



Town of Barnstable

Town Council

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Councilors:

Frederick Chirigotis
President

Harold E. Tobey
Vice President

Richard G. Barry
Janice L. Barton
Ann A. Canedy
James H. Crocker, Jr.
Leah C. Curtis
Henry C. Farnham
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J. Gregory Milne
James F. Munafo, Jr.
Tom Rugo
James M. Tinsley, Jr.

Administrator:
Donald M. Grissom

Administrative
Assistant:
Barbara A. Ford

TOWN COUNCIL MEETING AGENDA April 16, 2009 7:00 PM

- 1. ROLL CALL**
- 2. PLEDGE OF ALLEGIANCE**
- 3. MOMENT OF SILENCE**
- **Proclamation—Barnstable Kiwanis 80th Anniversary**
- 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: May 7th

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Minutes – March 19, 2009 and April 2, 2009

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# 2009-086

INTRO: 03/19/09, 04/02/09, 04/16/09

2009-086 AN ORDINANCE TO WAIVE WATER TOWER CONSTRUCTION FEES

ORDERED, That notwithstanding the provisions of any other ordinance of the Town regarding Schedules of Fees, water tower construction project(s) shall hereby be exempt from payment of such fees.

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

AN ORDINANCE TO WAIVE THE WATER TOWER CONSTRUCTION FEES

ITEM# 2009-086

INTRO: 03/19/09, 04/02/09, 04/16/09

SUMMARY

TO: The Town Council
FROM: John C. Klimm, Town Manager
DATE: March 19, 2009
SUBJECT: Waiver of fees for water tower construction

BACKGROUND: For the good of the public water system three new water towers will need to be built over the next several years including one in Cotuit, one in Centerville and one in Hyannis.

All three of these projects require what is known as a controlled build which requires a state licensed professional to oversee the construction of each tower consonant with and reflective of the requirements of Massachusetts General Laws.

Due to the stringent oversight requirement, there will be minimal inspection requirements by town personnel.

ANALYSIS: The aspects of this request for fee waiver have been vetted with Directory of Regulatory Affairs Thomas Geiler, who has approved of this request.

If this fee and other associated construction fees are not waived, portions of the proposed project may have to be valued engineered.

FISCAL IMPACT: It is anticipated that adoption of this order would have a neutral fiscal impact.

A. OLD BUSINESS (Public Hearing) (Roll-call 2/3)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-082
INTRO: 03/19/09, 04/16/09

2009-082 APPROPRIATION FOR COST STUDY - HYANNIS WATER SUPPLY SYSTEM

ORDERED: That the sum of \$48,000 be appropriated for the purpose of funding the Cost of Service and Rate Structure Analysis for the Hyannis Water Supply System; and to meet this appropriation that \$48,000 be transferred from the mitigation funds received by the Town from the MTBE lawsuit; and that the Town Manager is authorized to contract for and expend the appropriation made available for this purpose and be authorized to accept any grants or gifts in relation thereto, subject to the approval of the Town Council.

SPONSOR: Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

APPROPRIATION ORDER HYANNIS WATER SUPPLY SYSTEM COST STUDY

**ITEM# 2009-082
INTRO: 03/19/09, 04/16/09**

SUMMARY

TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Mark S. Ells, Director DPW
DATE: March 12, 2009
SUBJECT: Appropriation Order – Hyannis Water Supply System cost study

BACKGROUND: The Hyannis Water Board and Department of Public Works have prioritized the Cost of Service Study and Rate Structure Analysis for the Hyannis Water System. The findings of this study will guide the Hyannis Water Board to provide recommended rates and fees for fiscal year 2011 and beyond.

ANALYSIS: This cost of service study and rate structure analysis is needed to provide the Hyannis Water Board with accurate information and professional expertise relative to expenses for operations, debt service and capital plan and properly choose a rate structure to support these expenses in a way that is justifiable, equitable and fair to all of the rate payers of the Hyannis Water System.

FISCAL IMPACT: Funding is available for appropriation from the MBTE mitigation received by the Town of Barnstable for water supply issues.

