



Town of Barnstable

Town Council

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Administrator:
Donald M. Grissom

Administrative
Assistant:
Barbara A. Ford

TOWN COUNCIL MEETING

AGENDA

August 21, 2008

6:00 PM

- 1. ROLL CALL**
- 2. PLEDGE OF ALLEGIANCE**
- 3. MOMENT OF SILENCE**
 - **RECOGNITION - JOHN REED**
- 4. PUBLIC COMMENT (May be limited to 2 minutes)**
- 5. COUNCIL RESPONSE TO PUBLIC COMMENT**
- 6. WORKSHOP - COMMUNITY PRESERVATION COMMITTEE**
 - **EXECUTIVE SESSION**
- 7. ACT ON MINUTES**
- 8. COMMUNICATIONS FROM ELECTED OFFICIALS, BOARDS, COMMISSIONS, STAFF, CORRESPONDENCE, ANNOUNCEMENTS AND COMMITTEE REPORTS**
- 9. ORDERS OF THE DAY**
 - A. OLD BUSINESS**
 - B. NEW BUSINESS**
- 10. TOWN MANAGER COMMUNICATIONS**
- 11. ADJOURNMENT**

NEXT MEETING: September 4th

ITEM NO.	INDEX TITLE	PAGE
A.	OLD BUSINESS	
2008-131	Authorization for the Growth Management Department to expend an appropriation and transfer of Community Preservation funds for community housing improvements at 770 Independence Drive, Hyannis (Public Hearing closed) (Roll-call)	4 – 5
2008-160	Appropriation Order for the Community Preservation Fund FY09 debt service (Public Hearing) (Roll-call)	6 – 7
2008-161	Community Preservation Fund Reserve set-asides & appropriation for Community Preservation Committee administrative expenses (Public Hearing) (Roll call)	8 – 9
2008-163	Adoption of the Town of Barnstable Comprehensive Plan for 2008 (Public Hearing) (Roll-call)	10 – 11
2009-003	Reappointments to Boards/Committees/Commissions (Second reading)	12
2009-004	Appointments to Boards/Committees/Commissions (Second reading)	13
2009-005	Authorization for the town manager to enter into a regulatory agreement between the Town of Barnstable and Alan Granby & Janice Hyland. (May be acted upon) (Roll-call 2/3) .	14 – 22
2009-007	Authorizing the town manager to amend and restate a restriction - Beale Way/Hinkley (May be acted upon) (Roll-call)	23 – 26
2009-008	Amendment to the Zoning Ordinance: Article III. District Regulations, §240-39 Shopping Center Redevelopment Overlay District (Public Hearing) (Roll-call-2/3)	27 –28
2009-010	Appropriation and loan order for the Barnstable Harbor Dredge Project (Public Hearing) (Roll-call 2/3)	29 – 30
2009-013	Amend the General Ordinance to adopt procedures for absentee members of boards at adjudicatory hearings (Public Hearing) (Roll-call)	31– 33
2009-014	Community Preservation Fund appropriation and transfer order from the proposed amount set aside for community housing in the amount of \$108,000 (Public Hearing) (Roll-call)	34 – 35
2009-015	Appropriation and transfer order in the amount of \$40,620 for a special projects coordinator staff position and associated expenses to support the Barnstable Coastal Resources Management Committee (Public Hearing) (Roll-call)	36 –37
2009-016	Amend the Administrative Code to allow for interim appointments on regulatory boards (May be acted upon) (Roll-call)	38– 39
2009-017	Community Preservation Fund appropriation and transfer order not to exceed \$750,000 from the set-aside amount for open space acquisitions (Public Hearing) (Roll-call)	40 - 41

ITEM NO.	INDEX TITLE	PAGE
B.	NEW BUSINESS	
2009-018	Reappointments to Boards/Committees/Commissions (First reading).....	42
2009-019	Appointments to Board/Committee/Commission (First reading).....	43
2009-020	Acceptance of a \$65,000 State grant from the Consumer Affairs Division of Standards to the Regulatory Services Department for price/pricing verification (May be acted upon) .	44 - 45
2009-021	Authorization for the town manager to enter into a regulatory agreement between the Town of Barnstable and Ruth M. Rusher Trust. (May be acted upon) (Roll-call 2/3) ...	46 – 51
2009-022	Appropriate & Transfer \$220,000 unexpended bond proceeds for the re-construction of the West Bay bulkhead (Refer to public hearing September 4, 2008) (Roll-call 2/3) ..	52 - 53

Minutes – July 17, 2008

Please Note: It is possible that if it so votes, the Council may go into executive session. The Council may also act on items in an order other than they appear on this agenda.

A. OLD BUSINESS (Public hearing closed) (Roll-call)

BARNSTABLE TOWN COUNCIL

ITEM# 2008-131

INTRO: 05/01/08, 05/15/08, 06/19/08, 07/17/08, 08/21/08

2008-131 COMMUNITY PRESERVATION FUND APPROPRIATION FOR COMMUNITY HOUSING IMPROVEMENTS

ORDERED: That, pursuant to the provisions of G.L. c. 44B, the sum of Two Hundred Fifty Thousand and No/100 (\$250,000) Dollars be appropriated and transferred from Community Preservation Housing funds in the Community Preservation Fund on June 21, 2007 under item 2007-162; and that the Town of Barnstable, Growth Management Department is authorized to contract for and expend the amount of \$250,000 with the prior approval of the Town Manager; for the development of 148 apartments, of which 40 units will be affordable rentals and the remaining 108 will be market rate in five (5) buildings located at 770 Independence Drive, Hyannis, MA, Map 332, Parcel 010-001

SPONSOR: Town Manager upon recommendation of the Community Preservation Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Motion to Open Public Hearing
- ___ Rationale
- ___ Public Hearing
- ___ Close public hearing
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL

COMMUNITY PRESERVATION FUND APPROPRIATION FOR COMMUNITY HOUSING – VILLAGE GREEN AT INDEPENDENCE PARK

ITEM# 2008-131

INTRO: 05/01/08, 05/15/08, 06/19/08, 07/17/08, 08/21/08

SUMMARY

TO: Town Council
FROM: Community Preservation Committee
DATE: April 25, 2008
SUBJECT: Community Preservation Fund Appropriation: Village Green Apartments

BACKGROUND: The Community Preservation Committee (CPC) met on February 26, 2008 and has recommended that the town support the funding request of \$250,000.00, made by the JDJ Housing Development, LLC (JDJH) for three years of ground rent for a permitted 40B affordable housing development, also known as Village Green Apartments. This development is proposed on town owned land located at 770 Independence Drive, Hyannis, MA, Map 332, Parcel 010-001. The total funds requested for this project is \$250,000.00; and shall be appropriated and transferred from the Community Preservation Funds.

RATIONALE: Funding for this project is shared among the following:

\$15,000,000.00 provided through a Citizen's Bank loan
\$3,000,000.00 in equity provided by Keller Company and Diversified Funding
\$250,000.00 *requested from CPA funds for three (3) years of ground rent*

The project goal is to help support the creation of 148 units, 40 units will be affordable community housing committed to low and moderate-income households.

This project directly contributes to and supports the town's 10% goal of affordable housing. CPA funds are applicable in bridging the gap between the cost of development and debt, as well as leveraging CPA funds with other public or private funds.

Keller Company as well as the town will monitor all phases of construction and financing. Diversified Funding as leasing agent and property manager will be required to execute a monitoring agreement acceptable to the Town, at its own expense, which would verify that eligible tenants are renting the units at affordable rents. It is required that the developer provide documentation during each phase of this project to the town

Funding will be disbursed in phases, following receipt of project status reports from the developer and inspections of each phase performed by town staff. This development will incorporate a deed restriction to the Town of Barnstable for these units.

STAFF ASSISTANCE: Theresa Santos, Administrative Assistant, CPC

SPONSOR: Community Preservation Committee

A. OLD BUSINESS (Public Hearing) (Roll-call)

BARNSTABLE TOWN COUNCIL

ITEM# 2008-160
INTRO: 06/19/08, 07/17/08, 08/21/08

**2008-160 APPROPRIATION ORDER FOR COMMUNITY PRESERVATION FUND
FY09 DEBT SERVICE**

ORDERED: That the Town Council hereby appropriate \$2,995,075 for the purpose of paying the FY09 Community Preservation Fund debt service requirements, and to meet such appropriation, that \$2,604,116 be provided from current year revenues of the Community Preservation Fund and that \$390,959 be provided from surplus funds reserved for the open space program within the Community Preservation Fund.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Motion to Open Public Hearing
- ___ Rationale
- ___ Public Hearing
- ___ Close public hearing
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL

APPROPRIATION ORDER FOR COMMUNITY PRESERVATION FUND FY09 DEBT SERVICE

ITEM# 2008-160
INTRO: 06/19/08, 07/17/08, 08/21/08

SUMMARY

TO: Town Council
FROM: John Klimm, Town Manager
DATE: June 3, 2008
SUBJECT: Appropriation Order for FY 2009 Community Preservation Fund Debt Service

BACKGROUND: Part of the annual budget process includes an appropriation from the Community Preservation Fund to pay for the annual debt service associated with bonds issued under the program including those that were issued under the former Landbank Program.

ANALYSIS: The debt service requirements for FY 2009 for the Community Preservation Fund (CPF) are \$2,995,075. The estimated surtax revenue for the CPF in FY 2009 to be billed is \$2,604,116. The difference of \$390,961 will be covered by the fund balance brought forward from the Landbank Program as recommended by the Community Preservation Committee.

FISCAL IMPACT: There is no impact to the General Fund budget as a result of this appropriation. This appropriation will be provided from current year estimated revenues from the CPF and a portion of the fund balance generated under the Landbank Program.

TOWN MANAGER RECOMMENDATION: The Town Manager requests favorable action by the Town Council.

A. OLD BUSINESS (Public Hearing) (Roll-call)

BARNSTABLE TOWN COUNCIL

ITEM# 2008-161

INTRO: 06/19/08, 07/17/08, 08/21/08

2008-161 COMMUNITY PRESERVATION FUND RESERVE SET-ASIDES AND APPROPRIATION FOR COMMUNITY PRESERVATION COMMITTEE ADMINISTRATIVE EXPENSES

ORDERED: That, pursuant to the provisions of G. L. c. 44B § 6, for the fiscal year ending June 30, 2009, the following sums, or sums equaling ten percent (10%) of the annual revenues of the Community Preservation Fund if a different amount, be set aside for further appropriation and expenditure for the following purposes: Four Hundred Twenty Five Thousand Five Hundred and Fifty One and No/100 (\$425,551.00) Dollars or ten percent (10%) for open space but not including land for recreational use; Four Hundred Twenty Five Thousand Five Hundred and Fifty One and No/100 (\$425,551.00) Dollars or ten percent (10%) for historic resources; Four Hundred Twenty Five Thousand Five Hundred and Fifty One and No/100 (\$425,551.00) Dollars or ten percent (10%) for community housing; and that the sum of One Hundred Fifty Thousand and No/100 (\$150,000.00) Dollars be appropriated from the annual revenues of the Community Preservation Fund to be expended under the direction of the Town Manager, or the Community Preservation Committee with the prior approval of the Town Manager, for appraisal, title search, hazardous materials assessment, consulting services, and pre-development costs, and administrative expenses, and to assist in the development and performance of contracts for community preservation.

