



The Town of Barnstable

Town Council

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Janet S. Joakim
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Janice L. Barton
Gary R. Brown
Ann A. Canedy
Frederick Chirigotis
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James F. Munafo, Jr.
Tom Rugo
Harold E. Tobey

Administrator:
Donald M. Grissom

Town Council
Secretary:
Cheryl A. Phillips

TOWN COUNCIL AGENDA

September 7, 2006

7:00 PM

1. **ROLL CALL**
 2. **PLEDGE OF ALLEGIANCE**
 3. **MOMENT OF SILENCE**
 - **COUNTY COMMISSIONERS PRESENTATION -- TOWN SERVICES**
 4. **PUBLIC COMMENT**
 5. **COUNCIL AND TOWN MANAGER RESPONSE TO PUBLIC COMMENT**
 6. **REPORTS FROM TOWN COUNCIL, BOARDS, AND COMMITTEES**
 7. **ACT ON MINUTES**
 8. **ORDERS OF THE DAY**
 - A. **OLD BUSINESS**
 - B. **NEW BUSINESS**
 9. **COMMUNICATIONS FROM ELECTED OFFICIALS, BOARDS, COMMISSIONS AND STAFF, CORRESPONDENCE AND ANNOUNCEMENTS**
 10. **PRESIDENT/VICE PRESIDENT COMMUNICATIONS**
 11. **TOWN MANAGER COMMUNICATIONS**
 12. **PUBLIC COMMENT**
 13. **ADJOURNMENT.**
- NEXT MEETING SEPTEMBER 21ST.**
-

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Minutes of Barnstable Town Council Meeting of August 17, 2006.

Please Note: It is possible, if it so votes, the Council may go into executive session.

A. OLD BUSINESS (Joint Public Hearing with Planning Board May Be Acted Upon)

BARNSTABLE TOWN COUNCIL

**2006-147 AMENDMENT OF THE ZONING ORDINANCE BY THE CREATION OF AN AFFORDABLE HOUSING OVERLAY DISTRICT (AHOD)
INTRO.: 6/15/06; 07/20/06; 08/17/06; 09/07/06**

NOW THEREFORE, THE TOWN COUNCIL OF THE TOWN OF BARNSTABLE MASSACHUSETTS DO ORDAIN AS FOLLOWS:

ORDERED:

SECTION 1

AFFORDABLE HOUSING OVERLAY DISTRICT

1. Purpose. The purpose of this Section is to establish an overlay district(s), in which a special permit process is created to encourage privately initiated affordable housing by for-profit and not-for-profit organizations that authorize an increase in the permissible density of housing in a proposed development, provided that the applicant shall, as a condition for the grant of said special permit, provide a percentage of affordable housing as defined in Section 9 herein.

2. Definitions.

Affordable Housing Development (AHD) – A development of single-family (detached), duplex (two family detached) and/or multi-family (three or more dwelling units per building) residential dwellings, including required Affordable Units, and permissible accessory structures authorized by special permit from the Planning Board as set forth herein for parcels located in the AHOD.

Affordable Unit - A dwelling unit reserved in perpetuity for ownership by a household earning less than 80% of area median family income, and priced to conform with the standards of the Massachusetts Department of Housing and Community Development (DHCD) for ownership units set forth in 760 CMR 45.03(4), in order that such Affordable Units shall be included in the DHCD Subsidized Housing Inventory.

Applicant - The person or persons, including a corporation or other legal entity, who applies for approval of an Affordable Housing Development (AHD), hereunder. The Applicant must own, or be the beneficial owner of, all the land included in the proposed AHD, or have authority from the owner(s) to act for the owner (s) or hold an option or contract duly executed by the owner(s) and the Applicant giving the latter the right to acquire the land to be included in the site.

Building Height – Building height shall be measured as the vertical distance from the grade plane to the average height of the highest roof plane that also has the highest ridge line.

Building story - The vertical distance from top to top of two successive tiers of beams or finished floor surfaces; and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.

**BARNSTABLE TOWN COUNCIL
2006-147 AMENDMENT OF THE ZONING ORDINANCE
BY THE CREATION OF AN AFFORDABLE HOUSING
OVERLAY DISTRICT (AHOD) (CONTINUED)**

Visitability – Shall mean that a residence has: a) no steps between the exterior walking surface and interior first floor level; b) at least one external door three (3) feet wide; c) all first floor passage doors at least 2 feet 8 inches wide; and d) at least one toilet room on first floor.

3. Affordable Housing Overlay District. The AHOD is an overlay district that may be superimposed on any parcel(s) in any zoning district. Where the AHOD authorizes uses not otherwise allowed in the underlying district, the provisions of the AHOD shall control.

4. Location. The AHOD is to be shown on the Official Zoning Map of the Town of Barnstable.

5. Concept Plan. Prior to the rezoning of any property for inclusion in the AHOD, and as part of the petition for such rezoning, a schematic plan, called for purposes of this Section, a "Concept Plan", shall be filed by the applicant with the Planning Board for review at least twenty-one (21) days prior to a regularly scheduled meeting of the Planning Board. The Planning Board and the Barnstable Housing Committee shall hold a joint public meeting on the Concept Plan. The Concept Plan shall be consistent with the provisions of this AHOD ordinance and the town of Barnstable Affordable Housing Plan. In deliberation on approval of a Concept Plan, the Planning Board shall give consideration to the Town of Barnstable Village Plans as appended to the Town of Barnstable Local Comprehensive Plan.

The Concept Plan shall include:

- A. A schematic site development plan showing in general, the location of all proposed buildings, general site grading, parking, landscaping, roads, walkways and access ways, open space, wetlands, lighting and signage;
- B. A general breakdown of building types, i.e. single family, two family, multi family (and number of bedrooms in each building type);
- C. A schematic subdivision plan(s), if applicable;
- D. The proposed level of affordability;
- E. Specific floor plans, building plans or other detailed construction documents are **not** required at the Concept Plan stage.

The Barnstable Planning Board and the Barnstable Housing Committee will notify the public of the time and date of the public meeting on the Concept Plan. Thereafter, the Barnstable Planning Board shall determine that (i) the Concept Plan has been approved; or (ii) the Concept Plan has been approved subject to modifications; or (iii) the Concept Plan has been disapproved. If the Barnstable Planning Board disapproves the Concept Plan, it shall provide to the applicant, in writing, the reasons for such disapproval. The determination of the Barnstable Planning Board on the Concept Plan shall be the basis for a recommendation to the Town Council for the rezoning petition.

**BARNSTABLE TOWN COUNCIL
2006-147 AMENDMENT OF THE ZONING ORDINANCE
BY THE CREATION OF AN AFFORDABLE HOUSING
OVERLAY DISTRICT (AHOD) (CONTINUED)**

6. Map Amendment. In order for approval of an AHD, the applicant must file a petition for the amendment of the Town of Barnstable Zoning Map for inclusion of the subject parcel(s) within the AHOD.

7. Application for Special Permit in AHOD. After successful re-zoning of an AHOD, an application for a special permit for an AHD shall be submitted to the Planning Board on forms furnished by the Planning Board, accompanied by the following:

- A) Information pertaining to any association which the Applicant proposes to form for the private management of the AHD;
- B) Drawings showing floor plans, elevations, and sections as required to fully describe the proposed project;
- C) If a subdivision is proposed, then all documents as required for the subdivision, if any, shall be reviewed during the Special Permit process;
- D) Copies of proposed deed restrictions and monitoring agreements, drafted consistent with all requirements of 760 CMR 45 Local Initiative Program (LIP) and guidelines promulgated there under assuring the affordable units remain affordable in perpetuity, and assure the resale of Affordable Units at the restricted price, and providing a right of first refusal in favor of the Town;
- E) Special permits in the AHOD are exempt from Site Plan Review.

