

**TOWN COUNCIL MINUTES  
ORDINANCE COMMITTEE  
Town Hall Council Chambers  
May 31, 2006**

Present: Susan Kay, Chairperson  
Michael Smart, Vice-Chairperson  
Arthur Mathews  
Gregory Shanahan  
Kevin Whitaker

Also Present: Kenneth DiFazio, District 3 Councilor  
Paul Leary, District 5 Councilor  
Jane Hackett, Chief of Staff  
James Wilson, CFO  
James Clarke, Director of Planning & Community Development  
George Lane, Town Solicitor

Recording Secretary: Mary Briggs

Councilor Kay called the Ordinance Committee Meeting to order at 6:36 PM.

**06 098 – Organization Plan – Establishment of the Community Preservation Committee**

Ms. Hackett stated that the Mayor submitted the measure in accordance with Section 5-1 of the Weymouth Town Charter containing an organizational plan establishing the Community Preservation Committee. The purpose of the Committee is to study the needs, possibilities and resources of the town regarding community preservation. With citizen, relevant board member and Town Council representation, the Mayor is confident the Committee will execute its responsibilities in the best interest of the town. The proposed ordinance, state statute and the Department of Revenue Guidelines were attached.

Ms. Hackett stated the composition of the Committee would be a total of seven members, consisting of a member of the Conservation Commission, Planning Board, Historical Commission, Housing Authority, Recreation Commission and Town Council. The Mayor would appoint one citizen member. She noted the individual board/commission would determine the appointment. The Council President would appoint the council designation. Suggested term of appointment would be two years. This is not the norm, throughout the charter terms are usually three years, with the exception of the Board of Zoning Appeals. Due to the significance and responsibility of the committee the Mayor determined the importance in having the shorter term. If the member resigns from the board/committee, he/she will no longer be on the Community Preservation Committee as well and a new appointment will have to be determined.

Ms. Hackett stated the proposal of the Mayor requires one or more public meetings. By October 1<sup>st</sup> of each year the committee shall submit to the Capital Planning Committee all capital projects within the 6 year plan. Twenty-one days before the Mayor's budget submittal, the Committee shall submit its budget to the Mayor. The budget shall include a recommendation to set aside for later spending funds for specific purposes. For each fiscal year at least 10% of the estimated annual fund revenues must be appropriated or reserved for acquisitions and initiatives in each of

the following: open space, community housing, and historic resources. Annual appropriations may not exceed 5% of the year's estimated annual fund revenues.

Ms. Hackett reported the state statute and Department of Revenue Guidelines (30 pages) were submitted for review.

Councilor Kay stated she would accept questions by the committee and then they would address Councilor DiFazio's proposed changes.

Councilor Mathews stated in regards to the appointments by the boards to the committee, in the old form of government some bodies used to designate individuals to represent them on the committees. He questioned if there would be any intention of that happening.

Ms. Hackett stated the language is clear, which states there shall be an appointment of the commission as designated by the commission.

Councilor Mathews said he has heard from constituents and believes that since it was a citizen vote to adopt the Community Preservation Plan that additional citizen appointments be allowed.

Ms. Hackett stated that all members of boards and committees within town are citizens of the town. The Mayor decided to go with an extra citizen member for a total of 7 members. As she pointed out- the town has difficulty finding people that are interested in being on committees. There is also the concern of having a quorum at committee meetings.

Councilor Mathews cited within the Department of Revenue regulations, page 23, section d, which states "The Community Preservation committee is responsible for evaluating the community preservation needs of the city or town and making recommendations to the community's legislative body as part of the annual budget process...." He stated that he interprets that the Mayor is proposing to have the budget submitted to him and not the legislative body of the town. He referred to an example of the opinion of Solicitor Lane in regards to the appointment to the South Shore Tri-Town Board of Directors. This stated that the special act enacted by the Massachusetts General Law superseded the charter.

