



The Town of Barnstable Town Council

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Tom Rugo
Harold E. Tobey

Administrator:
Donald M. Grissom

Town Council
Secretary:
Barbara A. Ford

TOWN COUNCIL MEETING AGENDA October 18, 2007 7:00 PM

- 1. ROLL CALL**
- 2. PLEDGE OF ALLEGIANCE**
- 3. MOMENT OF SILENCE**
 - **APPROVE “No Discharge” letter**
- 4. PUBLIC COMMENT (May be limited to 2 minutes)**
- 5. COUNCIL RESPONSE TO PUBLIC COMMENT**
- 6. ACT ON MINUTES**
- 7. COMMUNICATIONS FROM ELECTED OFFICIALS, BOARDS, COMMISSIONS, STAFF, CORRESPONDENCE, ANNOUNCEMENTS AND COMMITTEE REPORTS**
- 8. ORDERS OF THE DAY**
 - A. OLD BUSINESS**
 - B. NEW BUSINESS**
- 9. TOWN MANAGER COMMUNICATIONS**
- 10. ADJOURNMENT**

NEXT MEETING NOVEMBER 1ST

ITEM NO.**INDEX TITLE****PAGE****A. OLD BUSINESS**

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B. NEW BUSINESS

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2008-037	– Resolve that the Town Council moves to approve the conservation restriction application of William and Antonia Cook, Grantors, and Barnstable Land Trust, Grantee, over 5.45 acres of land located at 141 Calves Pasture Lane, Pond Village, Barnstable, Map 259/Parcel 003 for the purpose of preserving open space (May be acted upon)	9 -11
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2008-039	– Resolve that the Town Council moves to approve the conservation restriction application of James G. Hinkle, Grantor, and Barnstable Land Trust, Grantee, over 2.85 acres of land located at 4275 Main St, Cummaquid, Barnstable, Map 350/Parcel 006 for the purpose of preserving open space (May be acted upon)	15 – 17
2008-040	– Resolve that the Town Council moves to approve the conservation restriction application of James B. Ingram and Barbara L. Ingram, Grantors, and Barnstable Land Trust, Grantee, over .70 acres of land located at 91 and 93 Route 149, Maps and Parcels 007/008 (Lot A) and 078/001 (Lot C) in Marstons Mills for the purpose of preserving open space (May be acted upon)	18 – 20
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Minutes of Barnstable Town Council:

Meetings of September 6, September 20, September 27 Special Meeting, and October 4, 2007

Please Note: It is possible, if it so votes, the Council may go into executive session and that the council may act on items in a different order than they appear on this agenda.

A. OLD BUSINESS (REQUEST TO BE POSTPONED TO NOVEMBER 1, 2007)

**2008-016 - APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$1,785,000 FOR THE PURPOSE OF A TOWN WIDE COASTAL ACCESS PLAN
INTRO.: 08/16/07; 09/06/07; 10/18/07**

ORDERED: that the sum of \$1,785,000 be appropriated for the purpose of funding improvements to the Town's coastal properties and that to meet that appropriation, the Town Treasurer is authorized to borrow \$1,785,000 and that the Town Manager is authorized to contract and expend said appropriation made available for that purpose and is authorized to accept any grants or gifts in relation thereto and furthermore that the town rescind \$1,785,000 of borrowing authorization under Council Order 1998-054 for the purpose of the Barnstable United Transportation and Parking System. (BUTAPS).

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

- _____ Read item
- _____ Motion to Open Public Hearing
- _____ Rationale
- _____ Public Hearing
- _____ Close public hearing
- _____ Council discussion
- _____ Move/vote

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2008-016
INTRO.: 08/16/07**

TO: Town Council
FROM: John C. Klimm, Town Manager
DATE: August 8, 2007
SUBJECT: Appropriation and loan order in the amount of \$1,785,000 for the purpose of a town wide coastal access plan

BACKGROUND: People are inherently drawn to Barnstable because of the beautiful ocean, lakes, and ponds. The natural environment and water bodies in particular are an important economic driver and the town has a responsibility to our residents and visitors to maintain and enhance the town's coastal properties. Town-owned Ways to Water include Marinas, Beaches, Landings, Bulkheads, Docks, Parks, Boat Ramps, and other points of access deemed "Ways to Water" generically. Funds are needed for maintenance and capital improvements to improve our collective access to these waterways in a comprehensive manner. The creation of the Town of Barnstable's Coastal Access Plan is a collaborative effort between the Town Manager's office and various impacted town departments to enhance said access town wide.

ANALYSIS: This appropriation will improve access for residents and visitors to bodies of water throughout the town, thereby contributing to economic development efforts by improving public recreation space and opportunities.

FISCAL IMPACT: The Town's Capital Trust Fund includes provisions for annual debt service payments on the remaining \$1,785,000 BUTAPS authorization. This request will transfer these provisions to the CAP instead. Since this provision already exists in the CTF there is no impact to the overall available funds for future projects within the CTF.

TOWN MANAGER RECOMMENDATION: The Town Manager recommends approval of this appropriation and loan order.

