 2012 - FY 2016 Capital Improvement Plan as recommended by the Town Manager; and that to meet this appropriation, that \$170,000 be transferred from surplus funds within the Water Supply Enterprise Fund, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes and be authorized to accept any grants or gifts in relation thereto.

**VOTE: Roll Call - 11 yes**

Upon motion duly made and seconded it was voted to move item 2011-136.

**VOTE: Unanimous consent**

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| <b>2011-136    TRANSFER ORDER - \$166,000 FOR THE MAHER WATER TREATMENT FACILITY – INTRO: 05/05/11</b> |
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Upon motion duly made and seconded

**ORDERED:**

That the amount of \$166,000 be transferred for the purpose of making repairs to the Maher Water Treatment facility from the balance of \$200,000 appropriated under council order 2009-090 for the purpose of installing emergency generators at the Hyannisport treatment plant, the Hyannisport well, and the Simmons Pond well.

**VOTE: 11 Yes**

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| <b>2011-092    APPROPRIATION &amp; LOAN ORDER -- \$350,000 CAPITAL TRUST FUND CIP ROAD REPAIR – INTRO: 04/07/11, 05/05/11</b> |
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Town Manager John Klimm gave the rationale regarding the disintegration of Baxter Neck Road. DPW Director Ells said that we have a private road repair program that can assist residents such as these. We have helped over 50 private roads get upgraded. These are initiated by the people who live on the private road. Fifty percent of the people must want the improvement. The residents pay 100% of the work. Ells gave a full history of this project.

Upon motion duly made and seconded it was voted to go in to a public hearing for the purpose of discussing 2011-092.

**VOTE: Unanimous consent**

(Councilor Tinsley arrived)

Donald Schmidt is a retired engineer and spoke in favor of the project. They have a son who lives on the road. Our trips are frequent and the road is dangerous. It is a one-lane road in many areas with cars having to go off the road to pass another. The road surface is bad and dangerous.

Dr. Barry Lehman said he was the point person for the 29 neighbors who are supporting this project. It is unfortunate that we don't have a larger support system for the project. He has bent wheels on his car from the road and he thanked DPW Director Ells and others for their help. We will have better drainage and pedestrian safe areas and a better road once this is complete.

John Donaldson said he sent a packet of information to each of the councilors. There are a number of problems with the project. One is procedural, one is quality of work and cost. About half of the people were denied the right to vote for project manager. This should have been scrapped because people were not allowed to vote. He identified a couple of other issues, and said they don't want another Thornton Drive. Ballots were altered.

Bill Cafferky said there have been times that the plows can't get down the street. It needs to be done. He feels the program is consistent. This needs to be done sooner rather than later.

Richard Slivka believes that he is entitled to vote for each of the lots he owns. DPW has been incredibly correct, have been kind and talked to us. He did not see anything unfair.

David Bernard is in favor of going ahead. Our road is deteriorating before our eyes. He has had 3 blow outs. Enough is enough.

Attorney Michael Ford was retained by the group to find out if the process was legal. He examined the ordinances, and administrative procedures. Then he looked at the facts. The first go-round there were people who did not get their petition and consents in on time. They started over again, and of the 57 owners, 29 returned the consent form. The process was in compliance.

Marvin Glick said the road has deteriorated and it should be fixed yesterday before someone gets seriously hurt on it.

Lawrence O'Toole is favor of construction of the road. Please act as soon as you can.

Upon motion duly made and seconded it was voted to close the public hearing at 9:15 pm.

**VOTE: Unanimous consent**

Councilor Crocker worked with the road betterment program and there have been successes. The program is strong. The town can get a loan at a low amount. People can put it in a 5 or 10 or some other year pay off program. He has no problem or doubts with the quality of the work. It is a great program.

Vice President Barton concurred with Councilor Crocker. She said it is a dangerous road. She will vote in favor.

Councilor Farnham said there are many private roads in need of repair. He was concerned about the procedure and the count. He asked about the qualified abutter votes.

Attorney T. David Houghton said there are 57 properties and 29 representatives of interest returned the petition and consent forms to have the road fixed. They have enough to make the percentage required.

