



Town Council Meeting
September 3, 2020



The September 3, 2020 meeting of the Barnstable Town Council was physically closed to the public to avoid group congregation.

A quorum being duly present, President Paul Hebert called the September 3, 2020 Town Council meeting to order at 7:00 p.m. from a remote location.

An announcement was made by President Hebert 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.

PRESENT: (On Zoom) David Bogan, Kristine Clark, Jennifer Cullum, Debra Dagwan (7:07 pm), Jessica Rapp Grasseti, Paul Hebert, Matthew Levesque, Paul Neary, Paula Schnepf, Tracy Shaughnessy, Gordon Starr. Eric Steinhilber.

The Pledge of Allegiance was led by President Hebert followed by a moment of silence.

PUBLIC COMMENT:

Amy Corcoran had questions regarding Short-Term Rentals (STR) ownership and compliance.

Bob Schulte urged Council to defer the vote on the STR General Ordinance.

Paul Logan discussed the need for STR being compliant with the Americans with Disabilities Act.

Rick Wrightson felt Council should postpone the STR Ordinance vote.

Jane Ward hoped Council would extend the public comment period for the machine gun range item.

Sue Rohrbach supported extending the public comment period for the machine gun range item.

Britt Beedenbender supported extending the public comment period for the machine gun range item.

Frances Park had concerns with lack of reporting regarding STR.

Close Public Comment

Councilor Response to Public Comment:

There are concerns with the definitions within the STR ordinance.

TOWN MANAGER COMMUNICATIONS: (Exhibit A) For August 21st to September 3rd

Mark Ellis explained Karen Nober, Town Attorney would address voting on agenda items and conflict of interest. She explained the Ethics Commission will discuss one's ethical issue but will not discuss other people's ethics. She added she abided by the same edict. She spoke about exemptions in the law, conflict with only portions of an item and recusing oneself. Karen Nober talked about the Planning Board vote. She explained the Legal Department's mistake and the immediate steps taken to correct this issue. She conferred what was needed for quorum, and the difference between abstain and recuse.

Mark Ellis discussed questions regarding enforcement of the general ordinance and resource allocation to general ordinances, rules and regulations adopted by the Town Council. As Town Manager he is responsible to administer either directly or through persons supervised by him in accordance with our charter all provisions general or special laws applicable to the Town. All ordinances, all regulations established by the Town Council therefore the general ordinance under consideration by Town Council shall receive the resource allocation necessary to adhere to the said ordinance.

Councilor questions and comments:

How will policing of off-hours (hours other than business hours), at a STR work? [General Ordinance as proposed requires Owners to be 24-hour accessible for compliance and also the Town does have services available]

ACT ON MINUTES:

Upon a motion duly made and seconded it was to amend the minutes of the August 20, 2020 as stated. Agenda item 2020-193 was withdrawn due to procedural irregularity that the Town Attorney believed rendered the Planning Board action invalid and the matter was returned to the Planning Board.

VOTE: PASSES 12 YES

Upon a motion duly made and seconded it was to approve and accept the amended minutes of the August 20, 2020 as written.

VOTE: PASSES 12 YES

COMMUNICATIONS- from elected officials, boards, committees, staff commission reports, correspondence and announcements:

Comprehensive Financial Advisory Committee (CFAC) has been working financing the Comprehensive Wastewater Management Plan and the report should be coming to Council.

Zoning and Regulatory Committee will be meeting on September 10th reviewing the model bylaw for accessory dwelling units.

Machine Gun Range at the Joint Cape Cod Base public comment due by September 8th – there is no plan to extend this public comment period.

Congratulations and thank you to Ann Quirk, Town Clerk for a successful State Primary election. Thank you to the Town Clerk's staff, poll workers and volunteers.

Congratulations to Council Shaughnessy on being selected as Chair of the Committee to Address Homelessness in Barnstable.

2020-192	ORDER AMENDING THE GENERAL ORDINANCES BY ADDING CHAPTER 190 SHORT TERM RENTAL PROPERTIES AND AMENDING CHAPTER 170 RENTAL PROPERTIES INTRO: 06/18/2020, 07/16/2020, 08/20/2020
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Resume Public Comment

Ellen Nozzle opposed the General Ordinance and Zoning Ordinance.

John Temple opposed the one-week minimum stay as it was too restrictive.

Christian Teague felt the ordinances were regulating something that does not exist.

Close Public Comment

Councilor questions and comments:

Councilor Starr proposed Amendment H –Town Manager provides the Town Council with an annual November report regarding how the STR is working or any issues with STR and how these are affecting the Town.