A. OLD BUSINESS (MAY BE ACTED UPON—ROLL CALL)

**BARNSTABLE TOWN COUNCIL
ITEM NO.: 2008- 022
INTRO.: 9/6/2007, 9/27/2007, 10/18/2007**

**COMMUNITY PRESERVATION FUND APPROPRIATION FOR OPEN SPACE – Mills Property
(May Be Acted Upon—Roll Call)**

ORDERED: That, pursuant to the provisions of G. L. c. 44B, the sum of One Hundred Fifty Thousand and No/100 (\$150,000.00) Dollars be appropriated and transferred from the amount set aside for Open Space CPA funds in the Community Preservation Fund on June 21, 2007 under agenda item number 2007-162 for the purpose of acquiring open space by co-purchasing with the Town of Mashpee approximately 15 acres of Mills family properties located adjacent to the so-called Cape Club lands that were acquired in 2002 and said funds would be used in conjunction with Town of Mashpee CPA funds and accept any gifts or grants including without any limitation the EOEI Drinking Water Supply Protection Grant and authorize the Town Manager to contract for and expend the amount approved and execute and deliver any documents in connection therewith on behalf of the Town.

Sponsor: Town Manager upon recommendation of the Community Preservation Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read item
- Rationale
- Council discussion
- Move/vote

BARNSTABLE TOWN COUNCIL
2008- 022
AGENDA ITEM SUMMARY
INTRO: 9/6/07, 9/27/07, 10/18/07

TO: Town Council
FROM: Community Preservation Committee
DATE: August 27, 2007
SUBJECT: Mills Property Acquisition Rationale

Background: The Community Preservation Committee (CPC) met on July 31, 2007 and has recommended that the town support the funding request of \$150,000.00 from the Town of Mashpee to co-purchase for open space approximately 15 acres of Mills family lands in the Town of Mashpee.

Rationale: The Barnstable Community Preservation Committee has voted to recommend funding of \$150,000 of the \$240,000 requested by the Mashpee Community Preservation Committee for the purchase of the so called Mills property in the Town of Mashpee. This approximately 15.235 acre parcel was part of the original proposal for the purchase of the Cape Club Golf Course property now called the Santuit Pond Preserve. The appraised value of this property is \$835,000. Mashpee Town meeting has previously voted to fund \$727,000 for the purchase of this land and contingencies. The proposal is that the property would be jointly owned and managed by both Towns as a part of the Santuit Pond Preserve. This land is important to Barnstable in that it continues our partnership with the Town of Mashpee protecting important Open Space. The land is an important high priority wildlife habitat and a wildlife corridor according to a 2003 study. This land provides linkages to existing trails and hiking areas. Preservation of these parcels will also protect a Zone 2 water supply recharge area. The care and maintenance of this land is important to Barnstable residents in the Hollow Road / Santuit Newtown Road area in that management of illegal off road vehicles and dumping is most easily served by Barnstable resources as this land abuts our existing holdings. In fact historically the lands east of Santuit Pond and the Santuit River were once part of the Town of Barnstable, those water bodies formed a natural boundary, and when Mashpee was incorporated the town line was changed and it fell along parcel boundaries that had been established at the time.

A. NEW BUSINESS (Refer to Public Hearing – November 1, 2007)

**BARNSTABLE TOWN COUNCIL
ITEM NO.: 2008-036
INTRO.: 10/18/2007**

COMMUNITY PRESERVATION FUND APPROPRIATION FOR HYANNIS AND BARNSTABLE HISTORIC INVENTORIES AND PLAN

ORDERED: That, pursuant to the provisions of G. L. c. 44B, the sum of Seventy Thousand and No/100 (\$70,000.00) Dollars be appropriated and transferred from the amount set aside for Unreserved Funds in the Community Preservation Fund on June 21, 2007 under agenda item number 2007-162; and that the Town of Barnstable Growth Management Department is authorized to contract and expend the amount for completing the Hyannis Historic Inventory, Barnstable Historic Inventory along with the Barnstable Historic Preservation Plan.

SPONSOR: Town Manager upon recommendation of the Community Preservation Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Motion to Open Public Hearing
- ___ Rationale
- ___ Close public hearing
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2008-036
INTRO.: 10/18/2007

TO: Town Council
FROM: Community Preservation Committee
DATE: September 24, 2007
SUBJECT: Rationale for Hyannis Historic Inventory, Barnstable Historic Inventory and Barnstable Historic Preservation Plan.

Background: The Community Preservation Committee (CPC) met on September 18, 2007 and has recommended that the town support the funding request of \$70,000.00 from the Town of Barnstable, Growth Management and the Barnstable Historical Commission for the completion of the Hyannis Historic Inventory, Town of Barnstable Historic Inventory Update and the Town of Barnstable Historic Preservation Plan.

Rationale: The project goal is to fund the completion of the Hyannis Historic Inventory, the Town of Barnstable Historic Inventory Update and Town of Barnstable Historic Preservation Plan. The combined Hyannis and Town of Barnstable Inventory Update is projected to cost \$50,000 and the Town of Barnstable Historic Preservation Plan is projected to cost \$20,000.

