



**TOWN COUNCIL MEETING**  
**March 18, 2010**

**A** quorum being duly present, Council President Frederick Chirigotis called the March 18, 2010 Town Council meeting to order at 7:00 p.m. in the 2<sup>nd</sup> Floor Hearing Room of Barnstable Town Hall, 367 Main Street, Hyannis, MA.

**PRESENT:** Richard Barry, Ann Canedy, Janice Barton, Frederick Chirigotis, James Crocker, Jr., Debra Dagwan, Henry Farnham, Janet Joakim, J. Gregory Milne, James Munafo, Jr. John Norman, Thomas Rugo, and James Tinsley.

President Chirigotis led the hall in the pledge of allegiance and a moment of silence.

**PUBLIC COMMENT**

- Jon Julius read from a 2004 wastewater report that dealt with betterments. He was impressed with the CFAC work completed recently on funding sewers. He hoped that the voters would be able to make the final decision on the issue of paying for the sewer updates. Who authorized and is paying for the pump station on West Main Street? The folks at Stewarts Creek should not have to abandon their Title 5.
- Tina Carey said the CFAC did represent the people of the town. Put the funding question on the ballot and let the people vote – spread the cost throughout the town. We all use the town and are the Town of Barnstable. The process right now is not pleasant and not civilized. Get the funding mechanism in place for Stewart’s Creek. She also wants to know who is going to pay for the pumping station.
- David Munsell thanked everyone who was involved with the creation of the HYCC. He is so pleased with it and everyone involved should be congratulated.
- Robert Tucker says we think nothing of sending money overseas; but we have problem with sewerage, and overcrowding of houses here. We need help on that.
- Louise DiCecca thanked the council for holding the special meeting and the presentation was phenomenal. She would like to have the website updated with more information. Put down some FAQ’s. Announce the meeting for the moratorium. Please allow the subcommittee to go around the town to educate everyone. She read one letter into the record from Yvette Mailenfant.
- Meredith Farnworth echoed the above on information and follow-up workshop. Please consider Stewart’s Creek in the financing. Betterments even at 50% would be a problem to me. (See additional letters on file – Exhibit A)
- Laurie Brown said she was glad to see everyone at the hearing. She read a notice from the Town Manager that said the public could testify. She pointed out that they thought they would be able to speak; but, after they got people to come, they were not allowed. When

can we speak? She read another letter from a gentleman from Studley Rd and said all neighbors except one were not in favor of it.

- Kate Gulliver also read some letters from individuals who were not at the hearing. One from a Mr. Abodeely said he felt people should be able to decide whether or not to sign on to the sewer. Many other towns pay at least 50%. He would like non-resident taxpayers notified of the hearings. Another couple from Greenwood Ave noted that many residents in that area are elderly and on fixed incomes. Another letter questioned exactly what it will cost. (Exhibit B – more letters)
- Dorothy Hughes said we elect you and also deserve respect relative to all of these issues. We don't get the answers to our questions, and at times feel there is no hope. She feels that Stewarts Creek is not fair. A Dr. Howes said you would get more bang for your buck if you concerned yourself with the bay areas. The moratorium hearing will be the 15<sup>th</sup> of April. She feels it is shameful that it took so long – and why is Hyannis West being dug up. Please inform us.
- Al Baker gave a couple of announcements of activities in Marstons Mills. They don't want to lose the Main Street school and asked if it would be possible to also have their Farmers' Market there.

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

- Councilor Barton said that she hopes to get an update on the Marstons Mills School and will see what they can do.
- Councilor Canedy feels that any sewage plan should include all of the town. She felt it did not include the north side of Barnstable. On the bulkhead issue, Canedy sought townwide payment for those repairs, but it didn't go forward. The Mercy Otis Warren awards are coming up.
- Councilor Munafo said possibly we need to apologize to those who were expecting to be able to speak. Town Manager Klimm said originally the hearing was to take place at a regular meeting and public comment would have been allowed. Your leadership decided to make it a workshop instead.
- Councilor Milne said we need to get the questions that we get from public comment and hearings and give the people back the answers on the website. Any questions from public hearings or public comment could be handled that way. Just tell staff to do it. He wants to know what is happening on the meetings since he has not received any notices. We need to answer the questions on the Hyannis West school project as well.
- President Chirigotis noted that the vote on the pump station was made in June of 2009; with the final vote being 9 yes to 4 no. That is why it is going forward. DPW Director Mark Ells said this was one of the 14 ARRA projects.
- President Chirigotis added that at the time of the vote Councilor Munafo made a motion that the pump station be within Precinct 3 and that is why it is where it is. Councilor Canedy said this is not associated with Stewarts Creek.

