



# Town of Barnstable

## Town Council

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### Councilors:

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Harold E. Tobey

Administrator:  
Donald M. Grissom

Administrative  
Assistant:  
Barbara A. Ford

## **TOWN COUNCIL MEETING AGENDA**

**October 2, 2008  
7:00 PM**

- 1. ROLL CALL**
- 2. PLEDGE OF ALLEGIANCE**
- 3. MOMENT OF SILENCE**
  - **BHS Hockey Boosters donation of \$10,000 to the Hyannis Youth & Community Center**
- 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: October 16<sup>th</sup>**

ITEM NO.	INDEX TITLE	PAGE
<b>A. OLD BUSINESS</b>		
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 <b>(To be withdrawn from consideration)</b> .....	3 - 4
2009-014	Community Preservation Fund appropriation and transfer order from the proposed amount set aside for community housing in the amount of \$108,000 <b>(Public Hearing closed) (Roll-call, 2/3)</b> . .....	5 - 6
2009-021	Authorization for the town manager to enter into a regulatory agreement between the Town of Barnstable and Ruth M. Rusher Trust. <b>(May be acted upon) (Roll-call 2/3)</b> .....	7 - 12
2009-024	Appropriation and transfer order in the amount of \$250,000 from the amount set aside for affordable housing on August 21, 2008 under agenda 2009-161, to buy-down the cost of five (5) affordable homes at \$50,000 per home. <b>(Public Hearing) (Roll-call)</b> .....	13 – 14
2009-025	Appropriation and transfer order in an amount not to exceed \$5,500 from the amount set aside for community preservation on August 21, 2008 under agenda 2009-161 in preservation of the Barnstable Town Record. <b>(Public Hearing) (Roll-call)</b> .....	15 - 16
2009-026	Amendment to the General Ordinance by accepting MGL C.59 §5K – a Senior Citizen Property Tax Work-off Abatement Program <b>(Public Hearing) (Roll-call)</b> .....	17 - 21
2009-027	Acceptance of a Homeland Security Grant from FEMA in the amount of \$90,000 and a supplemental appropriation of \$30,000 as matching funds <b>(Public Hearing) (Roll-call)</b> .....	22 - 23
<b>B. NEW BUSINESS</b>		
2009-031	Appointment to Boards/Committees/Commissions <b>(Second reading) (May be acted upon)</b> .....	24
2009-032	Acceptance of a \$5,000 FY09 grant award from Barnstable County through the Cape Cod Commission for professional evaluation of town-owned land .....	25 - 26

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Minutes – September 18, 2008

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**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, 10/02/08**

**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, 10/02/08**

### **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 closed) (Roll-call)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2009-014**

**INTRO: 07/17/08, 08/21/08, 09/04/08, 10/02/08**

**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
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close public hearing
- \_\_\_ 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, 10/02/08**

#### **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 2/3)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2009-021**

**INTRO: 08/21/08, 09/18/08, 10/02/08**

**2009-021 AUTHORIZING THE TOWN MANAGER TO EXECUTE A REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND RUTH M. RUSHER 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 Ruth M. Rusher Trust, for the property shown on Barnstable Assessor's Map 326 Parcel 045, and located within the HD zoning district and the Downtown Hyannis Growth Incentive Zone, including zoning relief as follows:

<u>HD zoning district permitted or conditional use</u>	Section 240-24.1.7
<u>Reduction in onsite parking requirements</u>	Section 240-24.1.10 (4) (b)

**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.**

**SPONSORS:** Councilor Greg Milne  
Councilor Harold Tobey  
Councilor James Tinsley

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# BARNSTABLE TOWN COUNCIL

## A REGULATORY AGREEMENT - RUTH M. RUSHER TRUST

ITEM# 2009-021

INTRO: 08/21/08, 09/18/08, 10/02/08

### SUMMARY

**TO:** Town Council  
**FROM:** Growth Management Department  
**DATE:** August 12, 2008  
**SUBJECT:** Proposed Regulatory Agreement--111 Ocean Street, Hyannis, Rusher Hostel

**RATIONALE:** This is a proposed Regulatory Agreement between the Town of Barnstable and the Ruth M. Rusher Trust. Chapter 168 of the Barnstable Code authorizes regulatory agreements. The ordinance allows the Town to enter into agreements with private property owners to allow new development in a manner that varies from local ordinances when it is deemed beneficial to the community.