The inventories would be done in two phases and would include the late 19th and early 20th century historic properties that were either missed or not included the first time that this inventory was completed. Phase I is to conduct an analysis of inventoried properties within the Hyannis Main Street Waterfront Historic District to provide additional detail about the significance of existing structures beyond that identified in the 1996 inventory of the District's cultural resources and create a list and narrative description of buildings and structures that contribute to and are significant to the preservation of the district. Phase II is to analyze and inventory the portion of the Hyannis Village Zoning Districts that lies outside the Hyannis Main Street Waterfront Historic District using the Massachusetts Historical Commission (MHC) survey methodology and inventory forms as well as other criteria identified by the Town of Barnstable; to identify contexts for National Register evaluation and apply the National Register Criteria to all resources identified in the survey; and to submit to the Town a list of individual properties that are recommended as qualifying for nomination to the National Register of Historic Places.

The Town's first preservation plan was completed in 1985 and was updated in 1990. There has been no update since that time and many of the recommendations from the original plan have been implemented. The updated inventories would provide information necessary for assessing the issues that are prevalent for today.

B. NEW BUSINESS (May be acted upon)

**2008 – 037 RESOLVE THAT THE TOWN COUNCIL MOVES TO APPROVE THE CONSERVATION RESTRICTION APPLICATION OF WILLIAM AND ANTONIA COOK, GRANTORS, AND BARNSTABLE LAND TRUST, GRANTEES, OVER 5.45 ACRES OF LAND LOCATED AT 141 CALVES PASTURE LANE, POND VILLAGE, BARNSTABLE , MAP 259/PARCEL 003 FOR THE PURPOSE OF PRESERVING OPEN SPACE
INTRO: 10/18/07**

RESOLVE, That the Town Council approve the conservation restriction application of William and Antonia Cook, grantors and Barnstable Land Trust, grantee, over 5.45 acres of land located at 141 Calves Pasture Land, Pond Village, Barnstable, Massachusetts; Map259/Parcel 003 for the purpose of preserving open space

SPONSORS: Councilor Ann Canedy, Liaison to the Land Acquisition Committee, with the approval of the Legal Department and the Conservation Commission

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Rationale
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2008-037
INTRO.: 10/18/07

TO: Town Council
FROM: Councilor Ann Canedy, Liaison to Land Acquisition and Preservation Committee
DATE: October 7, 2007
SUBJECT: William Cook and Antonia Cook Conservation Restriction Rationale

Background: One of the charges of the Land Acquisition and Preservation Committee is to seek innovative ways to preserve open space beyond tapping into the Community Preservation funds and other Town funds. The Federal Government passed Section 1206 of the Pensions Bill (HR4) to help landowners get a significant tax benefit for making a donation of a conservation restriction, restricting future development of their land to protect a resource important to the public. The provision is effective for conservation restriction donations made from January 1, 2006 through December 31, 2007. Property owners are provided with an incentive to donate land as a conservation restriction in return for tax benefits. Acres of land can be donated in perpetuity without any exchange of Town or private funds and without the incurrence of maintenance and monitoring costs by the Town. Conservation Restrictions are unique in that public access is not required.

If public access is provided, the Internal Revenue Service deems it a public benefit perse. If access is not provided, the IRS deems a conservation restriction s a public benefit if it meets clearly delineated criteria. Local approval is required for the applicant to move forward to State and Federal approval before the conservation restriction is granted. Conservation restrictions are voluntary donations by the donor who wishes to have his/her land preserved for future generations.

Through the hard work of the Barnstable Land Trust, the Cook property located at 141 Calves Pasture Lane, Pond Village, Barnstable, has been identified as an important parcel worthy of preservation in perpetuity. The total parcel is 7.13 acres. Of that amount, 1.68 acres (the building envelope) is unrestricted and 5.45 acres of which 4.55 acres are uplands and .90 acres are wetlands will be restricted.

Rationale: The purpose of the Cook Conservation Restriction is to protect the habitats and important wetland values of the land, to assure the land will be retained in perpetuity predominately in its scenic and open condition, to preserve a scenic view from Barnstable Harbor and to prevent any use that would materially impair or interfere with its conservation values.

This proposed conservation restriction conforms to the Open Space Policy of the Town of Barnstable adopted in 1981, which “encouraged...grants of conservation restrictions”. Further, it conforms to the recommendations of the Pond Village DCPC, Local Conservation Plan, and Regional Conservation Plan. Specifically the Cook Conservation Restriction offers the following public benefit and will:

- Preserve a scenic view
- Prevent disturbance of wetlands
- Preserve open space
- Preserve important habitats of fish, wildlife and plants
- Protect marine water quality
- Protect fresh water and ground water quality
- Preserve and protect the shoreline

- Reduce septic discharge in the area
- Limit and prevent construction on land of natural resource value

The Conservation Value of the Cook Conservation Restriction is as follows:

