



TOWN COUNCIL MEETING July 19, 2007

A quorum being duly present, Council President Janet Joakim called the meeting of the Barnstable Town Council to order at 7:00 pm, on July 19, 2007, at the Barnstable Town Hall, 367 Main Street, Hyannis, MA.

PRESENT: Richard Barry, Janice Barton, Gary Brown, Ann Canedy, Frederick Chirigotis, James Crocker, Jr., Leah Curtis, Henry Farnham, Janet Joakim, James Munafo, Jr., Thomas Rugo and Harold Tobey. **ABSENT:** J. Gregory Milne

Vice President Brown led the Council in the Pledge of Allegiance and turned the moment of silence over to Councilor Janice Barton who asked that the citizens think of the Marstons Mills family who lost a child and the fire and police departments involved in the search.

President Joakim explained to those present that they could sign up to speak during the hearing on the Cape Cod Commission withdrawal issue. She also noted that that and some other items would be taken out of order.

• TOWN CLERK PRESENTATION

Town Clerk Linda Hutchenrider presented the Town Council and the citizens of the town with a framed copy of the pages from Volume 3 of the ancient town records that displays the Declaration of Independence. This copy was found during recent research and according to the records, was ordered to stand as a perpetual memorial. The clerk felt that the memorial should be a visible one and helped put together the framed documents that were presented.

Emery Anderson, on behalf of the Indian Ponds Association, thanked Town Manager John Klimm for his proactive inclusion of supportive measures in the budget that will help the ponds. This action demonstrated extraordinary support. The Indian Ponds Association, Order of the Turtle award was presented to Manager Klimm. Anderson explained the award and that the turtle represents strength among other things. He said that since their mission deals with the preservation and protection of that area, it was fitting that this be given. Manager Klimm thanked Mr. Anderson and the other volunteers who have worked hard on this project as well as councilors, such as Councilor Barton, for their support.

PUBLIC COMMENT

John Alden said he has lived in Hyannis since 1987, and noted a number of items that need to be addressed and changes that need to be made.

John Julius agrees with Mr. Alden and said we do need a change. He congratulated the police department on their work. All American Town? We need changes and accountability.

Peter Doiron helped gather many of the signatures to get the charter commission issue on the ballot. We signature harvesters must have done something right.

Robert Tucker asked why are there people driving without a license. We need good paying jobs.

Chris Powicki has concerns about the proposed electric cooperative. This could increase the rates for businesses and residences. That is not acceptable. We need to be sure that our interests are protected. I don't think this is the case right now.

Michael Frishman does not like to be taxed without representation. He questioned why full time residents get a reduction on their taxes.

Frank Paparo congratulated the town for the recent award. Then he noted that we have a lot of crime, so we have a lot of work to do. There is a rip-off on the cost of gasoline in our community. Our costs are higher.

COUNCIL RESPONSE TO PUBLIC COMMENT

Councilor Munafo said that the council decides who pays what for taxes. That is what we decide to do. You need to be ready to speak out. It is stacked up against you.

Councilor Crocker explained the tax issue further with an explanation of the break even point too.

Councilor Chirigotis pointed out about if a full time resident owns more than one home they only get a break on one home.

Councilor Canedy suggested that the person get the email addresses of the councilors and converse with the councilors on this type of issue.

Councilor Tobey spoke as a past police officer. He said there is a lot of crime but our department has done an exemplary job even under strong problem times. They have been there for this community. We have hard working citizens and we are a working city. Those who wish to make changes in the government have a right to do that. We are here to serve the people.

President Joakim said that the prices of gas are better on the Cape than in some other areas like Kingston and Plymouth.

ACT ON MINUTES

Upon motion duly made and seconded, it was voted to approve the minutes of June 14, 2007.

VOTE: Unanimous in favor

Upon motion duly made and seconded, it was voted to approve the minutes of June 21, 2007.

VOTE: Unanimous in favor

COMMUNICATIONS FROM ELECTED OFFICIALS, BOARDS, COMMISSIONS, STAFF, CORRESPONDENCE, ANNOUNCEMENTS AND COMMITTEE REPORTS

Councilor Barry announced that Crocker Neck Conservation area is now open in Cotuit.

Councilor Barton made some announcements regarding youth and homeless issues. The school department had a study done on the consolidation of the human resources and finance departments.

Councilor Canedy attended a couple of events in Barnstable including the Unitarian church's 300th anniversary.

President Joakim announced the great concerts in Aselton Park on Friday nights. She talked about some of the problem intersections (such as Lumbert's Mill Road and Route 28) and announced that there is a hearing coming up soon on these areas.

Councilor Canedy also noted that Lynne Poyant received the Mercy Otis Warren woman of the year award.

**2008-003 - COUNCIL VOTES ON THE MERITS OF GROUP PETITION INTRO.:
07/19/07**

Upon motion duly made and seconded it was voted to open a public hearing for the purpose of discussing a Group Petition regarding the withdrawal from the Cape Cod Commission.

VOTE: Unanimous in favor

Robert Berry recommends that the council defer consideration and allow developers to demonstrate any change in value if the town remains as a part of the commission.

William Elkins stated that the council is deciding on the merits of voting in or out of the commission. This will be most controversial. Action is being taken on this issue in 4 other communities. The issue is loaded and therefore should go to the voters. It clearly belongs to the voters. Give them the right to determine whether we should be in or out.

Susan Nickerson advised the council to not move ahead with the petition. The timing of this question is important. The Cape Wind project is going through the review process now. Because of the significance – it would be more advisable to wait and then make a decision later on.

Marcel Poyant said that many changes have taken place since 1989 and he has monitored the commission. Poyant suggested that the council give the taxpayers an opportunity to vote and express their views.

Debbie West suggested that the council not move ahead with the petition and allow the task force to implement changes first.

Larry Wheatley said that an issue of this importance should be decided by the voters. Trust the people and let them make the decision.

Herbert Greenwald said Cape Cod is a special place and the CCC has helped to preserve some of the lands – retain the commission.