The applicant is proposing a regulatory agreement to gain additional development rights for a hostel use at 111 Ocean Street in Hyannis. The applicant is proposing a regulatory agreement to establish an alternative means to comply with the requirements of the Barnstable Zoning Ordinance for use and parking as follows:

<u>HD zoning district permitted or conditional use</u>	Section 240-24.1.7
<u>Reduction in onsite parking requirements</u>	Section 240-24.1.10 (4) (b)

The Agreement would authorize this zoning relief. The applicant proposes to renovate, and in some cases expand, three existing buildings for use as a hostel, and to add a new 10-car asphalt parking lot. Total square footage of buildings will be 4,225 s.f. A hostel staff manager would reside on the premises.

The Agreement is beneficial to the community because the 111 Ocean Street project redevelops an existing property. As community benefits, the applicant notes affordable access for visitors and their intention to partner with local businesses for the benefit of their visitors and the businesses. They also noted that the hostel could be used in the off-season to house artists-in-residence, or other cultural programs.

**REGULATORY AGREEMENT PROCESS:** The Barnstable Planning Board negotiated the proposed Agreement over the course of 2 public hearings held on August 13 and 27, 2007, September 10, 2007. The proposed Agreement was approved by the Planning Board for recommendation to the Town Council by a majority vote of the Board on January 28, 2008.

Because the applicant requests zoning relief, a two-thirds vote of the Town Council is needed to finally approve the proposed Regulatory Agreement.

If the Town Council approves the Regulatory Agreement, it is endorsed by the Town Manager and recorded at the Registry of Deeds.

Copies of the full size plans are available for viewing at the office of the Town Clerk.

**FISCAL IMPACT:** Positive

**STAFF ASSISTANCE:** Patty Daley, Interim Director, Growth Management,  
Jo Anne Miller Buntich, Assistant Director, Growth Management

**REGULATORY AGREEMENT**  
**Rusher Trust Hostel**  
**111 OCEAN STREET, HYANNIS**

This regulatory agreement (“Agreement”) is entered by and between the applicant, Ruth M. Rusher Trust, (“Applicant” and “Developer”) and the Town of Barnstable (“Town”), a municipal corporation, on this \_\_\_ day of \_\_\_\_, 2008 pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Section 168 of the Barnstable Code;

WITNESS:

WHEREAS, the Applicant 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 Applicant 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 Applicant is the legal owner of the property (“Property”) at 111 and 105 Ocean Street, Hyannis, consisting of approximately .45 acres, shown on Barnstable Assessor’s Map 326 as Parcel 045, title to which is recorded in Barnstable County Registry of Deeds Book 18564 Page 234, and desires to develop the Property pursuant to a Regulatory Agreement;

WHEREAS, it is anticipated that ownership of the Property will be transferred from the Ruth Rusher Trust to the Cape Cod Foundation once building permits are issued for the Project and as such the Cape Cod Foundation shall also be a signatory to this Agreement and the when the term “Developer” is used herein it shall include the Cape Cod Foundation;

WHEREAS, the Applicant 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 Applicant 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 Applicant 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 (“Hyannis 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 Applicant has submitted a Jurisdictional Determination to the Town of Barnstable Building Department to confirm the same;

WHEREAS, the Applicant has undergone informal review by the Hyannis Main Street Waterfront Historic District on August 15 and September 19, 2007;

WHEREAS the Applicant has undergone informal site plan review on September 5, 2007;

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

WHEREAS the Applicant will require zoning relief from the use regulation schedule in the HD zoning district, more specifically referred to in Paragraph 36, below;

WHEREAS the Applicant has undergone at least two public hearings on the Agreement application and received a majority vote from the Planning Board approving the application on January 28, 2008;

WHEREAS the Applicant 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 Applicant and the Town do enter into this Agreement, and hereby agree and covenant as follows;