8. Standards. In order to be eligible for consideration for a special permit, the proposal must contain parcels included in the AHOD and shall meet all of the following standards:

A) Compliance with Applicable Regulations and Standards:

- 1) In the case of a subdivision, all plans and development shall comply with all applicable standards of the Planning Board's Subdivision Rules and Regulations, including such waivers as may be granted by the Planning Board.

B) Bulk Regulations – For all lots and building within the AHOD the following Bulk Regulations shall apply as long as the Planning Board determines such bulk regulation is consistent with Section 10 herein:

Density:	as proposed by applicant
Lot area:	as proposed by applicant
Minimum Lot frontage:	40 feet
Property line and Road Layout setbacks:	as proposed by applicant
Maximum Building Height	
in feet/# of Stories:	40 feet/3 stories
Minimum building separation:	zero

C) Parking - A minimum of two (2) on-site parking spaces per dwelling unit shall be provided.

**BARNSTABLE TOWN COUNCIL
2006-147 AMENDMENT OF THE ZONING ORDINANCE
BY THE CREATION OF AN AFFORDABLE HOUSING
OVERLAY DISTRICT (AHOD) (CONTINUED)**

D) Building Permit Cap - An applicant proposing an AHD under this Section shall be exempt from the terms and conditions of Article XI Growth Management, Section 240-114 Rate of Residential Development.

E) Visitability – The applicant shall provide visitability for all or some of the dwelling units, if feasible.

9. Affordable Units. At least forty percent (40%) of the dwelling units shall be Affordable Units, subject to the following conditions:

A) The Affordable Unit(s) shall be affordable in perpetuity. A Deed Rider shall assure this condition. The Deed Rider shall be structured to survive any and all foreclosures;

B) The continuing enforcement of the Deed Rider through subsequent resale of the Affordable Units shall be the subject of a Monitoring Agreement;

C) The Deed Rider and the Monitoring Agreement shall be drafted in compliance with 760 CMR 45.00 Local Initiative Program and guidelines promulgated there under. The Deed Rider and the Monitoring Agreement shall be subject to review and approval by the Barnstable Housing Committee and approved as to form by Town Attorney prior to the issuance of a certificate of occupancy for any dwelling unit;

D) The Affordable Unit(s) shall conform to the standards of the Department of Housing and Community Development (DHCD) for inclusion in the DHCD Subsidized Housing Inventory;

E) A right of first refusal for such Affordable Unit(s) shall be granted to the Town or its designee for a period not less than 120 days after notice thereof;

F) The Affordable Unit(s) shall not be segregated within the AHD. The Affordable Unit(s) shall satisfy the design and construction standards of the Local Initiative Program, 760 CMR 45.00, with regard to distinguishability from market rate units. It is the intent of this ordinance that the Affordable Unit(s) shall be eligible for inclusion in the DHCD Subsidized Housing Inventory as LIP units;

G) The Affordable Unit(s) shall be constructed, and occupancy permits issued at the rate of two (2) Affordable Units for every three (3) market rate units;

H) In computing the number of required Affordable Units, any fraction of a unit shall be rounded up and the result shall be the number of Affordable Units to be built within the AHD and not off site.

10. Decision. The Planning Board may grant a special permit for an AHD where it makes the following findings:

A) The proposed AHD complies with all applicable Subdivision Rules and Regulations, the Zoning Ordinances and the requirements of this section except as they may be waived by the Board;

**BARNSTABLE TOWN COUNCIL
2006-147 AMENDMENT OF THE ZONING ORDINANCE
BY THE CREATION OF AN AFFORDABLE HOUSING
OVERLAY DISTRICT (AHOD) (CONTINUED)**

- B) The proposed AHD provides Affordable Units consistent with the requirements set forth herein;
- C) The proposed AHD does not cause substantial detriment to the neighborhood.

11. Expiration. The provisions of this ordinance shall expire on XXXX XX, 200? (date 18 months hence). Any application for an affordable housing development duly filed prior to the above date may continue through the process for final determination by the Town Council for an AHOD and the Planning Board for a special permit.

Upon the expiration of this ordinance, the Planning Board shall report to the Town Council a recapitulation of applications received under this ordinance stating the final disposition of all applications including units created, both market rate and affordable.

After review of the Planning Board report, the Town Council shall reconsider extension of this ordinance after a duly publicized hearing.

SPONSORS: Councilor Ann Canedy and Councilor Leah Curtis upon recommendation of the Planning Board and the Housing Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

A. OLD BUSINESS (Public Hearing May Be Acted Upon) (Roll Call)

BARNSTABLE TOWN COUNCIL

**2007-013 APPROPRIATION ORDER FOR COMMUNITY PRESERVATION FUND
DEBT SERVICE
INTRO.: 07/20/06; 08/17/06; 09/07/06**

ORDERED: that the Town Council hereby appropriate \$3,162,771 for the purpose of paying the FY07 Community Preservation fund debt service requirements, and to meet such appropriation, that \$2,403,999 be provided from current year revenues of the Community Preservation Fund and the \$758,772 be provided from surplus funds in the Community Preservation Fund.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2007-013
INTRO.: 07/20/06; 08/17/06; 09/07/06**

TO: Town Council
FROM: John Klimm, Town Manager
DATE: July 11, 2006
SUBJECT: Appropriation Order for Community Preservation Fund Debt Service

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

ANALYSIS: The debt service requirements for FY07 for the Community Preservation Fund (CPF) are \$3,162,771. The estimated surtax revenue for the CPF in FY07 to be collected is \$2,403,999. The difference of \$758,772 will be covered by the fund balance brought forward from the Landbank Program as recommended by the Community Preservation Committee.

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

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

A. OLD BUSINESS (Public Hearing May Be Acted Upon) (Roll Call 2/3 Vote)

BARNSTABLE TOWN COUNCIL

**2007-014 APPROPRIATION ORDER FOR CONCEPTUAL DESIGN WORK ON
SOUTH STREET IN HYANNIS
INTRO.: 07/20/06; 08/17/06; 09/07/06**

ORDERED: that the Town Council hereby appropriate \$39,000 for the purpose of preparing a conceptual design of the South Street in Hyannis, and to meet such appropriation, that \$39,000 be transferred from the reserves in the Capital Trust Fund.

SPONSOR: Town Manager John C. Klimm

DATE

ACTION TAKEN

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2007-014
INTRO.: 07/20/06; 08/17/06; 09/07/06**

TO: Town Council
FROM: John Klimm, Town Manager
DATE: July 11, 2006
SUBJECT: Appropriation Order for conceptual design work on South Street in Hyannis

BACKGROUND: The project is to prepare a conceptual design of South Street from the intersection with Main Street at the west end to the intersection with Lewis Bay Road on the east end. Improvements are recommended to coincide with the recent rejuvenation of downtown Hyannis, increased pedestrian circulation, and general water front access through intersections at Sea Street and South Street, and Old Colony, Barnstable Road and South Street.

ANALYSIS: A total of \$39,000 is estimated for this conceptual design. This conceptual design would include improvements at all major intersections, road resurfacing, sidewalk and drainage improvements, and investigation of relocating utilities subsurface.

FISCAL IMPACT: The current balance in the Capital Trust Funds reserves is \$7,203,951. Approval of this item will not impact the current operating budgets.