- Contains over 1,100 linear feet of tidal shoreline on Broad Sound and Barnstable Harbor, encompasses salt marsh tidal wetlands; and is partially within the 100-year floodplain;
- Contains areas of freshwater wetlands, with bordering upland buffer;
- Is included in the Sandy Neck/Barnstable Harbor Area of Environmental Concern
- Lies within the Mass Natural Heritage and Endangered Species Program (MNHESP) Priority Habitat for rare Species;
- Lies within an MNHESP State BioMap Core Habitat Area and a Supporting Natural Landscape Area;
- Is included within the Statewide Land Conservation Plan;
- Is part of a Noteworthy landscape designated by the Department of Environmental Management (DEM) in its 1981 scenic inventory;
- Is located within the Old King's Highway Regional Historic District;
- Is adjacent to the Scudder Lane Shellfish Resource Area;
- Is identified as one of the potential parcels for creation of the Greenbelt and Fingerlinks corridor within the Town of Barnstable;
- Is located within a Town of Barnstable primary area of archaeological sensitivity, defined as an area within a marine or marine related ecosystem and which has a high probability of containing prehistoric archaeological sites;
- Is within a designated Significant Natural Resources Area of the 2002 Regional Policy Plan for rare wetland habitat and priority site for rare species and natural communities;
- Is identified in the 2002 Regional Policy Plan as lying within a watershed where critical nutrient load has been determined or where there are documented water quality problems;
- Encompasses a scenic view visible from the waters and tidal flats of Broad Sound and Barnstable Harbor;
- Is part of a contiguous corridor including Mass Audubon land and land previously protected by conservation restrictions; and
- Is a substantial contributing element to the overall scenic and historic character of the area by adding to and maintaining the land predominately in its natural condition.

The Barnstable Land Trust will hold the CR in perpetuity with no cost to be incurred by the Town in purchase, maintenance, or monitoring.

B. NEW BUSINESS (May be acted upon)

2008 – 038 RESOLVE THAT THE TOWN COUNCIL MOVES TO APPROVE THE CONSERVATION RESTRICTION APPLICATION OF ROBERT FRAZIER, GRANTOR AND BARNSTABLE LAND TRUST , GRANTEE, OVER 4.02 ACRES OF LAND LOCATED AT 9999 ROUTE 130, COTUIT, MAP 010/PARCEL 043 FOR THE PURPOSE OF PRESERVING OPEN SPACE
INTRO: 10/18/07

RESOLVE, That the Town Council approve the conservation restriction application of Robert Frazier, grantor and Barnstable Land Trust , grantee, over 4.02 acres of land located at 9999 Route 130, Cotuit, Massachusetts; Map 010/parcel 043 for the purpose of preserving open space

SPONSORS: Councilor Ann Canedy, Liaison to the Land Acquisition Committee, with the approval of the Legal Department and the Conservation Commission

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Rationale
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2008-038
INTRO.: 10/18/07

TO: Town Council
FROM: Councilor Ann Canedy, Liaison to Land Acquisition and Preservation Committee
DATE: October 7, 2007
SUBJECT: Robert Frazier Conservation Restriction Rationale

Background: One of the charges of the Land Acquisition and Preservation Committee is to seek innovative ways to preserve open space beyond tapping into the Community Preservation funds and other Town funds. The Federal Government passed Section 1206 of the Pensions Bill (HR4) to help landowners get a significant tax benefit for making a donation of a conservation restriction, restricting future development of their land to protect a resource important to the public. The provision is effective for conservation restriction donations made from January 1, 2006 through December 31, 2007. Property owners are provided with an incentive to donate land as a conservation restriction in return for tax benefits. Acres of land can be donated in perpetuity without any exchange of Town or private funds and without the incurrence of maintenance and monitoring costs by the Town. Conservation Restrictions are unique in that public access is not required.

If public access is provided, the Internal Revenue Service deems it a public benefit perse. If access is not provided, the IRS deems a conservation restriction s a public benefit if it meets clearly delineated criteria. Local approval is required for the applicant to move forward to State and Federal approval before the conservation restriction is granted. Conservation restrictions are voluntary donations by the donor who wishes to have his/her land preserved for future generations.

Through the hard work of the Barnstable Land Trust, the Frazier property located at 9999 Route 130 (on the Mashpee/Barnstable Town Line), Cotuit, Massachusetts, has been identified as an important parcel worthy of preservation in perpetuity. The total parcel is 4.02 acres, all of which are to be restricted and known hereafter as the Enos-Frazier Patch Conservation Restriction.

Rationale: The purpose of the Enos-Frazier Patch Conservation Restriction is to protect habitat and important wetland values of the Premises, to assure that the land to assure that the land will be retained in perpetuity predominately in its natural, scenic, and open condition, and to prevent any use that would materially impair or interfere with its conservation values. Personally, to Mr. Frazier, this land abuts his boyhood home. His goal is to preserve his heritage, honor his family with this gift, and pass the land on to his son and his children to enjoy as he did in his youth.