1. The Applicant 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 "Proposed Site Plan" Sheet S-1 dated 02.26.2007, and Proposed Plans A-2, A-3, A-4, A-5, and A-6 dated 06.26.2007 prepared by A+E Architects, 15 Cape Lane, Brewster, MA
  - b. Such other plans and plan revisions as may be required by the terms and conditions of this Agreement
2. The Developer proposes to renovate four existing buildings to develop the Property as a Hostel. For the purposes of this Agreement, a Hostel is defined as a facility which provides inexpensive, overnight accommodations for travelers in dorm-style rooms with male, female, coed and family rooms. The hostel is designed to bring people together through the use of shared kitchens, bathrooms, and common areas. The four existing buildings at the Property shall be remodeled and updated to comply with applicable building and health codes.
3. A new 16 car parking area is also proposed to service the hostel (the "Development"), with 13 spaces of pervious parking and an additional three lined and available if the need arises.
4. As shown on the plans entitled, proposed Plans A-2, A-3, A-4, A-5, and A-6 dated 06.26.2007 prepared by A+E Architects, 15 Cape Lane, Brewster, MA Hostel shall have a maximum of 13 rooms with a maximum of 47 occupants, including Hostel staff and children under 18. The maximum number of occupants shall be posted in the area of the premises where guests register.
5. When open, the Hostel shall have a minimum number of one Hostel staff on the premises on a 24 hour basis.
6. Hostel visits shall be limited in duration. Each individual Hostel visitor shall be limited to not more than fourteen (14) aggregate nights in a one year period. The Hostel management shall keep a log containing the names of visitors or groups of visitors occupying the Hostel. The log shall be made available for inspection by the Town Board of Health and/or the Town Manager's office upon request, but in no case shall such log be made available later than five (5) business days after receipt of a written request by the Town.
7. The Hostel shall operate on a seasonal basis and shall not receive visitors between November 15<sup>th</sup> through April 15<sup>th</sup> of each year, but may be open at its option seven (7) days a week from April 15<sup>th</sup> through November 15<sup>th</sup> in any one year.
8. Separate sleeping accommodations shall be provided for visiting boys and girls under the age of 18. This shall not apply to a family sharing a discrete room.
9. The preparation of food shall be restricted to the kitchen and a designated area for outdoor grilling and dining. The management shall ensure that food preparation does not occur in sleeping rooms.
10. The Hostel management shall clearly post and shall enforce a quiet time between 11 pm and 7 am.
11. Smoking shall not be allowed, Outdoor smoking on the premises shall only be permitted in designated areas with proper receptacles.
12. The possession and/or consumption of alcoholic beverages or illegal substances shall be prohibited. The management shall take steps to remove anyone from the premises who has too much to drink or is disruptive.
13. Animals, with the exception of service animals assisting persons with disabilities shall be prohibited.

14. The four habitable buildings shall include a full emergency sprinkler system as approved by the Hyannis Fire District.
15. The curb cut on Ocean Street shall be configured on Ocean Street so it only allows for “right turn in, right turn out” and Developer shall install a “No Left Turn” sign.
16. Developer shall construct a Passive Stormwater Maintenance and Infiltration System to service the Development
17. Developer will provide a bicycle rack at the Property.
18. Developer and its successor(s) shall maintain all landscaping and drainage facilities during the term of this agreement for the period for which the development rights granted hereunder continue to be exercised.
19. Upon completion of all work, a registered engineer or 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 (Barnstable Code Section 240-104(G)). This document shall be submitted before the issuance of the final certificate of occupancy.
20. Prior to the issuance of any building permit, the Developer shall submit a landscape plan which shall be reviewed and approved by the Planning Board.
21. The Developer shall apply or cause its approved operator to apply for and receive a yearly license for the operation of the Hostel from the Town Manager or his designee, unless the Town Manager determines that there is an alternative adequate licensing procedure, The Developer agrees that for the first year the fee for said license shall be \$1,000 per year. Thereafter, the fee shall be determined pursuant to the Town’s fee-setting procedures. A denial, suspension or revocation of a license by the Town Manager or his designee shall result in the closure of Hostel operation on the premises, subject to all rights of appeal. No occupancy permit shall be issued until the Developer demonstrates that the premises are duly licensed.
22. Developer shall permit or cause its approved operator to permit the inspection of the premises by town staff, including but not limited to health, building and fire safety personnel.
23. Upon notice and hearing, the Town Manager reserves the right to terminate Hostel operations if necessary to protect the public health, safety or welfare.
24. No change in the licensed operator of the premises shall be permitted without the prior written approval of the Town Manager or his designee.
25. Any reconfiguration of the interior of the premises which alters the number of rooms available for guests shall receive the prior written approval of the Planning Board, who may approve such change administratively.
26. 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 one year period the Applicant 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 Applicant estimates that construction will commence on or about \_\_\_\_\_ and will be completed on or about \_\_\_\_\_.
27. Commencing in the third year of operation, the Developer has agreed to contribute to public capital facilities to serve the proposed development and the Town by making a yearly payment in lieu of taxes. The initial payment shall be \$ 5,355.40, which amount shall be increased by 2 ½ per cent per year. No license (permit) shall issue for the third year of operation until the initial payment constituting a contribution to public capital facilities has been received by the Town.
28. Any lighting for the development shall be contained on-site, shall be down cast and shall not contribute to light pollution of the area;
29. All landscaping within the Development shall be low water use and shall minimize the use of fertilizers and pesticides in keeping with the Hyannis Village Zoning Districts Design and Infrastructure Plan;

