



# Town of Barnstable Town Council

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## MEETING AGENDA TOWN HALL HEARING ROOM August 11, 2016 7:00 PM

### Councillors:

Jessica Rapp Grassetti  
President  
Precinct 7

Eric R. Steinhilber  
Vice President  
Precinct 2

John G. Flores  
Precinct 1

Paul Hebert  
Precinct 3

Frederick Chirigotis  
Precinct 4

James H. Crocker  
Precinct 5

William Crocker, Jr.  
Precinct 6

Debra S. Dagwan  
Precinct 8

James M. Tinsley  
Precinct 9

Sara Cushing  
Precinct 10

Philip N. Wallace  
Precinct 11

John T. Norman  
Precinct 12

Jennifer L. Cullum  
Precinct 13

Administrator:  
Cynthia A. Lovell

Administrative  
Assistant:  
Kelly Crahan

- 1. ROLL CALL**
- 2. PLEDGE OF ALLEGIANCE**
- 3. MOMENT OF SILENCE**
- 4. PUBLIC COMMENT**
- 5. COUNCIL RESPONSE TO PUBLIC COMMENT**
- 6. TOWN MANAGER COMMUNICATIONS**
- 7. ACT ON MINUTES (Including Executive Session)**
- 8. COMMUNICATIONS – from elected officials, boards, committees, staff, commission reports, correspondence and announcements**
- 9. ORDERS OF THE DAY**
  - A. Old Business**
  - B. New Business**
    - Charter Review Committee update and discussion**

Updated to  
reflect  
Executive  
Session  
Language  
08/10/16

The Town Council may vote to go into Executive Session under G.L. c. 30A §21(a)(3), to discuss litigation strategy with respect to the case of the *Town of Barnstable v. Barnstable County*, pending in Barnstable Superior Court, if the Chair declares that an open meeting may have a detrimental effect on the litigating position of the Town.

## 10. ADJOURNMENT

**NEXT REGULAR MEETING: September 15, 2016**

**A. OLD BUSINESS**

2017-001	Appointments to a Board/Committee/Commission: <b>LIBRARY COMMITTEE: Lois Cronin</b> , 484 Whistleberry Drive, Marstons Mills, as a member with a term expiring 6/30/17; <b>Chrystal LaPine</b> , 1135 Service Road, West Barnstable, as a member with a term expiring 6/30/17; <b>Patricia Lawlor</b> , 410 High Street, West Barnstable, as a member with a term expiring 6/30/17; <b>Emily Mezzetti</b> , 43 Snow Creek Drive, Hyannis, as a member with a term expiring 6/30/17; <b>Elena Schuck</b> , 56 Cinderella Terrace, Marstons Mills, as a member with a term expiring 6/30/17; <b>Fred Schilpp</b> , 115 Rendezvous Lane, Barnstable, as a member with a term expiring 6/30/17; <b>Kathy Spirtes</b> , 244 Santuit Rd, Cotuit, as a member with a term expiring 6/30/17; <b>Laurie Young</b> , 142 Great Bay Road, Osterville, as a member with a term expiring 6/30/17. <b>BOARD OF HEALTH: Donald A. Guadagnoli, MD</b> , 15 Abegale Snow Road, West Barnstable, as a regular member to a term expiring 6/30/19. <b>CULTURAL COUNCIL: Paula J. Hersey</b> , 5 Moss Place, Marstons Mills, MA as a regular member to a term expiring 6/30/19. <b>(May be acted upon)</b> .....	3
2017-002	Reappointments to a Board/Committee/Commission: <b>LIBRARY COMMITTEE: Mark Cote</b> , 1745 South County Road, Osterville, as a member with a term expiring 6/30/17; <b>Suzanne Kelly</b> , 3941 Route 6A, Barnstable, as a member with a term expiring 6/30/17; <b>Ed Maddox</b> , 244 School Street, as a member with a term expiring 6/30/17; <b>Karen Rezendes</b> , 121 Great Marsh Road, Centerville, as a member with a term expiring 6/30/17; <b>Lili Seely</b> , 33 Candlewick Lane, Hyannis, as a member with a term expiring 6/30/17. <b>(May be acted upon)</b> .....	4
2017-003	Appropriation and Loan Order in the amount of <b>\$180,000</b> pursuant to Temporary Repair to Private Roads Program regarding Blue Heron Drive and Quail Lane in Osterville. <b>(Public hearing) (Roll call 2/3)</b> .....	5-6

**B. NEW BUSINESS**

2017-007	Resolve acknowledgement of grant of temporary supplemental water supply Centerville-Osterville-Marstons Mills Fire District (COMM) and the Town of Yarmouth and intermunicipal agreements. <b>(May be acted upon)</b> .....	7-8
2017-008	Designation of Water Resources Advisory Committee Members as Special Municipal Employees. <b>(May be acted upon)</b> .....	9
2017-009	Regulatory Agreement Mark Hyannis, LLC – Bank with drive through and Pharmacy with drive through at 411 and 417 Barnstable Road and 42 Bearse Road, Hyannis <b>(Refer to Public hearing 09/15/16)</b>	10-24
2017-010	Appropriation and Loan order in the amount of <b>\$1,113,000</b> for the construction of three buildings for the carbon treatment units at the Mary Dunn wellfield. <b>(Refer to Public hearing 09/15/16)</b> .....	25-26

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Approve Minutes – July 21, 2016

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**Please Note:** The list of matters, are those reasonably anticipated by the council president, which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. 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. Persons interested are advised, that in the event any matter taken up at the meeting remains unfinished at the close of the meeting, may be put off to a continued session of this meeting, and with proper notice. Anyone requiring hearing assistance devices please inform the Town Clerk at the meeting.

**A. OLD BUSINESS (May be acted upon)**

**BARNSTABLE TOWN COUNCIL**

**ITEM # 2017-001**  
**INTRO: 07/21/16, 08/11/16**

**2017-001 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION**

**RESOLVED:** That the Town Council appoint the following individuals to a multiple-member board/committee/commission:

**LIBRARY COMMITTEE:** **Lois Cronin**, 484 Whistleberry Drive, Marstons Mills, as a member with a term expiring 6/30/17; **Chrystal LaPine**, 1135 Service Road, West Barnstable, as a member with a term expiring 6/30/17; **Patricia Lawlor**, 410 High Street, West Barnstable, as a member with a term expiring 6/30/17; **Emily Mezzetti**, 43 Snow Creek Drive, Hyannis, as a member with a term expiring 6/30/17; **Elena Schuck**, 56 Cinderella Terrace, Marstons Mills, as a member with a term expiring 6/30/17; **Fred Schilpp**, 115 Rendezvous Lane, Barnstable, as a member with a term expiring 6/30/17; **Kathy Spirtes**, 244 Santuit Rd, Cotuit, as a member with a term expiring 6/30/17; **Laurie Young**, 142 Great Bay Road, Osterville, as a member with a term expiring 6/30/17.

**BOARD OF HEALTH:** **Donald A. Guadagnoli, MD**, 15 Abegale Snow Road, West Barnstable, as a regular member to a term expiring 6/30/19.