Councilor Joakim is concerned when 50% don't want the work done. However, these are our rules.

Councilor Rugo asked about the voting. Twenty-nine consented and the others did not respond? It was confirmed that they just did not reply.

Councilor Milne asked the maximum number of years the betterment could be extended. Finance Director Mark Milne clarified that it could be extended to 15 years, and it would be about \$400 a year payment. Councilor Milne said he is cautious when votes deal with a betterment.

Councilor Barry suggested that the council might want to look at this program and possibly increase the percentage higher than what it is.

Councilor Dagwan thanked Mr. Donaldson for his views. She feels the quality of work will be appropriate. She is glad for the long term payments.

Councilor Crocker said road work is not able to be done by many people. A project of this size and stature has to have large contractors who can go forward and provide the asphalt.

Councilor Munafo asked about the altered ballot issue. Director Ells said they referred it to legal for review. Attorney Houghton clarified that there are two forms – one is a petition. If enough of them are returned then a consent and acknowledgement form is sent out. One of the consent forms originally listed a husband and wife and the husband returned the form with only his signature on it. It is the same as tax bills, only one bill goes to both. There is no problem.

Councilor Norman asked if it fails to go forward tonight, can they apply again. Ells said he would defer it to legal. It already has gone forward a second time. Attorney Houghton said yes there is nothing to stop another petition.

Councilor Tinsley noted that it needs to be done and it is a safety issue. This process is about a majority and it is time to go forward.

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

**VOTE: 11 Yes, 1 No**

Upon motion duly made and seconded

**ORDERED:**

That the sum of **\$350,000** be appropriated for the purpose of funding temporary repairs to Baxters Neck Road, a private road in Marstons Mills, as outlined in the FY 2012 - FY 2016 Capital Improvement Plan and Code Sections 206-8 to 206-10, and as recommended by the Town Manager; that to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$350,000**; that the Department of Public Works

is authorized to contract for and expend the appropriation made available for these purposes; and that betterments be assessed.

**VOTE: Roll Call 10 Yes – 2 No (Milne and Norman)**

**9:47 p.m. brief recess**

**President Chirigotis stated that since people were present on another issue, he stated the council would take 2011-097 out of order.**

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| <b>2011-097 AMEND THE GENERAL ORDINANCES –ROOSTER REGULATIONS – INTRO:<br/>04/07/11, 05/05/11</b> |
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Councilor Farnham gave the rationale. He noted the booklet created by the Barnstable Agricultural Commission “Keeping Backyard Chickens” (attached as Exhibit C), and introduced Bill Plettner, the chair of the Agriculture Commission who read the rationale. One of the suggestions is to coop the roosters at night.

Upon motion duly made and seconded it was voted to go in to a public hearing for the purpose of discussing 2011-097.

**VOTE: Unanimous consent**

Jenna Bekeshka noted that this doesn’t ban roosters. This is not meant to create enemies. Passing this ordinance is possible it takes everyone to make a change. Make a neighborhood where everyone is happy.

Ethan McPherson spoke against the rooster ordinance. He said in this economy people are turning more and more to raising chicks. Over regulating them would not be wise.

Marsha Elliott lives next to a chicken farm. She said her house is closer to the chickens than the owner’s house. There are two roosters next to her who continually crow. She feels that what is being proposed is good. She asked how it is going to be enforced. We need to start with this.

Upon motion duly made and seconded it was voted to go out of the public hearing at 10:07 pm.

**VOTE: Unanimous consent**

Councilor Munafo asked if it was 30 days before it was enacted, and could it be amended to allow it sooner. Attorney Weil said it is part of the charter. Munafo said the problem is roosters. He had three legitimate complaints about roosters in Hyannis. So this impacts the whole town.

Attorney Weil said that the enactment would be 30 days or later.

Councilor Barry asked if we are going to try to control noisy Harley Davidson motorcycles too. He has a neighbor with a batting cage. We are diving into something that may be setting a bad precedent. The poor male chicken is getting discriminated against.

Vice President Barton said that leaf blowers and motorcycles were brought up in this discussion, as well as dog barking.