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

A. OLD BUSINESS (Public Hearing May Be Acted Upon) (Roll Call)

BARNSTABLE TOWN COUNCIL

**2007-015 COMMUNITY PRESERVATION FUND APPROPRIATION
FOR HAMLIN MARKER WEST BARNSTABLE
INTRO.: 07/20/06; 08/17/06; 09/07/06**

ORDERED: That, pursuant to the provisions of G. L. c. 44B, the sum of Two thousand one hundred thirty-eight and No/100 (\$2,138.00) Dollars be appropriated and transferred from the amount set aside in the Community Preservation Fund on June 15, 2006 under agenda item number 2006-144 for historic resources; and that the Growth Management Department is authorized to contract for and expend the amount appropriated with the prior approval of the Town Manager for the creation of a historical marker citing the birthplace of Major Micah Hamlin in West Barnstable.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2007-015
INTRO.: 07/20/06; 08/17/06; 09/07/06**

TO: Town Council
FROM: Town Manager John C. Klimm
DATE: July 12, 2007
SUBJECT: The Replacement of Major Micah Hamlin Historical Marker

RATIONALE: The Community Preservation Committee (CPC) met on June 20, 2006 and has recommended that the town support the funding request of \$2,137.25 from the West Barnstable Historical Society for the replacement of a historical marker of citing the birthplace of Major Micah Hamlin. The current marker has an incorrect death date. It would be best to replace the stone entirely as the repairs will not last nor will they look good. This project preserves the integrity of the Town's recorded history. The incorrect marker was made by a Town entity, the Barnstable Tercentenary Committee of 1939. The Barnstable Historical Commission fully supports the correction of the marker.

ANALYSIS: The total cost of \$2137.25, which includes a 30% discount, includes a new granite tablet, lettering which is all hand drawn and hand cut, removal of the old foundation and tablet, new poured cement foundation, installation of the new tablet, tax and shipping. There have been funds raised for a total of \$500.00 to go towards the new marker.

TOWN MANGER RECOMMENDATIONS: The Town Manager upon recommendation of the Community Preservation Committee recommends adoption of this resolution.

BOARD OR COMMISSION ACTIONS: Community Preservation Committee recommends adoption of this resolution.

B. NEW BUSINESS (MAY BE ACTED UPON)

BARNSTABLE TOWN COUNCIL

**2007-016 MEMORIALIZING AIRPORT COMMISSION TO TERMINATE PRACTICE
OF ALLOWING PARTICIPATION BY A REPRESENTATIVE OF THE
TOWN OF YARMOUTH
INTRO.: 09/07/06**

WHEREAS

The Barnstable Municipal Airport Commission’s continued practice of maintaining membership which includes a member from the town of Yarmouth is a significant departure from administrative code provisions including a.) appointments to multiple member boards be made by the Barnstable Town Council and b.) members of such boards be a registered voter of the Town of Barnstable

THEREFORE

Be it resolved that the Barnstable Municipal Airport Commission is hereby memorialized to terminate its practice of allowing, as a matter of comity, participation by a representative of the town of Yarmouth on the board of the Barnstable Municipal Airport Commission and, in a desire to continue a good neighbor policy, invites the town of Yarmouth to use a liaison to observe the Barnstable Municipal Airport Commission meetings.

SPONSOR: Town Councilor James F. Munafo, Jr.

DATE	ACTION TAKEN
_____	_____
_____	_____

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2007-016
INTRO.: 09/07/06**

TO: Town Council
FROM: Town Councilor James F. Munafo, Jr.
DATE: August 3, 2007
SUBJECT: Memorializing Airport Commission to Terminate Practice of Allowing Participation by a Representative of the Town of Yarmouth

Whereas: The Town of Barnstable ascribes to a good neighbor policy; and

Whereas: The Town of Barnstable has continuously endeavored to redress any issue brought before it; and

Whereas: The Town of Barnstable has reached out to the Town of Yarmouth with a good neighbor policy of, allowing a Yarmouth resident to be recognized as a non-voting member on the Barnstable Municipal Airport Commission; and

Whereas: The Town of Barnstable has a municipal airport and not a regional airport; and

Whereas: the Town of Yarmouth does not have a financial interest in the operation and maintenance of the Barnstable Municipal Airport; and

Whereas: the Town of Yarmouth has sought to disrupt the Town of Barnstable's sovereignty in their frequent requests for a Yarmouth resident to participate in the operation and maintenance of The Town of Barnstable Municipal Airport; and

Whereas: the Town of Yarmouth has sought to usurp The Town of Barnstable's sovereignty by petitioning the Massachusetts State Legislature that a Yarmouth resident participate in the operation and maintenance of The Town of Barnstable Municipal Airport; and

Whereas: the Barnstable Municipal Airport Commissions' continued practice of maintaining a member from the town of Yarmouth is not consonant with or reflective of the Town's administrative code which includes provisions that a.) an appointee to a Standing Committee be a registered voter of the Town of Barnstable and b.) the appointment to a multiple-member board be made by the Barnstable Town Council; and

Whereas: the Town of Yarmouth's Board of Selectman's actions continue to interrupt and dishearten the good faith efforts of the Town of Barnstable.

Therefore: The Town of Barnstable's Municipal Airport Commission is memorialized to end the practice of recognizing a non-voting member from the Town of Yarmouth.

B. NEW BUSINESS (MAY BE ACTED UPON)

BARNSTABLE TOWN COUNCIL

**2007-018 FURTHER REGULATING COMPENSATION AND BENEFITS TO TOWN
OF BARNSTABLE EMPLOYEES PERTAINING TO OPERATIONS AND
TRAINING OF RESERVISTS
INTRO.: 09/07/06**

ORDERED: that Section 59 of Chapter 33 of the General Laws is hereby accepted.

SPONSOR: Town Councilor Richard Barry

DATE

ACTION TAKEN

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2007-018
INTRO.: 09/07/06**

TO: Town Councilors
FROM: Town Councilor Richard Barry
SUBJECT: 2007-018 – Further regulating compensation and benefits to town employees pertaining to operations and training of reservists.
DATE: August 10, 2006

This legislative item—relative to military reservists/guard leave—is proposed at the request of a citizen of Barnstable who is an employee of the town and who serves in the Navy reserve.

Section 59 of Chapter 33 of the General Laws provides for service members to receive regular compensation while they attend annual training up to seventeen calendar days per year.

Passage of this item would incorporate the provisions of Sec. 59 of Ch. 33 into the town personnel regulations as they relate to Military Reservists Leave.

B. NEW BUSINESS (MAY BE ACTED UPON)

BARNSTABLE TOWN COUNCIL

**2007-019 RESOLVE ACCEPTING AN ITEM PRICING/PRICE VERIFICATION
GRANT FROM THE COMMONWEALTH OF MASSACHUSETTS OFFICE
OF CONSUMER AFFAIRS, DIVISION OF STANDARDS
INTRO.: 09/07/06**

RESOLVED: that the Town Council hereby accepts an Item Pricing/Price Verification Grant in the amount of \$60,000 from the Massachusetts Office of Consumer Affairs, Division of Standards, to be used by the Regulatory Services Department, Consumer Affairs Division, to conduct Item Pricing/Price Verification Inspections throughout Barnstable County utilizing Division of Standards certified staff of the town.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2007-019
INTRO.: 09/07/06**

TO: Town Council
FROM: John Klimm, Town Manager
THROUGH: Thomas F. Geiler, Director Regulatory Services Department
DATE: August 9, 2006
SUBJECT: Request to Accept Item Pricing Grant of \$60,000
Awarded to Town of Barnstable

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

ANALYSIS: The Town of Barnstable Regulatory Services Department, Consumer Affairs Division, is committed to maintaining a fair and accurate marketplace, free from errors and overcharges. The Item Pricing/Price Verification Grant will provide for 1 staff position to conduct compliance checks in retail stores to ensure accuracy in posted or advertised prices. Inspections and compliance checks utilizing grant funded staff will be conducted throughout Barnstable County to ensure Barnstable merchants do not unfairly carry the burden of compliance costs.

Retail sales through electronic scanning systems in Barnstable County is estimated to be over 2 billion dollars annually. A one per cent error could represent an annual overcharge to consumers of 20 million dollars. Inspections during 2001 identified an average error of 5.78%. Implementation of this program has reduced the error to 2.6% over the last four years. The Item Pricing/Price Verification Grant program is intended to reduce error and level the marketplace playing field.

FISCAL IMPACT: The grant is for \$60,000 and is intended to cover all costs of the program. Acceptance of the grant will have a positive fiscal impact on the town.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends grant acceptance.

