



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

TOWN COUNCIL MEETING AGENDA
September 07, 2023

7:00pm

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 Grasseti
Precinct 7

Jeffrey Mendes
Precinct 8

Tracy Shaughnessy
Precinct 9

Kristine Clark
Precinct 11

Paula Schnepf
Precinct 12

The September 07, 2023 Meeting of the Barnstable Town Council shall be conducted in person at 367 Main Street 2nd 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 Xfinity Channel 8 or High Definition Channel 1072 or may be accessed via the Government Access Channel 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>

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/85635473076> Meeting ID: 856 3547 3076
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 (Pre-Recorded)

7. ACT ON PUBLIC SESSION MINUTES

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

Presentation from Dr. Caitlin Coyle from the Gerontology Institute at UMass Boston
Age & Dementia Friendly Barnstable - An Action Plan

9. ORDERS OF THE DAY

- A. Old Business**
- B. New Business**

10. ADJOURNMENT

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

NEXT REGULAR MEETING: September 21, 2023

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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 2/3 Full Council)

BARNSTABLE TOWN COUNCIL

**ITEM# 2024-025
INTRO: 08/17/2023, 09/07/2023**

2024-025 APPROPRIATION ORDER IN THE AMOUNT OF \$141,655 TO SUPPLEMENT FUNDING FOR THE DEMOLITION OF THE OSTERVILLE RECREATION BUILDING LOCATED AT 93 WEST BAY ROAD, OSTERVILLE

ORDERED: That the amount of **\$141,655** be appropriated and provided from the Capital Trust Fund Reserves the purpose of providing supplemental funding for the demolition of the Osterville recreation building located at 93 West Bay Road, Osterville; and that the Town Manager is authorized to contract for and expend this appropriation for this purpose.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>08/17/2023</u>	<u>Refer to Public Hearing 09/07/2023</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2024-025
INTRO: 08/17/2023, 09/07/2023

SUMMARY

TO: Town Council
THROUGH: Mark S. Ells, Town Manager
FROM: Daniel W. Santos, P.E., Director, Department of Public Works
DATE: August 17, 2023
SUBJECT: Appropriation Order in the amount of **\$141,655** to supplement funding for the demolition of the Osterville Recreation Building located at 93 West Bay Road, Osterville, MA

BACKGROUND: The Osterville Recreation Building currently lies within the 275-foot outfield of the new Osterville softball field, interfering with the limits of left field. The building was slated to be demolished in 2017 and building conditions since then have further deteriorated. Demolition of this building will allow continued rehabilitation of the site and allow removal of the leaching pit septic system.

ANALYSIS: As part of the Fiscal Year 2015 Capital Improvement plan, the Town Council appropriated \$900,444 for the demolition of both the Osterville Bay School and the Osterville recreation building. The project was bid in June, 2017. The base bid included work to demolish the Bay School, while alternate bid pricing included cost to demolish the recreation building. At the request of town leadership at the time only the base bid was awarded as part of the demolition contract, preserving the existence of the recreation building for the time being and demolishing only the Bay School.

Project 16112 expenditures were as follows:	
Original appropriation	\$900,444
Demolition of Bay School	\$629,109
Remaining Funds	\$271,335

In June of 2022 the demolition of the recreation building was re-initiated and updated bid documents prepared. Bids for the project were received in July of 2023. The lowest bid price of is \$413,000, which exceeds the funding remaining in the project, thus a budget increase of \$141,665 is needed to supplement existing funding for the project.

FISCAL IMPACT: Funding for this appropriation will be provided from the Capital Trust Fund reserves which have a current balance of \$13,352,605.