Councilor Farnham said he had talked with a Mass. Dept. of Agriculture representative who stated if you really want to regulate roosters, you have to ban them. This is a start. The fines are good.

Councilor Munafo noted that legislation was not our first resort. We tried remediation, we didn't want to create legislation.

Councilor Norman is struck by the lack of common courtesy when it comes to noise. Why are we not thinking about our neighbors? He will support this item because it has gotten to this point.

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

**VOTE: Unanimous consent**

Upon motion duly made and seconded it was

**ORDERED:** That the General Ordinances of the Code of the Town of Barnstable be amended as follows:

**SECTION 1.** By adding the following Article II to Chapter 24, Animals.

"ARTICLE II

**Regulation of Roosters**

**§ 24-4. Restrictions and Enforcement.**

Not more than one (1) rooster shall at any time be kept on premises not in agricultural use in the Town of Barnstable except as prohibited under subsection (C). Any person keeping a rooster on premises not in agricultural use shall comply with the following. For purposes of this ordinance premises shall be deemed to be in agricultural use if the parcel contains 5 or more acres primarily and directly used in the course of business individually or in any combination in farming in all its branches, cultivation and tillage of soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products on forest land, the raising of livestock including horses, the keeping of horses, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, and fur-bearing animals; or if the parcel contains between 2 and 5 acres, any of the aforesaid activities generates at least a \$1,000 per acre based on documented gross sales dollars regardless of the primary purpose.

- A.** The rooster shall be kept between the hours of 7:00 p. m. and 7:00 a. m. within a fully enclosed structure designed to minimize noise.
- B.** The person shall not allow or permit such rooster at any time to annoy another person's reasonable right to peace or privacy by making loud or continuous noise where such noise is plainly audible between the hours of 7:00 a.m. and 7:00 p.m. at a distance of 150 feet from the premises where the rooster is kept, or between the hours of 7:00 p.m. and 7:00 a.m. at a distance of 50 feet from the premises where the rooster is kept, or when such noise is continuous in excess of 10 minutes.
- C.** The provisions of this ordinance may be enforced pursuant to MGL Ch. 40 § 21D and Article I Non-criminal Enforcement of Violations of Chapter 1, General

Ordinances, of the Code of the Town of Barnstable for the first three (3) violations; and by prohibiting the further keeping of roosters in lieu of or in addition to enforcement pursuant to MGL Ch. 40 § 21 for each violation thereafter.”

**SECTION 2.** By adding to § 1-3, Schedule of Fines, of the General Ordinances of the Code of the Town of Barnstable after “Ch. 20 Art. II Alcoholic beverages (minors) \$200” the following in the appropriate columns: “Ch. 24 Art. II § 24-4 First Violation- \$25.00. Second Violation- \$50.00. Third Violation- \$100.00.”

**VOTE: Roll Call 11 yes 1 no (Barry)**

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| <b>2011-093 APPROPRIATION--\$555,000 FUNDING FY11 JET FUEL EXPENSES – BARNSTABLE MUNICIPAL AIRPORT – INTRO: 04/07/11, 05/05/11</b> |
|--|

Councilor Rugo introduced the item. Airport Manager Bud Breault gave the rationale. This is due to increased fuel costs.

Upon motion duly made and seconded it was voted to go in to a public hearing.

**VOTE: Unanimous consent**

Having no public comments – a motion was made to close the public hearing at 10:20 p.m.

**VOTE: Unanimous consent**

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

**VOTE: Unanimous in favor**

Upon motion duly made and seconded it was

**ORDERED:** That the sum of Five Hundred Fifty Thousand Dollars and no cents (\$550,000.00) be appropriated for the purposes of funding aviation jet fuel purchases at the Barnstable Municipal Airport for the remainder of FY2011; and that to meet this appropriation, \$550,000 be transferred from available funds within the Airport Reserve Fund, and that the Barnstable Municipal Airport Commission is authorized to contract for and expend the Appropriation made available for this purpose.