BOARD/COMMITTEE ACTION: N/A

STAFF ASSISTANCE: Lois Lomba, Administrative Assistant to the Director of Regulatory Services
Stephen Agostinelli, Inspector of Weights and Measures

B. NEW BUSINESS (MAY BE ACTED UPON)

BARNSTABLE TOWN COUNCIL

**2007-020 ACCEPTANCE OF A FY 2007 SPECIAL PROJECTS GRANT FUNDED BY THE CONGRESS IN THE VA-HUD-INDEPENDENT AGENCIES APPROPRIATIONS ACT FOR FY 2005 IN THE AMOUNT OF \$96,224.
INTRO.: 09/07/06**

RESOLVED: That the Town Council does hereby accept the grant award in the amount of \$96,224 from the Congress in the VA-HUD-Independent Agencies Appropriations Act for FY 2005 Special Projects Grant.

SPONSOR: Town Manager John C. Klimm

DATE

ACTION TAKEN

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY**

2007-020

INTRO.: 09/07/06

TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Ruth Weil
DATE: August 17, 2006
SUBJECT: Acceptance of a FY 2007 Special Projects Grant in the amount of \$96,224 from the Congress in the VA-HUD-Independent Agencies Appropriations Act for FY 2005.

BACKGROUND: The Town of Barnstable was awarded the Special Projects Grant from the Congress in the VA-HUD-Independent Agencies Appropriations Act for FY 2005 (PL 108-447) in the amount of \$96,224. The grant is part of the Town's efforts, the to revitalized downtown Hyannis through the implementation of the Design and Infrastructure Plan (DIP), It will be used for renovations and façade improvements on the Sturgis Charter School, 427 Main Street, Hyannis.

ANALYSIS: Acceptance of this grant will contribute to our economic development and downtown revitalization efforts through improved streetscape and façade treatments on our Main Street in downtown Hyannis.

FISCAL IMPACT: This grant will supplement funds allocated to Main Street improvements.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends acceptance of this grant.

STAFF ASSISTANCE: Ruth J. Weil

B. NEW BUSINESS (MAY BE ACTED UPON)

BARNSTABLE TOWN COUNCIL

**2007-021 ACCEPTANCE OF THE FIRST TEE NATIONAL GOLF PROGRAM THROUGH THE MASSACHUSETTS GOLF ASSOCIATION CHAPTER TO USE TOWN OF BARNSTABLE FACILITIES FOR THE PURPOSE OF INTRODUCING THE GAME OF GOLF AND ITS LIFE SKILLS AND VALUES TO OUR YOUTH.
INTRO.: 09/07/06**

RESOLVE, that the Town Manager through the Recreation Division may enter into an agreement with the First Tee Program, a nationally recognized youth development organization, to conduct golf instruction for children at Town facilities for a term of up to fifteen (15) years upon payment of at least \$ 5,000 per year.

SPONSOR: John C. Klimm, Town Manager

DATE

ACTION TAKEN

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2007-021
INTRO.: 09/07/06**

TO: Barnstable Town Council
FROM: John C. Klimm, Town Manager
THROUGH: David Curley, Director of Recreation
DATE: August 14, 2006
RE: Acceptance of First Tee Golf Program

RATIONALE/BACKGROUND: The Town of Barnstable owns and operates the Olde Barnstable Fairgrounds Golf Course in the village of Marstons Mills. As of December 30, 2006, the Town will own a second golf course, the Hyannis Golf Course located in Hyannis. The mission of our golf program is to provide, operate, and maintain an affordable, attractive, self-supporting public golf facility that is open and available to everyone.

Olde Barnstable Fairgrounds Golf Course opened in April of 1992. The Town developed a team of professionals and staff with the necessary knowledge, personality, and golf experience to provide the highest quality service and course conditioning possible. This team takes pride in providing quality recreational opportunities to our residents and visitors in particular our deserving youth in order to enhance their quality of life.

One of our most critical and rewarding activities offered at Olde Barnstable is the Junior Golf Program. The Junior Golf Program provides our Town's youth with affordable training in golf rules, etiquette, swing technique, clinics, and competition. The program promotes maturation both physically and socially. We at Olde Barnstable recognize the game of golf to be a lifetime activity and believe all individuals should be given the opportunity to explore this great game. There are many benefits gained by the juniors through golf participation.

ANALYSIS: With the Hyannis Golf Course coming on board December 30, 2006, the Barnstable Recreation Golf Program will be developing a larger junior golf activity and will continue to work closely with those families who may have some financial difficulty getting involved in the game of golf. In the Town of Barnstable, there are approximately 6,200 boys and girls enrolled in public schools. Approximately, 32% of children age 0 -18 residing in the Town, live in the village of Hyannis.

In 1997, the First Tee Golf Program was founded. The mission of the First Tee Program is to positively impact the lives of young people by providing learning facilities and educational programs that promote character development and life-enhancing values through the game of golf. Since the year 2000, the First Tee Program has reached more than 450,000 participants at nearly 200 facilities.

The Massachusetts Golf Association is a licensed Chapter of the First Tee Program. Currently, there are three host sites for a First Tee Sponsor in Massachusetts: Springfield, Norton, and Lynnfield. In researching the First Tee Program, one final site is available on Cape Cod. This resolve would allow the MGA to enter into an agreement with the Town of Barnstable to be a host site for the First Tee Program. The First Tee Program would provide the following to all participants involved in this activity: free golf instruction, free golf equipment, no charge to play golf at Cape Cod golf courses, free transportation, and some free meals. Through the First Tee Program, approximately 250 Barnstable youth will participate along with other children in surrounding Towns throughout the Cape. Through the game of golf, the children will develop the

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY (CONTINUED)
2007-021
INTRO.: 09/07/06**

following life skills and core values: honesty, integrity, sportsmanship, respect, confidence, responsibility, perseverance, courtesy, and judgment.

The First Tee Program would be offered to our youth at the appropriate times as to not negatively impact our golf operation or our revenue flow.

Acceptance of this resolve thus having the Town of Barnstable become a host site for the First Tee Golf Program will result in the following: children learning the game of golf, children learning life skills, allowing the junior and adult membership to grow, and stimulation of our Golf Program revenue stream.

FISCAL IMPACT: There will be no negative financial impact to the Town.

TOWN MANAGER RECOMMENDATIONS: The Town Manager recommends approval of this Resolve.

BOARD ACTION: The Golf Committee unanimously supports this Resolve.

STAFF ASSISTANCE: David Curley, Recreation Director

B. NEW BUSINESS (MAY BE ACTED UPON)

BARNSTABLE TOWN COUNCIL

**2007-022 ACCEPTANCE OF A GRANT TO THE BARNSTABLE SENIOR CENTER FOR \$5,000.00 FROM TD BANKNORTH TO HELP SUPPORT A VOLUNTEER COORDINATOR MARKETING POSITION AT THE BARNSTABLE SENIOR CENTER
INTRO.: 09/07/06**

RESOLVED: that the Town of Barnstable hereby accept a grant in the amount of \$5,000.00 from TD Banknorth to help pay for a part time Volunteer/Marketing Coordinator position. This is a one-time grant, with no expectations for continued funding from TD Banknorth.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY (CONTINUED)
2007-022
INTRO.: 09/07/06**

TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Elyse DeGroot, Director Senior Services
DATE: August 14, 2006
SUBJECT: TD Banknorth Grant

RATIONALE: The Barnstable Senior Center has been without a volunteer coordinator since 2004. The impact of the vacancy in this position has been felt on many different levels: fewer volunteers available to answer calls, help with flu clinics, etc.; less outreach and marketing completed in the community, especially to lower income seniors most in need of social services; and additional work for Senior Center staff that might otherwise have been delegated to a volunteer.

Acceptance of this grant will allow the Senior Center to continue to reach out into the community to not only attract new volunteers but to also educate seniors about our programs and services.

FISCAL IMPACT: Acceptance of this grant will have no fiscal impact on the Town since the money is coming from an outside source.