Solicitor Lane responded that when you enact a charter under the Home Rules Procedures Act (Chapter 43b, section 20), any special law or general law must be consistent with the charter. The town's charter is very specific, of which the organizational part of the town which resides with the Mayor- is under section 5.1 and budgeting is under section 6.5. He stated in regards to his opinion the S.S. Tri-Town appointment, the enabling legislation was set up by a special act. It did not trump the charter as a special act, but modified the charter to the extent that the ability to have a Home Rule Charter by the Massachusetts Constitution was reserved to the legislature to establish regional organizations composed of two or more communities. This is an entirely different scenario than the one in which an act of the legislature or general law establishes the Community Preservation Act (CPA).

Ms. Hackett quoted the second sentence of section d (page 23) of the Department of Revenue's (DOR) Guidelines, "Its role is analogous to that of a capital planning committee in developing a

multi-year capital improvement plan for a community and presenting an annual capital budget to its legislative body.” She stated this is what the town’s Capital Planning Committee does; submitting their annual report to the Mayor and then the Mayor submits it to the Council with funding requests with the operating budget. This is the same process and intent as this.

Councilor Mathews questioned if the town’s Home Rule Charter supersedes the guidelines.

Solicitor Lane replied it does.

Councilor Kay stated in of all documents provided, specifically refer the community recommending to the legislative body. She questioned Solicitor Lane on his decision in regards to the S.S. Tri-town appointments verbiage, “The legislation constituting the South Shore Tri-Town Development Corporation as a separate regional entity provides for an appointment of the Board of Selectmen, now the Mayor, but contains no approval provision by the legislative body of the town.” She stated that in the documents provided it does refer specifically to the legislative body. Therefore, isn’t it different?

Solicitor Lane replied no, because the air base situation is a constitutional reserved power to the legislature. This body and the appropriate committee studying that made a recommendation to amend the enabling act. They are attempting to take the general laws and read them consistently with the charter. Specifically, it states that within section 6.5 that all town appropriations are done through the budgeting process which originates with the Mayor. The basis for allowing interpretation of the charter-- where you have inconsistent provisions the charter governs.

Councilor Shanahan agreed with Councilor Mathews concern that he is in favor of an additional citizens (2) being appointed. His concern is that there is so much involvement by the community during the debate process that it should be considered.

Councilor Smart addressed Page 2 of the ordinance section 3-226 section c-1 which refers to public hearings. He questioned the intent of the wording to have a public hearing on each project that may be proposed, or simply 1 or 2 public hearings per year. He questioned if there would be forums in which the public could comment on the proposals.

Ms.. Hackett replied it is the requirement the committee must satisfy. The language was directly taken from the statute. It does not prohibit them from holding additional public hearings, but it is not required.

Councilor Kay questioned if there is a DOR requirement for an annual public hearing to be held.

Ms. Hackett responded in the affirmative-- to be held once per year.

Councilor Kay stated that it wasn’t clearly stated. Section c-1 doesn’t state annually nor does it give a frequency of the meeting to be held.

Ms. Hackett responded that it is contained within the statute.

Councilor Whitaker arrived at the meeting at 7:05 PM.

Councilor Kay stated that it is prudent to have specific wording within the ordinance as to the public hearing(s).

Ms. Hackett replied that they will have the DOR Guidelines to abide by.

Councilor Smart referred to the DOR Guidelines page 25, section d-4, “The legislative body may make appropriations from or reservations of community preservation funds in the amount recommended by the committee or it may reduce or reject any recommended amount. It may also decide to reserve all or part of the annual revenues recommended for appropriation for specific acquisitions or initiatives for later appropriation by allocating them to the reserve for that category of expenditures instead....” He stated that it appears that it is a different role which the council plays, in that they can cut from the budget only. He questioned if the 2<sup>nd</sup> sentence would pertain to them as well.

Mr. Wilson stated it isn't a different role at all. He cited the example of Proposition 2½ choosing to reduce an appropriation. There is no difference between the revenue and the appropriation. Under the regulations that money goes into a reserve, that difference is a result. If the council chooses to reduce an expenditure line item because it is a separate self-balancing account--it is reserved automatically for another appropriation. As long as they meet the minimum requirements in each of the three categories they satisfy the obligation. At the end of each year they will have “free cash” specifically for the CPA.