SPONSOR: Town Manager John C. Klimm, at the request of the Community Preservation Committee

BARNSTABLE TOWN COUNCIL

**COMMUNITY PRESERVATION FUND RESERVE SET-ASIDES
AND APPROPRIATION FOR COMMUNITY PRESERVATION COMMITTEE
ADMINISTRATIVE EXPENSES**

ITEM# 2008-161

INTRO: 06/19/08, 07/17/08, 08/21/08

SUMMARY

TO: Town Council
FROM: Town Manager John C. Klimm
DATE: May 15, 2008
SUBJECT: FY09 Community Preservation Fund Reserve Set-Asides and Appropriation for
Community Preservation Committee Administrative Expenses

BACKGROUND AND ANALYSIS: The CPA Committee has met and requested that we make reservations of annual estimated revenues for the three programs under the Community Preservation Fund and an appropriation for the purposes of financing the operating costs of the community preservation program.

FISCAL IMPACT: This is a reservation and appropriation from the Community Preservation Fund and has no adverse impact on the general fund.

A. OLD BUSINESS (Public Hearing) (Roll-call)

BARNSTABLE TOWN COUNCIL

ITEM# 2008-163
INTRO: 06/19/08, 07/17/08, 08/21/08

2008-163 ADOPTION OF THE TOWN OF BARNSTABLE COMPREHENSIVE PLAN 2008

RESOLVED AND ORDERED: That the Town Council hereby adopts the Town of Barnstable Comprehensive Plan 2008 and instructs the Town Clerk to submit the plan to the Clerk of the Cape Cod Commission for certification that it is consistent with the Regional Policy Plan.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Motion to Open Public Hearing
- ___ Rationale
- ___ Public Hearing
- ___ Close public hearing
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL

ADOPTION OF THE TOWN OF BARNSTABLE COMPREHENSIVE PLAN 2008

ITEM# 2008-163

INTRO: 06/19/08, 07/17/08, 08/21/08

SUMMARY

TO: Town Council
FROM: Patty Daley, Growth Management, Interim Director
DATE: June 10, 2008
SUBJECT: Town of Barnstable Comprehensive Plan 2008

BACKGROUND: This agenda item is the update of the 1997 Local Comprehensive Plan adopted by Town Council on October 30, 2007 and certified as consistent with the Regional Policy Plan by the Cape Cod Commission on February 12, 1998.

At their meeting on June 9, 2008 the Planning Board as the Local Planning Committee unanimously voted to send the Comprehensive Plan (CP) to Town Council for review and adoption. Once Town Council approves the CP it will then be submitted to the Cape Cod Commission for certification.

ANALYSIS: A comprehensive plan describes Barnstable's land use policy. This CP focuses on the location of new growth where capacity exists to absorb impacts; guidance for areas where investment in redevelopment is desirable and incentives can be provided; support and maintenance of the villages, their character and economy; economic sectors for focused attention; protection, improvement and maintenance of natural resources; and community housing, facilities and infrastructure, heritage preservation and health and human services issues.

RATIONALE: The 1997 Local Comprehensive Plan is the certified and approved plan of record for Barnstable. This updated plan reflects conditions, science, data and policies that have changed since 1997. The Comprehensive Plan is a source of information for residents, appointed and elected officials, businesses and other stakeholders as they consider land use options in Barnstable.

FISCAL IMPACT: The fiscal impact is neutral. Plan implementation would create an overall positive fiscal impact.

STAFF ASSISTANCE: Patricia Daley, Growth Management, Interim Director
Jo Anne Miller Buntich, Growth Management, Assistant Director
Jacqueline Etsen, AICP, Growth Management, Principal Planner

A. OLD BUSINESS (Second reading)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-003
INTRO: 07/17/08, 08/21/08**

2009-003 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION

RESOLVED, that the Town Council reappoint the following individuals to a multiple-member board/committee/commission:

LAND ACQUISITION & PRESERVATION COMMITTEE

Kristine P. Clark, 398 Woodside Rd, West Barnstable, to a term expiring 06/30/2011
Shirley A. Fisher, 115 Old Stage Rd, Centerville, to a term expiring 06/30/2011
Thomas Mullen, 38 Coach Lane, Barnstable, to a term expiring 06/30/2011

COMPREHENSIVE FINANCIAL ADVISORY COMMITTEE

Ralph Krau, 312 Compass Circle, West Hyannisport, to a term expiring 06/30/2011
James Sproul, 548 Main St, Centerville, to a term expiring 06/30/2011

SPONSOR: Appointments Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Council discussion
- ___ Move/vote

A. OLD BUSINESS (Second Reading)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-004
INTRO: 07/17/08, 08/21/08**

2009-004 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION

RESOLVED, that the Town appoint the following individuals to a multiple-member board/committee/commission:

AIRPORT COMMISSION

Timothy R. Luzietti, 119 Pond View Dr, Centerville, to a term expiring 06/30/2011

COUNCIL ON AGING

Sarah P. Schlegel, 21 Trotters Lane, Marstons Mills, (associate) to a term expiring 06/30/2010

HYANNIS MAIN ST. WATERFRONT HISTORIC DISTRICT COMMISSION

Joseph A. Cotellessa, 65 Sylvan Drive, Hyannis, to a term expiring 06/30/2011

HUMAN SERVICES COMMITTEE

Merrill Blum, Veterans' Transition, 94 Water View Circle, Centerville, to a term expiring 06/30/2011

Bill Doherty, Barnstable County Commissioners, Rte 6A, Barnstable, to a term expiring 06/30/2011

Kim Kalweit, VINFEN Corp, 310 Barnstable Road, Hyannis, to a term expiring 06/30/2011

Mary Pat Messmer, Cape Cod Child Development, 83 Pearl St, Hyannis, to a term expiring 06/30/2011

SANDY NECK BOARD

Lynn Heslinga, 1649 Hyannis Road, Barnstable, to a term expiring 06/30/2010

ZONING BOARD OF APPEALS

Eric Steinhilber, 399 Bishops Terrace, Hyannis, (associate) to a term expiring 06/30/2010

SPONSOR: Appointments Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Council discussion
- ___ Move/vote

A. OLD BUSINESS (May be acted upon) (Roll-call 2/3)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-005
INTRO: 07/17/08, 08/21/08**

2009-005 ORDER AUTHORIZING THE TOWN MANAGER TO EXECUTE A REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND ALAN GRANBY AND JANICE HYLAND

ORDERED: That the Town Manager is authorized pursuant to Section 168-5, General Ordinances of the Code of the Town of Barnstable, to enter into and execute a Regulatory Agreement between the Town of Barnstable and Alan Granby and Janice Hyland, for the property shown on Barnstable Assessor’s Map 327 Parcel 145,146 and 257, and located within the MS zoning district and the Downtown Hyannis Growth Incentive Zone, including but not limited to the following: Density: Relief is granted from Section 240-24.1.4.B, to allow 16 residential units on 40,721 s.f. of land; Front Setback is granted from Section 240.24.1.4.C from 20 ft to 16.8 ft.; Side Setback is granted from Section 240.24.1.4.C from 10 ft. to 6.3 ft; Rear Setback is granted from Section 240.24.1.4.C from 10 ft. to 9.2 ft; Driveway width/impervious surface limits from Section 170.9 from not more than 25% of the front yard as parking and no more than 20 feet of frontage as a parking area to 17.5% of the front yard as parking and 24 feet of frontage as a parking area; Dumpster setback, Relief is granted from 10 ft. to 7 ft.

The Town Manager shall execute the Regulatory Agreement on behalf of the Town within seven (7) days of the Town Council vote authorizing the execution of the Regulatory Agreement in accordance with Section 168 of the Code.

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL

PROPOSED REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND ALAN GRANBY AND JANICE HYLAND

**ITEM# 2009-005
INTRO: 07/17/08, 08/21/08**

SUMMARY

TO: Town Council
FROM: Growth Management Department
DATE: July 2, 2008
SUBJECT: Proposed Regulatory Agreement 37, 49 and 53 School Street, Hyannis

RATIONALE: This is a proposed Regulatory Agreement between the Town of Barnstable and Mr. Alan Granby and Ms. Janice Hyland. Regulatory agreements are authorized by Chapter 168 of the Barnstable Code. The ordinance allows the Town to enter into agreements with private property owners to allow new development in a manner that varies from local ordinances when it is deemed beneficial to the community.

The applicant is proposing a regulatory agreement to gain additional development rights for a 16 unit residential rental development at 37, 49 and 53 School Street in Hyannis. The applicant is proposing a regulatory agreement to establish an alternative means to comply with the requirements of the Barnstable Zoning Ordinance for density, setbacks and impervious surface area under the Zoning Ordinance as follows:

- Density: Relief is granted from Section 240-24.1.4.B, to allow 16 residential units on 40,721 s.f. of land; Under this Section in the MS District these properties are allowed 5 units with 11 bedrooms by-right. Through a special permit the density could be 11 units with 3 workforce units. This proposal requests zoning relief from these density requirements to construct 16 units with 30 bedrooms with 8 of those units as workforce units
- Front Setback is granted from Section 240.24.1.4.C from 20 ft to 16.8 ft.
- Side Setback is granted from Section 240.24.1.4.C from 10 ft. to 6.3 ft
- Rear Setback is granted from Section 240.24.1.4.C from 10 ft. to 9.2 ft
- Driveway width/impervious surface limits from Section 170.9 from not more than 25% of the front yard as parking and no more than 20 feet of frontage as a parking area to 17.5% of the front yard as parking and 24 feet of frontage as a parking area.
- Dumpster setback, Relief is granted from 10 ft. to 7 ft.

The Agreement would authorize this zoning relief. The Agreement is beneficial to the community because the 37, 49 and 53 School Street project redevelops an existing property, the developer will contribute public capital facilities by making payment of \$92,700, \$80,000 of which is to be used for the rehabilitation of sewer pipe liner on School Street with the remainder retained for additional infrastructure improvements which will benefit the area in and around School Street and will provide 8 units of workforce housing in the existing buildings at 37 and 53 School Street.

REGULATORY AGREEMENT PROCESS: The proposed Agreement was negotiated by the Barnstable Planning Board over the course of two public hearings held on May 9, 2007 and April 10, 2008. The proposed Agreement was approved by the Planning Board for recommendation to the Town Council by a majority vote of the Board on June 9, 2008.

Because the applicant requests zoning relief, a two-thirds vote of the Town Council is needed to finally approve the proposed Regulatory Agreement.

If the Town Council approves the Regulatory Agreement, it is endorsed by the Town Manager and recorded at the Registry of Deeds.

Copies of the full size plans are available for viewing at the office of the Town Clerk.