STAFF ASSISTANCE: Elyse DeGroot, Director Senior Services

B. NEW BUSINESS (MAY BE ACTED UPON)

BARNSTABLE TOWN COUNCIL

**2007-023 ACCEPTANCE OF A FY 2007 COMMUNITY DEVELOPMENT ACTION GRANT
(CDAG) FUNDED BY THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT IN THE
AMOUNT OF \$1,000,000
INTRO.: 09/07/08**

RESOLVED: That the Town Council does hereby accept the grant award in the amount of \$1,000,000 from the Commonwealth of Massachusetts Department of Housing and Community Development through their Community Development Action Grant (CDAG) Program.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY (CONTINUED)
2007-023
INTRO.: 09/07/06**

TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Ruth Weil
DATE: August 16, 2006
SUBJECT: Acceptance of a FY 2007 Community Development Action Grant (CDAG) in the amount of \$1,000,000 from the Commonwealth of Massachusetts Department of Housing and Community Development.

BACKGROUND: The Town of Barnstable was awarded the Community Development Action Grant (CDAG) from the Commonwealth of Massachusetts Department of Housing and Community Development in the amount of \$1,000,000. . The funds will be used for the installation of a sewer force main in Stevens Street, and Bearse's Way, Hyannis and for a phytotechnology/landscaping project at the site of the former Gulf Station at 725 Main Street, Hyannis.

ANALYSIS: Acceptance of this grant will contribute to our economic development and downtown revitalization efforts by expanding the sewer capacity and by landscaping the site of the former Gulf Station;

FISCAL IMPACT: This grant will supplement funds allocated to Main Street improvements.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends acceptance of this grant.

STAFF ASSISTANCE: Ruth J. Weil

B. NEW BUSINESS (FIRST READING)

BARNSTABLE TOWN COUNCIL

**2007-024 TO NAME THE CATBOAT "SARAH" THE OFFICIAL HISTORIC VESSEL
OF THE TOWN OF BARNSTABLE
INTRO.: 09/07/06**

RESOLVE: To name the Cape Cod Maritime Museum's catboat "Sarah" as the official historic vessel of the Town of Barnstable.

SPONSOR: Town Councilor Ann B. Canedy

DATE

ACTION TAKEN

_____	_____
_____	_____

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2007-024**

TO: Town Councilors
FROM: Town Councilor Canedy
DATE: August 28, 2006
SUBJECT: Catboat Sarah as official historic vessel of Barnstable

The 1886 Herbert F. Crosby catboat "Sarah" is being replicated on the grounds of the Cape Cod Maritime Museum. It is being constructed using period techniques and materials and is scheduled to be launched in the summer of 2007.

The late Howard Chapelle who was the curator emeritus of the Smithsonian's transportation museum said: "one can hardly mention Cape Cod without also mentioning the development of the Cape Cod Catboat".

Catboats have been prevalent in our history and our economy having outnumbered any other type of boat used in Cape Cod fishery. The Crosby family alone have built over 3,500 of these boats.

The Cape Cod Maritime Museum's "Sarah" has been used as a topic for educational outreach and on site classroom discussion throughout its construction process. It is the Museum's intention that she will serve as a floating classroom.

The catboat is seeking a permanent berth in the Harbor (that is a separate challenge-lottery not likely to occur until 2008 according to John Klimm) but in the meantime will be tied in front of the Museum and will operate as a floating classroom and as a focal point of interest for tourists and locals alike.

FISCAL IMPACT: There is no fiscal impact.

**B. NEW BUSINESS (TO REFER TO A PUBLIC HEARING SEPTEMBER 21ST)
(ROLL CALL 2/3)**

BARNSTABLE TOWN COUNCIL

**2007-025 ORDER AUTHORIZING THE TOWN MANAGER TO EXECUTE A REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND GINSBERG ASSET MANAGEMENT, LLC
INTRO.: 09/07/06**

ORDERED: That the Town Manager is authorized pursuant to Section 168-5, General Ordinances of the Code of the Town of Barnstable, to enter into and execute a Regulatory Agreement between the Town of Barnstable and Ginsberg Asset Management LLC, for the property shown on Barnstable Assessor's Map 308 Parcel 004, Lot 1, and located within the OM zoning district and the Downtown Hyannis Growth Incentive Zone, including but not limited to the following: permitting the provision of not less than three affordable housing units to be constructed off-site, in conjunction with the development of 29 residential condominium units at 320 Stevens Street, Hyannis; and hereby granting a waiver from the provisions of the Barnstable Ordinances as follows:

Barnstable Inclusionary Affordable Housing Ordinance: Chapter 9, Section 9-4D as it applies to the residential condominium development at 320 Stevens Street requiring the inclusion of three on-site affordable housing units, by permitting the development of three off-site affordable housing units.

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

The Town Manager may make minor amendments to the Regulatory Agreement and execute said regulatory agreement as amended, provided that such amendments do not alter the use, intensity or mitigation stipulations of the regulatory agreement. However, in no instance may the Town Manager make substantial amendments to the regulatory agreement without first receiving written concurrence from the Planning Board and the Town Council and qualified applicant that said substantial amendments are agreed to in accordance with Section 168 of the Code.

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2007-025
INTRO.: 9/7/06**

TO: Town Council
FROM: Growth Management Department
DATE: August 30, 2006
SUBJECT: Proposed Regulatory Agreement
320 Stevens Street, Hyannis

RATIONALE: This is a proposed Regulatory Agreement between the Town of Barnstable and Mr. Daniel Adams, the duly authorized agent of Ginsberg Asset Management, LLC. Regulatory agreements are authorized by Chapter 168 of the Barnstable Code. The ordinance allows the Town to enter into agreements with private property owners to allow new development in a manner that varies from local ordinances when it is deemed beneficial to the community.

The applicant is proposing a regulatory agreement in connection with a 29 unit residential condominium development at 320 Stevens Street in Hyannis. The applicant is proposing a regulatory agreement to establish an alternative means to comply with the requirements of the Barnstable Inclusionary Affordable Housing Ordinance. Under the Inclusionary Ordinance, the affordable units must be provided on-site with the residential units at 320 Stevens Street.

The applicant requests to provide the required affordable units off-site. It should be noted that the applicant is not seeking to waive the number of required affordable units, nor is he seeking to vary the affordability level of the units. The Agreement would authorize the provision of three affordable housing units off-site, subject to conditions contained within the Agreement. The Agreement is beneficial to the community because: the 320 Stevens Street project redevelops an existing blighted property, the developer will contribute public capital facilities including construction of a 5.5 foot concrete sidewalk with granite curbing along Stevens Street from Main Street to North Street (or will contribute \$50,000 toward the construction of said sidewalk), and will construct a twelve inch (12") water line within Stevens Street as referenced in the site plans, and will provide fair, affordable housing within the Town of Barnstable.

Regulatory Agreement Process:

The proposed Agreement was negotiated by the Barnstable Planning Board over the course of two public hearings (July 10th and July 24th). Prior to the Planning Board hearing, the applicant met with the Barnstable Housing Committee regarding this request. The Housing Committee supported the provision of three affordable units off-site.

The proposed Agreement was approved by the Planning Board for recommendation to the Town Council by a majority vote of the Board on August 14, 2006.

Because the requested relief in this case does not require zoning relief, a simple majority vote of the Town Council is needed to finally approve the proposed Regulatory Agreement.

