



Town of Barnstable Town Council

367 Main Street, Village of Hyannis, MA 02601
508.862.4738 • 508.862.4770
E-mail: council@town.barnstable.ma.us
www.town.barnstable.ma.us

MEETING AGENDA TOWN HALL HEARING ROOM August 13, 2015 7:00 PM

Councillors:

Jessica Rapp Grassetti
President
Precinct 7

Ann B. Canedy
Vice President
Precinct 1

Eric R. Steinhilber
Precinct 2

Paul Hebert
Precinct 3

Frederick Chirigotis
Precinct 4

James H. Crocker
Precinct 5

William Crocker, Jr.
Precinct 6

Debra S. Dagwan
Precinct 8

James M. Tinsley
Precinct 9

Sara Cushing
Precinct 10

Philip N. Wallace
Precinct 11

John T. Norman
Precinct 12

Jennifer L. Cullum
Precinct 13

Administrator to the
Town Council:
Cynthia A. Lovell

1. ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. MOMENT OF SILENCE

4. PUBLIC COMMENT

5. COUNCIL RESPONSE TO PUBLIC COMMENT

6. TOWN MANAGER COMMUNICATIONS

7. ACT ON MINUTES (Including Executive Session)

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

9. ORDERS OF THE DAY

A. Old Business

B. New Business

10. ADJOURNMENT

NEXT REGULAR MEETING: September 3, 2015

A. OLD BUSINESS

- 2016-002** Appointments to a board/committee/commission: **Council on Aging:** Anna Valtsakis, 33 Statice Lane, Hyannis as an associate member to a term expiring 6/30/17; **Disability Commission:** Paula Breagy, 2787 Main Street, Barnstable as a regular member to a term expiring 6/30/16; Jessica Sylver, 121 Lombard Avenue, West Barnstable as a regular member to a term expiring 6/30/18; **Housing Committee:** Paula Breagy, 2787 Main Street, Barnstable as a regular member to a term expiring 6/30/16; Jessica Sylver, 121 Lombard Avenue, West Barnstable as a regular member to a term expiring 6/30/16; **Hyannis Main Street Waterfront Historic District Commission:** Timothy Ferreira, 150 Old Yarmouth Road, Hyannis as an alternate member to a term expiring 6/30/17
(May be acted upon)..... 5
- 2016-003** Reappointments to board/committee/commission: **Barnstable Economic Development Commission:** Hartley Johnson, as a regular member to a term expiring 6/30/18; **Historical Commission:** Marilyn Fifield, as a regular member to a term expiring 6/30/18; Paul Arnold as an alternate member to a term expiring 6/30/18; **Old King’s Highway:** George Jessop, as the architecture representative to a term expiring 6/30/16; **Public Works Commission:** Thomas Mullen, as a regular member to a term expiring 6/30/18; Wolfgang Fattler, as a regular member to a term expiring 6/30/18; **Renewable Energy Commission:** Andrew Jaworski, as a regular member to a term expiring 6/30/18; Katie Lamoureux, as a regular member to a term expiring 6/30/18; Jan Rapp, as a regular member to a term expiring 06/30/17; **Waterways Committee:** John Meade, as a regular member to a term expiring 6/30/18; Robert Hazelton, as a regular member to a term expiring 6/30/18; **Water Pollution Control Board:** Wolfgang Fattler, as a regular member to a term expiring 6/30/18; **Youth Commission:** Brendan Clark, as a regular member to a term expiring 6/30/16; Matthew Hersey, as a regular member to a term expiring 06/30/16; Emma Mannal, as a regular member to a term expiring 06/30/16; Lianna Mitchell, as a regular member to a term expiring 06/30/16 **(May be acted upon)** 6

B. NEW BUSINESS

- 2016-006** Amendment to Chapter 241 of the Code of the Town of Barnstable, “ Article III Multiple-Member Appointive Organization” by adding Section 241-45.3 Water Resources Advisory Committee (WRAC) **(First reading)** 7-8
- 2016-007** Authorizing the Town Manager to execute a Regulatory Agreement between the Town of Barnstable and David S. Dumont, Trustee of Greenwood Sterling Estate Trust, 30 Elm Avenue, Hyannis, MA **(May be acted upon)**.....9-14
- 2016-008** Amendment to Chapter 121 of the Code of the Town of Barnstable, “Licensing” by adding “Article III, Civil Fingerprinting Criminal History Record Check for Certain Licenses” **(Refer to public hearing 09/03/15)**..... 15-17
- 2016-009** Acceptance of a \$3,991 gift from the Friends of the Barnstable Council on Aging to support the Transportation Program at the Barnstable Senior Center **(May be acted upon)**..... 18-19
- 2016-010** Amendment to the Code of the Town of Barnstable General Ordinances by adding “Chapter 195 Single Use Plastic Bags” and amendment to “Chapter 1, Article I Noncriminal Enforcement of Violations” **(Refer to public hearing 09/03/15)**.....20-23

2016-011 Declaration that Old Strawberry Hill Road, Centerville, MA is a common usage road in that it has been commonly used by the general public for a period of at least 20 consecutive years for travel directly from one public road or area to another public road or area under the requirements of Chapter 339 of the Acts of 2014 **(May be acted upon)**..... 24-25

2016-012 Declaration that High Street, West Barnstable, MA is a common usage road in that it has been commonly used by the general public for a period of at least 20 consecutive years for travel directly from one public road or area to another public road or area under the requirements of Chapter 339 of the Acts of 2014 **(May be acted upon)**..... 26-27

2016-013 Declaration that Mary Dunn Road, Barnstable, MA is a common usage road in that it has been commonly used by the general public for a period of at least 20 consecutive years for travel directly from one public road or area to another public road or area under the requirements of Chapter 339 of the Acts of 2014 **(May be acted upon)**..... 28-29

2016-014 Declaration that Wakeby Road, Marstons Mills, MA is a common usage road in that it has been commonly used by the general public for a period of at least 20 consecutive years for travel directly from one public road or area to another public road or area under the requirements of Chapter 339 of the Acts of 2014 **(May be acted upon)**..... 30-31

2016-015 Appropriation and transfer order in the amount of \$226,781.00 for preservation and restoration of the Old Town Hall/JFK Museum, 397 Main Street, Hyannis, MA **(Refer to public hearing 09/03/15)** 32-33

2016-016 Appropriation order in the amount of \$500,000.00 for acquisition and preservation by Preservation Of Affordable Housing, Inc. (POAH) at Founders Court, 979 Falmouth Road, Hyannis, MA. **(Refer to public hearing 09/03/15)** 34-35

2016-017 Amendment to the Code of the Town of Barnstable General Ordinances by adding Chapter 208 Substance Controls, Article I, Synthetic Marijuana and Synthetic Marijuana Analogue and by amending Chapter 1, “Article I Noncriminal Enforcement of Violation” **(Refer to public hearing 09/03/15)** 36-39

2016-018 Appointments to a board/committee/commission: **Comprehensive Financial Advisory Board:** Joseph Mladinich, 44 Dogwood Lane, Cotuit as a full member to a term expiring 06/30/18; **Housing Committee:** Aaron Kanzer, 48 Crystal Ridge Road, Cotuit as a full member to a term expiring 06/30/18; **Licensing Authority:** Judith Notz, 363 Sea Street, Hyannis as an associate member to a term expiring 06/30/17; Larry Decker, 346 Sea Street, Hyannis as an associate member to a term expiring 06/30/18; **Youth Commission:** Carrie Osborn, 141 Bassett Lane, Hyannis as a regular member to a term expiring 06/30/16 **(First reading)**..... 40

2016-019 Reappointments to board/committee/commission: **Agricultural Commission:** David Ross, as a regular member to a term expiring 06/30/18; Jeffrey Taylor, as a regular member to a term expiring 06/30/17; **Council on Aging:** L. Helen Stretch, as a regular member to a term expiring 06/30/18; Barbara Cross, as a regular member to a term expiring 06/30/18; **Cultural Council:** Marlene Weir, as a regular member to a term expiring 06/30/18; **Shellfish Committee:** Linda Romano, as a member holding a family permit to a term expiring 06/30/18; Richard Haskell, as a member at large to a term expiring 06/30/18; **(First reading)**..... 41

