



Town of Barnstable

Town Council

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Administrator:

Donald M. Grissom

Administrative

Assistant:

Barbara A. Ford

TOWN COUNCIL MEETING

AGENDA

September 4, 2008

7:00 PM

- 1. ROLL CALL**
- 2. PLEDGE OF ALLEGIANCE**
- 3. MOMENT OF SILENCE**
- 4. PUBLIC COMMENT (May be limited to 2 minutes)**
--Budget Update
- 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: September 18th

ITEM NO.	INDEX TITLE	PAGE
A. OLD BUSINESS		
2008-131	Authorization for the Growth Management Department to expend an appropriation and transfer of Community Preservation funds for community housing improvements at 770 Independence Drive, Hyannis (Public Hearing closed) (Roll-call)	2 – 3
2009-013	Amend the General Ordinance to adopt procedures for absentee members of boards at adjudicatory hearings (Public Hearing closed) (Roll-call)	4-6
2009-014	Community Preservation Fund appropriation and transfer order from the proposed amount set aside for community housing in the amount of \$108,000 (Public Hearing closed) (Roll-call, 2/3) . 7-8	
2009-016	Amend the Administrative Code to allow for interim appointments on regulatory boards (May be acted upon) (Roll-call)	9-10
2009-018	Reappointments to Boards/Committees/Commissions (Second reading)	11
2009-022	Transfer \$220,000 unexpended bond proceeds for the re-construction of the West Bay bulkhead (May be acted upon)	12-13
B. NEW BUSINESS		
2009-023	Appointment to Boards/Committees/Commissions (First Reading)	14

Minutes – August 21, 2008

Please Note: It is possible that if it so votes, the Council may go into executive session. The Council may also act on items in an order other than they appear on this agenda.

A. OLD BUSINESS (Public hearing closed) (Roll-call)

BARNSTABLE TOWN COUNCIL

ITEM# 2008-131

INTRO: 05/01/08, 05/15/08, 06/19/08, 07/17/08, 08/21/08, 09/04/08

2008-131 COMMUNITY PRESERVATION FUND APPROPRIATION FOR COMMUNITY HOUSING IMPROVEMENTS

ORDERED: That, pursuant to the provisions of G.L. c. 44B, the sum of Two Hundred Fifty Thousand and No/100 (\$250,000) Dollars be appropriated and transferred from Community Preservation Housing funds in the Community Preservation Fund on June 21, 2007 under item 2007-162; and that the Town of Barnstable, Growth Management Department is authorized to contract for and expend the amount of \$250,000 with the prior approval of the Town Manager; for the development of 148 apartments, of which 40 units will be affordable rentals and the remaining 108 will be market rate in five (5) buildings located at 770 Independence Drive, Hyannis, MA, Map 332, Parcel 010-001

SPONSOR: Town Manager upon recommendation of the Community Preservation Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

COMMUNITY PRESERVATION FUND APPROPRIATION FOR COMMUNITY HOUSING – VILLAGE GREEN AT INDEPENDENCE PARK

ITEM# 2008-131

INTRO: 05/01/08, 05/15/08, 06/19/08, 07/17/08, 08/21/08, 09/04/08

SUMMARY

TO: Town Council
FROM: Community Preservation Committee
DATE: April 25, 2008
SUBJECT: Community Preservation Fund Appropriation: Village Green Apartments

BACKGROUND: The Community Preservation Committee (CPC) met on February 26, 2008 and has recommended that the town support the funding request of \$250,000.00, made by the JDJ Housing Development, LLC (JDJH) for three years of ground rent for a permitted 40B affordable housing development, also known as Village Green Apartments. This development is proposed on town owned land located at 770 Independence Drive, Hyannis, MA, Map 332, Parcel 010-001. The total funds requested for this project is \$250,000.00; and shall be appropriated and transferred from the Community Preservation Funds.

RATIONALE: Funding for this project is shared among the following:

\$15,000,000.00 provided through a Citizen's Bank loan
\$3,000,000.00 in equity provided by Keller Company and Diversified Funding
\$250,000.00 *requested from CPA funds for three (3) years of ground rent*

The project goal is to help support the creation of 148 units, 40 units will be affordable community housing committed to low and moderate-income households.

This project directly contributes to and supports the town's 10% goal of affordable housing. CPA funds are applicable in bridging the gap between the cost of development and debt, as well as leveraging CPA funds with other public or private funds.

Keller Company as well as the town will monitor all phases of construction and financing. Diversified Funding as leasing agent and property manager will be required to execute a monitoring agreement acceptable to the Town, at its own expense, which would verify that eligible tenants are renting the units at affordable rents. It is required that the developer provide documentation during each phase of this project to the town

Funding will be disbursed in phases, following receipt of project status reports from the developer and inspections of each phase performed by town staff. This development will incorporate a deed restriction to the Town of Barnstable for these units.