Karen Nober, Town Attorney questioned whether Council wanted to move into making amendments or wanted to have time for discussion with the ability to put the language up on the screen for the public.

Councilor Cullum explained she had 4 proposed amendments and suggested discussion first then introduce the proposed amendments.

Councilor Starr suggested discussion should follow the definitions section of the ordinance first up would be the Short-Term Rental Registration.

Upon a motion duly made and seconded it was to amend item 2020-192 deleting in Paragraph F of Section 190-3 \$35 dollars and inserting \$90 in its place.

Vice-President Rapp Grassetti had concerns with just registration of STR. She felt STR needed to be permitted as well.

Point of Order for clarification Section F Page 5 of agenda/ordinance labeled Fees would be changed to \$90 dollars. Councilors agreed with the registration fee increase.

Upon a motion duly made and seconded it was stop debate and take a vote on the amendment.

VOTE: PASSES 12 YES

Vice-President Rapp Grassetti restated the amendment which was to amend item 2020-

192 deleting in Paragraph F of Section 190-3 from \$35 dollars and inserting \$90 in its place.

VOTE: PASSES 11 YES 1 NO (BOGAN)

President Hebert reiterated that Council start the discussion at the beginning of the ordinance section 190-1. Councilor Cullum suggested showing the agenda item language and amendments on the screen so that the public could see the language.

Councilor Shaughnessy had concerns with operator and owner language within the ordinance text. She questioned the ability to trace individual shareholders of a STR with the proposed language. Brian Florence, Building Commissioner explained the language was a dragnet to provide enforcement. Charlie McLaughlin, Senior Town Attorney explained they adapted language to be an all-encompassing dragnet of identification and revelation. It would include direct or indirect interests and ownership of a STR. Councilor Bogan felt that the ordinance definitions needed to follow the predicate determination only resident or non-resident STR.

Councilor Shaughnessy clarified the definition of person is good and the definition of owner is also good. She added definition of operator should say any person, language should relate back to person.

Upon a motion duly made and seconded it was to amend the definition of operator (host) be amended to any person as defined immediately below operating a STR.

Councilor Shaughnessy amended her motion to include the change to the definition of operator's agent to a person as defined immediately below who.

Charlie McLaughlin, Senior Town Attorney suggested voting the changes in two separate votes.

Amendment to the motion is withdrawn. Motion is restated for the record.

Upon a motion duly made and seconded it was to amend the definition of operator (host) from any individual operating a STR to any person as defined immediately below operating a STR

VOTE: PASSES 12 YES

Councilor Shaughnessy moved to amend the definition of operator's agent to read as a person as defined immediately below who on behalf of an operator of a STR. Deleting individual and replacing language with person.

VOTE: PASSES 12 YES

Councilor Bogan questioned the bedroom rent language and zoning in certain areas of the Town. He noted he had issues with any portion language and for periods not more than 31 days language.

Upon a motion duly made and seconded it was to amend the Section 190-2 of Item 2020-192 by deleting the words portions of a dwelling from the definition of STR and inserting the words bedroom within a dwelling in its place.

VOTE: PASSES 11 YES 1 NO (BOGAN)

Councilor Shaughnessy spoke about Item 190-3E Registration Renewal.

Upon a motion duly made and seconded it was to amend the language to include shall be renewed annually after a satisfactory inspection.

Remove biannually (every two years) and replace that with shall be renewed annually after a satisfactory inspection.

VOTE: PASSES 11 YES 1 NO (STARR)

Upon a motion duly made and seconded it to amend by inserting the following new Paragraph C in Section 190-3 and re-lettering the existing paragraphs of C through G as paragraphs D through H:

C. Restrictions

1. Minimum Night Stay, A STR shall not be rented out for a period of less than three (3) nights. No additional rental is permitted within the rental period.
2. A Dwelling may be rented as a STR only as a single rental to one party of Occupants at any one time.

Councilor Cullum inquired if Legal could work on an amendment allowing nightly renters if owner occupied meaning owner occupied is on the premises and the bedroom is in the house or attached to the house or on the same property. Karen Nober Town Attorney said yes they could work on amendment language.

Councilor Bogan would like a record requirement from the owner available within 72 hours.

Councilor Cullum reiterated the possible language for the amendment for the legal department.

Councilor recessed for a 10-minute break

Councilor reconvened after a 10-minute break

Councilor Cullum withdrew her motion and would be presenting another one in its place. The second was withdrawn as well.

