

Town of Barnstable  
Town Council  
James H. Crocker Jr. Hearing Room  
367 Main Street, 2<sup>nd</sup> floor,  
Hyannis, MA 02601  
Office 508.862.4738 • Fax 508.862.4770  
E-mail: [council@town.barnstable.ma.us](mailto:council@town.barnstable.ma.us)

## TOWN COUNCIL MEETING AGENDA

April 27, 2023

**6:00 PM**

### Councillors:

Matthew Levesque  
President  
Precinct 10

Jennifer Cullum  
Vice President  
Precinct 13

Gordon Starr  
Precinct 1

Eric R. Steinhilber  
Precinct 2

Betty Ludtke  
Precinct 3

Nikolas Atsalis  
Precinct 4

Paul Cusack  
Precinct 5

Paul C. Neary  
Precinct 6

Jessica Rapp Grassetti  
Precinct 7

Jeffrey Mendes  
Precinct 8

Tracy Shaughnessy  
Precinct 9

Kristine Clark  
Precinct 11

Paula Schnepf  
Precinct 12

Administrator:  
Cynthia A. Lovell  
Cynthia.Lovell@  
town.barnstable.ma.us

The April 27, 2023 Meeting of the Barnstable Town Council shall be conducted in person at 367 Main Street 2<sup>nd</sup> Floor James H. Crocker Jr. Hearing Room, Hyannis, MA. The public may attend in person or participate remotely in Public Comment or during a Public Hearing via the Zoom link listed below.

1. The meeting will be televised live via Comcast Channel 18 or may be accessed via the Channel 18 live stream on the Town of Barnstable's website:

<http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

2. Written Comments may be submitted to:

[https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town\\_Council/Agenda-Comment.asp](https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town_Council/Agenda-Comment.asp)

3. Remote Participation: The public may participate in Public Comment or Public Hearings by utilizing the Zoom video link or telephone number and access meeting code:

Join Zoom Meeting <https://townofbarnstable-us.zoom.us/j/82676895103> Meeting ID: 826 7689 5103

US Toll-free 888 475 4499

### PUBLIC SESSION

#### 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 PUBLIC SESSION MINUTES

#### 8. COMMUNICATIONS - from elected officials, boards, committees, and staff, commission reports, correspondence and announcements

#### 9. ORDERS OF THE DAY

A. Old Business

B. New Business

#### 10. ADJOURNMENT

**NEXT REGULAR MEETING: May 04, 2023**

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## **B. NEW BUSINESS**

2023-154	Resolve allowing the granting of licenses for the game commonly called “Beano” in the Town of Barnstable and approving the Bingo applications of the Holy Ghost Society of Santuit and Cotuit, Inc. <b>(May be acted upon) (Majority Vote)</b> .....	76-78
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**2023-180** Authorization to convey 8.1 +/- acres of the property located at 140 Old Oyster Road, in the village of Cotuit, MA, to the Cotuit Fire District for nominal consideration of one dollar and no cents (\$1.00) and approval and authorization of a Conservation Restriction on the remaining 5.4 +/- acres of said property to be held by the Cotuit Fire District for conservation, recreation, aquifer recharge area and water protection purposes **(First Reading)**  
**(Refer to Second Reading 05/04/2023)**..... 86-112

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**Please Note:** The lists of matters are those reasonably anticipated by the Council President which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may be discussed 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 as 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, it may be continued to a future meeting, and with proper notice.

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-073  
INTRO: 04/06/2023, 04/27/2023**

**2023-073 APPROPRIATION ORDER IN THE AMOUNT OF \$50,000 FOR THE PURPOSE OF FUNDING THE FINAL DESIGN OF THE SANDY NECK FACILITY RECONFIGURATION PROJECT AS OUTLINED IN THE FISCAL YEAR 2024- FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$50,000** be appropriated for the purpose of funding the Final Design of the Sandy Neck Facility Reconfiguration Project as outlined in the Fiscal Year 2024- Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$50,000** be provided from the Sandy Neck Enterprise Fund surplus, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-074  
INTRO: 04/06/2023, 04/27/2023**

**2023-074 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$195,000 FOR THE PURPOSE OF FUNDING THE DESIGN OF THE PRINCE COVE IMPROVEMENTS PROJECT AS OUTLINED IN THE FISCAL YEAR 2024- FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$195,000** be appropriated for the purpose of funding the Design of the Prince Cove Improvements Project as outlined in the Fiscal Year 2024- Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$56,000** be transferred from the remaining balance in Town Council order 2016-109, and that **\$139,000** be provided from the Marina Enterprise Fund surplus, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-075  
INTRO: 04/06/2023, 04/27/2023**

**2023-075 APPROPRIATION ORDER IN THE AMOUNT OF \$172,000 FOR THE PURPOSE OF FUNDING THE DESIGN AND PERMITTING OF THE BARNSTABLE HARBOR MARINA REVETMENT PROJECT AS OUTLINED IN THE FISCAL YEAR 2024- FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$172,000** be appropriated for the purpose of funding the Design and Permitting of the Barnstable Harbor Marina Revetment Project as outlined in the Fiscal Year 2024- Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$172,000** be provided from the General Fund surplus, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-076  
INTRO: 04/06/2023, 04/27/2023**

**2023-076 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$496,000 FOR THE PURPOSE OF FUNDING THE SCUDDER’S LANE BOAT RAMP RECONSTRUCTION PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$496,000** be appropriated for the purpose of funding the Scudder’s Lane Boat Ramp Reconstruction Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$496,000** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefore; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-077**  
**INTRO: 04/06/2023, 04/27/2023**

**2023-077 APPROPRIATION ORDER IN THE AMOUNT OF \$90,000 FOR THE PURPOSE OF FUNDING THE LITTLE RIVER FISH PASSAGE RESTORATION EVALUATION PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$90,000** be appropriated for the purpose of funding the Little River Fish Passage Restoration Evaluation Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$90,000** be provided from the General Fund Reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-078**  
**INTRO: 04/06/2023, 04/27/2023**

**2023-078 APPROPRIATION ORDER IN THE AMOUNT OF \$225,000 FOR THE PURPOSE OF FUNDING THE ROSA LANE FISH PASSAGE CULVERT REPLACEMENT DESIGN PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$225,000** be appropriated for the purpose of funding the Rosa Lane Fish Passage Culvert Replacement Design Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$225,000** be provided from the General Fund Reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-079  
INTRO: 04/06/2023, 04/27/2023**

**2023-079 APPROPRIATION ORDER IN THE AMOUNT OF \$125,000 FOR THE PURPOSE OF FUNDING THE LAKE ELIZABETH FISH RUN, DAM AND CULVERT REPLACEMENT DESIGN PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$125,000** be appropriated for the purpose of funding the Lake Elizabeth Fish Run, Dam and Culvert Replacement Design Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$125,000** be provided from the General Fund Reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-080  
INTRO: 04/06/2023, 04/27/2023**

**2023-080 APPROPRIATION ORDER IN THE AMOUNT OF \$295,000 FOR THE PURPOSE OF FUNDING THE MCCARTHY’S LANDING DINGHY DOCK CONSTRUCTION PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$295,000** be appropriated for the purpose of funding the McCarthy’s Landing Dinghy Dock Construction Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$295,000** be provided from the General Fund Reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-081  
INTRO: 04/06/2023, 04/27/2023**

**2023-081 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$100,000 FOR THE PURPOSE OF FUNDING THE DESIGN AND PERMITTING OF THE COTUIT TOWN DOCK IMPROVEMENTS PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$100,000** be appropriated for the purpose of funding the design and permitting of the Cotuit Town Dock Improvements Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$58,570** be transferred from the remaining balance in Town Council order 2019-150 and that **\$41,430** be provided from the General Fund Reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-082  
INTRO: 04/06/2023, 04/27/2023**

**2023-082 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$50,000 FOR THE PURPOSE OF FUNDING THE LICENSE PLATE READER TECHNOLOGY PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$50,000** be appropriated for the purpose of funding the License Plate Reader Technology Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$14,681** be transferred from the remaining balance in Town Council order 2019-140, that **\$8,490** be transferred from the remaining balance in Town Council order 2020-125, and that **\$26.829** be provided from the Solid Waste Enterprise Fund reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-083  
INTRO: 04/06/2023, 04/27/2023**

**2023-083 APPROPRIATION ORDER IN THE AMOUNT OF \$50,000 FOR THE PURPOSE OF FUNDING THE CONTAINER REPLACEMENT PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$50,000** be appropriated for the purpose of funding the Container Replacement Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$50,000** be provided from the Solid Waste Enterprise Fund reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-084  
INTRO: 04/06/2023, 04/27/2023**

**2023-084 APPROPRIATION, TRANSFER AND LOAN ORDER IN THE AMOUNT OF \$1,750,000 FOR THE PURPOSE OF FUNDING THE PUMP STATION REHABILITATION PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$1,750,000** be appropriated for the purpose of funding the Pump Station Rehabilitation Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$134,000** be transferred from the remaining balance in Town Council Order 2019-132, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$1,616,000** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-085  
INTRO: 04/06/2023, 04/27/2023**

**2023-085 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$4,500,000 FOR THE PURPOSE OF FUNDING THE WATER POLLUTION CONTROL FACILITY IMPROVEMENTS PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$4,500,000** be appropriated for the purpose of funding the Water Pollution Control Facility Improvements Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$4,500,000** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-086  
INTRO: 04/06/2023, 04/27/2023**

**2023-086 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$800,000 FOR THE PURPOSE OF FUNDING THE DOWNTOWN HYANNIS FORCE MAIN REHABILITATION PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$800,000** be appropriated for the purpose of funding the Downtown Hyannis Force Main Rehabilitation Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$800,000** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-087  
INTRO: 04/06/2023, 04/27/2023**

**2023-087 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$30,900,000 FOR THE PURPOSE OF FUNDING THE PARK CITY WIND SEWER EXPANSION CONSTRUCTION PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$30,900,000** be appropriated for the purpose of funding the Park City Wind Sewer Expansion Construction Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$30,900,000** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-088  
INTRO: 04/06/2023, 04/27/2023**

**2023-088 APPROPRIATION ORDER IN THE AMOUNT OF \$1,500,000 FOR THE PURPOSE OF FUNDING THE DESIGN AND PERMITTING OF THE OLD CRAIGVILLE ROAD SEWER EXPANSION PROJECT AS OUTLINED IN THE FISCAL YEAR 2024- FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$1,500,000** be appropriated for the purpose of funding the Design and Permitting of the Old Craigville Road Sewer Expansion Project as outlined in the Fiscal Year 2024- Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$1,500,000** be provided from the Capital Trust Fund reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-089**  
**INTRO: 04/06/2023, 04/27/2023**

**2023-089 APPROPRIATION ORDER IN THE AMOUNT OF \$350,000 FOR THE PURPOSE OF FUNDING THE PRELIMINARY DESIGN AND SURVEY OF THE LONG BEACH SEWER EXPANSION PROJECT AS OUTLINED IN THE FISCAL YEAR 2024- FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$350,000** be appropriated for the purpose of funding the Preliminary Design and Survey of the Long Beach Sewer Expansion Project as outlined in the Fiscal Year 2024- Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$350,000** be provided from the Sewer Construction and Private Way Improvement Fund reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-090  
INTRO: 04/06/2023, 04/27/2023**

**2023-090 APPROPRIATION ORDER IN THE AMOUNT OF \$650,000 FOR THE PURPOSE OF FUNDING THE FINAL DESIGN AND PERMITTING OF THE OLD YARMOUTH ROAD SEWER EXPANSION PROJECT AS OUTLINED IN THE FISCAL YEAR 2024- FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$650,000** be appropriated for the purpose of funding the final design and permitting of the Old Yarmouth Road Sewer Expansion Project as outlined in the Fiscal Year 2024- Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$650,000** be provided from the Sewer Construction and Private Way Improvement Fund Reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-091  
INTRO: 04/06/2023, 04/27/2023**

**2023-091 APPROPRIATION ORDER IN THE AMOUNT OF \$150,000 FOR THE PURPOSE OF FUNDING THE WARREN’S COVE AQUACULTURE FEASIBILITY STUDY PROJECT AS OUTLINED IN THE FISCAL YEAR 2024- FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$150,000** be appropriated for the purpose of funding the Warren’s Cove Aquaculture Feasibility Study Project as outlined in the Fiscal Year 2024- Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$150,000** be provided from the Sewer Construction and Private Way Improvement Fund Reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-092  
INTRO: 04/06/2023, 04/27/2023**

**2023-092 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$1,500,000 FOR THE PURPOSE OF FUNDING THE PIPE REPLACEMENT AND UPGRADE PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$1,500,000** be appropriated for the purpose of funding the Pipe Replacement and Upgrade Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$1,500,000** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-093  
INTRO: 04/06/2023, 04/27/2023**

**2023-093 APPROPRIATION ORDER IN THE AMOUNT OF \$200,000 FOR THE PURPOSE OF FUNDING THE WELLS, PUMP STATIONS, TREATMENT PLANT REPAIR AND UPGRADE PROJECT AS OUTLINED IN THE FISCAL YEAR 2024- FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$200,000** be appropriated for the purpose of funding the Wells, Pump Stations, Treatment Plant Repair and Upgrade Project as outlined in the Fiscal Year 2024- Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$200,000** be provided from the Water Supply Enterprise Fund Reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-094  
INTRO: 04/06/2023, 04/27/2023**

**2023-094 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$927,000 FOR THE PURPOSE OF FUNDING THE MARY DUNN 1 WATER STORAGE TANK REHABILITATION PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$927,000** be appropriated for the purpose of funding the Mary Dunn 1 Water Storage Tank Rehabilitation Project as outlined in the Fiscal Year 2024 - Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$927,000** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-095  
INTRO: 04/06/2023, 04/27/2023**

**2023-095 APPROPRIATION, TRANSFER AND LOAN ORDER IN THE AMOUNT OF \$620,000 FOR THE PURPOSE OF FUNDING THE NEW WELL EXPLORATION PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 - FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$620,000** be appropriated for the purpose of funding the New Well Exploration Project as outlined in the Fiscal Year 2024 - Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$147,600** be transferred from the remaining balance in Town Council order 2017-080, and that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$472,400** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefore; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-096  
INTRO: 04/06/2023, 04/27/2023**

**2023-096 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$1,000,000 FOR THE PURPOSE OF FUNDING THE MARY DUNN 4 WELL BUILDING PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$1,000,000** be appropriated for the purpose of funding the Mary Dunn 4 Well Building Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$1,000,000** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-097  
INTRO: 04/06/2023, 04/27/2023**

**2023-097 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$3,000,000 FOR THE PURPOSE OF FUNDING THE MARY DUNN ROAD WATER MAIN REPLACEMENT PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$3,000,000** be appropriated for the purpose of funding the Mary Dunn Road Water Main Replacement Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$3,000,000** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-098**  
**INTRO: 04/06/2023, 04/27/2023**

**2023-098 APPROPRIATION ORDER THE AMOUNT OF \$185,235 FOR THE PURPOSE OF FUNDING THE TOWN HALL ROOF ANALYSIS AND REPAIR PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$185,235** be appropriated for the purpose of funding the Town Hall Roof Analysis and Repair Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$185,235** be provided from the General Fund Reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-099  
INTRO: 04/06/2023, 04/27/2023**