Don Megathlin has been involved with the commission for 10 years as a developer. They are a lightning rod for controversy. He opposes withdrawal but supports the ballot question because of the CCC lack of instituting change.

Susan Rohrbach remembers the pre-commission years and the problems we had with the lack of guidance and regulations. You can say no to going backwards and to continue to go forward.

Peter Doiron asked that the council put the matter on the ballot – it is for the people to decide. Let the people vote.

Paul Hebert said that we are an example on how to use the Cape Cod Commission. It is necessary to maintain regional problem solving. Now is not the time to pull back – we need to solve problems together. He encourages reform and review but wants to continue the commission.

John Julius said that this should be up to the voters. The town will waste more money giving it to the CCC. The CCC has failed miserably. Leave this up to the voters.

Marc Segerman does not want to lose some things. But is it good to keep wasting our tax dollars? Give the question to the voters.

Patrick Frye urged the councilors to vote against the petition. Do not paint us over, asphalt is forever.

Mark Thompson said that we have the right to redress our government. We have the rights by petition and those who don't give us that right are not correct. Give the right to vote to the people – you have that duty.

Peter Fisher said without the CCC we would have more sprawl, box stores, pollution etc. Builders think that they have created too much regulation. What chance does the commission have to get a new director if we go to the polls against this?

Helen Bresnahan asked the council to vote against the petition. Keep us represented so that we maintain a voice.

Charlotte Saunders said the issue on the CCC should be left up to the voters. Let us do our thing.

Chuck Stacy said that regional planning is needed to solve our problems. Right now it would be premature and foolhardy to withdraw.

Frank Paparo said the CCC has an anti-business climate and stifles businesses from coming here. We still do not have good jobs. Give the public the right to vote.

Bob Frazee said that this does not have merit for action. We are working together effectively now it would not be right to derail at this time.

Brad Crowell is a CCC representative from Dennis. It is fair. The question has merit – but it is not in the best interest to make a decision right now. You need answers on how this will impact the town. Study the questions and allow the CCC to finish its improvements.

Alex Frazee said the CCC is trying to implement change. Give them a chance to do this. We have regional issues. This is not the time to put it on the ballot.

Lou Gonzaga said he collected signatures but is prepared to get more. The issue is shall the voters have a decision. They should decide whether they are for or against the commission. Don't be afraid of losing grants. Allow the voters to vote on this. They put them in let them decide the destiny.

Roy Richardson is the town's representative to the Cape Cod Commission. He feels the voters need information in order to make an intelligent decision at the polls. There is a status report on implementing task force recommendations and the results are being discussed. Do not put it on the ballot at this time but let the voters see how it is developing.

Rev. Harris asked his parishioners to stand with him in favor of voting, since it is our right to vote (and they did stand with him).

Meg Loughran asked the council to vote against the petition at this time. We have a task force and we need to give them a chance to let it work. She pointed out that we have been able to control growth and large box stores. We do have problems but give them a chance to fix them. Vote against sending it to the ballot in November.

Tom Mullen saw signs to withdraw and turn it back to the taxpayers. The right things have been done to protect the water supply wells. The CCC has taken the leadership role along with its predecessor. Do not take the chance of letting people, who do not know much about the whole of Barnstable, possibly create grief.

Chris Kehoe said to put it on the ballot.

Gay Black asked the council to vote no for the withdrawal from the CCC. It is premature to consider this while they are considering change. The town would be better served by keeping the CCC and giving up the new department of Growth Management.

Carolyn Garbutt said the CCC has done good and not so good things. They have turned into a money bureaucracy. Democracy is a messy business. To divorce the town from the scientific resources of CCC is not bright.

Senator Rob O'Leary asked the council to not support the petition. He was involved with the creation of this. It was an enormous undertaking. We needed special authorities to keep and protect the Cape. You will put the whole effort at risk. This is just not about the town, it is a regional entity. If we leave you are the signature community and can threaten all other communities. He said we are not sure what would happen on the state level if this happens – it would be a complicated and messy process and is not fully understood. There might be a requirement for a Cape wide referendum. Do not put this forward.

Peter Kenney from Yarmouth addressed an issue regarding the fact that the CCC did not go forward to apply for some funds when available, for wastewater issues. Don't forget the voters – give them the right to vote.

Scott Blazis spoke against sending this to the voters. In balance it has had a positive effect.

Virginia Keil said please do not put this to a vote. It is the wrong time. Think about what this place would have looked like without the CCC. The CCC has saved us from ourselves.

Ron Bergstrom from Chatham asked the council to not send it to the ballot. You make decisions. If this goes down in flames, it should not make a difference. It will ultimately be the decision of the council to decide.

Andrea Seddon said to give the CCC a chance – it is not the right time. The CCC gives us expertise and guidance. Withdraw the question from the ballot.

Upon motion duly made and seconded it was voted to close the public hearing.

VOTE: Unanimous in favor

Councilor Farnham entertained an amendment to direct the clerk to place the question on the ballot.

Attorney Robert Smith explained to the council that the first question is to vote on the merits of the petition. Then if it is in the affirmative, the council could choose to take a vote on that or any question pertaining to that issue. He explained that someone should move the merits of the petition.

Upon motion duly made and seconded it was moved to vote on the merits of the petition.

Councilor Curtis explained that her position has changed and she cannot vote positively on the merits. Basically because none of us fully understand the consequences; and because we do not understand that, there are too many other issues. She cannot vote positively.

Councilor Munafo asked if the merits were on the question, on the CCC, or the fact of putting it on the ballot. What merits are we to debate and deliberate on? Attorney Smith said the first question that was presented to the Town Council through a group petition was a question that called to adopt a law that would intervene in abortions taking place in Barnstable. It suggested the town administer a test for reasons to abort, etc. The charter asks for the council to vote on the merits of the petition. Attorney Smith said it is not up to him to make a question sensible and logical etc. Therefore a vote on "I move the merits of the petition" is appropriate. In this case, the issue is a lot more intelligible.

After you vote on the merits, you could then have another motion, such as the one placed before you.