Upon a motion duly made and seconded it to amend by inserting the following new Paragraph C in Section 190-3 and re-lettering the existing paragraphs of C through G as paragraphs D through H:

C. Restrictions

1. Minimum Night Stay, A STR shall not be rented out for a period of less than three (3) nights. No additional rental is permitted within the minimum rental period.
2. A Dwelling may be rented as a STR only as a single rental to one party of Occupants at any one time as written.

Councilor Cullum withdrew her amendment and the second motion was withdrawn.

Councilor Cullum explained her Amendment G. Upon a motion duly made and seconded it was to amend Item 2020-192 by inserting the following new Section: 190-3 Limits on Number of Registrations Town-wide

J. The number of STR registrations issued by the Town shall not exceed 1000 at one time.

Councilors discussed the number of registrations, whether to increase the number or leave it at 1000. Also, if Council could bring back the item later to increase the number of registrations.

Councilor Bogan suggested and amended the motion to increase the number of registrations to 1500

Upon a motion duly made and seconded it was to amend Item 2020-192 by inserting the following new Section: 190-3 Limits on Number of Registrations Town-wide

J. The number of STR registrations issued by the Town shall not exceed 1500 at one time.

VOTE: PASSES 11 YES 1 NO (NEARY)

Upon a motion duly made and seconded it to amend by inserting the following new Paragraph C in Section 190-3 and re-lettering the existing paragraphs of C through G as paragraphs D through H:

C. Restrictions

1. Minimum Night Stay, A STR shall not be rented out for a period of less than three (3) nights. No additional rental is permitted within the minimum rental period.
2. A Dwelling may be rented as a STR only as a single rental to one party of Occupants at any one time as written.

Councilor Levesque amended the motion.

Upon a motion duly made and seconded it to amend the previous motions by inserting The following new Paragraph C – in 2 in Section 190-3 and renumbering the existing sub-paragraph 2 to sub-paragraph 3.

2. Notwithstanding the provisions of paragraph C-1 immediately above, a STR may be rented for a rental period of less than three (3) nights provided that the owner is physically present on premise where the STR is located for the duration of the rental.

Councilor Starr motioned to move the question, seconded.

Councilor Starr withdrew his motion to move the question, seconded withdrew.

Councilor Starr motioned to vote on the motion as amended, seconded.

VOTE: PASSES 12 YES

Upon a motion duly made and seconded it to extend past the 11:00 o'clock hour

VOTE: PASSES 12 YES

Upon a motion duly made and seconded it to continue the agenda item to the next Town Council Meeting on September 17, 2020.

Vote: FAILS 6 YES 6 NO (CULLUM, LEVESQUE, NEARY, SCHNEPP, SHAUGHNESSY AND STEINHILBER)

Mark Ellis asked Dan Santos, Public Works Director if there was any reason why any of the other agenda items could not be continued to the next meeting. He said all remaining

agenda items could be continued to the next meeting without any negative impact.

Councilor Cullum explained her amendment. Upon a motion duly made and seconded to amend Item 2020-192 by inserting the following new Section:

XXX-X Large Event Regulations

- A. Large events, such as weddings, are prohibited in Short Term Rentals.
- B. The above prohibition notwithstanding, a large event may be held in a short term rental upon compliance with the following:
 - 1. At least 5 days in advance of the event, written notice shall be provided to the Inspectional Services department of the event. Notice shall include the name and a telephone number for the party responsible for the event.
 - 2. The notice shall include written authorization of the Owner for the event, either in the rental agreement, or by separate letter.
 - 3. The notice must include a start and end time for the event, expected number of participants, and a parking plan.

Additional language for consideration:

- A. A large event is defined as an event attended by not less than 30 persons, whether adult or child, including those persons occupying the Short Term Rental.
- B. A permit shall be required for a Large Event. The application for a permit shall be filed with the Inspectional Services department not less than 15 days before the event is to occur. Before any such permit is issued, the application shall be reviewed and approved or approved with conditions by the Building Department, the Board of Health, the Police Department, the Fire Department, and any other department that may have jurisdiction of the potential event or the site where it is proposed to be held.
- C. The Police Department may require that a private police detail be required to monitor traffic and conditions of the event. If a detail is required, the cost thereof will be paid in full, in advance of the issuance of the permit at rates then in effect for private police details.
- D. All parking necessary to accommodate event participants, beyond those occupying the Short Term Rental, shall not take place on the public or private ways of the Town. It is the intent of this requirement that suitable arrangements be made for off-site parking and that visitors be shuttled to the event site via appropriate transportation. No transportation vehicles shall remain idled at the event site for longer than necessary to expeditiously pick up or drop off passengers.

