



Town Council Meeting  
October 15, 2020



The October 15, 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 October 15, 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 (7:04), Jennifer Cullum, Debra Dagwan, Jessica Rapp Grasseti, Paul Hebert, Matthew Levesque, Paul Neary, Paula Schnepf, Tracy Shaughnessy, Gordon Starr. Eric Steinhilber.

The Pledge of Allegiance was led by Councilor Neary followed by a moment of silence in remembrance of James H. Crocker, Jr.

**PUBLIC COMMENT:**

Gloria Tu Gilbert is concerned about the drilling of a well near her property and having hunters in her back yard.

Steve Seymour support for the purchase of land preserving conservation land and asked the Town Council to prohibit hunting on this property.

Sue Phelan supports the transfer of the property however is concerned about the conservation agreement, regarding hunting on the property.

Stephanie Hinckley searching for clarification of hunting on the land just purchased in West Barnstable and when will the prohibition of hunting take place.

Vanessa Lee received a notice about an easement going under the road, is that going to affect my property line?

Michelle Lombard zoning is a promise you make, regarding short term rental, my property is no longer in a residential area.

Peg Taylor has concerns regarding short term rental property and the values of the properties in her neighborhood.

Jeff Sollows feels that we have regulatory agencies within the town, the short term rentals have been going on for years, we do not need to zone out.

Janet Davis notified the Council that she is in the process of developing a letter for a moratorium of 5G installation in the Town of Barnstable.  
Close public comment

### **COUNCIL RESPONSE TO PUBLIC COMMENT**

Town Manager Ells responded regarding the hunting issue on a property we have not yet purchased, the laws of Massachusetts prohibit hunting within a 500 foot area from residential properties. If it is used for public water supply, there is a prohibition from hunting near a public water supply area. We understand the neighborhoods concerns regarding hunting; [Hebert Can we put up signage regarding no hunting in that area?] Assistant Attorney Kate Connolly is working with the Barnstable Land Trust; there is a specific prohibition to hunting, camping and several other things, in the conservation restriction. Ells, if that negates the grant funding source, we will check carefully before going forward.

Anyone who feels intimidated by someone on their property should notify the Barnstable Police Department, they can handle that issue for you.

Town Manager Communication is attached to this document.

### **ACT ON MINUTES:**

Upon a motion duly made and seconded it was to approve the minutes of the October 1<sup>st</sup> 2020 as presented.

**VOTE: PASSES 12 YES**

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

- Thank you for those helping out with Farmers to Family event at Cape Cod Community College, this will continue for three more weekends.
- October 17<sup>th</sup> the state wide eviction moratorium will end, Housing Relief Fund may be able to help.
- Early Voting at the Barnstable Adult Community Center October 17 through the 30th
- Bottle redemption center at the transfer station will be reopening on the October 19<sup>th</sup>.

<b>2020-193            ORDER AMENDING CHAPTER 240 ZONING, ARTICLE II, SECTION 7 ADDING CERTAIN PROVISIONS PERTAINING TO SHORT TERM RENTALS INTRO: 06/18/2020, 10/01/2020, 10/15/2020</b>
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A presentation and rationale was given by Elizabeth Jenkins, Director of Planning and Development regarding the proposal of a zoning ordinance to recognize the short term rentals as a permitted use in the town. A short term rental is defined as residential dwelling or and portion of such and requires vehicles to be parked in the driveway or a paved area. The Planning board considered and voted on the present amendment and recommended the same to the Town Council.

Open public comment:

Anne Schulte thanked everyone for their response after public comment; wants to understand why the Councilors want to change the current zoning laws, regarding Short

Term Rentals (STR's).

Viktor Dubinski not a big fan of the current ordinance, STR's have been going on for decades, we should just solve individual issues, not change the zoning. There is demand for Short Term Rentals, and it will bring customers to the other businesses.

Bob Schulte made three suggestions via email to each of the Town Councilors, and has been published in the local newspaper. Would like acknowledgement after public comment from the Councilors to hear why you agree or disagree with our suggestions.

