



Town of Barnstable

Town Council

367 Main Street, Village of Hyannis, MA 02601
508.862.4738 • 508.862.4770

E-mail: council@town.barnstable.ma.us
www.town.barnstable.ma.us

Councilors:

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Harold E. Tobey
Vice President

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Administrator:
Donald M. Grissom

Administrative
Assistant:
Barbara A. Ford

TOWN COUNCIL MEETING AGENDA September 17, 2009 6:30 PM

- 1. ROLL CALL**
- 2. PLEDGE OF ALLEGIANCE**
- 3. MOMENT OF SILENCE**
- 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 1st

NEW BUSINESS 2010-024 THROUGH 2010-029 WILL BE TAKEN UP BEFORE OLD BUSINESS

A. OLD BUSINESS

2010-013	Appropriation order for Community Preservation Fund – repair & preservation of new town hall (Public hearing) (Roll-call, 2/3) (Substitute text is appended to this agenda on page xx)	3 – 4
2010-016	Appropriation & transfer \$137,500 from Community Preservation Fund set aside for open space (Public hearing continued) (Roll-call)	5 - 6
2010-018	Authorizing the town manager to enter into a regulatory agreement – 132-room Hilton Garden Inn on Iyannough Road, Hyannis (May be acted upon) (Roll-call, 2/3)	7 - 19
2010-021	Approval of a ballot question authorizing a capital expenditure exclusion to replace the Barnstable Harbor bulkhead (Second reading) (Roll-call, 2/3)	20 – 21

B. NEW BUSINESS

2010-024	Acceptance of a FY10 US Justice Department grant of \$511,808 (May be acted upon)	22 - 24
2010-025	Acceptance of a FY10 State 911 Department Training grant for \$31,870 (May be acted upon)	25 - 26
2010-026	Acceptance of a FY10 State 911 Department Support & Incentive grant for \$177,244 (May be acted upon)	27 - 28
2010-027	Authorizing acceptances of gifts for the Hyannis Youth & Community Center (May be acted upon)	29 - 30
2010-028	Acceptance of a \$10,000 grant from the Nature Conservancy for control of invasive plant species on Sandy Neck (May be acted upon)	31 – 32
2010-029	Acceptance of a gift from the West Barnstable Historical Society for ancient gravestone restoration at the Old West Barnstable Cemetery (May be acted upon)	33 – 34
2010-030	Appropriation & transfer order of proceeds from sale of surplus equipment toward construction of Hyannis Youth & Community Center (Refer to public hearing 10/01/09) (Roll-call)	35 – 36
2010-031	Amend the Conover conservation restriction recorded in 2005 with .92 acres & to accept a gift of an easement identified on Assessors’ Map 70 Parcels 17-3 and 22 (May be acted upon)	37 – 40
2010-032	Approve a gift & conservation restriction for property on Pilot’s Way as identified on Assessors’ Map 217 as Parcel 30 and on Map 237 as Parcel 4 (May be acted upon)	41 - 42

Minutes – August 27, 2009 and September 3, 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) (Roll-call, 2/3)
 (Substitute text dated August 6, 2009 appended to the end of the agenda)**

BARNSTABLE TOWN COUNCIL

**ITEM# 2010-013
 INTRO: 07/16/09, 08/06/09, 09/17/09**

2010-013 APPROPRIATION & LOAN ORDER-COMMUNITY PRESERVATION NEW TOWN HALL

Ordered: That, pursuant to the provisions of G.L. c. 44B, the sum of Four hundred twenty nine thousand seven hundred seventy one and NO/100 (\$429,771) Dollars be appropriated and transferred from the amount set aside for Historic Resources in the Community Preservation Fund on August 21, 2008 under agenda item number 2008-161; that the sum of One million three hundred thirty two thousand five hundred twenty and NO/100 (\$1,332,520) Dollars be appropriated and transferred from the undesignated portion of the Community Preservation Fund; that the sum of \$1,332,520.00 be appropriated from the undesignated portion of the Community Preservation Fund; that to meet the additional appropriation of \$1,332,520.00 from the undesignated portion of the Community Preservation Fund the Town Treasurer, with the approval of the Town Manager, is authorized to borrow \$1,332,520.00 in anticipation of community preservation fund revenues; for a total appropriation of \$3,094,811.00; and that the Growth Management Department is authorized to contract for and expend the total amount appropriated with the prior approval of the Town Manager, subject to oversight of the project expenses by the Community Preservation Committee for roof, brick, window, exterior door and other exterior repairs and replacements for the preservation and rehabilitation of the historic resource consisting of the New Town Hall of the Town of Barnstable with an address of 367 Main Street, Hyannis, MA., located on Map / Parcel 326 / 021.

SPONSOR: Town Manager, John C. Klimm 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

SUMMARY

ITEM# 2010-013

INTRO: 07/16/09, 08/06/09, 09/17/09

TO: Town Council
FROM: Community Preservation Committee
DATE: July 9, 2009
SUBJECT: Town Hall Exterior Envelope Preservation and Rehabilitation Project

BACKGROUND: At their meeting on June 22, 2009, the Community Preservation Committee (CPC) unanimously recommended support for the Town of Barnstable Department of Public Works funding request amount not to exceed, \$3,094,811.00, for the Town Hall Exterior Envelope Preservation and Rehabilitation Project.

RATIONALE: CBI Consulting, Inc., the Town's Historic Consultant for the project, has provided the Town with an Existing Conditions Report of the Town Hall Exterior Envelope. Recommendations for building preservation and rehabilitation that address safety and structural improvements to include roof reconstruction, exterior brick wall repair, brick window arch repairs, window replacement; exterior door replacement, brownstone repairs, new copper gutters and downspouts, fascia work, and hazardous components abatement have been prioritized by CBI and Town staff.

The estimated cost of this project is \$3,094,811. The Community Preservation Committee recommends the Town Council to approve the expenditure from Community Preservation Act funds as follows: \$429,771 from the Historic Preservation fund balance and; \$1,332,520 from the Undesignated Fund balance; and also authorize borrowing of an additional \$1,332,520 from the Undesignated Fund balance for a total project cost of \$3,094,811.

The estimated project cost of \$3,094,011 includes a \$156,400 reduction because an Energy Efficiency Community Development Block Grant of \$156,400 has been awarded to the Town for Town Hall window replacement.

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

BARNSTABLE TOWN COUNCIL

ITEM# 2010-016

INTRO: 08/06/09, 09/03/09, 09/17/09

2010-016 APPROPRIATION & TRANSFER \$137,500 FROM COMMUNITY PRESERVATION FUND SET ASIDE FOR OPEN SPACE

ORDERED: That, pursuant to the provisions of G. L. c. 44B, the sum of One hundred thirty seven thousand five hundred dollars and no/100 (\$137,500.00) be appropriated and transferred from the amount set aside for Open Space in the Community Preservation Fund on June 18, 2009 under agenda item 2009-129; and that the Growth Management Department is authorized to contract for and expend the amount appropriated with the prior approval of the Town Manager for the acquisition of a conservation restriction on 1.05 acres of land located at 671 Main Street, Cotuit, MA., Map / Parcel 036/015.

SPONSOR: Town Manager John C. Klimm 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

SUMMARY

ITEM# 2010-016

INTRO: 08/06/09, 09/03/09, 09/17/09

TO: Town Council
FROM: Community Preservation Committee
DATE: July 27, 2009
SUBJECT: Rationale: Bay Point, LLC – Conservation Restriction

BACKGROUND: The Community Preservation Committee (CPC) met on July 20, 2009, and recommends that the town support this funding request for the Open Space Conservation Restriction on 1.05 acres of land located at 671 Main Street, Cotuit, Map / Parcel 036/015, in an amount not to exceed \$137,500 and shall be appropriated and transferred from the Community Preservation Funds.

RATIONALE: The project goal is to secure a conservation restriction (CR) for a combined sum of \$275,000, of which the Cotuit Water District will share the cost with the town – each will contribute \$137,500.

In the agreement with the developers in return for the purchase of the conservation restriction extensive portions of the property will be restricted from any development. The remaining project will be dramatically reduced in size and density. The developer will physically set off the conservation restriction property with fencing, landscaping and signage at Cotuit Water District's direction. The Town's Growth Management Department will have design and landscaping approval rights. An enhanced Bioclere septic system or its equivalent will be installed and will be subject to extensive regulation and examination requirements that will be reflected in a comprehensive set of documents via order of Housing Appeals Committee, Condominium documents and Board of Health Order.

Barnstable's character will be preserved by protection of nitrate loading and injection of pathogens into ground water near a public water supply wellhead; increased affordable housing opportunities and protection of land.

Cost sharing with the Cotuit Water District and co-management of the CR with Cotuit Water District will assure strict compliance with the terms of settlement and maximize protection of the wellhead. Monitoring costs will initially be paid by the developer and later assumed by the condominium association as an encumbrance on the fee monitoring well installation costs will be paid by the developer to Cotuit Water District, which will install the wells to its specifications. Either Cotuit Water District or the Town, acting through the Board of Health, will have authority to act upon any reported threat to the wellhead or to groundwater.

STAFF ASSISTANCE: Theresa M. Santos, Growth Management Department

A. OLD BUSINESS (May be acted upon) (Roll-call, 2/3)

BARNSTABLE TOWN COUNCIL

**ITEM# 2010-018
INTRO: 08/06/09, 09/17/09**

2010-018 REGULATORY AGREEMENT FOR A 132-ROOM HOTEL – HILTON GARDEN INN

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 Stuart A. Bornstein, President, Holly Management & Supply Corp., Manager of Impulse, LLC, Developer, for the property shown on Barnstable Assessor's Map 328 Parcel 068 AND 069 and located within the Hyannis Gateway (HG) zoning district and the Downtown Hyannis Growth Incentive Zone, including but not limited to the following: permitting the development of 132 room Hotel at 333 & 349 Iyannough Road, Hyannis; and hereby granting a waiver from the provisions of the Barnstable Ordinances as follows:

Permitted Zoning: Relief from §240-24.1.8(B) (1) (a) for principal use as a hotel.

Front Yard Setback: Relief from §240-24.1.8(C) requiring 30' minimum front yard setback; Relief requested is 9.5' from Route 28 to allow for canopy. Building façade has 51.5' of setback from Route 28. Relief requested from Spring Street is 15.6' (14.4' proposed front yard setback from Spring Street).