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

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

BARNSTABLE TOWN COUNCIL
2007-025
INTRO.: 9/7/06

REGULATORY AGREEMENT
320 STEVENS STREET, HYANNIS

This regulatory agreement (“Agreement”) is entered by and between the developer, Daniel Adams (“Developer”) and the Town of Barnstable (“Town”), a municipal corporation, on this ___ day of ___, 2006 pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Chapters 9 and 168 of the Barnstable Code;

WITNESS:

WHEREAS, the Town and Developer are authorized to enter into this Agreement pursuant to Chapters 9, 168, and 240 of the Barnstable Code;

WHEREAS, the Barnstable Inclusionary Housing Ordinance, Chapter 9 of the Barnstable Code, provides for the use of Regulatory Agreements (referenced as “Development Agreements”) in Subsections 9-2, Definitions, and 9-6, Development agreement;

WHEREAS the Developer is the duly authorized agent of the current owner of the property (“Property”) at 320 Stevens Street, Hyannis, consisting of approximately 2.73 acres, shown on Barnstable Assessor’s Map 308/ 004, Lot 1, and owned by Ginsberg Asset Management, LLC, which has a principal place of business at 555 Constitution Drive, Taunton, Massachusetts 02780;

WHEREAS, it is anticipated that ownership of the Property will be transferred from Ginsberg Asset Management LLC to Flagship Estates Hyannis LLC during the term of this Regulatory Agreement and the Developer is the duly authorized agent of Flagship Estates Hyannis LLC, which has a principal place of business at 2 Adams Place, Suite 100, Quincy, Massachusetts 02169;

WHEREAS, the Property was previously referenced as 350 Stevens Street, Hyannis and has a current street address of 320 Stevens Street, Hyannis;

WHEREAS, the Developer desires to develop the Property by constructing twenty-nine (29) residential condominium units (the “Development”);

WHEREAS, the Barnstable Inclusionary Housing Ordinance, Chapter 9 of the Barnstable Code, requires that for a twenty-nine unit residential development at least three (3) affordable housing units shall be provided on-site;

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

WHEREAS this Agreement shall establish the means by which the Developer will meet the requirements of the Barnstable Inclusionary Housing Ordinance, Chapter 9 of the Barnstable Code, by providing not less than three (3) affordable housing units off-site, as further conditioned below;

BARNSTABLE TOWN COUNCIL
2007-025
INTRO.: 9/7/06

REGULATORY AGREEMENT
320 STEVENS STREET, HYANNIS

WHEREAS, the Developer under this Agreement will contribute public capital facilities to serve the proposed development and the municipality or both, will improve a blighted site, will construct a 5.5 foot wide concrete sidewalk with granite curbing along Stevens Street from Main Street to North Street or will contribute \$50,000 toward the construction of said sidewalk, will construct a 12-inch (12") water line within Stevens Street as referenced in the Site Plans, and will provide fair affordable housing;

WHEREAS, the Town and Developer desire to set forth in this Agreement their respective understandings and agreements with regard to the provision of three (3) off-site affordable housing units related to the Development;

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

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

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

WHEREAS The Development is not subject to mandatory review by the Cape Cod Commission as a Development of Regional Impact because it does not meet or exceed a mandatory review threshold. In addition, the Development is located in the GIZ as authorized by Barnstable County Ordinance 2006-06 establishing a cumulative development threshold within the GIZ;

WHEREAS the Developer has undergone Site Plan Review and received approval thereunder on June 30, 2006;

WHEREAS, for the purposes of this Agreement, the term "Developer" shall mean Ginsberg Asset Management LLC or Flagship Estates Hyannis LLC;

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

WHEREAS the Developer has undergone a public hearing on the Agreement application before the Town Council and received a majority vote approving the application on_____.

**B. NEW BUSINESS (TO REFER TO A PUBLIC HEARING SEPTEMBER 21ST)
(ROLL CALL 2/3)**

BARNSTABLE TOWN COUNCIL

**2007-026 ORDER AUTHORIZING THE TOWN MANAGER TO EXECUTE A
REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE
AND HIBEL REALTY LLC
INTRO.: 09/07/06**

ORDERED: That the Town Manager is authorized pursuant to Section 168-5, General Ordinances of the Code of the Town of Barnstable, to enter into and execute a Regulatory Agreement between the Town of Barnstable and Hibel Realty LLC, for the property shown on Barnstable Assessor's Map 327 Parcels 111&112, and located within the HVB zoning district and the Downtown Hyannis Growth Incentive Zone, including but not limited to the following: permitting the demolition of the existing building at the corner of Hyannis Main Street and Ocean Street; and, authorizing the construction of a four story mixed-use building consisting of twenty-two (22), two (2) bedroom residential units on the upper floors and 12,000 sq. ft. of non-residential floor space, served with an elevator and a thirty-four (34) space underground parking garage, as shown on the plans referenced in said Agreement; and, hereby granting waivers from the provisions of the Barnstable Ordinances as follows:

Building height: Relief is granted from Section 240.24.1-3.C, Maximum building height, and permission is granted to construct the building at a maximum height of four stories with the maximum ridge height not to exceed fifty-five feet (55') as shown on the plans (allowable building height is a maximum of forty-six (46) feet and three stories); and Section 240.24.1-3.C.2.a.3, regarding building setback off of the south side of Main Street (allowable building height is a maximum of thirty-five feet (35') within twenty-five feet (25') of the layout of Hyannis Main Street;

Density: Relief is granted from Section 240.24.1-3.C. Floor Area Limitations to allow a Floor Area Ratio of 3.67 including the underground parking garage (allowable FAR is 3.0);

Parking: Relief is granted from Sections 240.24.1-3.D, Site development standards, and permission is granted for the construction of the number and length of parking spaces as shown on the plans (required parking spaces for retail and office uses are proposed for shared parking as allowed by zoning, and parking spaces are less than twenty-feet (20') in length).

Zero Lot Line Setback: Relief is granted from Section 240.24.1-3.C.1.a to allow the building to be constructed at a 2.62 foot road setback as shown on the plans (a zero lot line setback is required).

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

The Town Manager may make minor amendments to the Regulatory Agreement and execute said regulatory agreement as amended, provided that such amendments do not alter the use, intensity or mitigation stipulations of the regulatory agreement. However, in no instance may the Town Manager make substantial amendments to the regulatory agreement without first receiving written concurrence from the Planning Board and the Town Council and qualified applicant that said substantial amendments are agreed to in accordance with Section 168 of the Code.

BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2007-026
INTRO.: 9/7/06

TO: Town Council
FROM: Growth Management Department
DATE: August 30, 2006
SUBJECT: Proposed Regulatory Agreement
One Ocean Street, Hyannis

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

The applicant is proposing a regulatory agreement to construct a mixed use, retail/office and residential development at 1 Ocean Street in Hyannis. The site is located within the HVB zoning district at the corner of Ocean Street and Main Street and is within the Downtown Hyannis Growth Incentive Zone. The applicant is seeking regulatory agreement approval because the project will require a waiver from building height and story limitations, density limitations (floor area ratio), length of parking spaces, and number of parking spaces required for retail/office uses, all as set forth in the zoning ordinance. The project is recommended as beneficial to the community because it will contribute to the Hyannis revitalization effort by providing new retail, office and condominium space, it will result in the reconstruction and ongoing maintenance of the Ocean Street municipal parking lot at no cost to the public, it will contribute a parking meter (or, alternatively, provide a contribution to a parking fund), it will contribute affordable housing, and it will bury existing overhead utility lines on Ocean Street and in the municipal parking lot.

Regulatory Agreement Process:

The proposed Agreement was negotiated by the Barnstable Planning Board over the course of two public hearings (July 24th and August 14th) and two negotiating sessions (July 25th and August 1st). Attendance at the two negotiating sessions included a representative from the Planning Board (Mr. David Munsell), a representative from Town Council (Ms. Ann Canedy as the Town Council's planning board liaison), a representative from the Barnstable Housing Committee (Ms. Laura Shufelt, Chair), a representative from the Hyannis Main Street Waterfront Historic District Commission (Mr. George Jessop, Chair), town engineering, planning and building staff, and representatives of the developer. The proposed Agreement was approved by the Planning Board for recommendation to the Town Council by a majority vote of the Board on August 14, 2006.

Because the requested relief in this case requires zoning relief, a two-thirds (2/3) majority vote of the Town Council is needed to finally approve the proposed Regulatory Agreement.