**ACT ON MINUTES – Continued to next meeting.**

**ORDERS OF THE DAY**

**A. OLD BUSINESS**

<b>2008-163     ADOPTION OF THE TOWN OF BARNSTABLE COMPREHENSIVE PLAN 2008</b> <b>INTRO: 06/19/08, 07/17/08, 08/21/08, 09/18/08, 03/18/10</b>
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- Joanne Buntich, Director of Growth Management and Marlene Weir, from the Planning Board and LCP chair, gave a brief overview of the process. There is an outline of the action plan (see Exhibit C)
- Councilor Crocker asked to review the Action Plan. Buntich said it is more like a wish list. She reviewed each section: land use, natural resources, natural resource protection, economic development, facilities and infrastructure, community housing and heritage preservation.
- Buntich and Weir concurred that they will put together a new action plan every year. Councilor Crocker said this document is a living document by having the action plan.
- Councilor Dagwan asked about the well at risk (in Hyannis). Buntich said we are engaged with many others and are looking at ways to possibly readjust the zoning to have more reasonable use of the land near the wells.
- Councilor Farnham asked about the economic development and formulas. Farnham said he believed the planning board did some work on it already. They are looking at impact fees. Farnham would like to see this get dusted off and looked at it again.
- Councilor Rugo said impact fees are good. The CCC allows it and it can at times be necessary.
- Councilor Munafo with all the information that we have had to digest lately, he has not had enough time to review this and would like to postpone it to the next regularly scheduled meeting. This was made into a motion and seconded.  
**VOTE: 3 yes 9 no (defeated)**

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

**VOTE: 12 yes 1 no**

- Councilor Norman said he had another question.
- Councilor Norman offered his assistance to Ms. Buntich and Weir and said he would like to have more information on yardage etc.

A motion was duly made and seconded to move the question. No vote taken.

- Vice President Crocker asked how we can pass this without seeing the final version. Ms. Buntich suggested adding language “that prior to submission to the CCC the final document will be presented to the council.”
- Councilor Milne corrected the date on the rationale in the first paragraph from 2007 to 1997.

- Councilor Farnham suggested that the council amend the vote to say “as amended.”

Councilor Canedy made a motion which was seconded to move – “That the Town Council hereby adopts the Town of Barnstable Comprehensive Plan 2008 as amended on March 18, 2010”.

- There was discussion on whether or not we should just vote it down and have it brought back at another meeting once it is complete.
- Attorney Weil felt that the council was getting tangled and should not vote it down.

Motion to reconsider the vote was brought forward.

**VOTE: Unanimous**

A motion was made and seconded to pass this item as amended.

Another motion was made and seconded to amend it as of March 18, 2010.

**VOTE: consensus**

**Charter Objection called by Councilor Munafo.**

Brief recess taken.

**After the recess, Atty. Weil said that the matter is continued to the next regular meeting. President Chirigotis concurred.**

<b>2010-68 AMEND ZONING ORDINANCES:-BUSINESS DISTRICT REGULATIONS IN BARNSTABLE VILLAGE INTRO: 01/07/10, 03/04/10, 03/18/10</b>
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Councilor Canedy gave the overview.

Upon motion duly made and seconded it was agreed to open a public hearing on this issue.

**VOTE: Unanimous**

Bob Kelly representing Barnstable village businesses stated that this came about because an owner, in that area, was asked to open a franchise coffee shop; and folks felt that franchisees would infringe on them. We all felt the village needs to control the family-owned neighborhood.

Upon motion duly made and seconded it was unanimously voted to close the public hearing at 8:35 p.m.

Ms. Buntich gave a brief description of the location. It goes between Railroad Ave and almost Hyannis Road. Councilor Crocker asked if there were any other MB-B districts – no.

Councilor Rugo recused himself from voting on this issue.

Councilor Milne suggested supporting this for many reasons.

Councilor Tinsley noted that there are empty storefronts. Is there an avenue to appeal on this? Buntich said yes, it probably would be by a use variance. Attorney Weil concurred and said it is difficult.

Vice President Crocker was a little annoyed that there are vacancies and they are still asking for this.

Councilor Canedy said we are concerned about vacancies as well. However, we need a little bit of room and time to encourage businesses in the village without the threat of large non-local chains.

Councilor Farnham said the West Barnstable LCP committee worked on a similar proposed ordinance. Attorney Weil said there has not been a lot of litigation history on this type of ordinance. She is comfortable with the “8” number and we do have other areas in town where larger chain businesses are allowed.

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

**VOTE: Unanimous in favor**

Upon motion duly made and seconded it was

**ORDERED, that:**

**Section 1.**

The Zoning Ordinance, Article III District Regulations § 240-24 VB-A and VB-B Business District is hereby amended as follows:

By deleting the words “Special permit uses (reserved for future use)” from Subsection E. And by adding the following to Subsection E:

The following use limitations shall apply within the Barnstable Village VB-A only.