Front Yard Landscape Setback: Relief from §240-24.1.8(C) (1) requiring 60' front yard landscape setback on Route 28. Requested setback is 7.5'.

Floor Area Ratio: Relief from §240-24.1.8(C) requiring .80 Floor Area Ratio; .93 provided.

Schedule of Off-Street Parking Requirements: Relief from § 240-56 Requirements: 1.2 spaces per guest room and 1 for every 2 employees on maximum shift; 115 spaces provided (project utilizes the 62' parking bay permitted by §40-104 Attachment 2:3 Dimensional Table).

Parking Facilities within the WP Overlay District: Relief from §240-24.1.9(B)(1) requiring Special Permit for parking facilities within the WP Overlay District for extra overflow off-site parking at 144 Ridgewood Avenue (in Transportation Hub District).

Parking Space Dimension: Relief from §240-52(A) 9'x20' parking space requirement to allow 9'x 19' space as allowed by §240-104 Attachment 2:3 Dimensional Table. Also relief from § 240-24.1-10(4) (c) (2) Site Development Standards requiring minimum dimension of 9'x20' for each off-street parking space.

Maximum Lot Coverage: Relief from §240-24.1.2 (H) increase of lot coverage in excess of the maximum lot coverage provisions.

Increase in Vehicle Trips: Relief from §240-24.1.8(C) (2) (a) change in use that may increase vehicle trips on Route 28.

Maximum Building Height: Relief from §240-24.1.8(C): Dimensional Bulk Relief: Proposing five stories (55'), three stories (40') is maximum allowed.

Parking in Front of Building: Relief from §240-24-1.8(C)(2)(d) discouraging parking at the front of the lot and limiting such parking to a single row of vehicles plus turning radius.

Parking Island Widths: Relief from §240-24.1.10(4)(d)[4] requiring that no landscaped islands in parking lots with 51 or more parking spaces be less than 10' wide.

Sign Relief: Relief from §240-59 through §240-78 inclusive in order to place a sign on the building.

Landscape Buffer Between Parking and Building: Relief from §240-53(B) (2) requiring 10' minimum buffer between building and parking lot.

Landscape Set Back From Residential Line: Relief from §240-24.1.10(5) (c) requiring 20' landscaped setback in the HG District from all residential property lines.

Permitted Uses, Well Head Protection Overlay District: Relief from § 240-35 (G) (1) (a) for permitting a non-conformity under non-conforming structures not used as a single/two family.

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

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

REGULATORY AGREEMENT

Impulse, LLC, 349 & 333 Iyanough Rd/Rte 28 HYANNIS

This regulatory agreement (“Agreement”) is entered by and between the developer, Impulse, LLC, (“Developer”) and the Town of Barnstable (“Town”), a municipal corporation, on this ___ day of ___, 2009 pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Section 168 of the Barnstable Code;

WITNESS:

WHEREAS, Developer under this Agreement will contribute to traffic management, landscape improvements, public transportation facilities to serve the proposed development, and contribute significant new annual tax income and build a green business-class hotel on-site using sustainable practices as described by components of the LEED checklist as shown in Attachment 1;

WHEREAS, this Agreement shall establish the permitted uses, dimensional requirements, parking requirements and traffic and access management within the Development, the duration of the agreement, and any other terms or conditions mutually agreed upon between Developer and the Town;

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

WHEREAS, the Town and the Developer are authorized to enter into this Agreement pursuant to Chapters 9, 168 and 240 of the Barnstable Code;

WHEREAS, Developer is the legal owner of the property (“Property”) at 349 & 333 Iyanough Rd/Route 28, Hyannis, consisting of approximately 2.3 acres, shown on Barnstable Assessor’s Map 328 as Parcels 068 & 069, as evidenced by deed recorded with Barnstable Registry of Deeds in Book 19132, Page 219 and desires to develop the Property pursuant to a regulatory agreement;

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

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

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

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

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

Chapter G, Growth Incentive Zone Regulations of the Cape Cod Commission Regulations of General Application;

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

WHEREAS, prior to applying for approval of this Agreement, Developer has undergone informal review by Site Plan review on 9/23/08, 10/21/08, 11/4/08 and 3/31/09;

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

WHEREAS, this Agreement establishes compliance with the Downtown Hyannis Design and Infrastructure Plan;

WHEREAS, the Property currently exists of two vacant buildings: one containing 47, 404 +/- sq. ft., and the other containing 6,200 +/- sq ft., both of blighted condition, with unacceptably wide site access on Route 28, a regional transportation corridor, and Spring Street;

WHEREAS, Developer proposes to demolish the two existing buildings, re-grade the parcel and build a 132-room Hotel;

WHEREAS, Developer will require zoning relief from: permitted zoning use, front yard setbacks on Route 28 and Spring Street, front yard landscape setback, on-site parking, maximum lot coverage provisions in a Wellhead Overlay District, possible increase of traffic, maximum building height, prohibited parking in front of building, parking island width, landscape setback from residential property lines, sign relief, relief from buffer between building and parking lot; and relief to permit an accessory overflow parking lot off-site at 144 Ridgewood Avenue (owned by affiliate of Developer, Thornton Drive, LP (for title see deed recorded in Barnstable Registry of Deeds Book 23121, Page 153));

WHEREAS, The Developer has secured No Hazard to Air Navigation approval from the Federal Aviation Administration issued on September 5, 2008, and the Massachusetts Aeronautics Commission determination that Airspace Review is not required pursuant to MGL CH 90, 35B dated November 25, 2008;

WHEREAS, Developer has provided calculations demonstrating adequate water flow for fire suppression as required and approved by the Hyannis Fire Department;

WHEREAS, Developer funded professional engineering services, Weston & Sampson, for a water system evaluation for this proposed Development. In a letter dated January 26, 2009 Weston & Sampson, engineers for the Hyannis Water Board found that construction of this development will not adversely impact the water distribution system during maximum day and peak hour demands.

WHEREAS, Developer has submitted water flow test results for a five-story building performed by Maurice Pilette, Fire Protection Consulting Engineer, and A.P. Caputo P.E., Registered Fire Protection Engineer, to the Hyannis Water Board for certification. Determination was that there is no necessity to install a fire pump, and if it becomes necessary, Developer will install a fire pump on-site at his sole cost and expense;

WHEREAS, in response to the Hyannis Water Board's recommendation that the Developer upgrade the water main as part of this construction project, the Developer has agreed to replace the existing 8" water main with a 12" main from the Hilton site to the 16" water transmission main at the corner of Mary Dunn Way and Brooks Road. The work will be performed at Developer's sole cost and expense, designed by a registered engineer and performed by a licensed water installer, both acceptable to the Hyannis Water Board, inclusive of all costs, i.e. asphalt, hydrants police officer details, engineering oversight, etc. This water main improvement shall be considered as project mitigation.

WHEREAS, Developer's Plans (as hereinafter defined) indicate adequate turning radius for fire department trucks for all driveways, and the Hyannis Fire Department has approved this configuration plan by Vanasse Hangen Brustlen, Inc. dated 2/19/09;

WHEREAS, Developer has agreed that it will be prohibited for any buses on the site to idle their engines in the rear of the hotel, at any/all times near the residential district boundary;

WHEREAS, Developer has provided a Plan of Land dated 2/20/09 for the lot at 144 Ridgewood Avenue, and has agreed to construct a parking lot in accordance with said plan, in order to provide an additional 69 parking spaces to be used by Hilton's valet and shuttle service to park vehicles of hotel guests. This lot to be serviced by shuttle bus or valet parking services only. Approved plan of land of proposed accessory use is recorded at Barnstable Registry of Deeds in Book _____ Page _____. This parking shall be permitted, constructed and a restrictive covenant senior to all existing encumbrances shall be recorded against 144 Ridgewood Avenue.

WHEREAS, the Planning Board finds that at PM peak hour there is a net increase of 77 trips, representing approximately one percent (1%) increase in traffic during peak hours;

WHEREAS, Developer proposes to provide a \$100,000 cash contribution (in addition to the estimated \$360,000 upgrade to the water system as detailed above), as follows: \$50,000 for off-site landscape improvements on Route 28 , and \$50,000 to the Youth and Community Center to be deposited with the Hyannis Youth & Community Center Foundation prior to the issuance of the "fit out" permit.

WHEREAS, during the construction phase, Developer proposes to employ up to 200 local construction workers. Approximately 20 newly created full-time and 30 newly created part-time permanent year round local jobs will be established.

WHEREAS, Developer has provided information indicating minimum new approximate annual tax revenue to the town as follows: an additional \$61,200 in real estate taxes, approximately \$188,460 per year in room taxes for a total approximate fiscal payment in year one after project completion of \$249,660 of new income—adjusting annually in perpetuity so that over twenty years, property will contribute over \$6 million dollars in new revenue to the Town

WHEREAS, Developer has met with neighbors and addressed their concerns; and

WHEREAS, Developer has undergone at least two public hearings on the Regulatory Agreement Application and received a majority vote from the Planning Board approving the application on May 18, 2009.; and

WHEREAS, Developer has undergone a public hearing on the Regulatory 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, Developer and the Town do enter into this Agreement, and hereby agree and covenant as follows;

If the Development rights granted hereunder are exercised,

1. Developer agrees to construct the Project in accordance with the plans and specifications submitted to and approved by the Town, listed as follows and made part of this Agreement by reference: Plans entitled "Hilton Garden Inn/Impulse, LLC" prepared by Down Cape Engineering, Inc., Sheets 1 through 5, dated July 28, 2008 and as revised 10/6/08, 11/10/08, 12/8/08, 2/9/09, and 2/20/09 (the "Plans"); and conceptual building floor plans entitled "Hilton Garden Inn" prepared by " BMA Architectural Group, Amherst, NH", dated 7/14/08, pages A100-105; and such other plans and plan revisions as may be required by the terms and conditions of this Agreement;
2. Developer proposes to raze two existing structures—a total of 54,604 +/- sq. ft-- on the property, and to construct one 55 ft high, 22,800 sq ft (footprint), total square footage of 93,462, 132 room, "green" hotel in the Hyannis Gateway (HG) District and Growth Incentive Zone (GIZ) of Barnstable (the "Development");