STAFF ASSISTANCE: Theresa Santos, Administrative Assistant, CPC

SPONSOR: Community Preservation Committee

A. OLD BUSINESS (Public Hearing) (Roll-call)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-013

INTRO: 07/17/08, 08/21/08, 09/04/08

2009-013 TO SEE IF THE TOWN COUNCIL WILL ACCEPT G.L. C.39, §23D AND AMEND THE GENERAL ORDINANCE TO ADOPT PROCEDURES FOR ABSENTEE MEMBERS OF BOARDS AT ADJUDICATORY HEARINGS

ORDERED, that:

SECTION 1: Section 23D of chapter 39 of the general laws is hereby accepted.

SECTION 2: Chapter 37 of the General Ordinance is hereby amended by inserting the following after Section 37-7:

§37-8. Absentee Members of certain Boards, Committees and Commissions

In accordance with Massachusetts General Laws Chapter 39, section 23D, an absentee voting member of any of the boards, committees and commissions of the town of Barnstable holding an adjudicatory hearing shall not be disqualified from voting solely on the basis of missing a single session so long as the following criteria are met: (1) the absentee voting member shall be absent from no more than a single session of the hearing at which testimony or other evidence is received; (2) prior to voting, the absentee member shall certify in writing that he has examined all evidence received at the missed session, and watched the video recording of the missed session, or, if no video recording is available, then has listened to the audio tape or reviewed a verbatim transcript of the missed session; and (3) the absentee member shall certify in writing which evidence was reviewed, and the written certification shall be made part of the record, and shall be filed with the Town Clerk.

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

ADOPTION OF THE MULLIN RULE FOR REGULATORY BOARDS

ITEM# 2009-013

INTRO: 07/17/08, 08/21/08, 09/04/08

SUMMARY

TO: Town Council
FROM: Interim Director Patty Daley, Growth Management
DATE: July 8, 2008
SUBJECT: Adoption of the Mullin Rule for Regulatory Boards

ANALYSIS: The Planning Board instituted this ordinance request. Upon acceptance by the Town through adoption of an ordinance, G.L. c.39, §23D, authorizes a member of a board, committee or commission holding an adjudicatory hearing to vote in the matter even though the individual has missed one session, provided that certain conditions are met. In order to vote, the member must review the proceedings of the missed hearing and sign a statement acknowledging the review. This provision, if accepted, overturns in part judicial precedent providing that only members present at all sessions of an adjudicatory hearing on a particular matter are eligible to vote on that matter.

RATIONALE: The acceptance and adoption of this Ordinance will allow various regulatory processes to proceed in a more efficient manner.

FISCAL IMPACT: The fiscal impact is neutral. Adoption will reduce costs for applicants who must currently expend additional funds to have consultants and attorneys present for additional hearing sessions.

STAFF ASSISTANCE: Patricia Daley, Interim Director, Growth Management
Jo Anne Miller Buntich, Growth Management, Assistant Director
Ruth Weil, Town Attorney

BARNSTABLE TOWN COUNCIL

ADOPTION OF THE MULLIN RULE FOR REGULATORY BOARDS

ITEM# 2009-013

INTRO: 07/17/08, 08/21/08, 09/04/08

M.G.L.A. 39 § 23D

§ 23D. Adjudicatory hearings; attendance by municipal board, committee and commission members; voting disqualification

(a) Notwithstanding any general or special law to the contrary, upon municipal acceptance of this section for 1 or more types of adjudicatory hearings, a member of any municipal board, committee or commission when holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that he has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing. Nothing in this section shall change, replace, negate, or otherwise supersede applicable quorum requirements.

(b) By ordinance or by-law, a city or town may adopt minimum additional requirements for attendance at scheduled board, committee, and commission hearings under this section.

A. OLD BUSINESS (Public Hearing closed) (Roll-call)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-014

INTRO: 07/17/08, 08/21/08, 09/04/08

**2009-014 COMMUNITY PRESERVATION FUND APPROPRIATION & TRANSFER
IN THE AMOUNT OF \$108,000 FOR COMMUNITY HOUSING**

ORDERED: That, pursuant to the provisions of G. L. c. 44B, the sum of One Hundred Eight Thousand and No/100 (\$108,000.00) Dollars be appropriated and transferred from the proposed amount set aside for Community Housing in the Community Preservation Fund described in agenda Item 2008-161 for the purpose of creating and supporting the purchase of affordable rental units, by the Barnstable Housing Authority, through the Town of Barnstable's Inclusionary Housing Ordinance by allocating \$50,000.00 per unit to buy down the cost of two (2) units and \$4,000.00 per unit for closing costs and legal fees of the two (2) units to be administered by the Town of Barnstable, Growth Management Department and authorize the Town Manager to acquire affordable housing restrictions, easements and other security on behalf of the Town.

