



Town of Barnstable Town Council

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Councilors:

Frederick Chirigotis
President

Janice L. Barton
Vice President

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Ann B. Canedy
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Henry C. Farnham
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James F. Munafo, Jr.
John T. Norman
Tom Rugo
James M. Tinsley

Acting Administrator:
Barbara A. Ford

Administrative
Assistant:

TOWN COUNCIL MEETING AGENDA October 6, 2011 7:00 PM

- 1. ROLL CALL**
- 2. PLEDGE OF ALLEGIANCE**
- 3. MOMENT OF SILENCE**
 - **Update from Police Chief Paul MacDonald**
- 4. PUBLIC COMMENT (May be limited to 2 minutes)**
- 5. COUNCIL RESPONSE TO PUBLIC COMMENT**
- 6. ACT ON MINUTES (Includes Executive Session)**
- 7. COMMUNICATIONS FROM ELECTED OFFICIALS, BOARDS, COMMISSIONS, STAFF, CORRESPONDENCE, ANNOUNCEMENTS AND COMMITTEE REPORTS**
- 8. ORDERS OF THE DAY**
 - A. OLD BUSINESS**
 - B. NEW BUSINESS**
- 9. TOWN MANAGER COMMUNICATIONS**
- 10. ADJOURNMENT**

NEXT REGULAR MEETING: October 20, 2011

ITEM NO.	INDEX TITLE	PAGE
 A. OLD BUSINESS		
2012-005	Adoption of the Town of Barnstable Multi-Hazard Plan (May be acted upon)	3 - 4
2012-020	Approval of a grant of a conservation restriction to Barnstable Land Trust located on Osterville-West Barnstable Road, Marstons Mills, Map 125, Parcel 002 (May be acted upon)	5 - 7
 B. NEW BUSINESS		
2012-026	Approval of and authorizing the Town Manager to execute a substantial amendment to the Regulatory Agreement between the town & Wayne Kurker, Trustee, HSR Realty Trust at 90 High School Rd. Ext. and 67 Winter Street, Hyannis (Public hearing) (Roll-call, 2/3)	8 - 10
2012-027	Acceptance of a \$843 gift from Life Rank Scout Jeffrey Clark to purchase a message board at Otis Atwood Conservation Area (May be acted upon)	11 - 12

Approve Minutes —September 22, 2011

Please Note: The list of matters, are those reasonably anticipated by the council president, which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. It is possible that if it so votes, the Council may go into executive session. The Council may also act on items in an order other than they appear on this agenda.

Persons interested are advised that in the event any matter taken up at the meeting remains unfinished at the close of the meeting, may be put off to a continued session of this meeting, and with proper notice.

Anyone requiring hearing assistance devices please inform the Town Clerk at the meeting.

A.

OLD BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

ITEM# 2012-005

INTRO: 08/04/11, 09/08/11, 09/22/11, 10/06/11

**2012-005 ADOPTION OF THE TOWN OF BARNSTABLE MULTI-HAZARD
MITGATION PLAN**

RESOLVED: that the Town Council hereby adopts the Town of Barnstable Multi-Hazard Mitigation Plan

SPONSOR: Town Manager John C. Klimm

DATE

ACTION TAKEN

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

BARNSTABLE TOWN COUNCIL

ITEM# 2012-005

INTRO: 08/04/11, 09/08/11, 09/22/11, 10/06/11

SUMMARY

TO: Town Council
FROM: Jo Anne Miller Buntich, Growth Management Director
DATE: July 21, 2011
SUBJECT: Adoption of the Multi Hazard Mitigation Plan

BACKGROUND: Multi-hazard mitigation is defined as any sustained action to reduce and/or eliminate short or long term risk to life and property from natural disasters. Effective hazard mitigation planning provides benefits to the Town and its residents, including creating a safer community by protecting life and property; preventing the loss of property, infrastructure and natural and cultural resources; and increasing public awareness of risk and vulnerability to natural disasters.

The Federal Emergency Management Agency (FEMA) requires local governments to develop a hazard mitigation plan as a condition for receiving certain types of non-emergency disaster assistance. FEMA administers a number of grant programs to assist communities with hazard mitigation efforts, both prior to disasters and following a Presidential disaster declaration.

To develop the Barnstable Multi-Hazard Mitigation (MHM) Plan, the Growth Management Department worked in cooperation with many Town departments, emergency service agencies, and the Cape Cod Commission to identify and profile the town's risk and vulnerability to potential natural hazards. Specifically, the MHM plan assesses the potential impacts of hurricanes, winter storms, shoreline change/coastal erosion, earthquakes, drought/wildfire, and dam failure and identifies properties, resources, and critical facilities, which may be impacted by these hazard events. The plan outlines mitigation strategies and actions aimed at reducing the loss of or damage to potentially vulnerable property, infrastructure, and resources within the Town. A corresponding implementation plan is also included.