Councilor DiFazio stated that the memo he submitted to the committee is based upon the autonomy of the Community Preservation Committee given the restrictions of the Town Charter and the Massachusetts General Laws. His attempt is to keep the committee autonomous for the benefit of the town. His understanding is that the division will come under the Division Head who would report to the Department Head who in turn reports to the Mayor. If the committee becomes a division within their organization, he suggested that it lose its autonomy, reporting to the director and Mayor. If it is a committee as mentioned in section 6 of 4-205 of the town ordinances, it would be another committee under the government.

Councilor DiFazio stated under measure 06-098 he recommends that it would be a nine member committee by adding two citizens of the town by vote of the Council or election. He understands the five members of the committees which are appointed by the Mayor are citizens, but he believes it is important that there are citizens appointed other than those already appointed by the Mayor.

Councilor DiFazio also recommended that there are committee bylaws, designating the officers of the committee, the election of officers, duties of the officers, meeting schedules, voting procedures and rules and regulations. He is suggesting reviewing what other towns are doing.

Ms. Hackett stated that the Mayor specifically decided not to include the committee bylaws for it would be a redundancy of the code (section 3-104). It was the intention of the Mayor not to organize the committee.

Ms. Hackett stated in relation to the nine member issue, the Mayor does appoint all multi-member bodies subject to Town Council review. She doesn't see that it would be any different if there were two additional members, as they would be appointed by the Mayor subject to the Council's review.

Ms. Hackett responded to the comment on who would be the Division Head. The town has had divisions within the municipal code that do not have "heads". There is no intention to have a Division Head for the department within the Department of Planning & Community Development.

**06 099- Organization Plan – Establishment of the Community Preservation Act Division within the Department of Planning and Community Development**

Councilor DiFazio questioned why this couldn't be another committee like the others within the code (section 6).

Mrs. Hackett read measure 06 099, which states "In accordance with Section 5-1 of the Weymouth Town Charter, an organization plan was submitted establishing the Division of Community Preservation within the Department of Planning & Community Development. The purpose of the Community Preservation Committee is to study the needs, possibilities and resources of the town regarding community preservation. The Committee's role and responsibilities integrate well with the existing duties of the Department."

Ms. Hackett stated that if you look at the charter and the existing ordinance (section 4-205). All land use matters are under the jurisdiction of the Department of Planning & Community Development, subject to the Mayor. She reviewed the current ordinance and the amendment adding the Community Preservation Division. She stated the Mayor wanted appropriate coordination, identifiable staff support, as the cause is too significant for self-support. Due to the tax surcharge they established this as a committee. As to the question whether the committee would report to the director, the answer is no. They wouldn't- similar to the Board of Zoning Appeals.

Councilor Kay opened the meeting to the members for comments.

Councilor Leary commented on measure 06 098 – establishment of the committee, stating it says one member appointed by the Mayor. He believes it should be three citizen appointments, appointed by the Mayor- not currently holding an elective office or appointment. This is a very important committee. The people voted for it. 5% of the funds collected go towards administering the funds. He addressed Solicitor Lane stating the budget is determined by the legislature who voted 1%. He feels it is a separate piece of legislation which was voted. It is a separate entity.

Councilor Whitaker stated that under the DOR regulations there is a provision which states that the community preservations budget should be submitted at the same time as the annual budget. In the ordinance itself, everyone would have different ways to compose the committee. He

stated his preference is to have more citizen appointments. This is an organizational plan, they are limited in what role to take, and it's either to accept or not.

Councilor Whitaker mentioned under provision C-2, it has the CPC reporting to the capital planning committee. He stated he prefers for it to be reversed or completely eliminated. The Capital Improvement Plan is really a five year plan. They are asking the CPC to go out and complete a six year plan. He stated in regards to the budget submittal timeframe for it to be submitted to the Mayor as well as the Council- twenty one days before the date the Mayor is required to submit a budget proposal.

Councilor Whitaker questioned if there was an opportunity clause for the ability to spend money on an item which might arise last minute. Therefore, the committee may be able to respond quickly if an opportunity arises. Under section 4 there is a listing of the three areas of which 10% would be allocated . He asked that under 4a, Open Space, that the language be added "but not including land for recreational use". His final comment on Section 5: there seems to be a disagreement between the legislation and the DOR regulations. The word he has the toughest time with is in line 2: "The community preservation may not exceed 5% of the year's estimated annual community preservation fund revenues." The estimate not only includes what is collected but also the matching funds. He referred to page 27 of the legislation which was provided, which states "but the appropriation shall not exceed 5% of the annual revenues in the community preservation fund." There may be a legal issue with difference in languages.