FISCAL IMPACT: Positive

STAFF ASSISTANCE: Patty Daley, Interim Director, Growth Management,
Jo Anne Miller Buntich, Assistant Director, Growth Management

REGULATORY AGREEMENT
37, 49 and 53, School Street, HYANNIS

This regulatory agreement (“Agreement”) is entered by and between the developer, Alan Granby and Janice Hyland, (“Developer”) and the Town of Barnstable (“Town”), a municipal corporation, on this___ day of___, 2008 pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Section 168 of the Barnstable Code;

WITNESS:

WHEREAS, Developer under this Agreement will contribute public capital facilities to serve the proposed development and the municipality or both, and provide fair workforce housing on-site;

WHEREAS, this Agreement shall establish the permitted uses, densities, and traffic within the Development, the duration of the agreement, and any other terms or conditions mutually agreed upon between Developer and the Town;

WHEREAS, this Agreement shall vest land use development rights in the property for the duration of the agreement, and such rights shall not be subject to subsequent changes in local development ordinances, with the exception of changes necessary to protect the public health, safety or welfare;

WHEREAS, the Town is authorized to enter into this Agreement pursuant to Chapters 168 and 240 of the Barnstable Code;

WHEREAS, Developer is the legal owner of the property (“Property”) at 37, 49 and 53 School Street, Hyannis, consisting of approximately 40,721 sq ft, shown on Barnstable Assessor’s Map 327/ as Parcels 145, 146 &257, and desires to develop the Property pursuant to a regulatory agreement;

WHEREAS, Developer is willing to commit itself to the development of the project substantially in accordance with this Agreement and desires to have a reasonable amount of flexibility to carry out the Development and therefore considers this Agreement to be in its best interests; and

WHEREAS, the Town and Developer desire to set forth in this Agreement their respective understandings and agreements with regard to development of the Property;

WHEREAS, the Development will not require regulatory review under the Massachusetts Environmental Policy Act (MEPA) or the Cape Cod Commission Act;

WHEREAS, Developer has made application to the Planning Board pursuant to Section 168 of the Barnstable Code;

WHEREAS, the Development is located in the Hyannis Growth Incentive Zone (GIZ) as approved by the Cape Cod Commission by decision dated April 6, 2006, as authorized by Barnstable County Ordinance 2005-13, Chapter G, Growth Incentive Zone Regulations of the Cape Cod Commission Regulations of General Application;

WHEREAS, the Development is not subject to review by the Cape Cod Commission as a Development of Regional Impact due to its location in the GIZ and due to the adoption of Barnstable County Ordinance 2006-06 establishing a cumulative development threshold within the GIZ, under which this development may proceed and Developer has submitted a Jurisdictional Determination to the Town of Barnstable Building Department to confirm the same;

WHEREAS, prior to applying for approval of this Agreement, Developer has undergone informal review by the Hyannis Main Street Waterfront Historic District on September 20th, 2006;

WHEREAS, the Development is serviced by municipal sewer and does not impact resources protected by the Barnstable Conservation Commission;

WHEREAS, the Property currently consists of two historic structures; one historic structure includes three apartments and the other includes five apartments. The property also includes a small cottage that contains one apartment;

WHEREAS, Developer proposes to: retain the eight existing apartments within the two existing historic structures; and, to demolish the cottage; and to construct four new duplex units as further described herein;

WHEREAS, Developer will require zoning relief from maximum density (units and bedrooms per acre), front yard setback (regarding existing historic structures), side yard setback, dumpster set back, and maximum entrance driveway width/impervious front yard parking area, all as further defined in condition number 33 below;

WHEREAS, Developer has undergone at least two public hearings on the Agreement application and received a majority vote from the Planning Board approving the application on June 9, 2008;

WHEREAS, Developer has undergone a public hearing on the Agreement application before the Town Council and received a 2/3rds vote approving the application on _____ (DATE);

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto hereby acknowledge to the other, Developer and the Town do enter into this Agreement, and hereby agree and covenant as follows;

1. If the Development rights granted hereunder are exercised, Developer agrees to construct the Project in accordance with the plans and specifications submitted to and approved by the Town, listed as follows and made part of this Agreement by reference:
 - a. Plans entitled “School Street Townhouses, 37, 49 & 53 School Street” prepared by Baxter Nye Engineering & Surveyors, Sheets C-1 through C-9, dated June 18, 2007;
 - b. Building Floor Plans entitled “New Multifamily for: Janice Hyland & Alan Granby” prepared by “ Cotuit Bay Design, LLC, dated June 19, 2007, pages A1, A1A and A2;
 - c. Such other plans and plan revisions as may be required by the terms and conditions of this Agreement;
2. Developer proposes to retain the existing historic structures and demolish the existing cottage at the property, and to construct four duplex units totaling approximately 10,900 square feet of gross floor area in the Medical Service (MS) Zoning District and Growth Incentive Zone (GIZ) of Barnstable (the “Development”);
3. Developer proposes to retain, eliminate and/or create residential dwelling units as follows;

Location	# Units	# Bedrooms	# Workforce
37 School Existing	5	6	5 at 100% of AMI
53 School Existing	3	4	3 at 100% of AMI
Duplex 1	2	5	0
Duplex 2	2	5	0
Duplex 3	2	5	0
Duplex 4	2	5	0
Total	16	30	8 at 100 % of AMI

The eight (8) workforce units shall be rental units and shall not be sold individually without the prior written approval of the Planning Board after public hearing. The eight new market rate units may be sold individually or leased as Developer should elect.

4. The development rights granted hereunder shall be exercised and development permits may be obtained hereunder for a period of two years from the effective date of the Agreement. Upon receipt of necessary development permits construction shall proceed, continuously and expeditiously, but in no case shall construction exceed three years from receipt of necessary development permits. Developer estimates that construction will commence on or about June, 2009 and will be completed on or about September 2010; the development rights granted under this agreement shall not transfer to another owner without the prior written permission of the Planning Board and the Town Manager.
5. All lead paint in the existing units located at 37 and 53 School Street shall be removed as units become vacant. No such vacated unit shall be occupied until Developer provides verification acceptable to the Building Commissioner, with copies to the Planning Board, that the unit has been de-leaded;
6. Prior to the issuance of any building permits for the construction of the eight (8) new units, Developer shall provide the Town of Barnstable Building Commissioner access to inspect all the units located at 37 and 53 School Street for the purpose of making a determination as to their compliance with the applicable building code, allowing for whatever grandfather protection the apartment units within the buildings may have based upon the age of the creation of said apartments units. Within thirty (30) days of the completion of the inspection, the Building Commissioner shall provide Developer with a detailed written list of all the repairs and/or renovations that are required to be completed to bring these units into compliance with the applicable building code. No occupancy permits shall issue for any of the 8 new units in the Project until all required repairs and renovations are made to the satisfaction of the Building Commissioner;
7. Developer provided the Town with funds to hire an independent inspector to evaluate all the appliances, utility services, fixtures, heating systems and structural systems including roofs, windows, floors, walls, etc located at 37 and 53 School Street. The inspector's report (Eagle Eye Inspection Agreement for 37 and 51 School Street Hyannis dated 1-30-08) is on file with the Planning Board. The Developer shall either replace, or make repairs to, or renovate any items rated less than "C" in the inspector's report. No occupancy permits shall issue for any of the 8 new units in the Project until all repairs and renovations identified by the Planning Board are made to the satisfaction of the Building Commissioner;
8. Developer shall establish a condominium association or unit owners association to carry out the ongoing maintenance and upkeep of the property and buildings as well as complying with the terms and conditions of this Agreement. The association shall include all residential condominium units and Developer on behalf of occupants of rental units. For the purposes of this Agreement, the term "Developer" shall mean the Developer and/or Developer's successor condominium association(s) or any other successors in interest or assignees. The form and content of condominium association documents, including the condominium master deed and association bylaws, shall be approved by the Town of Barnstable Legal Department prior to the sale of any condominium units;
9. If the development rights granted herein are exercised, Developer shall contribute to public capital facilities to serve the proposed development and the Town by making payment in the amount of \$92,700. The amount of \$80,000 of that sum shall be used for the rehabilitation of the sewer pipe liner on School Street and the remainder shall be retained for additional infrastructure improvements which will benefit the area in and around School Street. No building permit shall issue for construction of any of the eight (8) new units until the total amount of \$92,700 is paid into the Town;
10. Lighting for the development shall be contained on-site, shall be down cast, shall not contribute to light pollution of the area, and shall be constructed consistent with the lighting plan identified in paragraph 1, above. Developer shall screen the area around the dumpster with a fence landscaped with climbing ivy, forsythia or other flowering plants which will reach fence height over the years;
11. The site shall be landscaped consistent with the landscaping plan identified in paragraph 1, above. All landscaping within the development shall be low water use and shall minimize the use of fertilizers and

pesticides. Developer shall maintain landscaping, irrigation and drainage, including subsurface drainage, in perpetuity;

12. Utilities shall be buried underground within the Property and shall be maintained by Developer;
13. Developer shall be responsible for snow plowing and snow removal on the Development site in perpetuity;
14. *Bond: Prior to the issuance of any foundation building permit, Developer will provide a performance bond in an amount to be approved by the Planning Board or its designee, said bond to be expended on the replacement of landscape materials if such replacement becomes necessary. Any unexpended portion of said performance bond may be released by the Planning Board to Developer or his successor(s) after three years from the date of the initial landscape plantings, such date to be determined by the Building Commissioner, upon the request of Developer;*
15. *Bond: To ensure completion of development [Steve to recommend amount with developer input];*
16. Developer and its successors will participate in the Town of Barnstable's Transportation Management Association (TMA) upon its formation. Participation shall include: (a) distribution of materials provided by the Town to all tenants, lessees, and purchasers of condominium units within the development; and (b) the identification of a representative for the development who will serve as the contact between the inhabitants and tenants of the development and the Town's TMA;
17. Developer shall provide 8 workforce units which shall be rental units. Developer agrees to rent the eight workforce units to qualified affordable tenants whose income is at 100% of the area median income based upon household size. The rental prices for each unit shall be based upon a formula under which monthly housing costs, including rent and utilities, shall not exceed 30 % of 90% of the area median income based upon household size;
18. Before any building permits shall issue for the market rate units, Developer shall have executed and recorded at the Barnstable County Registry of Deeds a workforce housing restriction, which shall survive foreclosure, and which shall require that these units remain workforce housing units in perpetuity and a monitoring services agreement, both in a form which has been approved by the Town Attorney. The workforce housing restriction and monitoring services agreement shall apply to each of the 8 rental workforce units and shall be binding on Developer. Developer reserves the right, subject to prior notification to and written approval from the Planning Board, to convert the rental units to home ownership units. Any units so converted shall remain subject to a workforce housing restriction which shall survive foreclosure.
19. The Barnstable Housing Authority (BHA) shall serve as the Monitoring Agent for the workforce units. The BHA shall initially review the income eligibility of each of the tenants residing in the workforce units and every September thereafter shall review and certify the income eligibility of the tenants occupying the workforce units. Developer shall cooperate with the BHA and shall provide the BHA with all information requested, including tenant releases, to verify income eligibility. The BHA shall provide the Planning Board with an annual report, within 60 days of the completion of its certification, verifying the income eligibility of the tenant(s) occupying the workforce units. Developer shall pay the BHA an initial start up fee of \$500.00 plus \$125.00 for each work force unit for a total of One Thousand, Five Hundred (\$1,500.00) Dollars. No building permit shall issue for the market rate units, until Developer provides the Building Commissioner with proof that said \$1,500.00 has been paid to the BHA. Thereafter, no later than July 1st of each year, Developer shall pay the BHA a monitoring fee of \$125.00 for each workforce unit. Every five (5) years from the date of the execution of this Agreement, the Planning Board shall review the fee charged by the BHA and shall adjust the fee if it determines that the fee fails to adequately compensate the BHA for the costs of conducting the income certification. Developer's failure to cooperate with the BHA or to pay the fees required herein shall be deemed a material breach of this Agreement;