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

STAFF ASSISTANCE: Daniel W. Santos, P.E., Director, Department of Public Works;
Mark Marinaccio, Town Architect

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2024-027
INTRO: 08/17/2023, 09/07/2023**

2024-027 APPROPRIATION ORDER IN THE AMOUNT OF \$20,000 AND AUTHORIZATION TO EXPEND A GRANT IN THE AMOUNT OF \$72,000 FROM THE NATURAL RESOURCE CONSERVATION SERVICE FOR THE PURPOSE OF FUNDING STORMWATER IMPROVEMENTS ON CLAMSHELL COVE ROAD

ORDERED: That the amount of **\$20,000** be appropriated and provided from the Capital Trust Fund reserves, representing the local match requirement for a grant from the Natural Resource Conservation Service in the amount of **\$72,000**, and that the Town Manager is authorized to contract for and expend the grant for the purpose of funding the design and construction of Stormwater Improvements on Clamshell Cove Road, including the payment of costs incidental or related thereto.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>08/17/2023</u>	<u>Refer to Public Hearing 09/07/2023</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2024-027
INTRO: 08/17/2023, 09/07/2023

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director, Department of Public Works
DATE: August 17, 2023
SUBJECT: Appropriation Order in the amount of **\$20,000** and authorization to expend a grant in the amount of **\$72,000** from the Natural Resource Conservation Service for the purpose of funding stormwater improvements on Clamshell Cove Road

BACKGROUND: This project will fund the design and construction of Stormwater improvements within the public roadway near 140 Clamshell Cove Road to improve infiltration of stormwater and reduce direct runoff to Shoestring Bay. The Natural Resources Conservation Service (NRCS) will provide 100% funding for the design (\$18,000) and 75% of the construction costs (\$54,000), for a total of \$72,000. The Town is responsible for 25% of construction costs, or \$18,000. The request is for \$20,000 to provide for contingencies.

ANALYSIS: Untreated stormwater can carry excess nutrients and bacteria that degrade water quality in shellfishing areas. The Natural Resources Conservation Service, with Town staff, has identified stormwater inputs to a nearby shellfishing area in Shoestring Bay coming from the public roadway. NRCS contacted the Town with funding available in their current fiscal year budget to fund design and construction work, totaling up to \$72,000. The additional \$20,000 appropriation request is for the purposes of funding the Town's required match for 25% of the total construction cost and other non-applicable expenses related to the project.

FINANCIAL IMPACT: This is a reimbursement grant for \$72,000. The Town must expend the funds upfront and subsequently submit for reimbursement. The Town's match funds in the amount of \$20,000 for this project will be provided from the Capital Trust Fund which has an available balance of \$13,352,605.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends approval of this appropriation order.

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

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2024-028
INTRO: 08/17/2023, 09/07/2023**

2024-028 APPROPRIATION ORDER IN THE AMOUNT OF \$130,000 AND AUTHORIZATION TO EXPEND A GRANT IN THE AMOUNT OF \$625,000 FROM THE NATURAL RESOURCE CONSERVATION SERVICE FOR THE PURPOSE OF FUNDING THE LAKE ELIZABETH FISHWAY DESIGN, PERMITTING AND CONSTRUCTION PROJECT

ORDERED: That the amount of **\$130,000** be appropriated and provided from the Capital Trust Fund reserves, representing the local match requirement for a grant from the Natural Resource Conservation Service in the amount of **\$625,000**, and that the Town Manager is authorized to contract for and expend this appropriation and grant for the purpose of funding the Lake Elizabeth Fishway design, permitting and construction project, including the payment of costs incidental or related thereto.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>08/17/2023</u>	<u>Refer to Public Hearing 09/07/2023</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2024-028
INTRO: 08/17/2023, 09/07/2023

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director, Department of Public Works
DATE: August 17, 2023
SUBJECT: Appropriation order in the amount of **\$130,000** and authorization to expend a grant in the amount of **\$625,000** from the Natural Resource Conservation Service for the purpose of funding the Lake Elizabeth Fishway Design, Permitting and Construction Project

BACKGROUND: This project will fund the design, permitting, and construction of fish passage improvements into Lake Elizabeth and Red Lily Pond for the purposes of improving the conveyance of river herring into and out of the pond. NRCS approached the Town about providing funding to support the project. This project will be completed in partnership with the United States Department of Agriculture Natural Resources Conservation Service (NRCS). NRCS will provide funding for the design and 75% of the construction costs, totaling up to \$625,000. The Town is responsible for the permitting and 25% of construction costs, totaling up to \$255,000.