Councilor Munafo said the question has merit; but if they are asking us to put it on the ballot, he feels it is ill-timed and ill-advised. But he does believe it should be on the ballot.

Councilor Chirigotis said the value of the commission is not the debate. The task force is beginning the work. We have a search for a new director. The merits of this question do not warrant that it goes forward.

Councilor Canedy received 64 contacts from constituents against and 13 for the petition. She feels it is premature. The CCC may be our only vehicle to make a statement on Cape Wind. We are one big community on the Cape; we have to have a regional oversight to what we do.

Councilor Farnham said give us a choice. We should focus on the rights of the voters. There is a lot of time to hear more information before the election. We try to do what is right for our residents.

Councilor Tobey said that less than 100 years ago his people did not have the right to vote; don't think for a minute that I won't give people the right to vote. Everyone should have the right to vote.

Councilor Crocker said irony rears its head at times. He has faith in the town and its boards that they will do a good job even if we are out of the CCC. Proper decisions will be made. Let the voters decide.

Mimi McConnell asked Councilor Barry to read a statement to not vote on this issue until the task force has had the chance to work on its recent report. We have intelligent voters. Councilor Barry noted that the Senator does not even know what the implications will be if we withdraw. If we leave it, we will no longer be involved in a regional policy on the Cape. He does not see how it will be beneficial.

Councilor Barton pointed out that women were also given the right to vote in the early 1900's. We represent the entire town. Now is not the time to do this. It would be sending the wrong message.

President Joakim noted that there was already a sign on withdrawing from the CCC in front of BJ's. Did the people have all the information they needed when they signed the petition? We may still have to pay the CCC if we withdraw – there might be a cape-wide vote needed. We decided to put another question on the ballot but it was after a full study. The GIZ is nothing without the CCC. There are a lot of grants that we receive as part of our participation in the CCC. The CCC did their own due diligence on the airport – we need traffic mitigation and protection for water etc. We need to find out more information on what it will cost us to get out.

Councilor Barry acknowledged a petition opposing the proposal to have the Town of Barnstable withdraw from the Cape Commission that was signed by about 50 voters from Cotuit.

Upon motion duly made and seconded it was voted to move the question.

VOTE: Unanimous in favor of moving

PETITION

We, the Undersigned, who are at least 150 registered voters of the Town of Barnstable, hereby petition under Section 8-7(b) of the Barnstable Home Rule Charter, for the Barnstable Town Council to act by holding a public hearing and taking a vote on the merits of the following question: "Shall the Town of Barnstable withdraw from the Cape Cod Commission?"

VOTE ON THE MERITS OF THE PETITION:

VOTE: Roll Call – 5 Yes 7 No (Yes votes were: Brown, Crocker, Farnham, Munafo and Tobey)

The Council took a recess from 9:25 p.m. to 9:35 p.m.

ORDERS OF THE DAY

A. OLD BUSINESS

2007-152 - APPOINTMENTS INTRO.: 05/24/07; 07/19/07

Upon motion duly made and seconded it was voted:

That the Barnstable Town Council appoints the following individuals to a multiple member town board/committee/commission.

COMPREHENSIVE FINANCIAL ADVISORY COMMITTEE APPOINTMENT:

Alan Donheiser, 111 Old Kings Road, PO Box 213, Cotuit, MA 02635, term expires 06/30/2008

DISABILITY COMMISSION APPOINTMENT:

Jim Berks, 402 Prince Hinckley Road, Centerville, MA 02632, term expires 06/30/2008

JANE ESHBAUGH COMMUNITY SERVICE AWARD COMMITTEE APPOINTMENT:

Betty Nilsson, 2414 Meeting House Way, Box 3, W. Barnstable, MA 02668, term expires 06/30/2009

VOTE: Unanimous in favor

2007-165 - AN ORDER AUTHORIZING THE TOWN OF BARNSTABLE TO ENTER INTO THE FORMATION OF A REGIONAL ELECTRIC GENERATING COOPERATIVE: INTRO.: 06/14/07; 06/21/07; 07/19/07

Councilor Crocker moved and it was seconded to amend the motion by adding the following: “provided however, that this authorization will not bind the Town of Barnstable to commit to the purchase or use of any electricity that may be generated or purchased by the co-operative nor to any use of Barnstable’s cash, credit or bonding capacity, without further vote of the Town Council.”

VOTE: Unanimous on amendment.

Councilor Canedy said this was what we were looking for.

Councilor Munafo said there had been a report that was not given – may we get that information? He noted that purportedly part of that information did not look favorably on this coop? (This report will be provided). This is a multi step process, and this is only a first step.

Councilor Munafo said we are agreeing to form a new corporation and will enter into an agreement for this corporation. That is the only thing we are agreeing to do. Munafo said the likelihood of getting out may not be that easy and once we commit resources it will not be the same.

Upon motion duly made and seconded it was voted to move the question.

VOTE: MOVE the question – 7 yes 5 no

Upon motion duly made and seconded it was:

ORDERED, that the Town Manager, on behalf of the Town, is authorized to join with the County of Barnstable and Cape Light Compact in the formation of a Massachusetts corporation that shall function as a regional electric generating cooperative, subject to such provisions as are set forth in the corporation's Articles of Organization, as well as M.G.L. c. 164, Section 136 (the "Electric Co-op Law") and M.G.L. c. 156B, provided however, that this authorization will not bind the Town of Barnstable to commit to the purchase or use of any electricity that may be generated or purchased by the co-operative nor to any use of Barnstable's cash, credit or bonding capacity, without further vote of the Town Council

VOTE: As amended 9 yes 3 no - Roll Call – (No votes Crocker, Munafo and Tobey)

<p>2007-166 - ORDERED THAT BARNSTABLE ESTABLISH AN AGRICULTURAL COMMISSION. INTRO.: 06/21/07; 07/19/07</p>

Councilor Farnham explained the rationale behind this issue. He introduced Bill Plettner from the steering committee who addressed the fact that we have many acres of land that are still being utilized for agricultural purposes. This commission will be strictly advisory, represent the farming community and help preserve and revitalize its lands.