2016-020 Transfer order pursuant to Temporary Repair to Private Roads Program regarding Loomis Lane, Centerville, MA **(May be acted upon)** 42-43

Executive Session Minutes: Town Council President's announcement on the review and determinations on the following Executive Session minutes: 9/12/13, 9/19/13 and 10/17/13-Marty v. Town of Barnstable; 1/7/10-Stewart's Creek; 9/12/13, 3/20/2014, 5/22/14-Cape Wind; 2/26/15 Employee physical condition, termination

Approve Minutes – July 9, 2015

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 # 2016-002
INTRO: 07/09/15, 08/13/15

2016-002 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION

RESOLVED: That the Town Council appoint the following individuals to a multiple-member board/committee/commission:

COUNCIL ON AGING: Anna Valtsakis, 33 Statice Lane, Hyannis as an associate member to a term expiring 6/30/17

DISABILITY COMMISSION: Paula Breagy, 2787 Main Street, Barnstable as a regular member with a term expiring 6/30/16; Jessica Sylver, 121 Lombard Avenue, West Barnstable as a regular member to a term expiring 6/30/18

HOUSING COMMITTEE: Paula Breagy, 2787 Main Street, Barnstable as a regular member to a term expiring 6/30/16; Jessica Sylver, 121 Lombard Avenue, West Barnstable as a regular member to a term expiring 6/30/16

HYANNIS MAIN STREET WATERFRONT HISTORIC DISTRICT COMMISSION:
Timothy Ferreira, 150 Old Yarmouth Road, Hyannis as an alternate member to a term expiring 6/30/17

SPONSOR: Appointments Committee

DATE	ACTION TAKEN
<u>07/09/15</u>	<u>Second reading 08/13/15</u>

____ Read Item
____ Council Discussion
____ Move/Vote

A. OLD BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM # 2016-003
INTRO: 07/09/15, 08/13/15**

2016-003 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION

RESOLVED: That the Town Council reappoint the following individuals to a multiple-member board/committee/commission:

BARNSTABLE ECONOMIC DEVELOPMENT COMMISSION: Hartley Johnson, as a regular member to a term expiring 6/30/18;

HISTORICAL COMMISSION: Marilyn Fifield, to a term expiring 6/30/18; Paul Arnold as an alternate member to a term expiring 6/30/18

OLD KING’S HIGHWAY: George Jessop, as the architecture representative to a term expiring 6/30/16;

PUBLIC WORKS COMMISSION: Thomas Mullen, as a regular member to a term expiring 6/30/18; Wolfgang Fattler as a regular member to a term expiring 6/30/18;

RENEWABLE ENERGY COMMISSION: Andrew Jaworski, as a regular member to a term expiring 6/30/18; Katie Lamoureux, as a regular member to a term expiring 6/30/18; Jan Rapp, as a regular member to a term expiring 06/30/17

WATERWAYS COMMITTEE: John Meade, as a regular member to a term expiring 6/30/18; Robert Hazelton, as a regular member to a term expiring 6/30/18;

WATER POLLUTION CONTROL BOARD: Wolfgang Fattler, as a regular member to a term expiring 6/30/18

YOUTH COMMISSION: Brendan Clark, as a regular member to a term expiring 6/30/16; Matthew Hersey, as a regular member to a term expiring 06/30/16; Emma Mannal, as a regular member to a term expiring 06/30/16; Lianna Mitchell, as a regular member to a term expiring 06/30/16

SPONSOR: Appointments Committee

DATE	ACTION TAKEN
<u>07/09/15</u>	<u>Second reading 08/13/15</u>

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

B. NEW BUSINESS (First reading)

BARNSTABLE TOWN COUNCIL

ITEM # 2016-006

INTRO: 08/13/15

2016-006 AMENDMENT TO CHAPTER 241 OF THE CODE OF THE TOWN OF BARNSTABLE, "ARTICLE III MULTIPLE-MEMBER APPOINTIVE ORGANIZATION" BY ADDING SECTION 241-45.3 WATER RESOURCES ADVISORY COMMITTEE (WRAC)

ORDERED: That Chapter 241 of the Town's Administrative Code of the Town of Barnstable be amended by adding the following new section creating a Water Resources Advisory Committee (WRAC)

"§241-45.3 Water Resources Advisory Committee"

A. Purpose of the Committee: To advise the Town of Barnstable on the completion and implementation of its Comprehensive Water Resource Management Planning Project, with the goal of protecting and restoring the Town's fresh and salt water bodies and its drinking water supplies, in compliance with the Cape Cod Commission's Cape Cod Area Wide Water Quality Management Plan Update of 2015, ("The 208 Plan")

B. Composition of the Committee:

(1) There shall be a Water Resources Advisory Committee ("WRAC") consisting of eleven (11) members as follows:

a. Five (5) members shall be appointed by the Town Council so as to be as geographically diverse as possible so as to represent all the salt water embayments, freshwater lakes and ponds and watersheds of the Town of Barnstable.

b. Three (3) members shall be appointed by the Town Council as at large members who have interest or expertise in matters related to water quality and wastewater issues.

c. Three (3) members shall be Town Councilors, appointed by the Town Council President. Town Council members shall be full voting members of WRAC and shall act as liaisons from WRAC to the Town Council and Town Manager.

(2) A liaison to WRAC shall be appointed from the chair or his/her designee from each of the following: Board of Health, Conservation Commission, and Planning Board and from other boards, committees, commissions as requested by the Town Council.

C. Term of Office: Town Council members shall be appointed by the Town Council President to serve at his/her discretion. Other members shall each serve for a term of (3) years, so arranged that as equal a number, as possible, shall expire each year.

D. Authorities and Responsibilities: Assist and advise the Town and specifically the Director of the Department of Public Works and or his/her designee in identifying, prioritizing and reporting to the Town all town wide and site specific strategies which would bring the Town of Barnstable into compliance with The 208 Plan and any other applicable regulations for water resources protection.

E. Interrelationships:

(1) The Town Council: WRAC interacts with the Town Council in matters of policy and implementation of its functions and recommendations under the provision of this section. The Town Council members of this committee will regularly report to the Town Council as a whole. From time to time, the Town Council may direct the Committee to focus on specific areas of implementation or other related wastewater, groundwater, surface water and drinking water matters.

(2) The Town Manager: WRAC interacts with the Town Manager in matters relating to staff support and recommendations, funding and implementation of its functions under the provision of this section, including but not limited to interaction with other towns, districts, state and federal agencies and the Cape Cod Commission.

(3) Other Boards, Committees and Commissions: WRAC meets, as necessary, with any multiple member board to effectuate its purpose.

SPONSOR: Jessica Rapp Grassetti, Town Council President
Ann B Canedy, Town Council Vice President

DATE	ACTION TAKEN
_____	_____
_____	_____

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

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM # 2016-007
INTRO: 08/13/15**

2016-007 AUTHORIZING THE TOWN MANAGER TO EXECUTE A REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND DAVID S. DUMONT, TRUSTEE OF GREENWOOD STERLING REAL ESTATE TRUST, 30 ELM AVENUE, HYANNIS, MA

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 David S. Dumont, Trustee of Greenwood Sterling Real Estate Trust, Developer, for the property at 30 Elm Avenue, Hyannis, MA, consisting of .45 acres, shown on Barnstable Assessor’s Map 327 as Parcel 63, the title to which is recorded in Barnstable Land Court Division as Document No. 828,479 noted on Certificate of Title No. 161097 (hereinafter, the “Property”). For purposes of this Regulatory Agreement, the “Property” includes all site parking. The Developer desires to develop the Property pursuant to this Regulatory Agreement.

REGULATORY AGREEMENT

**GREENWOOD STERLING REAL ESTATE TRUST
30 ELM AVENUE, HYANNIS, MA 02601**

This regulatory agreement (the “Agreement”) is entered into by and between David S. Dumont, Trustee of Greenwood Sterling Real Estate Trust under declaration of trust dated April 3, 2001 and recorded in Barnstable Land Court Division as Document No. 828,478 (the “Applicant” and “Developer”) of 298 Main Street, Hyannis, MA 02601, which shall include his successor and assigns and Town of Barnstable, municipal corporation with a place of business at 367 Main Street, Hyannis, MA 02601 (the “Town”) on this the ____ day of _____, 2015 (the “Effective Date”) pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Section 168 of the Barnstable Code.