**CULTURAL COUNCIL:** **Paula J. Hersey**, 5 Moss Place, Marstons Mills, as a regular member to a term expiring 6/30/19.

**SPONSOR:** Appointments Committee

DATE	ACTION TAKEN
<u>07/21/16</u>	<u>Second reading 08/11/16</u>

\_\_\_\_\_

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Move/Vote

**A. OLD BUSINESS (May be acted upon)**

**BARNSTABLE TOWN COUNCIL**

**ITEM # 2017-002**  
**INTRO: 07/21/16, 08/11/16**

**2017-002 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION**

**RESOLVED:** That the Town Council appoint the following individuals to a multiple-member board/committee/commission:

**LIBRARY COMMITTEE:** **Mark Cote**, 1745 South County Road, Osterville, as a member with a term expiring 6/30/17; **Suzanne Kelly**, 3941 Route 6A, Barnstable, as a member with a term expiring 6/30/17; **Ed Maddox**, 244 School Street, as a member with a term expiring 6/30/17; **Karen Rezendes**, 121 Great Marsh Road, Centerville, as a member with a term expiring 6/30/17; **Lili Seely**, 33 Candlewick Lane, Hyannis, as a member with a term expiring 6/30/17.

**SPONSOR:** Appointments Committee

DATE	ACTION TAKEN
<u>07/21/16</u>	<u>Second reading 08/11/16</u>

\_\_\_\_\_ Read Item  
\_\_\_\_\_ Council Discussion  
\_\_\_\_\_ Move/Vote

**A. OLD BUSINESS (Public hearing) (Roll call 2/3)**

**BARNSTABLE TOWN COUNCIL**

**ITEM # 2017-003  
INTRO: 07/21/16, 08/11/16**

**2017-003 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$180,000  
PURSUANT TO TEMPORARY REPAIR TO PRIVATE ROADS PROGRAM  
REGARDING BLUE HERON DRIVE AND QUAIL LANE IN OSTERVILLE**

**ORDERED:** That the sum of **\$180,000** be appropriated for the purpose of making temporary repairs to Blue Heron Drive and Quail Lane in Osterville, a private road within the Town of Barnstable, and that to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, be authorized to borrow **\$180,000** in accordance with Chapter 174 of the Acts of 1994 as amended by Chapter 350 of the Acts of 2014, and that the Town Manager is authorized to contract for and expend the appropriation made available for this purpose, and that betterments be assessed, and the Town Manager is further authorized to accept any grants and/or gifts in relation thereto.

**SPONSOR:** Councilor James H. Crocker, Jr., Precinct 5

DATE	ACTION TAKEN
<u>07/21/16</u>	<u>Refer to Public hearing 08/11/16</u>
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Move/Vote

# BARNSTABLE TOWN COUNCIL

**ITEM # 2017-003**  
**INTRO: 07/21/16, 08/11/16**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**DATE:** July 16, 2016  
**SUBJECT:** Appropriation and Loan Order in the amount of **\$180,000** pursuant to Temporary Repair to Private Roads Program regarding Blue Heron Drive and Quail Lane in Osterville.

**BACKGROUND:** The successful passage of Chapter 174 of the Acts of 1994 and the passage of House Bills 4409 and 4410 by the State Legislature of Home Rule legislation authorized the Town to expend funds to repair private roads. Under this Program the abutters to roads being repaired can be charged betterment assessments for 100% of the actual costs of repairs which they can elect to pay in one lump sum or over a period of up to 20 years (with interest). None of these roads will be taken by the Town of Barnstable and will remain private roads. A majority of the property abutters to Blue Heron Drive and Quail Lane in Osterville have expressed an interest in having repairs made to their private road and 79% of the abutters have signed a Consent and Acknowledgement Agreement for Betterment Assessment. The proposed work is the removal and replacement of the existing pavement, cleaning of existing drainage, and installation of additional drainage structures.

The cost of improvements: Estimated as **\$180,000** with a cost per 14 abutters, distributed as 14 shares, not to exceed **\$12,850** per abutter share.

**FISCAL IMPACT:** There is no cost to the Town, as all costs will be covered by betterments assessed on the abutters. The Town will issue a bond to cover the cost of the repairs and use the revenue collected from the betterment assessments to make the annual loan repayments on the bond.

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

**STAFF ASSISTANCE:** Roger D. Parsons, P.E., Town Engineer

**B. NEW BUSINESS (May be acted upon)**

**BARNSTABLE TOWN COUNCIL**

**ITEM # 2017-007  
INTRO: 08/11/2016**

**2017-007 RESOLVE ACKNOWLEDGEMENT OF GRANT OF TEMPORARY  
SUPPLEMENTAL WATER SUPPLY CENTERVILLE-OSTERVILLE-  
MARSTONS MILLS FIRE DISTRICT (COMM) AND THE TOWN OF  
YARMOUTH AND INTERMUNICIPAL AGREEMENTS**

**RESOLVED:** That the Town Council acknowledges with appreciation ongoing supplemental water supplies provided to the Town by the Centerville-Osterville-Marstons Mills Fire District (COMM) and the Town of Yarmouth and approves of the execution and delivery by the Town Manager on behalf of the Town of intermunicipal agreements for those purposes.

**SPONSOR:** Councilor Debra Dagwan, Precinct 8

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Move / Vote

## **BARNSTABLE TOWN COUNCIL**

**ITEM # 2017-007**  
**INTRO: 08/11/2016**

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**DATE:** August 11, 2016  
**SUBJECT:** Resolve acknowledging supplemental water supply by Centerville-Osterville-Marstons Mills Fire District(COMM) and Town of Yarmouth and intermunicipal agreements

**RATIONALE:** Centerville-Osterville-Marstons Mills Fire District (COMM) water is the latest to supplement the water supply of the Hyannis Water Division of the Department of Public Works (DPW) during the restrictions on the Mary Dunn wells. Since Yarmouth has already been supplying water on a temporary basis it is appropriate to include our neighbor town in the acknowledgement.

**STAFF ASSISTANCE:** Daniel Santos, Director, Department of Public Works



**B. NEW BUSINESS (First reading)**

**BARNSTABLE TOWN COUNCIL**

**ITEM # 2017-008  
INTRO: 08/11/2016**

**2017-008 DESIGNATION OF WATER RESOURCES ADVISORY COMMITTEE (WRAC)  
MEMBERS AS SPECIAL MUNICIPAL EMPLOYEES**

**ORDERED:** That the members of the Water Resources Advisory Committee (WRAC) be designated special municipal employees by inserting the name of that committee in alphabetical order under the designation "(a) multiple member bodies" under Chapter 241 Attachment 1 of the Code of the Town of Barnstable, Designations of Town Officers/Positions As "Special" for Purposes of the Conflict of Interest Law.