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

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

BARNSTABLE TOWN COUNCIL
2007-026
INTRO.: 9/7/06

REGULATORY AGREEMENT
ONE OCEAN STREET, HYANNIS

This regulatory agreement (“Agreement”) is entered by and between the developer, Hibel Realty LLC, (“Developer”) and the Town of Barnstable (“Town”), a municipal corporation, on this ___ day of ___, 2006 pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Section 168 of the Barnstable Code;

WITNESS:

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

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

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

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

WHEREAS the Developer is the legal owner of the property (“Property”) at 337 and 345 Main Street, Hyannis, consisting of approximately 18, 550 sq ft, shown on Barnstable Assessor’s Map 327/ as Parcels 111&112 and Land Court Plans 15379A & 15853C, by virtue of Land Court Certificate of Title # 169924, and desires to develop the Property pursuant to a regulatory agreement;

WHEREAS, the Town is the legal owner of the property at 25 Ocean Street , Hyannis, a municipal parking lot (“Municipal Lot”) by virtue of Land Court Certificate of Title No. 17405, containing approximately 27,007 sq ft, shown as Parcel 261 on Barnstable Assessors Map 327;

WHEREAS, the Developer has committed to construct improvements to the Municipal Lot at an expense of approximately \$215,800 and has committed to on-going maintenance of the Municipal Lot at an expense of approximately \$32,000 per year;

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

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

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

BARNSTABLE TOWN COUNCIL

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

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

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

WHEREAS, prior to applying for approval of this Agreement, the Developer has undergone review by the Hyannis Main Street Waterfront Historic District and received approval thereunder on May 18, 2005;

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

WHEREAS the Developer will require zoning relief from maximum density (Floor Area Ratio), minimum parking, building height requirements and thirty-foot height setback requirements for the south side of Main Street, and road setbacks, all as further defined in condition number 32 below;

WHEREAS the Developer has undergone at least two public hearings on the Agreement application and received a majority vote from the Planning Board approving the application on August 14, 2006;

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

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

1. If the Development rights granted hereunder are exercised, the Developer agrees to construct the Project in accordance with the plans and specifications submitted to and approved by the Town, listed as follows and made part of this Agreement by reference:
 - a) Plans entitled "Proposed Retail and Residential Development for Hibbel Realty, LLC, One Ocean Street, Hyannis, MA, Supplemental Drawings issued for Development Agreement/Planning Board Approval", as follows:
 - Sheets T1, and C1 through C9, prepared by BSC Group, dated February 17, 2005 and revised through August 1, 2006;

BARNSTABLE TOWN COUNCIL

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Sheet L1, prepared by Helios Land Design, dated February 27, 2006 and revised through August 3, 2006; and

Sheets A1.1 and A1.4, prepared by Brown Lindquist Fenuccio & Raber, dated July 26, 2006 and revised through August 3, 2006.

- b) Plans entitled “Proposed Retail and Residential Development for Hibel Realty, LLC, One Ocean Street, Hyannis, MA, Design Drawings issued for Development Agreement/Planning Board Approval”, as follows:
 - Sheets A1.0, A1.2, A1.3, A1.5, A2.0 and A2.1, prepared by Brown Lindquist Fenuccio & Raber, dated May 15, 2006.
 - c) Revised plans to be submitted in response to comments provided by memorandum from Steven Seymour, P.E. to the Barnstable Planning Board, dated August 4, 2006.
 - d) Such other plans and plan revisions as may be required by the terms and conditions of this Agreement;
2. The Developer proposes to demolish the existing building at the property, and construct a four story mixed-use building consisting of twenty-two (22), two (2) bedroom residential units on the upper floors and 12,000 sq. ft. of non-residential floor space, served with an elevator and a thirty-four (34) space underground parking garage, in the HVB zoning district and Growth Incentive Zone (GIZ) of Barnstable (the “Development”);
 3. Ground-floor uses shall be the permitted principal or accessory uses within the HVB Zoning District, Section 240-24.1-3.A of the Barnstable Code, with the exception that no live entertainment, no drive through windows, and no restaurant requiring an exhaust system shall be permitted on the ground floor;
 4. The development rights granted hereunder shall be exercised and development permits may be obtained hereunder for a period of one year from the effective date of the Agreement, provided, however, that prior to the expiration of said one year period the Developer may request one six month extension to obtain development permits. Upon receipt of necessary development permits construction shall proceed continuously and expeditiously, but in no case shall construction exceed 2 years from receipt of necessary development permits. The Developer estimates that construction will commence on or about October 2, 2006 and will be completed on or about June 25, 2007;
 5. The Developer shall establish a condominium association to carry out the terms and conditions of this Agreement which association shall include all residential and non-residential condominium units. For the purposes of this Agreement, the term “Developer” shall mean the Developer and/or Developer’s successor condominium association(s). The form and content of condominium association documents, including the condominium master deed and association bylaws, shall be approved by the Town of Barnstable Legal Department prior to the sale of any condominium units;
 6. Developer has agreed to contribute public capital facilities to serve the proposed development and the Town by reconstructing the abutting Municipal Lot which will contain parking for 55 spaces, and providing appropriate paving, curbing, striping, lighting, landscaping, and irrigation and drainage as required by the Town. Said reconstruction, striping, and installation of lighting,

BARNSTABLE TOWN COUNCIL

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landscaping, and irrigation and drainage shall occur between Labor Day and Memorial Day and shall be completed prior to the issuance of any Certificate of Occupancy for the development, provided, however, that the Planning Board may accept a bond or other security satisfactory to the Planning Board of not less than 150% of actual costs of completing required landscaping, striping, and/or lighting, in lieu of work completed, and the acceptance of such bond or other security shall authorize the issuance of one or more Certificates of Occupancy, as may be solely determined by the Planning Board. Unless otherwise authorized by the Planning Board, construction work undertaken pursuant to this Agreement shall not interfere with public parking for 53 vehicles in the Municipal Lot between Memorial Day and Labor Day of each year; [Drafting Note – removed references to metering.]

7. Lighting for the development and the Municipal Lot shall be contained on-site, shall be down cast and shall not contribute to light pollution of the area;
8. The lighting plan and landscaping plan (including an irrigation plan for landscaping in the Municipal Lot) for the Property and Municipal Lot must be approved by the Planning Board, or its designee, and such approval shall include input from the Hyannis Main Street Waterfront Historic District Commission or its designee;
9. Developer shall bury underground the overhead utilities along Ocean Street extending from Main Street to the existing utility pole at the south end of the Municipal Lot, and shall bury underground the overhead utilities within the Municipal Lot as shown on the plans, and the cost of burying said utilities shall be borne by the Developer;
10. Nothing in this agreement shall be deemed to limit the legal use of the Municipal Lot by the public as the same may be determined by the Town from time to time;
11. Developer shall maintain landscaping, irrigation and drainage on the Municipal Lot in perpetuity;
12. Developer shall be responsible for snow plowing and snow removal on the Development site and the Municipal Lot in perpetuity;
13. All landscaping within the development, including landscaping within the Municipal Lot, shall be low water use and shall minimize the use of fertilizers and pesticides;
14. Bonds: Prior to the issuance of a foundation building permit and prior to commencement of reconstruction of the Municipal Lot, Developer will provide a performance bond in an amount to be approved by the Planning Board or its designee, said bond to be expended on the replacement of landscape materials if such replacement becomes necessary. Any unexpended portion of said performance bond may be released by the Planning Board to the Developer or his successor(s) after five years from the date of the initial landscape plantings, such date to be determined by the Building Commissioner, upon the request of the Developer;
15. Bonds: Bonds shall be provided as required by applicable regulation (i.e. for road openings). In addition, prior to the issuance of a foundation building permit and prior to commencement of

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reconstruction of the Municipal Lot, a bond or other security acceptable to the Planning Board shall be provided to insure the Town against damage to town property and to insure quality of construction work on Town property and long term maintenance of improvements on Town property. The amount of said bond(s) or security shall be determined by the Planning Board or its designee;