3. Development Summary: Developer proposes to construct a 55 foot high (five story), “green” Hilton Garden Inn, containing 132 guest rooms, kitchen, indoor pool, health club, two meeting rooms and a business center by incorporating sustainable components as described in the LEED checklist attached hereto as Attachment 1 on the 2.3 acre parcel. The facilities as described are for the usage of the guests, and not advertised to the general public. The proposed development will meet the standards of the Hilton Hotels Corporation Franchise Agreement and will be operated as a Hilton Garden Inn. One curb cut on Route 28 will be closed, and traffic from Route 28 is discouraged from taking a left turn into the property due to the construction of a right in only entranceway. Developer proposes to spend approximately \$17,250,000 on construction improvements (including interior improvements), and in addition to new anticipated annual tax revenues of more than \$249,000.00 per year, and site specific landscape and sidewalk improvements on Route 28 and Spring Street, proposes to provide a \$50,000 contribution to Route 28 landscape improvements, and an additional \$50,000 to the Hyannis Youth & Community Center Foundation, and to replace the existing 8” water main with a 12” main from the Hilton site to the 16” water transmission main at the corner of Mary Dunn Way and Brooks Road, estimated by the Hyannis Water Board to cost a minimum of \$360,000.00.
4. To foster use of Downtown Hyannis by Hilton Garden patrons, the Developer agrees to display local restaurant menus in the hotel lobby, as well as to provide shuttle bus transportation to Main Street restaurants as well as other destinations, thereby contributing to the tourism economy of the town. Prior to the issuance of any occupancy permits, Developer shall submit to the Planning Board the details of the proposed shuttle service for its approval. No changes in said shuttle bus service shall occur without the prior written approval of the Planning Board
5. The development rights granted hereunder shall be exercised and development permits may be obtained hereunder for a period of 8 years from the effective date of the Agreement, provided, however, that prior to the expiration of said period Developer may request one six month extension to obtain development permits. Upon receipt of necessary development permits, construction shall proceed continuously and expeditiously, but in no case shall construction exceed 2 years from receipt of necessary development permits. Developer estimates that construction will commence by _____, 2009 and will be completed on or about _____.
6. The Developer will construct a turnout in the layout of Route 28 along the Hilton Garden Inn frontage for the express purposes of serving as an RTA bus stop, as shown on the approved Plans, pending approval by the RTA.
7. Buses shall park at the front of the hotel on the Property and only while passengers embark and disembark and shall not park or idle on Route 28 or Spring Street.
8. Developer shall replace the existing 8” water main to a 12” main from the Property to the 16” water transmission main at the corner of Mary Dunn Way and Brooks Road. The work will be performed at Developer’s sole cost and expense, designed by a registered engineer and performed by a licensed water installer, both acceptable to the Hyannis Water Board, inclusive of all costs, i.e. asphalt, hydrants police officer details, engineering oversight, etc.
9. Developer shall contribute \$50,000 to be designated to landscaping Route 28 on the North side of the road in the vicinity of the airport in full compliance with Homeland Security requirements and in coordination with BMA/MHD and the landscape plan approved by the Growth Management Department, or its designee. No building permit shall issue until the total amount of \$50,000 for landscape improvements is paid to the Town;
10. The site shall be landscaped consistent with the landscaping plan identified herein. All landscaping within the development shall be plant material that has minimal requirements for watering and shall minimize the use of fertilizers and pesticides. To ensure compliance with this standard, a detailed landscape plan with species size and inventory and a landscape maintenance plan demonstrating compliance with low water, fertilizer and pesticide use standards shall be submitted for approval to the Director of Growth Management prior to the issuance of the foundation permit. Developer shall maintain landscaping, irrigation and drainage, including subsurface drainage, in perpetuity. A detailed description of the location, species and long term maintenance plan for plantings on the vertical sides of the building shall be provided by the Developer, for approval by a landscape architect retained by the Town prior to the issuance of the shell permit; Developer shall screen the area around the dumpster with

- a fence landscaped with climbing ivy, or other evergreen plants which will reach fence height in three years as shown on the landscape plan described above;
11. Developer shall provide a detailed plan for a noise abating fence and landscape barrier that is approved by and consistent with the wishes of residents of the neighbors on Brookshire Road. This fence and landscape buffer shall be perpetually maintained by the Hilton Garden Inn or the lessor and shall provide privacy from the abutting hotel structure, suppress noise and mitigate intrusion of this development on the Brookshire Road neighborhood.
 12. Lighting for the development shall be down cast and consist of fully shielded cut off fixtures as demonstrated by fixture catalog cuts for site lighting provided to the Growth Management Department for approval prior to the issuance of the shell permit, shall not contribute to light pollution of the area, glare shall be contained on-site, and shall be consistent with the plan identified herein. There shall be no light pollution on the Brookshire Rd. neighborhood, other abutting properties, Route 28 or Spring Street;
 13. Utilities servicing the building shall be buried underground within the Property and shall be maintained by Developer;
 14. Prior to the issuance of any foundation building permit, Developer will provide a performance bond, letter of credit, or other form of guarantee in a form acceptable to the town attorney in an amount to be approved by the Planning Board or its designee, said bond/form of guarantee to be expended on the replacement of landscape materials if such replacement becomes necessary. Any unexpended portion of said performance bond may be released by the Planning Board to Developer or his successor(s) after three years from the date of the initial landscape plantings, such date to be determined by the Building Commissioner, upon the request of Developer;
 15. The developer will construct this project as a 'green' project including the following: Green plantings and rain gardens, the use of non-toxic and organic cleaning supplies, solar panels, recycled building materials, white membrane roofing materials, water conservation in the plumbing design including double flush toilets and waterless urinals, dimmable ballasts, occupancy sensors and T5 lamps, low 'e' windows, paperless hand dryers, LED exit signs, extra insulation, Gen2 Otis elevator, install carpets created from recycled materials, use low-non VOC paints, and provide electrical charge station for cars. The Developer has provided a LEED-NC Version 2.2 Registered Project Checklist (Attached) to the Planning Board indicating the extent and values of the 'green' components listed above;
 16. Consistent with approved Plans, Developer shall construct and maintain a Passive Stormwater Maintenance and Infiltration System to service the Development, including landscaping and irrigation;
 17. Construction and demolition debris from the Development shall be removed and reused or recycled to the maximum extent possible. Developer will provide a plan to the Board for their approval prior to the application for demolition permit demonstrating compliance with this requirement;
 18. Developer has conformed to the request of the Hyannis Water Board and retained Weston and Sampson to determine a hydraulic model that determined what effect this Development will have on demand and use of water for the residential neighborhoods on Spring St and Ridgewood Ave.;
 19. 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. Only approved contractors are allowed to work on Town owned property. Contractors are required to have the insurance stipulated in the Street Excavation Rules and Regulations (SERR) and all work on town property must comply with all provisions of SERR. All work within the public way and public utility services shall be to Town Standards. All plans shall be reviewed and approved by the Department of Public Works prior to initiating any work within the public way;
 20. Prior to the issuance of a demolition permit, Developer shall obtain the written approval of the Building Commissioner for its construction schedule and sequencing plan. Changes in the schedule, if needed as work progresses, are subject to the written approval of the Building Commissioner. The construction schedule shall not interfere with peak hour traffic on Route 28; construction activities shall be scheduled for off peak hours only. The Developer shall obtain permission in advance of working on Town property and shall notify the Town of Barnstable Growth Management Department and the Department of Public Works at least 48 hours in advance of working on Town property. The Developer will be responsible for all construction signage, directional signs, and police officers necessary for the performance of the work;

21. Under no circumstances will the obstruction of Spring Street or Route 28 be allowed during any phase of this construction.
22. To limit exterior construction impacts to the residential neighborhoods, 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;
23. Dumpster pick up schedule shall be limited to the daylight hours of 10:00 a.m. through 2:00 p.m. There shall be no pre-dawn or nighttime service deliveries.
24. Developer shall be responsible for snow plowing and snow removal on the Property, in perpetuity;
25. 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 before development permits can be issued. In addition to permits, plans and approvals listed above, any and all permits and licenses required shall be obtained;
26. Developer and its successors will participate in the Town of Barnstable's Transportation Management Association (TMA) upon its formation. Participation shall include: the identification of a representative for the development who will serve as the representative for the development to the Town's TMA;
27. The Developer will provide a shuttle bus service for patrons of the Hotel. This shuttle will take passengers to the harbor, airport, shopping areas and restaurants, year-round, and at a minimum will run continuously during the peak traffic months of June, July and August, on a schedule to be determined by the hotel guests' requested drop-off and pick-up times.. In addition, Developer will provide a bicycle rack at the Property;
28. The Project will eliminate one curb cut on Route 28 and formulate the remaining curb cut for right-in only usage;
29. The Developer shall create a sidewalk and landscaping on Route 28 and Spring Street according to Developer's Plans;
30. Upon completion of all work (the Project), Developer shall cause a registered engineer of land surveying to submit as-built plans accompanied by a letter of certification, made upon knowledge and belief in accordance with professional standards that all work has been done in substantial compliance with the approved site plan. This document shall be submitted prior to the issuance of the final certificate of occupancy;
31. All mechanical equipment associated with the Development (air conditioners, electric generators, etc.) as per plans in paragraph 1 are to be located on the roof and designed in the building plans. In no case shall any mechanical equipment be located so as to negatively affect the adjacent residential neighborhood;
32. The Developer shall erect one freestanding sign as per sign code located at newly constructed right-in only entrance on Route 28 and an internally lit sign containing the words "Hilton Garden Inn" to be located on the façade of the building at the 5th floor level, as shown on the elevation plans; no additional relief from applicable sign regulations is granted.
33. The development allowed by this Agreement shall be considered full build-out of the property. The structures authorized shall not be expanded nor other buildings and structures added;
34. A restrictive covenant shall be recorded against the 44 Ridgewood Avenue property, which the Developer has agreed to use as an off-site parking lot in order to provide an extra 69 parking spaces for guests of the hotel; valets of the hotel shall drive the cars from the hotel Property, and park the cars at said off-site parking lot

Town hereby grants a waiver from the following zoning restrictions:

Permitted Zoning: Relief from §240-24.1.8(B) (1) (a) for principal use as a hotel.

Front Yard Setback: Relief from §240-24.1.8(C) requiring 30' minimum front yard setback; Relief requested is 9.5' from Route 28 to allow for canopy. Building façade has 51.5' of setback from Route 28. Relief requested from Spring Street is 15.6' (14.4' proposed front yard setback from Spring Street).