**SPONSOR:** Councilor John Norman, Precinct 12

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Move / Vote

**B. NEW BUSINESS (Refer to Public hearing 09/15/16)**

**BARNSTABLE TOWN COUNCIL**

**ITEM # 2017-009  
INTRO: 08/11/16**

**2017-009 AUTHORIZING THE TOWN MANAGER TO EXECUTE A REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND MARK HYANNIS, LLC**

**ORDERED:** That the Town Manager is authorized pursuant to Section 168-5, General Ordinances of the Code of the Town of Barnstable (the “Code”), to enter into and execute a Regulatory Agreement between the Town of Barnstable and Mark Hyannis, LLC, for the properties addressed 411 and 417 Barnstable Road and 42 Barse Road, Hyannis, which collectively total 2.38 acres, shown on Town of Barnstable Assessor’s Map 311, as Parcels 33, 35.1 and 35.2, title to which is described in the deeds to Mark Hyannis, LLC, recorded with the Barnstable County Registry of Deeds in Book 29205, Page 26 and Book 29357, Page 210, and in Certificate of Title 208367, as filed with the Barnstable County Registry District of the Land Court (collectively, the “Property”); and permitting the redevelopment of the Property and granting the requested zoning relief and approval under Chapter 115 of the Code pursuant to and as described in this Regulatory Agreement.

**SPONSOR:** Councilor Sara Cushing, Precinct 10

DATE	ACTION TAKEN
<u>06/27/16</u>	<u>Planning Board unanimously approved</u>

- 
- Read Item
  - Rationale
  - Council Discussion
  - Move / Vote

## REGULATORY AGREEMENT

MARK HYANNIS, LLC  
411 AND 417 BARNSTABLE ROAD AND 42 BEARSE ROAD  
HYANNIS, MA 02601

This regulatory agreement (“Agreement”) is entered into by and between the applicant, **Mark Hyannis, LLC** (the “Applicant” and/or “Developer”), a Massachusetts limited liability company with a mailing address of 57 River Street, Suite 106, Wellesley, MA 02481, and the **Town of Barnstable** (the “Town”), a municipal corporation with a mailing address of 367 Main Street, Hyannis, MA 02601, on this \_\_\_ day of \_\_\_\_\_, 2016, pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Chapter 168 of the Code of the Town of Barnstable.

WITNESS:

WHEREAS, this Agreement shall establish the following: permitted uses, densities, signage, and traffic within the proposed Redevelopment (as defined herein), the duration of this Agreement, and any other terms and conditions mutually agreed upon between the Applicant and the Town;

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

WHEREAS, the Applicant owns the properties known as and numbered 411 Barnstable Road, 417 Barnstable Road and 42 Bearse Road, Hyannis, which are shown on Barnstable Assessor’s Map 311, as Parcels 33, 35.2 and 35.1 respectively, and which are more particularly described in the deeds recorded with the Barnstable County Registry of Deeds in Book 29205, Page 26 and Book 29357, Page 210, and in Certificate of Title No. 208367 as filed with the Barnstable County Registry District of the Land Court (hereafter, collectively, the “Property”);

WHEREAS, each of the three parcels which collectively comprise the Property, as described in the preceding paragraph, are developed with commercial structures, as follows: (i.) 411 Barnstable Road – a one story building consisting of approximately 13,482 square feet, formerly used as a retail discount tool business, (ii.) 42 Bearse Road- a one story metal building consisting of approximately 3,340 square feet used as a Thrifty Car rental, a car servicing business, and used car sales, and (iii.) 417 Barnstable Road – a one story building containing approximately 12,736 square feet with drive thru lanes used for a Citizens Bank commercial branch bank;

WHEREAS, the Property is irregular in shape, bordering upon three different public roads: Bearse Road to the west, Falmouth Road (Route 28) to the north and Barnstable Road to the east, and the existing development on the Property has 8 curb-cuts onto the abutting public ways, many of which are large, open, and undefined;

WHEREAS, the Property consists of approximately 2.38 acres of land and is located in the Hyannis Gateway (HG) zoning district and the Groundwater Protection (GP) overlay district;

WHEREAS, the Applicant proposes to redevelop the Property by demolishing all three of the existing structures, which collectively contain a total gross floor area of approximately 29,558 square feet, re-divide the existing three lots into two lots (proposed as “Lot A” and “Lot B” on the plans submitted), and construct a two-story office/bank building with drive through lanes with a gross floor area of approximately 6,080 square feet on proposed Lot A, and an approximately 12,900 square foot retail

pharmacy (with a 1,675 square foot mezzanine) and a drive up window on proposed Lot B, together with numerous site improvements, including a significant reduction in curb-cuts, increased landscaping, new parking, pedestrian and site amenities, and new storm-water drainage, all as shown on the plans submitted and attached hereto as **Exhibit A** (hereafter, the “Redevelopment Plans,” and such proposed site work, new buildings and improvements all as shown on the Redevelopment Plans are hereafter referred to herein, collectively, as the “Redevelopment”);

WHEREAS, the Redevelopment is consistent with the Town of Barnstable’s Design and Infrastructure Plan;

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

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

WHEREAS, this Agreement shall vest land use development rights in the Property for the duration of this 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 Redevelopment will not require regulatory review under the Massachusetts Environmental Policy Act (MEPA);

WHEREAS, the Property is located in the Hyannis Growth Incentive Zone (GIZ) as approved by the Cape Cod Commission by decision dated April 6, 2006, as extended by vote of the Cape Cod Commission on December 3, 2015, and 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 Redevelopment 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 Redevelopment may proceed and the Applicant has submitted a Jurisdictional Determination to the Town of Barnstable Building Department to confirm the same;

WHEREAS, the Redevelopment has undergone formal site plan review and the Town of Barnstable Site Plan Review Committee determined the Redevelopment Plans approvable by decision dated March 9, 2016, and Developer shall submit final plans consistent with the terms and conditions contained in this Agreement to the Building Commissioner to determine whether any modifications to the Site Plan Review approval are necessary prior to any building permits being issued for the Redevelopment;

WHEREAS, the Applicant submitted a “Traffic Impact and Access Study, Proposed Office/Bank” dated March 2016 performed by VHB which was subsequently reviewed by the Town’s Peer Reviewer, Vanasse & Associates, in a memo dated April 29, 2016, which states, in summary: “Based on our review of the subject materials, we have determined that the March 2016 TIAS and associated materials were prepared in a professional manner and following applicable standards of care, and provide a reasonable basis from which to assess the impact of the Project;”

WHEREAS, concerns about the Bearse Road intersection with Falmouth Road regarding potential queuing and lack of marked turning lanes were raised during the public hearing, and in response, the

Applicant revised the Project plans to create dedicated and marked right and left turning lanes off of Bears Road onto Falmouth Road;

WHEREAS, the Town Engineer recommended that further modifications to the proposed Project plans be considered and that is the removal of the most northerly access from the site onto Bears Road and reconfiguration of the internal traffic movements would lessen the congestion on Bears Road in the Route 28 approach and the “attractiveness” of the Bears Road accessibility in general to the proposed facilities. In response, the Applicant has revised the Redevelopment Plans consistent with the Town Engineer’s recommendation;

WHEREAS, the Applicant has received a determination pursuant to Chapter 112 (Historic Properties) of the Code of the Town of Barnstable (the “Code”) from the Barnstable Historical Commission dated December 22, 2015, that the existing structure located at 411 Barnstable Road, which is proposed to be demolished as part of the Redevelopment, is not importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic or social history of the Town or the Commonwealth, nor is it architecturally significant in terms of period or style of the neighborhood and, therefore, despite being over seventy-five (75) years of age, may be demolished without need for a public hearing;

WHEREAS, Reciprocal Easement Agreements (“REA’s”) between the Developer and the tenants, and their respective successors, will be prepared and recorded at the Barnstable County Registry of Deeds detailing the Developer’s and tenants’ rights and obligations relative to the development and maintenance of the Property, including any shared infrastructure, common areas, and landscaping;

WHEREAS, the Developer has acknowledged that CVS Pharmacy Inc., or its affiliates (“CVS”) has no current intention to close the well-established CVS Pharmacy located at 176 North Street, Hyannis, MA. A pharmacy providing multi-faceted goods and services, not common in downtown Hyannis, is an important asset for downtown Hyannis and its residents.