This proposed conservation restriction conforms to the Open Space Policy of the Town of Barnstable, adopted in 1981, which “encouraged...grants of conservation restrictions”. Specifically the Enos-Frazier Patch Conservation Restriction offers the following public benefits and will:

- Prevent disturbance of wetlands
- Preserve open space
- Preserve important natural habitats of fish, wildlife and plants
- Preserve access and use of the land by Wampanoag Indians

- Prevent construction on land of natural resource value

Conservation Values of the Frazier land include:

- Over 4 acres of undisturbed, mature mixed pine/oak woodland, providing bordering upland buffers to two freshwater ponds,
- Frontage on two ponds: Naomi and Coombs Pond;
- Abuts 5 acres of Town of Barnstable Land Bank open space, connecting with 21 acres of Cotuit Fire District wellfield lands;
- Identified as one of the potential parcels for the creation of a Greenbelt and Fingerlinks corridor within the Town of Barnstable;
- Ranks “maximum” for wildlife habitat value in the Cape Cod Wildlife Conservation project;
- Is identified in the 2002 Regional Policy Plan as lying within a watershed (Popponesset Bay Subwatershed) where critical nutrient load has been determined or where there are documented water quality problems;
- Will eliminate two potential on site septic systems from being constructed in and entering the watershed;
- Lies just up gradient of the Santuit River herring run that originates in the Town of Barnstable, then enters the neighboring Town of Mashpee and feeds fresh water into the Shoestring Bay estuary, a shared resource of both towns;
- Contributes to the overall scenic and historic character of the area by adding to and maintaining the land predominately in its natural condition

The Barnstable Land Trust will hold the CR in perpetuity with no cost to be incurred by the Town in purchase, maintenance, or monitoring.

B. NEW BUSINESS (May be acted upon)

2008 - 039 RESOLVE THAT THE TOWN COUNCIL MOVES TO APPROVE THE CONSERVATION RESTRICTION APPLICATION OF JAMES G. HINKLE, GRANTOR, AND BARNSTABLE LAND TRUST ,GRANTEE, OVER 2.85 ACRES OF LAND LOCATED AT 4275 MAIN STREET, CUMMAQUID, BARNSTABLE, MAP 350/PARCEL 006 FOR THE PURPOSE OF PRESERVING OPEN SPACE

INTRO: 10/18/07

RESOLVE, That the Town Council approve the conservation restriction application of James G. Hinkle, grantor and Barnstable Land Trust , grantee, over 2.85 acres of land located at 4275 Main Street, Cummaquid, Massachusetts; Map350/Parcel 006 for the purpose of preserving open space

SPONSORS: Councilor Ann Canedy, Liaison to the Land Acquisition Committee, with the approval of the Legal Department and the Conservation Commission

DATE

ACTION TAKEN

- Read item
- Rationale
- Council discussion
- Move/vote

BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2008-039
INTRO.: 10/18/07

TO: Town Council
FROM: Councilor Ann Canedy, Liaison to Land Acquisition and Preservation Committee
DATE: October 7, 2007
SUBJECT: James G. Hinkle Conservation Restriction Rationale

Background: One of the charges of the Land Acquisition and Preservation Committee is to seek innovative ways to preserve open space beyond tapping into the Community Preservation funds and other Town funds. The Federal Government passed Section 1206 of the Pensions Bill (HR4) to help landowners get a significant tax benefit for making a donation of a conservation restriction, restricting future development of their land to protect a resource important to the public. The provision is effective for conservation restriction donations made from January 1, 2006 through December 31, 2007. Property owners are provided with an incentive to donate land as a conservation restriction in return for tax benefits. Acres of land can be donated in perpetuity without any exchange of Town or private funds and without the incurrence of maintenance and monitoring costs by the Town. Conservation Restrictions are unique in that public access is not required.

If public access is provided, the Internal Revenue Service deems it a public benefit perse. If access is not provided, the IRS deems a conservation restriction s a public benefit if it meets clearly delineated criteria. Local approval is required for the applicant to move forward to State and Federal approval before the conservation restriction is granted. Conservation restrictions are voluntary donations by the donor who wishes to have his/her land preserved for future generations.

Through the hard work of the Barnstable Land Trust, the Hinkle property located at 4275 Main Street, Cummaquid has been identified as an important parcel worthy of preservation in perpetuity. The total parcel is 4.25 acres of which 2.85 acres will be restricted. Of that amount, 2.6 acres are uplands and .025 acre is freshwater wetlands.

Rationale: The purpose of the Hinkle Conservation Restriction (to be known hereafter as the Old Gorham Farm Conservation Restriction) is to protect the habitats and important wetland values of the land, to assure the land will be retained in perpetuity predominately in its scenic and open condition, to preserve a scenic view along historic Route 6A, to retain land for Agriculture, and to prevent any use that would materially impair or interfere with its conservation values. Personally to Mr. Hinkle, who owns a historic home adjacent to the land to be restricted, his purpose is to preserve the scenic nature and essence of what was once the Old Gorham Farm and in the process, preserve the land for future agricultural use.