We are hear to speak to the item 2020-193, we are not to berate Councilors

Gene Quaglia referred to a letter sent to the Town Council regarding STR's, has three properties that are short term rentals. Properties are already registered with the Town Regulatory Services; there is already an inspection process in place. Detrimental the way it is written.

John Crow spoke about STR's , asked the Councilors to ask lots of questions tonight, regulated all around the country without zoning issues. Have been asked not to pass this by constituents, this is the kind of vote that loses elections. It is time for you to care about what the community thinks and not to just act.

Jennifer Mercadente sent an email to the Councilors, mentioned as an owner of an STR, it is a lack of accountability by some of the owners of STR's: maybe just having a registry and give your neighbors your contact information, and more information on the number of guests.

Janice a short term rental owner has seen a change over the years, now it needs more control. Very concerned, and supports regulation of short term rentals.

Deb Krau on the zoning article, do not think it is appropriate to have a zoning change before we know what the ordinance is going to be. Delay this zoning article until the ordinance has had a full review.

Don Megathin speaking about the poorly drafted zoning amendment, this does not fit everyone. We have three types of STR's. Investor owner should not be allowed in the Town. Investor owned properties have no interest in our neighborhoods.

Mr. Mcloughlin has had an STR for over ten years and has never had a problem, why are you trying to zone this separately.

M. Crowley has a small cottage on her property, never had a problem with my renters, no issues with her neighbors, and does not support the number of days.

Ken Nozel regarding the zoning amendment, not against STR's and understands their value; do not agree with Investor owned STR's, it is a business. He does not approve the zoning amendment as written.

Sean Hearn in favor of allowing STR's, as it has helped him own property in Barnstable, take this under consideration.

Jeremy Pozen owns small studio cottage guest house and have rented this for years. While people are renting, they have been present and have not had any problems. Would like to have further discussion about the STR's

Matt Teague short term rentals on Cape Cod has been going on for years, there is no evidence of crime happening with STR's. Fully support the by-law as written. There are much more pressing issues for the town.

Tina Carey has anyone looked into the fair housing act, so how does that affect the short term rental properties. Can Short Term Rentals be passed on to family members?

Christian Teague where are the investors to talk about STR's, how much can the town lose from tax revenue of Short Term Rentals. People generally abide by the rules put forth for each STR.

Jeffrey Vaz purchased a cottage used for Short Term Rental, invested in this property, this has worked well with four day stays, and finds that full week rentals don't work as well.

Bill Watson we rent our home in July and August, and intends to retire in this house, the policy works as it is, why change it now. Ask the people, you will get lots of great ideas.

Patricia Jeans owns a duplex, uses as a Short Term Rental, how are the numbers of STR's going to be regulated.

Councilor Schnepf, Chair of the Zoning and Regulatory Committee, stated the goal the committee came up with after checking the information through surveys, and the information of the presentations made to Village Associations. We want to preserve the Cape Cod traditions of STR's but put in place rules and regulations. There has been a great deal of public input, and we have listened. We spent time looking at other communities regulations on STR's, we have historically relied on tourism, renting is a large component. Hand in glove approach, to define Short Term Rentals and how to regulate STR's. Our zoning does not define STR's, we need to clarify something that exists in our town, which we can do through zoning.

Karen Nober, Town Attorney provided legal points regarding short term rentals and the current existing zoning regulations.

\*10 minute break

**Councilor comments and questions:**

(Bogan)

Disagree with the Town Attorney a zoning it is either permitted or it is not; this would be a change in the zoning ordinances;

Communities across the country have implemented regulation statute without zoning ordinances should be taken seriously;

The lawsuit was not dismissed it was withdrawn;

Regarding the basis for the report; four of the seven village associations were opposed to the proposal

This is not a one size fits all, endorse hand in glove,

Newport has a Short Term Rental page and overseer, but it is not allowed in residential neighborhoods

Still believe there is hard work to be done.