**VOTE: Roll Call - 12 yes**

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|---|
| <b>2011-094 APPROPRIATE \$170,000 FROM AIRPORT RESERVE FUND FOR FY11 LITIGATION COSTS – INTRO: 04/07/11, 05/05/11</b> |
|---|

The item was introduced and Airport Manager Breault gave the rationale.

Upon motion duly made and seconded it was voted to go in to a public hearing.

**VOTE: Unanimous consent**

Ed Lambert said he sent an email earlier in the day dealing with a Boston Globe article. The article tells about the Smiley family. It is one of those things where we are spending money. Can we just go back to the agreement? They have an agreement of understanding dealing with the traffic in and around Wendy's. All they are asking is to return to the signed agreement. Lambert thinks this is stupid. (See Exhibit D)

Upon motion duly made and seconded it was voted to close the public hearing at 10:23 p.m.

**VOTE: Unanimous consent**

Councilor Milne asked about how and why do you get in to the town insurance policy when the airport is separate. Breault said there is a town policy and we pay for part of it. That same policy is what we use and we have another that is for airport related issues that we pay for. We can't get reimbursed under either policy. Breault said all expenses are within this fiscal year.

Councilor Milne read the article and was not in favor of airport expansion. He feels there is stubbornness and we should not waste any more money on this.

Councilor Dagwan said she goes to the airport commission meetings and understands why the agreement was changed. She did ask for some clarification on the roadway changes. He explained the changes to the plan through the Cape Cod Commission.

Councilor Rugo asked why the light was removed. Breault said that Mass Highway, CCC and the town felt it was not appropriate being that close to the rotary.

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

**VOTE: Unanimous consent**

Upon motion duly made and seconded it was

**ORDERED:** That the sum of One Hundred Seventy Thousand Dollars and no cents (\$170,000.00) be appropriated for the purposes of funding litigation expenses at the Barnstable Municipal Airport for the remainder of FY2011; and that to meet this appropriation, \$170,000 be transferred from available funds within the Airport Reserve Fund, and that the Barnstable Municipal Airport Commission is authorized to contract for and expend the Appropriation made available for this purpose.

**VOTE: Roll Call - 8 Yes, 3 No, (Milne, Rugo, Tinsley) 1 Abstain (Crocker)**

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|---|
| <b>2011-95 APPROPRIATE \$388,000 TO FUND DESIGN &amp; CONSTRUCTION OF WATER QUALITY UNITS - INTRO: 04/07/11, 05/05/11</b> |
|---|

Councilor Dagwan introduced the item. Airport Manager Breault gave the rationale and referred to Exhibit E. The completion of this project is mandated by the Cape Cod Commission in order to get final certificate of compliance. He explained the construction.

Upon motion duly made and seconded it was voted to go in to a public hearing.

**VOTE: Unanimous consent**

Having no public comments – a motion was made to close the public hearing at 10:37 p.m.

**VOTE: Unanimous consent**

Councilor Norman asked about the units, which he has found need maintenance. Would the Town's vacuum truck be available to you? Breault said we have a mutual program to assist each other. Norman also suggested that maintenance be put in this program.

Councilor Dagwan asked about reimbursement

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

**VOTE: Unanimous in favor**

Upon motion duly made and seconded

**ORDERED:** That the sum of Three Hundred Eighty-Eight Thousand Dollars and no cents (\$388,000.00) be appropriated for the purposes of funding the design and construction of several mandated water quality units prior to the ponds outfalls as required by the various Water Resources conditions of the Cape Cod Commission Development of Regional Impact as approved on January 25, 2007, for the Barnstable Municipal Airport Improvements Project. This project will be added to the Federal Aviation Administration (FAA) aviation capital improvements program (ACIP); and that to meet this appropriation, \$388,000 be transferred from available funds within the Airport Reserve Fund, and that the Barnstable Municipal Airport Commission 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 - 12 yes**

## **B. NEW BUSINESS**

**President Chirigotis took as a block, 2011-101, 2011-102 and 2011-103 and asked for a vote to refer all three to June 2, 2011.**

**2011-101 APPROPRIATE \$1,500 CPC FUNDS FOR PRESERVATION & HISTORIC RESOURCES  
INTRO: 05/05/11**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on June 2, 2011, with a notation that it is for COMM headquarters and not Station 3.