Vice President Brown asked if this included aquaculture and it does. Councilor Canedy said this is a perfect union of business and open space.

Councilor Munafo asked if any staff would be involved. Farnham said the commission will be self-supporting and right now they are on their own.

Councilor Barton felt it was a great idea.

Upon motion duly made and seconded it was:

ORDERED,

That the Administrative Code is hereby amended by inserting a new Section in Chapter 241, Administrative Code titled AGRICULTURAL COMMISSION, as follows: There is hereby established an Agricultural Commission to be an advisory committee to the Town. The Agricultural Commission, in conjunction with other town agencies and committees as necessary, will establish methods to improve and increase agricultural and farming opportunities within the Town of Barnstable; assist existing and future agricultural businesses with their needs, and work to ensure an environment of healthy, safe products for human consumption.

The Agricultural Commission's focus will be to help create and maintain an agricultural environment conducive to sustainable economic development. In addition, the Agricultural Commission will work toward the preservation and improvement of private and public agricultural land and resources. The Agricultural Commission will bring private and public sector support and volunteers together to develop and carry out specific agricultural plans, where feasible, throughout the town. For the purposes of this order, agriculture shall include, but not be limited to, the production of crops, keeping and boarding of horses or livestock, horticulture, fresh water and marine aquaculture, forestry, nurseries, greenhouses, and other related activities.

VOTE: UNANIMOUS IN FAVOR

<p>2007-167 - COMMUNITY PRESERVATION FUND APPROPRIATION FOR OPEN SPACE (2 PARCELS ADJACENT TO HATHAWAY'S POND) INTRO.: 06/14/07; 07/19/07</p>
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Manager Klimm gave the rationale on this issue. (See map attached.)

Upon motion duly made and seconded it was voted to go in to a public hearing.

VOTE: Unanimous in favor

Upon motion duly made and seconded it was voted to go out of the public hearing.

VOTE: Unanimous in favor

Councilor Curtis asked why buy it when there is no access and we own all around it – I think this is silly. Lindsay Counsell from the CPC said this came through the legal department. The owner actually wanted a key to the gate, so it became a legal issue if we should give out a key. It is remnants of an old subdivision that dates back to 1911. Rather than litigation it became easier to purchase it.

Upon motion duly made and seconded it was:

ORDERED: That, pursuant to the provisions of G. L. c. 44B, the sum of Fourteen Thousand, Five Hundred and No/100 (\$14,500.00) Dollars be appropriated and transferred from the amount set aside for Open Space CPA funds in the Community Preservation Fund on June 15, 2006 under agenda item number 2006-144 for the purpose of purchasing two parcels of land, totaling .17 acres, adjacent to Hathaway's Pond that are entirely surrounded by 36 acres of existing Town of Barnstable Recreation land.

VOTE: ROLL CALL 10 yes, 1 no, 1 pass – (No Curtis – Pass Rugo)

2008-010 – ACCEPTANCE OF A GRANT FROM THE EXECUTIVE OFFICES OF ELDER AFFAIRS TO THE BARNSTABLE SENIOR SERVICES DIVISION – INTRO: 07/19/07

Councilor Crocker asked who was responsible for writing this grant. Senior Services Director Elyse DeGroot announced that she had written it. She was thanked for her efforts.

Upon motion duly made and seconded it was:

RESOLVED: That the Town of Barnstable hereby accepts a grant in the amount of \$75,304.00 to support the ongoing provision of services through the Town of Barnstable's Senior Services Division. This grant is a state-funded grant that is based on the number of seniors in a town's geographic region.

VOTE: 12 Yes

2008-002 - PROPOSED CHANGES TO THE TOWN'S ADMINISTRATIVE CODE BY THE COUNCIL ON AGING INTRO.: 07/19/07

Upon motion duly made and seconded it was voted to refer this item to a second reading on August 16, 2007.

VOTE: 12 yes unanimous to refer

2008-006 - RESOLVE TO AMEND PRIOR RESOLUTION 2003-027 IN OPPOSITION TO PROPOSED STOP & SHOP PROJECT, IYANNOUGH ROAD, HYANNIS INTRO.: 07/19/07

Councilor Canedy brought forward the rationale as printed. This new proposed project has come from a long period of negotiations and discussions. She pointed out some improvements such as: reduction in square footage, reduction in parking spaces, increase in open space, parking lot

landscaping improvements, etc. There will be many traffic improvements as well. Attorney Michael Ford was also present to represent Stop and Shop.

Councilor Curtis was pleased to see that they plan to attempt to fill the vacant building.

Attorney Ford said we have gone through a MEPA process and received approval. The town has stepped back due to the resolve in 2003. This is to bring the town back into the process. There are a number of hearings yet to be held. Ford said Stop & Shop got the message that they should downscale and slow down.

Councilor Munafo will vote on this. We should have made our will known to the boards and should not have voted on this in 2003.

Councilor Farnham thanked Ford for making this better.

Councilor Chirigotis said there was significant traffic mitigation. Ford said there will be more looking at this in the DRI process. It appears that those will cost more than \$2M.

Councilor Rugo asked Attorney Ruth Weil about the zoning in this area. She said that this is highway business and business zoned. She said that we will be coming to zoning and site plan review for the permits.

President Joakim appreciated the process. She asked about the grocery store downtown and the possible prevention of such a thing. Stop and Shop had a location in downtown Hyannis and they have agreed that they will not prevent a food store from going in that prior location.

Manager Klimm said there are many other businesses that may not have cared what the council thought, but Attorney Ford and Stop and Shop are respectful to our concerns. This allows us to get back to the table. Klimm thanked them, and added that if all the developers were that respectful the relationships would be a lot different.