Front Yard Landscape Setback: Relief from §240-24.1.8(C) (1) requiring 60' front yard landscape setback on Route 28. Requested setback is 7.5'.

Floor Area Ratio: Relief from §240-24.1.8(C) requiring .80 Floor Area Ratio; .93 provided.

Schedule of Off-Street Parking Requirements: Relief from §240-56 Requirements: 1.2 spaces per guest room and 1 for every 2 employees on maximum shift; 115 spaces provided (project utilizes the 62' parking bay permitted by §40-104 Attachment 2:3 Dimensional Table).

Parking Facilities within the WP Overlay District: Relief from §240-24.1.9(B)(1) requiring Special Permit for parking facilities within the WP Overlay District for extra overflow off-site parking at 144 Ridgewood Avenue (in Transportation Hub District).

Parking Space Dimension: Relief from §240-52(A) 9'x20' parking space requirement to allow 9'x 19' space as allowed by §240-104 Attachment 2:3 Dimensional Table. Also relief from § 240-24.1-10(4) (c) (2) Site Development Standards requiring minimum dimension of 9'x20' for each off-street parking space.

Maximum Lot Coverage: Relief from §240-24.1.2 (H) increase of lot coverage in excess of the maximum lot coverage provisions.

Increase in Vehicle Trips: Relief from §240-24.1.8(C) (2) (a) change in use that may increase vehicle trips on Route 28.

Maximum Building Height: Relief from §240-24.1.8(C): Dimensional Bulk Relief: Proposing five stories (55'), three stories (40') is the maximum allowed.

Parking in Front of Building: Relief from §240-24-1.8(C)(2)(d) discouraging parking at the front of the lot and limiting such parking to a single row of vehicles plus turning radius.

Parking Island Widths: Relief from §240-24.1.10(4)(d)[4] requiring that no landscaped islands in parking lots with 51 or more parking spaces be less than 10' wide.

Sign Relief: Relief from §240-59 through §240-78 inclusive in order to place a sign on the building.

Landscape Buffer Between Parking and Building: Relief from §240-53(B)(2) requiring 10' minimum buffer between building and parking lot.

Landscape Set Back From Residential Line: Relief from §240-24.1.10(5)(c) requiring 20' landscaped setback in the HG District from all residential property lines.

Permitted Uses, Well Head Protection Overlay District: Relief from § 240-35 (G) (1) (a) for permitting a non-conformity under non-conforming structures not used as a single/two family.

Lot Coverage, Well Head Protection Overlay District: Relief from § 240-35 (G) (3): No more than 50% of total upland area of any lot shall be made impervious.

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 _____, 2009.

By:
Town of Barnstable

By: Stuart A. Bornstein, President
Holly Management & Supply Corp., Manager of
Impulse, LLC, Developer

SPONSORS: Councilor James Tinsley and Council Vice President Harold Tobey

ATTACHMENT 1



LEED-NC

LEED-NC Version 2.2 Registered Project Checklist

LEED Design Phase revision 3.5.02

Yes ? No D- Design submittal, C- Construction submittal

				Responsibility
				VHB
	C	Prereq 1	Construction Activity Pollution Prevention	
		Credit 1	Site Selection	
		Credit 2	Development Density & Community Connectivity	
		Credit 3	Brownfield Redevelopment	
		Credit 4.1	Alternative Transportation, Public Transportation Access	
1	D	Credit 4.2	Alternative Transportation, Bicycle & Pedestrian Facilities	VHB/BMA
1	D	Credit 4.3	Alternative Transportation, Low-Emitting and Fuel-Efficient Vehicles	VHB/PLH
1	D	Credit 4.4	Alternative Transportation, Parking Capacity	VHB/PLH
		Credit 5.1	Site Development, Protect or Restore Habitat	
		Credit 5.2	Site Development, Maximize Open Space	
		Credit 5.1	Stormwater Design, Quantity Control	
1	D	Credit 5.2	Stormwater Design, Quality Control	VHB
		Credit 7.1	Heat Island Effect, Non-Roof- needs revision	
1	D	Credit 7.2	Heat Island Effect, Roof	BMA
		Credit 8	Light Pollution Reduction	VHB
1	D	Credit 1.1	Water Efficient Landscaping, Reduce by 50%	VHB/PLH
1	D	Credit 1.2	Water Efficient Landscaping, No Potable Use or No Irrigation	VHB/PLH
		Credit 2	Innovative Wastewater Technologies	
1	D	Credit 3.1	Water Use Reduction, 20% Reduction	AEI
1	D	Credit 3.2	Water Use Reduction, >30% 1.28 WCF & showerhead 0.5 lpm accepted	AEI
	C	Prereq 1	Fundamental Commissioning of the Building Energy Systems	CxA
	D	Prereq 2	Minimum Energy Performance	AEI
	D	Prereq 3	Fundamental Refrigerant Management	AEI
2	D	Credit 1	Optimize Energy Performance- 14% > ASHRAE required	TE
1		Credit 2	On-Site Renewable Energy	
		Credit 3	Enhanced Commissioning	
1	D	Credit 4	Enhanced Refrigerant Management	AEI
		Credit 5	Measurement & Verification	
1	C	Credit 6	Green Power- median 12.8 kWh/ft² yr @ 30.00¢/kWh = \$0.1	PLH

Yes ? No

		D	Prereq 1	Storage & Collection of Recyclables	BMA
			Credit 1.1	Building Reuse, Maintain 75% of Existing Walls, Floors & Roof	
			Credit 1.2	Building Reuse, Maintain 100% of Existing Walls, Floors & Roof	
			Credit 1.3	Building Reuse, Maintain 50% of Interior Non-Structural Elements	
1		C	Credit 2.1	Construction Waste Management, Divert 50% from Disposal	GC
1		C	Credit 2.2	Construction Waste Management, Divert 75% from Disposal	GC
			Credit 3.1	Materials Reuse, 5%	
			Credit 3.2	Materials Reuse, 10%	
1		C	Credit 4.1	Recycled Content, 10% (post-consumer + 1/2 pre-consumer)	BMA/GC
		C	Credit 4.2	Recycled Content, 20% (post-consumer + 1/2 pre-consumer)	BMA/GC
1		C	Credit 5.1	Regional Materials, 10% Extracted, Processed & Manufactured Regio	BMA/GC
		C	Credit 5.2	Regional Materials, 20% Extracted, Processed & Manufactured Regio	BMA/GC
			Credit 6	Rapidly Renewable Materials	
		C	Credit 7	Certified Wood- FSC wood doors/millwork/blocking will be priced	BMA/GC

Yes ? No

14

		D	Prereq 1	Minimum IAQ Performance	AEI
		D	Prereq 2	Environmental Tobacco Smoke (ETS) Control	PLH
1		D	Credit 1	Outdoor Air Delivery Monitoring	AEI
			Credit 2	Increased Ventilation	
1		C	Credit 3.1	Construction IAQ Management Plan, During Construction	GC
1		C	Credit 3.2	Construction IAQMP, Before Occupancy- EPA baseline IAQ testing	GC
1		C	Credit 4.1	Low-Emitting Materials, Adhesives & Sealants	BMA/GC
1		C	Credit 4.2	Low-Emitting Materials, Paints & Coatings	BMA/GC
1		C	Credit 4.3	Low-Emitting Materials, Carpet Systems	BMA/GC
1		C	Credit 4.4	Low-Emitting Materials, Composite Wood & Agrifiber Products	BMA/GC
1		D	Credit 5	Indoor Chemical & Pollutant Source Control	BMA/AEI
1		D	Credit 6.1	Controllability of Systems, Lighting	AEI
1		D	Credit 6.2	Controllability of Systems, Thermal Comfort	AEI
1		D	Credit 7.1	Thermal Comfort, Design- as/ASHRAE 55-2004	AEI
1		D	Credit 7.2	Thermal Comfort, Verification- as/ASHRAE 55-2004	AEI
1		D	Credit 8.1	Daylight & Views, Daylight 75% of Spaces	BMA
1		D	Credit 8.2	Daylight & Views, Views for 90% of Spaces	BMA

Yes ? No

1

	1	D	Credit 1.1	Innovation in Design: Exemplary Green Power offset ~\$12k	PLH
	1	D	Credit 1.2	Innovation in Design: Green Building Education- signage & outreach	PLH/BMA
			Credit 1.3	Innovation in Design:	
			Credit 1.4	Innovation in Design:	
		C	Credit 2	LEED® Accredited Professional	RMEC

Yes ? No

31

Project Totals (pre-certification estimates)

Certified 26-32 points Silver 33-38 points Gold 39-51 points Platinum 52-69 points

BARNSTABLE TOWN COUNCIL

SUMMARY

ITEM# 2010-018

INTRO: 08/06/09, 09/17/29

TO: Town Council
FROM: Planning Board
DATE: July 27, 2009
SUBJECT: Hilton Garden Inn, 333-349 Iyanough Road, Hyannis, MA
APPLICANT: Impulse, LLC, Stuart Bornstein, Manager

RATIONALE: This is a proposed Regulatory Agreement between the Town of Barnstable and Impulse, LLC. Regulatory agreements are authorized by Chapter 168 of the Barnstable Code. 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 permit Applicant to develop a Hilton Garden Inn, containing approximately 132 guest rooms, indoor pool, health club and business center. Currently there are two buildings on the site. The main structure contains 47,404 s.f. and was used as a plumbing supply warehouse and retail store and showroom. The other building contains 6,200 s.f. and was most recently used as a church.

Applicant proposes to raze the existing buildings (totaling 53,604 s.f.), and replace them with a 5-story building with a footprint of 22,800 s.f. on a 2.3 acre parcel. The Applicant will contribute to traffic management, landscape improvements, public transportation facilities to serve the proposed development and build a green business-class hotel which will generate significant new annual tax income to the town.