FEMA conditionally approved, for a six month period, the Multi-Hazard Mitigation Plan on February 18, 2011. A Town Council vote to adopt the Multi-Hazard Mitigation Plan will secure the Town's eligibility to apply for and receive FEMA hazard mitigation grant funds for the next five years.

FISCAL IMPACT: The fiscal impact of the plan adoption is neutral. Plan implementation would result in an overall positive fiscal impact.

A. OLD BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

ITEM# 2012-020
INTRO: 09/08/11, 10/06/11

2012-020 APPROVAL OF THE GRANT OF THE CONSERVATION RESTRICTION ON OSTERVILLE-W. BARNSTABLE RD, MARSTONS MILLS, MAP 125, PARCEL 002

RESOLVED, that the Town Council approve the grant of a Conservation Restriction from Kenneth Sutherland (grantor) to Barnstable Land Trust, Inc. (grantee), over approximately 27.32 acres of land on Osterville-West Barnstable Road, Marstons Mills, Map 125 Parcel 002, for the purposes of preserving open space, water quality, and scenic views and that the Town Council also approve a grant of a public parking easement to the Town of Barnstable for up to two spaces over a portion of the property not subject to the Conservation Restriction.

SPONSOR: Councilor Janice L. Barton on approval from the Legal Department

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2012-020
INTRO: 09/08/11, 10/06/11

SUMMARY

TO: Town Council
FROM: Executive Director Jaci Barton, Barnstable Land Trust
THROUGH: Councilor Janice L. Barton
DATE: August 30, 2011
SUBJECT: Grant of a conservation restriction to Barnstable Land Trust

Grantor: Ken Sutherland
Grantee: BARNSTABLE LAND TRUST, INC.

Property Location: 1127 Osterville-West Barnstable Road
Village: Marstons Mills
Map/ Parcel: 125/002
Total Acreage: 30.070 acres (per 2011 survey by Soule Land Surveying)
 Restricted area: Approximately 27.32 acres (virtually all upland)
 Unrestricted: Approximately 2.736 acres - 2.61 acres around existing house;
 0.11 acres at the northeastern area abutting Osterville West Barnstable Road;
 .008 acres for the parking easement (18' x 22') and .008 for the alternative
 parking easement

BACKGROUND AND ANALYSIS: The Sutherland property has been on the Town's priority list since the 1980's. The goals then, as they are now, were to preserve the rural character of Marstons Mills and the water quality of Shubael Pond, keeping woodlands along a designated scenic roadway (Osterville-West Barnstable Road) and a Town way to water (Shubael Pond Road) in their open, scenic and natural state.

The Sutherland family house was built on the shore of Shubael Pond in the 1930's. Ken Sutherland inherited it from his father. Today it remains surrounded by 30 acres of fields and pine/oak woodlands interspersed with hollies, rhododendrons and tall spruce trees.

In 2008, Ken Sutherland approached the Barnstable Land Trust about his interest in conserving his family land. His goals were to reserve an area around the existing house and to preserve the remainder of the land so that his son and his family could inherit it and use it as the family has for decades. Under the proposed plan, 2.61 acres around the Sutherland's existing house, a small area at the northeast corner of the property and a parking easement to be granted to the Town will remain unrestricted. The remaining 91% of the land would be permanently restricted.

Shubael Pond is a 55-acre freshwater Great Pond, which, is routinely stocked with trout by the Massachusetts Division of Fisheries and Wildlife. There are two ways to access the pond: Willimantic Drive and Shubael Pond Road. To launch kayaks or swim, the public generally uses Willimantic Drive where both the Town and the State own land and the access gently slopes to the water.

Shubael Pond Road is a town way to water that ends at a concrete bulkhead where stormwater flows through a drainage pipe into the pond. Along the pondshore, the road widens to 50'. Nearby on the Sutherland land there is an area between tall trees that is a favorite place to park. To meet the Town's goal of improving public access, the conservation restriction allows for the grant of a permanent easement to the Town of Barnstable for a public parking area for two vehicles among the tall trees.

This proposed conservation restriction conforms to the Open Space Policy of the Town, adopted in 1981, which "encouraged...grants of conservation restrictions" which yielded "benefits to the Town." Specifically, the Shubael Pond Conservation Restriction offers the following public benefits and will:

- preserve over 300' along a scenic roadway (Osterville-West Barnstable Road) and 1300' along a town way to water (Shubael Pond Road);
- enhance water quality of Shubael Pond by preserving 570' of scenic shoreline and 27 acres of attendant upland;
- encompass a scenic view visible from the waters of Shubael Pond; from the Town landing on Willimantic Drive and from Osterville-W. Barnstable Road, a Town of Barnstable designated Scenic Road;
- protect drinking water quality (falls entirely within a DEP Zone II Area of Contribution and the town's Groundwater Protection Overlay District, and partially within the Wellhead Protection Overlay District of a COMM Wellfield);
- preserve important natural habitats of fish, wildlife and plants and protect rare species habitat and permanently protect a significant parcel within the Town of Barnstable's Greenbelt and Fingerlinks Corridor; and,
- limit construction on land of natural resource value and contribute to the overall scenic and historic character of the area by adding to and maintaining the land predominantly in its natural condition.