Ms. Hackett responded that she will review the questions and comments raised this evening. Ms. Hackett stated that the Community Preservation Committee and Capital Planning Committee have similarities. The six year plan (current year, plus five years out) is required within the code. She also noted there are many functions of the Capital Planning Committee which will also be executed by the Community Preservation Committee. The specific reason for the six-year submittal is dictated by the municipal code. All departments are required to submit to Capital Planning Committee (Capital Planning Board) all expenditures for the ensuing six years- in the current year, and five years out.

The reason for the October 1 deadline for submittal by Community Preservation Committee to the Capital Planning Committee is as is required with the operating budget. It will indicate a complete financial plan of the town, with supporting documentation for all capital improvements, which, by definition, would include land acquisition Language in municipal code and the charter supports this. The 6-year request is so as to not exclude the current fiscal year in requests; the process is begun on October 1<sup>st</sup>, which is during the fiscal year.

The Capital Planning Committee is required to submit a list to the Mayor and Town Council of all of the proposed capital expenditures for the town, and many of the expenditures for the Community Preservation Committee will fall in that category.

Councilor Mathews asked Mr. Wilson if there are figures available for this year, and if they include any matching funds. Mr. Wilson responded that based on 1% of the estimated \$62 million in tax levy for FY06, exclusive of any refunds and abatements-the projected amount will be about \$600,000. The match from the state is based on a calculation of the certified budget by the DOR, but will not happen until FY07. In September, the budget is certified. In October,

based on the estimated receipts, the DOR calculates the distribution, which will be for FY07. First year out, FY06, the only receipts will be from the surcharge. In FY07 it will comprise the state fund (est. \$400,000) and \$600,000 from the surcharge. On the recap sheet, it has to total \$1M.

Councilor Mathews asked if in the ordinance itself, the Community Preservation Committee is required to submit its budget 21 days before the Mayor is required to submit his to the Town Council. Reviewing DOR regulations, they are requiring three separate reports generated, each with a timeframe for submitting. The question was posed that is the committee ready to submit, and if not, will it jeopardize receiving matching funds? It appears the town is already a year behind. Revenue is collected already this year; reports are required.

Mr. Wilson reviewed the process of the forms. The first (9/15 due date) is the Board of Assessors and the Mayor certifying that during the prior fiscal year (ending 6/30 of that year), an amount of money is committed to the Treasurer for collections, X number of dollars, less any refunds and exemptions, with a net commitment. In October, the fiscal year is again looked at, to review activity on expenditures. Revenue can be reported as gifts, surcharges, unexpended proceeds from bonds, etc. Money collected, expenditures made. What remains is “free cash” or an unreserved fund balance. In November, the Mayor, Board of Assessors, and Town Accountant all sign off on a budget for FY07, based on the anticipated spending. Based on the recommendation of the committee, the information for both FY06 and FY07 are submitted, within each of the timelines identified. This follows the normal appropriation process.

Councilor Smart asked for clarification of the committee makeup. If the members are chosen by their respective committees for inclusion on the Community Preservation Committee, are their appointments then subject to approval by the Mayor- meaning, are both the Town Council and Mayor removed from the process?

Ms. Hackett did not believe so. Committee members will be designated by their respective committees, and the Mayor or Town Council will also not be in position to veto any appointment to the committee.

Councilor Smart also asked whether the definition of open space included recreational use. In the legislation, “The operating and administrative expenses shall not exceed 5% of the annual total revenue received under the provisions said Section 10...” When reading Section 10 which follows, the money allocated from the Treasurer is referred to. Does the 5% include the money that the Treasurer will send out, plus the revenue collected?

Mr. Wilson noted the response is in the Recap sheet. Add all 8 revenue line items, and the recap will electronically show administrative costs. It cannot exceed 5%. DOR regulations will not allow it to go further in the certification process if the amount exceeds the 5%, which would prohibit the town from conducting business including setting the tax rate.