The Applicant is proposing a Regulatory Agreement to establish an alternative means to comply with the requirements of the Barnstable Zoning Ordinance. Relief from the requirements of the Barnstable Zoning Ordinance, which would be authorized by the Regulatory Agreement, is as follows:

- Permitted Zoning: Relief is granted from §240-24.1-8(B) (1) (a) to allow for principal use as a hotel (non-residential development with a total floor area greater than 10,000 s.f.).
- Increase in Vehicle Trips: relief is granted from §240-24.1-8(C) (2) (a) to allow for a change in use on Route 28 that may increase vehicle trips per day.
- Parking Facilities within the WP Overlay District: Relief is granted from §240-24.1.9(B)(1) requiring Special Permit for parking facilities within the WP Overlay District for off-site overflow parking at 144 Ridgewood Avenue, Hyannis, MA located in the Transportation Hub District. (Said property is owned by Thornton Drive LP, a subsidiary of Applicant.)
- Maximum Building Height: Relief is granted from §240-24.1-8(C): Dimensional Bulk Relief: to allow for five (5) stories, 55' height. Under the Ordinance a Maximum height of three (3) stories, forty (40') feet is allowed.
- Front Yard Setback: Relief is granted from §240-24.1-8(C) requiring 30' minimum front yard setback, to allow for 20.5' setback from Route 28, and 14.4' setback from Spring St.
- Floor Area Ratio: Relief is granted from §240-24.1.8(C) requiring .80 Floor Area Ratio, to allow for .93.
- Front Yard Landscape Setback: Relief is granted from §240-24.1-8(C) (1) requiring 60' front yard landscape setback on Route 28; landscape setback provided 7.5' (including 5' sidewalk).

- Schedule of Off-Street Parking Requirements: Relief is granted from §240-56 Requirements: 1.2 spaces per guest room and 1 per 2 employees max per shift, to allow for 115 parking spaces on site (and 69 overflow parking spaces off-site). (Project utilizes the 62' parking bay permitted by §40-104 Attachment 2:3 Dimensional Table.)
- Parking Space Dimensions: Relief is granted, from §240-52(A) 9'x20' parking space requirement to allow 9'x19' space as allowed by §240-104 Attachment 2:3 Dimensional Table (Note: 18' space permitted in §240-39(J) (3) Shopping Center Redevelopment Overlay District). Also, relief is granted from §240-24.1-10(4) (c) (2) Site Development Standards requiring minimum dimension of 9'x20' for each off-street parking space.
- Parking in front of Building: Relief is granted from §240-24.1-8(C)(2)(d) discouraging parking at the front of the lot and limiting such parking to a single row of vehicles, to allow for two (2) rows of parking in front of the building.
- Parking Island Widths: Relief is granted from §240-24.1-10(4)(d)(4) requiring that no landscaped islands in parking lots with 51 or more parking spaces shall be less than 10' wide, to allow for islands which may be less than 10' in width in some places.
- Landscaped Setback from Residential Line: Relief is granted from §240-24.1.10(5) (c) requiring 20' landscaped setback in the HG District from all residential property lines, to allow for 10'.
- Permitted Uses, Well Head Protection Overlay District: Relief is granted from §240-35(G) (1) (a), permitting a non-conformity under Non-conforming Structures not used as a single/two family.
- Signage: Relief is granted from §240-59 through §240-89, inclusive, in order to permit Applicant to put a sign on the building.
- Landscape Buffer Between Parking and Building: Relief is granted from §240-53(B)(2) requiring 10' minimum buffer between building and parking lot, to permit slight relief in places as shown on Plans.
- Lot C overage, Well Head Protection Overlay District: Relief is granted from §240-35(G) (3) prohibiting more than 50% of total upland area of any lot to be made impervious, to allow for 79%. NOTE: the total existing impervious coverage is 93.4%.
- Maximum Lot Coverage: Relief is granted from §240-24.1.2H requiring a Special Permit to allow for an increase in the maximum lot coverage from 80% to 78.8% (Note: Current lot coverage is 93.4%).

The Agreement is beneficial to the community because of the following:

1) Revenue to Town: The developer will contribute to public capital facilities by providing \$100,000 cash contribution, with \$50,000 to be directed for landscape improvements on Route 28, and \$50,000 to the Hyannis Youth & Community Center Foundation; The developer will also perform all work required to upgrade the existing 8" water main to a 12" water main from the site to the 16" water transmission main at the corner of Mary Dunn Way and Brooks Road (estimated by the Town to cost a minimum of \$360,000). The Agreement also offers dramatic financial benefits to the community as a result of the anticipated \$250,000 (up to a possible \$500,000) in the first year of business in new income to the town as a result of real estate taxes and room and occupancy tax. This new revenue will have no impact on the Town's school system. Over the first 20 years of business, the hotel would generate over \$6,000,000 in new revenue to the Town.

2) Aesthetic Improvements to Town: The proposed development would dramatically improve a run-down, blighted, abandoned area, to a first-class "green" hotel, designed by a renowned architect, with a partial living plant façade, surrounded by lush landscaping, including landscaping from the site up to the Airport rotary. The Regulatory Agreement would allow a very welcome change to this Gateway to Hyannis.

3) Employment: Will create approximately 200+ construction jobs during 1-2 year construction phase, and will result in approximately 20 newly created full-time year-round permanent benefited jobs, and approximately 30 newly created part-time permanent year round jobs.

4) Tourism: Will provide a first-class welcome to visitors flying into Barnstable Municipal Airport, as well as those taking the bus or a possible commuter rail, into the nearby Transportation Center. The hotel will include amenities such as indoor pool, restaurant, and business conference areas, which will meet the demands of travelers, increasing the tourist and business traveler traffic in the Hyannis area. Current industry standards state that the average tourist spends \$140 per day on meals and entertainment, and typically stay within 3 miles of their hotel; factoring a 60% occupancy rate, 2 people per room, for one year, would generate \$8,094,240 to downtown/mall Hyannis areas.

5) Traffic and Transportation: Vehicle trips will be reduced from the previous uses as a church and plumbing supply warehouse and design center; Shuttle bus service will be provided to patrons of the hotel to and from the Barnstable Municipal Airport, downtown Hyannis and Cape Cod Mall shopping, Main Street and surrounding area restaurants, museums, ocean activities and other attractions as incentive to visitors and business travelers to stay without the necessity of renting a vehicle/driving to the hotel; approximately 40% of the guests will arrive by buses as part of tour packages, greatly reducing traffic and parking. It has been determined that the increase in traffic during peak hours as a result of the hotel operations would be only 1% increase in vehicle trips.

6) Environment: The hotel will be a first-class “green” building utilizing the most sophisticated environmentally-friendly building materials, appliances and utilities available, complying with the LEEDS guidelines, and will be regulated by The Hilton Franchise strict environmental guidelines.

7) Land Preservation: The site will provide substantial landscaping buffers around the building and bordering the site including Route 28 and other perimeter roads using a combinations of Heritage Clump Birch, October Glory Red Maples, June berries, Northern Arrow woods, Maiden Grasses, Overdam Feather Reed Grasses, Elija Blue Fescues, Heller’s Japanese Hollies, Nikko Blue Hydrangeas, PJM Rhododendrons, Shamrock Inkberries, Hybrid Daylilies, and California Privets, providing a dramatic improvement to the aesthetics and green space of the parcel, and reducing the impervious surface.

8) Community and Recreational Facilities: The Hilton Garden Inn Hyannis will include high-end amenities such as indoor pool, health club and business conference center, improving the services offered in the greater Hyannis area. The proposed development will be a significant improvement to the area, and will offer superior benefits to the Town of Barnstable, surrounding community, Cape Cod visitors, as well as businesses everywhere desiring a fully capable business class hotel in a resort area close to a municipal airport.

REGULATORY AGREEMENT PROCESS: The proposed Agreement was negotiated by the Barnstable Planning Board over the course of fourteen (14) public hearings held on 11/10/08, 12/8/08, 1/6/09, 1/26/09, 2/3/09, 2/9/09, 2/17/09, 2/23/09, 3/3/09, 4/13/09, 4/27/09, 5/5/09, 5/11/09 and 5/18/09. The proposed Agreement was approved by the Planning Board for recommendation to the Town Council by a majority vote of the Board on May 18, 2009.

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.

A. OLD BUSINESS (Second reading) (Roll-call, 2/3)

BARNSTABLE TOWN COUNCIL

**ITEM# 2010-021
INTRO: 09/03/09, 09/17/09**

**2010-021 BALLOT QUESTION - CAPITAL EXPENDITURE EXCLUSION- BULKHEAD
IN BARNSTABLE HARBOR**

ORDERED: That the following question be placed on the ballot for the annual election to be held on November 3rd, 2009. BALLOT QUESTION-CAPITAL EXPENDITURE EXCLUSION FOR BARNSTABLE HARBOR:

“Shall the Town of Barnstable be allowed to assess an additional \$4,836,000 in real estate and property taxes for the purpose of replacing the existing wooden and steel bulkhead at the Barnstable Harbor Marina for the Fiscal Year beginning July 1, 2009.”

Yes_____

No_____

SPONSOR: Councilor Ann B. Canedy

DATE ACTION TAKEN

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

BARNSTABLE TOWN COUNCIL

SUMMARY

ITEM# 2010-021
INTRO: 09/03/09, 09/17/09

TO: Town Council
FROM: Councilor Ann B. Canedy
DATE: August 31, 2009
SUBJECT: Replacing the Barnstable Harbor Bulkhead

BACKGROUND: A portion of the wooden bulkhead failed in spring 2008 leading to costly temporary emergency repairs. To reduce the cost of the emergency repairs the temporary repairs were only intended to stabilize the structure until full replacement could be completed. The existing steel bulkhead is showing signs of deterioration including: movement of the steel sheeting, failed/failing wales, and loss of soil material from behind the bulkhead as evidenced by subsidence in the parking lot. The loss of material from behind the bulkhead is causing shoaling under and around the adjacent floats and slips.

The existing bulkhead will be reconstructed either in its existing footprint or directly behind the existing bulkhead. The new bulkhead will be constructed of steel sheet piles, steel wales, and tiebacks to deadmen. In addition to the reconstruction of the bulkhead, paved areas and drainage systems surrounding the bulkhead will be replaced to improve the function and use of said areas. All permits have been received for the proposed project. Design and bid documents are complete and ready for public bid.

Failure of the bulkhead would significantly impact marina operations, including possible marina closure. This would lead to loss of revenue to the marina enterprise fund and loss of revenue to commercial enterprises that lease slips at the marina. In addition, there is a possible loss of infrastructure (sewer, water, electrical, roadway) with high risk to public health and safety. The loss of sewer infrastructure could impact the entire neighborhood due to the location of the Freezer Road pump station. Shellfish resources in Barnstable Harbor, and nearby swimming beaches, could be negatively impacted if loss of the sewer infrastructure results in a wastewater spill into Barnstable Harbor.