In addition, the land satisfies the following community objectives as defined in the Town's 2010 Open Space Plan:

- Protect and maintain a maximum amount of open space to enhance environmental protection, recreational opportunities and community character (Goal 1), and promote non-regulatory measures (such as conservation restrictions) to preserve open space;
- Plan, coordinate and execute open space protection measures that complement community efforts to protect water supply, protect fresh and marine surface waters, preserve historic, scenic and cultural resources (Goal 2), and that protects wildlife habitat;
- Provide adequate public access to and safe enjoyment of the Town's open space and recreational resources and programs, particularly its shoreline areas and fresh and marine waterways. Access should be provided in balance with resource sustainability (Goal 4).

FISCAL IMPACT: Based on FY 2011 valuation

- Current Total evaluation is \$1,016,800
- The reduction in total value is approximately \$346,000, leaving a value of \$670,800 with annual taxes of \$5700.90
- The total property tax *reduction* due to the conservation restriction is approximately \$3336 of which \$2,792 is Town Tax; \$84 is CPA Tax and \$460 is COMM Fire District Tax)

B. NEW BUSINESS (Public hearing) (Roll-call, 2/3)

BARNSTABLE TOWN COUNCIL

**ITEM# 2012-026
INTRO: 10/06/11**

2012-026 AUTHORIZE THE TOWN MANAGER TO EXECUTE A SUBSTANTIAL REGULATORY AGREEMENT –WAYNE KURKER, HSR REALTY TRUST

AMENDMENT # 1 TO REGULATORY AGREEMENT

HSR REALTY TRUST, WAYNE KURKER TRUSTEE FOR PROPERTY ADDRESSED 90 HIGH SCHOOL ROAD EXTENSION AND 67 WINTER STREET, HYANNIS

This modification to a regulatory agreement (“Agreement”) is entered by and between the developer, HSR Realty Trust (“Developer”) and the Town of Barnstable (“Town”), a municipal corporation, on this ___ day of _____, 2011 pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Section 168 of the Barnstable Code;

WITNESS:

WHEREAS the Developer has undergone at least a public hearing on the Agreement amendment application and received a majority vote from the Planning Board recommending the following substantial amendment on September 12, 2011;

WHEREAS the Developer has undergone a second public hearing on the Agreement amendment application before the Town Council and received a majority vote approving the Agreement amendment on _____, 2011;

WHEREAS, the 2010 Regulatory Agreement remains in full force and effect except as modified herein;

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: that the regulatory agreement dated April 1, 2011 and recorded at the Barnstable Registry of Deeds, Book # _____, Page ___ be amended as follows:

Existing Paragraph 24

All new signage shall be in compliance with the zoning regulations and the Design and Infrastructure Plan and will require permits from the Building Division.

Proposed Amended Paragraph 24

Signage shall not exceed 100 SF for the portion of the premises occupied by Ford of Hyannis, Inc., d/b/a Balise Ford, providing relief from § 240-67.B of the Zoning Ordinance, and shall otherwise comply with zoning regulations and the Design and Infrastructure Plan/

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

Dated this _____ day of _____, 2011

Town of Barnstable
By: John C. Klimm
Barnstable Town Manager

HSR Realty Trust
By: Wayne Kurker
Trustee

SPONSOR: Interim Town Manager Thomas Lynch

DATE	ACTION TAKEN
_____	_____
___	Read Item
___	Rationale
___	Council Discussion
___	Move/Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2012-026
INTRO: 10/06/11

SUMMARY

TO: Town Council
FROM: Jo Anne Miller Buntich, Growth Management Director
DATE: September 19, 2011
SUBJECT: Substantial Amendment to Regulatory Agreement of HSR Realty Trust, Wayne Kurker Trustee for property at 90 High School Road Extension and 67 Winter Street, Hyannis

RATIONALE: This Regulatory Agreement Amendment proposes to amend Paragraph 24 of the existing April 1, 2011 Regulatory Agreement between the Town of Barnstable and Wayne Kurker as Trustee of the HSR Realty Trust. Such amendments are authorized in Section 168-5 of the Barnstable Code.

Paragraph 24 of the existing Agreement requires all new signage to comply with zoning regulations governing signs in the Office Multifamily Residential Zoning District limiting the total square footage of signs to 50 SF per business.