WHEREAS, this Agreement shall establish the permitted uses and density within the development on the hereinafter identified Property, the duration of the Agreement and any other terms or conditions mutually agreed upon between the Applicant and the Town;

WHEREAS, the Applicant is the legal owner of the real property located at 30 Elm Avenue, Hyannis, Massachusetts totaling approximately .45 acres as shown on Barnstable Assessor’s Map 327, Parcel 63, the title to which is recorded in Barnstable Land Court Division as Document No. 828,479 noted on Certificate of Title No. 161097 (the “Property”), which is improved with a one and one-half story building totaling 9,849 gross square feet with 8,660 net usable square feet (the “Building”);

WHEREAS, the Building was constructed in 1934 to be used as the principal police station for the Town of Barnstable. The Building was substantially renovated in 2001 and converted to a medical out-patient clinic and has been utilized as such until the present;

WHEREAS, the provisions of §112-3 of the Barnstable Code are applicable because 75 years has elapsed since the construction of the Building in 1934, notwithstanding that the Building was materially and substantial altered in 2001 as part of the conversion to a medical clinic;

WHEREAS, the Applicant seeks relief from §112-3 in accordance with this Regulatory Agreement to allow for the partial demolition of a structure greater than 75 years in age;

WHEREAS, the Applicant may construct up to five (5) residential units on the Property as a matter of right and desires to increase the number of residential units to nine (9) in accordance with this Regulatory Agreement;

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

WHEREAS, the Town and Applicant desire to set forth in this Agreement their respective understandings and agreements regarding the reuse of the Property;

WHEREAS, the Applicant is willing to commit to the reuse of the Property substantially in accordance with this Agreement and desires to have a reasonable amount of flexibility to carry out the reuse and therefore considers this Agreement to be in his best interests;

WHEREAS, this Agreement shall vest land use development rights in the Property for the duration of this 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 and/or welfare;

WHEREAS, the reuse of the Property will not require regulatory review under the Massachusetts Environmental Policy Act (MEPA);

WHEREAS, the Property is located in the Hyannis Growth Incentive Zone (GIZ) 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 the General Application;

WHEREAS, the reuse 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 the Barnstable County Ordinance 2006-06 establishing a cumulative development threshold within the GIZ, under which this development may proceed;

WHEREAS, the application has undergone site plan review and received an approval letter dated June 18, 2015;

WHEREAS, the Town acknowledges that this Regulatory Agreement will result in a material increase in the number of year round residential units for lower to middle income residents, as well as a reduction in the traffic flow on Elm Avenue;

WHEREAS, the Town acknowledges through the recently completed Housing Needs Assessment dated December 2014 that the Town of Barnstable's primary housing need is additional year round rental housing and Hyannis is in need of market rate residential apartments and construction of the said nine (9) residential units will be such a benefit to the Town that additional mitigation is not warranted;

WHEREAS, the Town acknowledges that (a) the Property is located within the Hyannis Village Business Zoning District wherein multifamily residential use is allowed and (b) the existing use as a

medical center is lawfully pre-existing non-conforming, and (c) the use as a residential development will result in substantially less vehicle trips per day than the existing medical center;

WHEREAS, the Town acknowledges that the proposal for the adaptive reuse of an existing historic building; a building design consistent with the character of the neighborhood; and the use of high quality building materials are consistent with the objectives of the Design and Infrastructure Plan;

WHEREAS, the Town acknowledges that the Building was substantially modified during the conversion to a medical clinic in 2001 and that the first floor of the structure will be preserved and reused; and that the proposed second story addition reflects the character and design of the historic structure.

WHEREAS, the proposal has undergone at least two public hearings on the Agreement application and received an affirmative majority vote from the Planning Board on July 13, 2015;

WHEREAS, the proposal has undergone a public meeting on the Agreement application before the Town Council and received no less than a two-thirds vote approving the application on _____, 2015;

WHEREAS, this Agreement authorizes only the uses and intensity of use and mitigation stipulation, if any, specified herein. Any substantial deviation from the authorized terms of this Agreement shall require review by the Town Council and Planning Board pursuant to Section 168-10 of the Town Code;

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto hereby acknowledge to each other, the parties hereby agree as follows:

1. The Applicant shall renovate and maintain the Building and Property at 30 Elm Avenue and construct nine (9) year-round one bedroom, one bathroom residential apartments in substantial compliance with the site plan entitled "Site Plan L11.0" dated June 6, 2015 prepared by ML Curadossi Landscape Design; catalog cut from Wolfer's Lighting depicting site lighting; and the floor plans and elevations entitled "Station House Apartments", dated June 12, 2015, drawn by Jeffrey M. Metcalfe, RA, sheets A1-10 and D0-2. Applicant shall install a bicycle rack on the property for the use of the residents as a Transportation Demand Management measure.
2. Based upon the existing acreage, the Applicant is permitted as a matter of right to construct five (5) residential units in accordance with § 240-24.1.3.A.1 (w). In addition to the Principal Permitted uses allowed in § 240-24.1.3.A.1, this Agreement permits the construction of an additional four (4) residential units as shown on the Plan.
3. Portions of the existing building proposed to be demolished, specifically the half-story and roof of the building, are not preferably preserved and their demolition would not be detrimental to the historical, cultural or architectural heritage or resources of the Town. The partial demolition shall be completed in substantial compliance with the plans referenced in Condition No. 1.
4. Any future partial demolition or total demolition of the Building shall constitute a substantial change to the Property and require review by Town Council and Planning Board pursuant to Section 168-10 of the Town Code;
5. The Applicant shall be responsible for obtaining all necessary building permits and all necessary approvals from the Town of Barnstable Public Works Water Supply Division, as necessary and the use and construction of the building shall be in compliance with all Building, Fire, and Health Codes.

6. Subsequent to the issuance of a Certificate of Occupancy for the units, each apartment unit shall be registered with the Health Division's Rental Registration Program.
7. The Project shall be completed in compliance with all requirements of the Site Plan Review approval issued June 18, 2015.
8. All Mortgagee(s) holding good and valid mortgage(s) against the Property have executed document(s) effectively subordinating the provisions of their mortgage(s) to this Agreement, which subordination agreement(s) shall be recorded contemporaneously with this Agreement.
9. The development rights granted under this agreement shall run with the land. However, the Applicant agrees that 30 days prior to any change of ownership of the Property that written notice shall be sent to the Planning Board, Town Council, and Town Manager and further agrees, that all terms and conditions of this regulatory agreement and any amendments thereto, shall be binding on any successive owner of the Property.
10. All terms, conditions and obligations contained in this Regulatory Agreement shall be binding on any successor or assignee of the Applicant.

This Agreement provides the following relief:

- A. Variance from the requirements of § 240-24.1.3.A.1(w) in the HVB Hyannis Village Business District permitting a density of 21.42 units per acre resulting in nine (9) residential market rate units on the Property in accordance with the Plan.**
- B. Waiver from all requirements of §112-3 thereby permitting the renovation of the building in accordance with the Plan so as to construct nine (9) residential market rate units on the Property in accordance with the Plan.**

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

Town of Barnstable

Greenwood Sterling Real Estate Trust

By: _____ By: _____

Thomas K. Lynch, Town Manager
Barnstable Town Manager

David S. Dumont, Trustee

For Land Court Purposes:

*Property address: 30 Elm Avenue, Hyannis, MA 02601
Lots 38 through 41 on Land Court Plan 9232-A2
Certificate of Title No. 161097*

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss

On this _____ day of _____, 2015, before me, the undersigned notary public, personally appeared Thomas K. Lynch and proved to me through satisfactory evidence of identification, being my own personal knowledge and acknowledged to me that he signed the foregoing instrument voluntarily for its stated purpose as Town Manager r for Town of Barnstable, a municipal corporation, before me.

Notary Public
Print name:

My Commission Expires:

(AFFIX SEAL)

BARNSTABLE, ss

On this _____ day of _____, 2015, before me, the undersigned notary public, personally appeared David S. Dumont, Trustee aforesaid and proved to me through satisfactory evidence of identification, being my own personal knowledge and acknowledged to me that he signed the foregoing instrument voluntarily for its stated purpose, before me.