This proposed conservation restriction conforms to the Open Space Policy of the Town of Barnstable adopted in 1981, which “encouraged...grants of conservation restrictions”. Specifically the Hinkle Old Gorham Farm Conservation Restriction offers the following public benefit and will:

- preserve a scenic and historic view
- preserve open space
- insure that the land remains in farming
- preserve important habitats of wildlife or plants
- prevent construction on land of natural resource value

Conservation values of the Old Gorham Farm Conservation Restriction are as follows:

- It contains an area of freshwater wetland, with bordering upland buffer;
- It contains an area of freshwater wetland with a hydrologic connection to a wetland certified as vernal pool #2683 by the Massachusetts Natural Heritage & Endangered Species Program;
- It contains soils classified as prime agricultural land in maintained meadow setting, providing unfragmented old field habitat;
- It is identified as one of the potential parcels for the creation of a Greenbelt and Fingerlinks corridor within the Town of Barnstable (and connects to the Cummaquid Golf Course);
- It is identified in the 2002 Regional Policy Plan as entirely within a marine watershed area for Barnstable Harbor and Cape Cod Bay;
- It contains approximately 280 feet of frontage on the railroad now or formerly known as the Old Colony Railroad and encompasses a public scenic view from that railroad;
- It is located within the Old King's Highway Regional Historic District and on a designated scenic road (Route 6A);
- It is a substantial contributing element to the overall scenic and historic character of the area by adding to and maintaining the land predominately in its natural condition.

The Barnstable Land Trust will hold the CR in perpetuity with no cost to be incurred by the Town in purchase, maintenance, or monitoring.

B. NEW BUSINESS (May be acted upon)

2008 – 040 RESOLVE THAT THE TOWN COUNCIL MOVES TO APPROVE THE CONSERVATION RESTRICTION APPLICATION OF JAMES B. INGRAM AND BARBARA L. INGRAM, GRANTORS, AND BARNSTABLE LAND TRUST, GRANTEE, OVER .70 ACRES OF LAND LOCATED AT 91 AND 93 ROUTE 149, MAPS AND PARCELS 007/008 (LOT A) AND 078/001 (LOT C) IN MARSTONS MILLS FOR THE PURPOSE OF PRESERVING OPEN SPACE.

INTRO: 10/18/07

RESOLVE, That the Town Council approve the conservation restriction application of James B Ingram and Barbara L. Ingram, grantors and Barnstable Land Trust , grantee, over .70 acres of land located at 91 and 93 Route 149; maps and parcels 007/008 (Lot A) and 078/001 (Lot C) in Marstons Mills, Massachusetts for the purpose of preserving open space

SPONSORS: Councilor Ann Canedy, Liaison to the Land Acquisition Committee, with the approval of the Legal Department and the Conservation Commission

DATE

ACTION TAKEN

- Read item
- Rationale
- Council discussion
- Move/vote

BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2008-040
INTRO.: 10/18/07

TO: Town Council
FROM: Councilor Ann Canedy, Liaison to Land Acquisition and Preservation Committee
DATE: October 7, 2007
SUBJECT: James B. Ingram

Background: One of the charges of the Land Acquisition and Preservation Committee is to seek innovative ways to preserve open space beyond tapping into the Community Preservation funds and other Town funds. The Federal Government passed Section 1206 of the Pensions Bill (HR4) to help landowners get a significant tax benefit for making a donation of a conservation restriction, restricting future development of their land to protect a resource important to the public. The provision is effective for conservation restriction donations made from January 1, 2006 through December 31, 2007. Property owners are provided with an incentive to donate land as a conservation restriction in return for tax benefits. Acres of land can be donated in perpetuity without any exchange of Town or private funds and without the incurrence of maintenance and monitoring costs by the Town. Conservation Restrictions are unique in that public access is not required.

If public access is provided, the Internal Revenue Service deems it a public benefit perse. If access is not provided, the IRS deems a conservation restriction s a public benefit if it meets clearly delineated criteria. Local approval is required for the applicant to move forward to State and Federal approval before the conservation restriction is granted. Conservation restrictions are voluntary donations by the donor who wishes to have his/her land preserved for future generations.

Through the hard work of the Barnstable Land Trust, the Ingram property located at 91 and 93 Route 149, Marstons Mills, has been identified as an important parcel worthy of preservation in perpetuity. The total parcel is .70 acres more or less. Of that property, Lot A (house lot-an area extending 50' from the pondshore) will be partially restricted and Lot C (vacant lot) will be fully restricted.

Rationale: The purpose of the Ingram Conservation Restriction is to protect the habitats and important wetland values that contribute to Mill Pond, to assure the land will be retained in perpetuity predominately in its scenic and open condition, and to prevent any use that would materially impair or interfere with the conservation values of the land.

This proposed conservation restriction conforms to the Open Space Policy of the Town of Barnstable adopted in 1981, which “encouraged...grants of conservation restrictions”. Specifically the Ingram Conservation Restriction offers the following public benefit and will:

- Preserve a public view
- Preserve open space
- Preserve important natural habitats of wildlife, fish and plants
- Prevent construction of land of natural resource value

Conservation values of the Ingram Conservation Restriction are as follows:

- It is located along approximately 300 feet of the Marstons Mills River and Mill Pond, and partially encompasses freshwater wetlands;
- It contains undisturbed, mature mixed pine/oak woodland, providing a bordering upland buffer to the freshwater wetlands on the Premises and to the adjoining Marstons Mills River and Mill Pond;
- It lies within the River Protection Area of the Marstons Mills River, an active and threatened anadromous fish (herring) run;
- It lies directly across the Marstons River from 32 acres of Town of Barnstable conservation land, connecting over 300 acres of the Hayden Wellfield lands owned by the COMM Fire District;
- It lies within a Mass Natural Heritage and Endangered Species Program (MNHESP) Priority Habitat for Rare Species;
- It lies within a MNHESP Living Waters Critical Supporting Watershed to the adjacent Marstons Mills Core Habitat;
- It is identified as one of the potential parcels for the creation of the Greenbelt and Fingerlinks corridor within the Town of Barnstable;
- It is located within a Town of Barnstable tertiary area of archaeological sensitivity, defined as an area immediately adjacent to a pond or lake of less than 500 feet in width or immediately adjacent to a freshwater ecosystem, and may contain prehistoric archaeological sites;
- It is identified in the 2002 Regional Policy Plan as lying within a watershed (Three Bay System Subwaterhead) where critical nutrient load has been determined or where there are documented water quality problems;
- It will eliminate one potential on site septic system from being constructed and entering into the watershed;
- It is ranked “High” for habitat protection priority and wildlife habitat value in the Cape Cod Wildlife Conservation Project;
- It is part of the scenic background across the historic Mill Pond at the corner of State Route 28, and State Route 149; and
- It is a substantial contributing element to the overall scenic and historic character of the area by adding to and maintaining the land predominately in its natural state.

The Barnstable Land Trust will hold the CR in perpetuity with no cost to be incurred by the Town in purchase, maintenance, or monitoring.

B. NEW BUSINESS (May be acted upon)

**BARNSTABLE TOWN COUNCIL
ITEM NO.: 2008-041
INTRO.: 10/18/07**

ORDER AUTHORIZING THE TOWN MANAGER TO EXECUTE A REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND ALLEN J. WHITE, TRUSTEE, 362 SOUTH STREET REALTY TRUST

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 Allen J. White, 362 South Street Realty Trust, for the property shown on Barnstable Assessor's Map 308, Parcel 98, and located within the SF zoning district and the Downtown Hyannis Growth Incentive Zone, including but not limited to the following: granting relief from Section 240-7.f.1 to convert an existing single family home and an existing cottage on the same lot to a condominium form of ownership, solely for the purpose of allowing each of the two existing structures to be used as single-family residences on a single lot.

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

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

REGULATORY AGREEMENT
362 SOUTH STREET, HYANNIS

This regulatory agreement ("Agreement") is entered by and between the developer, Allen J. White, Trustee, 362 South Street Realty Trust, ("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 362 South Street, Hyannis, consisting of approximately .26 acres, shown on Barnstable Assessor’s Map 308 Parcel 98, and desires to develop the Property pursuant to a regulatory agreement.

WHEREAS, the Property contains an existing single family residential unit (denoted on the plans as Building 1, Unit A, with a building area of 2,207 s.f.) and an existing cottage (denoted on the plans as Building 2, Unit B, with a building area of 1,598 s.f.).

WHEREAS, the existing cottage (Building 2) was previously permitted and used as a family apartment and said cottage is now vacant.

WHEREAS, the Developer seeks to convert the existing single family residence (Building 1) and the previously permitted family apartment in the rear cottage (Building 2) to two separate condominium units to create two single family condominium type residences on a single lot (the “Project” or “Development”).

WHEREAS, the existing buildings are consistent with the character of the SF District and the Hyannis Historic Main Street Waterfront Historic District and no significant external changes are proposed to those buildings.

WHEREAS, the Property is serviced by existing water and electric and the Development will not result in a substantial increase in water use, sewer use and traffic.

WHEREAS, the Town is conducting an analysis of potential roadway and landscaping improvements to South Street. The Developer has agreed to provide mitigation to contribute to the South Street improvements in the vicinity of the Project, including but not limited to providing an easement for lighting and/or landscaping along the Property frontage, and/or providing landscaping along the Property frontage consistent with street-wide improvements that may be implemented by the Town.

WHEREAS, Developer is willing to commit itself to the development of the project substantially in accordance with this Agreement and desires to obtain a waiver of zoning to establish a condominium form of ownership on the Property 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 Section 240-7.f.1 which prohibits locating more than one principal use on a single lot in residentially zoned areas;

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 September 24, 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 DATE, 2007;

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 maintain 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 "Condominium Site Plan At 362 South Street in Barnstable, (Hyannis) Massachusetts", prepared by CapeSurv, Osterville, MA, scale 1" = 20', dated February 1, 2007; and "Condominium Unit Plans At 362 South Street in Barnstable (Hyannis), Massachusetts", prepared by CapeSurv, Osterville, MA, scale 1" = 8', dated February 1, 2007.
 - b) Such other plans and plan revisions as may be required by the terms and conditions of this Agreement;
2. The Developer proposes to convert the existing single family residence (Building 1) and the previously permitted family apartment in the rear cottage (Building 2) to two separate condominium units to create two single family condominium type residences on a single lot.
3. 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.