WHEREAS, CVS, the proposed pharmacy tenant, has agreed to enter into an agreement with the Town of Barnstable which will provide benefits to the Town in accordance with Section 168-6(A) of Chapter 168 of the Code;

WHEREAS, the Redevelopment proposal has undergone 4 public hearings on the Agreement application and received an affirmative majority vote from the Planning Board on June 27, 2016;

WHEREAS, the Redevelopment proposal has undergone a public meeting on the Agreement before the Barnstable Town Council and has received a two-thirds vote approving the Agreement on \_\_\_\_\_;

WHEREAS, this Agreement authorizes only the uses, intensity of uses, dimensions and signage specified herein. Any substantial deviation from the authorized terms of this Agreement shall require review by the Town Council and Planning Board pursuant to Chapter 168-10 of the Code;

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

1. Description of Existing and Proposed Conditions:
  - A. Existing Conditions

The Property is presently developed with three (3) structures, each of separate lots, collectively totaling approximately 29,558 square feet of existing development as follows:

- A one-story building consisting of approximately 13,482 square feet, formerly used as a retail discount tool business.
- A one-story building consisting of approximately 3,340 square feet, used by Thrifty Car Rental, a car servicing business, and a used car sales business.
- A one-story building consisting of approximately 12,736 square feet with drive through lanes used by Citizen's Bank as a commercial branch bank.
- The Property contains 8 large, poorly defined and, in some cases, undefined curb-cuts on the various roadway frontages, including a wide curb-cut on the Airport rotary.
- Based on full occupancy of the existing structures, the existing site traffic generation is 380 trips in the weekday evening peak hour and 355 trips in the Saturday mid-day peak hour.
- Minimal landscaping.
- Pre-existing use and storage of hazardous materials within the existing car servicing business. According to an inventory filed with the Board of Health, the use included approximately 1,300 gallons of hazardous materials within a Wellhead Protection area.
- Total impervious coverage is 95%.
- No storm-water treatment facilities; presently, storm-water now causes sheet flow run-off sheets off into the roadways.
- There are 83 striped parking spaces on the Property, although many cars and trucks park on portions of the site that are not striped for parking. Many of these parking spaces require backing out Barnstable Road.
- Four (4) large free standing signs representing individual businesses which collectively total 118 square feet, plus existing building signage.

#### B. Proposed Redevelopment

The proposed Redevelopment involves demolishing the existing three (3) structures, re-dividing the Property into two (2) lots, and constructing two (2) buildings collectively totaling 20,655 square feet of development as follows:

- A two-story bank/office building with a gross floor area of approximately 6,080 square feet with drive through lanes on proposed Lot A.
- An approximately 12,900 square foot retail pharmacy with a 1,675 square foot mezzanine and a drive up pharmacy pick up window on proposed Lot B.
- Two limited movement curb-cuts on Barnstable Road: (a.) a right-in only; and (b.) a right in/right out curb-cut.
- One full access curb-cut on Bearse Road.
- Widening and roadway improvements to the Bearse Road / Falmouth Road intersection which include creating dedicated right and left turning lanes exiting Bearse Road.
- Significant landscaping and vegetation improvements.
- Reduction of impervious coverage to 70%.
- Architectural and site design in accordance with the Design and Infrastructure Plan.
- Construction of a sidewalk within the Property to connect to the existing sidewalk on Barnstable Road.
- Storm-water management system incorporating low impact design measures to retain and pre-treat all storm-water run-off on-site.
- One free-standing sign with 2 sign panels, one for each tenant, which totals 24 square feet, together with building and directional signage.
- A total of 82 paved parking spaces.

2. The Developer agrees to construct the Redevelopment on the Property in accordance with the Redevelopment Plans which are attached as **Exhibit A** to this Agreement and which are entitled as follows:
  - a. “Site Development Plans for Mark Investment” prepared by Bohler Engineering dated December 1, 2015, last revised on June 13, 2016 (unless otherwise noted below), consisting of 25 pages, as follows:
    - i. Cover Sheet, Sheet 1;
    - ii. General Notes Sheet, Sheet 2;
    - iii. Demolition Plan, Sheet 3;
    - iv. Site Plan, Sheet 4;
    - v. Grading & Drainage Plan, Sheet 5;
    - vi. Utility Plan, Sheet 6;
    - vii. Soil Erosion & Sediment Control Plan, Sheet 7;
    - viii. Soil Erosion & Sediment Control Notes & Details Sheet, Sheet 8;
    - ix. Landscape Plan, Sheet 9;
    - x. Landscape Notes & Details Sheet, Sheet 10;
    - xi. Lighting Plan, Sheet 11;
    - xii. Construction Details Sheet, Sheet 12;
    - xiii. Construction Details Sheet, Sheet 13;
    - xiv. Construction Details Sheet, Sheet 14;
    - xv. ALTA/ACSM Land Title Survey, Dwg 1 of 2, dated 6/11/15, last revised 12/3/15;
    - xvi. ALTA/ACSM Land Title Survey, Dwg 2 of 2, dated 6/11/15, last revised 12/3/15;
    - xvii. CVS Outline Plan, Sheet 0-1, dated 12/3/15, last revised 12/17/15;
    - xviii. Exterior Elevations, Sheet A-4.1, dated 12/3/15;
    - xix. Citizens Bank Proposed Branch Bank Cover Sheet, dated 2/29/16;
    - xx. Citizens Bank Conceptual First Floor Plan, Sheet A1.1, dated 2/29/16;
    - xxi. Citizens Bank Conceptual Second Floor Plan, Sheet A1.2, dated 2/29/16;
    - xxii. Citizens Bank Exterior Elevations, Sheet A2.1, dated 2/29/16;
    - xxiii. Citizens Bank Exterior Elevations, Sheet A2.2, dated 2/29/16;
    - xxiv. Citizens Bank Exterior 3D Views, Sheet A2.3, dated 2/29/16; and
    - xxv. Citizens Bank Exterior 3D Views, Sheet A2.4, dated 2/29/16.
  - b. “Signage Package for Pharmacy / Bank prepared for Mark Investment” prepared by Bohler Engineering, dated December 1, 2015 and last revised on June 27, 2016 (unless otherwise noted below) consisting of 19 pages, as follows:
    - i. Signage Package Cover Sheet, Sheet 1;
    - ii. Site Signage Exhibit, Sheet 2;
    - iii. Citizens Bank Sign Inventory, Sheet 1, dated 1/20/16, last revised on 2/29/16;
    - iv. Citizens Bank Tenant Sign Panel, Sheet 2, dated 1/20/16, last revised on 2/29/16;
    - v. Citizens Bank East Elevation, Sheet 3, dated 1/20/16, last revised on 2/29/16;
    - vi. Citizens Bank South Elevation, Sheet 4, dated 1/20/16, last revised on 2/29/16;
    - vii. Citizens Bank North Elevation, Sheet 5, dated 1/20/16, last revised on 2/29/16;
    - viii. Citizens Bank West Elevation, Sheet 6, dated 1/20/16, last revised on 2/29/16;
    - ix. Citizens Bank Directional Sign N09, Sheet 7, dated 1/20/16, last revised on 2/29/16;
    - x. Citizens Bank Directional Sign N10, Sheet 8, dated 1/20/16, last revised on 2/29/16;
    - xi. Citizens Bank Directional Sign N11, Sheet 9, dated 1/20/16, last revised on 2/29/16;
    - xii. Citizens Bank Directional Sign N12, Sheet 10, dated 1/20/16, last revised on 2/29/16;
    - xiii. Citizens Bank Monument Sign, Sheet 11, dated 1/20/16, last revised on 2/29/16;
    - xiv. CVS Proposed Sign Package, Sheet 1.1, dated 12/16/15, last revised 6/24/16;
    - xv. CVS Building Signage Site Plan, Sheet 1.2, dated 12/16/15, last revised 6/24/16;
    - xvi. CVS Building Signage Site Plan, Sheet 1.3, dated 12/16/15, last revised 6/24/16;