(Schnepp) Exactly how do you define investor owned properties?

(Bogan) Allow people who have had STR's of their own homes (July/August)

Owners, who live on the premises, can rent while on their property; can do it as a shorter term rental

Define Investor as not allowed to be an STR

(Schnepp) To clarify, anyone who owns property but is not a resident taxpayer in the Town of Barnstable you would define as an Investor owned property.

(Bogan) Correct, it protects the traditional Cape Cod rental and for people who are on the premises during the time of the STR

(Schnepp) A second home owner planning to retire here, would not be allowed to rent their property

(Bogan) Yes they can but not as a short term rental

(Starr) Clarifying that home owner as the primary resident,

(Bogan) Certify that it is your primary residence

(Rapp Grasseti) My issue is that this is very broad and does not address some of the problems that STR's have caused. The Cape Cod tradition of renting homes has changed considerably. Agree with owners being on the premise, all for absentee owners who want to retire here, want to hold onto their property, perhaps a special permit. Don't think the zoning should be allowed everywhere, and don't want to be pressured by legal action. We need strengthen the ordinance on short term rental

(Schnepp) asked for more specificity on how to change the ordinance

(Rapp Grasseti) Not prepared to make that kind of broad stroke of zoning, concerned about allowing this town wide. There are HOA's and Associations that don't allow rentals period.

(Schnepp) what would be the criteria of where we have the STR's and where it would not be allowed?

(Rapp Grasseti) Its how the property is owned; primary residences should be allowed to rent their home (traditional), we want to preserve our neighborhoods.

(Neary) Newport, RI is a very small seaside resort, generates visitor traffic, although they don't allow STR's in Newport neighborhoods, they are occurring in Newport. Barnstable is more spread out, regarding investor owned, how is that determined, what due diligence would be required by the town to identify it. Roughly 800 STR's investor owned percentage is a 10<sup>th</sup> how do you administer it? We need to govern/administer/regulate STR's and establish they exist.

(Hebert) When we talk about the 120 days or the 90 days, so that the owner is available for 8 or 9 months a year, does that help us in determining our zoning? Is that a helpful tool?

(Neary) Appreciate the thoughts the ordinances can have additional comments on length of stay or maybe putting a cap on them, these are not things that are unreasonable, vacation rentals, STR's are they located in all zones in the town of Barnstable? The answer is either yes or no.

Brian Florence, Building Commissioner, fourteen zoning districts classified as residential, they are all only residential districts. (Hebert) What do we mean when we say zero rentals in those 14 districts? (Florence) 80 to 90% of the town are residential districts. What does that mean when we say zero rentals in those communities? (Florence) It's my interpretation that the issues related to lodger have to do with lodging houses not individual homes the ordinances were written in the 1950's.

(Levesque) The ordinance makes it permissible, then others can enforce the restrictions, putting the investor only restrictions, can that be taken as discriminatory practices,

(Florence) I am not qualified to answer that question, that would be legal determination. If we start putting investor owned as language into the zoning piece can that be discriminatory? (Nober) Zoning deals with the property, linking to the use of the property not regulating the owner. You could make a distinction for owner occupied, can't distinguishing between categories of owners. (Connolly) The zoning goes to the property; the structures on the property and the uses of the property;

(Schnepp) Address the argument that we have three residential districts that does not allow permitting any rentals (Nober) All the other districts have language that allows rental of rooms as accessory use, renting of rooms versus the renting of a home, we need to have a definition of family member, that language does not talk about STR's or long term rentals. Don't see that language as not having STR's in those districts.

(Schnepp) if we do not move this item, are we still allowing STR's in Barnstable? (Nober) if we are making a change, we don't currently allow that. We need to decide what we are allowing and say so in the ordinances

(Cullum) the concern for the village of Hyannis, it has been treated differently, if we do anything except town wide ordinances, then we are doing that again. (Nober) If we are in fact treating districts differently we need to answer why are we making different rules for different districts.