4. The Developer shall establish a condominium association or associations to carry out the terms and conditions of this Agreement which association(s) shall include both 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;
5. Developer agrees to provide one street tree on South Street, and to either prune or remove the existing planted hedge along South Street so that it does not interfere with passage along the public sidewalk.
6. Developer agrees to provide an easement for the placement and maintenance of a municipal street light on South Street if so requested by the Town. Said easement shall be in form and content acceptable to the Town of Barnstable Legal Department and shall be recorded prior to the issuance of an occupancy permit for Building 2 (Unit B);
7. Lighting for the Development shall be contained on-site, shall be down cast and shall not contribute to light pollution of the area;
8. Developer shall be responsible for snow plowing and snow removal on the Development site in perpetuity;
9. All landscaping within the development shall be low water use and shall minimize the use of fertilizers and pesticides;
10. All plumbing fixtures shall be low water use fixtures and other water conservation measures are encouraged in the design and development of the project;
11. Developer shall provide calculations demonstrating adequate water flow for fire suppression, and standpipes, as required by the Hyannis Fire Department;
12. Each residential condominium unit shall have at least one dedicated parking space;
13. Town hereby grants a waiver from the following zoning restrictions:
 - i. More than One Principal Use on a Residential Lot: Relief is granted from Section 240-7.f.1, and permission is granted to convert the existing Building 1 and Building 2 to a condominium form of ownership, solely for the purpose of allowing each of the two existing structures to be used as single-family residences.

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: John C. Klimm
Barnstable Town Manager

362 South Street Realty Trust
By: Allen J. White, Trustee

SPONSOR: Council President Janet Joakim

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read item
- ___ Rationale
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2008-041
INTRO.: 10/18/07

TO: Town Council
FROM: Ruth Weil, Growth Management
DATE: October 5, 2007
SUBJECT: Proposed Regulatory Agreement 362 South Street, Allen J. White, Trustee,
362 South Street Realty Trust

BACKGROUND/ANALYSIS/RATIONALE: This involves the adoption of a Regulatory Agreement between the Town of Barnstable and Allen J. White, Trustee of 362 South Street Realty Trust, regarding the property located at 362 South Street in Hyannis.

The Regulatory Agreement proposes to grant relief from Section 240-7.f.1 of the Barnstable Code to allow the applicant to convert an existing single family home and an existing cottage on the same lot to a condominium form of ownership, solely for the purpose of allowing each of the two existing structures to be used as single-family residences on a single lot. The existing cottage was previously used as a legal family apartment. The impacts of the project are minimal. Proposed mitigation includes providing one street tree on South Street, agreeing to remove or trim existing hedges that interfere with public passage on the sidewalk, and providing an easement to the town, if the town so requests, for the placement and maintenance of a municipal street light along the front of the applicant's property.

In order for the Development to proceed as recommended by the Developer and the Planning Board, this Regulatory Agreement must receive a 2/3 majority vote from the Town Council approving the zoning waiver requested by the Developer as set forth in paragraph 13 of the proposed Regulatory Agreement.

FISCAL IMPACT: The fiscal impact is positive.

STAFF ASSISTANCE: Patricia Daley, Director of Comprehensive Planning

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

ITEM #2008-042

ACCEPTANCE OF A FY 2008 COMMUNITY DEVELOPMENT ACTION GRANT (CDAG) FUNDED BY THE COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT IN THE AMOUNT OF \$1,000,000.

INTRO: 10/18/07

RESOLVED: That the Town Council does hereby accept the grant award in the amount of \$1,000,000 from the Commonwealth of Massachusetts Department of Housing and Community Development through their Community Development Action Grant (CDAG) Program and that the Town Manager is authorized to enter into contracts and to expend the grant monies for the purposes specified therein.

SPONSOR: Town Manager John C. Klimm

DATE

ACTION TAKEN

- Read item
- Rationale
- Council discussion
- Move/vote

**BARNSTABLE TOWN COUNCIL
AGENDA ITEM SUMMARY
2008-042
INTRO.: 10/18/07**

TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Ruth Weil
DATE: September 28, 2007
SUBJECT: Acceptance of a FY 2008 Community Development Action Grant (CDAG) in the amount of \$1,000,000 from the Commonwealth of Massachusetts Department of Housing and Community Development.

BACKGROUND: The Town of Barnstable was awarded the Community Development Action Grant (CDAG) from the Commonwealth of Massachusetts Department of Housing and Community Development in the amount of \$1,000,000 for Phase Two of the Main Street Pump Station and Force Main Project in downtown Hyannis. The funds will be used to extend the force main in Bearses Way to the Water Pollution Control Facility, and to upgrade the main street west end pump station with larger pumps and appurtenances.

ANALYSIS: Acceptance of this grant will contribute to our economic development and downtown revitalization efforts by expanding the sewer capacity.

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

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

STAFF ASSISTANCE: Ruth J. Weil

B. NEW BUSINESS (First Reading)

BARNSTABLE TOWN COUNCIL

2008-043 - APPOINTMENTS

INTRO: 10/18/07

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

HISTORIC COMMISSION:

Len Gobeil, 720 Pitchers Way, Hyannis, MA 02601 for a term to expire 06/30/2009

PLANNING BOARD:

Nancy Trafton, 995 Main Street, West Barnstable, MA 02668 for a term to expire 06/30/2010

AGRICULTURAL COMMISSION:

Max Kumin, 3826 Main Street, Cummaquid, MA 02637 for a term to expire 06/30/2010

SPONSORS: Appointments Committee

DATE

ACTION TAKEN

- ___ Read item
- ___ Council discussion
- ___ Move/vote