FISCAL IMPACT: The cost of the bulkhead replacement will be financed with additional property taxes if approved by a majority of voters. If approved by the voters, a capital exclusion override allows the Town to raise additional real estate and personal property taxes for one year to finance the capital expenditure. A capital exclusion for \$4,836,000 would raise the Town's tax rate by approximately 32 cents based on the Town's current assessed valuation. This would translate into an additional \$32 per \$100,000 of taxable assessed property value.

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM# 2010-024
INTRO: 09/17/09**

2010-024 ACCEPTANCE OF A \$511,808 GRANT FROM US DEPARTMENT OF JUSTICE

RESOLVED, that the Barnstable Town Council does hereby accept fiscal year Recovery Act: Edward Byrne Memorial Justice Assistance Grant: Local Solicitation from the United States Department of Justice in the amount of \$511,808.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

SUMMARY

ITEM# 2010-024
INTRO: 09/17/09

TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Paul B. MacDonald, Chief of Police
DATE: July 15, 2009
SUBJECT: Edward Byrne Memorial Justice Assistance Grant: Local Solicitation

BACKGROUND: The Barnstable Police Department applied for and was awarded the Recovery Act: Edward Byrne Memorial Justice Assistance Grant: Local Solicitation from the United States Department of Justice, in the amount of \$511,808.00. This grant has been deemed to be a disparate certification allocation to be distributed among eight towns as outlined below based on a prescribed grant formula amount for each town. The Town of Barnstable will act as the grant administrator and fiscal agent for all towns:

- Town of Barnstable: \$48,494 to be expended for the purchase of a Fingerprinting Machine to replace an obsolete machine; \$128,010 to be expended to expand and continue Community Policing Initiatives such as drug interdiction, school liaisons, marine patrol and mountain bike patrols.
\$16,765 (5% of total grant allocation) to be expended to the Town of Barnstable to serve as fiscal agent and grant administrator for the above-referenced grant
- Town of Bourne: \$51,646 to be expended on a Drug Enforcement, Prevention and Education Program to increase community policing and intervention against crime.
- Town of Dennis: \$ 2,880 to be expended on a Community Policing/Crime Prevention Program to maintain relationships with neighborhood watch and crime prevention citizen groups;
\$10,894 to be expended on a Canine Unit Start Up Program to enhance patrol and investigative operations;
\$ 6,800 to be expended on a Mobile Computer to continue the replacement program for technology used in the field;
\$ 7,902 to be expended on the Presentation of a D.A.R.E. Program in the Middle School;
\$ 7,200 to be expended on Directed Patrols in response to citizen complaints and Part I crime data collection.
- Town of Falmouth: \$83,075 to be expended on Project "Hot Spots" to include the improvement of police services to reduce common and repetitive crime and quality of life issues.
- Town of Harwich: \$14,271 to be expended on Technology Improvements to include the purchase of a mobile data terminal to reduce report writing time in the station, promote community interaction and reduce response time to incidents.

Town of Mashpee: \$ 6,380 to be expended to provide Tactical Entry Protective Vests for members of the Special Response Team.

\$19,273 to be expended for modernization and upgrades of internal security of the police facility and documentary recordings of interrogations, bookings, and visitors, as mandated by recent court decisions.

Town of Sandwich: \$23,954 to be expended on two 40-Hour Citizens Police Academies over two years.

Town of Yarmouth: \$41,890 to be expended on 40 Electronic Control Devices (Tasers) and other related equipment to improve the safety and security of officers and reduce injuries to suspects.

\$17,500 to be expended for Technology Updates and Mobile Connectivity to improve efficiency of the Emergency Operations Center, the Mobile Command Post, Detective Division communications and interview recording capabilities.

\$24,874 to be expended to initiate a Prescription Drug Investigation and Enforcement Program in order to pro-actively respond to community problems associated with drug abuse and the distribution of prescription drugs.

ANALYSIS: The acceptance of this grant will allow the aforementioned police departments to take action on the programs as described previously.

FISCAL IMPACT: There is no matching funding required for this grant. This is a reimbursement grant as expenses are incurred up to the total dollar amount of the grant. The Town of Barnstable Police Department will serve as the fiscal agent for all of the towns and will be responsible for all grant reporting, reimbursement of funds and draw-downs.

TOWN MANAGER RECOMMENDATION: Town Manager John C. Klimm recommends acceptance of this grant.

STAFF ASSISTANCE: Paul B. MacDonald, Chief of Police

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM# 2010-025
INTRO: 09/17/09**

2010-025 ACCEPTANCE OF FY10 STATE 911 DEPT TRAINING GRANT OF \$31,870

RESOLVED, that the Town Council hereby accepts a FY10 State 911 Department Training Grant award in the amount of \$31,870 from the Executive Office Public Safety.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

SUMMARY

ITEM# 2010-025
INTRO: 09/17/09

TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Paul B. MacDonald, Chief of Police
DATE: July 15, 2009
SUBJECT: FY10 State 911 Dept Training Grant - Commonwealth of Massachusetts
Executive Office of Public Safety

BACKGROUND: The town has been awarded a Statewide Emergency Telecommunications Board Training Grant award for FY2010 in the amount of \$31,870.00. The Department applied for, and was awarded, this amount to support the training costs associated with the implementation and conversion to the new Statewide E911 system and other 911 related specialty trainings offered by the State.

ANALYSIS: The acceptance of this grant will assist the Department in the conversion training of officers and telecommunications personnel to the new E911 system and to attend specialty 911 trainings (i.e., domestic violence calls, suicide calls, etc.).

FISCAL IMPACT: There is no matching funding required for this grant. This is a reimbursement grant as expenses are incurred up to the total dollar amount of the grant.

TOWN MANAGER RECOMMENDATION: Town Manager John C. Klimm recommends acceptance of this grant.

STAFF ASSISTANCE: Paul B. MacDonald, Chief of Police

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM# 2010-026
INTRO: 09/17/09**

2010-026 GRANT ACCEPTANCE – 911 DEPT. SUPPORT & INCENTIVE GRANT

RESOLVED: That the Barnstable Town Council does hereby accept fiscal year 2010 911 Department Support and Incentive Grant from the Commonwealth of Massachusetts, Executive Office of Public Safety, State 911 Department in the amount of \$177,244.00.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

SUMMARY

ITEM# 2010-026
INTRO: 09/17/09

TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Paul B. MacDonald, Chief of Police
DATE: July 24, 2009
SUBJECT: FY10 911 Department Support and Incentive Grant

BACKGROUND: The Barnstable Police Department applied for and was awarded the 911 Support and Incentive Grant from the Commonwealth of Massachusetts, Executive Officer of Public Safety and Security, State 911 Department in the amount of \$177,244.00.

The Barnstable Police Department serves as a primary Public Safety Answering Point (PSAP) in that it receives all categories of 911 calls (Fire, Police, & Medical Emergency) and then dispatches to the appropriate service according to the type of need of the call. Eligible entities for this grant are primary, regional and regional secondary PSAPS and Regional Emergency Communications Centers (RECC). Additional monies are available under the grant guidelines pertinent to this grant, because the Barnstable Police Department serves as a Primary PSAP.

The Barnstable Police Department proposes that this funding be used to fund 911 Communications Center as follows:

- \$148,843.92: Personnel costs for the Replacement of 911 Center Personnel
- \$ 9,603.08: Purchase of 7 CAD Computers and Adjustable Stands and Sound Bars
- \$ 18,797.00: Purchase of raised flooring to reduce static electricity and better manage cables and wires generated from the dispatch and radio equipment

ANALYSIS: The acceptance of this grant will allow the Department to replace qualified personnel in the communications center in order to provide adequate staffing to that area on an understaffed shift without incurring undo overtime expenses. It will also enable the department to replace aging computer terminals in the 911 Center and to install raised flooring to reduce static electricity and manage large amounts of wiring generated by computer and radio equipment.

FISCAL IMPACT: This is a reimbursement grant for overtime and equipment.

TOWN MANAGER RECOMMENDATION: Town Manager John C. Klimm recommends acceptance of this grant.

STAFF ASSISTANCE: Paul B. MacDonald, Chief of Police

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM# 2010-027
INTRO: 09/17/09**

2010-027 AUTHORIZING ACCEPTANCES OF GIFTS FOR THE HYANNIS YOUTH & COMMUNITY CENTER

RESOLVE, that the Town Manager is authorized to accept gifts for the purpose of the Hyannis Youth and Community Center.

SPONSOR: John C. Klimm, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

SUMMARY

ITEM# 2010-027
INTRO: 09/17/09

TO: Barnstable Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Lynne M. Poyant, Director of Community Services
DATE: July 27, 2009
SUBJECT: Acceptance of Gifts for the Hyannis Youth and Community Center

BACKGROUND: One of the most significant projects the Town of Barnstable has been working on is the long awaited Hyannis Youth and Community Center Project which broke ground on January 18, 2008. The \$24.7 million project is funded by a \$3.5 million grant from the Commonwealth of Massachusetts, \$1 million grant from the federal government, \$1.34 million of private fundraising through the Hyannis Youth and Community Center Foundation and the balance of \$18,863,283 is from Town of Barnstable borrowing authorization and unexpended funds.

The project was expanded by the Town Council in May 2007 as it sought to increase the main rink seating capacity to 1,500 with 250 in the second rink. The gymnasium was also enlarged to accommodate a competition basketball court with two full cross courts and portable seating for spectators along with an elevated three lane jogging track. Additional property was added to the site along Stevens Street to accommodate needed parking and increased building size. The building of 105,000 SF now meets the requests of members of the general public and the Barnstable Youth Commission who spoke favorably on the new proposal in May 2007. The project, by design, is placed in the area of Town with the greatest need as 3,000 children reside within a one mile radius of the site. In June 2009, an Enterprise Account was created for the HYCC.

The completed multi-generational project will be a facility of which Barnstable residents can all be extremely proud!

ANALYSIS: This agenda item will set up the financial account in order for residents and visitors to contribute the Hyannis Youth and Community Center after it opens. The HYCC's business plan provides a line item that covers advertising, sponsorships and naming rights. Previous fundraising efforts were geared to the construction of the facility. We are now looking to the long term financial viability of the facility. A separate gift account will be established on the town's financial records to which all receipts will be credited from fundraising efforts. Expenditures from this account will be overseen by the Barnstable Recreation Division.