**2023-099 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$1,141,929 FOR THE PURPOSE OF FUNDING THE SCHOOL ADMINISTRATION BUILDING MECHANICAL COOLING UPGRADES PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$1,141,929** be appropriated for the purpose of funding the School Administration Building Mechanical Cooling Upgrades Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$1,141,929** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-100  
INTRO: 04/06/2023, 04/27/2023**

**2023-100 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$1,752,400 FOR THE PURPOSE OF FUNDING THE HYANNIS YOUTH & COMMUNITY CENTER MECHANICALS IMPROVEMENTS PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$1,752,400** be appropriated for the purpose of funding the Hyannis Youth & Community Center Mechanicals Improvements Project as outlined in the Fiscal Year 2024 - Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$1,752,400** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote



**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-101  
INTRO: 04/06/2023, 04/27/2023**

**2023-101 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$400,000 FOR THE PURPOSE OF FUNDING THE DEPARTMENT OF PUBLIC WORKS OFFICE ADMINISTRATION BUILDING EXPANSION PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$400,000** be appropriated for the purpose of funding the Department of Public Works Office Administration Building Expansion Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$373,320** be transferred from the remaining balance in Town Council order 2021-097 and that **\$26,680** be provided from the General Fund Reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-102  
INTRO: 04/06/2023, 04/27/2023**

**2023-102 APPROPRIATION ORDER IN THE AMOUNT OF \$3,750,000 FOR THE PURPOSE OF FUNDING THE PUBLIC ROADS MAINTENANCE PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 - FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$3,750,000** be appropriated for the purpose of funding the Public Roads Maintenance Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$3,750,000** be provided from the Capital Trust Fund Reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-103  
INTRO: 04/06/2023, 04/27/2023**

**2023-103 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$270,000 FOR THE PURPOSE OF FUNDING THE MONITORING AND MANAGEMENT PLAN FOR FRESHWATER PONDS PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$270,000** be appropriated for the purpose of funding the Monitoring and Management Plan for Freshwater Ponds Project as outlined in the Fiscal Year 2024 - Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$105,440** be transferred from the remaining balance in Town Council order 2013-114 and that **\$164,560** be provided from the General Fund Reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-104  
INTRO: 04/06/2023, 04/27/2023**

**2023-104 APPROPRIATION ORDER IN THE AMOUNT OF \$195,000 FOR THE PURPOSE OF FUNDING THE MYSTIC LAKE ALUM TREATMENT PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 - FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$195,000** be appropriated for the purpose of funding the Mystic Lake Alum Treatment Project as outlined in the Fiscal Year 2024 - Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$195,000** be provided from the General Fund Reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-105  
INTRO: 04/06/2023, 04/27/2023**

**2023-105 APPROPRIATION ORDER IN THE AMOUNT OF \$95,000 FOR THE PURPOSE OF FUNDING THE MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 - FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$95,000** be appropriated for the purpose of funding the Municipal Separate Storm Sewer System (MS4) Project as outlined in the Fiscal Year 2024 - Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$95,000** be provided from the General Fund Reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-106  
INTRO: 04/06/2023, 04/27/2023**

**2023-106 APPROPRIATION ORDER IN THE AMOUNT OF \$175,000 FOR THE PURPOSE OF FUNDING THE RAISED CROSSWALKS IN COTUIT PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$175,000** be appropriated for the purpose of funding the Raised Crosswalks in Cotuit Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$175,000** be provided from the General Fund Reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-107  
INTRO: 04/06/2023, 04/27/2023**

**2023-107 APPROPRIATION ORDER IN THE AMOUNT OF \$131,500 FOR THE PURPOSE OF FUNDING THE DESIGN OF THE HAWES AVE. CULVERT RECONSTRUCTION PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$131,500** be appropriated for the purpose of funding the Design of the Hawes Ave. Culvert Reconstruction Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$131,500** be provided from the General Fund Reserves, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-108  
INTRO: 04/06/2023, 04/27/2023**

**2023-108 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$492,270 FOR THE PURPOSE OF FUNDING THE HYANNIS GOLF COURSE TURF MAINTENANCE EQUIPMENT REPLACEMENT PROJECT AS OUTLINED IN THE FISCAL YEAR 2024- FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$492,270** be appropriated for the purpose of funding the Hyannis Golf Course Turf Maintenance Equipment Replacement Project as outlined in the Fiscal Year 2024- Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$9,335** be transferred from the remaining funds in Town Council order 2021-096 and that **\$482,935** be provided from the Golf Enterprise Fund surplus, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-109  
INTRO: 04/06/2023, 04/27/2023**

**2023-109 APPROPRIATION ORDER IN THE AMOUNT OF \$82,561 FOR THE PURPOSE OF FUNDING THE OLDE BARNSTABLE FAIRGROUNDS IRRIGATION SPRINKLER REPLACEMENT PROJECT AS OUTLINED IN THE FISCAL YEAR 2024- FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$82,561** be appropriated for the purpose of funding the Olde Barnstable Fairgrounds Irrigation Sprinkler Replacement Project as outlined in the Fiscal Year 2024- Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$82,561** be provided from the Golf Enterprise Fund surplus, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-110  
INTRO: 04/06/2023, 04/27/2023**

**2023-110 APPROPRIATION ORDER IN THE AMOUNT OF \$161,757 FOR THE PURPOSE OF FUNDING THE OLDE BARNSTABLE FAIRGROUNDS CART BARN ROOF REPLACEMENT PROJECT AS OUTLINED IN THE FISCAL YEAR 2024- FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$161,757** be appropriated for the purpose of funding the Olde Barnstable Fairgrounds Cart Barn Roof Replacement Project as outlined in the Fiscal Year 2024- Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$161,757** be provided from the Golf Enterprise Fund surplus, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

- 
- Read Item
  - Motion to Open Public Hearing
  - Rationale
  - Public Hearing
  - Close Public Hearing
  - Council Discussion
  - Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-111  
INTRO: 04/06/2023, 04/27/2023**

**2023-111 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$400,000 FOR THE PURPOSE OF FUNDING THE COBB ASTRO PARK EXTERIOR INSULATION FINISH SYSTEM (EIFS) REPLACEMENT PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 - FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$400,000** be appropriated for the purpose of funding the Cobb Astro Park Exterior Insulation Finish System (EIFS) Replacement project as outlined in the Fiscal Year 2024 - Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$400,000** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Barnstable School Committee is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-112**  
**INTRO: 04/06/2023, 04/27/2023**

**2023-112 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$1,000,000 FOR THE PURPOSE OF FUNDING THE CAMPUS-WIDE DOOR AND WINDOW REPLACEMENT PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 - FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$1,000,000** be appropriated for the purpose of funding the Campus-wide Door and Window Replacement project as outlined in the Fiscal Year 2024 - Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$1,000,000** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Barnstable School Committee is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-113  
INTRO: 04/06/2023, 04/27/2023**

**2023-113 APPROPRIATION ORDER THE AMOUNT OF \$350,000 FOR THE PURPOSE OF FUNDING THE CAMPUS-WIDE PAVING AND SIDEWALK REPAIR PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 - FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$350,000** be appropriated for the purpose of funding the Campus-wide Paving and Sidewalk Repair Project as outlined in the Fiscal Year 2024 - Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to fund this appropriation that **\$350,000** be provided from the General Fund Reserves; and that the Barnstable School Committee is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-114  
INTRO: 04/06/2023, 04/27/2023**

**2023-114 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$500,000 FOR THE PURPOSE OF FUNDING THE BARNSTABLE HIGH SCHOOL CULINARY ARTS KITCHEN IMPROVEMENTS PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 - FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$500,000** be appropriated for the purpose of funding the Barnstable High School Culinary Arts Kitchen Improvements project as outlined in the Fiscal Year 2024 - Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$500,000** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Barnstable School Committee is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-115  
INTRO: 04/06/2023, 04/27/2023**

**2023-115 APPROPRIATION ORDER IN THE AMOUNT OF \$250,000 FOR THE PURPOSE OF FUNDING THE CAMPUS-WIDE MECHANICAL UPGRADES PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$250,000** be appropriated for the purpose of funding the Campus-wide Mechanical Upgrades Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to fund this appropriation that **\$250,000** be provided from the General Fund Reserves; and that the Barnstable School Committee is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-116  
INTRO: 04/06/2023, 04/27/2023**

**2023-116 APPROPRIATION ORDER IN THE AMOUNT OF \$250,000 FOR THE PURPOSE OF FUNDING THE KNIGHT HALL CHILLER REPLACEMENT PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$250,000** be appropriated for the purpose of funding the Knight Hall Chiller Replacement Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$250,000** be provided from the General Fund Reserves; and that the Barnstable School Committee is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-117  
INTRO: 04/06/2023, 04/27/2023**

**2023-117 APPROPRIATION ORDER IN THE AMOUNT OF \$1,000,000 FOR THE PURPOSE OF FUNDING THE BARNSTABLE HIGH SCHOOL PHASE II SOFTBALL FIELD UPGRADE PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$1,000,000** be appropriated for the purpose of funding the Barnstable High School Phase II Softball Field Upgrade Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$1,000,000** be provided from the General Fund Reserves; and that the Barnstable School Committee is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-118  
INTRO: 04/06/2023, 04/27/2023**

**2023-118 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$750,000 FOR THE PURPOSE OF FUNDING THE WEST VILLAGES ELEMENTARY CARPET REMOVAL PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$750,000** be appropriated for the purpose of funding the West Villages Elementary Carpet Removal project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$441,549** be transferred from the remaining available balance in Town Council order 2019-101, and that **\$239,605** be transferred from the remaining available balance in Town Council order 2019-102, and that **\$68,846** be provided from the General Fund reserves; and that the Barnstable School Committee is authorized to contract for and expend the appropriation made available for these purposes.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-119  
INTRO: 04/06/2023, 04/27/2023**

**2023-119 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$1,015,864 FOR THE PURPOSE OF FUNDING THE HVAC UPGRADES TO THE AIRPORT TERMINAL AND TOWER PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 - FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$1,015,864** be appropriated for the purpose of funding the HVAC Upgrades to the Airport Terminal and Tower Project as outlined in the Fiscal Year 2024 - Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$50,793** be provided from the Airport Enterprise Fund surplus, and that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$965,071** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Airport Commission is authorized to contract for and expend the appropriation made available for these purposes and to accept any gifts or grants in relation thereto.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-120  
INTRO: 04/06/2023, 04/27/2023**

**2023-120 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$525,000 FOR THE PURPOSE OF FUNDING THE MASTER PLAN UPDATES PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 - FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$525,000** be appropriated for the purpose of funding the Master Plan Updates Project as outlined in the Fiscal Year 2024 - Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$26,250** be provided from the Airport Enterprise Fund surplus, and that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$498,750** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefore; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Airport Commission is authorized to contract for and expend the appropriation made available for these purposes and to accept any gifts or grants in relation thereto.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-121  
INTRO: 04/06/2023, 04/27/2023**

**2023-121 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$689,000 FOR THE PURPOSE OF FUNDING THE SECURITY CAMERA UPGRADES PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$689,000** be appropriated for the purpose of funding the Security Camera Upgrades Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$34,450** be provided from the Airport Enterprise Fund surplus, and that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$654,550** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Airport Commission is authorized to contract for and expend the appropriation made available for these purposes and to accept any gifts or grants in relation thereto.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-122  
INTRO: 04/06/2023, 04/27/2023**

**2023-122 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$383,000 FOR THE PURPOSE OF FUNDING THE REPLACEMENT OF SNOW REMOVAL EQUIPMENT PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 - FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$383,000** be appropriated for the purpose of funding the Replacement of Snow Removal Equipment Project as outlined in the Fiscal Year 2024 - Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$19,150** be provided from the Airport Enterprise Fund surplus, and that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$363,850** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Airport Commission is authorized to contract for and expend the appropriation made available for these purposes and to accept any gifts or grants in relation thereto.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-123  
INTRO: 04/06/2023, 04/27/2023**

**2023-123 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$1,120,580 FOR THE PURPOSE OF FUNDING THE SNOW REMOVAL EQUIPMENT STORAGE FACILITY PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 - FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$1,120,580** be appropriated for the purpose of funding the Snow Removal Equipment Storage Facility Project as outlined in the Fiscal Year 2024 - Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$1,120,580** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Airport Commission is authorized to contract for and expend the appropriation made available for these purposes and to accept any gifts or grants in relation thereto.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-124  
INTRO: 04/06/2023, 04/27/2023**

**2023-124 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$505,000 FOR THE PURPOSE OF FUNDING THE ELECTRIC AIRCRAFT SUPPORT VEHICLE AND CHARGING STATION PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 - FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$505,000** be appropriated for the purpose of funding the Electric Aircraft Support Vehicle and charging Station Project as outlined in the Fiscal Year 2024 - Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$25,250** be provided from the Airport Enterprise Fund surplus, and that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$479,750** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Airport Commission is authorized to contract for and expend the appropriation made available for these purposes and to accept any gifts or grants in relation thereto.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-125  
INTRO: 04/06/2023, 04/27/2023**

**2023-125 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$355,000 FOR THE PURPOSE OF FUNDING THE JET A FUEL STORAGE TANK PROJECT AS OUTLINED IN THE FISCAL YEAR 2024 – FISCAL YEAR 2028 CAPITAL IMPROVEMENT PLAN**

**ORDERED:** That the amount of **\$355,000** be appropriated for the purpose of funding the Jet A Fuel Storage Tank Project as outlined in the Fiscal Year 2024 – Fiscal Year 2028 Capital Improvement Plan, including the payment of costs incidental or related thereto; and that to meet this appropriation, that **\$71,000** be provided from the Airport Enterprise Fund surplus, and that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$284,000** under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Airport Commission is authorized to contract for and expend the appropriation made available for these purposes and to accept any gifts or grants in relation thereto.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

**B. NEW BUSINESS (First Reading) (Refer to Second Reading 05/04/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-126  
INTRO: 04/27/2023**

**2023-126 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION**

**RESOLVED:** That the Town Council appoints the following individuals to a multiple-member Board/Committee/Commission: **Mid Cape Cultural Council:** Barbara Hersey, as a regular member, to a term expiring 06/2025; **Shellfish Committee:** Paul Hendricks Jr., as a professional fisheries trained member, to a term expiring 06/2024; **Youth Commission:** Sophia Machnik, as a student member, to a term expiring 06/2024; Daniel Gomes, as a student member, to a term expiring 06/2024

**SPONSORS:** Appointments Committee Members: Councilor Paula Schnepf, Chair; Councilor Tracy Shaughnessy; Councilor Jeffrey Mendes; Councilor Nikolas Atsalis; and Councilor Gordon Starr

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call 2/3 Present and Voting)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-132**

**INTRO: 02/02/2023, 04/06/2023, 04/27/2023**

**2023-132 ORDER TO DISCONTINUE AND ABANDON MOTHER’S PARK ROAD, CENTERVILLE, MA**

**ORDERED:** To discontinue and abandon the public way known currently as Mother’s Park Road in Centerville, MA; provided that this Order shall be effective thirty (30) days after the date on which it is approved by the Town Council.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>02/02/2023</u>	<u>Refer to Planning Board</u>
<u>04/06/2023</u>	<u>Open and Continued to Public Hearing to 04/27/2023</u>

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Motion

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-132

INTRO: 02/02/2023, 04/06/2023, 04/27/2023

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director, Department of Public Works  
**DATE:** February 02, 2023  
**SUBJECT:** Order to discontinue and abandon Mother's Park Road, Centerville, MA

**BACKGROUND:** The Town is proceeding with plans to install sewers and related infrastructure in Centerville. The Town intends to install an underground sewer pump station in the current layout of Mother's Park Road as a vital component of the Town's approved Comprehensive Wastewater Management Plan. In order to accomplish this installation, Mother's Park Road must first be abandoned as a public way. Extensive outreach to the homeowners on Mother's Park Road indicates that these homeowners are fully supportive of the Town's plan. As required by statute, this matter is to be referred to the Planning Board for its recommendation.