Notary Public
Print name:

My Commission Expires:

(AFFIX SEAL)

SPONSOR: Councilor Jennifer Cullum

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM # 2016-007

INTRO: 08/13/15

SUMMARY

TO: Town Council
THROUGH: Thomas K. Lynch, Town Manager
FROM: Jo Anne Miller Buntich, Growth Management Director
DATE: July 26, 2015
SUBJECT: David S. Dumont, Trustee of Greenwood Sterling Real Estate Trust, Developer, for the property at 30 Elm Avenue, Hyannis

BACKGROUND: This Regulatory Agreement proposes to renovate and maintain the Building and Property at 30 Elm Avenue and construct nine (9) year-round market rate one bedroom, one bathroom residential apartments.

As a matter of right, the Applicant may build five (5) units in accordance with § 240-24.1.3.A.1 (w). Since the project will entail a renovation or alteration of a structure greater than 75 years old, a waiver of §112-3 will be necessary. The Applicant maintains that mitigation is not warranted as the project will further the Town's goal to create more market rate residential units as set forth in the Housing Needs Assessment dated December 2014.

FISCAL IMPACT: The fiscal impact for the Town will be positive. The proposed nine unit apartment building will generate benefit to the town of \$14,845 in real estate tax representing a 50% increase over the current tax generated. More importantly, the benefits generated from providing these market-rent apartments to income producing residents assist in meeting the benchmark set forth in the 2014 Housing Needs Assessment. The Town will presumably generate more revenue from these residents through other taxes such as meals tax.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends this regulatory agreement

STAFF ASSISTANCE: JoAnne Miller Buntich, Growth Management Director

B. NEW BUSINESS (Refer to public hearing 09/03/15)

BARNSTABLE TOWN COUNCIL

ITEM# 2016-008

INTRO: 08/13/15

2016-008 AMENDMENT TO CHAPTER 121 OF THE CODE OF THE TOWN OF BARNSTABLE, "LICENSING" BY ADDING ARTICLE III, CIVIL FINGERPRINTING CRIMINAL HISTORY RECORD CHECK FOR CERTAIN LICENSES

ORDERED: That Chapter 121 of the Code of the Town of Barnstable, "Licensing" be amended by adding Article III, Civil Fingerprinting Criminal History Record Check for Certain Licenses as follows:

"§121-8 Criminal History Record Check Procedure

A. The Police Department shall, as authorized by **MGL c. 6, § 172B 1/2**, to conduct state and federal fingerprint-based criminal history checks for individuals applying for the following licenses:

- (1) Hawking and peddling or other door-to-door salespeople
- (2) Ice cream truck vendors

B. At the time of fingerprinting, the Police Department shall notify the individual fingerprinted that the fingerprints will be used to check the individual's criminal history records and shall obtain the individual's consent.

C. The Chief of Police shall periodically check with the Executive Office of Public Safety and Security ("EOPSS"), which has issued an informational bulletin which explains the requirements for town ordinances and the procedures for obtaining criminal history information, to see if there have been any updates.

D. Upon receipt of the fingerprints and the appropriate fee, the Police Department shall transmit the fingerprints it has obtained pursuant to this ordinance to the Identification Section of the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Services (DCJIS), and/or the Federal Bureau of Investigation (FBI) or the successors of such agencies as may be necessary for the purpose of conducting fingerprint-based state and national criminal records background checks of license applicants specified in this ordinance.

E. The Town authorizes the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Systems (DCJIS), and the Federal Bureau of Investigation (FBI), and their successors, as may be applicable, to conduct fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this ordinance.

F. The Town authorizes the Police Department to receive and utilize state and FBI records in connection with such background checks, consistent with this bylaw. The state and FBI criminal history will not be disseminated to unauthorized entities.

G. Upon receipt of a report from the FBI or other appropriate criminal justice agency, a record subject may request and receive a copy of his/her criminal history record from the Police Department.

H. An applicant who wants to challenge the accuracy or completeness of the record received under **§121-8G** shall make application directly to the agency which contributed the challenged information. The Police Department shall not utilize and/or transmit the results of the fingerprint-based criminal record background check to any licensing authority until the applicant has been afforded a reasonable time to correct or complete the information,. Where an applicant has sought to challenge the accuracy or completeness of the record, no license specified herein shall be issued until a determination is made by the applicable state or federal agency regarding the applicant's request, at which point either the original or corrected record, depending on the determination, shall be transmitted to the applicable licensing authority.

I. The Police Department shall communicate the results of the fingerprint-based criminal record background checks to the appropriate governmental licensing authority within the Town pursuant to **§121-8A**. The Police Department shall, in addition, render to the licensing authority its evaluation of the applicant's suitability for the proposed occupational activity based upon the results of the criminal records background check and any other relevant information known to it. The Police Department shall indicate whether the applicant has been convicted of, or is awaiting final adjudication for, a crime that bears upon his or her suitability or any felony or misdemeanor that involved force or threat of force, controlled substances or a sex-related offense.

J. No such suitability evaluation or communication shall be disseminated to unauthorized entities.

K. The Town Manager is authorized to promulgate regulations for the implementation of the proposed ordinance, after consultation with the Chief of Police.

§121.9 Use of Criminal History Record by Licensing Authorities:

A. Town licensing authorities shall utilize the results of fingerprint-based criminal record background checks for the sole purpose of determining the suitability of the subjects of the checks in connection with the license applications specified in this ordinance.

B. Town licensing authorities may deny an application for the license on the basis of the results of a fingerprint-based criminal record background check and upon the evaluation provided by the Police Department if it determines that the results render the subject unsuitable for the proposed occupational activity. The licensing authority shall consider all applicable laws, regulations and town policies bearing on an applicant's suitability in making this determination.

C. The Town or any of its officers, departments, boards, committees or other licensing authorities is hereby authorized to deny any application, including renewals and transfers thereof, for any person who is deemed unfit for the license, as determined by the licensing authority, due to information obtained pursuant to this ordinance.

§121.9. Fees:

The fee charged by the Police Department for the purpose of conducting fingerprint-based criminal record background checks shall be fifty dollars (\$50.00). A portion of the fee, as specified in **MGL c. 6, § 172B 1/2**, shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund, and the remainder of the fee may be retained by the Town for costs associated with the administration of the fingerprinting system.

§121.10. Severability

The provision of this article is severable. If any provision shall be held to be invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

SPONSOR: Paul B. MacDonald, Chief of Police

DATE	ACTION TAKEN
_____	_____
_____	_____

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

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM # 2016-009
INTRO: 08/13/15**

2016-009 ACCEPTANCE OF A GIFT IN THE AMOUNT OF \$3,991 TO THE SENIOR SERVICES DIVISION FROM THE FRIENDS OF THE BARNSTABLE COUNCIL ON AGING TO SUPPORT THE TRANSPORTATION PROGRAM AT THE BARNSTABLE SENIOR CENTER

RESOLVED: That the Town of Barnstable hereby accepts a gift in the amount of \$3,991 from the Friends of the Barnstable Council on Aging to support the transportation program at the Barnstable Senior Center.

SPONSOR: Thomas K. Lynch, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM # 2016-009

INTRO: 08/13/15

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
THROUGH: Lynne M. Poyant, Director of Community Services
DATE: July 23, 2015
SUBJECT: Acceptance of a \$3,991 gift from the Friends of the Barnstable Council on Aging to support the Transportation Program at the Barnstable Senior Center.

RATIONALE: In an effort to provide more sustainable and cost-effective transportation services to seniors in our community, the Barnstable Senior Services Division has added an electric vehicle to our “Silver Express” transportation program. The vehicle, a Nissan Leaf, is being leased for a term of three years. The Friends of the Barnstable Council on Aging, who provided the funding required for the down payment, have now generously agreed to fund the monthly payments which will total \$3,991.

The primary advantage of the electric vehicle is the cost savings through reduced fuel usage. Additionally, we have had an ongoing challenge in recruiting volunteers to drive the handicapped accessible vehicles but have had prospective volunteers express interest in driving a smaller vehicle. We will continue to provide para-transit services using our handicapped accessible van.