Councilor Smart asked if that was in conflict with the legislation. Mr. Wilson noted that the DOR interprets that as anticipated receipts. If revenue is improperly shown on the recap sheet, it will automatically be offset the following year.

Mrs. Hackett reviewed the “open space, not including land” and “recreational use” definitions. The open space interpretive definition is from the DOR regulations. In the establishment of the ordinance, the Mayor’s intent is not to parrot the DOR regulations, which are subject to amendment, and subsequent reinterpretation, nor to contradict those regulations.

Councilor Whitaker interjected with a Point of Information. He stated that it is in section 6 of the legislation (p. 27). Mrs. Hackett noted that one of the significant changes in the original passing of the legislature by the state, and reviewed by the previous Town Council for the Community Preservation Act, was the untestedness of it, and specifically how much of the language was written for Town Meeting form of government. The interpretations of DOR would shape out over time, and one of the significant shifts in DOR was land use, for recreational purposes. The interpretation has changed over time.

James Clarke came to the table to explain further. The allocation each year for the 10% can be used for recreational purposes, because it is in the statute language. The latest rendering language changed, the legislation which includes “set aside” spending language, which refers to open space, but not recreational use. Each year, money can be spent for recreational improvements.

Mr. Wilson explained that the reserve has to be reported as 10% open space; it cannot be recreational. The allowed uses in the regulations specifically say ... “the acquisition, creation and preservation of land for recreational use is an allowable expenditure”. There are two different scenarios; one is an accounting issue, the other is a mandated reserve.

Councilor Whitaker felt the wording is confusing, and that the Community Preservation Committee, reading this, may not know how to interpret the 30% (10% open space, etc.).

Ms. Hackett noted that this is why the committee will be receiving staff support.

Mr. Wilson also noted, that administratively, he is obligated by duty to report anything that comes before him which violates the regulations, or prohibits from setting a tax rate. The recap sheet is done each year under his direct supervision. He ensures that all statutory regulations are adhered to in reviewing every department’s budget, to meet all compliance issues.

Councilor Leary noted that today’s Ledger reported that Randolph Town Meeting, which voted a Community Preservation Act and with several items to be paid; none of which includes acquisition of land for open space, although five are for recreational use.

Councilor DiFazio asked Solicitor Lane about earlier conversation of whether the Charter or the Legislature takes precedence, and the determination was made that the Charter does. He then asked if the committee’s members are to be made up of members from other existing committees who were appointed by the Mayor through the Charter, then how is the Charter consistent with the Legislation? If the Charter is followed; the Mayor would have to appoint every member of every committee. He asked Solicitor Lane to look further at this, since it is an inconsistency.

Solicitor Lane reported that there are some committees which are designated by virtue of office,



for example the Director of the DPW on the DPW Committee. Councilor Kay noted this should be reviewed further.

Councilor Mathews reported he had spoken with a representative in the DOR, and she confirmed that the Mayor could establish an ordinance, and what could and could not be done by him to that budget. He can reduce, cut, reject or send back-- but cannot add to a recommended budget for the Community Preservation Committee unless it has been endorsed by that committee.

Ms. Hackett agreed, the Mayor cannot initiate any funding for the committee, nor submit it to the Town Council unless endorsed by the Community Preservation Committee.

Councilor Kay noted that under 3-226, C-2 “by October 1<sup>st</sup> of each year the Community Preservation Committee shall give to the Capital Planning Committee ...” this is information on all capital projects anticipated by them for the ensuing 6 years. She asked if this is practical, to have a committee newly formed that will mirror a Capital Planning Committee now in that they will be meeting and evaluating those three areas of importance and other capital items that they might link with. By submitting it to the Capital Planning Committee, it now goes for another review by the Planning Board. It doesn’t seem to have a smooth flow; there appears to be redundancy.