- xvii. CVS Building Signage Site Plan, Sheet 1.4, dated 12/16/15, last revised 6/24/16;
- xviii. Ground Sign Design, Sheet SE-I, dated 2/16/16;
- xix. Monument Sign Design, Sheet SE-2, dated 6/9/19.

3. The Redevelopment provides, without limitation, the following multi-modal transportation, economic, place-making, site design, traffic safety, and community benefits:
  - a. Redevelopment and significantly improved aesthetics at a gateway property into the Hyannis Growth Incentive Zone.
  - b. Substantial reduction in the number of curb-cuts servicing the Property, including elimination of an existing curb-cut in the Airport rotary.
  - c. Assuming full by right occupancy of existing buildings, the Redevelopment results in a decrease of approximately 100 vehicle trips during the weekday evening peak hour and a decrease of approximately 90 vehicle trips during the Saturday midday peak hour.
  - d. Substantially increased landscaping and reduction in impervious surfaces from 95% existing impervious coverage to 70% impervious coverage under proposed conditions.
  - e. Construction of a sidewalk within the Property along its Route 28 frontage to connect to an existing sidewalk on Barnstable Road.
  - f. Provision of bicycle racks adjacent to each of the proposed buildings.
  - g. Safe and well-marked interior pedestrian connections within the Property between the two proposed buildings.
  - h. Exterior site lighting improvements, including use of LED lights.
  - i. Improved storm-water drainage management on-site with low impact design measures, including landscaped bio-infiltration drainage areas. New storm-water system will eliminate storm-water sheet run-off into adjacent roadways.
  - j. Elimination of car maintenance and servicing use, and associated hazardous materials, within a Groundwater Protection (GP) overlay district.
  - k. New underground utility connections for Redevelopment eliminating existing overhead services for the Property.
  - l. Replacing existing internally illuminated signs with new signs illuminated externally or with halo lighting.
  - m. Removing the 4 existing, uncoordinated, free-standing signs on the Property which collectively total 118 square feet, and constructing one free standing sign with 2 sign panels which, together, total 24 square feet, plus one free standing entry identification sign with 2 sign panels which, together, total 12 square feet.
4. The Redevelopment includes dividing the Property into two (2) proposed lots – Lot A and Lot B – as shown on the Redevelopment Plans and the draft approval not required plan attached as **Exhibit B** (the “ANR Plan”). It is expressly acknowledged that, once divided, proposed Lot A and Lot B may be transferred to two separate person or entities, subject to the requirements set forth in this Agreement. Cross-easement agreements for the ten (10) shared parking spaces and cross access/egress between Lot A and Lot B shall be recorded with the transfer of either lot into separate ownership.
5. Based upon the recommendations of the Town’s peer reviewer, the following measures have been, or shall be, implemented:
  - a. Signs and landscaping along the Property’s frontages and within the Project site shall be designed, located and maintained so as to provide the requisite lines of sight. In its May 5, 2016 response to the Town’s peer reviewer, the Applicant’s traffic engineer, VHB, confirmed that all signs and landscaping along the Property’s frontages and within the Project site, as shown on the Redevelopment Plans, are designed and located to ensure that requisite lines of sight will be maintained at all times.



- b. All signs and pavement markings to be installed within the Project shall conform to the specifications of the Manual on Uniform Traffic Control Devices (MUTCD). In its May 5, 2016 response to the Town's peer reviewer, VHB confirmed that all signs and pavement markings shown on the Redevelopment Plans will conform to the specifications of the MUTCD.
  - c. Recommendations should be offered with respect to pedestrian, bicycle and public transportation access to the Project and associated on-site accommodations such as bicycle racks, etc. In its May 5, 2016 response to the Town's peer reviewer, VHB noted the proposed pedestrian and bicycle initiatives including, a new sidewalk connecting to an existing sidewalk on Barnstable Road, and the provision of bicycle racks adjacent to both proposed structures.
  - d. A No Left Turns sign should be installed at the Bearse Road north driveway and evaluate a channelized island or pavement treatment to further discourage left-turn-out traffic. In response, the Developer has modified the Redevelopment Plans to eliminate the previously proposed northerly Bearse Road curb-cut. As a result, there is no longer a need for this signage or a channelized island/pavement treatment.
  - e. Barnstable Road north driveway radius should be improved similar to the 20 foot radius at the south drive. As VHB indicates in its May 5, 2016 response, the proposed Barnstable Road north driveway radius has been adjusted on the Redevelopment Plans to the recommended radius.
  - f. Do Not Enter locations should have two "Do Not Enter" signs facing on-coming traffic. As shown on the Redevelopment Plans, such signs are proposed.
  - g. The internal intersection at Barnstable Road north drive entrance should have STOP-control on all approaches except the entrance way. This will allow for smooth traffic flow entering the site and prevent queuing for entering traffic. Remove solid line on entrance way which could be confused with a STOP-bar. As shown on the Redevelopment Plans and as indicated in VHB's May 5, 2016 response, STOP-control signs have been added to each of the three approaches at the Barnstable Road north driveway internal intersection. As recommended by the Town's peer reviewer, the previously proposed solid line on the entrance way has been removed on the Redevelopment Plans.
  - h. The project proponent should commit to a traffic monitoring program within one year of the Project opening to review traffic and safety conditions post development. As indicated in VHB's May 5, 2016 response, the Developer will conduct a traffic counting and safety report one year after the Project is fully open and operational (the "Report"). Specifically, the following shall be provided in the Report which shall be submitted to the Growth Management Department Director:
    - i. Peak summer condition traffic counts at all site driveways during the weekday evening (4-6PM) and Saturday mid-day (11-PM) peak periods;
    - ii. Accident records from the files of the Town of Barnstable Police Department will be gathered for each site access driveway; and
    - iii. Traffic volume and accident records for study area intersections will be summarized.
6. As shown on the Redevelopment Plans, the Developer shall: 1) widen the Bearse Road approach to Falmouth Road to accommodate separate right and left turn lanes; 2) provide a by-pass lane around the pharmacy drive-through lane; and 3) remove the previously proposed most northerly access/egress from the site onto Bearse Road and reconfigure the internal traffic movement.
7. Irrigation system(s) shall be incorporated into a revised plan which shall be reviewed by the Building Commissioner prior to the issuance of any building permits.