A second consideration supporting this proposed Order is that the intersection at the lower end of Mother's Park is challenging, if not dangerous, because sightlines are significantly compromised.

The Town proposes to reconfigure the intersection to a 90 degree angle and this will require using part of the Mother's Park land as a roadway. Under Article 97 of the Amendments to the Massachusetts Constitution ("Article 97"), approval is needed from the state Legislature to dispose of, or change the use, custody or control of, park land. Under Chapter 274 of the Acts of 2022, the Town must replace any lands that are removed from a public park, as contemplated here, with land not currently subject to Article 97 that is in a comparable location and of equal or greater resource value and acreage and monetary value. Abandoning Mother's Park Road will free up considerable square footage that can then be added to Mother's Park. The Park will be expanded considerably beyond what is lost to the revised roadway improvements. The intersection will be safer. Accessible parking will make the Park easier to visit. And the proposed pump station will be accommodated.

Once Mother's Park Road is formally abandoned, the Town proposes to take under a separate Order the former roadway by Eminent Domain to extinguish any private interests within the layout. This will clear up any title interests to comply with State Revolving Fund requirements.

**FISCAL IMPACT:** There is no direct cost associated with this abandonment. Costs related to the Eminent Domain taking and the pump station construction will be addressed outside of this Item.

**TOWN MANAGER RECOMMENDATION:** Mark S Ells, Town Manager, requests favorable action by the Town Council.

**STAFF ASSISTANCE:** Karen L. Nober, Town Attorney; Charles S. McLaughlin, Senior Town Attorney; Griffin Beaudoin, Town Engineer; Daniel W. Santos, P.E., Director, Department of Public Works; Shane Brenner, Town Surveyor

**A. OLD BUSINESS (Public Hearing) (Roll Call) (2/3 Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-133**

**INTRO: 02/02/2023, 03/16/2023, 04/06/2023, 04/27/2023**

**2023-133 APPROPRIATION ORDER IN THE AMOUNT OF \$22,700 FOR THE PURPOSE OF ACQUIRING THE FEE IN MOTHER’S PARK ROAD BY EMINENT DOMAIN FOR SEWER AND WATER AND GENERAL MUNICIPAL PURPOSES**

**ORDERED:** Provided that the Town Council has first voted to abandon Mother’s Park Road as a public way, the Town Council hereby authorizes the Town Manager to purchase, take by eminent domain under Chapter 79 of the General Laws of Massachusetts, or otherwise acquire for sewer and water and general municipal purposes the fee through, under, across, and on Mother’s Park Road, Centerville, as more fully shown on a plan to be filed in the office of the Town Council, for the installation, operation, maintenance, repair, relocation, and replacement of sewer and water lines and infrastructure for the same and for all purposes for which such infrastructure is commonly used in the Town of Barnstable, and that to fund the same, that **\$22,700** be provided from the reserves in the Sewer Construction and Private Way Improvement Special Revenue Fund, and that the Town Manager is authorized to contract for and expend said appropriation for such purposes and accept any gifts or grants in relation thereto.

Any trees, buildings, and other structures located within said roads are not included in this Order and the owners of the same may have a period of up to sixty (60) days after the recording of the Order of Taking to remove the same.

The names and addresses of the owners of said interests taken and their mortgagees as far as can be ascertained by the Town are as set forth on Exhibit A attached hereto, along with any awards, if any, for damages sustained by said owners.

Betterments will be assessed for the associated sewer and water improvements made by the Town of Barnstable.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>02/02/2023</u>	<u>Refer to Public Hearing 03/16/2023</u>
<u>03/16/2023</u>	<u>Open and Continued Public Hearing to 04/06/2023</u>
<u>04/06/2023</u>	<u>Open and Continued Public Hearing to 04/27/2023</u>

- Read Item
- Motion to Open Public Hearing
- Rationale
- Public Hearing
- Close Public Hearing
- Council Discussion
- Vote

		<b>EXHIBIT A</b>		
<b>Owner</b>	<b>Street</b>	<b>Side of Street</b>	<b>Area</b>	<b>Damages</b>
	<b>Address</b>		<b>Discontinued</b>	
<b>Town of Barnstable</b>		<b>West of the center line of Mother's Park Road</b>	<b>7316 square feet</b>	<b>\$0</b>
<b>Barbara F. MacBride surviving Trustee of the Barbara F. MacBride Revocable Trust under Declaration of Trust dated February 2011 recorded with said Registry of Deeds in Book 25248, Page 328</b>	<b>15 Long Pond Circle, Centerville</b>	<b>East of the center line of Mother's Park Road as shown on Plan</b>	<b>1067 square feet</b>	<b>\$2,200.00</b>
<b>Richard J. Cohen and Shelly Cohen, individually and as Co-Trustees of the Cohen Revocable Trust</b>	<b>25 Long Pond Circle, Centerville</b>	<b>East of the center line of Mother's Park Road as shown on Plan</b>	<b>4046 square feet</b>	<b>\$8,500.00</b>
<b>Thomas L. Boduch and Karen J. Boduch</b>	<b>43 Long Pond Circle, Centerville</b>	<b>East of the center line of Mother's Park Road as shown on Plan</b>	<b>4904 square feet</b>	<b>\$10,300.00</b>
<b>Robert Dannemann and Stephanie Dannemann</b>	<b>47 Long Pond Circle, Centerville</b>	<b>East of the center line of Mother's Park Road as shown on Plan</b>	<b>819 square feet</b>	<b>\$1,700.00</b>

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-133

INTRO: 02/02/2023, 03/16/2023, 04/06/2023, 04/27/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director, Department of Public Works  
**DATE:** February 02, 2023  
**SUBJECT:** Appropriation Order in the amount of **\$22,700** for the purpose of acquiring the fee in Mother's Park Road by eminent domain for sewer and water and general municipal purposes

**BACKGROUND:** The Town is proceeding with plans to install sewers and related infrastructure in Centerville. These proposed taking of the fee in Mother's Park Road will enable the Town to install an underground sewer pump station in the former roadway as a vital component of the Town's approved Comprehensive Wastewater Management Plan.

The Town also contemplates making alterations to Mother's Park to correct severe turning and sightline deficiencies at the intersection of Craigville Beach Road. Article 97 of the Amendments to the State Constitution requires the Town to substitute land to replace that removed from the current configuration of Mother's Park. The taking of this land will allow the Town to add significant square footage to Mother's Park in excess of that actually removed for the safety improvements.

**FISCAL IMPACT:** Funding will be provided from the existing reserves in the Sewer Construction and Private Way Improvement Fund.

**TOWN MANAGER RECOMMENDATION:** Mark S Ells, Town Manager, requests favorable action by the Town Council.

**STAFF ASSISTANCE:** Karen L. Nober, Town Attorney; Charles S. McLaughlin, Senior Town Attorney; Griffin Beaudoin, Town Engineer; Daniel W. Santos, P.E., Director, Department of Public Works; Shane Brenner, Town Surveyor

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-139**

**INTRO: 03/02/2023, 03/16/2023, 04/27/2023**

**2023-139 ORDER APPROVING AN AMENDMENT TO THE 1992, 1995 AND 1997 AGREEMENTS BETWEEN THE TOWN AND THE WOODS HOLE, MARTHA’S VINEYARD AND NANTUCKET STEAMSHIP AUTHORITY**

**ORDERED:** That the Town Council does hereby authorize the Town Manager to negotiate and execute an Amendment to the July 16, 1992 Agreement, the February 27, 1995 Memorandum of Understanding Relative to the Agreement dated as of July 16, 1992, and the November 6, 1997 Amendment to the Agreements Dated July 16, 1992 and February 27, 1995, between the Woods Hole, Martha’s Vineyard and Nantucket Steamship Authority (the “SSA”) and the Town of Barnstable (“Town”) (collectively, the “Agreements”), to increase the permitted maximum overall length of any of the SSA’s vessels to two hundred forty-five feet (245’); provided that the execution of such Amendment shall be contingent on said Amendment expressly including language in which the Town and the SSA agree to work collaboratively to consolidate the Agreements and the Amendment authorized herein into one new agreement which would supersede and replace those separate agreements (the “Superseding Agreement”). Such consolidation would be for administrative convenience only to reflect in one document the current terms and conditions of those individual agreements and to remove outdated, expired, and/or superseded language. The Town Manager is hereby authorized to negotiate and execute the Superseding Agreement as described herein.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>03/02/2023</u>	<u>Refer to Second Reading 03/16/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-139

INTRO: 03/02/2023, 03/16/2023, 04/27/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Andrew Clyburn, Assistant Town Manager  
**DATE:** March 02, 2023  
**SUBJECT:** Order approving an Amendment to the 1992, 1995 and 1997 agreements between the Town and the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority

**BACKGROUND: LENGTH OF AUTHORITY VESSELS:** The Steamship Authority and the Town entered into a 1992 agreement relating to the expansion of the Authority's Hyannis terminal, its operations, and other mitigation measures at the site, which agreement was subsequently amended by agreements entered into in 1995 and 1997. One of the 1992 contract provisions required the Authority to limit the maximum length of its vessels using the Hyannis facility to a maximum of 230 feet. The limit on length was intended to provide for safe turning and maneuverability in the Hyannis Inner Harbor so as not to endanger small craft in the crowded area. The 1995 agreement provided that freight vessel length shall not exceed 185 feet, and the 1997 agreement increased the freight vessel length to a maximum of 235 feet, which was the then-current length of the Authority's passenger/vehicle ferries.

The Authority now requests approval to extend the maximum length of Authority vessels to 245 feet. The requested change was presented to and unanimously recommended by both Marine & Environmental Affairs staff and the Town's Waterways Committee. The current Authority vessels are twin screw and have no bow or stern thrusters. The Authority's three new vessels, all identical, will each have two bow thrusters and one stern thruster, in addition to their twin screws. They will be highly maneuverable and will be able to maintain fixed position over a GPS-determined spot. With the added capability, the vessels will be much safer to operate within Hyannis-area waterways.

**CONSOLIDATION OF MULTIPLE AGREEMENTS:** The content of the three agreements when read together is somewhat outdated and confusing. Therefore, the Parties have agreed in principle that they should work collaboratively to consolidate the agreements into a single document that will not affect the substantive rights of the parties but that will restate and reaffirm their respective substantive rights and obligations. The requested vote affirms the Parties' obligation to undertake and complete this task in good faith. The vote also authorizes the Town Manager to execute the consolidated agreement when the re-write is complete.

**FISCAL IMPACT:** None

**STAFF ASSISTANCE:** Andrew Clyburn, Assistant Town Manager; Derek Lawson, Director, MEA; Brian Taylor, Harbormaster; Griffin Beaudoin, Town Engineer; Karen L. Nober, Town Attorney; Charles McLaughlin, Senior Counsel

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-147  
INTRO: 04/06/2023, 04/27/2023**

**2023-147 APPROPRIATION ORDER IN THE AMOUNT OF \$1,362,962 FOR NEW ACCESSIBLE PLAYGROUND EQUIPMENT AT THE OSTERVILLE RECREATION PLAYGROUND LOCATED AT 93 WEST BAY ROAD, OSTERVILLE**

**ORDERED:** That pursuant to the provisions of the Community Preservation Act, G.L. c. 44B, the amount of One Million Three Hundred Sixty-Two Thousand Nine Hundred Sixty-Two Dollars (**\$1,362,962**) be appropriated for the purpose of replacing outdated playground equipment, previously removed, with new Americans with Disabilities Act-compliant playground equipment and other amenities, and making renovations to provide ADA-compliant access at the Osterville Recreation Playground located at 93 West Bay Road, Osterville, MA, as shown on Assessor’s Map 116, Parcel 053; and to fund this appropriation, that **\$904,072** be provided from the amount set aside for Open Space and Recreation within the Community Preservation Fund, that **\$95,683** be provided from the Undesignated Funds within the Community Preservation Fund, and that **\$363,207** be provided from the General Fund Reserves; and that the Town Manager is authorized to contract for and expend the appropriation made available for this purpose, subject to oversight by the Community Preservation Committee.

**SPONSOR:** Mark S. Ells, Town Manager, upon recommendation of the Community Preservation Committee

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-147  
INTRO: 04/06/2023, 04/27/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark Ells, Town Manager  
**THROUGH:** Lindsey Counsell, Chair, Community Preservation Committee  
**DATE:** April 06, 2023  
**SUBJECT:** Appropriation Order in the amount of **\$1,362,962** for new accessible playground equipment at the Osterville Recreation Playground located at 93 West Bay Road, Osterville

**BACKGROUND:** At the February 27, 2023 Community Preservation Committee (CPC) meeting, the eight members present voted unanimously to recommend to the Town Council through the Town Manager, the Department of Public Work's request for **\$999,755** from the remaining balance in Community Preservation Open Space and Recreation Fund and the Community Preservation Undesignated Fund for the replacement of previously-removed outdated playground equipment located at the Osterville Recreation Playground with American Disabilities Act (ADA)-compliant equipment. The proposal, coordinated with the community, is for installation of new accessible playground equipment including a shade structure, benches, tables, patio, accessible surfacing, retaining wall, landscaping, sidewalk, water bottle filling station and an accessible pathway. The total estimated project cost is **\$1,362,962** with a General Fund contribution of **\$363,207**.

**ANALYSIS:** There is a high level of public interest in replacing the playground equipment at this location. Out of the eleven playgrounds in the Town of Barnstable's seven villages, only five are available to the public without limitation of school session hours, and of those five, only two are accessible.

**FISCAL IMPACT:** This appropriation will consume the remaining funds set aside for open space and recreation in the Community Preservation Fund totaling \$904,072. The balance of the Community Preservation Fund contribution in the amount of \$95,683 is provided from the Undesignated Community Preservation Funds which have available balances of \$8,713,242. The General Fund share of \$363,207 for this project will be provided from the General Fund Reserve which has a balance of \$24,975,542. There is no impact on the General Fund Operating Budget as the annual maintenance will be covered by the existing Operating Budget.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends acceptance of this Appropriation Order.