(Rapp Grasseti) the ordinances are unclear about what is permitted or included and what is prohibited,

(Shaugnessy) effectively if you do not live in the Town of Barnstable that makes you an investor, many people purchased their homes in the 60s and 70s and now live here year round. They don't have their primary residents in the Town of Barnstable; they would be considered an investor. Historically back in the 70's families could afford to rent for a week or two, cannot do that anymore financially. When the court decides for you that can result in a loss of control that can result in unintended consequences you don't control the ultimate decision. Litigation consumes resources, not everyone can afford a suit in Court. Ask specifically, appreciate the comments by the Schulte's, your proposal talks about a three year wait and see period, that is three years time, where suits could be made with unintended consequences.

(Levesque) what are we going to allow, my concern is the equity of what we are trying to do in the Town. We have three zones that do not have the specific language. The issue is we should be making this decision ourselves; this ordinance should give us the teeth for our departments to protect our properties, and to punish bad behavior. I think I would vote in favor.

(Steinhilber) made a motion to move the question and vote 2020-193, seconded, (Nober), this needs two thirds vote, the presiding officer has not said the debate is over if you are voting to stop debate, it needs a two thirds vote see rule 6d.

**VOTE: FAILS 5 YES, 7 NO** (Bogan, Clark, Dagwan, Rapp Grasseti, Hebert, Levesque, Starr)

(Levesque) thought other Councilors may have wanted to speak to this question; the zoning piece is allowing permission. It is not equitable if we don't allow this in 100 percent of the residential areas of the town. (Hebert) If you feel the discussion is incomplete, and not in the best interest of the town you can say "Charter Objection, which will give us to the next meeting to continue the item.

(Schnepp) If we continue this item to another meeting this will allow more input from the public [yes] some issue have been raised, to restrain our STR's to primary residential owners the majority of the year. How would we amend or change the zoning? I will not vote for a general ordinance unless we pass a zoning ordinance!

(Starr) agree that it needs to be equal throughout the town. It is an equity issue, it would allow Osterville to have no STR's, but they would be allowed in the whole of Cotuit and Barnstable Village, move it forward and deal with it on November 5<sup>th</sup>.

(Clark) would benefit with more information and would like to see the map; we need equity, leaning towards preserving our residential areas

(Dagwan) after much thought, change is inevitable, this zoning has not changed in many years, property ordinance took a great deal of time, like to have some time to filter through the information we received tonight.

(Schnepp) Asked Elizabeth Jenkins to put up the map that shows the zones that wish to be excluded from STR's; RF-1, RG and RC districts, the accessory provision does not allow renting of rooms to no more than three family members. Zoning history shows the renting of rooms to lodgers in the 1950's, versus whole house rentals.

(Neary) the overlay currently exist as STR's obtained through state tax records, these are only on the tax roles (Jenkins) registered with the department of revenue as of June of this year. (Clyburn) clarify that number is from the Department of Revenue from June and not representative of who is registered through the town of Barnstable; that number is 770; only 338 are currently registered with the Town of

Barnstable (Clark) is the map shown on the presentation of the short term rentals also on the website, [yes]

A motion was made and seconded to continue the public hearing until November 5<sup>th</sup>, moved an seconded

**VOTE: PASSES 7 YES 5 NO (Cullum, Schnepp, Starr, Steinhilber, Neary)**

**2021-020 RESOLVE TO PETITION BARNSTABLE COUNTY TO DISCONTINUE ITS INTEREST IN CRAIGVILLE BEACH ROAD INTRO: 10/01/2020, 10/15/2020**

Rationale given by Senior Attorney McLaughlin

Upon a motion duly made and seconded it was

**RESOLVED:** That the Town Manager be authorized to petition Barnstable County pursuant to M.G.L. c. 82 to discontinue all of its interest in Craigville Beach Road and upon discontinuance the Town of Barnstable will continue to maintain Craigville Beach Road as a public way.