20. All plumbing fixtures in the new units and any replacement plumbing fixtures in the existing units shall be low water use fixtures and other water conservation measures are encouraged in the design and development of the project;
21. Consistent with approved plans, Developer shall construct a Passive Stormwater Maintenance and Infiltration System to service the Development;
22. Developer will assume all maintenance responsibilities for the Passive Stormwater System servicing the Property, and the landscaping and irrigation at the Property;
23. Construction and demolition debris from the Development shall be removed and reused or recycled to the maximum extent possible;
24. Developer shall provide calculations demonstrating adequate water flow for fire suppression as required by the Hyannis Fire Department;
25. Developer is responsible for obtaining all applicable permits and licenses, including but not limited to the following: foundation permit, building permit, street excavation permit (necessary for work in all public spaces,), sewer permits and water permits. Only approved contractors are allowed to work on Town owned property. Contractors are required to have the insurance stipulated in the Street Excavation Rules and Regulations (SERR) and all work on town property must comply with all provisions of SERR. All work within the public way and public utility services shall be to Town Standards. All plans shall be reviewed and approved by the Department of Public Works prior to initiating any work within the public way;
26. Developer will make best efforts to complete construction work in accordance with a construction schedule and sequencing plan submitted to the Town prior to the execution of the Regulatory Agreement. To the extent construction impacts public property or public rights of passage, changes in the schedule, if needed as work progresses, are subject to the approval of the Town. The construction schedule shall, to the maximum extent feasible, avoid interference with ferry truck traffic. The developer shall notify the Town of Barnstable Growth Management Department and the Department of Public Works at least 48 hours in advance of working on Town property. The Developer will be responsible for all construction signage, directional signs, and police officers necessary for the performance of the work;
27. Exterior construction impacts shall be minimized and construction shall be limited to the hours of 7:30 a.m. to 6:00 p.m. weekdays, and 8:30 a.m. to 2:00 p.m. Saturdays. No exterior construction shall occur on Sundays. The Building Commissioner shall establish protocols to minimize the location of staging, noise, dust, and vibration;
28. During all stages in the demolition, rehabilitation and new construction, all vehicles, equipment and materials associated with the development shall be required to be located off the right of way of School Street except as may be required to install utilities, and work authorized by this Agreement and as approved by Public Works and then only on a temporary basis;
29. To the extent that the referenced plans do not depict all of the findings and conditions as set forth in this Agreement, revised plans and/or notations shall be provided. In addition to permits, plans and approvals listed above, any and all permits and licenses required shall be obtained;
30. Each residential unit shall have at least one dedicated parking space;
31. Developer will provide a bicycle rack at the Development site;
32. Upon completion of all work (the Project); Developer shall cause a registered engineer of land surveyor to submit as-built plans accompanied by a letter of certification, made upon knowledge and belief in accordance with professional standards that all work has been done in substantial compliance with the

approved site plan. This document shall be submitted prior to the issuance of the final certificate of occupancy;

33. Town hereby grants a waiver from the following zoning restrictions:

Density: Relief is granted from Section 240-24.1.4.B, to allow 16 residential units on 40,721 s.f. of land;

Front Setback is granted from Section 240.24.1.4.C from 20 ft to 16.8 ft.

Side Setback is granted from Section 240.24.1.4.C from 10 ft. to 6.3 ft

Rear Setback is granted from Section 240.24.1.4.C from 10 ft. to 9.2 ft

Driveway width/impervious surface limits from Section 170.9 from not more than 25% of the front yard as parking and no more than 20 feet of frontage as a parking area to 17.5% of the front yard as parking and 24 feet of frontage as a parking area.

Dumpster setback, Relief is granted from 10 ft. to 7 ft.

34. All mechanical equipment associated with the Development (air conditioners, electric generators, etc.) shall be located so as to conform to the minimum required setbacks for the district. That being: a 16.8-foot front setback and a 6.3-foot side and a 9.2 rear yard setbacks. All mechanical equipment shall be screened from neighboring homes and ways;

35. The development allowed in this permit shall be considered full build-out of the property. The structures authorized shall not be expanded nor other buildings and structures added without prior permission from this Board.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed, on the day and year first above written.

Dated this _____ day of _____, 2008

Town of Barnstable
By:

Developer, Alan Granby and Janice Hyland
By:

COMMONWEALTH OF MASSACHUSETTS
_____ County, ss.

On this ____ day of _____, 2008, before me, the undersigned notary public, personally appeared _____, the trustee of Guaranteed Fresh Produce, proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. passport] [my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged to me that he/she signed it voluntarily for its stated purpose as Trustee of Guaranteed Fresh Produce.

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS
_____ County, ss.

On this ____ day of _____, 2008, before me, the undersigned notary public, personally appeared John C. Klimm, Town Manager for the Town of Barnstable, Massachusetts, and proved to me through satisfactory evidence of identification, which was [a current driver's license] [a current U.S. passport] [my personal knowledge], to be the person whose name is signed on the preceding instrument and acknowledged to me that he signed it voluntarily for its stated purpose as Town Manager as aforesaid.

Notary Public
My commission expires

A. OLD BUSINESS (May be acted upon) (Roll-call)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-007
INTRO: 07/17/08, 08/21/08

2009-007 AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AMENDED AND RESTATED RESTRICTION - BEALE WAY/HINCKLEY RESTRICTION

ORDERED: That the Town Council vote to amend a certain “Grant of Restriction” granted to the Town by Heather Hinckley by instrument dated January 21, 2005 and recorded in the Barnstable Registry of Deeds in Book 19807 Page 263 concerning property on Beale Way, Barnstable, MA; and that the Town Manager is hereby authorized to execute an Amended and Restated Restriction, in the form attached hereto, and that upon the execution and recording of the Amended and Restated Restriction, the original restriction shall have no further force and effect and the rights of the parties shall be subject to and governed solely by the terms of the Amended and Restated Restriction

SPONSOR: Town Councilor Ann Canedy

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read item
- Council discussion
- Move/vote

BARNSTABLE TOWN COUNCIL

AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AMENDED AND RESTATED RESTRICTION - BEALE WAY/HINCKLEY RESTRICTION

ITEM# 2009-007
INTRO: 07/17/08, 08/21/08

SUMMARY

TO: Town Council and Planning Board
FROM: Growth Management Department
DATE: July 7, 2008
SUBJECT: Amend Restriction Granted by Heather Hinckley recorded in the Barnstable Registry of Deeds in Book 19807 Page 263

BACKGROUND: Heather Hinckley as the owner of land located on Beale Way, Barnstable, MA and in connection with the settlement of a lawsuit filed against the Planning Board, (*Heather Hinckley v. Robert Stahley et al, Barnstable Superior Court C.A. No. 04-200*), granted a restriction to the Town for the purpose of providing and preserving adequate access to the land. The restriction provided that the land would not be developed into more than 2 lots and there would be no improvements except for 2 single family dwellings and certain appurtenant uses, certain utility purposes and uses consistent with the principal recreational uses of the Barnstable Yacht Club (located at the end of Beale Way). At the time of the grant the land was improved with a single family dwelling and the restriction provided that no additional single family dwelling could be built unless certain improvements had been made to Beale Way, including a macadam surface and two turnouts.

The restriction is being amended to state that the land has been divided into 2 lots shown as Lot 1 and Lot 2 on Plan Book 599 Page 25, that Lot 2 is improved with a single family dwelling and that Lot 1, or a portion thereof, may be combined with a portion of the land to the east, shown as "Judith E. Kaess" on Plan Book 599 Page 25, for the purpose of creating one buildable lot, for single family residential purposes with the access to the lot to be via Beale Way; and that no building permit shall be issued for a single-family dwelling on Lot 1 or on any new lot created by a division, subdivision or combination of Lot 1 with a portion of the adjoining land, unless and until certain improvements are made to Beale Way, including a macadam surface and two turnouts, with a plan attached showing the approved location of the two turnouts.

FISCAL IMPACT: Neutral

STAFF ASSISTANCE: Patty Daley, Interim Director, Growth Management
Jo Anne Miller Buntich, Assistant Director, Growth Management

AMENDED AND RESTATED RESTRICTION

This Agreement made this _____ day of _____, 2008, by and between, Heather Handy Hinckley, of 114 Beale Way, Box 365, Barnstable, MA 02630 ("Grantor") and the Town of Barnstable, a Massachusetts municipal corporation, with a principal office at New Town Hall, 367 Main Street, Hyannis, MA 02601 ("Town");

WITNESSETH:

WHEREAS, Grantor, by instrument dated January 21, 2005, and recorded in the Barnstable County Registry of Deeds in Book 19807 Page 263, granted to the Inhabitants of the Town of Barnstable, a restriction ("original Restriction") for the purpose of providing, protecting and preserving adequate access to land owned by the Grantor and located on Beale Way, Barnstable, Barnstable County, MA;

WHEREAS, the land owned by the Grantor on Beale Way, was formerly shown as Lot 2 on a plan recorded with the Barnstable County Registry of Deeds in Plan Book 407 Page 95; and

WHEREAS, Lot 2 on Plan Book 407 Page 95 has been divided into Lot 1 and Lot 2 as shown on an Approval Not Required Plan recorded in Barnstable County Registry of Deeds in Plan Book 599 Page 25.

WHEREAS, the parties desire to enter into this Amended and Restated Restriction for the purpose of amending and restating the provisions of the original Restriction;

WHEREAS, the parties agree that upon the execution and recording of this Amended and Restated Restriction, the original Restriction shall have no further force and effect and the rights of the parties shall be subject to and governed solely by the terms of this Amended and Restated Restriction;

NOW THEREFORE, in consideration of \$1.00 and the mutual promises and covenants contained herein, the parties hereby agree that this Amended and Restated Restriction shall be substituted for the original Restriction and the Grantor does hereby grant to the Inhabitants of the Town of Barnstable, a Massachusetts municipal corporation with an office at 367 Main Street, Hyannis, MA, the following restriction on the land shown as Lot 1 and Lot 2 on Plan Book 599 Page 25, in accordance with the provisions of the Agreement for Judgment in *Heather Hinckley v. Robert Stahley et al*, Barnstable Superior Court C.A. No. 04-200, which restriction shall run with the land and have legal significance and be binding upon all successors in title as provided herein, and shall be enforceable only by the Town of Barnstable:

1. There now exists a single family dwelling on Lot 2 on Plan Book 599 Page 25. No further improvements shall be made on Lot 2 except for:
 - (a) the construction and maintenance of facilities appurtenant to the existing single family dwelling;
 - (b) any improvements pursuant to the power line easement recorded in Book 1009 on Page 551; and
 - (c) any uses accessory to the principal recreational use of the Barnstable Yacht Club.
2. Lot 1 on Plan Book 599 Page 25 is a vacant lot. Lot 1 may be used for the following purposes:
 - (a) the construction and maintenance of one single family dwelling and its appurtenant facilities;
 - (b) any improvements pursuant to the power line easement recorded in Book 1009 on Page 551;
 - (c) any uses accessory to the principal recreational use of the Barnstable Yacht Club; and
 - (d) Lot 1, or a portion thereof, may be combined with a portion of the land to the east, shown as "Judith E. Kaess" on Plan Book 599 Page 25, for the purpose of creating one buildable lot, for single family residential purposes with the access to the lot to be via Beale Way.