**VOLUNTEER ASSISTANCE:** Lindsey Counsell, Chair, Community Preservation Committee

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-151  
INTRO: 04/06/2023, 04/27/2023**

**2023-151 SUPPLEMENTAL APPROPRIATION ORDER IN THE AMOUNT OF \$35,000 FOR THE PURPOSE OF PAYING OUTSIDE COUNSEL EXPENSES OF THE LEGAL DEPARTMENT**

**ORDERED:** That the amount of **\$35,000** be appropriated for the purpose of paying operating expenses of the Legal Department for the services of the law firm of Anderson & Kreiger, which is serving as outside counsel to the Town with respect to two lawsuits filed against the Town by the Conservation Law Foundation; and to meet such appropriation, that **\$35,000** be provided from the General Fund Reserves.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Motion to Open Public Hearing
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Public Hearing
- \_\_\_\_\_ Close Public Hearing
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-151  
INTRO: 04/06/2023, 04/27/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Karen L. Nober, Town Attorney  
**DATE:** April 06, 2023  
**SUBJECT:** Supplemental Appropriation Order in the amount of **\$35,000** for the purpose of paying operating expenses of the Legal Department for the services of the law firm of Anderson & Kreiger, which is serving as outside counsel to the Town with respect to two lawsuits filed against the Town by the Conservation Law Foundation

**BACKGROUND:** In February 2021, the Conservation Law Foundation (“CLF”) filed a lawsuit against the Town of Barnstable alleging violation of the federal Clean Water Act for operating the Town’s wastewater treatment facility without obtaining a National Pollutant Discharge Elimination System permit for discharges from the facility to groundwater. In June 2021, CLF filed a second lawsuit against the Town alleging violations of the Massachusetts Title 5 regulations of septic systems. The law firm of Anderson & Kreiger has been representing the Town in both of these matters. To date, the Town has paid Anderson & Kreiger \$265,729.50.

In October 2021, the Town filed a motion to dismiss the Clean Water Act lawsuit, and in July 2022, U.S. District Court Judge Burroughs granted the Town’s motion and issued an Order of Dismissal. CLF then filed a motion for reconsideration, which Judge Burroughs denied in January 2023. However, she amended her Order of Dismissal to be a dismissal without prejudice, meaning that CLF could file a new lawsuit against the Town.

On February 16, 2023, CLF sent the Town a new Notice of Intent to file suit against the Town for alleged violations of the Clean Water Act. Under the statutory framework, CLF must wait 60 days before filing the lawsuit. This means that CLF is free to file another suit against the Town on or after April 18, 2023. This requested supplemental appropriation would be used to pay the anticipated legal costs for the initial phase of legal work associated with responding to such a lawsuit.

**FISCAL IMPACT:** The relief and penalties sought by CLF under the Clean Water Act would have a potentially substantial financial impact on the Town, and it is therefore critically important that the Town continue to have the benefit of representation by counsel with significant experience and expertise in these types of matters.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this Supplemental Appropriation Order.

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority Vote Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-152  
INTRO: 04/06/2023, 04/27/2023**

**2023-152 ORDER AUTHORIZING AN INTERMUNICIPAL AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND THE TOWN OF PLYMOUTH FOR PROFESSIONAL SERVICES RELATING TO THE DECOMMISSIONING OF THE PILGRIM NUCLEAR PLANT IN PLYMOUTH BY HOLTEC INTERNATIONAL AND SUPPLEMENTAL APPROPRIATION ORDER IN THE AMOUNT OF \$23,667 FOR THE PURPOSE OF PAYING THE TOWN OF BARNSTABLE’S SHARE OF THE COSTS OF SUCH PROFESSIONAL SERVICES**

**ORDERED:** That the Town Council authorizes the execution and delivery by the Town Manager of an Intermunicipal Agreement with the Town of Plymouth for the provision of professional services by and through the Town of Plymouth relating to the decommissioning of the Pilgrim Nuclear Plant in Plymouth by Holtec International for a term of five years in an amount not-to-exceed **\$23,667**; and that the amount of **\$23,667** be appropriated for the purpose of funding the Town of Barnstable’s one-third share of the total costs of such professional services; and that to meet such appropriation, that \$23,667 be provided from the General Fund Reserves.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
<u>04/06/2023</u>	<u>Refer to Public Hearing 04/27/2023</u>

\_\_\_\_\_

- \_\_\_ Read Item
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close Public Hearing
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-152  
INTRO: 04/06/2023, 04/27/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Karen L. Nober, Town Attorney  
**DATE:** April 06, 2023  
**SUBJECT:** Order authorizing an Intermunicipal Agreement between the Town of Barnstable and the Town of Plymouth for professional services relating to the decommissioning of the Pilgrim Nuclear Plant in Plymouth by Holtec International and Supplemental Appropriation Order in the amount of **\$23,667** for the purpose of paying the Town of Barnstable's share of the costs of such professional services

**BACKGROUND:** The Town of Barnstable, the Town of Plymouth and the Association to Protect Cape Cod (the "parties") all share a common legal interest in issues pertaining to the decommissioning of the Pilgrim Nuclear Plant in Plymouth by Holtec International. As such, the attorneys for each of the parties have been meeting to discuss how best to protect and advance the shared interests of each of their clients. The attorneys jointly interviewed two environmental and science consulting firms and agreed to select Gradient to provide scientific and technical analysis to the parties with respect to the environmental, health and safety issues and related permitting issues arising from the decommissioning of the Pilgrim Nuclear Plant and, specifically, the potential discharge of nuclear waste or waste water into Cape Cod Bay. Gradient will be engaged by the Town of Plymouth, acting through its legal counsel, and the parties are seeking to equally share the costs of such services. The total cost of the services is not anticipated to exceed \$71,000, and, therefore, the Town of Barnstable's share of such costs would be one-third of those costs and would not exceed \$23,367. The requested appropriation and authorization of an Intermunicipal agreement with the Town of Plymouth would provide the mechanism and funding for such collaboration among the parties.

**FISCAL IMPACT:** Funding for this appropriation will be provided from the General Fund Reserves which has a current balance of \$24,975,542.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this item.

**STAFF ASSISTANCE:** Karen L. Nober, Town Attorney

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-154  
INTRO: 04/27/2023**

**2023-154 RESOLVE ALLOWNG THE GRANTING OF LICENSES FOR THE GAME COMMONLY CALLED “BEANO” IN THE TOWN OF BARNSTABLE AND APPROVING THE BEANO APPLICATIONS OF THE HOLY GHOST SOCIETY OF SANTUIT AND COTUIT, INC.**

**RESOLVED:** That, in accordance with Massachusetts General Laws Chapter 10, Section 38, the Town Council does hereby allow the granting of licenses for the operation, holding or conducting of the game commonly called “beano”, and also known as bingo, in the Town of Barnstable; and further approves, in accordance with said section 38 of said chapter 10, the applications of the Holy Ghost Society of Santuit and Cotuit, Inc. to the Massachusetts State Lottery Commission to operate two one-day beano games, as presented at this meeting.

**SPONSOR:** Councilor Jessica Rapp Grasseti, Precinct 7

DATE	ACTION
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-154**  
**INTRO: 04/27/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Karen L. Nober, Town Attorney  
**DATE:** April 27, 2023  
**SUBJECT:** Resolve allowing the granting of licenses for the game commonly called “Beano” in the Town of Barnstable and approving the Bingo applications of the Holy Ghost Society of Santuit and Cotuit, Inc.

**BACKGROUND:** Massachusetts General Laws Chapter 10, Section 38 provides that certain types of organizations which have been in existence for at least five years may apply to and be granted a license by the State Lottery Commission to conduct the game commonly called “Beano”, and also known as bingo, in connection with which prizes are offered to be won by chance. Before the organization may be granted such a license, the organization must obtain approval of the application by a majority of the Town Council; provided that the Town has voted to allow the granting of licenses for the operation, holding or conducting of said game within the town.

The Holy Ghost Society of Santuit and Cotuit, Inc. has submitted the attached applications for approval by the Town Council to operate and conduct two one-day beano games on May 7 and May 21, 2023, respectively.

**FISCAL IMPACT:** N/A

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this item.

**STAFF ASSISTANCE:** Karen L. Nober, Town Attorney

Massachusetts State Lottery Commission

CHARITABLE GAMING DIVISION  
 P.O. BOX 55019  
 BRAintree, MASSACHUSETTS 02185-0012  
 TEL. 781-549-5500



DEBORAH B. GOLDBERG  
 Treasurer and Receiver General

APPLICATION FOR LICENSE TO CONDUCT A ONE DAY GAME COMMONLY CALLED "BEANO"

PLEASE TYPE OR PRINT IN BLACK INK

IMPORTANT: PLEASE FILL OUT FORM COMPLETELY AND ACCURATELY. FAILURE TO DO SO WILL DELAY PROCESSING OF YOUR LICENSE APPLICATION

NAME OF ORGANIZATION: Holy Ghost Society of Cotuit/Cotuit DATE ORG. CHARTERED: 1/30/74  
 STREET ADDRESS: 53 MAIN STREET ORGANIZATION F.I.D.: 11-3826411  
 CITY/TOWN: COTUIT OCCASION DAY: MAY 7 2023  
 OCCASION ADDRESS: 53 Main Street ORG. TELEPHONE: 508-420-2037  
 CITY/TOWN/ZIP: COTUIT MA 02635 BEANO HALLPHONE: 508-420-2037  
 MAILING AND SHIPPING ADDRESS: PO Box 715  
 CITY/TOWN/ZIP: COTUIT MA 02635

Check one:  
 6:00 P.M. TO 12:00 MID.   
 1:00 P.M. TO 6:00 P.M.   
 LICENSE FEE - \$50.00

NAME OF HEAD OF ORGANIZATION: NATHAN WHITE HOME PHONE: [REDACTED]  
 MAILING ADDRESS: [REDACTED] BUSINESS PHONE: [REDACTED]  
 CITY/TOWN/ZIP: [REDACTED] EMAIL ADDRESS: N/A  
 NAME OF MEMBER IN CHARGE: NOXANA WHITE HOME PHONE: [REDACTED]  
 MEMBER IN CHARGE OF BEANO ADDRESS: 53 MAIN STREET BUSINESS PHONE: 508-771-3606  
 CITY/TOWN/ZIP: COTUIT MA 02635 EMAIL ADDRESS: [REDACTED]  
 NAME OF BOOKKEEPER: NOXANA WHITE HOME PHONE: [REDACTED]  
 MAILING ADDRESS: PO Box 715 BUSINESS PHONE: [REDACTED]  
 CITY/TOWN/ZIP: COTUIT MA 02635 EMAIL ADDRESS: [REDACTED]

FOR MASSACHUSETTS STATE LOTTERY COMMISSION USE ONLY

EFFECTIVE DATE

WAGE	

COUNTY	CITY/TOWN	TYPE	LICENSE NUMBER

**B. NEW BUSINESS (May be acted upon) (2/3 Vote of the Full Council)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-179  
INTRO: 04/27/2023**

**2023-179 ORDER TO PETITION THE GENERAL COURT OF THE COMMONWEALTH TO ENACT SPECIAL LEGISLATION APPROVING THE CHANGE OF USE OF 5,803 SQUARE FEET WITHIN MOTHER’S PARK, CENTERVILLE (BARNSTABLE)**

**ORDERED:**

**SECTION 1:** That, having received notice that the Town Manager has determined that 5,803 square feet within Mother’s Park, Centerville, as shown on a plan of land titled “Approval Not Required Plan Mother’s Park 20 Phinney’s Lane” drawn by Town of Barnstable Department of Public Works dated 2/23/2023, are no longer needed for park purposes, and that the Town Conservation Commission, by unanimous vote, concurred with and endorsed the Town Manager’s declaration that a portion of the surface of Mother’s Park shown on a plan of land entitled “ Roadway Alteration Plan, Mother’s Park 20 Phinney’s Lane, Village of Centerville, Barnstable, Massachusetts”, shown as “Parcel A”, as prepared by Town of Barnstable, Department of Public Works, dated 2/23/23, which land is under his custody and control, is surplus to the municipal, conservation and open space needs of the Town of Barnstable and should instead be dedicated to general municipal purposes in order to enhance pedestrian and automotive safety, the Town Council hereby approves a change in use of such land from park land to general municipal purposes to support construction of a sewer project which is part of the Town’s Comprehensive Wastewater Management Plan and to make safety improvements by reconfiguring the intersection of Phinney’s Lane and North Main Street in Centerville; provided that such change in use shall be subject to the enactment of legislation by the General Court as set forth in Section 2 of this Order.

**SECTION 2:** That the Town Council hereby directs the Town Manager to submit a petition to the General Court of the Commonwealth for a special act approving the change in use of 5,803 square feet within Mother’s Park, Centerville, as follows:

**“AN ACT AUTHORIZING THE CITY KNOWN AS THE TOWN OF BARNSTABLE TO CHANGE THE USE OF A PORTION OF LAND WITHIN MOTHER’S PARK**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Notwithstanding any general or special law to the contrary, and in accordance with M.G.L. c. 3, § 5A, the town council of the city known as the town of Barnstable may change the purpose of 5,803 square feet of land within Mother’s Park as shown on a plan of land titled “Approval Not Required Plan Mother’s Park 20 Phinney’s Lane” drawn by Town of Barnstable Department of Public Works dated 2/23/2023 for the purpose of making public safety improvements by reconfiguring

the intersection of Phinney’s Lane and North Main Street as shown on said plan. The town of Barnstable may make minor modifications to the plan to carry out this act.

SECTION 2. As consideration for the change of purpose of the land described in section 1, the town of Barnstable shall dedicate for park purposes land of not less than 9,288 square feet within the discontinued portion of Mother’s Park Road to increase the area of Mother’s Park as shown on the plan referred to in Section 1.

SECTION 3. The town manager of the city known as the town of Barnstable may execute and record on behalf of the town any instruments necessary to carry out this act.

SECTION 4. This act shall take effect upon its passage.”

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

**BARNSTABLE PLANNING BOARD**  
 APPROVAL UNDER THE SUBDIVISION CONTROL  
 LAW NOT REQUIRED

DATE: \_\_\_\_\_

NO DETERMINATION AS TO COMPLIANCE WITH THE ZONING  
 ORDINANCE REQUIREMENTS HAS BEEN MADE OR INTENDED  
 BY THE ABOVE SUBSCRIBER.