Ms. Hackett responded that it is and isn’t practical in many respects. The Community Preservation Committee will be reacting to opportunities which avail themselves that may not be possible to predict five years into the future. The first document that the Community Preservation Committee will receive is the Capital Plan, and they will need to identify by next October 1<sup>st</sup> anything they think they can do in addition to that plan, and submit to the Capital Planning Committee to incorporate into the document, so there is a complete overview. What should not be occurring is the Community Preservation Committee recreating the entire Capital Improvement Plan. There are many items on the CIP which would be eligible for Community Preservation funding, items that are on the current plan. New items can be incorporated each year as they arise. The Planning Board will prioritize the requests. All Capital requests which come before the Town Council by Charter are required to be on the Capital Improvement Plan, or reason given why they are not.

Councilor Kay noted her concern with that is if there is a member of the Planning Board on the committee, and Planning Board review, it’s heavily weighted in that area. She noted her own experience working with a Community Preservation Board. It does not need to also go through a Capital Plan, nor a priority stage.

Ms. Hackett responded that there is very little a Community Preservation Committee can do that is not capital in nature, because of the dollar amount. Capital Improvement Plan is required to be submitted by Charter on March 1<sup>st</sup> of each year, for all possible capital expenditures by the town for the course of 5 years, and not including potential funding sources. You can’t exclude any one agency from the process.

Councilor Kay questioned what happens with the non-capital requests. Ms. Hackett responded

that they are handled budgetarily. Ms. Hackett reminded the committee that the Capital Improvement Plan is a plan, not a budget. Ms. Kay agreed, and said if it goes to the Council and the Council does not approve it, it's rejected. She noted that it's different in reading the legislation. The recommendations of the committee go to the legislative body.

Mr. Wilson disagreed. He said that one is a planning tool for 5 plus years. There is nothing in the recommendation for the plan under the statute or the recap sheet which says everything in the plan has to be done; however, once an appropriation is made, which comes through the budgetary process, then that can be segregated out by capital and non-capital items. In a bonding request, just because a 5-year plan may show bonding for acquisition for open space in town doesn't mean it has to happen. The only legal way is for a measure to come forward from the Mayor to say a bond is requested for this purpose, under this provision of the statute, and to be funded in the following manner. That is different from a plan, which is a working document. On the reporting side, on the expenditure side, every expenditure is required to be reviewed, and a measure that is an appropriation measure from it. There are more constrictions if it's a capital- for a town this size, capital is defined as over \$25,000, and with a use life of 3 years.

Councilor Kay posed a situation to the administration. The committee recommends to the Capital Planning Board items for FY07, and the funding is there. She asked if the Capital Planning Committee, through the Planning Board, could delay or not approve. Ms. Hackett noted that it could, and that it happens all the time.

Each Department Head submits their prioritized requests to the Planning Board. The Planning Board then plugs them into a year. The Planning Board then submits this document to the Mayor, who isn't always in agreement with prioritization. The Planning Board does not adjust any of the department priorities. For example, the School Department's priorities are submitted as voted by the School Committee, without amending the priority. The ability and authority will be the same for the Community Preservation Committee as any other department. The document is a clear inventory of what are anticipated expenditures, and to exclude Community Preservation is not responsible, and may violate the Charter. It is a useful tool in budget recommendations.

Ms. Kay noted that in the annual budget recommendations, the Community Preservation Committee may propose appropriations or reservations from fund or financing sources for specific projects or categories of projects. These recommendations should be in the annual Preservation budget as requested, or modified by the Mayor. She asked if the Council would receive that budget.

Mr. Wilson responded that it must--it would be included as part of the annual appropriation request.

Ms. Kay noted that it would not necessarily be the recommendations of the committee, it may be altered.

Mr. Wilson noted that the Mayor cannot add to the recommendation but may subtract from it.

Councilor DiFazio questioned if this committee makes a recommendation, then the Capital

Planning Committee submits to the Mayor, and the Mayor would then need to approve before it comes to Town Council. The Mayor can veto any recommendation? It goes no further. He asked the other Councilors if this is what they intended when lobbying with their constituents for a tax surcharge. Councilor DiFazio felt his constituents thought that this money was safe from “government”- the money would go into a pot, and a committee would be formed to determine how it is spent. This is not the case.

Mr. Wilson disagreed with the basis. As an example, with a bond authorization, the Community Preservation Committee approves the spending of money for a particular project. It is not their authorization, it is a general obligation of the town, so the Mayor does have the option to refuse to go further. The Mayor has oversight and general responsibility for the financial condition of the town.