ANALYSIS: The Department of Marine Fisheries has labeled Lake Elizabeth as a historic fish passage spawning area in need of fish passage restoration. In the Fiscal Year 2024-Fiscal Year 2028 Capital Improvement Plan, the Town Council voted to fund permitting and design of fish passage improvements to restore fish passage into this historic herring spawning area. The Natural Resources Conservation Service has contacted the Town with funding available to support the project, totaling up to \$625,000. The Town is responsible for the permitting and 25% of construction costs, totaling up to \$255,000. The additional \$130,000 appropriation request is for the purposes of funding the Town's required match for 25% of the anticipated total construction cost.

FINANCIAL IMPACT: This is a reimbursement grant for \$625,000. The Town must expend the funds upfront and subsequently submit for reimbursement. The Town's match funds for this project will be provided from the Capital Trust Fund which has an available balance of \$13,352,605.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends approval of this appropriation order and grant expenditure.

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

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

BARNSTABLE TOWN COUNCIL

ITEM# 2024-031
INTRO: 08/17/2023, 08/17/2023

2024-031 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION

RESOLVED: That the Town Council appoints the following individuals to a multiple-member Board/Committee/Commission: **Disability Commission:** Patricia Erickson-Taylor, as a regular member to a term expiring 06/30/2025; **Zoning Board of Appeals:** Emanuel Alves, as an associate member to a term expiring 06/30/2024.

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

DATE	ACTION TAKEN
<u>08/17/2023</u>	<u>Refer to Second Reading 09/07/2023</u>

- ___ Read Item
- ___ Rationale
- ___ Council Discussion
- ___ Vote

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

BARNSTABLE TOWN COUNCIL

ITEM# 2024-032
INTRO: 08/17/2023, 09/07/2023

2024-032 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION

RESOLVED: That the Town Council reappoints the following individuals to a multiple-member Board/Committee/Commission: **Council on Aging:** Ella Rollins, as a regular member to a term expiring 06/30/2026; **Historical Commission:** Barbara DeBiase from an alternate member to a regular member position to a term expiring 06/30/2026.

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

DATE	ACTION TAKEN
<u>08/17/2023</u>	<u>Refer to Second Reading 09/07/2023</u>

- Read Item
- Rationale
- Council Discussion
- Vote

B. NEW BUSINESS (May be Acted Upon) (Majority Vote)

BARNSTABLE TOWN COUNCIL

**ITEM# 2024-034
INTRO: 09/07/2023**

2024-034 AUTHORIZATION TO EXPEND A 2023 GRANT ROUND MASSACHUSETTS DREDGING GRANT FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF ECONOMIC DEVELOPMENT IN THE AMOUNT OF \$300,000 FOR THE COTUIT BAY ENTRANCE AND EMBAYMENT CHANNEL DREDGING PROJECT

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a 2023 Grant Round Massachusetts Dredging Grant in the amount of **\$300,000** from the Commonwealth of Massachusetts, Executive Office of Economic Development for the Cotuit Bay Entrance and Embayment Channel Dredging Project.

SPONSOR: Mark S. Ells, Town Manager

DATE ACTION TAKEN

- ___ Read Item
- ___ Rational
- ___ Council Discussion
- ___ Move/Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2024-034
INTRO: 09/07/2023

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, Director, Department of Public Works
DATE: September 07, 2023
SUBJECT: Authorization to expend a 2023 Grant Round Massachusetts Dredging Grant from the Commonwealth of Massachusetts, Executive Office of Economic Development in the amount of **\$300,000** for the Cotuit Bay Entrance and Embayment Channel Dredging Project

BACKGROUND: The Town of Barnstable has been awarded a \$300,000 Massachusetts Dredging Grant from the Commonwealth of Massachusetts for the execution of the Cotuit Bay Entrance and Embayment Channel Dredging Project. The Massachusetts Dredging Grant provides construction-phase funding to coastal communities for saltwater dredging projects. Grants are competitively awarded, with a focus on shovel-ready projects that contribute to the economic significance, public safety, recreational value, and/or coastal resiliency of the Commonwealth's coastal harbors. Dredging is anticipated to be completed this winter.