We are extremely grateful to the Friends of the Barnstable Council on Aging for their ongoing support of the programs and services of the Barnstable Senior Center.

FISCAL IMPACT: None

STAFF ASSISTANCE: Madeline Noonan, Director of Senior Services

B. NEW BUSINESS (Refer to public hearing 09/03/15)

BARNSTABLE TOWN COUNCIL

**ITEM# 2016-010
INTRO: 08/13/15**

2016-010 AMENDMENT TO THE CODE OF THE TOWN OF BARNSTABLE GENERAL ORDINANCES BY ADDING CHAPTER 195 SINGLE USE PLASTIC BAGS AND AMENDMENT TO “CHAPTER 1, ARTICLE I NONCRIMINAL ENFORCEMENT OF VIOLATIONS”

ORDERED: That the General Ordinances of the Code of the Town of Barnstable be amended by adding the following Chapter 195 and by amending Chapter 1, Article I, Non-criminal Enforcement of Violations.

SECTION 1: by adding the following Chapter 195.

“Chapter 195

SINGLE-USE PLASTIC CARRYOUT BAGS

§ 195-1 Purpose and Intent.

The production and use of single-use plastic checkout bags have significant impacts on the marine and land environment of all coastal communities, including but not limited to: contributing to the potential death of marine and terrestrial animals through ingestion and entanglement; contributing to pollution of the land and coastal environment; clogging our storm drainage systems; creating a burden on our solid waste collection and recycling efforts; and requiring the use of millions of barrels of non-renewable, polluting, fossil fuel nationally for their manufacture. Therefore, the purpose of this chapter is to phase out the use of single-use plastic checkout bags by all establishments as defined herein in the Town of Barnstable over a period of 12 months from the effective date of this chapter.

§ 195-2 Definitions.

For purposes of this chapter, the following words shall have the following meanings.

CARRYOUT BAG - Any bag that is provided at the point of sale to a customer of an establishment for use to transport or carry away purchases, such as merchandise, goods or food, except as otherwise exempted under §195-4.

CUSTOMER - Any person purchasing goods articles, food or personal services from an establishment.

ENFORCING PERSON – Those persons listed in §1-2(A), non-criminal enforcement of ordinances, rules and regulations, of the General Ordinances of the Code of the Town of Barnstable, as further delegated by the time of taking effect pursuant to §195-6.

ESTABLISHMENT - Any business selling goods, articles, food or personal services to the public, including public eating establishments and take-out restaurants.

OPERATOR - The person in control of, or having the responsibility for, the operation of an establishment, which may include, but is not limited to, the owner.

PERSON - Any natural person, firm, corporation, partnership, or other organization or group however organized.

PLASTIC BAG - Any bag made of plastic derived from either petroleum, ethylene derived from natural gas, polyethylene, polyethylene terephthalate, polyvinyl chloride, polypropylene, or nylon.

PRODUCT BAG - A bag integrated into the packaging of the product.

REUSABLE BAG - A bag specifically designed and manufactured for long term multiple reuse made of cloth, fabric or other durable washable materials.

SINGLE-USE PLASTIC BAG means a plastic carryout bag with integral handles and thickness less than 3.0 mils.

§ 195-3 Plastic Bag Use Regulation.

Single-use plastic carryout bags shall not be sold, provided, or distributed to a customer or any other person by any person, owner, or operator of any establishment within the Town of Barnstable.

§ 195-4 Exemptions and Alternatives.

A. The following are exempt and not subject to the provisions of this chapter.

(1) Bags used by customers inside establishments to:

- (a) package bulk items, such as fruit, vegetables, nuts, grains, candy or small hardware items;
- (b) contain or wrap frozen foods, meat, or fish, whether packaged or not; or
- (c) contain or wrap flowers, potted plants, or other items where dampness may be a problem;

(2) Laundry or dry-cleaning bags or bags sold in packages containing multiple bags intended to be used for home food storage, garbage, waste, pet waste or yard waste.

(3) Product bags.

B. Nothing in this chapter prohibits customers from using bags of any type that they bring to the grocery store, food provider, or other establishment themselves or from carrying away goods that are not placed in a bag. Customers are encouraged to bring their own reusable bags to the aforesaid establishments.

C. Establishments may and are strongly encouraged to distribute paper bags, reusable bags and boxes available to customers with or without charge and educate their staff to promote reusable bags and post signs encouraging customers to use washable reusable bags.

D. The Town Manager or designee may prior to the effective date of this ordinance engage in any outreach process to establishments concerning this ordinance and exempt an establishment from the requirements of § 195-3 for a period of not more than one year upon the establishment's showing, in writing, that this code would create an undue hardship or practical difficulty not generally applicable to other persons in similar circumstances. The decision to grant or deny an exemption shall be in writing and the Town Manager's decision shall be final.

§ 195-5 Provision for Reusable Bag at No Cost.

Notwithstanding the provisions of § 195-4, an establishment shall provide a reusable bag at no cost upon the request of a customer who uses a voucher issued under the Special Supplemental Food Program for Women, Infant and Children (WIC) pursuant to M.G.L. c. 111.

§ 195-6 Time of Taking Effect.

In addition to the exemption provided in §195-4(D), in order to further assist existing establishments in complying with this ordinance by phasing out the use of single-use plastic carryout bags over a period of 12 months from the effective date this ordinance, this ordinance shall take effect after 12 months from the expiration of thirty days from the date of its adoption.

§ 195-7 Inspection and Enforcement.

Any enforcing person shall have the right to enter any establishment during regular business hours, without a search or inspection warrant, to make reasonable inspection to ascertain whether there is compliance with the provisions of this chapter. Upon finding a violation of this chapter an enforcing person shall issue a written warning notice to the operator of the establishment that a violation has occurred and the potential penalties that will apply for future violations.

§ 195-8 Violations and Penalties.

Any establishment that violates or fails to comply with this chapter shall be subject to the following penalties to be enforced in law or equity by any means, including without limitation non-criminal disposition pursuant to G. L. c. 40 § 21D, provided that no more than one (1) penalty after written warning shall be imposed upon an establishment within a seven (7) day calendar day period:

First Offense: written warning.

Second Offense: \$100.00 fine.

Third and Subsequent Offense: \$200.00 and the Town may in its discretion publish the fine on its web site after the third and subsequent offense.

§ 195-9 Severability.

If any provision of this ordinance shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this ordinance, which shall remain in full force and effect.”

SECTION 2: by amending section 1-3, Schedule of Fines, of Article I, Noncriminal Enforcement of Violations, of Chapter 1, General Provisions, of the General Ordinances by adding after “Ch.192, Art. II Signs \$100” the following in the respective columns: “Ch.195 Single-Use Plastic Carryout Bags First Offense warning, Second Offense \$100.00 fine, Third and Subsequent Offense \$200.00 fine” in the respective columns.

SPONSOR: Councilor Paul Hebert

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2016-010
INTRO: 08/13/15

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
THROUGH: Councilor Paul Hebert
DATE: August 13, 2015
SUBJECT: Order amending the code of the Town of Barnstable General Ordinances by adding Chapter 195 Single Use Plastic Bags

RATIONALE: I am sponsoring this ordinance because I believe, as a marine community; we have a special responsibility to reduce the harmful impacts of single use plastic bags. We know these bags contribute to the deaths of many forms of marine life and they are one of the most prevalent pieces of trash found on beaches worldwide, including our beaches. Because of their inherent properties, they float through the air and make their way into rivers and streams, and eventually into the ocean where they degrade into smaller and smaller pieces, which are consumed by fish or end up as part of the great “garbage patches” floating in the world’s oceans. Recycling plastic bags is not the answer. The evidence suggests that less than ten percent of single use plastic bags are recycled, and the bags frequently cause problems and equipment breakdowns in recycling facilities. We know this ordinance will not completely solve our litter issues, but it will eliminate the air borne trash that is the source of so many problems. We are not leaders in this effort but rather we are adding both our voice and our action to those communities in Massachusetts and particularly to other Towns on Cape Cod. We have everything to gain by taking such action and a great deal to lose in our failure to act. We cannot separate our environment from our health, economic sustainability today and for the future. While we may be initially motivated by the unsightly plastic bags in our trees, bushes, streets, beaches and parking lots, it is the indisputable negative environmental impact that causes us to join our neighboring communities in promoting this ordinance. It is for the love of our families and fellow citizens’ health, quality of life, economic wellbeing and concern for future generations that we take action today. Let us stand united in our determination to seize this opportunity to accept perhaps a small inconvenience for the sake of the greater good.