Councilor Cullum withdrew her amendment as it was a different version, seconded withdrew.

Councilor Cullum read the amendment to the motion.

Brian Florence, Building Commissioner suggested reducing the number of days to 48

hours and revising the Board of Health to the Health Division.

Councilor Clark asked for the language in the amendment to reflect Building Division and Health Division.

Upon a motion duly made and seconded it was

VOTE: FAILS 4 YES 8 NO (CLARK, DAGWAN, RAPP GRASSETTI, HEBERT, NEARY, SHAUGHNESSY, STARR AND STEINHILBER)

Amendment D Vice-President Rapp Grassetti moved to amend Item 2020-192 by deleting Section 190-18 in its entirety and inserting the following new Section 190-18 in its place:
190-18 Penalties

Any person who violates any provision of this chapter shall be subject to a fine in accordance with the following:

- \$150 1st offense
- \$300 2nd offense – and each subsequent offense

Each day that a violation exists constitutes a separate offense

Councilors discussed warnings with a graduated offense fee.

Vice-President Rapp Grassetti withdrew her motion, seconded withdrew.

Legal will need to work on language regarding the Amendment D.

Vice-President Rapp Grassetti read her motion.

Upon a motion duly made and seconded it was to amend
190-9 Occupancy Requirements

Brian Florence Building Commissioner discussed occupancy regarding kids or no kids.

Upon a motion duly made and seconded it was to amend

VOTE: 1 YES 11 NO (BOGAN, CULLUM, DAGWAN, RAPP GRASSETTI, HEBERT, LEVESQUE, NEARY, SCHNEPP, SHAUGHNESSY, STARR AND STEINHILBER)

Councilor Starr Letter H amendment

Upon a motion duly made and seconded it was to amend

VOTE: PASSES 7 YES 4 NO (CULLUM, RAPP GRASSETTI, SHAUGHNESSY AND STEINHILBER)

Upon a motion duly made and seconded it was withdrew

Upon a motion duly made and seconded it

\$150 for first offense

VOTE: PASSES 12 YES

Upon a motion duly made and seconded it was to continue the agenda item 2020-192 to the October 1, 2020 Town Council Meeting.

VOTE: PASSES 10 YES 2 NO (CULLUM and STEINHILBER)

2021-006 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$289,600 OF COMMUNITY PRESERVATION FUNDS FOR THE PAYMENT OF FISCAL YEAR 2021 DEBT SERVICE ON THE ACQUISITION OF THE HYANNIS GOLF COURSE INTRO: 08/20/2020, 09/03/2020

Open public hearing seeing no one close public hearing.

Marl Ells explained the importance of the Barnstable golf course. He noted everyone from 9 years old to 90 years old have benefitted from the activities at the golf course. Service over 500 youths at the golf course. Lindsey Counsel gave the rationale. He explained the money would be utilized for the debit service. Kate , Assistant Town Attorney, explained the property was acquired under the Land Bank Act which is the chapter 293 of Acts of 1998. She discussed the amendment to Chapter 149 of the Acts of 2004 which allowed Land Bank purchases to be paid for with CPC money. This an acceptable use of CPC money. Mark Milne, Financing Director agreed with the legal department's assessment of the item.

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

VOTE: 10 YES 2 NO (BOGAN AND SCHNEPP)

Upon a motion duly made and seconded it was to approve the item as written

ORDERED: That, pursuant to the provisions of the Community Preservation Act, G. L. c 44B, the sum of Two Hundred and Eighty Nine Thousand Six Hundred and No/100 **(\$289,600)** Dollars be appropriated and transferred from the undesignated fund balance in the Community Preservation Fund for the purpose of paying the Fiscal Year 2021 Debt Service Payment on the loan issued to acquire the Hyannis Golf Course.

VOTE: PASSES 9 YES 3 NO (BOGAN, SCHNEPP AND STEINHILBER)

2021-009 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$8,500,000 FOR THE PURPOSE OF FUNDING THE SOLIDS HANDLING UPGRADES CONSTRUCTION PROJECT AS OUTLINED IN THE FISCAL YEAR 2021 FISCAL YEAR 2025 CAPITAL IMPROVEMENT PLAN INTRO: 08/20/2020, 09/03/2020

Upon a motion duly made and seconded it to open the Public Hearing for the Item 2021-009 and continue the item until then September 17, 2020