Use Limitations: Permitted retail establishment, lodging establishment, restaurant, or take out food establishment shall not include a business which is required by contractual or other arrangement to maintain one or more of the following items: standardized (“Formula”) array of services and/or merchandise, trademark, logo, service mark, symbol, décor, architecture, layout, uniform, or similar standardized features and which causes it to be substantially identical to more than eight (8) other businesses regardless of ownership or location. Drive-up windows and/or drive-through facilities are prohibited.

Corporate Branding Prohibition: Buildings, colors, signage, architectural features, text, symbols, graphics, other attention getting devices and landscape elements that are trademarked, branded or designed to identify with a particular formula business chain or corporation are prohibited. Interior corporate branding elements shall not be visible to the street through windows, doors or any other means. All structures and sites shall be designed to include architectural and design elements that are consistent with the Barnstable Village VB-B architectural composition, character, and historic context.

**Section 2**

The Zoning Ordinance, Article III District Regulations § 240-23 MB-B Business District is hereby amended as follows:

By Re-enumerating existing subsection E to subsection G  
And by adding the following to Subsection E:

The following use limitations shall apply within the MB-B only.

Use Limitations: Permitted retail establishment, lodging establishment, restaurant, or take out food establishment shall not include a business which is required by contractual or other arrangement to maintain one or more of the following items: standardized (“Formula”) array of services and/or merchandise, trademark, logo, service mark, symbol, décor, architecture, layout, uniform, or similar standardized features and which causes it to be substantially identical to more than eight (8) other businesses regardless of ownership or location. Drive-up windows and/or drive-through facilities are prohibited.

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**VOTE: Roll Call – 12 yes (Rugo recused himself)**

<b>2010-069 AMEND ZONING ORDINANCE, ARTICLE III DISTRICT REGULATIONS §240-24.1.6, OM OFFICE/MULTIFAMILY RESIDENTIAL DISTRICT SECTION A INTRO: 01/07/10, 03/04/10, 03/18/10</b>
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Councilor Dagwan gave the rationale and asked for the council to move forward on this.

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

**VOTE: Unanimous consent.**

Stuart Bornstein said we didn’t want medical clinics on the first floors but our buildings got spot zoned in the last zoning changes. There may be 4 – 6 offices altogether. We have buildings that have been built for medical uses but doctors do not want to go through the process of zoning and special permitting. Put it back the way it was before and let us go forward.

Felicia Penn, chair of the Planning Board, asked that the council approve this item. The planning board voted in favor of this 5 to 1. There will not be any detrimental impact on the neighborhood. It will be business by appointment only. This is not for redevelopment or new development. It is to allow this area to be utilized in a manner that it was prior to recent zoning changes. The only dissenting vote had a couple of reasons and asked that we check with Cape Cod Medical. Penn said they did. CCM’s opinion was this location had better parking; and access to North Street was a lot easier than it is for locations around the hospital. The GIZ is a zoning change and was initiated for quick development in Hyannis. This does not create new zoning it just adds to the list of already allowed uses by right.

David Munsell from the Planning Board said private enterprise can do very good work. He encouraged the council to vote for this and support your planning board because it is good and good for the town. This will eliminate having doctors go through the special permit process.

Matthew Teague from the Planning Board stated that this is important and fits a need.

Upon motion duly made and seconded it was voted to close the public hearing.

**Unanimous consent.**

Councilor Norman asked what is inpatient and why is it being excluded (overnight stays are considered to be inpatient and are therefore, excluded).

Councilor Munafo was glad to see that we can make this type of correction and can make this right. He stands in favor.

Vice President Crocker said we need to look at what is good for the neighborhood – and we need to think of the people who are housed above these businesses. The medical tenant use is a positive neighbor in mixed use. This is a good match for the neighborhood.

Councilor Farnham said this type of business is important, the income levels are higher and it is a good community need.

Councilor Canedy asked for an explanation of and if this is, in fact, a zoning change. Buntich showed the map and explained the situation. Canedy would have preferred that this come forward as a regulatory agreement instead of a zoning change.

Vice President Crocker said this has been about a single use for a single purpose and he has an issue on this item but also just realized that he needed to recuse himself.

Councilor Milne was torn by this. He feels that possibly this might need to be postponed because of the recusal issue. He feels the rationale is biased toward one owner. However, he will vote in favor.

Councilor Barton asked about the map and it was explained that the whole of the map is the GIZ. We have one need and one growth right now and it is in the medical field.

Councilor Tinsley stated that it is a great area for this use, we should do this. I don't want it to be challenged.