SPONSOR: Town Manager upon recommendation of the Community Preservation Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

CPC FUNDING REQUEST FROM BHA FOR ITS WORKFORCE HOUSING INCLUSIONARY PROGRAM (WHIP) PHASE 2

ITEM# 2009-014

INTRO: 07/17/08, 08/21/08, 09/04/08

SUMMARY

TO: Town Council
FROM: Community Preservation Committee
DATE: July 2, 2008
SUBJECT: Rationale for the funding for the Barnstable Housing Authority (WHIP) Phase 2

BACKGROUND: The Community Preservation Committee (CPC) met on June 17, 2008 and has recommended that the town support the funding request of \$108,000.00 from the Barnstable Housing Authority for their Workforce Housing Inclusionary Program (WHIP) Phase 2.

RATIONALE: The project goal is to create and support the purchase of affordable rental units, by the Barnstable Housing Authority, which units have been created through the Town of Barnstable's Inclusionary Housing Ordinance. The request is for \$50,000.00 per unit to buy down the cost of two (2) units and \$4,000.00 per unit to cover closing costs and legal fees for the units located at Flagship Estates, LLC in Hyannis. The Barnstable Housing Authority is the designated buyer for these units and the funds requested would greatly help in lowering the mortgages therefore lowering the rent necessary to meet expenses of these units.

The Barnstable Housing Authority will provide the administrative support for the program. Each unit will be deed restricted requiring that the unit remains affordable in perpetuity.

STAFF ASSISTANCE: Alisha Parker

A. OLD BUSINESS (May be acted upon) (Roll-call)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-016

INTRO: 07/17/08, 08/21/08, 9/04/08

2009-016 AN ORDER AMENDING THE ADMINISTRATIVE CODE TO PROVIDE FOR INTERIM APPOINTMENTS ON REGULATORY BOARDS/COMMITTEES/COMMISSIONS

ORDERED, that Section 241-8(C) of the Town of Barnstable Administrative Code be hereby amended by adding the following at the end of the second sentence: "...except when vacancies occur involving a majority of the members of a multiple member board which conducts adjudicatory hearings, the Town Council may make interim appointments for a period not to exceed six months while permanent members are sought to fill the remainder of the term." Section 241-8 (C) to read after amendment as follows.

"C. Term of office. The terms of office of multiple-member boards are arranged so that 1/3 of the terms, as nearly as is possible, shall expire each year. A vacancy shall be filled by the Town Council for the remainder of the term, except when vacancies occur involving a majority of the members of a multiple member board which conducts adjudicatory hearings, the Town Council may make interim appointments for a period not to exceed six months while permanent members are sought to fill the remainder of the term. Length of office is three years, except as noted. Appointments are effective the first of July, and expire the 30th of June. Numbers of members for boards will vary. The Town Council shall annually evaluate all members subject to reappointment. Members may be removed for cause, subject to an investigation and hearing by the Town Council, pursuant to the Charter, Section 2-10".

SPONSORS: Town Councilor & Vice President Frederick Chirigotis
Town Councilors Rick Barry, Leah Curtis, Hank Farnham, Tom Rugo

DATE	ACTION TAKEN
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- ___ Read item
- ___ Council discussion
- ___ Move/vote

BARNSTABLE TOWN COUNCIL
ADMINISTRATIVE CODE AMENDMENT

ITEM# 2009-016
INTRO: 07/17/08, 08/21/08, 09/04/08

SUMMARY

TO: Town Council
FROM: Town Attorney Ruth J. Weil
DATE: July 17, 2008
SUBJECT: Amendment to the Administrative Code

RATIONALE: This amendment only applies to boards, committees, and commissions that hold adjudicatory hearings. It provides that where a majority of the seats in such boards become vacant, the Town Council has the opportunity to appoint qualified applicants who might only be in a position to assist on a temporary basis. Such interim appointment shall not exceed six months.