LOCATION MAP SCALE: 1" = 2000'

APPROVAL UNDER THE SUBDIVISION CONTROL  
 LAW NOT REQUIRED

DATE: \_\_\_\_\_

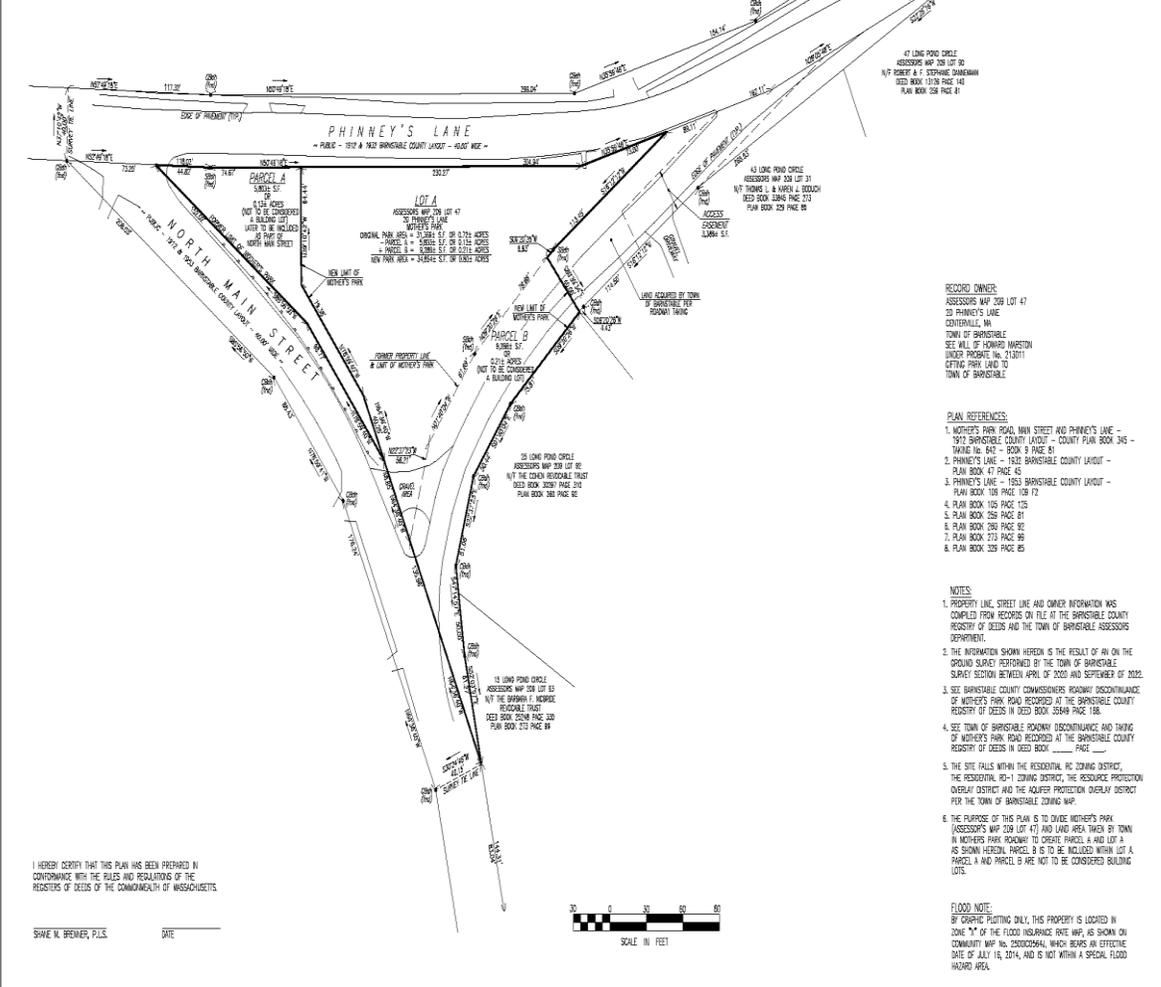
NO DETERMINATION AS TO COMPLIANCE WITH THE ZONING  
 ORDINANCE REQUIREMENTS HAS BEEN MADE OR INTENDED  
 BY THE ABOVE SUBSCRIBER.

FOR REGISTRY USE ONLY



**TOWN OF BARNSTABLE**  
 Department of Public Works  
 Administration & Technical Support  
 382 Falmouth Road, Hyannis, MA 02601  
 Phone: (508) 739-8400  
 www.townofbarnstable.com

**APPROVAL NOT REQUIRED PLAN**  
**MOTHER'S PARK - 20 PHINNEY'S LANE**  
**VILLAGE OF CENTERVILLE**  
**BARNSTABLE, MASSACHUSETTS**



REVISION	DATE	COMMENTS
1		
2		
3		
4		
5		
6		
7		
8		

DRAWN BY: \_\_\_\_\_ PROJECTING: \_\_\_\_\_

DATE: 11-27-23 DATE: 2/23/23

SCALE: 1" = 2000'

PLAN OF LAND

SHEET 1 OF 1

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-179  
INTRO: 04/27/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Karen L. Nober, Town Attorney; Charles McLaughlin, Senior Counsel  
**DATE:** April 27, 2023  
**SUBJECT:** Order to Petition the General Court of the Commonwealth to enact special legislation approving the change of use of 5,803 square feet within Mother's Park, Centerville, (Barnstable)

**BACKGROUND:** In 1924, Howard Marston, late of Boston and Centerville, left what is known as "Mother's Park" (the "Park") in his Will to the Town of Barnstable. The Town has maintained the Park ever since. The Town now proposes to change the use of 5,803 square feet of the Park at the intersection of North Main Street and Phinney's Lane from park land to general municipal use. The purpose of the change in use is to allow the Town to make much-needed safety improvements to that intersection and be able to site a sewer pumping station in the adjacent Mother's Park Road.

Article 97 of the Amendments to the Massachusetts Constitution requires a 2/3 vote of each branch of the Legislature to dispose of or change the use of park land, and M.G.L. c. 3, § 5A (the Public Lands Protection Act, "PLPA", enacted in 2022) establishes statutory requirements and a process for submission to the Legislature of Article 97 petitions. The key PPLA requirements are notice to the Secretary of Energy and Environmental Affairs and the public, an alternatives analysis and identification and dedication of replacement land for Article 97 purposes. Under the PLPA, the replacement land must be in a comparable location to the impacted area and must be equal or greater than the impacted area with respect to acreage, monetary value and natural resource value. A detailed alternatives analysis must be provided to the Secretary of Energy and Environmental Affairs and made available to the public for review and comment.

The Town's alternatives analysis was posted on the Town website on April 18, 2023, and is attached.

The Town proposes to discontinue and abandon Mother's Park Road adjacent to and outside of the Park, install an underground sewer pump station in part of what will be the former Mother's Park Road, add to the Park the remaining 9,288 square feet of Mother's Park Road not needed for the sewer installation and dedicate that land in perpetuity as park land. This Order will direct the Town Manager to seek a special act of the state legislature approving this action as required by Article 97.

The benefits of this change in use would be significant. Among them, the intersection will be made much safer by changing the geometry of the intersection to a 90-degree angle, thereby improving the sightlines and enabling turning motions that do not intrude into on-coming traffic. This is particularly important because the discontinuance of Mother's Park Road would eliminate that road as an alternative

route, thereby forcing travelers to navigate the intersection of Phinney's Lane and North Main Street. By adding replacement land from Mother's Park Road, the Park will increase in size and see a net addition of about 3,485 square feet. In addition, the Town plans to create accessible parking and will add crosswalks and sidewalk extensions to accommodate pedestrian access from existing sidewalks on Phinney's Lane to the Park.

The Town Manager will also direct that a legal action be filed with the Supreme Judicial Court of the Commonwealth seeking Court authorization that would in effect modify the will of Howard Marston to allow the use of land within Mother's Park to reconfigure the intersection and to allow the replacement of that land, thereby increasing the size of Mother's Park, as outlined in the proposed legislation.

**FISCAL IMPACT:** The design and construction costs for the reconfiguration of the intersection have already been accounted for within existing appropriations.

**STAFF ASSISTANCE:** Karen L. Nober, Town Attorney, Charles S. McLaughlin, Jr., Senior Counsel; Griffin Beaudoin, Town Engineer; Daniel W. Santos, Director of Public Works; Shane Brenner, Town Surveyor

## **M.G.L. c. 3, § 5A (a) ALTERNATIVES ANALYSIS**

In accordance with the Guidance on Public Lands Preservation Act Implementation issued in February 2023 by the Executive Office of Energy and Environmental Affairs, the Town of Barnstable provides the following alternatives analysis as required by M.G.L. c. 3, § 5A (a) (also known as the Public Lands Preservation Act or PLPA) pertaining to the change of use of certain land within Mother's Park in the village of Centerville. The alternatives analysis is intended to demonstrate that all other options to avoid or minimize the disposition or change in use of public land that is subject to Article 97 of the Amendments to the Massachusetts Constitution ("Article 97") have been explored and no feasible or substantially equivalent alternative exist.

### **(i) Explain the proposed Article 97 Action and identify the public purpose it will serve.**

Mother's Park is a triangle shaped "island" abutted on all three sides by roadways: Phinney's Lane on its west side; North Main Street on its southern border; and Mother's Park Road on its east side. (See attached plan titled "Mother's Park: Existing Conditions".) Mother's Park consists of land described in the deed dated June 14, 1911 from Simeon C. Childs to Howard Marston recorded with the Barnstable Registry of Deeds in Book 310, Page 343. In 1924, Mr. Marston died, bequeathing the land to the Town for use as a park in his Will. The Town accepted the bequest by vote at the 1927 Annual Town Meeting. There is currently no formal parking near Mother's Park, and there are no pedestrian access ways (crosswalks and sidewalks) to get into the park.

The proposed Article 97 Action involves the change of use of 5,803 square feet land within Mother's Park, Barnstable, Massachusetts ("Mother's Park") to be used to reconfigure the intersection of Phinney's Lane and North Main Street, and the replacement of the land for which a change of use is sought with not less than 9,288 square feet of abutting land within Mother's Park Road. (See attached plans titled "Mother's Park: Proposed Project" and "Approval Not Required Plan Mother's Park 20 Phinney's Lane" dated 2/23/2023.) This Article 97 Action would result in a net increase of the park area by 3,485 square feet. In addition, sidewalks and accessible parking areas will be constructed to provide better access to the park.

The Town intends to construct a sewer pumping station within a portion of the adjacent discontinued Mother's Park Road. The planned sewer pumping station, one of six to be constructed as part of the Clean Water State Revolving Fund Project ID number 7305 (which project is a portion of Phase 1 of the Town's 30-year Comprehensive Wastewater Management Plan), does not require the use of any park land. However, the proposed change of use of a portion of land within Mother's Park is integral to the construction of the sewer pumping station in Mother's Park Road, as the discontinuance of Mother's Park Road would eliminate that road as an alternative route, thereby forcing travelers to navigate the intersection of Phinney's Lane and North Main Street. That intersection has long been an identified safety concern due to its irregular geometry and poor sight lines. With the discontinuance of Mother's Park Road, the need to reconfigure that intersection to make it safer for those who travel on those roads, including those who may travel on those roads to use Mother's Park, becomes critically important – so important that if the park land cannot be used to make the necessary safety improvements to that intersection, the Town would have to pursue options to locate the sewer pumping station elsewhere. Due to technical considerations, however, there are very limited options for siting the sewer pumping station elsewhere, and the decision to locate it in Mother's Park Road was made after a significant public process in which the Town sought and received public input and consensus.

The 9,288 square feet of replacement land within part of the discontinued portion of Mother's Park Road satisfies the requirements of M.G.L. c. 3, § 5A because it is not subject to Article 97; is in a comparable location because it is contiguous to the existing park; and is of equal natural resource value as the parkland for which a change of use is sought.

Based on appraisals obtained by the Town, the replacement land is of greater area and monetary value than the park land for which a change of use is sought. The 9,288 square feet of replacement land is valued at \$19,700.00, whereas the park land that will be replaced contains 5,803 square feet of area and is valued at \$12,300.00.

The replacement land, which is flat and well-drained, is suitable for park purposes and will be dedicated in perpetuity for Article 97 purposes as part of the enlarged Mother's Park. In addition, as part of the reconfiguration of the intersection of North Main Street and Phinney's Lane, crosswalks and sidewalk extensions will be added to accommodate pedestrian access to the park from existing sidewalks on Phinney's Lane.

**(ii) Identify alternatives considered.**

Due to the location of the parcels in question (the dangerous intersection, Mother's Park, and Mother's Park Road), the alternatives were limited to three. They included:

- a. offsetting the loss of Mother's Park land with land not contiguous to the Park;
- b. abandoning Mother's Park Road without reconfiguring the intersection of North Main Street and Phinney's Lane; or
- c. not abandoning Mother's Park Road, effectively a "do nothing" option.

**iii) Describe why each alternative not selected is not feasible or substantially equivalent to the proposed Article 97 Action.**

- a. Offsetting the Mother's Park land for which change of use is contemplated with land that is not contiguous to Mother's Park is not feasible or substantially equivalent to the proposed Article 97 Action for two reasons: (i) other than Mother's Park Road, there is no land in Centerville that has equivalent area and value; and (ii) the community benefit of an expanded park, as well as the addition of accessible parking and pedestrian access, provides an improvement to existing public land.
- b. Abandoning Mother's Park Road without reconfiguring the intersection of North Main Street and Phinney's Lane is not feasible or substantially equivalent to the proposed Article 97 Action because, as noted above, the discontinuance of Mother's Park Road would eliminate that road as an alternative route, thereby forcing travelers to navigate the intersection of Phinney's Lane and North Main Street. This is a result that is unacceptable from a public safety standpoint.
- c. Not abandoning Mother's Park Road is not feasible or substantially equivalent to the proposed Article 97 Action as that is the location for the planned sewer pumping station. As noted above, due to technical considerations, there are very limited options for siting the sewer pumping station elsewhere, and the decision to locate it in Mother's Park Road was made after a significant public process in which the Town sought and received public input and consensus. Additionally, this option would ignore remediable safety issues associated with a problematic roadway intersection which the community wants to have addressed, and would do nothing to provide pedestrian access to, or parking for, the park, leaving it less functional than the proposed solution.