**VOTE: PASSES 12 YES**

**2021-021 RESOLVE THAT THE TOWN PETITION BARNSTABLE COUNTY TO GRANT AN EASEMENT WITHIN THE FULL LENGTH OF CRAIGVILLE BEACH ROAD IN ACCORDANCE WITH A SKETCH ATTACHED HERETO FOR ALL PURPOSES FOR WHICH PUBLIC WAYS ARE UTILIZED IN THE TOWN OF BARNSTABLE INTRO: 10/01/2021, 10/15/2020**

**Town Manager requests if there is no objection to withdraw this item. No objections, this item is withdrawn.**

**2021-022 ORDER TO GRANT TO VINEYARD WIND LLC AN EASEMENT FROM COVELL'S BEACH TO INDEPENDENCE PARK FOR UTILITY PURPOSES ONLY INTRO: 10/01/2021, 10/15/2020**

Upon a motion duly made and seconded it was

**ORDERED:** That the Town grant to Vineyard Wind LLC an easement extending from Covell's Beach to Independence Park along the route along the route shown in a plan prepared by the Department of Public Works and attached hereto for utility purposes only, with the final form of such easement to be approved by the Town Attorney. Such easement shall terminate at such time as a permit granted to Vineyard Wind LLC by the U.S. Bureau of Ocean Management shall cease to be in full force and effect; and that the Town Manager is authorized to accept, sign, deliver and record documents for the purposes set forth herein.

**VOTE: PASSES 12 YES**

**2021-023 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$320,000 OF COMMUNITY PRESERVATION FUNDS FOR THE ACQUISITION OF 28 FALCON ROAD ON WHICH WILL BE PLACED A CONSERVATION RESTRICTION TO BE HELD BY BARNSTABLE LAND TRUST INTRO: 10/15/2020**

Upon a motion duly made and seconded it was

**ORDERED:** That pursuant to the provisions of the Community Preservation Act, G.L.c. 44B and the Conservation Restriction statute, G.L.c. 184, Sections 31-33, the sum of Three Hundred Twenty Thousand Dollars (**\$320,000**) be appropriated and transferred from the amount set aside for open space and recreation in the Community Preservation Open Space/Recreation Funds for the acquisition by the Town of the open space resource consisting of 15.96 acres located at 28 Falcon Road, West Barnstable, shown on Barnstable Assessors Map 195 as Parcel 038, representing a portion of the total amount of Three Hundred Forty-Seven Thousand, Five Hundred Dollars (\$347,500) for the acquisition. The property will have a Conservation Restriction allowing for open space and recreation thereon, said Restriction to be held by the Barnstable Land Trust which is contributing \$27,500 in both funding and in kind contributions. That Conservation Restriction is subject to approval by the Secretary of the Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs. Further it is ordered that the Town Manager is authorized to expend the amount appropriated on behalf of the Town for the acquisition subject to oversight by the Community Preservation Committee and that the Town Manager are authorized to execute, receive, deliver and record any written instruments for the stated purposes.

**VOTE: TO NOVEMBER 19<sup>th</sup> PASSES**

**2021-024 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$500,000 OF COMMUNITY PRESERVATION FUNDS FOR THE ACQUISITION OF 830 WAKEBY ROAD ON WHICH WILL BE PLACED AN OPEN SPACE/RECREATION CONSERVATION RESTRICTION TO BE HELD BY BARNSTABLE LAND TRUST INTRO: 10/15/2020**