Town Attorney Ruth Weil said as far as this discussion goes, ethics is about openness in government. This discussion is open and should not affect this item. Disclosure is the whole purpose of this and it was accomplished.

Councilor Dagwan said no one in the area has come forward against it. That in itself gives it merit. Support and move this forward.

Councilor Canedy asked if the council should review the zoning in the east part of town. Will resources in the east move out? Can we give that to someone?

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:**

Section 1 That the Zoning Ordinance, Article III. District Regulations § 240-24.1.6. OM Office/Multifamily Residential District Section A. Permitted uses, is hereby amended as follows:

By adding the following to § 240-24.1.6 OM Office/Multifamily Residential District. § A. Permitted Uses,(1) Permitted Principal Uses

(j.) Office, dental or medical

Section 2 That the Zoning Ordinance, Article III. Definitions Applicable to the Hyannis Village Zoning Districts, §240-24-1.12 is hereby amended as follows:

By adding the following Definition

**OFFICE, DENTAL OR MEDICAL** — A building or portion of a building in which the primary use is the provision of health care services to patients or clients by an appointment only. Appointments limited to the hours between 7 AM to 7 PM Monday through Friday and Saturday from 7 AM to 1 PM. Such services may include the following: medical, dental, psychiatric, psychological, chiropractic, dialysis, acupuncture, reflexology, mental health professional, physical and/or occupational therapy, related medical services, or a laboratory which provides bacteriological, biological, medical, x-ray, pathological and similar analytical or diagnostic services to doctors or dentists. This definition excludes in-patient or overnight care, animal hospitals, veterinarians, or other similar services. The sale of merchandise is allowed only as an accessory use.

Section 3 That the Zoning Ordinance, Article III. Definitions, Definitions Applicable to the Hyannis Village Zoning Districts, §240-24-1.12, **CLINIC, MEDICAL OR DENTAL** is hereby amended as follows:

Delete the sentence: "No fabricating is conducted on the premises, except the custom fabrication of dentures or similar dental appliances."

**VOTE: Roll Call 12 yes**

<b>2010-091 AMEND GENERAL ORDINANCE: SECTION 177-1 SANDY NECK BEACH PARK INTRO: 03/04/10, 03/18/10</b>
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President Chirigotis announced that this item is withdrawn to come back at a later date.

<b>2010-092 APPROPRIATION FROM SANDY NECK ENTERPRISE SURPLUS FUNDS \$5,000 INTRO: 03/04/10, 03/18/10</b>
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Lynne Poyant, Director of Community Services, gave the overview and rationale. These monies will be used to expand the stock for merchandise sales, and encourage additional revenue.

Nina Coleman from Sandy Neck said we now have t-shirts and hats. In the evening during the summer, we send staffers out to the beach and sell the items. We were able to purchase sweatshirts last spring and they were gone before July. Our surplus account has \$280,000 and we made \$16,000 in sales.

Councilor Barry asked if you should ask for more money. Coleman said she wants to take it a little slowly and she doesn't want to get in over her head. Then she would really have to peddle the stock.

A public hearing was duly opened and closed by the council with no comments from the public.

Councilor Munafo asked about revenues. She said the account is now enterprise and the money goes back into the park.

Councilor Farnham said Nina has done a great job for thinking outside the box.

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 thousand dollars and no/100 (\$5,000.00) be transferred from the Sandy Neck Enterprise Account Surplus funds to the Sandy Neck Enterprise Account Operating Budget for the purpose of funding additional purchases of merchandise for resale.

**VOTE: Roll Call - 13 yes**

## **B. NEW BUSINESS**

<b>2010-094 ACCEPT THE FISH WEIR APPLICATION-NANTUCKET SOUND FISH WEIRS, INC. INTRO: 03/18/10</b>
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Upon motion duly made and seconded it was voted to postpone this item to April 1, 2010.

**VOTE: Unanimous**

## **TOWN MANAGER COMMUNICATIONS**

Town Manager John Klimm said that as far as some of the issues raised this evening. Mark Ells, Director of DPW spoke with Louise DiCecca, who will work with him to update the Stewart's Creek website. They are working together on this collaboration.

Klimm said that as far as a format for councilor response, that is a council issue (Milne's suggestions to answer questions) – he stands ready to assist if need be.

Manager Klimm also noted that Mark Ells is continually on the Barnstable TV working to get out the information on the sewers and they will take suggestions. Klimm puts out a weekly

newsletter; Lynne Poyant puts out a monthly newsletter. We are doing more than most towns and are willing to do more.

**ADJOURNMENT**

Upon motion duly made and seconded it was moved to

**ADJOURN.**

**ADJOURNED: AT 9:30 p.m.**

Respectfully submitted,

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



**NEXT MEETING: April 1, 2010**