ANALYSIS: The Cotuit Bay Entrance and Embayment Channels require regular maintenance dredging to maintain the navigation channel. Sediments have accumulated in the channels to the point where dredging is now necessary. The channels will be dredged by the Barnstable County Dredge and the dredged sediments will be placed on Dead Neck to nourish that beach and to repair a portion of the dune adjacent to the jetty that has been damaged.

FISCAL IMPACT: The Massachusetts Dredging Grant provides up to a 50% match of the project. The matching funds will be funded by an existing appropriation authorized under Town Council Order 2021-102.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends approval of this grant expenditure.

STAFF ASSISTANCE: Daniel W. Santos, Director, Department of Public Works

B. NEW BUSINESS (May be acted upon) (Majority vote)

BARNSTABLE TOWN COUNCIL

**ITEM# 2024-035
INTRO: 09/07/2023**

2024-035 AUTHORIZATION TO EXPEND A FISCAL YEAR 2024 MUNICIPAL VULNERABILITY PREPAREDNESS ACTION GRANT IN THE AMOUNT OF \$199,000 FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS FOR THE DEVELOPMENT OF A HYANNIS HARBOR MASTER PLAN

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2024 Municipal Vulnerability Preparedness Action Grant in the amount of **\$199,000** from the Commonwealth of Massachusetts, Executive Office of Energy and Environmental Affairs for the purpose of hiring a consultant to support the creation of a Hyannis Harbor Master Plan to develop land use, zoning and economic development recommendations for the area with attention to long-term coastal resiliency.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Rationale
- ___ Council Discussion
- ___ Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2024-035
INTRO: 09/07/2023

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Elizabeth Jenkins, Planning & Development Director
DATE: September 07, 2023
SUBJECT: Authorization to expend a Fiscal Year 2024 Municipal Vulnerability Preparedness Action Grant in the amount of **\$199,000** from the Commonwealth of Massachusetts, Executive Office of Energy and Environmental Affairs for the development of a Hyannis Harbor Master Plan

BACKGROUND: The Municipal Vulnerability Preparedness Action Grant is a competitive grant program for municipalities that received designation from the Executive Office of Energy and Environmental Affairs (EEA) as a Municipal Vulnerability Preparedness (MVP) Community to implement priority adaptation actions identified through the MVP planning process, or other climate change vulnerability assessment and action planning process.

ANALYSIS: The Town of Barnstable has been awarded a \$199,000 Municipal Vulnerability Preparedness Grant from EEA. The funding will be used for the purpose of hiring a consultant to support the development of a comprehensive plan for public and private development around the Hyannis Inner Harbor. The goal of the Hyannis Harbor Master Plan is to better understand the current and future challenges and opportunities of this working and recreational waterfront, and create a cohesive strategy for the mix of land uses that activate the harbor area on a daily basis. In addition, the Town seeks to review and plan for the growing development pressures immediately around Hyannis Harbor and better align its current zoning to meet today's needs, while also making the Harbor and associated development areas more resilient to the threats of climate change. The master plan will consider the interaction between public open spaces and private development parcels, ensuring the entire area is designed to cohesively consider people, the environment, and the economy. The plan will include recommendations for future equitable economic development opportunities that can be spun off from this active area.

FISCAL IMPACT: The required 25% grant match will be met with in-kind staff support.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends approval of this grant expenditure.