Upon motion duly made and seconded it was voted that:

WHEREAS: Town Council under Resolve 2003-027 expressed its opposition to the proposed Stop & Shop expansion project for Iyannough Road/ Route 132 in Hyannis (“Project”), and

WHEREAS: There have been significant revisions and improvements to the Project since the time of the Council’s previous Resolution, including:

The size of the proposed building footprint has been reduced by more than 26 percent, where the proposed building footprint has been reduced almost a half-acre, from 74,588 square feet to 55,120 square feet;

Proposed Parking has been reduced by 26 percent, from 402 spaces to 297 spaces;

Proposed Open Space has increased by 21 percent, from 4.9 acres to 6.2 acres;

Building coverage is half the square footage of the five buildings previously on-site;

Proposed parking lot landscaping has been enhanced with landscaped islands between the parking rows;

Proposed site buffer landscaping along Hadaway Road (Attucks Lane) has increased from a depth of 65 feet to 185 feet, and improved screening has been provided for site loading areas and compactors;

The revised site plan includes a connection to abutting properties, decreasing street traffic on Lyannough Road/ Route 132;

Smaller site detention/infiltration basins have been proposed; instead of one large basin, plans call for two smaller basins, one of which would become a landscape feature along the Route 132 frontage. The other basin has been moved back on the site approximately 100 feet from Hadaway Road;

Construction of a connector roadway between Route 132 and Hadaway Road is proposed at no cost to the Town;

Installation of upgraded traffic signals at the Route 132 aforementioned connector roadway, and Attucks Lane intersections are proposed;

Land banking of commercial land for traffic mitigation is proposed;

Long-planned State Highway improvements along Route 132 in the vicinity of the Project Site have now begun; Substantial contribution to infrastructure improvements is proposed.

WHEREAS: the Project Proponent has offered to include as a condition of approval the relinquishment of any rights it, or its agents or assignees may have which would prevent the location of a supermarket in downtown Hyannis;

WHEREAS: the Project Proponent's lease for its current location at 65 Independence Drive, Hyannis, Massachusetts, has an additional twenty years (20) years remaining and the Project Proponent has offered to work with the Town to locate an acceptable tenant to lease said space;

WHEREAS: The Project as revised has been reviewed under the Massachusetts Environmental Policy Act (MEPA), and received approval thereunder by the Secretary of Environmental Affairs' issuance of a Final Certificate, and

WHEREAS: The Project Proponent now intends to undergo permitting and regulatory approval before the Cape Cod Commission and the Town of Barnstable.

NOW THEREFORE, be it

RESOLVED: that the Barnstable Town Council amend the action taken under Resolve 2003-027 by expressing its intention that the Project as revised with the changes, improvements, representations and offsets delineated and promised herein should be allowed to proceed with the required permitting and regulatory approval process; and further, that the Council hereby requests that the Proponent continue to keep the Council informed of the status of Project permitting and approval, for the Council's information and consideration.

VOTE: 11 Yes 1 No

2008-008 - REGULATORY AGREEMENT, 89 LEWIS BAY ROAD AND 42 SOUTH STREET, HYANNIS (THE GREENERY) INTRO.: 07/19/07

Director of Growth Management Ruth Weil said this is a regulatory agreement under the GIZ. She said this gives us a lot of offsets and gives us a productive building with business and residential opportunities. She introduced Attorney David Lawler who made the presentation.

Upon motion duly made and seconded it was voted to go in to a public hearing for the purpose of discussing 2008-008.

VOTE: Unanimous in favor

Attorney Lawler gave the presentation on the “Greenery” on Lewis Bay Road. It presently is a blighted building and is rundown. They are proposing a mixed-use development. A 4th floor will be added. The first floor is basically underground since there is no basement. It will be about a 3 ½ story structure. There will be higher end condominiums on the upper floors. On the first floor they are marketing medical or professional office space.

Attorney Lawler said he has been before the planning board numerous times as they have proceeded through the project. The water and sewage use will be 50% less than the prior use. He further explained the parking and traffic issues as well as the landscaping, water improvements, and lighting improvements.

(See attached letter from Hyannis Water Board in support of the agreement).

Paul Hebert from Champ Homes, who is an abutter, congratulated the developer and the planning board. He said everyone worked hard to resolve this. He feels this is a wonderful and beautiful addition to the neighborhood.

Cynthia Cole from the BID said that although it is outside of the BID it is important to the downtown area. It is a good mixed use project.

Upon motion duly made and seconded it was voted to close the public hearing.

VOTE: Unanimous in favor of closing

Upon motion duly made and seconded it was moved to amend the agreement by changing paragraph #38 – page 33 – under the subparagraph entitled “building height” to strike the number “56” and substitute in its place the number “61”.

VOTE: on amendment – 12 yes

Councilor Munafo asked if there is an affordable housing component. Weil said that we need to bring diversity to the housing stock. It is important to bring high end condos to this area and as a housing offset there will be off site housing. This is part of a diversified housing strategy.

Councilor Canedy asked if offsite parcels have been identified. Weil said that we are cataloguing town-owned parcels and are working with the housing committee.

Councilor Farnham suggested that construction begin at 8 a.m. on Saturdays instead of 7 a.m. He said that the council would like an inventory of housing units that are available, coming on line, and in the planning stages for the downtown area.

Councilor Rugo feels that 4 floors is too tall and adds more parking to the harbor area. He does not support this. Is this going to be a domino effect?

Councilor Crocker said these developers are committed to the community. He has a problem with the height as well. He thanked all for the presentation.

Upon motion duly made and seconded it was voted to call the question.

VOTE: 8 yes 4 no

Upon motion duly made and seconded it was voted:

REGULATORY AGREEMENT
89 LEWIS BAY ROAD AND 42 SOUTH STREET, HYANNIS

This regulatory agreement ("Agreement") is entered by and between the developer, , Greenery Development, LLC ("Developer") and the Town of Barnstable ("Town"), a municipal corporation, on this ___ day of ___, 2007 pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Section 168 of the Barnstable Code;

WITNESS:

WHEREAS, the Developer under this Agreement will contribute public capital facilities to serve the proposed development and the municipality or both;

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

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

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

WHEREAS the Developer is the legal owner of the property ("Property") at 89 Lewis Bay Road and 42 South Street, Hyannis, consisting of approximately 91,346 sq ft, shown on Barnstable Assessor's Map 327 as Parcels 241&223, and desires to develop the Property pursuant to a regulatory agreement.