STAFF ASSISTANCE: Mark S. Ells, Director of Public Works
Hans Keijser, Water Supply Division Supervisor

A. OLD BUSINESS (Public Hearing) (Roll-call 2/3)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-083
INTRO: 03/19/09, 04/16/09

2009-083 APPROPRIATION FOR DESIGN OF WATER MAIN UPGRADE-HYANNIS

ORDERED: That the sum of \$190,000 be appropriated for the purposes of funding the preliminary design and final design of an water main upgrade from the Maher Treatment Plant on Old Yarmouth Road through South Street for the Hyannis Water System; and to meet this appropriation that \$190,000 be transferred from the mitigation funds received by the Town from the MTBE lawsuit; and that the Town Manager is authorized to contract for and expend the appropriation made available for this purpose and be authorized to accept any grants or gifts in relation thereto, subject to the approval of the Town Council.

SPONSOR: Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

APPROPRIATION ORDER DESIGN OF WATER MAIN UPGRADE

**ITEM# 2009-083
INTRO: 03/19/09, 04/16/09**

SUMMARY

TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Mark S. Ells, Director DPW
DATE: March 12, 2009
SUBJECT: Appropriation Order – water main upgrade design

BACKGROUND: The Hyannis Water Board and Department of Public Works have prioritized the design, permitting and construction of this water main upgrade as one of two prioritized capital improvement recommendations of the Hyannis Water System Master Plan completed in April 2007. This request is for funding to proceed with the preliminary design and final design of the water main upgrade.

ANALYSIS: The fire flow tests performed for the Insurance Services Office in 2007 and the Hydraulic Study Results identified deficient fire flows in the down town Hyannis area. This project is needed to improve these fire flows.

FISCAL IMPACT: Funding is available for appropriation from the MBTE mitigation received by the Town of Barnstable for water supply issues.

STAFF ASSISTANCE: Mark S. Ells, Director of Public Works
Hans Keijser, Water Supply Division Supervisor

A. OLD BUSINESS (Public Hearing) (Roll-call 2/3)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-084
INTRO: 03/19/09, 04/16/09

2009-084 APPROPRIATION-REPAIR WATER TANK - HYANNIS WATER SYSTEM

ORDERED: That the sum of \$33,000 be appropriated for the purposes of funding the recommended repairs on the Mary Dunn 1 Water Storage Tank for the Hyannis Water System; and to meet this appropriation that \$33,000 be transferred from the mitigation funds received by the Town from the MTBE lawsuit; and that the Town Manager is authorized to contract for and expend the appropriation made available for this purpose and be authorized to accept any grants or gifts in relation thereto, subject to the approval of the Town Council..

SPONSOR: Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

APPROPRIATION ORDER REPAIR WATER TANK

**ITEM# 2009-084
INTRO: 03/19/09, 04/16/09**

SUMMARY

TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Mark S. Ells, Director DPW
DATE: March 12, 2009
SUBJECT: Appropriation Order- repair water tank

BACKGROUND: The Hyannis Water Board and Department of Public Works have prioritized the repairs to the Mary Dunn 1 Water Storage Tank for the Hyannis Water System. The June 2008 tank inspection report by Weston & Sampson recommended a variety of repairs to be done within the first year. This request is for funding to proceed with these repairs.

ANALYSIS: These repairs are needed to help ensure the safety and reliability of the Hyannis Water System for their rate payers.

FISCAL IMPACT: Funding is available for appropriation from the MBTE mitigation received by the Town of Barnstable for water supply issues.

STAFF ASSISTANCE: Mark S. Ells, Director of Public Works
Hans Keijser, Water Supply Division Supervisor

A. OLD BUSINESS (Public Hearing) (Roll-call 2/3)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-085
INTRO: 03/19/09, 04/16/09

2009-085 APPROPRIATION-WATER QUALITY STUDY-HYANNIS WATER SUPPLY

ORDERED: That the sum of \$145,000 be appropriated for the purposes of funding the Water Quality Study for the Hyannis Water Supply System; and to meet this appropriation that \$145,000 be transferred from the mitigation funds received by the Town from the MTBE lawsuit; and that the Town Manager is authorized to contract for and expend the appropriation made available for this purpose and be authorized to accept any grants or gifts in relation thereto, subject to the approval of the Town Council.