STAFF ASSISTANCE: James Kupfer, Interim Assistant Director of Planning & Development; Kate Maldonado, Assistant Director of Planning & Development; Alice-Marcus Krieg, Grants Coordinator

B. NEW BUSINESS (Refer to Public Hearing 09/21/2023)

BARNSTABLE TOWN COUNCIL

**ITEM# 2024-036
INTRO: 09/07/2023**

2024-036 ORDER WAIVING INSPECTION FEES FOR PUBLIC LIBRARIES IN THE TOWN OF BARNSTABLE FOR A PERIOD OF ONE YEAR

ORDERED: Notwithstanding the provisions of any ordinance of the Town regarding schedules of fees, public libraries in the Town of Barnstable shall be exempt from the payment of inspection fees for a period of one year, commencing on October 23, 2023.

SPONSOR: Gordon Starr, Councilor, Precinct 1

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2024-036
INTRO: 09/07/2023

SUMMARY

TO: Town Council
FROM: Karen L. Nober, Town Attorney
THROUGH: Mark S. Ells, Town Manager
DATE: September 07, 2023
SUBJECT: Order waiving inspection fees for public libraries in the Town of Barnstable for a period of one year

BACKGROUND: All residents of the Town of Barnstable benefit from the services provided by the Town's public libraries. Accordingly, several Councilors have asked that the Town waive inspection fees for public libraries. In 2016, the Town Council voted to waive fees for construction work on the new Hyannis Fire District Fire Station, and in 2022, the Town Council voted to waive fees for construction work by the Barnstable Fire District for a new water treatment plant.

FISCAL IMPACT: The annual inspection fee for each library that would be waived under this order is \$50 per library.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends approval of this fee waiver.

STAFF ASSISTANCE: Brian Florence, Director of Inspectional Services

**B. NEW BUSINESS (Public Hearing) (May be acted upon)
(Roll Call 2/3 Full Council)**

BARNSTABLE TOWN COUNCIL

**ITEM# 2024-037
INTRO: 09/07/2023**

**2024-037 ORDER TO PETITION THE GENERAL COURT OF THE COMMONWEALTH
TO ENACT SPECIAL LEGISLATION APPROVING THE CHANGE THE USE
OF APPROXIMATELY 3,400 SQUARE FEET OF LAND WITHIN THE
CRAIGVILLE BEACH PARKING LOT**

ORDERED:

SECTION 1:

That, having received notice that the Town Manager has determined that approximately 3,400 square feet within the Craigville Beach parking lot, as shown on a plan of land titled “Area of Land for Which A Change of Use is Contemplated, 997 Craigville Beach Road, Barnstable, Massachusetts” drawn by Town of Barnstable Department of Public Works dated 8/24/2023 (“the Property”) are no longer needed exclusively for recreation purposes, and that the Town Conservation Commission, by unanimous vote, concurred with and endorsed the Town Manager’s declaration that the Property which 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 to support construction of a sewer project which is part of the Town’s Comprehensive Wastewater Management Plan, the Town Council hereby approves a change in use of such Property from recreation land to general municipal purposes; 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 approximately 3,400 square feet within the Craigville Beach parking lot, Centerville, as follows:

**“AN ACT AUTHORIZING THE CITY KNOWN AS THE TOWN OF BARNSTABLE TO
CHANGE THE USE OF A PORTION OF LAND WITHIN THE CRAIGVILLE BEACH
PARKING LOT**

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 section 5A of chapter 3 of the General Laws, the town council of the city known as the town of Barnstable may change the use of approximately 3,400 square feet of land located within the Craigville Beach parking lot, as shown on a plan of land titled “Area of Land for Which A Change of Use is Contemplated 997 Craigville Beach Road, (Centerville) Barnstable, Massachusetts” drawn by Town of Barnstable Department of Public Works dated 8/24/2023, for the purpose of constructing, operating and

maintaining sewer infrastructure, including a below-ground sewer pump station and related infrastructure as well as an above-ground structure to enclose electrical equipment, all in support of the town of Barnstable’s approved Comprehensive Wastewater Management Plan.