**VOTE: Unanimous to refer**

**2011-102 APPROPRIATE \$8,000 CPC FUNDS FOR PRESERVATION & HISTORIC  
RESOURCES – INTRO: 005/05/11**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on June 2, 2011.

**VOTE: Unanimous to refer**

**2011-103 APPROPRIATE \$75,300 CPC FUNDS FOR PRESERVATION & HISTORIC  
RESOURCES – INTRO: 05/05/11**

Upon motion duly made and seconded it was voted to refer this item to a public hearing on June 2, 2011.

**VOTE: Unanimous to refer**



**B. NEW BUSINESS - FY12 – OPERATING BUDGET ORDERS – INTRO: 05/05/11**

President Chirigotis took as a block: 2011-104, 105, 106,107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127 and asked for them to be moved to a public hearing on May 19

**2011-104 APPROPRIATION ORDER - \$11,758,549 FY12 POLICE DEPARTMENT BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-105 APPROPRIATION ORDER - \$7,744,400 FY12 AIRPORT ENTERPRISE FUND**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-106 APPROPRIATION ORDER - \$58,746,878 FY12 LOCAL SCHOOL SYSTEM BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-107 APPROPRIATION ORDER - \$8,373,119 FY12 DEPT. OF PUBLIC WORKS GENERAL FUND BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-108 APPROPRIATION ORDER - \$2,615,406 FY12 DEPT. OF PUBLIC WORKS SOLID WASTE ENTERPRISE FUND BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011, and to delete the word “loan” order.

**VOTE: Unanimous to refer**

**2011-109 APPROPRIATION ORDER - \$5,072,446 FY12 DEPT. OF PUBLIC WORKS POLLUTION CONTROL ENTERPRISE FUND BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-110 APPROPRIATION ORDER - \$3,203,284 FY12 DEPT. OF PUBLIC WORKS WATER SUPPLY ENTERPRISE FUND BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-111 APPROPRIATION ORDER - \$2,458,332 FY12 REGULATORY SERVICES DEPT. BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-112 APPROPRIATION ORDER - \$2,618,544 FY12 COMMUNITY SERVICES DEPT. GENERAL FUND BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-113 APPROPRIATION ORDER - \$3,100,883 FY12 COMMUNITY SERVICES DEPT. GOLF COURSE ENTERPRISE FUND BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-114 APPROPRIATION ORDER - \$2,897,704 FY12 COMMUNITY SERVICES DEPT. HYANNIS YOUTH AND COMMUNITY CENTER ENTERPRISE FUND BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-115 APPROPRIATION ORDER -- \$652,512 FY12 COMMUNITY SERVICES DEPT. MARINA ENTERPRISE FUND BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-116 APPROPRIATION ORDER -- \$658,692 FY12 COMMUNITY SERVICES DEPT. ENTERPRISE FUND BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-117 APPROPRIATION ORDER -- \$887,121 FY12 GROWTH MANAGEMENT DEPT. GENERAL FUND BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-118 APPROPRIATION ORDER - \$341,033 FY12 TOWN COUNCIL DEPT. BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-119 APPROPRIATION ORDER - \$573,820 FY12 TOWN MANAGER DEPT. BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-120 APPROPRIATION ORDER – \$5,425,589 FY12 ADMINISTRATIVE SERVICES DEPT. BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-121 APPROPRIATION ORDER-\$10,390,994 FY12 GENERAL FUND DEBT SERVICE BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-122 APPROPRIATION ORDER - \$10,158,991 FY12 EMPLOYEE BENEFITS & INSURANCE BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-123 APPROPRIATION ORDER - \$1,489,184 FY12 LIBRARY GRANT**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-124 APPROPRIATION ORDER - \$167,489 OTHER GRANTS BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-125 APPROPRIATION ORDER - \$3,284,491 FY12 ASSESSMENTS BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-126 APPROPRIATION ORDER - \$10,542,250 FY12 TRANSFERS BUDGET**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-127 FY12 REVOLVING FUNDS AUTHORIZATION ORDER - \$1,345,000**

Upon motion duly made and seconded, it was voted to refer this item to a public hearing on May 19, 2011.