VOTE: PASSES 12 YES

2021-012 RESOLVE TO ACCEPT THE GRANT OF AN ELECTRIC EASEMENT FROM FESTIVAL OF HYANNIS, LLC FOR ELECTRIC SERVICE FOR NEW TRAFFIC SIGNAL AT THE INTERSECTION ATTUCKS LANE AND WILKENS LANE INTRO: 09/03/2020

Upon a motion duly made and seconded it was

RESOLVED: that the Town accept the grant of a perpetual easement to the Town under the care, custody and control of its Department of Public Works for the construction, maintenance, repair and use of a new electric service to serve a new traffic signal at the intersection of Attucks Lane and Wilkens Lane from Festival of Hyannis, LLC, as shown on a plan prepared by the DPW Survey Section dated February 10, 2020 and that the Town Manager is authorized to accept, sign deliver and record documents for the purposes set forth herein.

2021-013 ACCEPTANCE OF FISCAL YEAR 2021 MASSTRAILS GRANT IN THE AMOUNT OF \$180,950 FROM THE COMMONWEALTH OF MASSACHUSETTS FOR DESIGN OF THE CAPE COD RAIL TRAIL INTRO: 09/03/2020

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council does hereby accept the Fiscal Year 2021 MassTrails Grant award in the amount of **\$180,950** from the Commonwealth of Massachusetts Department of Conservation and Recreation for the purpose of design and permitting of the Cape Cod Rail Trail Phase 3 extension from Yarmouth to Mary Dunn Road in Barnstable Village, and that the Town Manager be authorized to contract for and expend the grant funds for the purpose stated herein.

2021-014 ACCEPTANCE OF FISCAL YEAR 2021 COASTAL POLLUTANT REMEDIATION GRANT IN THE AMOUNT OF \$173,255.50 FROM THE COMMONWEALTH OF MASSACHUSETTS FOR CONSTRUCTION OF STORMWATER IMPROVEMENTS ON SOUTH COUNTY ROAD INTRO: 09/03/2020

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council does hereby accept the Fiscal Year 2021 Coastal Pollutant Remediation Grant award in the amount of **\$173,255.50** from the Commonwealth of Massachusetts Department of Coastal Zone Management for the purpose of constructing stormwater improvements along South County Road in Marstons Mills, and that the Town Manager be authorized to contract for and expend the grant funds for the purpose stated herein.

2021-015 ACCEPTANCE OF 2020 MASSACHUSETTS DREDGING GRANT IN THE AMOUNT OF \$500,000 FROM THE COMMONWEALTH OF MASSACHUSETTS FOR THE DEAD NECK / SAMPSON'S ISLAND DREDGING PROJECT INTRO: 09/03/2020

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council does hereby accept the 2020 Massachusetts Dredging Grant award in the amount of **\$500,000.00** from the Commonwealth of Massachusetts Executive Office of Housing and Economic Development for the purpose of executing Phase 3 of the Dead Neck / Sampson's Island Dredging Project and that the Town Manager be authorized to contract for and expend the grant funds for the purpose stated herein.

2021-016 RESOLVE TO ACCEPT THE GRANT OF A ROADWAY IMPROVEMENTS EASEMENT FROM CAPE COD HOSPITAL FOR NEW TRAFFIC SIGNAL AT THE INTERSECTION ATTUCKS LANE AND WILKENS LANE INTRO: 09/03/2020

Upon a motion duly made and seconded it was

RESOLVED: that the Town accept the grant of a perpetual easement to the Town under the care, custody and control of its Department of Public Works for the construction, maintenance, repair and use of roadway improvements to support the construction of a new traffic signal at the intersection of Attucks Lane and Wilkens Lane from Cape Cod Hospital, as shown on a plan prepared by the Department of Public Works Survey Section dated February 10, 2020 and that the Town Manager is authorized to accept, sign deliver and record documents for the purposes set forth herein.

**2021-017 APPROVAL OF A CONTRACT FOR MARK S. ELLS AS THE
BARNSTABLE TOWN MANAGER, AND ITS EXECUTION INTRO: 09/03/2020**

Upon a motion duly made and seconded it was

RESOLVED: That the Town Council approves a contract for Mark S. Ells to serve as Town Manager and authorizes the Council President to sign on behalf of the Council and the Town of Barnstable.

VOTE: ADJOURNMENT:

Upon a motion duly made and seconded it was

VOTED TO ADJOURN:

Adjourned at 1:00 AM

Respectfully submitted,

Janet E. Murphy
Assistant Town Clerk/Town of Barnstable

NEXT REGULAR MEETING: September 17, 2020

EXHIBITS:

A. Town Manager's Report for August 21st through September 3rd