Upon a motion duly made and seconded it was

**ORDERED:** That pursuant to the provisions of the Community Preservation Act, G.L.c. 44B and the Conservation Restriction statute, G.L.c. 184, Sections 31-33, the sum of Five Hundred Thousand Dollars (\$500,000) be appropriated and transferred from the amount set aside for open space and recreation in the Community Preservation Open Space/Recreation Funds for the acquisition by the Town of the open space resource consisting of 15.74 acres located at 830 Wakeby Road, Marstons Mills, shown on Barnstable Assessors Map 013 as Parcel 003, representing a portion of the total amount of Five Hundred Twenty-Five Thousand, Six Hundred Eighty Dollars (\$525,680) for the acquisition. The property will have a Conservation Restriction allowing for open space and recreation thereon, said Restriction to be held by the Barnstable Land Trust which is



contributing \$25,680 in both funding and in kind contributions. Said Restriction is subject to approval by the Secretary of the Commonwealth of Massachusetts Executive Office of Energy and Environmental Affairs. Further it is ordered that the Town Manager is authorized to expend the amount appropriated on behalf of the Town for the acquisition subject to oversight by the Community Preservation Committee, and that the Town Manager is authorized to execute, receive, deliver and record any written instruments for the stated purposes.

**VOTE: TO NOVEMBER 19<sup>th</sup> -PASSES**

**2021-025 CONFIRMING REAPPOINTMENTS TO THE AFFORDABLE HOUSING/GROWTH & DEVELOPMENT TRUST FUND BOARD INTRO:10/15/2020**

Upon a motion duly made and seconded it was

**RESOLVED:** That Town Council hereby confirms the Town Manager's reappointment of the following individuals to serve as Trustees of the Affordable Housing/Growth and Development Trust Fund Board (the "Board"), pursuant to the provisions of M.G.L. c. 44 §55C, and in accordance with the Amended Declaration of Trust, as approved by the Board at its September 25, 2020 meeting:

Michael Andrew Clyburn, a resident of Sandwich, MA to a term expiring June 30, 2022.

Mark Milne, a resident of Marstons Mills, MA, to a term expiring June 30, 2022.

Laura Shufelt, a resident of West Barnstable, MA, to a term expiring June 30, 2022.

Wendy Northcross, a resident of West Barnstable, MA, to a term expiring June 30, 2022.

**VOTE: PASSES 12 YES**

**2021-026 ACCEPTANCE OF AN FISCAL YEAR 2021 GRANT IN THE AMOUNT OF \$4,366.51 FROM THE COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH BUREAU OF INFECTIOUS DISEASE AND LABORATORY SCIENCES IMMUNIZATION DIVISION FOR THE PURPOSE OF SUPPORTING INFLUENZA VACCINE ACTIVITIES FOR THE COMING INFLUENZA SEASON INTRO: 10/15/2020**

Upon a motion duly made and seconded it was

**RESOLVED:** That the Barnstable Town Council does hereby accept a Fiscal Year 2021 grant from the Commonwealth of Massachusetts Department of Public Health Bureau of Infectious Disease and Laboratory Sciences Immunization Division in the amount of **\$4,366.51** for the purpose of supporting influenza vaccine activities for the coming influenza season, and that the Town Manager be authorized to expend the grant funds for this purpose.

**VOTE: PASSES 12 YES**

**2021-027 ACCEPTANCE OF A FISCAL YEAR 2021 GRANT IN THE AMOUNT OF \$1,076.50 FROM THE COMMONWEALTH OF MASSACHUSETTS THROUGH ITS CITIES COMPLETE COUNT GRANT PROGRAM FOR THE PURPOSE OF ENSURING A COMPLETE AND ACCURATE COUNT IN THE 2020 U.S. CENSUS INTRO: 10/15/2020**

Upon a motion duly made and seconded it was

**RESOLVED:** That the Barnstable Town Council does hereby accept an Fiscal Year 2021

Grant from the Commonwealth of Massachusetts through its Complete Count Grant Program in the amount of **\$1,076.50** for the purpose of funding outreach efforts in Precincts 5, 9 and 13 to increase census reporting rates in those census tracts in the Town of Barnstable, and that the Town Manager be authorized to expend the grant funds for this purpose.

**VOTE: PASSES 12 YES**

**Adjourned at 11:00 PM**

Respectfully submitted,

Ann M Quirk  
Town Clerk/Town of Barnstable

NEXT MEETING: October 29, 2020