30. All plumbing fixtures shall be low water use fixtures and other water conservation measures are encouraged in the design and development of the project;
31. Construction and demolition debris from the Development shall be removed and reused or recycled to the maximum extent possible;
32. 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.
33. Exterior construction impacts shall be minimized and construction shall be limited to the hours of 7:30 a.m. to 6:00 p.m. weekdays, and 8:30 a.m. to 2:00 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;
34. 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;
35. Developer has represented to the Board that it intends to enter into contract with the Eastern New England Council Hostelling International – American Youth Hostel, Inc. to operate the Hostel. Prior to the issuance of any occupancy permit for the premises, Developer shall submit a copy of said contract to the Planning Board for their determination that the contract incorporates the terms and conditions of this regulatory agreement. All operators shall be bound by the terms and conditions of this Agreement and the Developer shall incorporate this Agreement by reference into any contract it enters into for the operation of the premises and said contract shall require that the operator comply with the terms of this Agreement.
36. Town hereby grants a waiver from the following zoning restrictions: permitted or conditional use in the HD zoning district (Hostel), Section 240-24.1.7 of the Barnstable Code and reduction in onsite parking requirements, Section 240-24.1.10 (4)(b)
37. The Developer shall submit revised plans which address the comments submitted by the Site Plan Review Committee dated September 5, 2007, to the extent applicable, which plans shall be reviewed and approved administratively by the Building Commissioner.

**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 \_\_\_\_\_, 2008.

\_\_\_\_\_  
 Town of Barnstable  
 By:

\_\_\_\_\_  
 Developer  
 By:

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2009-024**  
**INTRO: 09/18/08, 10/02/08**

**2009-024 COMMUNITY PRESERVATION FUND APPROPRIATION FOR HOUSING**

**ORDERED:** That, pursuant to the provisions of G. L. c. 44B, the sum of Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars be appropriated and transferred from the amount set aside for the creation of affordable Housing in the Community Preservation Fund on August 21, 2008 under agenda item number 2009-161, to buy down the cost of five (5) affordable homes, at \$50,000.00 per home, inclusive of closing costs and legal fees, for resale to first-time homebuyers at affordable prices by the Housing Assistance Corporation, through the Town of Barnstable's Inclusionary Housing Ordinance and that the Town of Barnstable Growth Management Department is authorized to contract for and expend the amount appropriated with the prior approval of the Town Manager for the creation of affordable housing and 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
- \_\_\_ Motion to Open Public Hearing
- \_\_\_ Rationale
- \_\_\_ Public Hearing
- \_\_\_ Close public hearing
- \_\_\_ Council discussion
- \_\_\_ Move/vote

# **BARNSTABLE TOWN COUNCIL**

## **COMMUNITY PRESERVATION FUND APPROPRIATION FOR HOUSING**

**ITEM# 2009-024**  
**INTRO: 09/18/08, 10/02/08**

### **SUMMARY**

**TO:** Town Council  
**FROM:** Community Preservation Committee  
**DATE:** September 3, 2008  
**SUBJECT:** Rationale for the funding for the Housing Assistance Corporation Home Ownership Program

**BACKGROUND:** The Community Preservation Committee (CPC) met on August 19, 2008 and has recommended that the town support the funding request of \$250,000.00 from the Housing Assistance Corporation for their Home Ownership Program. The request is for five (5) homes at \$50,000.00 per unit, inclusive of closing costs and legal fees.

**RATIONALE:** The project goal is to buy down the cost of five (5) affordable homes for resale to first-time homebuyers at affordable prices by the Housing Assistance Corporation; creating affordable homeownership opportunities for local residents who meet the area median income requirements therefore increasing the inventory in the Town of Barnstable.

The Housing Assistance Corporation is the designated buyer for these homes and the funds requested would greatly lower the mortgages. These homes will receive weatherization and repair upgrades, increasing the quality of affordable homes as well.

Funding partnerships will include the Department of Housing and Community Development, Barnstable County and the Cape Light Compact. Due to market fluctuations, once homes are identified, a site visit and subsequent approval from the CPC must take place.

This project is in keeping with the Local Comprehensive Plan, while fulfilling criteria for affordable community housing. Each home purchase will be inclusive of closing costs and legal fees; administered by the Town of Barnstable, Growth Management Department. Each home will be deed restricted requiring that the home remains affordable in perpetuity.