REDLINED VERSION WITH PROPOSED AMENDMENT UNDERLINED

Section 241-8(C), now reads:

C. Term of office. The terms of office of multiple-member boards are arranged so that 1/3 of the terms, as nearly as is possible, shall expire each year. A vacancy shall be filled by the Town Council for the remainder of the term, except when vacancies occur involving a majority of the members of a multiple member board which conducts adjudicatory hearings, the Town Council may make interim appointments for a period not to exceed six months while permanent members are sought to fill the remainder of the term. Length of office is three years, except as noted. Appointments are effective the first of July, and expire the 30th of June. Numbers of members for boards will vary. The Town Council shall annually evaluate all members subject to reappointment. Members may be removed for cause, subject to an investigation and hearing by the Town Council, pursuant to the Charter, Section 2-10

A. OLD BUSINESS (Second Reading)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-018
INTRO: 08/21/08, 09/04/08

2009-018 REAPPOINTMENTS

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

AGRICULTURAL COMMISSION

J. Timothy Friary, 241 Commerce Rd, Barnstable; to a term expiring 06/30/2011

COMMUNITY PRESERVATION COMMITTEE

Lindsey Counsell, 1183 Old Stage Rd, Centerville; to a term expiring 06/30/2011

SPONSOR: Appointments Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

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

B. NEW BUSINESS (May Be Acted Upon)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-022
INTRO: 08/21/08**

2009-022 TRANSFER AND APPROPRIATE \$220,000 OF UNEXPENDED BOND PROCEEDS FOR THE RE-CONSTRUCTION OF THE WEST BAY BULKHEAD

RESOLVED, that the Town Council hereby votes to discontinue the sidewalk projects appropriated originally under council order numbers 2003-085 and 2007-094 and approves the transfer of \$130,000 from 2003-085 and \$90,000 from 2007-094 for the purpose of re-constructing the West Bay bulkhead.

SPONSOR: John Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

TRANSFER OF UNEXPENDED BOND PROCEEDS FOR RE-CONSTRUCTION OF THE WEST BAY BULKHEAD

ITEM# 2009-022
INTRO: 08/21/08

SUMMARY

TO: Town Council
FROM: Town Manager John Klimm
DATE: August 13, 2008
SUBJECT: Transfer for the re-construction of the West Bay Bulkhead

BACKGROUND: The deterioration of the West Bay Bulkhead area including the bulkhead, parking and drainage, first observed in 1996, has continued to the point of serious undermining and wash-outs, with increasing deterioration of the bulkhead, and developing pits behind the bulkhead. Temporary repairs were put in place in 2006 and 2007, which are now ineffective. An above water and underwater investigation of the marine bulkhead was conducted on February 14, 2008 to assess the overall structural condition. It was determined that the bulkhead is in critical condition overall with large corrosion holes in the steel sheets at numerous locations near the seabed. The holes have resulted in the formation of large sinkholes in the pavement, and a release of backfill to the harbor. While the bulkhead has not yet failed catastrophically, it is no longer providing its primary function of retaining fill. This condition has rendered the bulkhead as unsafe for use for boaters from the harbor side.

ANALYSIS: The Town has restricted vehicular, pedestrian, and boating access to the bulkhead, and additional temporary repairs were made to prevent additional loss of fill. Repair designs and permitting were initiated to replace the bulkhead. It has been determined that the structure has reached the end of its useful life, and should be replaced. An engineering and cost analysis of reconstruction options has determined that the best option is to replace the existing sheet steel structure with a new steel sheet pile bulkhead as soon as possible, with an estimated project cost of \$250,000.00.

FISCAL IMPACT: Excess funds have been identified within existing appropriations that could be used for this project. Council Order 2003-085 appropriated \$495,000 for sidewalk improvements. To date a total of \$110,331 has been expended from this appropriation and \$250,000 is still earmarked for sidewalk construction at Sandy Neck. This leaves a balance of \$134,669 available after all of the originally proposed projects are completed. Council order 2007-094 appropriated \$250,000 for sidewalk improvements. After encumbering funds for all the proposed projects in this appropriation, a balance of \$90,000 remains available. It is proposed that \$130,000 from council order 2003-085 and \$90,000 from council order 2007-094 be transferred to complete the reconstruction of the West Bay bulkhead. If the unexpended bond proceeds are not transferred to this project they will remain available for the original purpose until such time that the council redirects them with future council action. All projects originally proposed under these two appropriations will be completed. The council must vote to discontinue the sidewalk program but this only applies to the uncommitted balance. The projects that have not yet started will still be completed. This includes Sandy Neck, Wianno Ave., and Stevens St.

B. NEW BUSINESS (First Reading)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-023
INTRO: 09/04/08

2009-023 APPOINTMENTS

RESOLVED, that the Town reappoint the following individual to a multiple-member board/committee/commission:

PLANNING BOARD

Robert Anderson, 71 Midway Drive, Centerville 02632; to a term expiring 06/30/

SPONSOR: Appointments Committee