**B. NEW BUSINESS (Refer to Second Reading 05/04/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-180  
INTRO: 04/27/23**

**2023-180 AUTHORIZATION TO CONVEY 8.1 +/- ACRES OF THE PROPERTY LOCATED AT 140 OLD OYSTER ROAD, IN THE VILLAGE OF COTUIT, MA, TO THE COTUIT FIRE DISTRICT FOR NOMINAL CONSIDERATION OF ONE DOLLAR AND NO CENTS (\$1.00) AND APPROVAL AND AUTHORIZATION OF A CONSERVATION RESTRICTION ON THE REMAINING 5.4 +/- ACRES OF SAID PROPERTY TO BE HELD BY THE COTUIT FIRE DISTRICT FOR CONSERVATION, RECREATION, AQUIFER RECHARGE AREA AND WATER PROTECTION PURPOSES**

**WHEREAS**, the 13.5 acre parcel located at 140 Old Oyster Road in the Village of Cotuit in the Town of Barnstable, as shown on Town of Barnstable Assessor’s Map 021, Parcel 008, is under the charge, custody and control of the Town Manager; and

**WHEREAS**, on April 10, 2023, the Town sought and received endorsement of the Town Planning Board that approval under the Subdivision Control Law was not required to divide said 13.5 acre parcel into two lots of 8.1 +/- acres and 5.4 +/- acres, referred to hereinafter as Lot A and Parcel B, respectively, as shown on a plan of land entitled, “Approval Not Required Plan of Land at 140 Old Oyster Road in Barnstable (Cotuit) MA (Barnstable County) prepared for: Town of Barnstable Department of Public Works, prepared by: JC Engineering, Inc., 2854 Cranberry Highway, East Wareham, MA 02538, Scale 1” = 60’ October 14, 2022” (the “ANR Plan”) attached hereto; and

**WHEREAS**, on April 11, 2023, the Town Manager declared that Lot A was no longer required for the public purposes of the Town and was surplus to the Town’s needs and so informed the Town Council; and

**WHEREAS**, the Cotuit Fire District seeks to acquire Lot A due to its location within a wellhead protection area and directly up gradient from one of the Fire District’s primary drinking water wells; and

**WHEREAS**, the Town Manager seeks authorization to convey Lot A by deed to the Cotuit Fire District for the nominal consideration of One Dollar and No Cents (\$1.00); and

**WHEREAS**, the Town Manager seeks Town Council approval of a Conservation Restriction to be placed on Parcel B to be held by the Cotuit Fire District for conservation, recreation, aquifer recharge area and watershed protection purposes;

**NOW, THEREFORE, BE IT ORDERED:**

1. That the Town Council does hereby declare available for disposition and approve and authorize the conveyance by deed of Lot A, 8.1 +/- acres as shown on the ANR Plan, including the

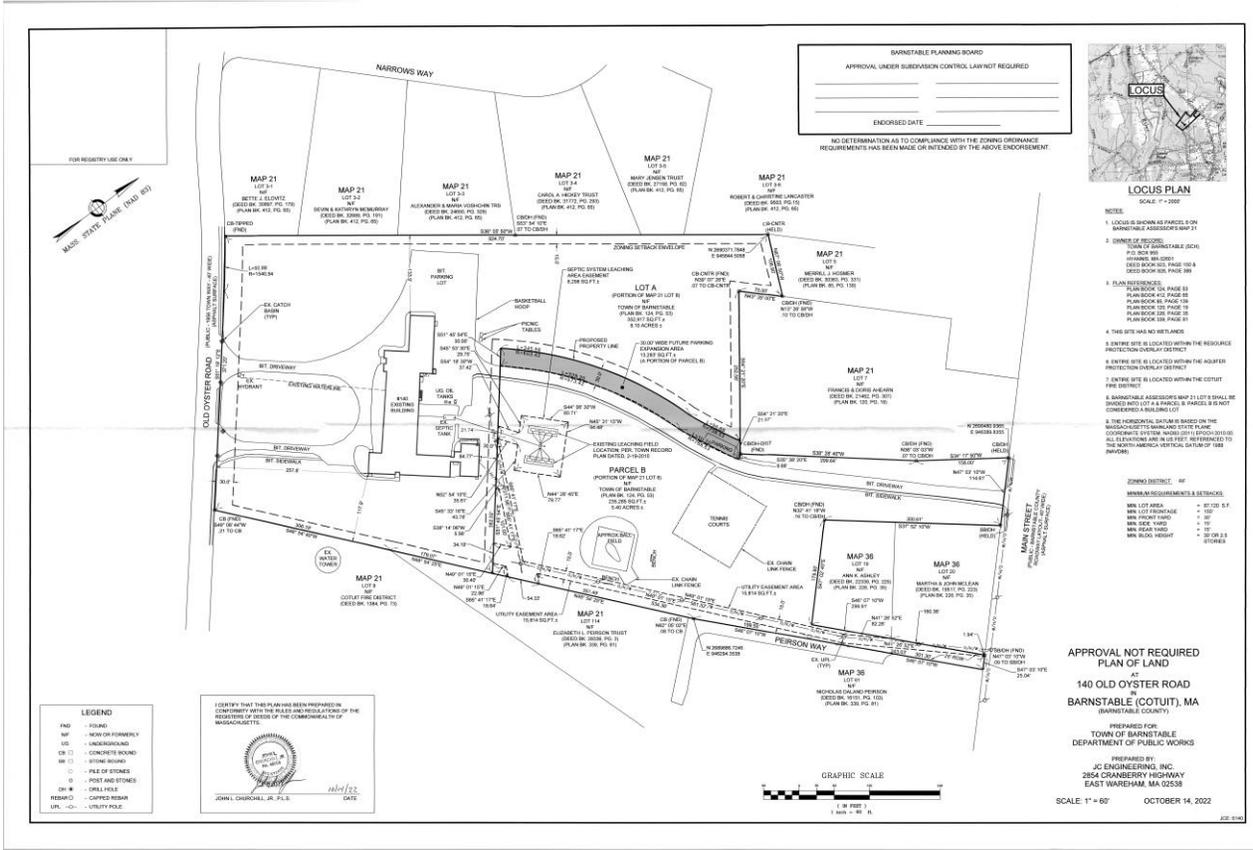
building thereon, as is, where is, without warranty or any further obligation incumbent upon the Town, to the Cotuit Fire District for the nominal consideration of One Dollar and No Cents (\$1.00); and further authorizes the Town Manager to execute, receive, deliver and record any written instrument necessary to effectuate such conveyance; and

2. Subject to the conveyance authorized by Paragraph 1 hereof, and pursuant to the provisions of M.G.L. c. 184, sections 31-33, the Conservation Restriction statute, the Town Council does hereby approve and authorize the Town Council President to sign on behalf of the Town Council a Conservation Restriction on Parcel B, 5.4 +/- acres as shown on the ANR Plan, said Restriction to be held by the Cotuit Fire District for conservation, recreation, aquifer recharge area and watershed protection purposes. Said Restriction is subject to approval of the Massachusetts Secretary of Energy and Environmental Affairs, and shall be substantially in the form attached hereto. It is further ordered that the Town Manager is authorized to execute, receive, deliver and record any written instruments necessary to effectuate the purposes set forth herein.

**SPONSOR:**Councilor Jessica Rapp Grasseti, Precinct 7; Mark S. Ells, Town Manager

DATE	ACTION
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote



*COTUIT SCHOOL LAND CONSERVATION RESTRICTION  
BARNSTABLE, MA*

**Grantor: TOWN OF BARNSTABLE**

**Grantee: Cotuit Fire District**

**Property Address: 140 Old Oyster Road, Cotuit, MA**

**Grantor's Title: Book 923 Page 150 in Barnstable County Registry of Deeds**

**CONSERVATION RESTRICTION**

**TOWN OF BARNSTABLE**, a Massachusetts municipal corporation with a principal place of business at Town Hall, 367 Main Street, Hyannis, Barnstable County, Massachusetts, 02601-3907, acting by and through its Town Council, an attested copy of whose vote is attached hereto as Exhibit C, its successors and assigns holding any interest in the Premises as hereinafter defined, ("Grantor"), for nominal consideration paid by the **COTUIT FIRE DISTRICT**, a Massachusetts municipal corporation duly-organized pursuant to Chapter 328 of the Acts of 1926, with a principal place of business at 64 High Street, Cotuit, Massachusetts 02635, acting by and through its Prudential Committee, ("District/Grantee"), pursuant to authority granted by vote of the District on Article \_\_\_ of the Cotuit Fire District Annual Meeting held on May 31, 2023, an attested copy of which vote is attached hereto as Exhibit D,

GRANTS WITH QUITCLAIM COVENANTS to the COTUIT FIRE DISTRICT and to its successors and permitted assigns, with quitclaim covenants, a Conservation Restriction, pursuant to Sections, 31, 32, and 33 of Chapter 184 of the Massachusetts General Laws, to be held and exercised in perpetuity as provided in Section I. Purposes herein exclusively for conservation, recreation, aquifer recharge area and watershed protection purposes, including under Mass. Const. Amend. Art. 97, the following described perpetual **CONSERVATION RESTRICTION** ("Restriction"), on a parcel of unregistered land totaling approximately \_\_\_\_ [5.5+] acres, located at 140 Old Oyster Road in the Village of Cotuit, Town of Barnstable, County of Barnstable, Commonwealth of Massachusetts, said parcel being described in Exhibit A and shown on Exhibit B both of which are attached hereto, said parcel hereinafter referred to as the "Premises." The Grantor and Grantee, their successors and assigns, are bound by and subject to the terms and conditions of this Restriction.

The conveyance of this Restriction is made pursuant to the vote of the Barnstable Town Council, at a duly called meeting held on \_\_\_\_\_ 2023, on Agenda Item 2023-\_\_\_\_\_, to authorize the Town to grant this Restriction on the Premises in compliance with the provisions set forth herein. A copy of the Town Council Order is attached hereto as Exhibit C.

The District acquires this Restriction subject to the approval of the Department of Environmental Protection ("DEP") pursuant to Massachusetts General Laws Chapter 40, Section 41 of the District's monitoring and enforcement powers as provided in section M owing to the fact that the Premises is located within the Zone II to Well Station #3 of the District. The Town and the District also acquire this Restriction subject to the approval of the Secretary of Energy and Environmental Affairs ("EEA") pursuant to Massachusetts General Laws Chapter 184, Section 32 over the entire premises.

DEP approval is required before the Premises located within the DEP-approved Zone II can be transferred to a different ownership or control, or before the Premises located within the Zone II can be changed to a different use.

**I. PURPOSE:** This Restriction is defined in and authorized by Sections 31-33 of Chapter 184 of the

Massachusetts General Laws. The purpose of this Restriction is to assure that, while allowing public access for passive and active recreational use and enjoyment of the open space and natural resources and permitting the other uses described in Paragraph B herein, and to the extent permitted by applicable law, the Premises will be preserved for conservation, aquifer, recharge area and watershed protection purposes, and be maintained in perpetuity, substantially in a scenic and open condition and to prevent any use of the Premises that would materially impair or interfere with the conservation values and aquifer recharge area and watershed protection values thereof. This Restriction will yield a significant public benefit because the Premises' protection will advance the following policies and objectives.

- A. The Drinking Water Program of the Massachusetts Department of Environmental Protection ("DEP") approves Zone II areas of contribution, wellhead protection areas determined by hydro-geologic modeling that are important for protecting the recharge area around aquifer, recharge area and groundwater resources.
- B. In 1999, the Cape Cod Commission completed its Priority Land Acquisition Assessment Project (PLAAP) for the Massachusetts Department of Environmental Protection under a Section 604(b) grant. The PLAAP in effect serves as the water assets plan for the Cotuit Fire District, and, in fact, probably is more specific than a typical community assets plan. This PLAAP report refined a Capewide inventory conducted by the U.S. Geological Survey in 1994 that had identified only five percent of the Cape's land mass as potentially suitable for future wellfield creation.
- C. In July 1991 the Barnstable Assembly of Delegates, pursuant to the Cape Cod Commission Act (Chapter 716 of the Acts of 1989), adopted a *Regional Policy Plan*, amended in 1996, 2002 and 2009, which provided, *inter alia* (references are to the 2009 Plan):
  - Wildlife and Plant Habitat Goal to "prevent loss or degradation of critical wildlife and plant habitat...and to maintain existing populations and species diversity" (WPH1); stating that "renewed commitment to protect the most ecologically sensitive undeveloped lands through land acquisition and other permanent conservation measures is also warranted;"
  - Open Space and Recreation Goal to "preserve and enhance the availability of open space that provides wildlife habitat...and protects the region's natural resources and character" (OS1) with a recommended Town Action of working with "local land conservation organizations to identify, acquire by fee simple or conservation restriction, and manage open space to meet projected community needs.
- D. In 2000, the Town of Barnstable voted to establish a Resource Protection Overlay District to reduce nitrogen loading to groundwater, surface water and coastal embayments to prevent deterioration of water quality, destruction of bottom habitat, loss of fin fish and shell fish habitat, and other adverse environmental and economic impacts; and,
- E. The Town of Barnstable adopted wellhead protection regulations, mapping the entire Town as falling under one of three Groundwater Protection Overlay Districts, shown on the Town's Official Zoning Map: the Aquifer Protection (AP) District is the entire town because it is part of the Cape Cod Sole Source Aquifer; the Groundwater Protection (GP) District is similar to the State's Zone II, but future proven well sites were also included so the area of protection is larger than the Zone II; and the Wellhead Protection (WP) District, which is within the five-year time of travel, and is a subset within the GP District.
- F. In 2008, the Town of Barnstable established a Saltwater Estuary Protection Overlay District to mitigate the adverse impact to saltwater, nitrogen-impaired estuaries from the subsurface

discharge of sewage effluent; and this Conservation Restriction meets the following requirements:

G. Consistency with Clearly Delineated Town of Barnstable Conservation Policy. Protection of the Premises will further the Town of Barnstable's documented goals regarding conservation land. The Town outlined its conservation goals in its *Open Space and Recreational Plan* (1984, amended 1987, 1998, 2005, 2010, 2018), identifying goals, policies, and actions to guide conservation efforts, among them the goal of preserving "quality open spaces throughout the Town which protect and enhance its visual heritage." Additional objectives include (*references are to the 2018 Plan*):

1) "Preservation of open space for protection of drinking water resources, and for protection of other natural, historic and scenic resources is a community-wide priority; and 2) Protection of open space should continue to be an integral component of the Town's efforts." (p. 6)  
To achieve this vision, the Plan sets several goals for the town including: 1) "To protect and maintain the maximum amount of open space to enhance environmental protection, recreational opportunities and community character, and 2) "Plan, coordinate and execute open space protection measures that complement community efforts to protect water supply, protect fresh and marine surface waters, [and] preserve historic, scenic and cultural resources..." (pp. 10-11).

Additionally, the Barnstable Town Council's Strategic Plan adopted on November 19, 2020 identified the goal to conserve and protect significant natural and historic resources for visual quality, outdoor recreation, public access, wildlife habitat, and cultural history.

Moreover, in 1981, the Town of Barnstable adopted a Conservation Restriction Program consisting of policies and guidelines, in particular an *Open Space Policy*, approved by the Board of Selectmen, Assessors, and Conservation Commission, which encourages the use of conservation restrictions in perpetuity to protect natural resources in accordance with the purposes of the *Open Space and Recreation Plan*, and which further specified that purposes of a conservation restriction could include the following:

- preserve scenic view;
- protect groundwater quality for drinking purposes;
- preserve open space;
- to protect a trail;
- preserve important natural habitats of fish, wildlife or plants; and,
- limit or prevent construction on land of natural resource value.

H. Consistency with Clearly Delineated Federal Conservation Policy. Protection of the Premises meets the definition of "conservation purposes" as defined in 26 CFR 1.170A-14(d)(1), because its conservation would: protect the land for outdoor recreation by the general public; preserve an existing public water supply; reserve the land for education regarding the natural world; protect wildlife habitats; and it would contribute to the preservation of open space because it is proximate to several other parcels already conserved.

I. Consistency with Clearly Delineated State Conservation Policy. The Premises possesses significant open space, natural, aesthetic, ecological, plant and wildlife habitat, soil and water resource quality, watershed, and scenic values (collectively "conservation values") of great

importance to the Grantee and the people of Barnstable and the Commonwealth of Massachusetts.