8. Outdoor storage is prohibited including storage in trailers, containers, trucks or other storage units. This prohibition shall be prominently noted on the final approved site plans. It is expressly acknowledged that the bank's proposed temporary trailer, which will be used for banking operations during the construction period in accordance with Section 14 of this Agreement, is not subject to this prohibition.
9. This Agreement shall run with the land, and all of the terms, conditions, and obligations contained in this Agreement shall be binding on any successor or assignor of the Applicant.
10. Prior to issuance of a building permit, the Developer shall provide evidence to the Building Commissioner of an agreement with the Town which provides that during the Term of this Regulatory Agreement, the CVS Pharmacy identified as one of the tenants of the Redevelopment shall in accordance with Section 168-6(A) of Chapter 168 of the Code of the Town of Barnstable, provide the following benefits to the Town: (i) a listing of all sites at which hypodermic syringes, needles, and medical sharps can be disposed of in Barnstable County, to be made available to each customer visiting the CVS Pharmacy at the Property as well as the display of such listing at the registers within the CVS Pharmacy operated at the Property, and (ii) health educational assistance to the community in accordance with the programs developed and offered by CVS Pharmacy from time to time.
11. All mortgagee(s) holding good and valid mortgage(s) against the Property have executed document(s) effectively subordinating the provisions of their mortgage(s) to this Agreement, which subordination agreement(s) shall be approved by the Town Attorney and recorded contemporaneously with this Agreement.
12. Prior to the issuance of the first building permit, the Developer shall provide a letter of credit, or cash escrow in an amount approved by the Growth Management Director, said letter of credit or cash escrow to be expended to replace landscape materials if such replacement becomes necessary because of the failure of Developer or its tenants to do so. An "acceptable" letter of credit is a letter of credit issued by a bank incorporated in the Commonwealth of Massachusetts or currently licensed to do business in the Commonwealth, and having at the time of issue of the letter of credit an S&P Rating of "BBB+" or better and/or a Bankrate.com rating of 4-star or better. Further, an acceptable letter of credit shall be approved as to issuer by the Treasurer of the Town of Barnstable and as to form by the Office of the Town Attorney. Any unexpended portion of said letter of credit or cash escrow shall be released by the Planning Board to the Developer or its successor(s), as directed by the Developer, after three years from the date of the landscape installation, such date to be determined by the Building Commissioner, upon the request of the Developer.
13. Prior to issuance of a building permit for the proposed pharmacy structure, the Developer shall provide the Growth Management Department Director with evidence that the lease between the Developer and the CVS pharmacy tenant contains a provision requiring CVS to provide the Town of Barnstable Growth Management Department Director with not less than ninety (90) day written notice of closure by CVS of the CVS Pharmacy located at 176 North Street, Hyannis.
14. Developer acknowledges that there will be public access to the bank portion of the site during the construction period. These temporary conditions and operations shall be depicted on a plan with a full narrative showing and describing the temporary arrangements for the bank's operation in a temporary trailer – including structural dimensions of the temporary trailer, its specific location on the lot, detailed access and traffic circulation information. There shall be no drive-thru banking operations allowed during this temporary construction period. This plan and narrative shall show how this publicly accessible portion of the site is to be separated from demolition and construction

areas and also demonstrate how the site will transition to permanent build conditions. The plan and narrative shall be submitted to the Building Commissioner and the Hyannis Fire Department Fire Safety official for their review and approval prior to issuance of a demolition permit for the existing bank building.

15. Developer is responsible for obtaining all applicable permits and licenses.
16. No Certificate of Occupancy shall be issued until all conditions of this Agreement have been met and Design and Infrastructure Plan approval has been issued.
17. This Agreement is transferable to a person or entity other than the Applicant (hereafter, the "Transferee") with prior written notice to the Town Manager and contingent upon the Applicant being in compliance with all the requirements of this Agreement. In the event that Lot A and Lot B are held in separate ownership, the Transferee shall also provide written notice to the record owner of whichever lot (Lot A or Lot B) is not being transferred. However, no such notice to the Town shall be effective unless it includes a written acknowledgement by the Transferee that they have read this Regulatory Agreement, and any amendments thereto, and they agree to be bound by the terms and conditions set forth herein, in which event after such assignment the transferor shall be relieved of liability from and after the date of transfer. Upon receipt of such written notice of transfer, and subject to a determination by the Town Manager that that the Applicant is in compliance with all the then applicable requirements of the Agreement, the Transferee and the Town Manager shall execute a minor amendment of this Regulatory Agreement acknowledging the Transferee is a signatory of this Regulatory Agreement, agreeing to be bound by the terms and conditions set forth herein and any subsequent amendments hereto, and assuming liability as of the date of transfer. No Planning Board or Town Council approval is required for such a minor amendment acknowledging such a transfer in ownership.
18. The development rights granted hereunder shall be exercised and development permits needed to commence construction may be obtained hereunder for a period of three years from the effective date of this Agreement, provided, however, that prior to the expiration of said three year period, the Developer may request one six month extension to obtain development permits necessary to commence construction. Upon receipt of necessary development permits, construction shall proceed continuously and expeditiously, but in no case shall construction exceed two years from receipt of necessary development permits. In the event that this Agreement and/or any necessary development permits for the Project are appealed, the timeframes set forth in this section shall be tolled for the length of any such appeals. The Developer estimates that construction will commence on or about Fall 2016 and will be completed on or about Fall 2017.
19. Construction and demolition debris from the Project shall be removed and reused or recycled to the maximum extent possible.
20. No uses shall use, store, generate, treat or dispose of hazardous waste or hazardous materials and shall not generate hazardous waste as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR Section 30.353, except in compliance with all applicable laws.
21. Prior to the issuance of a building permit, the Developer shall provide the Town Attorney, the Building Commissioner, and the Growth Management Director with copies of the recorded REA's indicating the Developer's and tenants' respective rights and obligations relative to the development and maintenance of the Property, including any shared infrastructure, common areas, and landscaping. Once the Property is divided into Lot A and Lot B, each property owner will maintain its own common areas, sidewalks, access-ways, curb-cuts, utility connects, storm-water drainage,

landscaping, directional signage, and any other infrastructure located on its property. The REA will provide for two shared ground signs, as shown on the Redevelopment Plans. Each parcel owner maintains its own sign panels on the shared signs. The REA will address any sharing of costs, if any, between the owners relating to the items covered under the REA. As noted in Section 4 hereof, cross easements for access and use of ten (10) shared parking spaces will be included in the REA.