**VOTE: Unanimous to refer**

**2011-128 AUTHORIZING THE TOWN MANAGER TO ACCEPT A GIFT OF VACANT LAND  
- INTRO: 05/05/11**

Item not taken up.

**2011-129 RESOLUTION IN SUPPORT OF HB890 & SB45 THAT UPDATES THE  
BOTTLE BILL TO INCLUDE WATER, JUICE & TEA BOTTLES - INTRO: 05/05/11**

Upon motion duly made and seconded it was voted to refer this item to May 19, 2011.

**VOTE: Unanimous consent**

**2011-130 ACCEPTANCE OF A \$1,500 MASS DEPT. OF ENVIRONMENTAL  
PROTECTION GRANT FOR RECYCLING BINS - INTRO: 05/05/11**

Item not taken up.

**2011-131 - ACCEPTANCE OF A \$7,500 MASS DEPT. OF ENVIRONMENTAL  
PROTECTION GRANT TO IMPLEMENT MASS DEPT GOALS IN CIP - INTRO: 05/05/11**

Item not taken up.

**2011-132 ACCEPTANCE OF MGL C. 32B §20 ESTABLISHING - OTHER POST  
EMPLOYMENT BENEFITS LIABILITY TRUST FUND - INTRO: 05/05/11**

Item not taken up.

**2011-133 ACCEPTANCE OF MGL C.32B §18A MEDICARE EXTENSION PLANS;  
MANDATORY TRANSFER OF RETIREES - INTRO: 05/05/11**

It was noted that this item was postponed to June 2, 2011.

Councilor Crocker also asked for more information as to what cost savings to us, and to employees.

**2011-134 - AMENDING THE GENERAL ORDINANCES CHAPTER 86, ARTICLE III -  
ADDING A REVOLVING FUND FOR ARTS & CULTURE PROGRAMS - INTRO: 05/05/11**

Item not taken up.

**2011-137 APPROPRIATE \$158,792.69 FOR REVISED NON-FEDERAL  
REIMBURSABLE AGREEMENT - INTRO: 05/05/11**

Item not taken up.

A motion was made at 10:55 p.m. to extend the meeting in order to finish the business at hand.

**VOTE: 5 Yes, 5 No, 2 abstain – DID NOT PASS**

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| <b>2011-135 ADOPTION OF THE 2010 TOWN OF BARNSTABLE PRECINCT MAP –<br/>INTRO: 05/05/11</b> |
|--|

The item was introduced. Councilor Milne asked why the initial draft maps showed such a large drop in Precinct 9 vs. what it is now. Town Clerk Hutchenrider explained that the initial maps were done from estimates. A lot of the types of counts that were utilized do not pick up transient and non-voter segments of the population. Once the door-to-door count was done it just showed an overall reduction throughout the town in population. There was a slight shift to the west so the major changes are in the western Marstons Mills precincts.

Councilor Crocker thanked the Clerk and felt this map was very close to what is in existence now.

Upon motion duly made and seconded it was

**ORDERED:** That the Town Council hereby approves the 2010 Precinct Map prepared for the Town of Barnstable through the courtesy of William F. Galvin, Secretary of the Commonwealth and Census Liaison; and requests that the Town Clerk forward said Map, a physical boundary description of each precinct, population figures for each precinct; a list of census block numbers for each precinct, and a certified copy of this vote to the Local Election Districts Review commission for approval.

**VOTE: Unanimous in favor**

## **ADJOURNMENT**

**Upon motion duly made and seconded, it was voted to adjourn.**

**VOTE: 9 yes 3 no**

**ADJOURNED: at 11 p.m.**

Respectfully submitted,

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

## **EXHIBITS ATTACHED:**

Exhibit A – List of Martin J. Flynn Scholarship recipients

Exhibit B – Town Council list of Ex. Session minutes

Exhibit C - “Keeping Backyard Chickens”

Exhibit D - Ed Lambert’s statement and copy of Boston Globe article

Exhibit E – Barnstable Airport handout of maps and photos