3. No building permit shall be issued for a single-family dwelling to be constructed on Lot 1 or on any new lot created by a division, subdivision or combination of Lot 1 with a portion of the adjoining land of "Judith E. Kaess" unless and until:
 - (a) Beale Way as shown on Plan Book 599 Page 25 is improved and maintained to the satisfaction of the building permitting authority, with a macadam surface one and one-half inches in thickness and ten feet wide; and
 - (b) two ten foot by thirty foot paved turnouts are constructed wholly within the layout of Beale Way in the area as shown on the attached plan.
4. Grantor acknowledges and agrees for herself and her successors in interest that the Grantee is under no duty or obligation to improve or maintain any access to the land area shown as Lot 1 and Lot 2 on Plan Book 599 Page 25, pursuant to this restriction or otherwise.
5. Grantor acknowledges and agrees for herself and her successors in interest that these restrictions shall constitute restrictions running with said land so as to affect title to said land.

Heather Handy Hinckley

Town of Barnstable

COMMONWEALTH OF MASSACHUSETTS

Barnstable ss:

On this the ____ day of _____, 2008, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification which was a _____, to be the person(s) whose name(s) is/are signed on the preceding or attached document, and acknowledged to me that he/they signed it for its stated purpose.

Notary Public
My Commission expires:

COMMONWEALTH OF MASSACHUSETTS

Barnstable ss:

On this the ____ day of _____, 2008, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification which was a _____, to be the person(s) whose name(s) is/are signed on the preceding or attached document, and acknowledged to me that he/they signed it for its stated purpose.

Notary Public
My Commission expires: _____

A. OLD BUSINESS (Public Hearing) (Roll-call 2/3)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-008
INTRO: 07/17/08, 08/21/08**

2009-008 AMEND ZONING ORDINANCE, ARTICLE III. DISTRICT REGULATIONS, §240-39. SHOPPING CENTER REDEVELOPMENT OVERLAY DISTRICT

ORDERED that:

Section 1. That the Zoning Ordinance, Article III. District Regulations, §240-39. Shopping Center Redevelopment Overlay District, Section F. Permitted and prohibited uses, is hereby amended as follows:

By adding the following language to §240-39 F. (2)(f):

“except that a drive-through bank shall be permitted in so much of the Shopping Center Redevelopment Overlay District, as lies within the underlying Highway Business District, subject to the special permit provisions of §240-39M.”

So that as revised subsection (f) shall now read:

“(f) Drive-through restaurant or drive-through bank, except that a drive-through bank shall be permitted in so much of the Shopping Center Redevelopment Overlay District, as lies within the underlying Highway Business District, subject to the special permit provisions of §240-39M.”

Section 2. That the Zoning Ordinance, Article III. District Regulations, §240-39. Shopping Center Redevelopment Overlay District, Section M. Special permit provisions, is hereby amended as follows:

By adding the following new sentence to §240-39M. (1)(a):

“ In addition, no building permit or occupancy permit shall be issued for a drive-through bank unless the Zoning Board of Appeals has issued a special permit or a modification of a special permit issued under this section, approving such use, subject to the provisions of this §240-39M.”

Section 3. That the Zoning Ordinance, Article III. District Regulations, §240-39. Shopping Center Redevelopment Overlay District is hereby amended by deleting §240-39 G. (1)(e) in its entirety and inserting in place thereof, the following new (e):

(e) Minimum front yard setback (at perimeter of the redevelopment area): 30 feet

[1] One hundred feet along Route 132/Iyanough Road.

[2] One hundred feet along the easterly side of the roadway which would be created if Independence Drive were extended from its existing terminus on the northerly side of Route 132 along its current trajectory across Route 132 and the redevelopment area.

[3] Within one hundred feet of Route 28/Falmouth Road, the minimum setback shall be twenty feet, but there shall be a maximum setback of fifty feet.

DATE

ACTION TAKEN

- _____ Read item
- _____ Motion to Open Public Hearing
- _____ Rationale
- _____ Public Hearing
- _____ Close public hearing
- _____ Council discussion
- _____ Move/vote

BARNSTABLE TOWN COUNCIL
AMEND ZONING ORDINANCE
SHOPPING CENTER REDEVELOPMENT OVERLAY DISTRICT

ITEM# 2009-008
INTRO: 07/17/08, 08/21/08

SUMMARY

TO: Town Council and Planning Board
FROM: Growth Management Department
DATE: July 7, 2008
SUBJECT: Amend Zoning Ordinance, Article III. District Regulations, §240-39.

BACKGROUND: This involves the amendment of the Zoning Ordinance, Article III District Regulations, §240-39. Shopping Center Redevelopment Overlay District (SCROD), to permit a drive-through bank in that portion of the SCROD which is located in the Highway Business (HB) portion of the SCROD. The amendment also amends the front yard setbacks on Route 28/Falmouth Road within the SCROD to provide that within the first 100 feet, the minimum building setback shall be 20 feet and the maximum building setback shall be 50 feet.

In 1996, the Zoning Ordinance was amended to add the SCROD so as to permit the renovation and redevelopment of the then existing shopping center, subject to specific regulations and requirements, including the issuance of a special permit by the Zoning Board of Appeals under §240-39M. Under the SCROD, after the issuance of a special permit, the regulations and requirements set forth in the SCROD govern even where they are inconsistent with or less restrictive than the other requirements of the chapter.

Even though a drive-through bank is a use permitted by special permit in the underlying HB District, such use is prohibited in the SCROD District.

The Board of Appeals has issued a special permit for the redevelopment of the Cape Cod mall. Accordingly, at present, a drive-through bank is a prohibited use in the SCROD.

ANALYSIS: The purpose of the amendment is to permit drive-through banks in so much of the SCROD as is included within the underlying HB District, and subject to the issuance of a special permit or to the modification of the special permit issued to redevelop the Mall.

The amendment to the setback provisions along Route 28 would ensure that with respect to any future buildings constructed within 100 feet of Route 28, the parking would be located to the rear or side of the buildings.

RATIONALE: Permitting a drive-through bank in the HB portion of the SCROD, will make the use consistent with the underlying HB District

STAFF ASSISTANCE: Patty Daley, Interim Director, Growth Management
Jo Anne Miller Buntich, Assistant Director, Growth Management

A. OLD BUSINESS (Public Hearing) (Roll-call 2/3)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-010
INTRO: 07/17/08, 08/21/08

2009-010 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$419,250 FOR THE BARNSTABLE HARBOR DREDGE PROJECT

ORDERED: That the sum of \$419,250 be appropriated all for the purpose of funding the maintenance dredging of Barnstable Harbor, and that to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, is authorized to borrow \$419,250, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes and be authorized to accept any grants or gifts in relation thereto.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Motion to Open Public Hearing
- ___ Rationale
- ___ Public Hearing
- ___ Close public hearing
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL

APPROPRIATION AND LOAN ORDER FOR THE DESIGN AND PERMITTING OF BARNSTABLE HARBOR

**ITEM# 2009-010
INTRO: 07/17/08, 08/21/08**

SUMMARY

TO: Town Council
FROM: John Klimm, Town Manager
DATE: July 7, 2006
SUBJECT: Appropriation and Loan Order for the maintenance dredging of Barnstable Harbor

BACKGROUND: In FY 2006 the Town Council appropriated capital funds to proceed with the design and permitting for the maintenance dredging of Barnstable Harbor. The maintenance dredging is needed to remove approximately 15,000 cubic yards of material from the existing channel area within Barnstable Harbor.

ANALYSIS: The Harbor reports that shoaling in the channel is making it difficult for all but the smallest boats to use the channel during low tide periods. This greatly restricts the access to the Harbor for both commercial and recreational boats. Permits have been obtained to apply dredge material at Sandy Neck and Blish Point. The Town is awaiting the final permits to proceed with this project.

FISCAL IMPACT: After the adoption of the FY09 capital improvement program the Town has approximately \$1.8 million per year for the next four years in borrowing capacity for additional capital improvements that can be financed within the projected cash flow of the Capital Trust Fund. Approval of this project will reduce the remaining funds available for all other improvements currently listed in the capital plan.

STAFF ASSISTANCE: Patty Daley, Interim Director, Growth Management,
Jo Anne Miller Buntich, Assistant Director, Growth Management

SPONSOR: Town Manager John C. Klimm

A. OLD BUSINESS (Public Hearing) (Roll-call)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-013
INTRO: 07/17/08, 08/21/08**

2009-013 TO SEE IF THE TOWN COUNCIL WILL ACCEPT G.L. C.39, §23D AND AMEND THE GENERAL ORDINANCE TO ADOPT PROCEDURES FOR ABSENTEE MEMBERS OF BOARDS AT ADJUDICATORY HEARINGS

ORDERED, that:

SECTION 1: Section 23D of chapter 39 of the general laws is hereby accepted.

SECTION 2: Chapter 37 of the General Ordinance is hereby amended by inserting the following after Section 37-7:

§37-8. Absentee Members of certain Boards, Committees and Commissions

In accordance with Massachusetts General Laws Chapter 39, section 23D, an absentee voting member of any of the boards, committees and commissions of the town of Barnstable holding an adjudicatory hearing shall not be disqualified from voting solely on the basis of missing a single session so long as the following criteria are met: (1) the absentee voting member shall be absent from no more than a single session of the hearing at which testimony or other evidence is received; (2) prior to voting, the absentee member shall certify in writing that he has examined all evidence received at the missed session, and watched the video recording of the missed session, or, if no video recording is available, then has listened to the audio tape or reviewed a verbatim transcript of the missed session; and (3) the absentee member shall certify in writing which evidence was reviewed, and the written certification shall be made part of the record, and shall be filed with the Town Clerk.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Motion to Open Public Hearing
- ___ Rationale
- ___ Public Hearing
- ___ Close public hearing
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL

ADOPTION OF THE MULLIN RULE FOR REGULATORY BOARDS

ITEM# 2009-013
INTRO: 07/17/08, 08/21/08

SUMMARY

TO: Town Council
FROM: Interim Director Patty Daley, Growth Management
DATE: July 8, 2008
SUBJECT: Adoption of the Mullin Rule for Regulatory Boards

ANALYSIS: The Planning Board instituted this ordinance request. Upon acceptance by the Town through adoption of an ordinance, G.L. c.39, §23D, authorizes a member of a board, committee or commission holding an adjudicatory hearing to vote in the matter even though the individual has missed one session, provided that certain conditions are met. In order to vote, the member must review the proceedings of the missed hearing and sign a statement acknowledging the review. This provision, if accepted, overturns in part judicial precedent providing that only members present at all sessions of an adjudicatory hearing on a particular matter are eligible to vote on that matter.

RATIONALE: The acceptance and adoption of this Ordinance will allow various regulatory processes to proceed in a more efficient manner.

FISCAL IMPACT: The fiscal impact is neutral. Adoption will reduce costs for applicants who must currently expend additional funds to have consultants and attorneys present for additional hearing sessions.

STAFF ASSISTANCE: Patricia Daley, Interim Director, Growth Management
Jo Anne Miller Buntich, Growth Management, Assistant Director
Ruth Weil, Town Attorney

BARNSTABLE TOWN COUNCIL

ADOPTION OF THE MULLIN RULE FOR REGULATORY BOARDS

ITEM# 2009-013
INTRO: 07/17/08, 08/21/08

M.G.L.A. 39 § 23D

§ 23D. Adjudicatory hearings; attendance by municipal board, committee and commission members; voting disqualification

(a) Notwithstanding any general or special law to the contrary, upon municipal acceptance of this section for 1 or more types of adjudicatory hearings, a member of any municipal board, committee or commission when holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that he has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing. Nothing in this section shall change, replace, negate, or otherwise supersede applicable quorum requirements.

(b) By ordinance or by-law, a city or town may adopt minimum additional requirements for attendance at scheduled board, committee, and commission hearings under this section.

A. OLD BUSINESS (Public Hearing) (Roll-call)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-014
INTRO: 07/17/08, 08/21/08**

**2009-014 COMMUNITY PRESERVATION FUND APPROPRIATION & TRANSFER
IN THE AMOUNT OF \$108,000 FOR COMMUNITY HOUSING**

ORDERED: That, pursuant to the provisions of G. L. c. 44B, the sum of One Hundred Eight Thousand and No/100 (\$108,000.00) Dollars be appropriated and transferred from the proposed amount set aside for Community Housing in the Community Preservation Fund described in agenda Item 2008-161 for the purpose of creating and supporting the purchase of affordable rental units, by the Barnstable Housing Authority, through the Town of Barnstable's Inclusionary Housing Ordinance by allocating \$50,000.00 per unit to buy down the cost of two (2) units and \$4,000.00 per unit for closing costs and legal fees of the two (2) units to be administered by the Town of Barnstable, Growth Management Department and authorize the Town Manager to acquire affordable housing restrictions, easements and other security on behalf of the Town.

SPONSOR: Town Manager upon recommendation of the Community Preservation Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Motion to Open Public Hearing
- ___ Rationale
- ___ Public Hearing
- ___ Close public hearing
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL

CPC FUNDING REQUEST FROM BHA FOR ITS WORKFORCE HOUSING INCLUSIONARY PROGRAM (WHIP) PHASE 2

ITEM# 2009-014
INTRO: 07/17/08, 08/21/08

SUMMARY

TO: Town Council
FROM: Community Preservation Committee
DATE: July 2, 2008
SUBJECT: Rationale for the funding for the Barnstable Housing Authority (WHIP) Phase 2

BACKGROUND: The Community Preservation Committee (CPC) met on June 17, 2008 and has recommended that the town support the funding request of \$108,000.00 from the Barnstable Housing Authority for their Workforce Housing Inclusionary Program (WHIP) Phase 2.

RATIONALE: The project goal is to create and support the purchase of affordable rental units, by the Barnstable Housing Authority, which units have been created through the Town of Barnstable's Inclusionary Housing Ordinance. The request is for \$50,000.00 per unit to buy down the cost of two (2) units and \$4,000.00 per unit to cover closing costs and legal fees for the units located at Flagship Estates, LLC in Hyannis. The Barnstable Housing Authority is the designated buyer for these units and the funds requested would greatly help in lowering the mortgages therefore lowering the rent necessary to meet expenses of these units.

The Barnstable Housing Authority will provide the administrative support for the program. Each unit will be deed restricted requiring that the unit remains affordable in perpetuity.

STAFF ASSISTANCE: Alisha Parker

A. OLD BUSINESS (Public Hearing) (Roll-call)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-015
INTRO: 07/17/08, 08/21/08**

2009-015 APPROPRIATION AND TRANSFER ORDER TO FUND A SPECIAL PROJECTS COORDINATOR TO SUPPORT THE BARNSTABLE COASTAL RESOURCES MANAGEMENT COMMITTEE

ORDERED, that the Town Council hereby appropriate the sum of \$40,620 to fund a one-year, half time, Special Projects Coordinator staff position to support the Barnstable Coastal Resources Management Committee, and to fund that appropriation, that \$40,620 be transferred from available funds.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Motion to Open Public Hearing
- ___ Rationale
- ___ Public Hearing
- ___ Close public hearing
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL

APPROPRIATION AND TRANSFER ORDER TO FUND A SPECIAL PROJECTS COORDINATOR TO SUPPORT THE BARNSTABLE COASTAL RESOURCES MANAGEMENT COMMITTEE

ITEM# 2009-015
INTRO: 07/17/08, 08/21/08

SUMMARY

TO: Town Council
FROM: John C. Klimm, Town Manager
DATE: July 17, 2008
SUBJECT: FY09 Appropriation Order for Special Projects Coordinator Staff Position

BACKGROUND: In May of 2008, the Barnstable Town Council created a Coastal Resources Management Committee, which Committee is charged with updating the 1990 Camp, Dresser & McKee Coastal Resources Management Plan. The Committee is also charged with investigating the question of whether to pursue state-designation of town Harbor Management Plans and with making recommendations for land use enactments, watershed zoning, and identifying other tools deemed by the Committee to be beneficial to the Town.

The Committee has held several meetings and has identified the need for administrative and technical assistance to best carry out its charge. The requested funds would support a half-time position beginning in August and ending November 8, 2009, tasked with data gathering and analysis, report drafting, and other tasks as identified by the Committee.

The salary portion of the request is for \$37,620 and the operating budget portion of this request (copies, postage, etc.) is \$3,000.

FISCAL IMPACT: This is a one-time expense. The funding for this appropriation will be provided from the Capital Trust Fund.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends approval of the appropriation order after the required public hearing.

A. OLD BUSINESS (May be acted upon) (Roll-call)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-016
INTRO: 07/17/08, 08/21/08

2009-016 AN ORDER AMENDING THE ADMINISTRATIVE CODE TO PROVIDE FOR INTERIM APPOINTMENTS ON REGULATORY BOARDS/COMMITTEES/COMMISSIONS

ORDERED, that Section 241-8(C) of the Town of Barnstable Administrative Code be hereby amended as follows:

Section 1

Under Section 241-8(C) Term of Offices, at the end of the second sentence, the following shall be added, "...except when vacancies occur involving a majority of the members of a multiple member board which conducts adjudicatory hearings. The Town Council may make interim appointments for a period not to exceed six months while permanent members are sought to fill the remainder of the term." so that Section 241-8(C), now reads:

C. Term of office. The terms of office of multiple-member boards are arranged so that 1/3 of the terms, as nearly as is possible, shall expire each year. A vacancy shall be filled by the Town Council for the remainder of the term, except when vacancies occur involving a majority of the members of a multiple member board which conducts adjudicatory hearings. The Town Council may make interim appointments for a period not to exceed six months while permanent members are sought to fill the remainder of the term. Length of office is three years, except as noted. Appointments are effective the first of July, and expire the 30th of June. Numbers of members for boards will vary. The Town Council shall annually evaluate all members subject to reappointment. Members may be removed for cause, subject to an investigation and hearing by the Town Council, pursuant to the Charter, Section 2-10

SPONSORS: Town Councilor & Vice President Frederick Chirigotis
Town Councilors Rick Barry, Leah Curtis, Hank Farnham, Tom Rugo

DATE

ACTION TAKEN

____ Read item
____ Council discussion
____ Move/vote

BARNSTABLE TOWN COUNCIL
ADMINISTRATIVE CODE AMENDMENT

ITEM# 2009-016
INTRO: 07/17/08, 08/21/08

SUMMARY

TO: Town Council
FROM: Town Attorney Ruth J. Weil
DATE: July 17, 2008
SUBJECT: Amendment to the Administrative Code

RATIONALE: This amendment only applies to boards, committees, and commissions that hold adjudicatory hearings. It provides that where a majority of the seats in such boards become vacant, the Town Council has the opportunity to appoint qualified applicants who might only be in a position to assist on a temporary basis. Such interim appointment shall not exceed six months.

REDLINED VERSION WITH PROPOSED AMENDMENT UNDERLINED

Section 241-8(C), now reads:

C. Term of office. The terms of office of multiple-member boards are arranged so that 1/3 of the terms, as nearly as is possible, shall expire each year. A vacancy shall be filled by the Town Council for the remainder of the term, except when vacancies occur involving a majority of the members of a multiple member board which conducts adjudicatory hearings. The Town Council may make interim appointments for a period not to exceed six months while permanent members are sought to fill the remainder of the term. Length of office is three years, except as noted. Appointments are effective the first of July, and expire the 30th of June. Numbers of members for boards will vary. The Town Council shall annually evaluate all members subject to reappointment. Members may be removed for cause, subject to an investigation and hearing by the Town Council, pursuant to the Charter, Section 2-10

A. OLD BUSINESS (Public Hearing) (Roll-call)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-017
INTRO: 07/17/08, 08/21/08**

2009-017 COMMUNITY PRESERVATION FUND APPROPRIATION AND TRANSFER TO ACQUIRE 2.7 ACRES MORE OR LESS FOR OPEN SPACE AND RECREATION, ASSESSORS MAP 226, PARCEL 008, Lot 001

ORDERED: That the sum not to exceed the amount of Seven Hundred and Fifty Thousand (\$750,000.00) and No/100 Dollars be appropriated and transferred from the amount set aside for open space acquisitions under the Community Preservation Fund in Fiscal Year 2009 for the acquisition and creation of open space and recreation by the Town and interests in land on the property shown on Assessors Map 226, Parcel 008, Lot 001 consisting of 2.7 acres more or less and that the Growth Management Department is authorized to contract for and expend the amount appropriated for the purposes of acquiring and creating such open space.

SPONSORS: President Joakim, Vice President Chirigotis, & Councilor Rugo

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Motion to Open Public Hearing
- ___ Rationale
- ___ Public Hearing
- ___ Close public hearing
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL

APPROPRIATION OF COMMUNITY PRESERVATION FUNDS FOR 2.07 ACRES OF OPEN SPACE

ITEM# 2009-017
INTRO: 07/17/08, 08/21/08

SUMMARY

TO: Town Council
FROM: Community Preservation Committee
DATE: August 13, 2008
SUBJECT: Suni-Sands Property, Map 226, Parcel 008, Lot 001

BACKGROUND: The Suni-Sands Motel property located at 946 Craigville Beach Road, Centerville, MA. and the lot consists of 2.7 acres more or less with approximately 2.0 acres of wetlands. The property owners are in bankruptcy and the property was auctioned by the Trustee in Bankruptcy on July 17, 2008, subject to Court approval.

Because the high bid of \$540,000 at the public auction was not adequate to satisfy the Trustee, the Town now has the opportunity to engage in a Court-supervised bidding for the property. A minimum qualifying bid of \$577,500 is required to be submitted to the Court by September 5, 2008, accompanied by a deposit of \$25,000. Thereafter, the Court will hold a hearing on September 10, 2008 to approve, reject, and/or accept higher offers in a bidding context.

The opportunity was brought to the attention of the Community Preservation Committee (CPC) which met on July 15, 2008 and in Executive Session, recommended that the town support the acquisition of the property. The CPC Members also voted in Executive Session to approve CPC funds for the Open Space acquisition not to exceed \$750,000.00.

RATIONALE: The Town sees an opportunity to acquire and un-develop the property which is located in a sensitive area of Craigville. The potential for development of the property into a modern motel, condominiums, or a large single family residence in this area is of great concern to the Centerville and Craigville community. The President and Members of the Centerville Civic Association approached the Town showing strong support of this acquisition as well. The Civic Association would prefer to see the lot devoted to Open Space, Recreation and/or Education use.

The intent of this appropriation request is to give the Town the option to acquire the property in a competitive bidding context in accordance with guidelines established by a vote of the Council, subject to court approval.

The opportunity to acquire and un-develop this property for open space and recreational purposes meets the goals of protecting the environment from further development and by reducing pollution.

B. NEW BUSINESS (First Reading)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-018
INTRO: 08/21/08**

2009-018 REAPPOINTMENTS

RESOLVED, that the Town reappoint the following individuals to a multiple-member board/committee/commission:

AGRICULTURAL COMMISSION

J. Timothy Friary, 241 Commerce Rd, Barnstable; to a term expiring 06/30/2011

COMMUNITY PRESERVATION COMMITTEE

Lindsey Counsell, 1183 Old Stage Rd, Centerville; to a term expiring 06/30/2011

SPONSOR: Appointments Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Council discussion
- ___ Move/vote

B. NEW BUSINESS (First Reading)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-019
INTRO: 08/21/08**

2009-019 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION

RESOLVED, that the Town appoint the following individuals to a multiple-member board/committee/commission:

ZONING BOARD OF APPEALS

For regular membership:

Michael P. Hersey, 62 Homeport Drive, Hyannis, to a term expiring 06/30/2011

Craig G. Larson, 142 Bog Road, Marstons Mills, to a term expiring 06/30/2011

James F. McGillen, 297 Tanglewood Drive, Osterville, to a term expiring 06/30/2009

William H. Newton, 101 Curlew Way, Cotuit, to a term expiring 06/30/2010

For associate membership:

Brian Florence, 126 Laurie’s Lane, Marstons Mills, to a term expiring 06/30/2011

Alex M. Rodolakis, 83 Blantyre Avenue, Centerville, to a term expiring 06/30/2010

SPONSOR: Appointments Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read item
- Council discussion
- Move/vote

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-020
INTRO: 08/21/08**

**2009-020 RESOLVE ACCEPTING AN ITEM PRICING/PRICE VERIFICATION
GRANT FROM THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS, DIVISION OF STANDARDS**

RESOLVED, that the Town Council hereby accepts an Item Pricing/Price Verification Grant in the amount of \$65,000 from the Massachusetts Office of Consumer Affairs, Division of Standards, to be used by the Regulatory Services Department, Consumer Affairs Division, to conduct Item Pricing/Price Verification Inspections throughout Barnstable County utilizing Division of Standards certified staff of the town.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL

ACCEPTANCE OF A STATE GRANT FOR ITEM PRICING/PRICE VERIFICATION FOR THE REGULATORY SERVICES DEPARTMENT

**ITEM# 2009-020
INTRO: 07/17/08**

SUMMARY

TO: Town Council
FROM: Thomas F. Geiler, Director of Regulatory Services Department
DATE: August 8, 2008
SUBJECT: Request to accept Item Pricing Grant of \$ 65,000 Awarded to Town of Barnstable

BACKGROUND: The Commonwealth of Massachusetts Office of Consumer Affairs and business Regulations, Division of Standards, administers an Item Pricing/Price Verification Grant to support accurate pricing within the Commonwealth. By administering the grant the Divisions of Standards encourages the local communities to assist the Commonwealth in random inspections of retail stores to ensure pricing accuracy compliance.

ANALYSIS: The Town of Barnstable Regulatory Services Department, Consumer Affairs Division, is committed to maintaining a fair and accurate marketplace, free from errors and overcharged. The Item Pricing/Price Verification Grant will provide for 1.5 staff positions to conduct compliance checks in retail stores to ensure accuracy in posted or advertised prices. Inspections and compliance checks utilizing grant funded staff will be conducted throughout Barnstable County to ensure Barnstable merchants to not unfairly carry the burden of compliance costs.

Retail sales through electronic scanning systems in Barnstable County, is estimated to be over 2 billion dollars annually. A one percent error could represent an annual overcharge to consumers of 20 million dollars. Inspections during 2001 identified an average error of 5.78%. Implementation of this program has reduced the error to 2.8% over the last three years. The Item Pricing/Price Verification Grant Program is intended to reduce error and level the market place playing field.

FISCAL IMPACT: The grant is for \$65,000 and is intended to cover all costs of the program. Acceptance of the grant will have a positive fiscal impact on the town.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends grant acceptance.

STAFF ASSISTANCE: Tracey Smith, Administrative Assistant to the Director of Regulatory Services, Kim Connors, Weights and Measures Program Manager

B. NEW BUSINESS (May be acted upon) (Roll-call 2/3)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-021
INTRO: 08/21/08**

**2009-021 AUTHORIZING THE TOWN MANAGER TO EXECUTE A
REGULATORY AGREEMENT BETWEEN THE TOWN OF
BARNSTABLE AND RUTH M. RUSHER TRUST**

ORDERED: That the Town Manager is authorized pursuant to Section 168-5, General Ordinances of the Code of the Town of Barnstable, to enter into and execute a Regulatory Agreement between the Town of Barnstable and Ruth M. Rusher Trust, for the property shown on Barnstable Assessor's Map 326 Parcel 045, and located within the HD zoning district and the Downtown Hyannis Growth Incentive Zone, including zoning relief as follows:

HD zoning district permitted or conditional use Section 240-24.1.7
Reduction in onsite parking requirements Section 240-24.1.10 (4) (b)

The Town Manager shall execute the Regulatory Agreement on behalf of the Town within seven (7) days of the Town Council vote authorizing the execution of the Regulatory Agreement in accordance with Section 168 of the Code.

SPONSORS: Councilor Harold Tobey
 Councilor James Tinsley

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Rationale
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL

A REGULATORY AGREEMENT - RUTH M. RUSHER TRUST

ITEM# 2009-021
INTRO: 08/21/08

SUMMARY

TO: Town Council
FROM: Growth Management Department
DATE: August 12, 2008
SUBJECT: Proposed Regulatory Agreement--111 Ocean Street, Hyannis, Rusher Hostel

RATIONALE: This is a proposed Regulatory Agreement between the Town of Barnstable and the Ruth M. Rusher Trust. Chapter 168 of the Barnstable Code authorizes regulatory agreements. The ordinance allows the Town to enter into agreements with private property owners to allow new development in a manner that varies from local ordinances when it is deemed beneficial to the community.

The applicant is proposing a regulatory agreement to gain additional development rights for a hostel use at 111 Ocean Street in Hyannis. The applicant is proposing a regulatory agreement to establish an alternative means to comply with the requirements of the Barnstable Zoning Ordinance for use and parking as follows:

<u>HD zoning district permitted or conditional use</u>	Section 240-24.1.7
<u>Reduction in onsite parking requirements</u>	Section 240-24.1.10 (4) (b)

The Agreement would authorize this zoning relief. The applicant proposes to renovate, and in some cases expand, three existing buildings for use as a hostel, and to add a new 10-car asphalt parking lot. Total square footage of buildings will be 4,225 s.f. A hostel staff manager would reside on the premises.

The Agreement is beneficial to the community because the 111 Ocean Street project redevelops an existing property. As community benefits, the applicant notes affordable access for visitors and their intention to partner with local businesses for the benefit of their visitors and the businesses. They also noted that the hostel could be used in the off-season to house artists-in-residence, or other cultural programs.

REGULATORY AGREEMENT PROCESS: The Barnstable Planning Board negotiated the proposed Agreement over the course of 2 public hearings held on August 13 and 27, 2007, September 10, 2007. The proposed Agreement was approved by the Planning Board for recommendation to the Town Council by a majority vote of the Board on January 28, 2008.

Because the applicant requests zoning relief, a two-thirds vote of the Town Council is needed to finally approve the proposed Regulatory Agreement.

If the Town Council approves the Regulatory Agreement, it is endorsed by the Town Manager and recorded at the Registry of Deeds.

Copies of the full size plans are available for viewing at the office of the Town Clerk.

FISCAL IMPACT: Positive

STAFF ASSISTANCE: Patty Daley, Interim Director, Growth Management,
Jo Anne Miller Buntich, Assistant Director, Growth Management

REGULATORY AGREEMENT
Rusher Trust Hostel
111 OCEAN STREET, HYANNIS

This regulatory agreement (“Agreement”) is entered by and between the applicant, Ruth M. Rusher Trust, (“Applicant” and “Developer”) and the Town of Barnstable (“Town”), a municipal corporation, on this ___ day of ____, 2008 pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Section 168 of the Barnstable Code;

WITNESS:

WHEREAS, the Applicant under this Agreement will contribute public capital facilities to serve the proposed development and the municipality or both;

WHEREAS this Agreement shall establish the permitted uses, densities, and traffic within the Development, the duration of the agreement, and any other terms or conditions mutually agreed upon between the Applicant and the Town.

WHEREAS this Agreement shall vest land use development rights in the property for the duration of the Agreement, and such rights shall not be subject to subsequent changes in local development ordinances, with the exception of changes necessary to protect the public health, safety or welfare.

WHEREAS, the Town is authorized to enter into this Agreement pursuant to Chapters 168 and 240 of the Barnstable Code;

WHEREAS the Applicant is the legal owner of the property (“Property”) at 111 and 105 Ocean Street, Hyannis, consisting of approximately .45 acres, shown on Barnstable Assessor’s Map 326 as Parcel 045, title to which is recorded in Barnstable County Registry of Deeds Book 18564 Page 234, and desires to develop the Property pursuant to a Regulatory Agreement;

WHEREAS, it is anticipated that ownership of the Property will be transferred from the Ruth Rusher Trust to the Cape Cod Foundation once building permits are issued for the Project and as such the Cape Cod Foundation shall also be a signatory to this Agreement and the when the term “Developer” is used herein it shall include the Cape Cod Foundation;

WHEREAS, the Applicant is willing to commit itself to the development of the project substantially in accordance with this Agreement and desires to have a reasonable amount of flexibility to carry out the Development and therefore considers this Agreement to be in its best interests; and

WHEREAS, the Town and Applicant desire to set forth in this Agreement their respective understandings and agreements with regard to development of the Property;

WHEREAS the Development will not require regulatory review under the Massachusetts Environmental Policy Act (MEPA) or the Cape Cod Commission Act;

WHEREAS the Applicant has made application to the Planning Board pursuant to Section 168 of the Barnstable Code;

WHEREAS the Development is located in the Hyannis Growth Incentive Zone (“Hyannis GIZ”) as approved by the Cape Cod Commission by decision dated April 6, 2006, as authorized by Barnstable County Ordinance 2005-13, Chapter G, Growth Incentive Zone Regulations of the Cape Cod Commission Regulations of General Application;

WHEREAS the Development is not subject to review by the Cape Cod Commission as a Development of Regional Impact due to its location in the GIZ and due to the adoption of Barnstable County Ordinance 2006-06 establishing a cumulative development threshold within the GIZ, under which this development may proceed and the Applicant has submitted a Jurisdictional Determination to the Town of Barnstable Building Department to confirm the same;

WHEREAS, the Applicant has undergone informal review by the Hyannis Main Street Waterfront Historic District on August 15 and September 19, 2007;

WHEREAS the Applicant has undergone informal site plan review on September 5, 2007;

WHEREAS, the Development is serviced by municipal sewer and does not impact resources protected by the Barnstable Conservation Commission;

WHEREAS the Applicant will require zoning relief from the use regulation schedule in the HD zoning district, more specifically referred to in Paragraph 36, below;

WHEREAS the Applicant has undergone at least two public hearings on the Agreement application and received a majority vote from the Planning Board approving the application on January 28, 2008;

WHEREAS the Applicant has undergone a public hearing on the Agreement application before the Town Council and received a 2/3rds vote approving the application on _____;