The amendment application requests a total of 100 SF of signage for the reuse of that part of the premises occupied by Ford of Hyannis, Inc., d/b/a Balise Ford. Approval of the amendment grants relief from Section 240-67.B of the zoning ordinance that limits the total area to 50 SF per business.

A total of 100 SF of signage is authorized in most business zoning areas except for the Hyannis Village Zoning Districts and the smaller village business districts. Previously zoning in this area did allow a maximum of 100 SF of signage per business.

This relief was not previously requested of the Town, nor noticed to the public and is therefore a substantial amendment to the Agreement.



Town of Barnstable
Growth Management Department
Planning Board

www.town.barnstable.ma.us/planningboard

Jo Anne Miller Buntich, Director
Art Traczyk, Regulatory/Design Review Planner

COMMITTEE MEMBERS:

Matthew Teague, Chair
Paul Curley, Vice Chair
Patrick Princi, Clerk
Cheryl Bartlett
Raymond Lang
David Munsell
Felicia Penn

September 20, 2011
Frederick Chirigotis, President
Barnstable Town Council
367 Main Street
Hyannis, MA 02601

Re: Amendment to Regulatory Agreement with HSR Realty Trust, Wayne Kurker Trustee
for property addressed 90 High School Road Extension and 67 Winter Street.

Dear Council President Chirigotis,

On August 11, 2011, Attorney Michael Ford, on behalf of HSR Realty Trust, submitted an application to amend the April 1, 2011 Regulatory Agreement between Wayne Kurker, Trustee of the HSR Realty Trust and the Town of Barnstable. The application requested to amend paragraph 24 of the Agreement to allow a total of 100 SF of signage for the reuse of that part of the premises occupied by Ford of Hyannis, Inc. d/b/a Balise Ford. The request constituted a substantial amendment as it seeks additional relief from Chapter 240 Zoning not previously granted in the Agreement.

A duly noticed and posted public hearing was held on September 12, 2011. At that hearing, the Planning Board unanimously voted in the affirmative to recommend amending paragraph 24 of the Regulatory Agreement to read;

All new signage shall be in compliance with zoning regulations except in the case of a single tenant who occupies 46,000 SF or more of the Development. Such a single tenant shall be permitted to have a total of 100 SF of signage. In all instances new signage shall be reviewed for compliance with the Design and Infrastructure Plan and shall require any other permits as may be necessary.

The Planning Board recommends this amendment and forwards the application to the Town Council for their further action.

Respectfully Submitted,

Matthew K. Teague, Chair

C: Attorney Michael Ford

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B.

NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

ITEM# 2012-027

INTRO: 10/06/11

2012-027 ACCEPTANCE OF \$843 GIFT FROM LIFE RANK SCOUT JEFFREY CLARK

RESOLVED, That the Town Council hereby accepts a gift from Life Rank Scout Jeffrey Clark in the amount of \$843.00 to purchase a message board for the Otis Atwood Conservation Area and that the Town Manager is authorized to expend the gift for the purpose specified.

SPONSOR:

DATE

ACTION TAKEN

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

BARNSTABLE TOWN COUNCIL

ITEM# 2012-027
INTRO: 10/06/11

SUMMARY

TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Thomas F. Geiler, Regulatory Services Department Director
DATE: September 16, 2011
SUBJECT: Acceptance of a monetary fund raising gift from Life Rank Scout, Jeffrey Clark, in the amount of \$843.00, to purchase a message board for Otis Atwood Conservation Area, West Barnstable.

BACKGROUND: Life Rank Scout Jeffrey Clark is currently working on an Eagle Scout community project under the direct supervision of the Conservation Agent. The project entails the revitalization of the Otis Atwood Conservation area trail head parking area, West Barnstable. Mr. Clark has raised \$843.00 through fund raising events, including a carwash. Mr. Clark would like to donate the money towards the purchase a new message center, where trail information and safety notices will be posted. The message center frame is made from recycled plastic with a weatherproof acrylic glass locking window. In addition, Mr. Clark will be receiving a donation of loam from Cape Wide and flower bulbs from County Gardens. He also repaired the Conservation Sign.

ANALYSIS: The acceptance of this gift will not only assist the Conservation Division with the purchase of a message center, a necessary feature for trail head parking area, but assist Mr. Clark with his requirements under the Eagle Scout community project.

FISCAL IMPACT: The full price for the message center is \$1054.050. The difference once the gift is accepted, \$211.50, will be provided through the Conservation Division's Land Management line item.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends favorable action.

BOARD AND COMMISSION ACTION: Land management plans, approved by the Conservation Commission for Otis Atwood, include public access improvements.

STAFF ASSISTANCE: Darcy Karle, Conservation Division