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2009-025**  
**INTRO: 09/18/08, 10/02/08**

**2009-025 COMMUNITY PRESERVATION FUND FOR HISTORIC PRESERVATION**

**ORDERED:** That, pursuant to the provisions of G. L. c. 44B, the amount not to exceed Five Thousand Five Hundred and No/100 (\$5,500.00) Dollars be appropriated and transferred from the amount set aside in the Community Preservation Fund on August 21, 2008 under agenda item number 2009-161; and that the Town of Barnstable, Growth Management Department is authorized to contract for and expend the amount appropriated with the prior approval of the Town Manager for Historic Preservation and reproduction (photocopying, binding, digitally scanning and distribution) of the verbatim transcript of the Barnstable Town Record, Volume I, allowing distribution of the copies to public institutions across southeastern Massachusetts; further maintaining limited access to the original volume and lengthening its preservation through less handling and use.

**SPONSOR:** Town Manager upon recommendation of the Community Preservation Committee

<b>DATE</b>	<b>ACTION TAKEN</b>
_____	_____
_____	_____

- \_\_\_ 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 HOUSING**

**ITEM# 2009-025**  
**INTRO: 09/18/08, 10/02/08**

### **SUMMARY**

**TO:** Town Council  
**FROM:** Community Preservation Committee  
**DATE:** September 3, 2008  
**SUBJECT:** Rationale: Barnstable Historic Archives Transcripts / Agenda Item 2009-161

**BACKGROUND:** The Community Preservation Committee (CPC) met on August 19, 2008 and has recommended that the town support the funding request from Eben L. Johnson for the Historical Archives Transcription of Barnstable Town Records not to exceed \$5,500.00; and shall be appropriated and transferred from the Community Preservation Funds.

**RATIONALE:** The project goal is to reproduce and distribute copies of the completed verbatim transcript of the Barnstable Town Record, Volume 1 among numerous public institutions across southeastern Massachusetts. These transcripts will provide countless citizens with access into the early town's history.

Currently, only one copy of the Barnstable Town Record, Volume 1 exists; it is located in the vault of the Office of the Town Clerk and utilized only under supervised conditions. Distribution of these reproduced transcripts would provide wider accessibility and more direct access regarding the factual recorded of Barnstable history.

This project will enhance the protection, restoration and preservation of the information currently contained in the original volume, which is deteriorating, from handling these.

No historic restriction is necessary because the original and the reproductions are the property of the Town of Barnstable.

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2009-026**

**INTRO: 09/18/08, 10/02/08**

**2009-026 ACCEPT MGL C. 59 §5K AND AMEND THE GENERAL ORDINANCE TO ESTABLISH A PROGRAM FOR A SENIOR CITIZEN PROPERTY TAX WORK-OFF ABATEMENT**

**ORDERED**, that:

SECTION 1: Section 5K of chapter 59 of the general laws is hereby accepted.

SECTION 2: That the general ordinance of the town of Barnstable is hereby amended by adding a new Chapter 183, Senior Citizen Property Tax Work-Off Abatement Program.

SECTION 3: Chapter 183: Senior Citizen Property Tax Work-Off Abatement Program

§183-1: Purpose:

In accordance with the provisions Section 5K, Chapter 59 of the general laws, the town is offering a program which allows certain eligible seniors aged sixty and older the opportunity to perform work for the town in exchange for an abatement of property taxes for the maximum amount of \$750.00 yearly.

§183.2: Eligibility

In order to be eligible to apply for the program, an individual shall meet all of the following requirements:

- A. Owns and occupies a residential property in the immediate fiscal year preceding the fiscal year in which the taxpayer applies to volunteer his/her services;
- B. Has reached 60 years of age by the July 1 of the fiscal tax year for which the tax credit is given;
- C. Has a gross yearly income of not more than \$30,000 for single taxpayers and \$40,000 for married taxpayers, and
- D. Cannot be a compensated employee of the Town during the fiscal year for which the tax credit is sought.

§183.3: Program Administration

- A. The Town Manager or his/her designee shall be responsible for administering the Senior Tax Work-Off Program.
- B. The Town Manager or his/her designee shall review and approve the volunteer services to be included in the program and place and/or assign eligible residents to perform such services.

C. The Town Manager or his/her designee shall certify the amount of volunteer services performed by each participating taxpayer to the Barnstable Board of Assessors on or before December 1 of the year for which tax credits are to be given. Upon timely receipt of this certification, the Board of Assessors shall credit the real property tax obligations of the participating taxpayers in an amount not to exceed \$750 per taxpayer. A copy of each taxpayer's certification will be given to that taxpayer. This credit shall be in addition to any exemption or abatement for which the volunteer may otherwise be eligible.

D. The Town Manager shall determine annually the maximum number of residents who may participate in the program and shall advise the Board of Assessors of this number prior to the start of the fiscal year for which tax credits are to be given.

