



The Town of Barnstable

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February 5, 2025

To: Barnstable Town Councilors

From: Mark S. Ells, Town Manager

RE: Town Manager update for January 29, 2025 through February 5, 2025

1. We continue with the preparation of the Capital and Operating Budget for FY 2026. We continue to follow the budget action calendar with submittal of the recommended FY 2026 Capital Budget to Town Council in March with a first reading of the Capital Budget on April 3, 2025. A Town Manager Fiscal Year 2026 proposed fee hearing is scheduled for mid-March. For information on our fiscal year budgets please view the Town's Open Budget website at <http://budget.townofbarnstable.us>.
2. As previously reported, the Executive Office of Energy and Environmental Affairs (EEA) issued a Notice of Public Hearing and draft regulations for implementing the Public Lands Preservation Act (PLPA), now referred to by EEA as the Open Space Act (attached). The PLPA and these draft regulations concern process and mitigation for the disposition or change in use of land or interests in land protected under Article 97 of the Amendments to the State Constitution. The Town Attorney's Office submitted comments on the draft regulation and the Town Council received comments at the last Town Council meeting and subsequent to that meeting. I offer the following clarification on the Town's comment letter.

During and after the January 30th Town Council meeting, the Council heard and received several oral and written public comments regarding the draft regulations issued by the Executive Office of Energy and Environmental Affairs ("EEA"), 301 CMR 52.00, to implement the Public Lands Preservation Act (referred to as the "PLPA", and also known as the Open Space Act) and codified at section 5A of Chapter 3 of the General Laws, and the Legal Department's comments on those draft regulations.

Because the comments were inaccurate in a number of regards, this additional information is a clarification of what Article 97 and the PLPA do, how they are

different, the role of the draft regulations, and how the EEA Article 97 Land Disposition Policy (the “EEA Policy”) fits in and providing accurate information. The following are the key points for consideration:

- Article 97 of the Amendments to the State Constitution (“Article 97”) requires a two-thirds roll-call vote of the Legislature for a change of use or disposition of lands and easements protected by Article 97. This can only be changed by a Constitutional amendment approved by the voters of the Commonwealth.
- There are a number of ways to get an Article 97 bill involving municipal land before the Legislature. The typical way is through a Home Rule petition. This has not changed.
- The PLPA codifies in state law EEA’s long-standing policy for a no-net-loss of lands protected by Article 97 and does so by setting requirements for an alternatives analysis and replacement land, which must be addressed prior to the filing of an Article 97 bill with the Legislature, which typically occurs through a municipal Home Rule petition.
- For all municipal Home Rule petitions, and not just those involving Article 97, the State Constitution sets the quantum of vote at a simple majority. Therefore, the Legislature could not change the municipal vote to a two-thirds absent a Constitutional amendment.
- For the Town to impose upon itself a higher two-thirds vote of the Town Council for filing a Home Rule petition, the Town would need to do so either through a change to the Town Charter or through a Special Act of the Legislature initiated by a Home Rule Petition approved by the Town Council.
- EEA can’t include in its regulations a two-thirds vote requirement for filing a Home Rule petition because, again, the State Constitution sets the vote at a simple majority. For this reason, the Legal Department considered but did not include in its written comments anything regarding a two-thirds vote from EEA’s Policy.
- The residents’ comments shared with the Council suggest that, for the Town to seek a Home Rule petition from the Legislature, EEA’s Policy, which requires a two-thirds vote of the Town Council and a unanimous vote of the Conservation Commission, must be followed. This is incorrect. The Policy’s vote requirements are not legal requirements, and therefore the Town can choose whether to comply with them. A policy does not have the force of law and cannot set any legal requirements. Accordingly, failure to comply may result in a loss of eligibility for EEA grant funds. But there is no other

consequence and nothing to prevent the Town from filing a Home Rule petition approved by a majority vote of the Council, as long as the PLPA process is followed.

I hope this summary is helpful to explain with accurate information the comment letter submitted. We will keep you advised as this matter progresses.

3. I received an email from MIT as a follow up to my conversation with Sanjana Paul from the MIT Renewable Energy Facility Siting Clinic requesting that Barnstable enter into a letter agreement with MIT regarding spring semester continuation of the clinic. I have referred the letter to staff for review and comment. I did verbally state that I support their clinic to continue the stakeholder survey and that further discussion of action items is needed before I can support such efforts. I am available to review and for further discussion.
4. Town of Barnstable residents have multiple ways to communicate with the Town, including email, phone and via our app and we have introduced a new video to provide the information. The video may be viewed here: <https://youtu.be/LpUDBvk4kXA>
5. James Kupfer, Director of Planning and Development, will provide an update on the Local Comprehensive Plan and Great Streets. His report is below.

Local Comprehensive Plan Update

The Local Comprehensive Planning Committee is currently reviewing an *initial draft* of the complete Local Comprehensive Plan which includes all efforts coordinated to date including the Existing Conditions Plan with data and narrative for the Town's natural, built and community systems, the Community Vision, key issues and opportunities organized by chapter topics, and an initial draft of the Action Plan with location and topic specific actions to be achieved over the next 10 or so years.

The Committee will continue to discuss comments for the Draft Local Comprehensive Plan at their upcoming meeting to be held Thursday February 13th at 6:00 PM in person at Town Hall within the Hearing Room.

Upon coordination of Committee comments, the Draft Local Comprehensive Plan will be made available to the public for review and comment-likely-by the end of February. A robust public outreach effort will be coordinated with the release of the draft Plan to ensure that the community is informed of and engaged in this important effort to provide final comments for the Town's Local Comprehensive Plan.

If you have any questions regarding this project, please contact Kate Maldonado, Senior Planner, by email at

Kaitlyn.maldonado@town.barnstable.ma.us or by phone at 508-862-4791. To stay up to date on upcoming meetings and events, and to learn more about how to get involved, please visit BarnstableLCP.com.

Great Streets

The Great Streets project continues to be a priority of the Town. Planning and Development in collaboration with DPW have been meeting weekly to fine tune the 25 percent designs and guiding the consulting engineer to a 75 percent design that will be available to the public in the coming weeks. We have also continued to work with the various utility companies on pole relocation at the six points intersection, which is an important early step to maintain the current timeline. The hope is to hold a public workshop on the 75 percent design this winter to gain feedback and move to final design.

If you have any questions regarding this project, please contact James Kupfer, Director of Planning and Development, by email at james.kupfer@town.barnstable.ma.us or by phone at 508-862-4784.