Councilor DiFazio warned the committee; he does not believe the intent of the voters is this.

Councilor Kay noted that in town form of government, committees bond routinely; however, Mr. Wilson responded that the Selectmen have the option to refuse to sign bond authorization. The CPC does not have the authority to bond on its own.

Councilor Kay asked for a review of the timeline and what needs to occur before June 30<sup>th</sup>.

Mr. Wilson noted that by 9/15, the first form will be going out, and there will be no problem meeting the deadline. (Collection less abatement and refunds = net.) The October 15<sup>th</sup> payment is based on the first submittal of 9/1 (calculation based on fund balances and commitments). Councilor Kay asked if a budget needs to be submitted by June 30<sup>th</sup>. Mr. Wilson responded that it does not, for FY06; report, but no action. For FY07, the recap sheet needs to be completed by November of this year.

Councilor Leary followed up on Councilor DiFazio’s point. If free cash from 06, revenue from FY07 and matching funds the 10% set aside are all in place, and the committee votes to spend available monies on open space, the Mayor could then refuse the acquisition? Mr. Wilson responded yes. Councilor Leary asked then why have a Community Preservation Act?

Ms.Hackett noted that in another form of government, the selectmen can do the same. It isn’t unique to Weymouth.

Councilor Leary responded that the act was adopted to preserve open space, not for one person to have veto power over what the committee chooses to do.

Mr. Wilson reiterated that the DOR has rules. The Mayor may reduce a recommendation of the CPC, and it is true in a town meeting form of government. The form of government doesn’t change the checks and balance review of budgetary process.

Councilor Mathews noted that the problem lies with the Charter. It’s so strong that it supersedes the state statutes. He was not aware when he was supporting this that it would be this way. Page 23 of the DOR regulations should have been reviewed, and before the citizens voted it the

legislative body should have been asked to adopt the by-law at the same time as it asked to accept the proposal. The committee makeup should have been determined before presenting to the voters.

Councilor Whitaker asked if the formation of the committee is an organizational plan, the Council is not permitted to formulate the ordinance. It would have had to come from the Mayor, prior to the vote. He already tried to do this in November, and it was not permitted in the charter. The original committee should have been prepared from before the vote. He is concerned that timing is now an issue. With only 60 days to act on this, and any councilor can postpone a vote on any night. There aren't that many meetings ahead to get what needs to be done.

Councilor Kay noted that the committee does not appear to be ready to make a decision at this meeting. She would like further clarification.

Solicitor Lane noted that on multiple member committees, those appointments are by the Mayor. Other appointments are by the statute (designee).

Councilor Kay responded that on more than one occasion, the council was trying to get this started, and was told it had to wait for ordinances to go through, and had to wait during budget season. The council was waiting for this, and it is unfortunate that it has gotten to this point.

Councilor DiFazio asked if this committee was not a division, just a committee formed by ordinance, would it still be considered a reorganizational change.

Ms. Hackett responded in the affirmative. The Mayor submitted two organizational plans; one to form the committee by ordinance, the other placing it within the administrative organization.

Councilor DiFazio asked if it were just a committee formed by ordinance, would it need to be filed as a reorganizational plan. Ms. Hackett responded in the affirmative.

Councilor Kay asked to get clarification on that; why it is organizational if it were only seeking support.

Ms. Hackett responded that if she understands the question: if the Mayor is not establishing a division and is establishing a committee would it require an organizational plan? Yes, it would. If however, the question is if the Mayor was not seeking to establish a division within the Department of Planning and Community Development, would it be an organizational plan. She does not believe it would, but in the last paragraph of the current ordinance, the Mayor has the authority to assign other committees to the department, as he sees fit. The Mayor could give staff support to the Community Preservation Committee through the Department of Planning and Community Development without the Council's authorization. He chose to do it this way to be candid and forthcoming with both the committee and the residents as to the administration of the surcharge.

Councilor DiFazio responded that a committee by itself will generate sufficient fanfare and support from the administration. He doesn't feel it needs to be a division.