§183.4: Program Criteria

A. The hourly rate at which the volunteer services are to be credited shall be the minimum wage of the Commonwealth in effect at the time the services are provided.

B. The Town will pay the volunteer's share of FICA taxes.

C. The maximum amount by which the real property tax obligation of any one volunteer may be reduced in any given tax year shall not exceed \$750.

D. Tax credits may be applied only toward real property, which the volunteer occupies as a principal residence and has property tax liability.

E. Only one tax abatement per property per year shall be allowed.

F. Participation will be awarded using a lottery system if qualified applications received exceed the number of available slots.

G. Taxpayers in the program may not participate in two consecutive years unless the number of applicants is less than the eligible slots.

**SPONSOR:** Town Manager John Klimm and the Council on Aging

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 A GENERAL ORDINANCE**  
**SENIOR CITIZEN PROPERTY TAX WORK-OFF ABATEMENT PROGRAM**

**ITEM# 2009-026**  
**INTRO: 09/18/08, 10/02/08**

**SUMMARY**

**TO:** Town Council  
**FROM:** John C. Klimm, Town Manager  
**DATE:** September 9, 2008  
**SUBJECT:** Adoption of a General Ordinance Establishing a Senior Citizen Property Tax Work-off Abatement Program

**BACKGROUND:** The Town Council may establish a property tax work-off program for taxpayers over 60 years old. Under the program, participating taxpayers volunteer their services to the town in exchange for a reduction in their tax bills. Acceptance of the statute may be revoked but the town must wait until at least three years after the statute was accepted to do so. Revocation is also made by the Town Council.

**ANALYSIS:** Many seniors living on fixed incomes are faced with cost increases including; but not limited to, utilities, prescription medications and property taxes. This program would allow eligible seniors the opportunity to work off a portion of their annual property tax bill by providing volunteer services to the town. The town would benefit from their expertise and experience. It is important to note that seniors participating in this program are not replacing town employees. They will be augmenting services that are currently provided. The positions will be primarily clerical requiring mail sorting, copying, filing, phone work and reception.

The maximum abatement taxpayers may earn is \$750 per fiscal year. In addition, they cannot receive credit for their services at an hourly rate higher than the state's minimum wage. As of January 1, 2008, that rate is \$8.00 an hour. Using the state's minimum wage rate a volunteer can earn the maximum abatement working 93.75 hours. The Town should also set the rate no lower than the federal minimum wage unless advised by the Wages and Hours Division of the United States Department of Labor that the federal fair labor standards act does not apply to the program. The federal minimum wage is currently \$5.85 an hour.

Taxpayers may earn abatements under the work-off program in addition to any property tax exemptions they may be eligible for under other statutes, such as personal exemptions under G.L. Ch. 59 §5 or residential exemptions under G.L. Ch. 59 §5C. They may also defer the balance of their taxes under G.L. Ch. 59 §5(41A) if they are eligible to do so. Additionally, seniors may be eligible for the State Senior Circuit Breaker Tax Credit. Participation in this tax work-off program may affect a taxpayer's eligibility under the State Circuit Breaker program if the tax work-off program reduces their tax liability to certain non-qualifying levels.

The Human Resources Division must certify to the Board of Assessors the hours of services performed by the taxpayer before the actual tax for the fiscal year is committed. The certification must state the amount actually earned as of that time. Services performed after that date is credited

toward the next fiscal year's actual tax bill to the extent consistent with the program rules established by the town. A copy of the certification must also be given to the taxpayer before the actual tax bill is issued.

The amount of the property tax reduction earned by the taxpayer under this program is not considered income or wages for purposes of state income tax withholding or workmen's compensation. However, the United States Internal Revenue Service (IRS) has ruled that under current federal law the abatement amount is included in the taxpayer's gross income for both federal income tax and Federal Insurance Contribution Act (FICA) tax purposes. Participating seniors will receive a W2 under this program and the employee's share of FICA taxes (\$57.38) will be paid by the Town resulting in federal taxable income to the participant of \$807.38.

Earned reductions must be applied to the actual tax bills for the fiscal year. The assessors must commit the full tax for the year and process the gross amount earned as certified by Human Resources for the taxpayer's volunteer services as an abatement to be charged against the overlay account. The taxpayer's actual tax bill, however, should only show a credit for the amount earned net of any federal withholdings. The municipal share of federal Social Security and Medicare taxes may also be charged to the overlay unless the community has otherwise provided.