In the words of Peter Drucker, “Doing things right is management. Doing the right thing is leadership.” Let us do the right thing for us all and let us manage this well.

FISCAL IMPACT: None

TOWN MANAGER RECOMMENDATION: The Town Manager recommends this Ordinance

STAFF ASSISTANCE: Ruth Weil, Town Attorney; David Houghton, First Assistant, Town Attorney

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM# 2016-011
INTRO: 08/13/15**

2016-011 DECLARATION THAT OLD STRAWBERRY HILL ROAD, CENTERVILLE, MA IS A COMMON USAGE ROAD UNDER THE REQUIREMENTS OF CHAPTER 339 OF THE ACTS OF 2014

RESOLVED: That the Town Council hereby declares that, pursuant to the requirements of Chapter 339 of the Acts of 2014, Old Strawberry Hill Road, Centerville, MA is a common usage road in that it has been commonly used by the general public for a period of at least 20 consecutive years for travel directly from one public road or area to another public road or area.

SPONSOR: Roads Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2016-011
INTRO: 08/13/15

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: August 5, 2015

BACKGROUND: Recent legislation, Chapter 339 of the Acts of 2014 allows the Town of Barnstable to repair certain private roads in Common Usage. The Act further requires that the Town Council make an affirmative declaration that the road proposed for repair has been in common usage for a period of at least 20 consecutive years.

ANALYSIS: Old Strawberry Hill Road, a private road located in Centerville, is in a seriously degraded condition and, as a matter of public safety, needs to be repaired. Old Strawberry Hill Road has been in common usage for more than 20 consecutive years. The road connects Route 132 with Phinney's Lane and is traveled by hundreds of cars each day. Over the years Strawberry Hill Road has become a major thoroughfare and cut-through for passenger and commercial vehicles traveling from Route 132 to Phinney's Lane heading west. The Department of Public Works has proposed to repave Old Strawberry Hill Road in the fall of 2015.

FISCAL IMPACT: Funds have been appropriated in the FY 2016 Capital Improvement Program for the proposed repairs

TOWN MANAGER RECOMMENDATION: Town Manager Thomas k. Lynch recommends approval of the Declaration of Common Usage

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

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM# 2016-012
INTRO: 08/13/15**

**2016-012 DECLARATION THAT HIGH STREET, WEST BARNSTABLE, MA IS A
COMMON USAGE ROAD UNDER THE REQUIREMENTS OF CHAPTER 339
OF THE ACTS OF 2014**

RESOLVED: That the Town Council hereby declares that, pursuant to the requirements of Chapter 339 of the Acts of 2014, High Street, West Barnstable, MA is a common usage road in that it has been commonly used by the general public for a period of at least 20 consecutive years for travel directly from one public road or area to another public road or area.

SPONSOR: Roads Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2016-012
INTRO: 08/13/15

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: August 5, 2015

BACKGROUND: Recent legislation, Chapter 339 of the Acts of 2014 allows the Town of Barnstable to repair certain private roads in Common Usage. The Act further requires that the Town Council make an affirmative declaration that the road proposed for repair has been in common usage for a period of at least 20 consecutive years.

ANALYSIS: High Street, a private road located in West Barnstable, is in a seriously degraded condition and, as a matter of public safety, needs to be repaired. High Street has been in common usage for more than 20 consecutive years. The road connects Route 6A with Old County Road in the Town of Sandwich and is traveled by hundreds of cars each day. Over the years the road has become a major thoroughfare and cut-through for passenger and commercial vehicles traveling from Route 6A on the North side to Sandwich and the Mid-Cape Highway Exit 4. The Department of Public Works has proposed to repave High Street in the fall of 2015.

FISCAL IMPACT: Funds have been appropriated in the FY 2016 Capital Improvement Program for the proposed repairs

TOWN MANAGER RECOMMENDATION: Town Manager Thomas k. Lynch recommends approval of the Declaration of Common Usage

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

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM# 2016-013
INTRO: 08/13/15**

**2016-013 DECLARATION THAT MARY DUNN ROAD, BARNSTABLE, MA IS A
COMMON USAGE ROAD UNDER THE REQUIREMENTS OF CHAPTER 339
OF THE ACTS OF 2014**

RESOLVED: That the Town Council hereby declares that, pursuant to the requirements of Chapter 339 of the Acts of 2014, Mary Dunn Road, Barnstable, MA is a common usage road in that it has been commonly used by the general public for a period of at least 20 consecutive years for travel directly from one public road or area to another public road or area.

SPONSOR: Roads Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2016-013
INTRO: 08/13/15

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: August 5, 2015

BACKGROUND: Recent legislation, Chapter 339 of the Acts of 2014 allows the Town of Barnstable to repair certain private roads in Common Usage. The Act further requires that the Town Council make an affirmative declaration that the road proposed for repair has been in common usage for a period of at least 20 consecutive years.

ANALYSIS: Mary Dunn Road, a private road located in Barnstable Village, is in a seriously degraded condition and, as a matter of public safety, needs to be repaired. Mary Dunn Road has been in common usage for more than 20 consecutive years. The road connects Route 6A with Independence Drive and is traveled by thousands of cars each day. Over the years since Independence Drive was completed the road has become a major thoroughfare for passenger and commercial vehicles traveling from Route 6A on the North side to the Hyannis area. The Department of Public Works has proposed to repave Mary Dunn Road in the fall of 2015.

FISCAL IMPACT: Funds have been appropriated in the FY 2016 Capital Improvement Program for the proposed repairs

TOWN MANAGER RECOMMENDATION: Town Manager Thomas k. Lynch recommends approval of the Declaration of Common Usage

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

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM# 2016-014
INTRO: 08/13/15**

**2016-014 DECLARATION THAT WAKEBY ROAD, MARSTONS MILLS, MA IS A
COMMON USAGE ROAD UNDER THE REQUIREMENTS OF CHAPTER 339
OF THE ACTS OF 2014**

RESOLVED: That the Town Council hereby declares that, pursuant to the requirements of Chapter 339 of the Acts of 2014, Wakeby Road, Marstons Mills, MA is a common usage road in that it has been commonly used by the general public for a period of at least 20 consecutive years for travel directly from one public road or area to another public road or area.

SPONSOR: Roads Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2016-014
INTRO: 08/13/15

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: August 5, 2015

BACKGROUND: Recent legislation, Chapter 339 of the Acts of 2014 allows the Town of Barnstable to repair certain private roads in Common Usage. The Act further requires that the Town Council make an affirmative declaration that the road proposed for repair has been in common usage for a period of at least 20 consecutive years.

ANALYSIS: Wakeby Road, a private road located in Marstons Mills, is in a seriously degraded condition and, as a matter of public safety, needs to be repaired. Wakeby Road has been in common usage for more than 20 consecutive years. The road connects River Road with Santuit-Newtown Road and the Town of Sandwich and is traveled by hundreds of cars each day. Over the years the road has become a major thoroughfare for passenger and commercial vehicles traveling east-west to avoid Route 28. The Department of Public Works has proposed to repave the Wakeby Road in the fall of 2015.

FISCAL IMPACT: Funds have been appropriated in the FY 2016 Capital Improvement Program for the proposed repairs

TOWN MANAGER RECOMMENDATION: Town Manager Thomas k. Lynch recommends approval of the Declaration of Common Usage

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

B. NEW BUSINESS (Refer to public hearing 09/03/15)

BARNSTABLE TOWN COUNCIL

**ITEM # 2016-015
INTRO: 08/13/15**

2016-015 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$226,781.00 FOR PRESERVATION AND RESTORATION OF THE OLD TOWN HALL/JFK MUSEUM, 397 MAIN STREET HYANNIS, MA

ORDERED: That, pursuant to the provisions of G. L. c. 44B, the sum of Two Hundred Twenty Six Thousand Seven Hundred Eighty One and No/100 (\$226,781.00) Dollars be appropriated and transferred from the set aside for historic preservation in the Community Preservation Fund; and that the Town Manager is authorized to contract for and expend said appropriation for preservation and restoration of the Old Town Hall/JFK Museum historic resource at 397 Main Street, Hyannis consisting of replacement of 16 additional lintels and wood trim, cornice restoration and masonry cleaning and sealing.