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto hereby acknowledge to the other, the Applicant and the Town do enter into this Agreement, and hereby agree and covenant as follows;

36. The Applicant agrees to construct the Project in accordance with the plans and specifications submitted to and approved by the Town, listed as follows and made part of this Agreement by reference:
 - a. Plans entitled "Proposed Site Plan" Sheet S-1 dated 02.26.2007, and Proposed Plans A-2, A-3, A-4, A-5, and A-6 dated 06.26.2007 prepared by A+E Architects, 15 Cape Lane, Brewster, MA
 - b. Such other plans and plan revisions as may be required by the terms and conditions of this Agreement
37. The Developer proposes to renovate four existing buildings to develop the Property as a Hostel. For the purposes of this Agreement, a Hostel is defined as a facility which provides inexpensive, overnight accommodations for travelers in dorm-style rooms with male, female, coed and family rooms. The hostel is designed to bring people together through the use of shared kitchens, bathrooms, and common areas. The four existing buildings at the Property shall be remodeled and updated to comply with applicable building and health codes.
38. A new 16 car parking area is also proposed to service the hostel (the "Development"), with 13 spaces of pervious parking and an additional three lined and available if the need arises.
39. As shown on the plans entitled, proposed Plans A-2, A-3, A-4, A-5, and A-6 dated 06.26.2007 prepared by A+E Architects, 15 Cape Lane, Brewster, MA Hostel shall have a maximum of 13 rooms with a maximum of 47 occupants, including Hostel staff and children under 18. The maximum number of occupants shall be posted in the area of the premises where guests register.
40. When open, the Hostel shall have a minimum number of one Hostel staff on the premises on a 24 hour basis.
41. Hostel visits shall be limited in duration. Each individual Hostel visitor shall be limited to not more than fourteen (14) aggregate nights in a one year period. The Hostel management shall keep a log containing the names of visitors or groups of visitors occupying the Hostel. The log shall be made available for inspection by the Town Board of Health and/or the Town Manager's office upon request, but in no case shall such log be made available later than five (5) business days after receipt of a written request by the Town.
42. The Hostel shall operate on a seasonal basis and shall not receive visitors between November 15th through April 15th of each year, but may be open at its option seven (7) days a week from April 15th through November 15th in any one year.
43. Separate sleeping accommodations shall be provided for visiting boys and girls under the age of 18. This shall not apply to a family sharing a discrete room.
44. The preparation of food shall be restricted to the kitchen and a designated area for outdoor grilling and dining. The management shall ensure that food preparation does not occur in sleeping rooms.
45. The Hostel management shall clearly post and shall enforce a quiet time between 11 pm and 7 am.
46. Smoking shall not be allowed, Outdoor smoking on the premises shall only be permitted in designated areas with proper receptacles.
47. The possession and/or consumption of alcoholic beverages or illegal substances shall be prohibited. The management shall take steps to remove anyone from the premises who has too much to drink or is disruptive.
48. Animals, with the exception of service animals assisting persons with disabilities shall be prohibited.

49. The four habitable buildings shall include a full emergency sprinkler system as approved by the Hyannis Fire District.
50. The curb cut on Ocean Street shall be configured on Ocean Street so it only allows for “right turn in, right turn out” and Developer shall install a “No Left Turn” sign.
51. Developer shall construct a Passive Stormwater Maintenance and Infiltration System to service the Development
52. Developer will provide a bicycle rack at the Property.
53. Developer and its successor(s) shall maintain all landscaping and drainage facilities during the term of this agreement for the period for which the development rights granted hereunder continue to be exercised.
54. Upon completion of all work, a registered engineer or land surveyor shall submit a letter of certification, made upon knowledge and belief in accordance with professional standards that all work has been done in substantial compliance with the approved site plan (Barnstable Code Section 240-104(G)). This document shall be submitted before the issuance of the final certificate of occupancy.
55. Prior to the issuance of any building permit, the Developer shall submit a landscape plan which shall be reviewed and approved by the Planning Board.
56. The Developer shall apply or cause its approved operator to apply for and receive a yearly license for the operation of the Hostel from the Town Manager or his designee, unless the Town Manager determines that there is an alternative adequate licensing procedure, The Developer agrees that for the first year the fee for said license shall be \$1,000 per year. Thereafter, the fee shall be determined pursuant to the Town’s fee-setting procedures. A denial, suspension or revocation of a license by the Town Manager or his designee shall result in the closure of Hostel operation on the premises, subject to all rights of appeal. No occupancy permit shall be issued until the Developer demonstrates that the premises are duly licensed.
57. Developer shall permit or cause its approved operator to permit the inspection of the premises by town staff, including but not limited to health, building and fire safety personnel.
58. Upon notice and hearing, the Town Manager reserves the right to terminate Hostel operations if necessary to protect the public health, safety or welfare.
59. No change in the licensed operator of the premises shall be permitted without the prior written approval of the Town Manager or his designee.
60. Any reconfiguration of the interior of the premises which alters the number of rooms available for guests shall receive the prior written approval of the Planning Board, who may approve such change administratively.
61. The development rights granted hereunder shall be exercised and development permits may be obtained hereunder for a period of two years from the effective date of the Agreement, provided, however, that prior to the expiration of said one year period the Applicant may request one six month extension to obtain development permits. Upon receipt of necessary development permits, construction shall proceed continuously and expeditiously, but in no case shall construction exceed 2 years from receipt of necessary development permits. The Applicant estimates that construction will commence on or about _____ and will be completed on or about _____.
62. Commencing in the third year of operation, the Developer has agreed to contribute to public capital facilities to serve the proposed development and the Town by making a yearly payment in lieu of taxes. The initial payment shall be \$ 5,355.40, which amount shall be increased by 2 ½ per cent per year. No license (permit) shall issue for the third year of operation until the initial payment constituting a contribution to public capital facilities has been received by the Town.
63. Any lighting for the development shall be contained on-site, shall be down cast and shall not contribute to light pollution of the area;
64. All landscaping within the Development shall be low water use and shall minimize the use of fertilizers and pesticides in keeping with the Hyannis Village Zoning Districts Design and Infrastructure Plan;

65. All plumbing fixtures shall be low water use fixtures and other water conservation measures are encouraged in the design and development of the project;
66. Construction and demolition debris from the Development shall be removed and reused or recycled to the maximum extent possible;
67. Developer is responsible for obtaining all applicable permits and licenses, including but not limited to the following: foundation permit, building permit, street excavation permit (necessary for work in all public spaces) sewer permits and water permits.
68. Exterior construction impacts shall be minimized and construction shall be limited to the hours of 7:30 a.m. to 6:00 p.m. weekdays, and 8:30 a.m. to 2:00 p.m. Saturdays. No exterior construction shall occur on Sundays. The Building Commissioner shall establish protocols to minimize the location of staging, noise, dust, and vibration;
69. To the extent that the referenced plans do not depict all of the findings and conditions as set forth in this Agreement, revised plans and/or notations shall be provided. In addition to permits, plans and approvals listed above, any and all permits and licenses required shall be obtained;
70. Developer has represented to the Board that it intends to enter into contract with the Eastern New England Council Hostelling International – American Youth Hostel, Inc. to operate the Hostel. Prior to the issuance of any occupancy permit for the premises, Developer shall submit a copy of said contract to the Planning Board for their determination that the contract incorporates the terms and conditions of this regulatory agreement. All operators shall be bound by the terms and conditions of this Agreement and the Developer shall incorporate this Agreement by reference into any contract it enters into for the operation of the premises and said contract shall require that the operator comply with the terms of this Agreement.
71. Town hereby grants a waiver from the following zoning restrictions: permitted or conditional use in the HD zoning district (Hostel), Section 240-24.1.7 of the Barnstable Code and reduction in onsite parking requirements, Section 240-24.1.10 (4)(b)
72. The Developer shall submit revised plans which address the comments submitted by the Site Plan Review Committee dated September 5, 2007, to the extent applicable, which plans shall be reviewed and approved administratively by the Building Commissioner.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed, on the day and year first above written.

Dated this _____ day of _____, 2008.

 Town of Barnstable
 By:

 Developer
 By:

B. NEW BUSINESS (Refer to Public Hearing 09/04/08) (Roll-call 2/3)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-022
INTRO: 08/21/08**

2009-022 TRANSFER AND APPROPRIATE \$220,000 OF UNEXPENDED BOND PROCEEDS FOR THE RE-CONSTRUCTION OF THE WEST BAY BULKHEAD

RESOLVED, that the Town Council hereby votes to discontinue the sidewalk projects appropriated originally under council order numbers 2003-085 and 2007-094 and approves the transfer of \$130,000 from 2003-085 and \$90,000 from 2007-094 for the purpose of re-constructing the West Bay bulkhead.

SPONSOR: John Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Rationale
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL

TRANSFER OF UNEXPENDED BOND PROCEEDS FOR RE-CONSTRUCTION OF THE WEST BAY BULKHEAD

ITEM# 2009-022
INTRO: 08/21/08

SUMMARY

TO: Town Council
FROM: Town Manager John Klimm
DATE: August 13, 2008
SUBJECT: Transfer for the re-construction of the West Bay Bulkhead

BACKGROUND: The deterioration of the West Bay Bulkhead area including the bulkhead, parking and drainage, first observed in 1996, has continued to the point of serious undermining and wash-outs, with increasing deterioration of the bulkhead, and developing pits behind the bulkhead. Temporary repairs were put in place in 2006 and 2007, which are now ineffective. An above water and underwater investigation of the marine bulkhead was conducted on February 14, 2008 to assess the overall structural condition. It was determined that the bulkhead is in critical condition overall with large corrosion holes in the steel sheets at numerous locations near the seabed. The holes have resulted in the formation of large sinkholes in the pavement, and a release of backfill to the harbor. While the bulkhead has not yet failed catastrophically, it is no longer providing its primary function of retaining fill. This condition has rendered the bulkhead as unsafe for use for boaters from the harbor side.

ANALYSIS: The Town has restricted vehicular, pedestrian, and boating access to the bulkhead, and additional temporary repairs were made to prevent additional loss of fill. Repair designs and permitting were initiated to replace the bulkhead. It has been determined that the structure has reached the end of its useful life, and should be replaced. An engineering and cost analysis of reconstruction options has determined that the best option is to replace the existing sheet steel structure with a new steel sheet pile bulkhead as soon as possible, with an estimated project cost of \$250,000.00.

FISCAL IMPACT: Excess funds have been identified within existing appropriations that could be used for this project. Council Order 2003-085 appropriated \$495,000 for sidewalk improvements. To date a total of \$110,331 has been expended from this appropriation and \$250,000 is still earmarked for sidewalk construction at Sandy Neck. This leaves a balance of \$134,669 available after all of the originally proposed projects are completed. Council order 2007-094 appropriated \$250,000 for sidewalk improvements. After encumbering funds for all the proposed projects in this appropriation, a balance of \$90,000 remains available. It is proposed that \$130,000 from council order 2003-085 and \$90,000 from council order 2007-094 be transferred to complete the reconstruction of the West Bay bulkhead. If the unexpended bond proceeds are not transferred to this project they will remain available for the original purpose until such time that the council redirects them with future council action. All projects originally proposed under these two appropriations will be completed. The council must vote to discontinue the sidewalk program but this only applies to the uncommitted balance. The projects that have not yet started will still be completed. This includes Sandy Neck, Wianno Ave., and Stevens St.