SPONSOR: Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

APPROPRIATION ORDER WATER QUALITY STUDY

**ITEM# 2009-085
INTRO: 03/19/09, 04/16/09**

SUMMARY

TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Mark S. Ells, Director DPW
DATE: March 12, 2009
SUBJECT: Water Quality Study

BACKGROUND: The Hyannis Water Board and Department of Public Works have prioritized the Water Quality Study for the Hyannis Water System. The findings of this study will provide recommendations and guide the Hyannis Water Board and the Department of Public Works relative to all issues related to water quality within the water system and will provide a structured and prioritized Operational and Capital Improvement Plan.

ANALYSIS: This water quality study is needed to provide the Hyannis Water Board and the Department of Public Works with accurate water quality testing, assessment and professional expertise relative to operations, water treatment options and requirements, capital improvements with cost estimates and the required adjustments in the Hyannis Water System Master Plan.

FISCAL IMPACT: Funding is available for appropriation from the MBTE mitigation received by the Town of Barnstable for water supply issues.

STAFF ASSISTANCE: Mark S. Ells, Director of Public Works
Hans Keijser, Water Supply Division Supervisor

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

BARNSTABLE TOWN COUNCIL

ITEM# 2009-087
INTRO: 03/19/09, 04/16/09

2009-087 CIP APPROPRIATION –SEWER RESERVE ENTERPRISE FUND

ORDERED, That the sum of **\$80,000** be appropriated for the purpose of funding the repair of deteriorated sewer manhole and design for the demolition of several no longer needed manholes in the force main leading to the Treatment Plant as outlined in the FY 2010 - FY 2014 Capital Improvement Plan as recommended by the Town Manager; and that to meet this appropriation, that **\$80,000** be transferred from available funds within the Sewer Reserve Fund, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes and be authorized to accept any grants or gifts in relation thereto, subject to the approval of the Town Council.

SPONSOR: Town Manager John C. Klimm

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

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

BARNSTABLE TOWN COUNCIL

ITEM# 2009-088
INTRO: 03/19/09, 04/16/09

2009-088 CIP APPROPRIATION –SEWER RESERVE ENTERPRISE FUND

ORDERED, That the sum of **\$115,000** be appropriated for the purpose of funding a sludge reduction process study as outlined in the FY 2010 - FY 2014 Capital Improvement Plan as recommended by the Town Manager; and that to meet this appropriation, that **\$115,000** be transferred from available funds within the Sewer Reserve Fund, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes and be authorized to accept any grants or gifts in relation thereto, subject to the approval of the Town Council.

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

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

BARNSTABLE TOWN COUNCIL

ITEM# 2009-089
INTRO: 03/19/09, 04/16/09

2009-089 CIP APPROPRIATION –SEWER RESERVE ENTERPRISE FUND

ORDERED, That the sum of **\$100,000** be appropriated for the purpose of funding the design and permitting of a solar power system for the Waste Water Treatment Plant in Hyannis as outlined in the FY 2010 - FY 2014 Capital Improvement Plan as recommended by the Town Manager; and that to meet this appropriation, that **\$100,000** be transferred from available funds within the Sewer Reserve Fund, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes and be authorized to accept any grants or gifts in relation thereto, subject to the approval of the Town Council.

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

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

BARNSTABLE TOWN COUNCIL

ITEM# 2009-090
INTRO: 03/19/09, 04/16/09

2009-090 CIP APPROPRIATION –WATER SUPPLY RESERVE ENTERPRISE FUND

ORDERED, That the sum of **\$200,000** be appropriated for the purpose of funding a continuing program of repairing and upgrading water supply wells, treatment plants and pump stations owned by the Town as outlined in the FY 2010 - FY 2014 Capital Improvement Plan as recommended by the Town Manager; and that to meet this appropriation, that **\$200,000** be transferred from available funds within the Water Supply Reserve Fund, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes and be authorized to accept any grants or gifts in relation thereto, subject to the approval of the Town Council.