FISCAL IMPACT: There will be no negative financial impact to the Town.

TOWN MANAGER RECOMMENDATIONS: The Town Manager recommends approval of this Resolve.

STAFF ASSISTANCE: David Curley, Recreation Director

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

ITEM# 2010-028
INTRO: 09/17/09

2010-028 ACCEPTANCE OF A \$10,000 GRANT FROM THE NATURE CONSERVANCY

RESOLVED: That the Barnstable Town Council does hereby accept a grant from the Nature Conservancy in the amount of \$10,000 for the purpose of invasive species removal work on Sandy Neck Beach

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

SUMMARY

ITEM# 2010-028
INTRO: 09/17/09

TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Lynne M. Poyant, Director of Community Services
DATE: August 25, 2009
SUBJECT: Acceptance of a Nature Conservancy grant in the amount of \$10,000.

RATIONALE: The Nature Conservancy has agreed to make a Grant to the Town of Barnstable in the amount of \$10,000. This Grant will provide funds for Sandy Neck's invasives control program. Specifically, Sandy Neck shall use the funding for staffing and equipment needed to complete a season of control on the invasive species *Phragmites australis*, *Panicum amarulum*, and *Lythrum salicaria* at Sandy Neck in wetland swales and adjacent salt marsh areas as described in the report: "Control of *Phragmites australis* in Interdunal Wetlands at Sandy Neck Barrier Beach, Cape Cod, 2002-2008, Barnstable Massachusetts."

BACKGROUND: *Phragmites* is a species of non-native grass that invades wetlands and disrupts healthy ecological processes. In 2002, the Massachusetts Chapter of The Nature Conservancy (TNC) initiated a *Phragmites* control project at Sandy Neck Beach Park based off research by the University of Massachusetts on the extent and impacts of *Phragmites* at the site.

As of 2008, all wetlands on Sandy Neck have been treated at least once for *Phragmites* control. This means that 89 wetlands (34 acres) have been treated using herbicide via the cut and drip method. This method is labor intensive but it has been proven to have the greatest success rate.

ANALYSIS: Funding is needed for supplies and labor in order to continue this important project in the fall of 2009.

FISCAL IMPACT: There are no in-kind services or matching funds required from the grant funding source.

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

STAFF ASSISTANCE: Nina Coleman, Sandy Neck Park Manager

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM# 2010-029
INTRO: 09/17/09**

2010-029 GIFT ACCEPTANCE OF \$2,600 FROM WEST BARNSTABLE HISTORICAL SOCIETY FOR ANCIENT GRAVESTONE RESTORATION

RESOLVED: That the Town Council does hereby accept a gift in the amount of \$2,600.00 from the West Barnstable Historic Society for the restoration of ancient gravestones in the Old West Barnstable Cemetery and that the Town Manager is authorized to enter into contracts and to expend the gift for the purposes specified.

SPONSOR: Town Manager John C. Klimm

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

SUMMARY

ITEM# 2010-029
INTRO: 09/17/09

TO: Town Council
FROM: John C. Klimm, Town Manager
DATE: August 25, 2009
SUBJECT: Acceptance of a Gift from the West Barnstable Historic Society for restoration of ancient gravestones in the Old West Barnstable Cemetery.

RATIONAL: The West Barnstable Historical Society has recently taken control of monies that were in the West Barnstable Cemetery Association improvements account. The Association was established in 1945 with the intention of making improvements to the cemetery. A sub committee in cooperation with town staff has identified numerous historic gravestones that are in a state of disrepair. This work will focus on leveling monument bases, re-pinning, caulking and cleaning stones that have been identified as priorities due to their current condition.

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

B. NEW BUSINESS (Refer to public hearing 10/01/09) (Roll-call)

BARNSTABLE TOWN COUNCIL

ITEM# 2010-030

INTRO: 09/17/09

2010-030 APPROPRIATION & TRANSFER ORDER - \$31,831 FROM THE SALE OF THE DECLARED TWO SURPLUS ZAMBONIS

ORDERED: That the Barnstable Town Council hereby appropriate \$31,831 for the purpose of the construction of the Hyannis Youth and Community Center and to meet this appropriation that the sum of \$31,831 be transferred from the General Fund municipal savings account.

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

SUMMARY

ITEM# 2010-030

INTRO: 09/17/09

TO: Town Council
FROM: John C. Klimm, Town Manager
THROUGH: Lynne M. Poyant, Director of Community Services
DATE: August 25, 2009
SUBJECT: Appropriation of \$31,831 to the Hyannis Youth and Community Center from the sale of items declared surplus at Kennedy Rink

BACKGROUND: Recreation Division is committed to providing leisure opportunities to improve the quality of life in the Town of Barnstable through exceptional programs and services. The Recreation Division responds to the needs of our community, most specifically the challenges associated with high rates of poverty; the inability of working families to provide safe, secure quality supervision and constructive activities for school-aged children. After school programs, sports and recreational activities have always played an important role in the development of the children and young adults of Barnstable. In this difficult economy, the Barnstable Recreation Division is called upon to play a more significant role in maturing our young people physically, emotionally, and socially.

ANALYSIS: Upon the declaration of the Lt. Joseph P. Kennedy, Jr. Memorial Skating Rink materials being declared surplus, a bidding process was conducted through the Town's Purchasing Agent Johanna Boucher for the sale of two Zambonis. The 1984 Zamboni had a minimum bid of \$3,000. Upon bid opening, the high bidder was the Zamboni Company with a bid of \$4,276. The 1997 Zamboni had a minimum bid of \$9,000 and the high bidder was Rocky Mountain Rink Supply with a bid of \$27,555. The total is \$31,831. The high bidders were responsible to arrange for pick up of their purchases.

FISCAL IMPACT: The \$31,831 received for sale of the Zambonis declared surplus prior to the demolition of the Kennedy Rink will be credited to the General Fund municipal savings account; reimbursing the account for this requested appropriation.

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

STAFF ASSISTANCE: Johanna Boucher, Purchasing Agent
David Curley, Recreation Director

B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM# 2010-031
INTRO: 09/17/09**

**2010-031 APPROVE THE AMEMDED & RESTATED CONSERVATION RESTRICTION
CONOVER & ACCEPT A GIFT OF AN ACCESS EASEMENT TO THE TOWN**

RESOLVED, that the Town Council approve the Amended and Restated Conservation Restriction between Catherine M. Conover (grantor), and Barnstable Land Trust, Inc., (grantee), over approximately 26.97 acres of land on Grand Island, Osterville, Map 070, Parcels 017-003, 018 and 022 and Map 071, Parcel 024, for the purposes of preserving open space and water quality and providing access to the Town of Barnstable for purposes relating to the care of the Town's shellfish grants and further that the Town accepts the gift of a perpetual access easement from Catherine M. Conover for purposes relating to the care of the Town's shellfish grant in West Bay.

SPONSOR: Councilor Richard Barry, liaison to the Shellfish Committee, upon approval from the Legal Department.

BARNSTABLE TOWN COUNCIL

SUMMARY

ITEM# 2010-031
INTRO: 09/17/09

TO: Town Council
FROM: Rick Barry
DATE: August 20, 2009

SUBJECT: Amended and Restated Deed of Conservation Restriction held by Barnstable Land Trust, Inc. over approximately 26.97 acres of land on Grand Island, Osterville; and new Easement in favor of the Town of Barnstable over a portion of Map 70, Parcels 17-3 and 22.

SUMMARY: This item has been placed on the agenda for two purposes: the Council's approval of amendments to a recorded conservation restriction (CR) as given by Catherine M. Conover, and held by the Barnstable Land Trust, Inc. (BLT), covering 26.97 acres, more or less, on Grand Island in Osterville and the Council's acceptance of a gift of an access easement from Catherine M. Conover to the Town as proposed within the amended and restated conservation restriction.

BACKGROUND: In 2000, the Town Council approved a conservation restriction (CR) to be granted by Catherine M. Conover to Barnstable Land Trust on 26.97 acres surrounding Great Cove (just inside the Osterville Cut) on Grand Island, Osterville. An Amendment to that CR was approved and recorded in 2005. Within the CR is a .92-acre building envelope called "Limited Building Site B" and attendant to that is a "Managed Landscape Area B" along the shore of West Bay.

In this amended restriction, Mrs. Conover is requesting the right to retire "Limited Building Site B" and "Managed Landscaped Area B". Approval by the Town Council would eliminate the potential for a home to be built and the construction of a previously permitted dock both of which are adjacent to the Town's only shellfish nursery. In essence, the 1.79 acres on the point will remain essentially as it is today – a wooded lot.

In addition, Mrs. Conover is also willing to grant limited access rights to the Town over a portion of her property for purposes relating to the care of the Town's shellfish grant in West Bay– i.e., for the laying out, drying and reclaiming of nets used in the growing of shellfish and for the temporary storage of cages and gear used while planting or harvesting seed clams.

To effect these changes requires an amendment to the recorded CR. The Amended and Restated CR, if approved by the Town Council would consolidate the CR as originally approved and recorded in 2000, Amendments approved and recorded in 2005 and Amendments as proposed now in 2009. The result is one document, rather than three separate documents. The Amended and Restated CR specifically allows Mrs. Conover to grant the Town access for the above-stated limited purposes and to grant an easement for those purposes. The Easement itself details the rights being granted and provides the Town with the legal authority for such access. The Easement would be separately recorded when the new Amended and Restated conservation restriction is recorded.

ANALYSIS: This proposed Amended and Restated CR conforms to the Open Space Policy of the Town, adopted in 1981, which “encouraged...grants of conservation restrictions” which yielded “benefits to the Town.” In addition to providing the Town with the access as stated above, the Conover Amended and Restated CR offers the following public benefits and will:

- preserve a scenic view,
- prevent disturbance of wetlands,
- preserve open space,
- preserve important natural habitats of fish, wildlife or plants,
- protect marine water quality,
- preserve and protect a shoreline; and,
- limit or prevent construction on land of natural resource value.