WHEREAS, preservation of the Premises satisfies each of these enumerated objectives because the Premises:

- 1) consists of approximately 5 acres of cultivated playing fields and fringing woodland;
- 2) lies wholly within a DEP Zone II Area of Contribution to Cotuit Fire District Well #3;
- 3) was rated as a priority tract for acquisition or protection through the PLAAP work;
- 4) completely is within a Significant Natural Resources Area for wellhead protection and as potential aquifer, recharge area and watershed area, and is completely within a Resource Protection Area of the Land Use Vision Map for the Town of Barnstable;
- 5) is completely within the Town of Barnstable Resource Protection Overlay District;
- 6) is partially within the Town of Barnstable Groundwater Protection and Wellhead Protection Overlay Districts;
- 7) is completely within the Town of Barnstable Saltwater Estuary Protection District;
- 8) abuts and connects with an existing greenbelt of open space owned by the Grantor and Grantee;
- 9) will continue to provide passive and active public recreation opportunities to complement the nearby active recreation at Lowell Park;
- 10) will protect the quality of the nearby marine Cotuit Bay Estuary;
- 11) will preserve the scenic character of the area off historic Main Street;
- 12) will be open to the public for conservation and recreation purposes; and,
- 13) is a substantial contributing element to the overall scenic and historic character of the area by being maintained predominantly in an open condition; and,

WHEREAS, accordingly, the Premises possess significant open, natural, and scenic values (collectively, "conservation values") of great importance to Grantees and the people of Barnstable and the Commonwealth of Massachusetts; and,

WHEREAS, the Town of Barnstable has in recent years come under increasing pressure for development, and such development can destroy or otherwise severely impact the open character, natural resources, and scenic beauty of the area; and,

WHEREAS, District consists of a body corporate that is qualified to hold restrictions in perpetuity; and,

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, Grantor and Grantee voluntarily agree that the CONSERVATION RESTRICTION described herein is an appropriate means to achieve the community's open space, aquifer, recharge area and watershed protection goals and objectives.

**The terms of this Restriction are as follows:**

**II. PROHIBITED ACTIVITIES:** In order to carry out the purposes set forth in Article I above, the Grantor covenants for itself and its legal representatives, mortgagees, successors and assigns that the Premises will at all times be held, used and conveyed subject to and not in violation of this Restriction. The Grantor shall refrain from and will not permit any activity which shall be inconsistent with the aforesaid purposes of this Restriction or which materially impairs water quality, soil conservation, wildlife conservation, scenic landscape protection or which is otherwise wasteful of the natural resources of the Premises.

Subject to the exceptions set forth in Article III below, prohibited activities shall include, but shall not be limited to, the following:

- A. Construction or placing of any building, residential dwelling, mobile home, swimming pool, billboard, or other advertising display, landing strip or pad, roadway, asphalt or concrete pavement, antenna, utility pole, tower, wind turbine, solar array, aboveground or underground storage tank, dog park or any other temporary or permanent structure or facility on, under or above the Premises.
- B. Placing, storing or dumping of equipment, mobile home, trailer, automotive vehicle or parts, soil, rock, sand, stumps, slash, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, radioactive waste, or hazardous waste or other substance or material whatsoever.
- C. Mining, excavation, dredging or removal of any loam, peat, gravel, soil, sand, rock or other mineral substance, or natural deposit from the Premises or otherwise making topographical changes to the Premises.
- D. Pollution, alteration, depletion, diversion, channelization, damming, draining, or extraction of surface water, natural water courses, marshes, potential or certified vernal pools, subsurface water, or any other water bodies.
- E. Removal, destruction or cutting of trees, grasses, shrubs or other natural vegetation, including cutting for firewood or commercial harvesting and lumbering activities.
- F. Introduction of species of animals or plants that are not native to Barnstable County, as defined by current published lists of native species, including *The Vascular Plants of Massachusetts: A County Checklist*, by Bruce A. Sorrie and Paul Somers, published by the Massachusetts Division of Fisheries and Wildlife Natural Heritage & Endangered Species Program (1999) or as amended or contained in a similar professionally acceptable publication available in the future.
- G. Use of motorized or power-driven recreational vehicles of any kind, including without limitation snowmobiles, motorbikes or all-terrain vehicles off of established roadways.
- H. Camping, hunting, owing to state safety setbacks, or trapping unless for a proven nuisance to wildlife.
- I. Conveyance of a part or portion of the Premises alone or division or subdivision of the Premises or use or assignment of the dimensions, area or acreage of the Premises for purposes of subdivision or development of unrestricted land whether or not such land is owned by the Grantor, its successors and assigns. (Conveyance of the Premises in its entirety shall be permitted.)
- J. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or wildlife habitat.
- K. The excavation of landscape features on the Premises with the intent of collecting or otherwise removing archaeological artifacts (prehistoric and/or historic) except by formal approval of the Massachusetts Historic Commission (MHC) through submission, with the concurrence of the Grantee, of a project notification form (PNF) in accordance with Section 27C of Chapter 9 of the Massachusetts General Laws, and associated regulations, as

amended.

- L. Subdivision or conveyance of a part or portion of the Premises, it being intended to keep the Premises in single ownership.
- M. No portion of the Premises may be used towards any building, septic system or other development requirements on any other parcel outside the Premises.
- N. Any commercial, residential, industrial or other municipal uses.
- O. Any other use of the Premises or activity which is inconsistent with the purpose of this Restriction or which would materially impair its conservation values, or which is prohibited by federal, state or local law or regulation.

**III. PERMITTED ACTIVITIES AND RESERVED RIGHTS:** The Grantor reserves the right to conduct or permit the following activities on the Premises, but only if such uses and activities do not materially impair the conservation values and are not inconsistent with the purposes of this Restriction:

- A. Use, maintenance, expansion and replacement in situ of the existing passive and active recreational facilities on the Premises, including two (2) fenced and surfaced tennis/pickleball courts; youth baseball field with backstop, dugouts, storage sheds and benches; and playing field, including unpaved parking areas along their periphery which may be expanded to support the recreational activities with the permission of the Grantee ;
- B. With Grantee's written approval, delivered by vote of the Prudential Committee of the Cotuit Fire District, not to be unreasonably withheld, the installation, use and maintenance of new open-air recreational facilities, including playground, fitness course and tot lot, basketball court, and the like, and new or redesigned walking trails in the forest.
- C. Measures, such as the installation of fencing and signage, taken in order to prevent unauthorized vehicle entry and dumping, vandalism or other acts destructive to the Premises.
- D. With the prior approval of the Grantee, measures taken in order to protect landform stability (i.e, to maintain a naturally occurring feature on the land's surface, e.g., bank or hill from erosion.)
- E. The use of the Premises for passive recreational activities such as hiking, snowshoeing, cross-country skiing, nature study or research, and other like activities, including access by motorized wheelchairs or other disabled assistance devices.
- F. The maintenance, upgrade, rebuilding and use of the existing paved way, and trails on the Premises substantially in their present location and condition, and with the prior approval of the Grantee, the relocation, or construction of new trails, provided that all applicable federal, state, regional and local approvals are obtained in advance, and that any relocated trails or new trails are no wider than eight (8) feet. Both parties retain the right to relocate the existing paved ways to accommodate future development uses of adjacent parcel. The Grantee reserves the right to improve any paved ways to allow fire trucks to pass safely.
- G. The maintenance of turf without the use of chemical fertilizers, herbicides and pesticides consistent with the town of Barnstable's Recreation turf policy, as updated from time to time,

and with the approval of the grantee for this location.

- H. The erection and maintenance of signs identifying ownership of the Premises, the property boundaries, the Premises' status as a conservation/recreation reservation, the restrictions on the use of the Premises, the identity or location of trails, areas of interest, natural features or other characteristics of the Premises, or for providing other like information.
- I. Minimal cutting or removal of trees, shrubs and other vegetation and planting of native trees, shrubs and other vegetation to maintain or improve the conservation and recreation values protected by this Restriction; to prevent threat of injury or damage to persons or property; to prevent or mitigate pest infestation, blight or disease; to control, manage or eradicate non-native or invasive species not native to the field or forest; or to improve or protect wildlife habitat.
- J. Selective trimming and pruning of trees and brush necessary to preserve access to the existing power lines and power poles, for as long as the poles are installed and in use, on the premises, is allowed as would be trimming around existing recreational fields, fences, tennis courts and parking areas. This is allowed only to the extent necessary to preserve these improvements and activities.
- K. The use of motorized vehicles (1) by the Grantor as reasonably necessary to carry out activities permitted under this Restriction, (2) for access by Grantee for purposes set forth in Article VI, below, and (3) for access by police, fire, emergency, public works, or other governmental personnel carrying out their official duties. The use of motorized vehicles for the purposes described herein shall be limited to the existing trails or those trails that may be approved and installed pursuant to Article III.D. Notwithstanding the foregoing, the use of motorized vehicles for recreational purposes, such as dirt bikes, all-terrain vehicles, off-highway vehicles, and the like, is not permitted except on existing or relocated ways.
- L. Archaeological investigations consisting of site inspections and subsurface excavations subject to and in accordance with an Archaeological Field Investigation Permit issued by the State Archaeologist under G.L. c. 9, §26A, and associated regulations, and Grantee's written approval in accordance with Article IV, below.
- M. In accordance with a state-approved wastewater management plan, the right to construct, maintain and use one (1) sewage treatment pump station and associated utilities, but not to treat or discharge any effluent on-site.
- N. Such other non-prohibited activities or uses of the Premises may be permitted with the prior approval of the Grantee provided that the Grantee has made a finding, such finding to be documented in writing and kept on file at the office of the Grantee, that such activities are consistent with the Reserved Rights, do not impair the conservation values and purposes of this Conservation Restriction, and, where feasible, result in a net gain in conservation value of the Premises.

Notwithstanding the foregoing permitted activities, any proposed modifications to the landscape, including but not limited to the creation of trails, management of vegetation and wetland resources, and installation of signage and educational kiosks, shall not be undertaken if they disturb, remove, damage or destroy archaeological resources or artifacts on the Premises.

The exercise of any right or obligation reserved by the Grantor under this Article III shall be in compliance with all applicable federal, state and local law. The inclusion of any reserved right in this

Article III requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position on whether such permit should be issued.

#### **IV. NOTICE AND APPROVAL:**

- A. Whenever notice to or approval by Grantee is required under the provisions of this Restriction, Grantor shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Restriction. Where Grantee's approval is required, Grantee shall grant or withhold approval in writing within sixty (60) days of receipt of Grantor's request. Grantee's approval shall not be unreasonably withheld, but shall only be granted upon a showing that the proposed activity shall not materially impair the purposes of this Restriction.
- B. Failure of Grantee to respond in writing within sixty (60) days shall be deemed to constitute approval by the Grantee of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after sixty (60) days in the notice, provided the requested activity is not expressly prohibited hereunder and the activity will not materially impair the purposes of this Restriction. This Article IV.B shall not apply to Article III. I. or Article III.J, in which cases failure of Grantee to respond in writing within sixty (60) days shall be deemed to constitute denial by the Grantee of the request as submitted.

In the event the activity proposed is necessary to address an emergency situation, either to avert environmental degradation, ecological damage or risk to public health and safety, Grantee shall respond forthwith.

#### **V. LEGAL REMEDIES OF THE GRANTEE; WAIVER:**

- A. The rights hereby granted shall include the right to enforce this Restriction by appropriate legal proceedings including obtaining injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of, it being agreed that the Grantee may have no adequate remedy at law, and shall be in addition to and not in limitation of any other rights and remedies available to the Grantee for the enforcement of this Restriction.
- B. Notwithstanding the foregoing, Grantee agrees to provide written notice to Grantor of any violation of this Restriction and to cooperate for a reasonable period of time, not to exceed sixty (60) days, to allow Grantor to remedy the violation, prior to resorting to legal or equitable means in resolving issues concerning alleged violations provided Grantor has ceased objectionable actions and is making a good faith effort to remedy the violation and Grantee reasonably determines there is no ongoing diminution of the conservation values of the Restriction.
- C. The Grantor and its successors and assigns shall each be liable under this section for any such violations of this Restriction as may exist during their respective periods of ownership of the Premises. Any new owner may be held responsible for any continuing violations existing during his or her period of ownership.
- D. By acceptance of this Restriction, the Grantee does not undertake any liability or obligation

relating to the condition of the Premises pertaining to compliance with and including, but not limited to, hazardous materials, zoning, environmental laws and regulations, or acts not caused by the Grantee or their agents.

- E. If Grantee prevails in any action to enforce the terms of this Restriction, the Grantor or Grantor's heirs, successors and assigns, as the case may be, shall reimburse the Grantee for all reasonable costs and expenses, including reasonable attorney's fees, incurred in enforcing this Restriction or in taking reasonable measures to remedy or abate any violation thereof. If Grantor prevails in any action brought by Grantee to enforce the terms of this Restriction, the Grantee or its heirs, successors and assigns, as the case may be, shall, to the extent allowed by law, reimburse the Grantor for all reasonable costs and expenses, including attorney's fees, incurred in defending such action to enforce this Restriction, provided the Grantee's action is deemed by the court or by other competent authority to be unreasonable or arbitrary and capricious.
- F. Enforcement of the terms of this Restriction shall be at the discretion of the Grantee. Any election or forbearance by the Grantee as to manner and timing of its right to enforce this Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights

#### **VI. GRANTEE'S RIGHT OF ACCESS; INSPECTION:**

The Restriction hereby conveyed does not grant to the Grantee any right to enter upon the Premises except at reasonable times and in a reasonable manner for the following purposes:

- A. To perform a survey of boundary lines;
- B. To inspect the Premises to determine compliance within provisions of this Restriction;
- C. To enter the Premises with or without the presence of an employee or employees of the Grantor for the purpose of taking any and all actions with respect to the Premises, at Grantor's cost, as may be necessary or appropriate to remedy or abate or enforce any violation hereof provided that Grantee first give Grantor notice of the violation, and upon failure of the Grantor to cure the violation within sixty (60) days of receiving said notice, Grantee then gives Grantor further written notice of its intention to enter the Premises to take such actions at least fifteen (15) days following the date of such further written notice. The requirements for providing notice to the Grantor prior to entering the Premises shall not apply in emergency situations where delayed action may result in irreparable harm to the Premises.
- D. The Restriction hereby conveyed includes the grant of the right to the general public to enter upon the Premises, and to use the Premises and the trails thereon for the purposes set forth in Article III above.
- E. The Grantee may, with written approval from the Grantor, access the property to perform the following activities:
  - a. The pruning and trimming of trees or removal of fallen trees or branches that hinder or threaten the power lines or poles currently in place, so long as any damage caused by equipment to the playing fields or surrounding area is repaired back to the pre entry standards.

- b. The maintenance, repair, expansion, removal or replacement of the existing septic leach field located on the premises
- c. The replacement, relocation or removal of power lines and power poles.

**VII. ACTS BEYOND GRANTOR'S CONTROL:** Nothing contained in this Restriction shall be construed to entitle the Grantee to bring any action against the Grantor for any injury or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm, natural erosion or from any prudent action taken by the Grantor under emergency conditions to abate, prevent, or mitigate significant injury to or alteration of the Premises resulting from such natural causes. The parties to this Restriction agree that in the event of damage to the Premises from acts beyond the Grantor's control, that if it desirable that the Premises be restored, the parties will cooperate in attempting to restore the Premises, if feasible.

**VIII. DURATION, BINDING EFFECT, RELEASE AND RECORDATION:** The burdens of this Restriction shall run with the Premises IN PERPETUITY, and shall be enforceable against the Grantor and the Grantor's successors and assigns holding any interest in the Premises. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Restriction. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instrument upon reasonable request.