SPONSOR: Thomas K. Lynch, Town Manager upon recommendation of the Community Preservation Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM # 2016-015

INTRO: 08/13/15

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
THROUGH: Lindsey Counsell, Chair, Community Preservation Committee
DATE: August 13, 2015
SUBJECT: Appropriation and Transfer Order of (\$226,781.00) dollars be appropriated and transferred from the set aside for historic preservation in the Community Preservation Fund Restoration work at the Old Town Hall/JFK Museum at 397 Main Street, Hyannis.

RATIONALE: This Community Preservation Committee voted on February 9, 2015 to recommend that the Town Council approve the request of the Department of Public Works to fund Phase II of restoration work at the Old Town Hall/JFK Museum at 397 Main Street, Hyannis. Phase I preservation work which included work on several lintels, the supporting structure above a window, was completed successfully; however, the project's architect has recommended that the remaining lintels in the building be replaced as well. Additional funding for Phase II is being sought for the design, project management and construction in order to complete the full stabilization and restoration of the exterior of the Old Town Hall building. The work will consist of the replacement of 16 additional lintels, wood trim and cornice restoration and masonry cleaning and sealing.

This important structure is a part of the village fabric of downtown Hyannis and has a place of honor on our Main Street. The building is listed as a Massachusetts Cultural Resource and is within the Hyannis Waterfront Historic District and is on the National Register of Historic Places. The completion of this work will restore the exterior of the building fabric to its original grandeur.

FISCAL IMPACT: There is no impact to the general fund. All funds are drawn from the Community Preservation Fund.

VOLUNTEER ASSISTANCE: Lindsey Counsell, on behalf of the Community Preservation Committee.

B. NEW BUSINESS (Refer to public hearing 09/03/15)

BARNSTABLE TOWN COUNCIL

**ITEM # 2016-016
INTRO: 08/13/15**

2016-016 APPROPRIATION ORDER IN THE AMOUNT OF \$500,000.00 FOR ACQUISITION AND PRESERVATION BY PRESERVATION OF AFFORDABLE HOUSING, INC. (POAH) AT FOUNDERS COURT, 979 FALMOUTH ROAD, HYANNIS, MA

ORDERED: That, pursuant to the provisions of G.L. c. 44B, the sum of Five Hundred Thousand and NO/100 (\$500,000) Dollars be appropriated and transferred from the amount set aside for Community Housing in the Community Preservation Fund; that the Town Manager is authorized to contract for and expend the amount appropriated for the acquisition and preservation by Preservation of Affordable Housing, Inc. (POAH) of the 32 unit affordable rental housing community of Founders Court located at 979 Falmouth Road, Hyannis, MA; and that the Town Manager is authorized to recover or apply any other sums of money and execute, accept, deliver and record instruments to secure the units' continued affordability.

SPONSOR: Thomas K. Lynch Town Manager, upon recommendation of the Community Preservation Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM # 2016-016

INTRO: 08/13/15

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
THROUGH: Lindsey Counsell, Chair, Community Preservation Committee
DATE: August 13, 2015
SUBJECT: Appropriation order in the amount of \$500,000.00 for acquisition and preservation by Preservation Of Affordable Housing, Inc. (POAH) at Founders Court, 979 Falmouth Road, Hyannis, MA

RATIONALE: The Town of Barnstable is seeking approval from the Town Council for CPA funding in the amount of \$500,000 from the Preservation of Affordable Housing (POAH) for the acquisition and renovation of Founders Court Apartments in Hyannis, MA; a 32 unit affordable rental housing community. Founders Court represents a critical housing asset for the Town of Barnstable. However, Founders Court requires new physical plant investments in order to ensure it can serve as safe and healthy affordable housing for the town over the long term.

POAH's intent is to take the place of the current owner (who will take no acquisition price, and will contribute the property's existing reserves to support the transaction). POAH will then work with state and local agencies to assemble the resources to renovate the property, enhance its affordability levels, and extend its term of affordability for at least 40 years.

The project meets the criteria for CPA funds as it creates community housing and helps preserve Barnstable's character by providing much needed housing opportunities that help maintain a diverse and vibrant community.

FISCAL IMPACT: There is no impact to the general fund. All funds are drawn from the Community Preservation Fund.

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

B. NEW BUSINESS (Refer to public hearing 09/03/15)

BARNSTABLE TOWN COUNCIL

**ITEM # 2016-017
INTRO: 08/13/15**

2016-017 AMENDMENT TO THE CODE OF THE TOWN OF BARNSTABLE GENERAL ORDINANCES BY ADDING CHAPTER 208 SUBSTANCE CONTROLS, ARTICLE I SYNTHETIC MARIJUANA AND SYNTHETIC MARIJUANA ANALOGUE AND BY AMENDING CHAPTER 1, "ARTICLE I NONCRIMINAL ENFORCEMENT OF VIOLATION"

ORDERED: that the General Ordinances of the Code of the Town of Barnstable be amended by adding the following Chapter 208, Substance Controls, and by amending Chapter 1, Article I, Noncriminal Enforcement of Violations.

SECTION 1: by adding the following Chapter 208, Substance Controls.

**"Chapter 208
SUBSTANCE CONTROLS**

**ARTICLE I
Synthetic Marijuana and Synthetic Marijuana Analogue**

§ 208-1 Purpose and Intent.

It has been determined that certain businesses and/or individuals within the Town of Barnstable are possessing and selling certain substances which when ingested produce intoxicating effects similar to Tetrahydrocannabinol (THC) or Marijuana. These substances, which are described herein, are often used as an alternative synthetic to Marijuana and are potentially dangerous to users and society, and the long term effects are not yet known. The effects of these substances are a health concern to the citizens of Barnstable. Not all of the substances are categorized as illegal controlled substances under State or Federal law. By selling these "legal" substances for smoking and ingestion in the guise of incense, the manufacturers avoid the United States Food and Drug Administration process for study and approval of such prior to distribution for consumption. In addition, by marketing such "incense" products directed at the controlled drug subculture, the manufacturers and sellers avoid the Schedule Implications of the Controlled Substances Act. The Town of Barnstable Town Council recognizes there is no legitimate purpose of such synthetic chemicals contained therein.

§ 208-2 Prohibited Activities.

A. It shall be unlawful for any person to possess, sell, barter, give, publicly display for sale; attempt to possess, sell, barter, or give; or transport any material, compound, mixture or preparation within the corporate limits of the Town of Barnstable which contains any quantity of synthetic marijuana or synthetic marijuana analogue.

B. This Ordinance shall apply regardless of whether the synthetic marijuana or synthetic marijuana analogue is described as tobacco, herbs, incense, spice, bath salts, plant food or any blend thereof,

and, regardless of whether the substance is marketed for the purpose of being smoked or ingested, and, regardless of whether the substance is marked "not for human consumption".

§ 208-3 Exceptions.

A. It is not an offense under this Article if the person was acting at the direction of the Barnstable Police Department and its officers, or federal or state law enforcement, to enforce or ensure compliance with this law prohibiting the sale of the aforementioned substances.

B. If the State of Massachusetts enacts criminal penalties for the possession, sale, transportation, or delivery of any chemical substance listed in this Article, then upon the effective date of such enactment, this Article shall no longer be deemed effective for that substance. However, a violation of this Article occurring prior to the effective date of such enactment may be prosecuted after the effective date of State enactment.

§ 208-4 Definitions.

For the purpose of this article, the following words shall have the following meanings.

PERSON - An individual, corporation, limited liability company, partnership, wholesaler, retailer, and any license or unlicensed business, including clerk, manager, or owner of business.