22. Once Lot A and Lot B are held in separate ownership, and provided that full and final Certificates of Occupancy have been issued for the both the pharmacy and bank structures, a default, non-use, or non-compliance on the part of one owner of the terms and conditions contained herein shall not affect the rights conferred and granted hereunder to the owner of the other lot.
23. To the extent that the Redevelopment Plans referenced in this Agreement do not depict all the findings and conditions set forth in this Agreement, revised plans and/or notations shall be provided in the final site plan. The Redevelopment shall remain in substantial conformance with the Site Plan Review approval dated March 6, 2016 and all conditions thereof and any modifications thereto as reflected in the final approved site plan.
24. 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.
25. The term of this Agreement shall be ten (10) years from the effective date of the Agreement (herein, the "Term"), and the development rights authorized herein must be exercised prior to expiration of the Term or this Agreement shall be null and void. Once the development rights authorized herein have been timely exercised, all terms and conditions of this Agreement shall remain in effect until the Property is no longer used in accordance with the Redevelopment Plans.
26. The Town hereby grants the following waivers from the Town of Barnstable Zoning Ordinance for the Redevelopment, as requested by the Developer:
  - a. Section 240-24.1.8(B) (1) (a), Special Permit for Non-Residential Development with total gross floor area greater than 10,000 square feet.
    - i. Applicant proposes 6,080 square foot office/bank and 14,575 square foot retail pharmacy.
  - b. Section 240-24.1.8(B) (3), Special Permit for retail uses that increase the number of vehicle trips per day and/or increase peak hour vehicle trips.
    - ii. Proposed retail pharmacy will result in increase of vehicle trips.
  - c. Section 240-24.1.8(C), Front Yard Setback
    - iii. Proposed bank canopy is 24.7 feet from Bearse Road (30 foot front yard setback required).
  - d. Section 240-24.1.8(C)(2)(d), Location of Parking
    - iv. Proposed two rows of parking in front of proposed pharmacy from Barnstable Road frontage.
  - e. Section 240-24.1.8(C) (1), Front yard landscape setback from Route 28 of 60 feet.
    - v. Proposed landscape setback from Route 28 varies from 17.5 feet to 54.8 feet, but represents a substantial improvement as compared to existing conditions.
  - f. Section 240-24.1.10(A) (3), Drive-through windows.
    - vi. Redevelopment proposes bank with two drive-through lanes and one drive-through window is proposed for retail pharmacy.
  - g. Section 240-24.1.10(A)(4)(a)[1] and Section 240-56, Schedule of Parking Spaces

- vii. Redevelopment proposes 82 parking spaces and Ordinance requires 85 parking spaces
- h. Section 240-24.1.10(A) (4) (b) [1], Location of off-street parking spaces.
- viii. Applicant proposes shared parking arrangement between proposed Lot A and Lot B with 10 shared parking spaces, the remaining spaces being for the exclusive use of the lot on which such spaces are located.
- i. Section 240-24.1.10(A)(4)(c)[2] and Section 240-52, Parking Dimensions
  - ix. Applicant proposes parking spaces with dimensions of 9'x19' (9'x20' required).
- j. Section 240-24.1.10(A) (4) (d) [2], [3], [4], Parking lot landscaping.
  - x. Ordinance requires 6' landscape buffer between property lines and parking spaces and between building and surface area of parking lot. Proposed landscape buffer from parking to property line varies from 4.5 feet to 73 feet, and from building to surface area of parking lot varies from 0 feet to 9.8 feet.
  - xi. Proposed landscape islands vary in width from 5 feet to 21 feet (10' width required).
  - xii. For each of these parking lot landscaping waivers, the proposed condition represents an improvement as compared to existing, non-conforming condition of Property.
- k. Section 240-24.1.10(A)(5)(b) and (f), Landscaping
  - xiii. Proposed front yard landscaping setback from road varies from 4.5 feet to 54.8 feet (10 foot setback required).
  - xiv. Redevelopment proposes 12 street trees within front yard setback (37 trees required based on Property's frontage).
  - xv. For each of these landscaping waivers, the proposed condition represents an improvement as compared to the existing, non-conforming condition of the Property.
- l. Section 240-53(B) (1) and (2), and 240-53(C), Landscaping requirements for parking lots.
  - xvi. Ordinance requires 10 foot landscape setback for parking lots from property line and 10' landscape perimeter buffer between building and surfaced area of parking lot. Redevelopment proposes varying parking lot landscape setback of 4.5 feet to 73 feet, and a 0 to 9.8 foot landscape perimeter buffer between building and surfaced area of parking lot.
  - xvii. Redevelopment proposes interior landscape islands of between 5 to 21 feet in width (10 feet in width required).
  - xviii. For each of these parking lot landscape requirements, the proposed condition represents an improvement as compared to the existing, non-conforming condition of the Property.
- m. Section 240-35(F) (3) and (4), GP Overlay District.
  - xix. Redevelopment proposes impervious coverage (combined for both Lot A and Lot B) of 70% (Ordinance provides for 50% maximum, but existing impervious coverage is 95%).
  - xx. Existing and proposed natural state is 0% (30% minimum required).
- n. Signage – Sections 240-24.1.10(A)(6), 240-67(B) and (C), and 240-65(A)
  - xxi. Excluding directional signage, proposed office/bank building proposes 12 signs (a panel on the main free standing sign, one panel on free standing entry identification sign, three building signs, a sign on the ATM, a sign on the pneumatic teller, two incidental door signs, and three interior but outward facing sign display areas) and a total square footage for all signs of 194.7 square feet.
  - xxii. Excluding directional signage, the proposed retail pharmacy proposes 4 signs (two building signs, a panel on the main free-standing sign, and one panel on the free standing entry identification sign) and a total square footage for all signs of 122.42 square feet.
  - xxiii. Square footage of proposed main free standing ground sign contains 24 square feet of tenant signage (12 sf for Citizen's Bank and 12 sf for CVS Pharmacy), which is

permitted under the Zoning Ordinance, however including the shingled mounting together with the tenant panels, the proposed ground sign totals 53 square feet.

27. In addition to the foregoing waivers/relief from the Zoning Ordinance, this Agreement also waives the requirement for a public hearing before the Town Manager pursuant to Chapter 115-2 of the Code (Hours of Operation of Businesses) and authorizes issuance of a permit to allow the proposed pharmacy drive-up window to remain open twenty-four hours a day. Said permit may be revoked by the Town pursuant to the process set forth in Chapter 115-2 of the Code. In that Chapter 115 of the Code only pertains to retail businesses, no such waiver/relief is needed from Chapter 115 or any other provisions of the Zoning Ordinance for the proposed bank's drive-up ATM to be operational 24-hours a day.

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 \_\_\_\_\_, 2016.