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

A. OLD BUSINESS (Public Hearing) (Roll-call 2/3)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-091
INTRO: 03/19/09, 04/16/09

2009-091 CIP APPROPRIATION – \$3,250,000 CAPITAL TRUST FUND

ORDERED, That the sum of **\$3,250,000** be appropriated for the purpose of funding the repair of the Town’s public roads and drainage systems as outlined in the FY 2010 - FY 2014 Capital Improvement Plan as recommended by the Town Manager; and that to meet this appropriation, that **\$3,250,000** be transferred from available funds within the Town’s Capital Trust Fund, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes, and be authorized to accept any grants or gifts in relation thereto, subject to the approval of the Town Council.

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

A. OLD BUSINESS (Public Hearing) (Roll-call 2/3)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-092
INTRO: 03/19/09, 04/16/09

2009-092 CIP APPROPRIATION – \$220,000 CAPITAL TRUST FUND

ORDERED, That the sum of **\$220,000** be appropriated for the purpose of dredging Cotuit Entrance Channel as outlined in the FY 2010 - FY 2014 Capital Improvement Plan as recommended by the Town Manager; and that to meet this appropriation, that **\$220,000** be transferred from available funds within the Town’s Capital Trust Fund, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes, and be authorized to accept reimbursements, grants or gifts in relation thereto, subject to the approval of the Town Council.

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

A. OLD BUSINESS (Public Hearing) (Roll-call 2/3)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-093

INTRO: 03/19/09, 04/16/09

2009-093 CIP APPROPRIATION – \$200,000 CAPITAL TRUST FUND

ORDERED, That the sum of **\$200,000** be appropriated for the purpose of funding the Town’s share of the Stewart’s Creek restoration project as outlined in the FY 2010 - FY 2014 Capital Improvement Plan as recommended by the Town Manager; and that to meet this appropriation, that **\$200,000** be transferred from available funds within the Town’s Capital Trust Fund, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes, and be authorized to accept any grants or gifts in relation thereto, subject to the approval of the Town Council..

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

A. OLD BUSINESS (Public Hearing) (Roll-call 2/3)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-094
INTRO: 03/19/09, 04/16/09**

2009-094 APPROPRIATION & LOAN ORDER – \$725,000 CAPITAL TRUST FUND

ORDERED, That the sum of **\$725,000** be appropriated for the purpose of funding repairs to the steel sheet pile bulkhead portion of the Barnstable Inner Harbor Marina as outlined in the FY 2010 - FY 2014 Capital Improvement Plan as recommended by the Town Manager; and that to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$725,000**, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes and be authorized to accept any grants or gifts in relation thereto, subject to the approval of the Town Council.

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

A. OLD BUSINESS (Public Hearing) (Roll-call 2/3)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-095
INTRO: 03/19/09, 04/16/09**

2009-095 APPROPRIATION & LOAN ORDER – \$936,600 CAPITAL TRUST FUND

ORDERED, That the sum of **\$936,600** be appropriated for the purpose of funding municipal and school building improvements and equipment replacements as outlined in the FY 2010 - FY 2014 Capital Improvement Plan as recommended by the Town Manager; and that to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$936,600**, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes and be authorized to accept any grants or gifts in relation thereto, subject to the approval of the Town Council.

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

A. OLD BUSINESS (Public Hearing) (Roll-call 2/3)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-096

INTRO: 03/19/09, 04/16/09, 04/16/09

2009-096 APPROPRIATION-& LOAN ORDER - SEWER COLLECTION SYSTEM

ORDERED: That the sum of **\$3,900,000** be appropriated for the purpose of funding the sewer collection system expansion at Stewart’s Creek as outlined in the FY 2010 - FY 2014 Capital Improvement Plan as recommended by the Town Manager; and that to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$3,900,000**, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes and be authorized to accept any grants or gifts in relation thereto, subject to the approval of the Town Council.