**IX. ASSIGNMENT:** The benefits of this Restriction shall run to the Grantee, shall be in gross and shall not be assignable by the Grantee, their successors and assigns, except when all of the following conditions are met:

- A. The assignee is a "qualified organization" as defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, including, without limitation, a government entity;
- B. The assignee is required to hold this Restriction and enforce its terms for conservation purposes;
- C. The assignee is not an owner of the fee in the Premises;
- D. The assignment complies with the provisions required by Article 97 of the amendments to the Constitution of the Commonwealth of Massachusetts, if applicable;
- E. The Grantee shall notify the Grantor in writing at least thirty (30) days before assigning this Restriction and the Grantor shall have thirty (30) days from the date of such notice to approve the assignment in writing, which approval shall not be unreasonably withheld. Failure of the Grantor to respond to the notice of assignment within thirty (30) days shall be deemed approval thereof.
- F. No such assignment of the right to enforce the Restriction shall diminish the rights or benefits held by the Grantee or its successors pursuant to this Restriction, and the Grantee shall retain the equivalent right to enforce this Restriction.

**X. ESTOPPEL CERTIFICATES:** Upon request by the Grantor, the Grantee shall, within twenty (20) days, execute and deliver to the Grantor any document, including an estoppel certificate, which certifies the Grantor's compliance with any obligation of the Grantor contained in this Restriction, and which otherwise evidences the status of this Restriction as may be requested by the Grantor.

**XI. SUBSEQUENT TRANSFERS:** The Grantor agrees to incorporate the terms of this Restriction, in full or by reference, in any deed or other legal instrument by which Grantor conveys or transfers any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. The Grantor further agrees to notify the Grantee in writing at least thirty (30) days before conveying or transferring the Premises, or any part thereof or interest therein, including a leasehold interest. Any transfer shall comply with Article 97 of the amendments to the Constitution of the Commonwealth of Massachusetts, if applicable.

**XII. TERMINATION OF RIGHTS AND OBLIGATIONS:** Notwithstanding anything to the contrary contained herein, the rights and obligations under this Restriction of any party holding an interest in the Premises, terminate upon transfer of that party's interest, except that liability for acts or omissions occurring prior to the transfer, and liability for the transfer itself if the transfer is a violation of this Restriction, shall survive the transfer.

**XIII. AMENDMENT:** If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, the Grantor and the Grantee may by mutual consent amend this Restriction provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General laws of Massachusetts. Any amendments to this Restriction shall occur only in exceptional circumstances. The Grantee will consider amendments only to correct an error or oversight, to clarify an ambiguity, or where there is a net gain in conservation values. All expenses of all parties in considering and/or implementing an amendment shall be borne by the persons or entity seeking the amendment. Any amendment shall be consistent with the purposes of this Restriction, shall not affect its perpetual duration, shall be approved by the Secretary of Energy and Environmental Affairs and if applicable, shall comply with the provisions of Article 97 of the Amendments to the Massachusetts Constitution, and any gifts, grants or funding requirements. Any amendment shall be recorded in the Barnstable County Registry of Deeds.

**XIV. EXTINGUISHMENT:**

- A.** If circumstances arise in the future such as render the purpose of this Conservation Restriction impossible to accomplish, this restriction can only be terminated or extinguished, whether in whole or in part, by a court of competent jurisdiction under applicable law after review and approval by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then Grantee, on a subsequent sale, exchange, or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Article XV.B, subject, however, to any applicable law which expressly provides for a different disposition of the proceeds and after complying with the terms of any gift, grant, or funding requirements. Grantee shall use its share of the proceeds in a manner consistent with the conservation purpose set forth herein.
- B.** Proceeds. Grantor and Grantee agree that the conveyance of this Conservation Restriction gives rise to a real property right, immediately vested in the Grantee, with a fair market value that is equal to five percent (5%) of the fair market value of the unrestricted Premises. Such proportionate value of the Grantee's property right shall remain constant. Any proceeds resulting from an extinguishment or other release of this Restriction will be distributed only after complying with the terms of any gift, grant, or other funding requirements, including any

requirements of the CPA, if applicable.

- C. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or part of the Premises or any interest therein is taken by public authority other than Grantor under power of eminent domain or other act of other public authority, then the Grantor and Grantee shall cooperate in recovering full value or all direct and consequential damages resulting from such action.

All related expenses incurred by the Grantor and Grantee under this section shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and Grantee in accordance with Article XV.B., after complying with the terms of any law, gift, grant, or funding requirements, including any requirements of the CPA. If a less than fee interest is taken, the proceeds shall be equitably allocated according to the nature of the interest taken. The Grantee shall use its share of the proceeds like a continuing trust in a manner consistent with the conservation purposes of this grant.

**XV. NONMERGER:** Grantee agrees that it will not take title to any part of the Premises without having first assigned this Restriction, pursuant to Article X, to a non-fee holder to ensure that merger does not occur and that this Restriction continues to be enforceable by a non-fee owner.

**XVI. SEVERABILITY:** If any court of competent jurisdiction shall hold that any section or provision of this Restriction is unenforceable, the remainder of this Restriction shall not be affected.

**XVII. MISCELLANEOUS PROVISIONS:**

- A. Controlling Law: The interpretation and performance of this Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
- B. Liberal Construction: Any general rule of construction to the contrary notwithstanding, this Restriction shall be liberally construed in favor of the grant to affect the purposes of this Restriction and the policies and purposes of Sections 31- 33 of Chapter 184 of the Massachusetts General Laws. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
- C. Entire Agreement: This instrument sets forth the entire agreement of the parties with respect To the Restriction and supercedes all prior discussions, negotiations, understandings, or agreements related to the Restriction, all of which are merged herein.
- D. Joint Obligation: The obligations imposed by this Restriction upon the parties that together comprise the "Grantor" and "Grantee" shall be joint and several.
- E. Pre-existing Public Rights. Approval of this Restriction pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

- F. Notices. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor: Town of Barnstable, c/o Town Manager  
367 Main Street, Hyannis MA 02601

To Grantee: Cotuit Fire District, Prudential Committee  
PO Box 1475  
Cotuit, MA 02635

or to such other address as any of the above parties shall designate from time to time by written notice to the other or, if notice is returned to sender, to an address that is reasonably ascertainable by the parties

- G. Subordination: The Grantor shall record at the Barnstable County Registry of Deeds simultaneously with this Restriction all documents necessary to subordinate any mortgage, promissory note, loan, lien, equity credit line, reference assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

- H. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction of interpretation.

**XIII. EFFECTIVE DATE:** This Restriction shall be recorded in a timely manner. Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this Restriction is recorded in the official records of the Barnstable County Registry of Deeds, after all signatures required by Massachusetts General Law, Chapter 184, Section 32 have been affixed hereto.

Attached hereto and incorporated herein are the following:

Signatures:

Grantor and Approvals – Town of Barnstable: Town of Barnstable Town Council & Town Manager  
Grantee Acceptance – Cotuit Fire District, Board of Water Commissioners  
Approval: Secretary of Energy and Environmental Affairs

Exhibits:

- A. Description of the Premises
- B. Reduced Copy of Recorded Plan of the Premises
- C. Town Council Order
- D. Cotuit Fire District Vote

**APPROVAL OF THE GRANT**

**TOWN OF BARNSTABLE**

**TOWN COUNCIL**

At a public meeting duly held on \_\_\_\_\_ 2023, the Town Council of the Town of Barnstable, Massachusetts, voted to approve and grant the foregoing Conservation Restriction to the Cotuit Fire District, pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws and hereby grants the foregoing Conservation Restriction.

**TOWN COUNCIL**

**PRESIDENT:** \_\_\_\_\_

Matthew Levesque

**Barnstable, ss COMMONWEALTH OF MASSACHUSETTS**

On the \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared \_\_\_\_\_, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, and who being by me duly sworn did say that he is the President of the Town Council of the Town of Barnstable; that he is duly authorized to act on behalf the Town Council; and he acknowledged the foregoing instrument to be the free act and deed of Town of Barnstable Town Council.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**APPROVAL OF TOWN MANAGER**

I, Mark S. Ells, as Town Manager of the Town of Barnstable, Massachusetts, hereby approve the foregoing Conservation Restriction to Cotuit Fire District, pursuant to Section 32 of Chapter 184 of the Massachusetts General Laws.

TOWN OF BARNSTABLE

TOWN MANAGER:

Mark S. Ells \_\_\_\_\_

**Barnstable, ss**

On the \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Mark S. Ells, the person whose name is signed on the document and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, and who being by me duly sworn did say that he is the Town Manager of the Town of Barnstable; that he is duly authorized to act on behalf the Town of Barnstable and he acknowledged the foregoing instrument to be his free act and deed.

\_\_\_\_\_  
Notary Public  
My Commission Expires

ACCEPTANCE OF GRANT by COTUIT FIRE DISTRICT

At a public meeting duly held on \_\_\_\_\_, 2023, the Board of Water Commissioners of the Cotuit Fire District, acting pursuant to the authority granted under Article \_\_\_\_ of the Annual District Meeting held on May 31, 2023, voted to accept the above Conservation Restriction from the Town of Barnstable.

COTUIT FIRE DISTRICT  
By: Prudential Committee

Print Name

\_\_\_\_\_

\_\_\_\_\_

Print Name

\_\_\_\_\_

Print Name

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the document and acknowledged to me that he signed it voluntarily for its stated purpose on behalf of the Cotuit Fire District.

Notary Public

My commission expires:

APPROVAL BY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

The undersigned, Commissioner, Massachusetts Department of Environmental Protection of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the Cotuit Fire District, acting by and through its Water Commissioners, has been approved in the public interest pursuant to Massachusetts General Laws, Chapter 184, Section 32.

Dated: \_\_\_\_\_, 2023 \_\_\_\_\_

Commissioner

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared \_\_\_\_\_ and proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the proceeding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Commissioner of MassDEP.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

APPROVAL BY  
SECRETARY OF EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to the Cotuit Fire District, acting by and through its Water Commissioners, has been approved in the public interest pursuant to M.G.L. Chapter 184, Section 32.

Date:, 2023

, Secretary  
Executive Office of Energy  
and Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this \_\_\_ day of \_\_\_, 2023, personally appeared the above-named \_\_\_\_\_, and proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the document and acknowledged to me that s/he signed it voluntarily for its stated purpose as Secretary of Energy and Environmental Affairs for the Commonwealth of Massachusetts.

Notary Public  
My commission expires:

CONSERVATION RESTRICTION  
on land owned by  
TOWN OF BARNSTABLE  
in Cotuit (Barnstable), Massachusetts

**EXHIBIT A**

Description of the Premises

The Premises is shown on a plan entitled “\_\_\_\_\_” *(to be inserted)*

A reduced copy of the CR Plan is attached hereto as Exhibit B.

Street Address: 140 Old Oyster Road, Cotuit, MA.

For Grantor’s title, see Deed recorded in the Barnstable County Registry of Deeds in Book \_\_\_\_\_ Page \_\_\_\_\_.

**EXHIBIT B**

Sketch Plan of Premises (*needs land survey*)  
5.5 acres under Conservation Restriction

Cotuit Elementary School, 140 Old Oyster Road, Cotuit, Map 021 Parcel 008



**EXHIBIT C**  
Town Council Order  
*(to be inserted)*

**EXHIBIT D**

**Attested Copy of Cotuit Fire District Meeting Vote**

*(to be inserted)*

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-180  
INTRO: 04/27/23

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** David Anthony, Director of Asset Management, Town of Barnstable  
**DATE:** April 27, 2023  
**SUBJECT:** Authorization to convey 8.1 +/- acres of the property located at 140 Old Oyster Road, in the village of Cotuit, MA, to the Cotuit Fire District for nominal consideration of one dollar and no cents (\$1.00) and approval and authorization of a Conservation Restriction on the remaining 5.4 +/- acres of said property to be held by the Cotuit Fire District for conservation, recreation, aquifer recharge area and water protection purposes

**BACKGROUND:** The Town of Barnstable is seeking to manage its vacant, underperforming or excess properties through different methods. The proposed disposition of 8.1 +/- acres of the property located at 140 Old Oyster Road in the Village of Cotuit transfers an important piece of land central to the village of Cotuit to the neighboring Cotuit Fire District for drinking water preservation. The Town will retain 5.4 +/- acres of the property for general active recreational use by the public, but will agree to a Conservation Restriction to be held by the Cotuit Fire District for conservation, recreation, aquifer recharge area and watershed protection purposes. The Town Council's approval of this proposed plan achieves a number of objectives. These include the disposition of the underperforming asset of the vacant school building, the retention of an adjoining smaller but critical piece of recreation land under Town control, and assistance in the protection of drinking water for one of the seven villages of the Town.

The Barnstable Public School system opened the new Cotuit Elementary School in 1956 at 140 Old Oyster Road in Cotuit. This school encompassed over 15,000 square feet and sat upon 13.5 acres of land that was acquired through land donations and purchases by the Town of Barnstable in the early 1950s.

In 2019, the school department declared the building surplus to its needs, citing the lower school population and high cost of potential renovation, and turned it back over to Town control. A full renovation plan for the building was developed in 2020 which resulted in an estimated cost of over \$4,000,000 to bring the school back up to a standard of use that was acceptable with building codes and public facilities.

The Cotuit Fire District Water Division indicated that they desired to acquire the land and would be willing to take on the liability of the closed school building with the property. The elementary school site lies within a well-defined wellhead protection area and is directly up gradient from one of the Cotuit Water Department's primary drinking water withdrawal wells.

At the Cotuit Fire District annual district meeting held on May 25 and May 26, 2021, the voters authorized the acquisition/ownership of the building and grounds.

**ANALYSIS:** After working with a subcommittee of the Cotuit Water District for nearly 24 months, a plan to divide the 13.5 acre parcel into two lots was presented to the Planning Board on April 10, 2023. The Town received endorsement by the Planning Board to divide said 13.5 acre parcel into two lots of 8.1 +/- acres and 5.4 +/- acres. The 8.1 acre parcel was declared surplus by the Town Manager, and staff is now seeking Town Council approval to convey the 8.1 acre parcel to the Cotuit Fire District as well as approval of the Conservation Restriction to be placed on the remaining 5.4 acre parcel that will remain with the Town. The consideration monetarily is nominal, but the Cotuit Fire District agrees to take on the liability for the existing school, in its current condition, with the land. The Cotuit Fire District desires to acquire this land to control land up gradient of its well but it also recognizes that as technology improves and the understanding of water contamination increases, the prospect of necessary treatment of the drinking water requires the control of land near the well to potentially treat the drinking water.

The Conservation Restriction to be placed on the remaining piece of 5.4 acres of Town land was negotiated to allow for current and future public Town recreational activities while managing the turf and water runoff. The underground fuel storage tank associated with the school building is to be removed by the Town prior to final conveyance of the property.

**FISCAL IMPACT:** A market appraisal of the 8.1 acres of land is underway, with an expected completion date of May 2, 2023. The Marstons Mills Elementary school built in the same era and of approximately the same size, had a low bid of \$700,000 for demolition and a soft cost and contingency budget of \$250,000. By transferring the property to the Cotuit Fire District, the cost of demolition and removal of the school building built in the 1950s is also transferred to the Cotuit Fire District.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends the conveyance of this property and the approval of the Conservation Restriction.

**STAFF ASSISTANCE:** David Anthony, Director of Asset Management, Town of Barnstable; Karen L. Nober, Town Attorney; Charles McLaughlin, Senior Counsel; Kate Connolly, Assistant Town Attorney; Andrew Clyburn, Assistant Town Manager; Elizabeth Jenkins, Director of Planning