**FISCAL IMPACT:** The amounts earned under the program are charged to the Town's reserve for abatements and exemptions; similar to other exemptions granted. The cost would be dependent upon the number of participants, the amount of the maximum abatement granted and the treatment of FICA taxes. For example, if the abatement is established at the maximum authorized amount, or \$750, and 20 seniors participate, and the Town elects to pay the volunteer's share of FICA taxes, then \$17,295 would be granted in exemptions ( $20 \times \$750 = \$15,000 + (\$15,000 \times 15.3 \text{ percent})$ ).

**COUNCIL ON AGING RECOMMENDATION/COMMENTS:** The Council on Aging recommends the implementation of this program with the suggestion that some consideration should be given to assigning some of these individuals to the Senior Center. This would accomplish two things:

- 1) Be helpful to an understaffed staff that already serves the needs of the recipients.
- 2) Could introduce someone who may be a future volunteer to the senior center.

**TOWN MANAGER RECOMMENDATION:**

The Town Manager recommends the implementation of this program.

**STAFF ASSISTANCE:**

Mark Milne, Finance Director  
William Cole, Human Resource Director  
Madeline Taylor, Senior Services Director  
Debra Blanchette, Treasurer  
Nancy Finch, Assistant Assessor

M.G.L.A. 59 § 5K

Massachusetts General Laws Annotated Currentness

Part I. Administration of the Government (Ch. 1-182)

Title IX. Taxation (Ch. 58-65C)

Chapter 59. Assessment of Local Taxes (Refs & Annos

Persons and Property Exempt from Taxation

§ 5K. Property tax liability reduced in exchange for volunteer services; persons over age 60

In any city or town which accepts the provisions of this section, the board of selectmen of a town or in a municipality having a town council form of government, the town council or the mayor with the approval of the city council in a city may establish a program to allow persons over the age of 60 to volunteer to provide services to such city or town. In exchange for such volunteer services, the city or town shall reduce the real property tax obligations of such person over the age of 60 on his tax bills and any reduction so provided shall be in addition to any exemption or abatement to which any such person is otherwise entitled and no such person shall receive a rate of, or be credited with, more than the current minimum wage of the commonwealth per hour for services provided pursuant to such reduction nor shall the reduction of the real property tax bill exceed \$750 in a given tax year. It shall be the responsibility of the city or town to maintain a record for each taxpayer including, but not limited to, the number of hours of service and the total amount by which the real property tax has been reduced and to provide a copy of such record to the assessor in order that the actual tax bill reflect the reduced rate. A copy of such record shall also be provided to the taxpayer prior to the issuance of the actual tax bill. Such cities and towns shall have the power to create local rules and procedures for implementing this section in any way consistent with the intent of this section

In no instance shall the amount by which a person's property tax liability is reduced in exchange for the provision of services be considered income, wages, or employment for purposes of taxation as provided in chapter 62, for the purposes of withholding taxes as provided in chapter 62B, for the purposes of workers' compensation as provided in chapter 152 or any other applicable provisions of the General Laws, but such person while providing such services shall be considered a public employee for the purposes of chapter 258, but such services shall be deemed employment for the purposes of unemployment insurance as provided in chapter 151A.

M.G.L.A. 59 § 5K

**A. OLD BUSINESS (Public Hearing) (Roll Call)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2009-027**  
**INTRO: 09/18/08, 10/02/08**

**2009-027 ACCEPTANCE OF A PORT SECURITY GRANT FROM THE DEPARTMENT OF HOMELAND SECURITY, FEMA IN THE AMOUNT OF \$90,000 AND THE SUPPLEMENTAL APPROPRIATION OF \$30,000 AS MATCHING FUNDS**

**ORDERED, that:** The Barnstable Town Council does hereby accept a Port Security Grant from the Department of Homeland Security, FEMA in the amount of \$90,000 and that the amount of \$30,000 in matching funds is hereby transferred from the mooring fee special revenue account, and further, that the Town Manager is authorized to expend these funds in accordance with the grant

**SPONSOR:** Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

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

# **BARNSTABLE TOWN COUNCIL**

## **ACCEPTANCE OF A FEMA HOMELAND SECURITY GRANT**

**ITEM# 2009-027**

**INTRO: 09/18/08, 10/02/08**

### **SUMMARY**

**TO:** Town Council  
**FROM:** Director of Community Services Lynne Poyant  
**DATE:** September 9, 2008  
**SUBJECT:** FEMA Homeland Security Grant

**RATIONALE:** FEMA's Infrastructure Protection Activities (IPA) grant program is designed to strengthen the Nation's ability to protect critical infrastructure facilities and systems. These activities are comprised of five separate grant programs including Port Security Grant Program (PSGP).