WHEREAS, the Development will rehabilitate a large, blighted and vacant building that was formally a nursing home, located on a highly visible parcel at the corner of South Street and Lewis Bay Road.

WHEREAS, the Development will result in a substantial reduction in water use, sewer use and traffic as compared to the previous nursing home use.

WHEREAS, the Development will renovate the existing building, including the existing brick façade, and will create a visual benefit to the South Street, Lewis Bay Road, and Hyannis Harbor area.

WHEREAS, the Developer demolished two blighted residential structures and will improve the lots upon which they were located with parking, lighting and landscaping;

WHEREAS the Development will improve blighted lots and a vacant building and will provide newly renovated office space and residential units, and the rehabilitation of the building will add economic and aesthetic value to the area;

WHEREAS, in addition to the improvements cited above, the Developer has agreed to provide financial mitigation to offset project impacts as set forth below:

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

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

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

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

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

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

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

WHEREAS the Developer will require zoning relief from maximum density, building height and story limitations, front setbacks (for the existing building), parking stall size and parking lot buffers, and vegetated buffers to residential properties, all as further defined in paragraph 38 below;

WHEREAS the Developer has undergone at least two public hearings on the Agreement application and received a majority vote from the Planning Board approving the application on July 9, 2007;

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

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

1. If the development rights granted hereunder are exercised, the Developer agrees to construct the Project in accordance with the plans and specifications submitted to and approved by the Town, listed as follows and made part of this Agreement by reference:

- a) Plans entitled "Mixed Use Development, 89 Lewis Bay Road & 42 South Street, Hyannis, MA" all dated April 25, 2007, revised through June 14, 2007, sheets 1 through 7, prepared by BSC Group, as further detailed as follows:
 - Title Sheet, Sheet 1 of 7;
 - Existing Conditions Plan, Sheet 2 of 7;
 - Layout Plan, Sheet 3 of 7;
 - Landscape and Lighting Plan, Sheet 4 of 7;
 - Grading and Utility Plan, Sheet 5 of 7;
 - Site Details, Sheet 6 of 7;
 - Site Details, Sheet 7 of 7.
 - b) Plans entitled "Project, Lewis Bay Court, Exterior Elevations", dated April 10, 2007, prepared by JGA Architectural Design and Judd Brown Designs, Inc., including a South Street elevation, Lewis Bay Road elevation, and second, third and fourth floor plans, and Plans entitled "Lewis Bay Building Renovation" "Left Side Elevation Looking from South Street" and "Right Side Elevation Looking from Lewis Bay Road", Sheet A5.2, by JGA Architectural Design, undated, and "Lewis Bay Building Renovation" "Proposed First Floor Plan", Sheets A1.1 and A1.1B, by JGA Architectural Design, undated.
 - c) Such other plans and plan revisions as may be required by the terms and conditions of this Agreement;
2. The Developer proposes to renovate an existing building to create a mixed use development as follows: renovate the building façade and renovate and enhance site amenities, add a fourth floor, create 21,000 s.f. of non-residential space on the first floor to be developed as not more than four commercial condominium units, and create a total of 42 residential condominium units including 84 bedrooms with said residential units to be located on the second, third, and fourth floors. In addition, the Developer proposes to create additional parking with landscaping on the 42 South Street lot, and Developer demolished two blighted, residential structures to accommodate said additional parking. The 89 Lewis Bay Road lot is located within the Medical Services (MS) zoning district. The 42 South Street lot is located within the Harbor District (HD) zoning district. Both lots are located within the Growth Incentive Zone (GIZ) of Barnstable (the "Development");
 3. Ground-floor uses shall be business and professional offices or medical/dental clinics, as allowed within the MS Zoning District, Section 240-24.1.4 of the Barnstable Code;
 4. In addition to the rehabilitation of the existing structure and parking area and the reduction in impacts from the former nursing home use, mitigation offered by the Developer includes but is not limited to:
 - \$250,000 toward improvements within the layout of South Street in Hyannis;
 - \$150,000 toward improvements for the benefit of the Barnstable Department of Public Works, Water Supply Division;
 - \$34,421 toward improvements within the layout of School Street in Hyannis;
 5. The development rights granted hereunder shall be exercised and development permits may be obtained hereunder for a period of two years from the effective date of the Agreement, provided, however, that prior to the expiration of said two year period the Developer may request one six month extension to obtain development permits. Upon receipt of necessary development permits construction shall proceed continuously and expeditiously, but in no case shall construction exceed 2 years from receipt of necessary development permits. The Developer estimates that

construction will commence on or about August 1, 2007 and will be completed on or about July 31, 2009;

6. The Developer shall establish a condominium association or associations to carry out the terms and conditions of this Agreement which association(s) shall include all residential and non-residential condominium units. For the purposes of this Agreement, the term "Developer" shall mean the Developer and/or Developer's successor condominium association(s). The Developer shall remain a voting member and fee payer of any unsold condominium units. The form and content of condominium association documents, including the condominium master deed and association bylaws, shall be approved by the Town of Barnstable Legal Department for the purposes of ensuring compliance with the terms and conditions of this agreement, prior to the sale of any condominium units;
7. All building access, but for deliveries as discussed below, shall be through the main entrance with all commercial tenant use (i.e. office waiting areas) to be contained within each commercial tenant condominium;
8. All commercial tenants shall receive large deliveries via the separate, ramped entrances located on the north and west side of the building;
9. Developer agrees to renovate the fire hydrant on South Street to current standards;
10. Developer will remove the existing utility poles that serviced the two demolished residential units at 42 South Street so long as those poles do not service other lots/structures;
11. The proposed crosswalk shall align with the sidewalk ramp accessing Cape Cod Hospital property on the opposite side of Lewis Bay Road. The Developer shall perpetually maintain the crosswalk with thermo plastic paint;
12. The Development shall eliminate 2 curb cuts on South Street and shall utilize one curb cut on South Street and one curb cut on School Street, as shown on the Plans. Developer shall install a "No Right Turn" sign at the South Street parking lot exit and a "One-Way" arrow sign across South Street in the vicinity of the South Street curb cut, as may be permitted by the Town. The sidewalk shall be reconstructed in areas where curb cuts are eliminated, consistent with Condition 13 below;
13. The Developer shall replace the sidewalk and sidewalk curbing along South Street between the proposed South Street curb cut and running west to School Street and then around the corner and up School Street to the edge of Developer's property on 42 South Street. The newly constructed sidewalk shall be constructed of concrete (brick accent is allowed) with granite curbing and shall be constructed at a width of not less than five (5) feet, and the Developer may upgrade other areas of sidewalk along the frontage of the Development consistent with this agreement;
14. Developer agrees to provide an easement for the placement and maintenance of new municipal street lights on South Street if so requested by the Town;
15. Developer intends to reuse existing light fixture bases and shall install new light poles and fixtures, to be installed in accordance with the Downtown Hyannis Design and Infrastructure Plan;