The town of Barnstable may make minor modifications to the plan to carry out this act.

SECTION 2. As compensation for the change of use of the land described in section 1, the town of Barnstable shall deposit \$71,500 to the town of Barnstable Community Preservation Fund, which represents 110 percent of the required appraised value, to be used by the town to acquire replacement land or interests in land pursuant to section 5A (2) of chapter 3 of the General Laws.

SECTION 3. The Town Manager of 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.”

Approved, _____ 2023.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2024-037
INTRO: 09/07/2023

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Karen L. Nober, Town Attorney; Charles McLaughlin, Senior Counsel
DATE: September 07, 2023
SUBJECT: Order to petition the General Court of the Commonwealth to enact special legislation approving the change the use of approximately 3,400 square feet of land within the Craigville Beach parking lot

BACKGROUND: 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 recreation land. M.G.L. c. 3, § 5A, the Public Lands Preservation Act (“PLPA”), establishes statutory requirements and a process for submission to the Legislature of Article 97 petitions. The key PLPA requirements are notice to the Secretary of Energy and Environmental Affairs and the public, an alternatives analysis, and identification and dedication of replacement land or interests in 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 proposed Article 97 project and legislation would allow the change of use of approximately 3,400 square feet of land within the Craigville Beach Parking Lot in support of the Town’s approved Comprehensive Wastewater Management Plan (“CWMP”). The Town would construct a below-grade sewer pump station, below-grade sewer pipes, below-grade electrical conduit and an above-grade electrical equipment structure to be located above mapped flood elevations. About 1,200 square feet of the surface of the paved parking lot will be altered. About 2,200 square feet will be consumed by a subsurface electrical conduit which will not change the physical use of the parking lot surface.

However, as explained in the attached alternatives analysis, the Town has been unable to identify suitable replacement land comparable to that for which the change in use is sought. A payment to the Town’s Community Preservation Fund in lieu of actual acquisition of land is an option provided by the PLPA which the Town will pursue. As required by the PLPA, the Town obtained an appraisal which valued the subject property at \$65,000. If the Secretary approves the Town’s request to make a payment in lieu of acquisition, the PLPA requires that the Town deposit 110% of the appraised value of the property (\$71,500) into the Community Preservation Fund and also requires that the monies be expended within three years of approval of suitable replacement land or interests in land. The Town will request that the Secretary make and submit the necessary findings to the Legislature in support of the “funding in lieu of” option.

FISCAL IMPACT: There is no impact on the operating budget as a result of this item. Funding for the payment as required under the PLPA will be provided from the Town’s General Fund reserves once certified at a subsequent Town Council meeting through an appropriation request. Certification is expected in the month of October.

STAFF ASSISTANCE: Karen L. Nober, Town Attorney; Charles S. McLaughlin, Jr., Senior Counsel; Thomas LaRosa, First Assistant Town Attorney; 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 (“EEA”), the Town of Barnstable provides the following alternatives analysis as required by subsection (a) of M.G.L. c. 3, § 5A (also known as the Public Lands Preservation Act or PLPA) pertaining to the change of use of certain land within the Craigville Beach parking lot 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 exists.

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

Craigville Beach is a 10.7 acre public beach located at 997 Craigville Beach Road in the Village of Centerville in the Town of Barnstable, which provides beach access to Nantucket Sound. Craigville Beach consists of a large, approximately 3.7 acre paved parking lot, a bath house and a maintained sandy beach.

The proposed Article 97 Action involves the change of use of approximately 3,400 square feet of land within the existing paved parking lot, to be used for the construction of necessary sewer infrastructure in order to support sewer expansion of the surrounding area consistent with the Town’s Comprehensive Wastewater Management Plan (CWMP). This sewer infrastructure will play a critical role in improving water quality in the nearby water bodies; more specifically Nantucket Sound, Lake Elizabeth, Red Lily Pond and the nitrogen impaired Centerville River.