**A MOTION was made by Councilor Smart to CONTINUE item 06 098 until the next scheduled meeting of the Ordinance Committee, and was seconded by Councilor Mathews.**

Councilor Whitaker again noted that there are 60 days to act on this. If it is not up for a vote at the next Town Council meeting, it is then deferred to the following meeting. Any single member who wants to can ask that a vote not be taken that evening. Essentially, any of the eleven members of the Council can effectively adopt this if it is not up for a vote.

Councilor Kay responded that there could be a special meeting, and it will probably need to happen.

Councilor Mathews noted that he would be interested in the public hearing after hearing from constituents, particularly in the committee make up before he takes any action.

Councilor Shanahan noted that a public hearing will add to people's understanding and if a special meeting is required; he is in favor of it.

**UNANIMOUSLY VOTED.**

Mrs. Hackett requested, in light of the 60 day requirements for a copy of the minutes from this meeting as soon as possible in draft form-- before they are voted, so that the information can be reviewed and addressed quickly. Councilor Kay responded the request will be accommodated, and any materials provided for this meeting will be forwarded also.

**06 099 Organization Plan - Establishment of the Community Preservation Act Division within the Department of Planning and Community Development.**

Ms. Hackett stated it was the Mayor's determination rather than exercise his authority under section 4-205-5 to provide administrative support for the committee, to establish it as a committee. The constituents voted the tax surcharge. It's a significant event in the town of Weymouth. The Mayor feels it needs the identification within the municipal tax code, and the Department of Planning and Community Development is the logical place, by Charter and municipal code.

Councilor Mathews asked Jim Clarke if there is anyone specifically intended to be designated as liaison from his department. Mr. Clarke responded that he would be spending a great amount of his time the first year to get it up and running smoothly, with support from the Economic Planner, and others as needed to ensure its success.

Councilor Whitaker noted he also supports councilor DiFazio's approach to establishing the committee instead of a separate division. He has a copy of the cross outs, but not the actual proposal, and supports putting the committee in instead of as a separate division, and while the Fair Housing Commission has just been eliminated, it could be cleaned up a bit; however, he is concerned that the Town Council is giving away powers that were granted by legislation with respect to land management. The Council should retain power by keeping the committee as a

division of the Department of Planning and Community Development until the committee has some time and then look to revise it. As far as the administrative support element, it could be put as item 6 and still receive administrative support as do the other committees. He is concerned with giving up some powers granted by legislation.

Ms. Hackett responded that there are other sections. There are several points within the municipal code and the Charter where council rights relative to land use are reserved (Zoning, setting minimum land prices, for example). There are steps along the way where the Council's rights are reserved. It is not the intent of the outcome to diminish any of the Town Council's rights or responsibilities, but she will check and make sure they are itemized within the municipal code.

**A MOTION was made by Councilor Shanahan to continue item 06 099 until after the public hearings and until the next scheduled meeting of the Ordinance Committee, and was seconded by Councilor Mathews. UNANIMOUSLY VOTED.**

Ms. Hackett asked if at the public hearing on Monday, if responses to the public would be anticipated. Council President Smart responded that where possible, he would expect it.

Councilor Kay asked if she meant in response to the committee's questions arising from this meeting, and Ms. Hackett responded yes, and in that case may need to reserve some comments. Councilor Kay noted that in addition to the committee's questions, the public may have additional questions. Ms. Hackett responded that she would want to reserve some answers in that case. Council President Smart responded that was understood.

Councilor Leary noted that he hoped there would be a full discussion of the CPA at Monday's Council meeting, and recommended it be televised so that there will be greater access to the information by the public.

Councilor Whitaker asked if the administration would include answers to the questions brought up in this meeting as part of the public presentation on Monday, and if there is continued dialogue, and the possibility of reworking, that the Council consider continuing the public hearing should there be the need. Whatever is ultimately adopted, the public should have input, and not just on the work in progress.

Councilor Kay agreed, but noted in Councilor Whitaker's warning on the 60 day time frame, she would prefer to not make that decision until and unless it needs to be made.

**At 8:40 PM, there being no further business, Councilor Mathews made a motion to ADJOURN the meeting, and was seconded by Councilor Shanahan. UNANIMOUSLY VOTED.**

Approved by: \_\_\_\_\_  
Susan Kay, Chairperson