16. Lighting for the Development shall be contained on-site, shall be down cast and shall not contribute to light pollution of the area;
17. Developer shall be responsible for snow plowing and snow removal on the Development site in perpetuity;
18. All landscaping within the development shall be low water use and shall minimize the use of fertilizers and pesticides;
19. Developer shall provide an eight-foot high wood fence to screen the Development from neighboring residences, and shall provide landscaping to abutting properties as shown on the Plans;
20. The dumpster shall be located and screened as shown on the Plans. The dumpster shall be serviced solely between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday;
21. Bonds: Prior to the issuance of a foundation building permit Developer will provide a performance bond in an amount to be approved by the Planning Board or its designee, said bond to be expended on the replacement of landscape materials if such replacement becomes necessary. Any unexpended portion of said performance bond (including interest) may be released by the Planning Board to the Developer or his successor(s) after three years from the date of the initial landscape plantings, such date to be determined by the Building Commissioner, upon the request of the Developer;
22. Bonds: Bonds shall be provided as required by applicable regulation (i.e. for road openings);
23. Developer and its successors will participate in the Town of Barnstable's Transportation Management Association (TMA) upon its formation. Participation shall include: (a) distribution of materials provided by the Town to all tenants, lessees, and purchasers of condominium units within the development; and (b) the identification of a representative for the development who will serve as the contact between the inhabitants and tenants of the development and the Town's TMA;
24. All plumbing fixtures shall be low water use fixtures and other water conservation measures are encouraged in the design and development of the project;
25. Consistent with approved plans, Developer shall construct a Passive Stormwater Maintenance and Infiltration System to service the Development;
26. Developer will provide a bicycle rack at the Development site;
27. Construction and demolition debris from the Development shall be removed and reused or recycled to the maximum extent possible;
28. Developer shall provide calculations demonstrating adequate water flow for fire suppression, and standpipes, as required by the Hyannis Fire Department;
29. Ground-floor tenants shall not use, store, generate, treat or dispose of hazardous waste or hazardous materials in quantities greater than 25 gallons (or the dry weight equivalent) or less, and shall not generate hazardous waste in quantities greater than the Very Small Quantity Generator level as defined in the Massachusetts Hazardous

Waste Regulations, 310 CMR Section 30.353. In addition, all ground-floor tenants shall comply with state and local regulations regarding medical materials and wastes including the use of a licensed disposal company, as required by law;

30. Developer is responsible for obtaining all applicable permits and licenses, including but not limited to the following: foundation permit, building permit, street excavation permit (necessary for work in all public spaces), sewer permits and water permits. Contractors are required to have the insurance stipulated in the Street Excavation Rules and Regulations (SERR) and all work on town property must comply with all provisions of SERR;
31. Developer will make best efforts to complete construction work in accordance with a construction schedule and sequencing plan submitted to the Town prior to the execution of the Regulatory Agreement. To the extent construction impacts public property or public rights of passage, changes in the schedule, if needed as work progresses, are subject to the approval of the Town. The developer shall notify the Town of Barnstable Growth Management Department and the Department of Public Works at least 48 hours in advance of working on Town property. (The construction sequencing plan shall identify those areas of public street layout and sidewalk that may be used by the Developer at various points in the project construction and where barricades and fencing will be installed during construction.) The Developer will be responsible for all construction signage, directional signs, and police officers necessary for the performance of the work;
32. Exterior construction impacts shall be minimized, and construction shall be limited to the hours of 7:00 a.m. to 6:00 p.m. weekdays, and 7:00 a.m. to 5:00 p.m. Saturdays. No exterior construction shall occur on Sundays. The Building Commissioner shall establish protocols to minimize the location of staging, noise, dust, and vibration;
33. To the extent that the referenced plans do not depict all of the findings and conditions as set forth in this Agreement, revised plans and/or notations shall be provided. In addition to permits, plans and approvals listed above, any and all permits and licenses required shall be obtained;
34. Upon completion of all work, a registered engineer of land surveyor shall submit a letter of certification, made upon knowledge and belief in accordance with professional standards that all work has been done in substantial compliance with the approved site plan. This document shall be submitted prior to the issuance of the final certificate of occupancy;
35. Each residential condominium unit shall have at least one dedicated parking space;
36. In order to maintain the use of the Development as a residential condominium development, the rental of condominium units shall be restricted to not less than thirty (30) days tenancy;
37. During the construction of the Development, the Developer shall provide a contact number, to be clearly posted on the Development site, the purpose of which shall be to receive and respond to comments and concerns that may be raised by neighboring property owners during construction;
38. Town hereby grants a waiver from the following zoning restrictions:
Building height: Relief is granted from Section 240-24.1.4.C, Maximum building height, and permission is granted to construct the building at a maximum height

of four stories with the maximum vertical distance to the average height of the highest roof plane not to exceed forty-eight and one-half feet (48.5'), plus or minus, as shown on the plans, with the exception that structures containing stairwells/elevators shall not exceed 61 feet from grade, as shown on the Plans;