Together, these grants fund a range of preparedness activities, including strengthening infrastructure against explosive attacks, preparedness, planning, equipment purchase, training, exercises, and security management and administration costs. IPA grants support objectives outlined in post-9/11 laws, strategy documents, plans, Executive Orders and Homeland Security Presidential Directives, the National Preparedness Guidelines and associated work products, including the National Infrastructure Protection Plan (NIPP) and its transportation sector-specific plans and Executive Order 13415 (Strengthening Surface Transportation Security).

The FY2008 IPA grant program contains significant improvements based upon extensive outreach to stakeholders. In addition, the risk assessments that formed the basis for eligibility under the IPA were refined slightly to conform with the final provisions of the Implementing Recommendations of the 9/11 Commission Act of 2007.

Captain R.J. Perry, Sector Commander of the United States Coast Guard (Woods Hole), validated that the Barnstable Harbormaster is a provider of layered waterside security pursuant to the area maritime security plan.

**BACKGROUND:** The Town of Barnstable has applied for and been awarded a Port Security Grant in the amount of \$90,000.00 for the purchase of a 21-24' commercial grade center console harbor patrol vessel. The grant total is for \$120,000.00 of which the Town is responsible for a 25% or \$30,000 match. The Town has within its jurisdiction three regulated maritime facilities, two in Hyannis Harbor (Steamship Authority and Hy-Line Cruises) and one in Barnstable Harbor (Hyannis Whale Watcher Cruises/Millway Marina). While this vessel will benefit the entire Town, our intent is to locate it at Barnstable Harbor. The Harbormasters Office has requested funding for such a replacement vessel for Barnstable Harbor as far back as the FY1999 budget. We were one of only seven grants in the entire Commonwealth of Massachusetts that received Port Security Grant Money.

**ANALYSIS:** We do have only 45 days, from the September 5<sup>th</sup> official date of notification, to accept the grant.

**FISCAL IMPACT:** \$30,000 in matching funds through the mooring fee special revenue account and an anticipated operational increase of approximately \$2,500/year

**STAFF ASSISTANCE:** Joe Gibbs, Mooring Officer  
Dan Horn, Director of Marine and Environmental Affairs  
Lynne M. Poyant, Director of Community Services

**A. OLD BUSINESS (Second reading) (May be acted upon)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2009-031  
INTRO: 09/18/08, 10/02/08**

**2009-031 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION**

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

**ZONING BOARD OF APPEALS**

George T. Zevitas, 77 Winding Cove Road, Marstons Mills, an associate member to a term expiring 06/30/2009

**HYANNIS MAIN ST. WATERFRONT HISTORIC DISTRICT COMMISSION**

Meaghann Kenney, 26 Pearl Street, Hyannis, as an alternate member to a term expiring 06/30/2009

**GOLF COMMITTEE**

James M. Lawson, Jr., 49 Statice Lane, Hyannis, as a member to a term expiring 06/30/2010

**SPONSOR:** Appointments Committee

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read item
- Council discussion
- Move/vote

**B. NEW BUSINESS (May be acted upon)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2009-032  
INTRO: 10/02/08**

**2009-032 ACCEPTANCE OF FY2009 GRANT FROM BARNSTABLE COUNTY  
THROUGH THE CAPE COD COMMISSION IN THE AMOUNT OF \$5,000**

**ORDERED: RESOLVED:** That the Town Council does hereby accept the grant award in the amount of \$5,000 from the Cape Cod Commission Technical Assistance Program (TAP).

**SPONSOR:** Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

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

## **BARNSTABLE TOWN COUNCIL**

### **ACCEPTANCE OF GRANT FROM BARNSTABLE COUNTY THROUGH THE CAPE COD COMMISSION TECHNICAL ASSISTANCE PROGRAM**

**ITEM# 2009-032**  
**INTRO: 10/02/08**

#### **SUMMARY**

**TO:** Town Council  
**FROM:** John C. Klimm, Town Manager  
**THROUGH:** Patty Daley, Interim Director of Growth Management  
**DATE:** September 16, 2008  
**SUBJECT:** Acceptance of FY 2009 Cape Cod Commission Technical Assistance Program (TAP) grant in the amount of \$5,000 from the Cape Cod Commission.

**BACKGROUND:** The Growth Management Department applied for and has been awarded funding from the Barnstable County through the Cape Cod Commission in the amount of \$5,000 to supplement efforts to evaluate town owned property for future use.

**ANALYSIS:** Acceptance of this grant will allow the Town to complete a professional evaluation of town owned land.

**FISCAL IMPACT:** Positive. No additional operating funds will be needed to complete this project.

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

**STAFF ASSISTANCE:** Assistant Director Jo Anne Miller Buntich, Growth Management