SYNTHETIC MARIJUANA – any substance as defined by 21 U.S.C §812(d), excluding "marihuana" as such term is defined in Massachusetts General Laws chapter 94C §1, 21 U.S.C. §812(d) notwithstanding; or any one or any combination of the following cannabinoids, or, a substance containing any one or combination of the following cannabinoids, namely JWH-018, JWH-073, CP-47,497, JWH-200, or, cannabicyclohexanol; or vegetable material that has been chemically treated and is possessed, sold, or, purchased, with the intent that it will, despite any labeling to the contrary, be consumed by humans, for the purpose of voluntary intoxication, said vegetable material typically having a retail price of over five dollars per ounce and contained within packaging indicating that the contents is not for human consumption, and which, if consumed, may induce an effect or effects of intoxication similar to a controlled substance or imitation controlled substance, said effect or effects to include elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, dulling of the senses or nervous system, or, distortion of audio, visual or mental processes.

SYNTHETIC MARIJUANA ANALOGUE - a substance , the chemical structure of which is substantially similar to the chemical structure of synthetic marijuana and which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of synthetic marijuana; or with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of synthetic marijuana.

§ 208-5 Violations and Penalties

A. Any person found to be in violation of this Article will be assessed a fine of \$300.00. Each day a violation occurs will constitute a separate offense.

B. In addition to any penalty provided in the above Section A, if any of the aforementioned substances listed above are found in the possession of any person, the substance will be forfeited by seizure by the

Barnstable Police Department, or its officers, and may be destroyed by such law enforcement officials in a method consistent with law.

§ 208-6 Severability

If any provision of this Article shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions of this Article, which shall remain in full force and effect.”

SECTION 2: by adding the following in the appropriate numerical and column order to section 1-3, Schedule of Fines, of Article I, Noncriminal Enforcement of Violations, of Chapter 1, General Provisions, of the General Ordinances in the Code of the Town of Barnstable.

“Ch. 208, Art. I §300.00”

SPONSOR: Ann B. Canedy, Council Vice President
Councilor Jennifer Cullum

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2016-017
INTRO: 08/13/15

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
THROUGH: Barnstable Police Department Community Impact Unit
DATE: August 13, 2015
SUBJECT: Order Adding Substance Controls, Article I Synthetic Marijuana and Synthetic Marijuana Analogue to the General Ordinances of the Code of the Town of Barnstable and an Amendment to Section 1-2, Schedule of Fines/Noncriminal Enforcement of Violations

RATIONALE: Certain businesses and/or individuals within the Town of Barnstable are in possession of and selling substances that produce intoxicating effects under the sales item pretense of “incense.” These “legal” substances, which are used as a synthetically produced alternative to marijuana are sold to be smoked or ingested and may be potentially dangerous to users and to our community, especially since their long term effects are, at present, unknown. The Town of Barnstable Town Council recognizes that there is no legitimate purpose to the sale of these synthetic chemicals and therefore, for the safety and welfare of the community, supports the prohibition of the sale of these synthetic substances to be incorporated in the General Ordinances of the Code of the Town of Barnstable. Furthermore, it is also recommended that a fine of \$300/day of violation be added to Section 1-3, Schedule of Fines, of Article I, Noncriminal Enforcement of Violations, of Chapter 1, General Provisions, of the General Ordinances in the Code of the Town of Barnstable if found in violation of the aforementioned proposed ordinance Substance Controls on the sale of Synthetic Marijuana and Synthetic Marijuana Analogue.

ANALYSIS: For the safety and welfare of the community, its citizens and visitors, it is recommended that the Town proceed with the proposed amendments to the General Ordinances of the Code of the town of Barnstable by adding certain controls and prohibitions on the sale of synthetic marijuana and synthetic marijuana analogue. It is also recommended that to deter violation, a fine be implemented in the amount of \$300/day of violation of the proposed ordinance, Substance Controls on the Sale of Synthetic Marijuana and Synthetic Marijuana Analogue.

FISCAL IMPACT: A fine to violators of this ordinance will generate a fine of \$300/day of violation.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends that the Town Council approve the actions proposed by this order.

STAFF ASSISTANCE: Town of Barnstable Legal Department
Barnstable Police Department Community Impact Unit

B. NEW BUSINESS (First reading)

BARNSTABLE TOWN COUNCIL

**ITEM # 2016-018
INTRO: 08/13/15**

2016-018 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION

RESOLVED: That the Town Council appoint the following individuals to a multiple-member board/committee/commission:

COMPREHENSIVE FINANCIAL ADVISORY BOARD: Joseph Mladinich, 44 Dogwood Lane, Cotuit, MA as a regular member to a term expiring 06/30/18

HOUSING COMMITTEE: Aaron Kanzer, 48 Crystal Ridge Road, Cotuit, MA as a regular member to a term expiring 06/30/18

LICENSING AUTHORITY: Larry Decker, 346 Sea Street, Hyannis, MA as an associate member to a term expiring 06/30/18; Judith Notz, 363 Sea Street, Hyannis, MA as an associate member to a term expiring 06/30/17

YOUTH COMMISSION: Carrie Osborn, 141 Bassett Lane, Hyannis, MA as a regular member to a term expiring 06/30/16

SPONSOR: Appointments Committee

DATE ACTION TAKEN

- Read Item
- Council Discussion
- Move/Vote

B. NEW BUSINESS (First reading)

BARNSTABLE TOWN COUNCIL

**ITEM # 2016-019
INTRO: 08/13/15**

2016-019 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION

RESOLVED: That the Town Council reappoint the following individuals to a multiple-member board/committee/commission:

AGRICULTURAL COMMISSION: David Ross, as a regular member to a term expiring 06/30/18;
Jeffrey Taylor, as a regular member to a term expiring 06/30/17

COUNCIL ON AGING: L. Helen Stretch, as a regular member to a term expiring 06/30/18;
Barbara Cross, as a regular member to a term expiring 06/30/18

CULTURAL COUNCIL: Marlene Weir, as a regular member to a term expiring 06/30/18

SHELLFISH COMMITTEE: Linda Roman, as a member holding a family permit to a term expiring 06/30/18; Richard Haskell, as a member at large to a term expiring 06/30/18

SPONSOR: Appointments Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Council Discussion
- Move/Vote

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM # 2016-020
INTRO: 08/13/15**

2016-020 TRANSFER ORDER OF \$10,000.00 PURSUANT TO TEMPORARY REPAIR TO PRIVATE ROADS PROGRAM REGARDING LOOMIS LANE, CENTERVILLE, MA

ORDERED: That the sum of \$10,000 be transferred from Town Council Appropriation Order 2013-066 and be added to the \$88,060 appropriated under Town Council order 2015-081 for the purpose of making temporary repairs to Loomis Lane, Centerville, MA a private road within the Town of Barnstable, and the Town Manager is authorized to contract for and expend the appropriation made available for this purpose and that betterments be assessed, and the Town Manager is further authorized to accept any grants and/or gifts in relation thereto.

SPONSOR: Thomas K. Lynch, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM # 2016-020
INTRO: 08/13/15

SUMMARY

TO: Town Council
FROM: Thomas K. Lynch, Town Manager
THROUGH: Roger D. Parsons, P. E., Town Engineer
DATE: August 13, 2015
SUBJECT: Transfer order pursuant to Temporary Repair to Private Roads Program regarding Loomis Lane, Centerville, MA

BACKGROUND: The successful passage of Chapter 174 of the Acts of 1994 and the passage of House Bills 4409 and 4410 by the State Legislature of Home Rule legislation authorized the Town to expend funds to repair private roads. Under this Program the abutters to roads being repaired can be charged betterment assessments for 100% of the actual costs of repairs which they can elect to pay in one lump sum or over a period of 20 years (with interest). None of these roads will be taken by the Town of Barnstable and will remain Private Roads. Funds exist within prior appropriations under the Temporary Repair to Private Roads program to pay for the cost of these improvements. This Appropriation request for \$10,000 is to be taken from the remaining funds available within Appropriation 2013-066. An amount of \$30,064 remains in this Appropriation. This Appropriation is in addition to Town Council Order number 2015-081 wherein \$88,060 was appropriated to cover the estimated cost of repairs to Loomis Lane. The project was advertised for public bids and the lowest acceptable bid received of (\$89,790) exceeded the estimated amount by \$1750. This additional funding request seeks to fully fund the construction and pay for administrative costs for the project with a total additional request of \$10,000.

FISCAL IMPACT: There is no cost to the Town as all costs will be covered by betterments assessed to the abutters.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends that the Town Council approve the action proposed by this order.

STAFF ASSISTANCE: Roger D. Parsons, P.E., Town Engineer