Density: Relief is granted from Section 240-24.1.4.B to allow 42 units and 21,000 s.f. of commercial mixed use development on 91,346 s.f. of land;

Parking: Relief is granted from Section 240-24.1.7.A to allow parking at 42 South Street as an accessory use to the mixed use structure at 89 Lewis Bay Road; from Section 240-24.1.10.A.4.a.2. to allow parking located less than 30 feet from the base of the multi-family dwelling; and from Section 240-24.1.10.A.4.c.2 to allow existing parking spaces of less than nine feet by twenty feet and to allow new parking spaces with a minimum size of nine feet by nineteen feet, all as shown on the Plans;

Setbacks: Relief is granted from Section 240-24.1.4.D.1. to allow a perimeter of green space of less than ten feet (10') in width due to existing conditions layout of the building and parking lot at 89 Lewis Bay Road; and from Section 240-24.1.10.A.4.d. 1 and 4 to allow less than 10% of interior parking lot landscaping and less than one tree per five parking space, due to existing conditions layout of the building and parking lot at 89 Lewis Bay Road; from Section 240-24.1.4.C to allow a front setback of 19.9' instead of twenty feet due to existing building location; from Section 353-4 to allow the placement of a dumpster within a property line, as shown on the Plans; and from 240-24.1.10.A.5.c to allow less than twenty feet (20') of landscaping from all residential property lines;

Fences: Relief is granted from Section 240-24.1.10.A.8 to allow a fence of eight feet (8') abutting a residential district;

Signage: Relief is granted from Section 240-64 to allow signage greater than twelve (12) square feet as further approved by the Planning Board or its designee.

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

Dated this _____ day of _____, 2007.

 Town of Barnstable
 By:

 Developer, Greenery Development, LLC
 By:

VOTE: 10 yes 2 no (No – Crocker and Rugo)

<p>2008-009 – ORDER GRANT TO NSTAR ELECTRIC COMPANY AND VERIZON NEW ENGLAND, INC., UTILITY EASEMENTS-1200 PHINNEY’S LANE</p> <p>07/19/07</p>	<p>INTRO.:</p>
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Town Manager Klimm said the town has received requests to place poles outside of the normal placement of the road. This is an area where there is town owned land where the poles could be placed.

Councilor Farnham asked about the moving of the poles and will this take a long time. Engineer Robert Burgmann said getting these moved involves first needing the easements. It will take time to get them all moved and they would be moved within the next year.

Councilor Crocker asked if we will have street lights in this area. Burgmann said if the fire district wants to place the lights there, they could do it. The lighting comes through the districts.

Councilor Chirigotis asked if we could bury the utilities. Burgmann said the cost would be prohibitive and not what was going to be funded at that location. This is a Mass Highway project and they do not fund the burial of utilities.

Upon motion duly made and seconded it was:

ORDERED: That the Town Council vote to grant to Nstar Electric Company and Verizon New England, Inc., utility easements in a portion of 1200 Phinney’s Lane property (Map 274, Parcel 31) in Barnstable (Hyannis), Barnstable County, Massachusetts, as shown on a plan of land entitled “Iyannough Road (Route 132), Exhibit “A”, Easement Sketch, Prepared for Verizon, Phinney’s Lane and Iyannough Road, Barnstable, MA – Scale: 1” = 40’, Date: February 16, 2007” by Canal Land Surveying & Permitting Inc., a copy of which plan is on file with the Town Clerk’s Office, and to authorize the Town Manager to take any steps necessary to finalize said easement.

VOTE: 11 yes 1 no

2008-007 - GRANT ACCEPTANCE AND TRANSFER ORDER INTRO.: 07/19/07

Manager Klimm presented the rationale.

Upon motion duly made and seconded it was:

ORDERED: That the Town Council hereby accepts a Cape Cod Cooperative Extension Wildfire Assessment and Preparedness Program Land Management and Wildfire Grant in the amount of \$5,000 to continue reducing fuel loadings along the residential interface areas in Barnstable, along the Barnstable/Sandwich town line, and within a firefighter and public safety zone.

VOTE: 12 Yes

2007-143 - ADOPT PROVISIONS OF G.L. C. 33 SEC 59 EFFECT OF MILITARY SERVICE ON SALARY OR VACATION ALLOWANCE OF PUBLIC EMPLOYEES INTRO.: 05/24/07; 07/19/07

Upon motion duly made and seconded it was voted to postpone action on this item until August 16, 2007.

VOTE: 10 yes 2 no

NEW BUSINESS

2008-001 - APPOINTMENTS INTRO.: 07/19/07

Vice President Brown excused himself from this issue.

A motion was made and seconded to add the name of Herbert L. McSorley, 117 Hinckley Circle, Osterville, as another nominee for the Water Quality Committee.

Upon motion duly made and seconded it was voted to refer this item as printed in the agenda with the addition above to a second reading.

VOTE: 10 yes 1 no 1 abstain

Upon motion duly made and seconded it was voted to continue the meeting past 11 p.m.

VOTE: 12 yes

2008-004 - REAPPOINTMENTS - INTRO.: 07/19/07

Upon motion duly made and seconded it was voted to refer this item as printed in the agenda to a second reading on August 16, 2007.

VOTE: 12 yes

2008-005 - COMMUNITY PRESERVATION FUND APPROPRIATION FOR COMMUNITY HOUSING INTRO.: 07/19/07

Upon motion duly made and seconded it was voted to refer this item to a public hearing to be held on August 16, 2007.

VOTE: 12 yes

2008-011 – ORDER TO CREATE A RECREATIONAL SHELLFISH AREA AND SHELLFISH RELAY OVERLAY DISTRICT – INTRO: 07/19/07

Upon motion duly made and seconded it was voted to refer this item to a public hearing with the Planning Board in September, 2007.

VOTE: 8 Yes 4 No

ADJOURNMENT

Upon motion duly made and seconded it was voted to: **ADJOURN.**

VOTE: UNANIMOUS TO ADJOURN at 11:05 p.m.

Respectfully submitted,

Linda E. Hutchenrider, MMC/CMMC
Town Clerk/Town of Barnstable