The approximate 3,400 square feet for which the change of use is proposed will be used for the construction and installation of sewer infrastructure, including a below grade sewer pump station, below grade sewer pipes, below grade electrical conduit and an above grade structure (hereinafter referred to as “the structure”) in order to elevate critical electrical equipment sufficiently above mapped flood elevations. The construction of the sewer pump station and the structure will result in the physical change of use of approximately 1,200 square feet of the surface of the existing paved parking lot. The remaining approximately 2,200 square feet will consist of subsurface electrical conduit which will not change the physical use of the parking lot in those areas.

The Town has obtained an appraisal of the area for which a change of use is sought. The appraised value of the property is \$65,000. The Town has not identified suitable replacement land at this time and as a result is seeking approval of funding in lieu of replacement land. This request is further discussed below in (iv).

(ii) Identify alternatives considered.

The Town’s CWMP dictates the need for sewer expansion in the surrounding areas of Craigville Beach. The design of the new sewer system in the area resulted in the need for a new sewer pump station in the area of Craigville Beach, due to topography and the centralized location of the property in relation to the proposed service area. The following alternatives to the Town’s proposal were evaluated:

- a) Install the sewer pump station infrastructure within the public right of way;
- b) Install the sewer pump station infrastructure on another Town owned property;
- c) Not installing sewer infrastructure in this area, 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) The alternative of installing the sewer pump station infrastructure within the public right of way was determined to not be feasible as there is not an area large enough to site the infrastructure within the public right of way in the area that it is needed.

- b) The alternative of installing the sewer pump station infrastructure on another Town owned property was determined to be less advantageous than the Town's current proposal. The only other feasible Town owned property in which the infrastructure could be located is 946 Craigville Beach Road. This property was purchased by the Town in 2008 for open space and recreation purposes, thus it is also protected under Article 97. This property is improved with a memorial garden and has minimal impervious surfaces. As previously stated, the current proposal would site the infrastructure within areas that are currently entirely developed with impervious surfaces (paved parking area). As a result, 946 Craigville Beach Road was determined to be a less advantageous site for the proposed infrastructure than the Town's proposed site.
- c) A "do nothing" option is not viewed as an acceptable alternative, as the Town's CWMP identifies this area as requiring sewer expansion to achieve water quality goals (i.e., address nutrient impairment in the Centerville River).

(iv) Request for funding in lieu of replacement land.

The Town has not identified suitable replacement land at this time, and as a result is seeking approval of funding in lieu of replacement land. The Town is seeking to have the Secretary of EEA make and report the necessary findings to the Legislature to support the Town's request for funding in lieu of replacement land. The Town believes it has met the necessary criteria as further discussed below. The land proposed for Article 97 Action has been appraised at \$65,000. Consistent with the guidance for funding in lieu of replacement land, the Town proposes to hold 110% of the appraised value (\$71,500) in a fund for acquiring Article 97 land and use the funds within three years to acquire land that qualifies as replacement land under the PLPA.

- a) The Article 97 Action serves a significant public interest in that it supports sewer expansion within the area consistent with the Town's CWMP in order to improve water quality
- b) The Article 97 Action will have no adverse impact on an Environmental Justice Population. The project is located 1.5 miles from the nearest Environmental Justice Population based upon measurement on the 2020 Environmental Justice Population Viewer.
- c) The alternatives analysis has been subjected to public notice and comment and demonstrates that, for specifically stated reasons, no feasible or substantially equivalent alternative exists to avoid or minimize Article 97 impacts. This alternatives analysis will be posted on the Town's website and made available for public comment. In addition, the Town expects to hold a public hearing at an upcoming Town Council meeting during which the public will have the opportunity to comment on the alternatives analysis. This alternatives analysis demonstrates that no feasible or substantially equivalent alternative exists to avoid or minimize Article 97 impacts.
- d) It is not feasible to contemporaneously designate replacement land. There is not currently available replacement land in a comparable location and which is of equal or greater value, as described in the PLPA, to the impacted area.