Conservation Values of the 1.79 acres (Limited Building Site B and Managed Landscape Area B) of the Conover Amended and Restated CR:

- 1) is situated in the West Bay Estuary of the village of Osterville and further preserves the water quality of the saltwater cove known as Great Cove;
- 2) will reduce nitrogen loading by removing the potential for one septic system within the Resource Protection Overlay District;
- 3) contains mature oak/pine woodland, providing a bordering upland buffer to the coastal bank, dune and beach habitats of the property;
- 4) encompasses almost 500 linear feet of shoreline on West Bay, and is partially within FEMA Zone A;
- 5) directly enhances the Town of Barnstable shell fish nursery located immediately to the east of the Property in West Bay;
- 6) is a dominant feature of the public scenic vista for motorists from Seaview Avenue Landing and for recreational boaters on West Bay; and,
- 7) furthers the Town of Barnstable’s 2005 Update to its Open Space Plan.

Town of Barnstable Tax Consequences: Jeff Rudziak, Town Assessor is reviewing the record and will prepare numbers for the Town Council.

Conover Conservation Restriction – proposed access provisions

The Conover Conservation Restriction approved in 2000 includes a .92 acre undeveloped building envelope which is now proposed to be retired by amending that original restriction. The building envelope is shown on the map herewith as the red “rectangle” above the words Great Cove. The building envelope straddles a portion of the properties as shown on the Town records as 070022 and 070017003.

Also proposed to be retired is a permitted dock which if constructed, would lie immediately north of the Town’s shellfish nursery on West Bay.

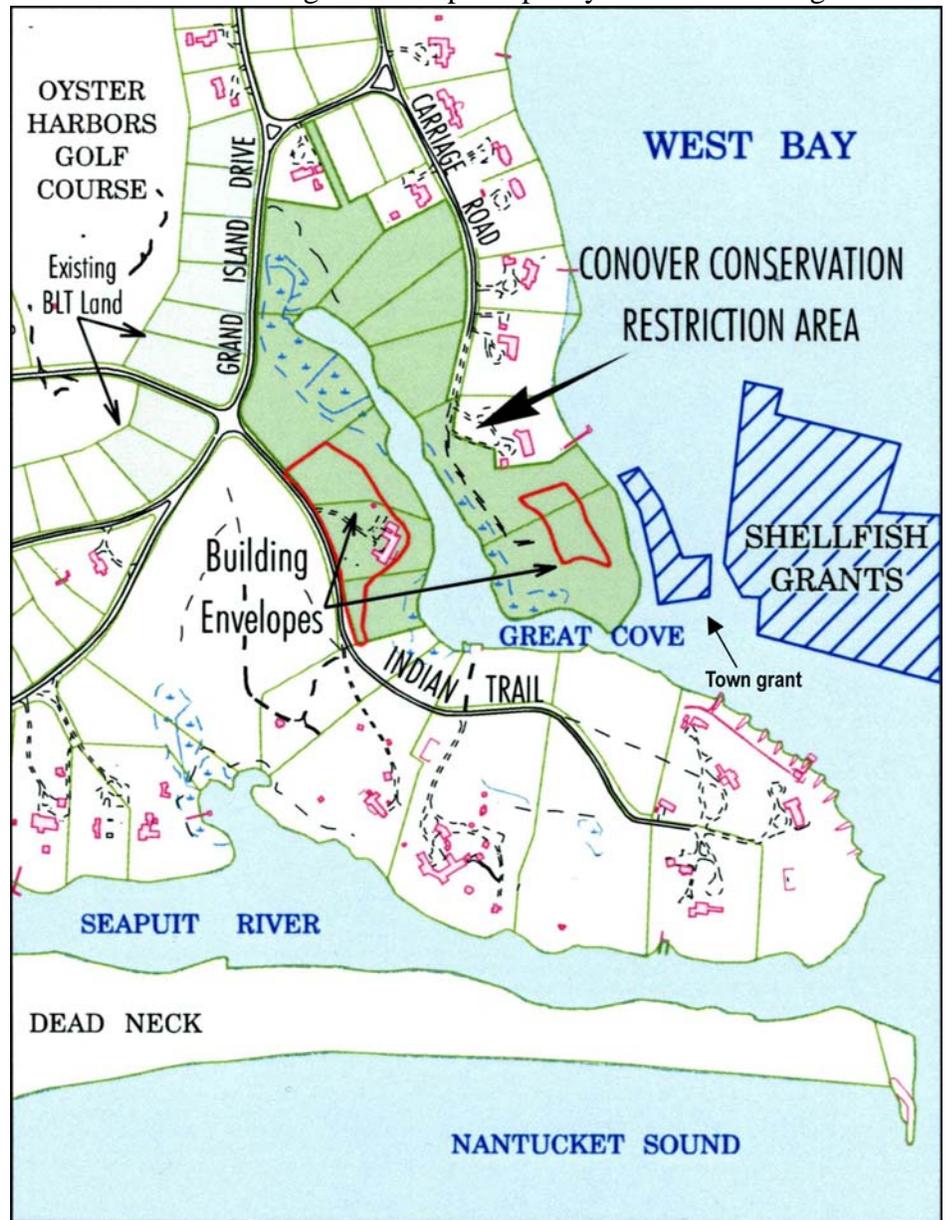
The amendments to the conservation restriction also provide a mechanism for granting an access easement to the Town. The perpetual easement has been agreed to in principle by the Town Manager and Assistant Town Attorney, David Houghton. The easement will grant to the Town a limited right of access to the beach area as described below.

Goal: Provide access to the beach area on West Bay to service the Town’s shellfish grant that is the Town’s only nursery for growing out seed clams.

The area proposed for access falls within the Managed Landscape Area B of the conservation restriction which is seaward of the building envelope, along the eastern boundary of the property.

Access details:

- 1) The beach would provide a work area for the Town of Barnstable’s Department of Natural Resources staff and volunteers under staff supervision for laying out, drying and reclaiming nets and for the temporary storage of cages and gear when planting and harvesting.
- 2) Access with gear is by water. No overland access.
- 3) Activities are limited to the beach between the base of the bluff and mean low water within the Managed Landscape Area B of the original Conservation Restriction.



B. NEW BUSINESS (May be acted upon)

BARNSTABLE TOWN COUNCIL

**ITEM# 2010-032
INTRO: 09/17/09**

2010-032 GIFT AND GRANT OF A CONSERVATION RESTRICTION-67 PILOT'S WAY

RESOLVED, that the Town Council hereby accepts the gift and grant of a Conservation Restriction from the Community Bank of 1265 Belmont Street, Brockton, Massachusetts on the land shown on Assessors' Map 217 as Parcel 30 and on Map 237 as Parcel 4, being a portion of the property having a street address of 67 Pilot's Way, Barnstable, to be held exclusively by the Barnstable Conservation Commission pursuant to G. L. c. 40 § 8C, in accordance with the terms of an Agreement for Judgment between Gordon Starr and Sherri Greene-Starr and the Town of Barnstable Zoning Board of Appeals dated July 20, 2004; and authorize the Council President and Town Manager to sign any documents in furtherance thereof.

SPONSOR: Councilor Ann B. Canedy

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

SUMMARY

ITEM# 2010-032
INTRO: 09/17/09

TO: Town Council
FROM: Councilor Ann B. Canedy
DATE: September 9, 2009
SUBJECT: Pilot's Way – gift and conservation restriction

BACKGROUND & ANALYSIS: As part of a judicially orchestrated settlement agreement, the Town of Barnstable is being “gifted” seven (7) acres of marshland with the caveat that it be placed under a Conservation Restriction.

This matter originated with an applicant's request for relief from the Zoning Board of Appeals in 2002 in the form of a variance. The applicant possessed land north of Route 6A in Barnstable Village with no frontage. He represented that he had a 40 foot right of way which narrowed to a 20 foot easement to the lot. Based on this representation, the ZBA issued a variance. Abutters appealed the decision alleging that the represented easement did not exist as presented. The building commissioner issued a building permit and the house was partially constructed. The property fell subject to foreclosure and the structure remains unoccupied and partially built.

The parties have negotiated a settlement and the property is under sales agreement. The actual sale cannot be realized until the Town accepts the Conservation Restriction, which fulfills the terms of the Agreement of Judgment.

The proposed 7 acres, more or less, is an important parcel for wetlands protection, both fresh and salt, undisturbed wildlife habitat, including an important tree canopy along the marsh edge. It is also significant for floodplain protection, archeological significance and abuts conservation land owned by the Barnstable Land Trust. Portions of the property are located within the ACEC and Great Marshes of Barnstable.

The Conservation Restriction has been vetted by the Conservation Commission, the legal department and the Chair of the Land Acquisition Committee. The full Land Acquisition Committee has not reviewed it because of failure to meet due to quorum issues. However, since this is a Court ordered settlement, the terms cannot be altered by the Land Acquisition Committee.

FISCAL IMPACT: There is no cost to the Town.

**SUBSTITUTE TEXT – 2010-013
Dated August 6, 2009**

BARNSTABLE TOWN COUNCIL

**ITEM# 2010-013
INTRO: 08/06/09, 09/17/09**

**2010-013 APPROPRIATION & LOAN ORDER COMMUNITY PRESERVATION NEW
TOWN HALL**

ORDERED: That, pursuant to the provisions of G.L. c. 44B, the sum of Three Million Ninety Four Thousand Eight Hundred and Eleven and No/100 (\$3,094,811) Dollars be appropriated for the repairs to the exterior of the New Town Hall facility; and to meet this appropriation that the sum of Four Hundred Twenty Nine Thousand Seven Hundred and Seventy One dollars (\$429,771) be transferred from the reserve set aside for Historic Preservation in the Community Preservation Fund; and that One Million Three Hundred and Thirty Two Thousand Five Hundred and Twenty dollars (\$1,332,520) be transferred from the undesignated fund balance of the Community Preservation Fund; and that the Town Treasurer, with the approval of the Town Manager, is authorized to issue bonds and notes amounting to One Million Three Hundred and Thirty Two Thousand Five Hundred and Twenty dollars (\$1,332,520) under CH44B or any other enabling authority; and that the Growth Management Department is authorized to contract for and expend the total amount appropriated with the prior approval of the Town Manager, subject to oversight of the project expenses by the Community Preservation Committee for roof, brick, window, exterior door and other exterior repairs and replacements for the preservation and rehabilitation of the historic resource consisting of the New Town Hall of the Town of Barnstable with an address of 367 Main Street, Hyannis, MA., located on Map / Parcel 326 / 021.

SPONSOR: Town Manager, John C. Klimm upon the recommendation of the Community Preservation Committee