SPONSOR: Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

A. OLD BUSINESS (Public Hearing) (Roll-call 2/3)

BARNSTABLE TOWN COUNCIL

ITEM# 2009-097
INTRO: 03/19/09, 04/16/09

2009-097 APPROPRIATION-& LOAN ORDER - HYANNIS WATER SYSTEM

ORDERED: That the sum of **\$1,050,000** be appropriated for the purpose of funding the pipe replacement and upgrade program for the Hyannis Water System as outlined in the FY 2010 - FY 2014 Capital Improvement Plan as recommended by the Town Manager; and that to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, is authorized to borrow **\$1,050,000**, and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes and be authorized to accept any grants or gifts in relation thereto, subject to the approval of the Town Council.

SPONSOR: Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

**B. NEW BUSINESS (Refer to Joint Public Hearing with Planning Board
05/07/09) (Roll-call 2/3)**

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-099
INTRO: 04/16/09**

**2009-099 AMEND ZONING ORDINANCE RELATING TO DEMOLITION AND
REBUILDING ON MERGED, DEVELOPED LOTS**

ORDERED:

Section 1. That the Code of the Town of Barnstable, Zoning Ordinance, Chapter 240, Article VIII, Nonconformities, §240-91H is hereby amended by adding a new paragraph (2) as follows:

- (2) As of Right: Merged Lots Each Containing a Minimum Area of 43,560 Square Feet of Contiguous Upland.

Where immediately prior to November 16, 2000, two legally created contiguous lots each containing a minimum area of 43,560 square feet of contiguous upland were:

- (a) located in the Resource Protection Overlay District and
- (b) held in common ownership and
- (c) improved by the construction of one single-family residence including accessory structures which occupied both lots,

each said 43,560 square foot lot may be treated under these provisions as two separate buildable lots, provided that each of said lots conformed to all the bulk regulations of the zoning ordinance immediately prior to November 16, 2000 and as long as the other requirements of §240-91H(1)(a)-(c) above are satisfied.

And by renumbering the paragraphs thereunder so that the current §240-91H(2) becomes §240-91H(3).

Section 2: That the Code of the Town of Barnstable, Zoning Ordinance, Chapter 240, Article VIII, Nonconformities, §240-91H is hereby amended by adding a new subsection §240-91H(3)(d) which reads: "This section shall only apply to H(2) to the extent that the proposed demolition and rebuilding cannot satisfy the criteria established in Subsection H(1) above and shall not be available for relief from any of the other provisions of H(2)."

And so §240-91H would now read as follows:

- H. Developed lot protection; demolition and rebuilding on nonconforming lots. Preexisting legal nonconforming lots which have been improved by the construction of a single- or two-family residence which conformed to all provisions of the zoning ordinance or bylaw at the time of construction shall be entitled to completely demolish the old residence and construct thereon a new residence in accordance with the following. **[Added 11-18-2004 by Order No. 2005-025]**

- (1) As of right. The proposed demolition and rebuilding shall be permitted as-of-right on a preexisting legal nonconforming lot that contains a minimum of 10,000 square feet of contiguous upland, provided that the Building Commissioner determines that all of the following criteria are met:

- (a) The proposed new structure conforms to all current use and setback requirements of the zoning district it is located in;
 - (b) The proposed construction conforms to the following requirements of lot coverage, floor area ratio and building height:
 - [1] Lot coverage by all buildings and all structures shall not exceed 20% or the existing lot coverage, whichever is greater;
 - [2] The floor area ratio shall not exceed 0.30 or the existing floor area ratio of the structure being demolished and rebuilt, whichever is greater; and
 - [3] The building height, in feet, shall not exceed 30 feet to the highest plate and shall contain no more than 2 1/2 stories. The building height, in feet, shall be defined as the vertical distance from the average grade plane to plate.
 - [4] Lot coverage by all buildings and all structures shall not exceed 20% or the existing lot coverage, whichever is greater;
 - [5] The floor area ratio shall not exceed 0.30 or the existing floor area ratio of the structure being demolished and rebuilt, whichever is greater; and
 - [6] The building height, in feet, shall not exceed 30 feet to the highest plate and shall contain no more than 2 1/2 stories. The building height, in feet, shall be defined as the vertical distance from the average grade plane to plate.
 - (c) Further expansion of the rebuilt structure must conform to Subsection H(1)(b) above.
- (2) As of Right: Merged Lots Each Containing a Minimum Area of 43,560 Square Feet of Contiguous Upland.

Where immediately prior to November 16, 2000, two legally created contiguous lots each containing a minimum area of 43,560 square feet of contiguous upland were:

- (a) located in the Resource Protection Overlay District and
- (b) held in common ownership and
- (c) improved by the construction of one single-family residence including accessory structures which occupied both lots,

each said 43,500 square foot lot may be treated under these provisions as two separate buildable lots, provided that each of said lots conformed to all the bulk regulations of the zoning ordinance immediately prior to November 16, 2000 and as long as the other requirements of §240-91H(1)(a)-(c) above are satisfied.

- (3) By special permit. If the proposed demolition and rebuilding cannot satisfy the criteria established in Subsection H(1) above, then the Zoning Board of Appeals may allow the demolition and rebuilding by special permit, provided that the Board finds that:
 - (a) If the proposed new dwelling does not comply with Subsection H(1)(a) above, then the proposed yard setbacks must be equal to or greater than the yard setbacks of the existing building; and **[Amended 2-17-2005 by Order No. 2005-058]**
 - (b) All the criteria in Subsection H(1)(b)[1], [2] and [3] above are met.
 - (c) The proposed new dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling.
 - (d) This section shall only apply to H(2) to the extent that the proposed demolition and rebuilding cannot satisfy the criteria established in Subsection H(1) above and shall not be available for relief from any of the other provisions of H(2).

SPONSOR: Town Manger John C. Klimm

BARNSTABLE TOWN COUNCIL
ZONING AMENDMENT
DEMOLITION & REBUILDING MERGED, DEVELOPED LOTS

ITEM# 2009-099
INTRO: 04/16/09

SUMMARY

TO: Town Council
FROM: John Klimm, Town Manager
THROUGH: Jo Anne Buntich, Interim Director, Growth Management Department
DATE: April 8, 2009
SUBJECT: Zoning Amendment

BACKGROUND & RATIONAL: This amendment is being presented to clarify a condition that exists in the zoning ordinance related to the two acre zoning and state grandfathering rights with respect to the “zoning lot” upon which a single-family dwelling exists. The amendment proposes to protect those legally created lots of one-acre or more when two such abutting lots have been developed as one.

For most of the town, the Resource Protection Overlay District (RPOD) imposed a minimum lot area of two acres as of November of 2000. A specific provision was incorporated to limit merger of legally created vacant one-acre lots. That grandfathering provision for the RPOD followed the state’s standard grandfathering language for merger of vacant lots. This grandfathering provision in the RPOD did not address two abutting one-acre lots developed with one single-family dwelling, which may include accessory structures on these two one-acre lots. And so, the two lots are now considered one lot for the purposes of zoning.

Although each of the two lots conform to all the requirements including the one-acre minimum lot area and predates the adoption of the RPOD, the pattern of development and the use of the two lots as one creates an issue with how they would be treated upon the demolition of the single-family dwelling now located on the lots. This amendment clarifies that the two lots would each be treated as are all other pre November 2000 one-acre lots. Once the existing dwelling is demolished, it clarifies that rebuilding would be allowed on each of the two one-acre lots.

The Barnstable RPOD grandfathering provision is more permissive than the state’s grandfathering provision. So to allow the local ordinance to prevail, this amendment is proposed.

TOWN MANAGER RECOMMENDATION: Town Council proceeds to a joint public hearing with the Planning Board to receive public comment on the proposal.

STAFF ASSISTANCE: Jo Anne Buntich, Interim Director, Growth Management Department

B. NEW BUSINESS (Refer to Public Hearing 05/07/09) (Roll-call)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-100
INTRO: 04/16/09**

**2009-100 COMMUNITY PRESERVATION FUND APPROPRIATION FOR ACQUISITION
OF A CONSERVATION RESTRICTION ON 3.5 ACRES**

ORDERED, that pursuant to the provisions of G.L. c. 44B, the sum of One Hundred Thousand and No/100 (\$100,000) Dollars be appropriated and transferred from the amount set aside for Open Space in the Community Preservation Fund on March 30, 2009; and that the Town of Barnstable Growth Management Department is authorized to contract for and expend the amount of (\$100,000) with the prior approval of the Town Manager for the purpose of acquiring a conservation restriction on a 3.5 acre parcel located at 580 Old Post Road in Cotuit, on Map 054 Parcel 007.

SPONSOR: 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

CPF APPROPRIATION

ITEM# 2009-100
INTRO: 04/16/09

SUMMARY

TO: Town Council
FROM: Community Preservation Committee
DATE: April 7, 2009
SUBJECT: Galloway Conservation Restriction, 580 Old Post Road, Cotuit, MA, Map 054 Parcel 007

BACKGROUND: The Community Preservation Committee (CPC) met on March 30, 2009 and has recommended that the town support the funding request of \$100,000, made by Barnstable Land Trust to have the town acquire a Conservation Restriction on 3.5 acres of property, Map 054 Parcel 007. The total requested amount is \$100,000 and is being requested and shall be appropriated and transferred from the Community Preservation Funds.

RATIONALE: This project seeks to assist Barnstable Land Trust in the acquisition 3.5 acres of the Galloway property located at 580 Old Post Road, Cotuit; Map 054 Parcel 007. Permanent protection and preservation by a Conservation Restriction will be acquired for the 3.5 acres to be held by the Town of Barnstable. The Town of Barnstable would also be identified as a partner with the Barnstable Land Trust in helping to preserve the Eagle Pond Sanctuary which is likely the most heavily used conservation land in the Mashpee / Cotuit area.

The Galloway property fronts on Old Post Road, which is used by bicyclists, walkers and joggers. The goal is to keep the land in its natural state and create a new pedestrian entrance from the south into the Eagle Pond Sanctuary. The new entrance will hopefully eliminate roadway pedestrian traffic. The installation of an educational kiosk would include a map and provide a sense of place for people.

Between the changes to the Resource Protection Overlay District and continued protection of the 'headwaters' of the Little River Corridor; protection of this property would further reduce nitrogen, maintain the numerous aquatic usages of the area and aide in the reduction of eutrophication of shellfish beds.

This project is consistent with the Local Comprehensive Plan; preserves the essential character of the Town; saves resources that would otherwise be threatened; demonstrates financial feasibility; produces advantageous benefits; endorsed by other municipal entities; and serves more than one CPA purpose.

The overall benefit of this parcel will enhance existing wildlife habitat and enhanced preservation of the aquifer which lies beneath that provides drinking water and interconnects with the rich surface waters and kettlehole ponds.

STAFF ASSISTANCE: Project Coordinator Alisha L. Stanley

B. NEW BUSINESS (Refer to Public Hearing 05/07/09) (Roll-call)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-101
INTRO: 04/16/09**

**2009-101 COMMUNITY PRESERVATION FUND APPROPRIATION FOR ACQUISITION
OF A CONSERVATION RESTRICTION ON 17 ACRES**

ORDERED, that pursuant to the provisions of G.L. c. 44B, the sum of One Hundred Thousand and No/100 (\$200,000) Dollars be appropriated and transferred from the amount set aside for Open Space in the Community Preservation Fund on March 30, 2009; and that the Town of Barnstable Growth Management Department is authorized to contract for and expend the amount of (\$200,000) with the prior approval of the Town Manager for the purpose of acquiring a conservation restriction on a 17 acre parcel located at 0 Pine Lane in Barnstable Village, on Map 278 Parcel 048; said land is to be owned by the Barnstable Fire District under the control of the Water Department.

SPONSOR: 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

CPF APPROPRIATION

ITEM# 2009-101
INTRO: 04/16/09

SUMMARY

TO: Town Council
FROM: Community Preservation Committee
DATE: April 7, 2009
SUBJECT: Barnstable Fire District / Bush Brown property (17 acres), Map 278 Parcel 048

BACKGROUND: The Community Preservation Committee (CPC) met on March 30, 2009 and has recommended that the town support the funding request in the amount of, and not to exceed \$200,000, made by the Barnstable Fire District to acquire one parcel of land totaling 17 acres of the following lot: Map 278 Parcel 048. The total acquisition for the 17 acres is \$200,000; and is being requested and shall be appropriated and transferred from the Open Space Community Preservation Funds.

RATIONALE: This Barnstable Fire District seeks to purchase the parcel, reducing the number of buildable lots to six, while increasing open space, further increasing the groundwater protection area and permanently protecting the future potential public water supply source.

Acquisition of this parcel will protect and enhance an important wildlife corridor, connecting to approximately 1,000 acres of protected open space, encompassing Barnstable Fire District's wellfields and the Town's Old Jail Lane Preserve; also connecting miles of existing protected public walking trails, and complete a link in the Barnstable County's Cape Cod Pathway's program

The Community Preservation Committee has approved the request contingent on the Barnstable Water District contributing an equal amount of funds. A Conservation Restriction for the 17 acres of the Bush Brown property will be held jointly by the Town of Barnstable and Barnstable Land Trust.

Completion of this acquisition will safeguard the land from development, and ensure that the rural and peaceful character of the area will be preserved indefinitely.

STAFF ASSISTANCE: Project Coordinator Alisha L. Stanley

B. NEW BUSINESS (Refer to Public Hearing 05/07/09) (Roll-call)

BARNSTABLE TOWN COUNCIL

**ITEM# 2009-102
INTRO: 04/16/09**

2009-102 CPF APPROPRIATION FOR ACQUISITION OF A CONSERVATION RESTRICTION – MARY DUNN ROAD OF 1.79 ACRES

ORDERED, That, pursuant to the provisions of G.L. c. 44B, the sum not to exceed the amount of Forty Six Thousand Six Hundred Dollars and No/100 (\$46,600) Dollars be appropriated and transferred from the amount set aside for Open Space acquisitions under the Community Preservation Fund on August 21, 2008 for Fiscal Year 2009, Agenda Item Order Number 2008-161 for the acquisition and creation of open space and recreation by the Town and interests in land on the properties shown on Assessors Map as Map 332 Parcel 005 and Map 348 Parcel 036; that the Town of Barnstable, Growth Management Department is authorized to contract for and expend the amount of \$46,600 with the prior approval of the Town Manager, for the acquisition.

SPONSOR: 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

CPF APPROPRIATION

ITEM# 2009-102
INTRO: 04/16/09

SUMMARY

TO: Town Council
FROM: Community Preservation Committee
DATE: April 7, 2009
SUBJECT: CPF appropriation

BACKGROUND: The Community Preservation Committee (CPC) met on March 30, 2009 and has recommended that the town support the funding request of \$46,600, made by the Growth Management Department to acquire two parcels of land totaling 1.79 acres of the following two lots: Map 332 Parcel 005 and Map 348 Parcel 036. The total acquisition for the 1.79 acres is \$46,600; (for the parcel purchase, closing and legal fees) and is being requested and shall be appropriated and transferred from the Community Preservation Funds.

RATIONALE: This project seeks to acquire a fee interest for the 1.79 acres of the Cobb Trust land of the two parcels east of Mary Dunn Road. Further protection and preservation by a Conservation Restriction for the 1.79 acres may be sought at a later date and could be held by either the Division of Fish and Game or another entity as approved by the Town Council and the Town Manager. The first parcel (M/P 332/005) consists of approximately .59 acres of un-developed and un-protected land and located entirely within the Wellhead Protection Overlay District. The acquisition of this parcel will be dedicated to Open Space and water supply protection as it directly abuts the Hyannis Water Supply Division property.

The second parcel (M/P 348-036) consists of approximately 1.2 acres is landlocked within the 350 +/- acres of land owned by the Commonwealth of Massachusetts Division of Fisheries and Wildlife. The acquisition of this parcel will also be dedicated to Open Space

The overall benefit of the acquisition of these parcels will be measured by the pollution reduction achieved in the public drinking water supply from not allowing the development of the property at Israel Ponds as well as permanent protection of the many rare plant and animal species habitat that use these and the surrounding lands.

STAFF ASSISTANCE: Project Coordinator Alisha L. Stanley