TOWN OF BARNSTABLEMARK HYANNIS, LLC  
a Massachusetts Limited Liability Company  
By: Amadan Management, LLC  
a Massachusetts Limited Liability Company

By: \_\_\_\_\_ By: \_\_\_\_\_  
Name: Mark Ells, Town Manager Name: Robert S. Korff, Manager

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared Mark Ells, Town Manager of the Town of Barnstable, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document in my presence.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned notary public, personally appeared Robert S. Korff, Manager of Amadan Management, LLC, and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document in my presence.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

**EXHIBIT A: REDEVELOPMENT PLANS**

**EXHIBIT B: DRAFT APPROVAL NOT REQUIRED PLAN**

# BARNSTABLE TOWN COUNCIL

**ITEM # 2017-009**  
**INTRO: 08/11/16**

## SUMMARY

**TO:** Town Council  
**FROM:** Michael Scott and Eliza Cox, Attorneys for Mark Hyannis, LLC  
**THROUGH:** JoAnne Miller Buntich, Growth Management Director  
**DATE:** August 5, 2016  
**SUBJECT:** Regulatory Agreement Mark Hyannis, LLC – Bank with drive through and Pharmacy with drive through at 411 and 417 Barnstable Road and 42 Bearse Road, Hyannis

**BACKGROUND:** The proposed Regulatory Agreement has been negotiated between the Planning Board (with the assistance of Growth Management Staff, and with input from the Town Engineer and the Town Attorney) and the Applicant, and has been the subject at four Planning Board public hearings, at the conclusion of which the Planning Board voted unanimously (6-0 vote) to recommend the Regulatory Agreement to the Town Council.

**RATIONALE:** Mark Hyannis, LLC, the Applicant in the proposed Regulatory Agreement, purchased the three developed properties known as and numbered 411 Barnstable Road, 417 Barnstable Road, and 42 Bearse Road in Hyannis in fall/winter of 2015. These three properties, which collectively comprise the subject property under the Regulatory Agreement, total 2.38 acres of land, and are developed with approximately 29,558 square feet of commercial uses that include a bank with drive through lanes, a former discount tool retail use, a car rental business, car servicing/repair, and used car sales. The existing development contains 8 large, poorly defined curb-cuts on the multiple roadway frontages, including a wide curb-cut onto the Airport rotary. The existing site is non-conforming as to dimension and use, contains minimal landscaping, and is approximately 95% impervious.

The subject property is within the Hyannis Gateway (HG) zoning district, and the Groundwater Protection (GP) overlay district. It is also located within the Growth Incentive Zone (GIZ).

The Applicant proposes to make a substantial investment in the subject property by redeveloping and improving this gateway location. The proposed Regulatory Agreement authorizes the redevelopment of the property by demolishing all three existing structures, re-dividing the existing 3 lots into 2 lots (proposed as “Lot A” and “Lot B”), and constructing a two-story office/bank building with drive through lanes with a gross floor area of approximately 6,080 square feet on proposed Lot A, and an approximately 12,900 square foot retail pharmacy with a drive-up pharmacy window on proposed Lot B, together with numerous site improvements, including a substantial reduction in curb-cuts (including closing the existing Airport rotary curb-cut), pedestrian and site amenities, new storm-water drainage, and significantly increased landscaping.

During the course of the Planning Board review, the Town engaged a traffic engineering firm to peer review the Applicant’s traffic assessment. As a result, additional improvements were made, including further reducing the number of proposed curb-cuts so that only 3 curb-cuts are proposed, 2 of which are limited access (right-in only, and right-in/right out).

Because the Applicant requests zoning relief for the proposed redevelopment, a two-thirds vote of the Town Council is needed to approve the proposed Regulatory Agreement. In addition to the requested zoning relief, the Regulatory Agreement also authorizes the proposed pharmacy drive-up window to remain open twenty-four hours a day pursuant to Chapter 115 of the Code.

**FISCAL IMPACT:** The fiscal impact is positive.



**B. NEW BUSINESS (Refer to Public hearing 09/15/16)**

**BARNSTABLE TOWN COUNCIL**

**ITEM #: 2017-010**

**INTRO: 08/11/16**

**2017-010 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$1,113,000 FOR THE CONSTRUCTION OF THREE BUILDINGS FOR THE CARBON TREATMENT UNITS AT THE MARY DUNN WELLFIELD**

**ORDERED:** That the sum of **\$1,113,000** be appropriated for the purpose of constructing three buildings to enclose the three carbon treatment units at the Mary Dunn wellfield, and that to meet this appropriation, the Town Treasurer with the approval of the Town Manager, is authorized to borrow **\$1,113,000**, 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:** Councilor John G. Flores, Precinct 1

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Move/Vote

# BARNSTABLE TOWN COUNCIL

**ITEM #:2017-010**  
**INTRO: 08/11/16**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**DATE:** August 8, 2016  
**SUBJECT:** Appropriation and Loan order in the amount of **\$1,113,000** for the construction of three buildings for the carbon treatment units at the Mary Dunn wellfield

**BACKGROUND:** In 2015, United States Environmental Protection Agency (USEPA)-mandated testing of the Hyannis Water System for Contaminants of Emerging Concern (CEC's) identified the presence of perfluorinated compounds in the Mary Dunn wellfield that exceeded the *provisional* Federal Health Advisory for these compounds. Working with the Massachusetts Department of Environmental Protection (DEP), the DPW leased and installed two granular activated carbon treatment systems on Mary Dunn wells #1 and #2 in June of 2015.

On May 19, 2016, the USEPA announced the *final* Federal Health Advisory for perfluorinated compounds in drinking water. The new advisory level was significantly lower than the provisional level. Consequently, Mary Dunn well #3, which was below the provisional level, now exceeded the final level. In response, the Department of Public Works (DPW) leased and installed a third carbon treatment system to serve Mary Dunn well #3.

As the result of the final USEPA Health Advisory, the use of 3 wells at the Maher wellfield, that currently exceed the new standard, has been significantly curtailed. The Town has entered into an agreement with the Town of Yarmouth to provide water from their system through a seasonal interconnection in the vicinity of the Maher wellfield.

**ANALYSIS:** Due to the overall impact on the entire Hyannis Water System as a result of the presence of perfluorinated compounds in six of its 10 wells, the Mary Dunn wells will need to be operated on a year-round basis. In order to accomplish this, the three carbon treatment units need to be housed in heated buildings. We propose to construct wood frame buildings around each of the three carbon units.

Barnstable County has undertaken groundwater sampling in the vicinity of the County Fire Training Academy (CFTA) and the Mary Dunn wellfield. These investigations have revealed that not only is the (CFTA) the likely source of contamination in the Mary Dunn wells, but the perfluorinated compound contamination is worse than originally thought and has not yet been fully delineated. Given this information, it is likely that the use of the carbon treatment units will be required for at least 3 to 5 years and possibly longer.

**FISCAL IMPACT:** Funding for this project will be provided from a bond issue. The Fiscal Year 2017 Operating Budget will not be affected by this appropriation. The costs of operation of the buildings will be absorbed into existing operating budget line items. The annual rate study, which is conducted in the fall, will consider the annual debt service expense for the bond, and recommend adjustments to the rate structure

**TOWN MANAGER RECOMMENDATION:** The Town Manager recommends approval of the appropriation and loan order.

**STAFF ASSISTANCE:** Daniel W. Santos, P.E., Director of Public Works