16. Developer and its successors will participate in the Town of Barnstable's Transportation Management Association (TMA) upon its formation. Participation shall include: (a) distribution of materials provided by the Town to all tenants, lessees, and purchasers of condominium units within the development; and (b) the identification of a representative for the development who will serve as the contact between the inhabitants and tenants of the development and the Town's TMA;
17. Access to the rear of 347 Main Street and 349 Main Street for delivery of supplies to those businesses shall be maintained as shown on the plans;
18. Developer shall provide two affordable units within the development. The affordable units shall be provided as follows:
 - i. The developer agrees to sell the two affordable units to a governmental agency or non-profit who shall offer said units for sale or lease to a qualified affordable purchaser or tenant whose income is at 65% of the area median income based upon household size. The initial selling prices for each unit shall be based upon a formula under which monthly housing costs, including mortgage payments, taxes, insurance, and condominium association fees, shall not exceed 30% of 65% of the area median income based upon household size. The proportionate share of the condominium fees for all of the units in the development shall be established based upon the initial sales price.
 - ii. One (1) two-bedroom unit shall be provided on the second floor and one (1) two-bedroom unit shall be provided on the third floor. The affordable units shall comply with all terms of the Barnstable Inclusionary Affordable Housing Ordinance, Section 9 of the Barnstable Code. Affordable units shall be in form, substance and location consistent with market rate units.
 - iii. Before the first ten (10) occupancy permits for the market rate units can issue, the Developer must demonstrate that at least one of the two approved affordable housing units has been sold to a qualified purchaser as defined in Section 9 of the Barnstable Code and an affordable housing restriction and monitoring services agreement, in a form acceptable to the Town Attorney, has been recorded at the Barnstable County Registry of Deeds; and that the unit is eligible for inclusion in the Department of Housing and Community Development Subsidized Housing Inventory.

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- iv. Before occupancy permits for the eleventh (11th) to the twentieth (20th) market rate units can issue, the Developer must demonstrate that the second of the two approved affordable housing units has been sold to a qualified purchaser as defined in Section 9 of the Barnstable Code and an affordable housing restriction and monitoring services agreement, in a form acceptable to the Town Attorney, has been recorded at the Barnstable County Registry of Deeds; and that the unit is eligible for inclusion in the Department of Housing and Community Development Subsidized Housing Inventory;
- 19. All plumbing fixtures shall be low water use fixtures and other water conservation measures are encouraged in the design and development of the project;
- 20. Consistent with approved plans, Developer shall construct a Passive Stormwater Maintenance and Infiltration System to service the Development and the abutting municipal lot at 25 Ocean Street;
- 21. Developer will assume all maintenance responsibilities for the Passive Stormwater System servicing the Property and Municipal Lot, and the landscaping and irrigation at the Municipal Lot;
- 22. Town will grant Developer perpetual access parking and drainage easements over the Municipal Lot to serve the Development, which easement shall be approved in form and content by the Town Attorney. Developer shall obtain Town Attorney approval and shall record said easement at the Barnstable County Registry of Deeds prior to the issuance of a building foundation permit;
- 23. Developer will provide a bicycle rack at the Municipal Lot as shown on the plan;
- 24. In recognition of the construction of an underground parking lot to service the Property, the location of the Development within two-hundred feet (200') of the North Street municipal parking lot, the provision of approximately \$215,800 in construction improvements to the Municipal Lot and approximately \$32,000 per year in on-going maintenance of the Municipal Lot, and the contribution of funds for the Town to acquire a parking meter as required by Condition #25 below, no further parking mitigation shall be required beyond the mitigation established by this Agreement. It is agreed that the Developer shall provide all improvements and maintenance as required by Conditions #6, 7, 8, 9, 11, 12, 13, 20, 21 and 23, regardless of actual cost.;
- 25. Developer will contribute \$10,000 for parking mitigation. The Town Manager shall determine whether such funds shall be: (a) deposited in a municipal fund dedicated to planning, design and/or improvements related to municipal parking needs, or (b) the purchase of a remote parking meter for the Municipal Lot (to be installed by the Town), in which case the Town shall collect all revenue obtained from the parking meter. Developer shall provide the \$10,000 parking mitigation contribution prior to the issuance of an occupancy permit for any of the condominium units;

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26. During the pendency of construction of the Project and the reconstruction of the municipal lot, the Town will grant Developer a non-exclusive license agreement over the 25 Ocean Street Property. The Town Attorney shall approve the form and content of the non-exclusive license agreement prior to issuance of a building foundation permit;
27. Construction and demolition debris from the Development shall be removed and reused or recycled to the maximum extent possible;
28. Developer shall provide calculations demonstrating adequate water flow for fire suppression, and standpipes, as required by the Hyannis Fire Department;
29. Ground-floor uses shall not use, store, generate, treat or dispose of hazardous waste or hazardous materials in quantities greater than 25 gallons (or the dry weight equivalent) or less, and shall not generate hazardous waste in quantities greater than the Very Small Quantity Generator level as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR Section 30.353;
30. Developer is responsible for obtaining all applicable permits and licenses, including but not limited to the following: foundation permit, building permit, street excavation permit (necessary for work in all public spaces, including work in the Municipal Lot), sewer permits and water permits. Only approved contractors are allowed to work on Town owned property. Contractors are required to have the insurance stipulated in the Street Excavation Rules and Regulations (SERR) and all work on town property must comply with all provisions of SERR;
31. Developer will make best efforts to complete construction work in accordance with a construction schedule and sequencing plan submitted to the Town prior to the execution of the Regulatory Agreement. To the extent construction impacts public property or public rights of passage, changes in the schedule, if needed as work progresses, are subject to the approval of the Town. The Developer shall hold weekly construction progress meetings to which the Town will be invited if construction involves town property. The developer shall notify the Town of Barnstable Growth Management Department and the Department of Public Works at least 48 hours in advance of working on Town property. (The construction sequencing plan shall identify those areas of Ocean Street road layout, the sidewalk and the Municipal Lot that will be used by the Developer at various points in the project construction and where barricades and fencing will be installed during construction.) The Developer will be responsible for all construction signage, directional signs, and police officers necessary for the performance of the work;
32. Exterior construction impacts shall be minimized, and construction shall be limited to the hours of 6:30 a.m. to 6:00 p.m. weekdays, and 6:30 a.m. to 2:00 p.m. Saturdays. No exterior construction shall occur on Sundays. The Building Commissioner shall establish protocols to minimize the location of staging, noise, dust, and vibration;
33. To the extent that the referenced plans do not depict all of the findings and conditions as set forth in this Agreement, revised plans and/or notations shall be provided. In addition to permits, plans and approvals listed above, any and all permits and licenses required shall be obtained;

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34. Upon completion of all work, a registered engineer of land surveyor shall submit a letter of certification, made upon knowledge and belief in accordance with professional standards that all work has been done in substantial compliance with the approved site plan. This document shall be submitted prior to the issuance of the final certificate of occupancy;
35. Town hereby grants a waiver from the following zoning restrictions:
- Building height: Relief is granted from Section 240.24.1-3.C, Maximum building height, and 240.24.1-3.C.2.a.3, regarding building setback off of the south side of Main Street, and permission is granted to construct the building at a maximum height of four stories with the maximum ridge height not to exceed fifty-five feet (55') as shown on the plans;
 - Density: Relief is granted from Section 240.24.1-3.C. Floor Area Limitations to allow an Floor Area Ratio of 3.67 including the underground parking garage;
 - Parking: Relief is granted from Section 240.24.1-3.D, Site development standards, and Section 240.24.1-10.A.4.c.2, and permission is granted for the construction of the number and length of parking spaces as shown on the plans.
 - Zero Lot Line Setback: Relief is granted from Section 240.24.1-3.C.1.a to allow the building to be constructed at a 2.62 foot road setback as shown on the plans.

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

Dated this _____ day of _____, 2006.

Town of Barnstable
By:

Developer, Hibel Realty LLC
By: