



Town of Barnstable
Town Council
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Hyannis, MA 02601
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TOWN COUNCIL MEETING AGENDA
February 17, 2022
7:00 PM

Councillors:

Matthew Levesque
President
Precinct 10

Paula Schnepf
Vice President
Precinct 12

Gordon Starr
Precinct 1

Eric R. Steinhilber
Precinct 2

Paul Hebert
Precinct 3

Nikolas Atsalis
Precinct 4

David W. Bogan
Precinct 5

Paul C. Neary
Precinct 6

Jessica Rapp Grassetti
Precinct 7

Jeffrey Mendes
Precinct 8

Tracy Shaughnessy
Precinct 9

Kristine Clark
Precinct 11

Jennifer L. Cullum
Precinct 13

Administrator:
Cynthia A. Lovell
Cynthia.Lovell@town.barnstable.ma.us

Administrative
Assistant:
Kelly Crahan
Kelly.Crahan@town.barnstable.ma.us

The February 17, 2022 Town Council Meeting of the Barnstable Town Council shall be conducted remotely and shall be physically closed to the public. Alternative public access shall be provided as set forth below.

1. The meeting will be televised live via Comcast Channel 18 or may be accessed via the Channel 18 live stream: <http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

2. Remote Participation: Real-time public comment may be addressed to the Barnstable Town Council utilizing the Zoom video link or telephone number and access meeting code:

Join Zoom Meeting <https://zoom.us/j/94661533369> Meeting ID: 946 6153 3369
US Toll-free 888 475 4499

3. Written Comments may be submitted to:
https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town_Council/Agenda-Comment.asp

PUBLIC SESSION

1. ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. MOMENT OF SILENCE

4. PUBLIC COMMENT

5. COUNCIL RESPONSE TO PUBLIC COMMENT

6. TOWN MANAGER COMMUNICATIONS

- Massachusetts Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS) and Your Health Study
Laurel Schaider, PhD, Senior Scientist, Silent Spring Institute
- Update on the Local Comprehensive Plan
Elizabeth Jenkins, Director, Planning and Development
- Update on the Comprehensive Wastewater Management Plan
Dan Santos, Director, Department of Public Works

7. ACT ON MINUTES (Including Executive Session)

8. COMMUNICATIONS- from elected officials, boards, committees, and staff, commission reports, correspondence and announcements

9. ORDERS OF THE DAY

- A. Old Business**
- B. New Business**

10. ADJOURNMENT

NEXT REGULAR MEETING: March 3, 2022

ITEM NO.	INDEX TITLE	PAGE
A. OLD BUSINESS		
2022-069	Authorizing the Town Manager to execute a major amendment to the original Regulatory Agreement 2019-03 between the Town of Barnstable and Airview, LLC for the properties located at 451 and 467 Iyannough Road, Hyannis (Public Hearing) (Roll Call 2/3 Full Council)	4-13
B. NEW BUSINESS		
2022-134	Order pursuant to M.G.L. Chapter 40A, Section 5 submitting to the Planning Board a proposed zoning amendment establishing a temporary moratorium on the construction of large scale Ground Mounted Solar Photovoltaic Systems (First Reading) (Refer to Planning Board)	14-17
2022-135	Appointments to a Board/Committee/Commission: Registrar of Voters: Lisa Gage, Barnstable, MA; Michael R. Curtis, Cotuit, MA (First Reading) (Refer to Second Reading 03/03/2022)	18
2022-136	Amendment to the Administrative Code to designate members of the Local Comprehensive Planning Committee as Special Municipal Employees for purposes of the State Conflict of Interest Law (First Reading) (Refer to Second Reading 03/03/2022)	19-20
2022-137	Appropriation and Transfer Order in the amount of \$68,000 for the purpose of addressing infrastructure and code compliance issues in several buildings within the Golf Operations Division (Refer to Public Hearing 03/03/2022)	21-22

Approve Minutes: February 03, 2022

Please Note: The lists of matters are those reasonably anticipated by the Council President which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may be discussed to the extent permitted by law. 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 as they appear on this agenda. Persons interested are advised that in the event any matter taken up at the meeting remains unfinished at the close of the meeting, it may be continued to a future meeting, and with proper notice.

A. OLD BUSINESS (Public Hearing) (Roll Call 2/3 Full Council)

BARNSTABLE TOWN COUNCIL

ITEM # 2022-069

INTRO: 01/06/2022, 02/03/2022, 02/17/2022

2022-069 AUTHORIZING THE TOWN MANAGER TO EXECUTE A MAJOR AMENDMENT TO THE ORIGINAL REGULATORY AGREEMENT 2019-03 BETWEEN THE TOWN OF BARNSTABLE AND AIRVIEW, LLC FOR THE PROPERTIES LOCATED AT 451 AND 467 IYANNOUGH ROAD, HYANNIS

ORDERED: That the Town Council hereby authorizes the Town Manager pursuant to Sections 168-5 and 168-10 of Chapter 168 of the General Ordinances of the Code of the Town of Barnstable (the "Code") to amend the original Regulatory Agreement 2019-03 between the Town of Barnstable and Airview, LLC for the properties located at 451 and 467 Iyannough Road/Route 28, Hyannis, Massachusetts, shown on Town of Barnstable Assessor's Map 311 as Parcels 027, 081 and 082, respectively, and which are more particularly described in the deed recorded with the Barnstable County Registry of Deeds in Book 28116, Page 008 (collectively, the "Property"), consisting of approximately 2.108 acres of land, and further authorizing a drive-through with supplemental site improvements and granting the requested zoning relief pursuant to and as described in this First Major Amendment to Regulatory Agreement.

FIRST MAJOR AMENDMENT TO REGULATORY AGREEMENT

AIRVIEW, LLC

451 AND 467 IYANNOUGH ROAD, HYANNIS, MA 02601

This Regulatory Agreement Amendment ("Amended Agreement" or "Amended RA") is entered into by and between the applicant, **Airview, LLC** (the "Applicant" and/or "Developer"), a Massachusetts limited liability company with a mailing address of 297 North Street, Hyannis, MA 02601, and the **Town of Barnstable** (the "Town"), a municipal corporation with a mailing address of 367 Main Street, Hyannis, MA 02601, on this ____ day of _____, 2021, pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Chapter 168 of the Code of the Town of Barnstable.

WITNESS:

WHEREAS, the Applicant and the Town entered into a Regulatory Agreement dated July 15, 2020 ("RA 2019-03"), which is recorded in the Barnstable County Registry of Deed in Book 33111, Page 187;

WHEREAS, the Applicant has constructed Building A, a one-story retail pharmacy building with a drive through lane and a gross floor area of approximately 10,000 square feet, and Building B an approximately 6,000 square foot building together with numerous site improvements, including a significant reduction in curb-cuts, increased landscaping, new parking, pedestrian and site amenities, and new storm-water drainage;

WHEREAS, The Applicant applied for an amendment to RA 2019-03 to allow for a drive through window, additional signage, and minor revisions to the site plan to accommodate a drive through for a 2,500 square foot food service establishment/coffee shop located in Building B as shown on the Amended Redevelopment Plans are hereafter referred to herein, collectively, as the "Amended Redevelopment", all as shown on the plans submitted and attached hereto as **Exhibit A** (hereafter, the "Amended Redevelopment Plans");

WHEREAS, pursuant to sections 168-3 and 168-10 of the Code of the Town of Barnstable, the Town of Barnstable is authorized to amend RA 2019-03 with the Applicant;

WHEREAS, the Applicant continues to own the properties known as and numbered 451 and 467 Iyannough Road, Hyannis, which are shown on Barnstable Assessor's Map 311, as Parcels 027, 081 and 082 respectively, and which are more particularly described in the deed recorded with the Barnstable County Registry of Deeds in Book 28116, Page 008 (hereafter, collectively, the "Property");

WHEREAS, the Applicant commenced development of the Property consistent with the approvals under RA 2019-03 by constructing Buildings A and B, with Building A already occupied by a Walgreens Drug Store;

WHEREAS, this Amended Agreement shall establish additional permitted uses, densities, signage, traffic, and the drive through, within the approved Redevelopment (as defined within the original RA 2019-03), the duration of this Amended Agreement, and any other terms and conditions mutually agreed upon between the Applicant and the Town;

WHEREAS, the scale, placement, materials, design, and details of the buildings comply with the Design and Infrastructure Plan guidelines; and the Project and its supported mitigation provide the infrastructure necessary to support the project;

WHEREAS, the Town and Applicant desire to amend RA 2019-03 and this Amended Agreement reflects their respective understandings and agreements with regard to the Amended Redevelopment;

WHEREAS, the Applicant commits to use of the Property in accordance with this Amended Agreement and desires to have a reasonable amount of flexibility to carry out the amended use and therefore considers this Amended Agreement to be in its best interests;

WHEREAS, the Amended Agreement will not require regulatory review under the Massachusetts Environmental Policy Act (MEPA);

WHEREAS, the Amended Agreement 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 Redevelopment may proceed;

WHEREAS, the Amended Redevelopment proposal was reviewed by the Site Plan Review Committee (Building, Department of Public Works, Hyannis Fire District, etc.) pursuant to Article IX of the Zoning Ordinance. Per the Site Plan Review Letter dated February 8, 2021, the Committee determined that the proposal was approvable subject to obtaining Planning Board approval for the modification to the approved Regulatory Agreement, with recommendations for sufficient stacking and a focus on site improvements to ensure that pedestrian and vehicle circulation would be sufficient and safe provided the added drive-through.

WHEREAS, pursuant to Section 168 of the Code of the Town of Barnstable, the Town of Barnstable may enter into Regulatory Agreements with qualified applicants in areas shown on the Regulatory Agreements District Map. The subject property is located within the area delineated for regulatory agreements. Regulatory agreements may be amended pursuant to §168-5(D). This request qualifies as a substantial amendment, as additional zoning relief is necessary, and must be approved by the Planning Board and Town Council;

WHEREAS, the Applicant submitted a “Traffic Impact and Assess Study” dated May 27, 2021 performed by WorldTech Engineering (“WorldTech”) and an additional Traffic Report in July 2021;

WHEREAS, after the initial hearing on the Application to amend RA 2019-03, the Planning Board requested a Peer Review of the traffic implications of the proposed amendments;

WHEREAS, the Planning Board hired Vanasse & Associates Inc. (“Vanasse”) to conduct the peer review (“Peer Review” at the Applicant’s expense) and;

Vanasse submitted the Peer Review on October 5, 2021;

and WorldTech Engineering submitted a “Peer Review Memo Response” dated October 21, 2021;

WHEREAS, the final Traffic Impact and Assessment Study showed that anticipated traffic impacts are 97 new trips during the peak hour. This was deemed to create significant queuing leaving the Site as well as adding vehicular trips to an already congested regional roadway;

WHEREAS, the Applicant submitted a revised Site Plan dated November 22, 2021 from Baxter Nye

Engineering & Surveying with additional signage and modifications to the parking lot layout;

WHEREAS, the Applicant submitted signage design and specifications and a rendering for the proposed drive through;

WHEREAS, the Amended Agreement application has undergone a public hearing opened on 08/23/2021 and closed on 11/22/2021 and received an affirmative majority vote from the Planning Board on 11/22/2021;

WHEREAS, the Amended Agreement has undergone a public hearing opened on XX/XX/XXXX and closed on XX/XX/XXXX before the Barnstable Town Council and received a _____ vote _____ the Agreement on _____, 2022;

NOW, THEREFORE, in consideration of the agreements and covenants set forth hereinafter, and for other good and valuable consideration, the receipt and sufficiency of which each of the parties hereby acknowledge to each other, the Applicant and Town do enter into this Amended Agreement, and hereby agree to covenant as follows:

1. All conditions defined within the original RA 2019-03 shall remain in full force and effect.
2. The Amended Redevelopment shall consist of:
 - Addition of a drive-through for a 2,500 square foot food service establishment/coffee shop located in Building B with a drive through lane and additional site improvements including wayfinding, drive through and traffic control signage, a clearance bar and a patio.
 - A reduction in provided parking from 80 to 78 paved parking spaces.
 - The island directly at the rear of the Building B was increased to accommodate the drive through menu boards.
 - The southeast rear corner of the site was established as one-way circulation counter clockwise around Building B.
 - Within the southeast corner, parking was modified from ninety degree parking to angled parking to better accommodate one-way traffic and the reduced drive aisle width.
 - Modification to the median on Route 28, including addition of two flexible bollards, to be coordinated with MassDOT for approval in an effort to further limit the ability to take a left turn into the site.
 - Addition of a bike rack.
3. The Developer constructed the Redevelopment on the Property in accordance RA 2019-03.
4. This Amended Agreement shall vest land use development rights in the Property for the duration of this 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.
5. Any substantial deviation from the authorized terms of this Amended Agreement shall require review by the Town Council and Planning Board pursuant to Chapter 168-10 of the Code.
6. The Developer agrees to construct the Amended Redevelopment on the Property in accordance with the Amended Redevelopment Plans which are submitted herewith and which are entitled as follows:
 - a. "Layout and Dimension Plan", Sheet C3.0, revised November 22, 2021

- b. "Landscape Planting Plan", Sheet L1, dated November 17, 2021
 - c. Building B Floor Plan and Elevation drawings as follows:
 - i. "FF & E Plan ", Sheet I101, dated November 22, 2021
 - ii. "Building Exterior Elevations", Sheet A201, dated September 3, 2021
 - iii. "Building Exterior Elevations", Sheet A202, dated September 3, 2021
 - d. Signage Plan "Starbucks Coffee #66563 467 Iyannough Road Hyannis, MA 02601", Sheets 1-11, dated November 19, 2021 and revised November 22, 2021
7. This Agreement shall run with the land, and all of the terms, conditions, and obligations contained in this Agreement shall be binding on any successor or assignor of the Applicant.
 8. The remaining 3,500 square feet of space of Building "B" shall be occupied by office use or low impact retail use not to exceed the traffic impact established for office use (58 new total daily trips, 7 new AM peak hour trips and 9 PM peak hour trips) in accordance with the Traffic Impact and Access Study prepared by WorldTech Engineering dated July 2021. Office use shall not include medical or dental offices or clinics, unless approved by the Planning Board at a public hearing.
 9. All new exterior lighting shall be "dark sky complaint" in order to retain all exterior lighting on the site.
 10. All deliveries for both Building A and Building B shall be during non-peak hours. Deliveries shall be limited to the hours when the Starbucks is closed. Limited small deliveries may occur during the day via small vans, which can park in front of the store drop off and leave.
 11. The northeastern driveway island shall be constructed substantial in conformance with the Layout and Dimension Plan updated November 22, 2021. The Massachusetts Department of Transportation shall review and approve the final design on the northeastern driveway island.
 12. As a result of the traffic impacts to the surrounding roadways, the Applicant has agreed to provide \$100,000 towards the study and/or design of roadway and multi-modal improvements along the Route 132 and/or Route 28 corridor(s).
 13. The Developer is responsible for obtaining all applicable permits and licenses.
 14. No Certificate of Occupancy shall be issued until all conditions of this Amended Agreement have been met and Design and Infrastructure Plan approval has been issued.
 15. Prior to the issuance of any building permits the Developer shall submit a bike rack detail.
 16. This Amended Agreement is transferable to a person or entity other than the Applicant (hereafter, the "Transferee") with prior written notice to the Town Manager and contingent upon the Applicant being in compliance with all the requirements of this Agreement. However, no such notice to the Town shall be effective unless it includes a written acknowledgement by the Transferee that they have read this Regulatory Agreement, and any amendments thereto, and they agree to be bound by the terms and conditions set forth herein, in which event after such assignment the transferor shall be relieved of liability from and after the date of transfer. Upon receipt of such written notice of transfer, and subject to a determination by the Town Manager that that the Applicant is in compliance with all the then applicable requirements of the Agreement, the Transferee and the Town Manager shall execute a minor amendment of this Regulatory Agreement acknowledging the Transferee is a signatory of this Regulatory Agreement, agreeing to be bound by the terms and conditions set forth herein, and any subsequent amendments hereto, and assuming liability as of the date of transfer. No Planning Board or Town Council approval is required for such a minor amendment acknowledging such a transfer in ownership.
 17. The Developer estimates that construction will commence within 30 days of the granting of the Building permits.
 18. To the extent that the Amended Redevelopment Plans referenced in this Amended Agreement do not depict all the findings and conditions set forth in this Agreement, revised plans and/or notations shall be provided with the submission of final plans to the Building Commissioner. The amended Redevelopment shall remain in substantial conformance with the Site Plan Review approvals dated July 2, 2019 and February 8, 2021 and all conditions thereof and any modifications thereto including any conditions

required should the Building Commissioner determine that modifications to the Site Plan Review approval are necessary as reflected in the final approved site plan.

19. Upon completion of all work, a registered engineer or land surveyor shall submit a letter of certification and an as-built plan, made upon knowledge and belief in accordance with professional standards that all work has been done in substantial compliance with the approved site plan (Barnstable Code Section 240-104(G)). This document shall be submitted before the issuance of the final certificate of occupancy.
20. The Town hereby grants the following waivers from the Town of Barnstable Zoning Ordinance for the Redevelopment, as requested by the Developer:
 - a. Section 240-24.1.4.1.11(A) (3) Drive-through windows. Drive-through windows are prohibited within the Hyannis Village Zoning Districts; with the exception that banks allowed as a principal permitted use may construct and operate a drive-through window upon the issuance of a special permit.
 - i. The proposed amendment to the RA 2019-03 requests the ability to construct a second drive through window for a 2,500 square foot food service establishment/coffee shop within Building B.
 - b. Sections 240-24.1.11(A) (6); 240-67(A), (B), and (C), and 240-65 (A)-(I), Signage. Airview, LLC seeks to amend the original RA 2019-03 to update the request associated with the need for the previously approved signage waivers to incorporate signage proposed for the food service establishment/coffee shop and to modify the request associated with signage established for Building A.
 - ii. Section 240-67(B) limits the maximum square footage of all signs to the lesser of 50 square feet or 10% of the building face. Excluding directional drive thru signage, the total square footage of signage for Building A (pharmacy) is 177.54 square feet and the total square footage of signage for Building B (proposed retail space) is 150 square feet.
 - iii. Section 240-67(C) limits the maximum size of any freestanding sign to 10 square feet except that the Building Commissioner can grant up to 24 square feet. The project proposes two freestanding signs each totaling 30 square feet.
 - iv. Section 240-65(A) limits each business to a total of two signs. Building A (proposed pharmacy) proposes 6 signs (four building signs and one panel on each of the two freestanding pylon signs). Building B (retail space) proposes four signs (a panel on each of the freestanding pylon signs for each location) with additional signage to be determined.
 - v. Section 240-65(d) allows one freestanding sign per business, which may not exceed half of the allowable size as permitted. The project proposes two freestanding signs each of which exceeds the allowable size.
 - vi. Section 240-65 and 240-67 Signs in the HG District. Redevelopment proposes two free-standing signs – one along Route 28 and one along Barnstable Road. The Ordinance allows for only one free-standing sign per business.
 - vii. Section 240-78 Internal Illumination drive through menu signage will be internally illuminated.
 - viii. Section 240-75 allows for directional or safety signs provided such signs do not exceed one square foot in area, nor be more than three feet high. No more than four such signs are allowed per site. Building B proposes the following directional/safety signs:

18" CHANNEL LETTERS ON BUILDING (A)	22.94 SQ FT.
48" DT WALL SIGN (B)	6.96 SQ. FT.
CLEARANCE BAR (C)	2.29 SQ. FT.
46" ILLUMINATED DIRECTIONAL TYEO (D)	7.99 SQ. FT.
Sign cabinet only	2.6 SQ. FT.
PRE-MENU BOARD (G)	6.72 SQ. FT.
FREESTANDING 5-PANEL MENU (H)	22.9 SQ. FT.
DOS ON CANOPY (I)	9.62 SQ. FT.

- c. Section 240-24.1.8(B) (3), Special Permit for retail uses that increase the number of vehicle trips per day and/or increase peak hour vehicle trips.
 - ix. Proposed 2,500 square foot food service establishment/coffee shop will result in increase of vehicle trips.
- d. Section 240-24.1.8(C)(2)(a), Special Permit for new vehicular access/change in use that increases vehicle trips per day and/or peak hour roadway use for existing curb cuts on Route 28.
 - x. Proposed retail uses will result in increase of vehicle trips.

21. The failure of this agreement to address a particular permit, condition, term, or restrictions shall not relieve the qualified applicant of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction;

22. Section 240-24.1.11(A) (4) (a) [1] and Section 240-56, Schedule of Parking Spaces.

- xi. Airview, LLC seeks to amend the original RA 2019-3 to update the request associated with the need for a reduction from the required parking. The Amended Redevelopment provides a total of 78 parking spaces. The proposed redevelopment, with the remaining 3,500 square of Building B being used as office, requires a total of 83 parking spaces. If the remaining 3,500 square feet of Building B is used for low impact retail, the required parking would be 89 parking spaces. In either scenario, the required parking exceeds the provided parking.

23. This amended Regulatory Agreement may not be used to prevent the Town of Barnstable or other governmental agency from requiring the qualified applicant to comply with the laws, rules and regulations and policies enacted after the date of the regulatory agreement, if the Town of Barnstable or governmental agency determines that the imposition of and compliance with the newly effective laws and regulations are essential to ensure the public health, safety or welfare of the residents of all or part of the jurisdiction.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed on the day and year first above written.

Town of Barnstable,

By,

 Mark S. Ells
 Town Manager

Date _____

Airview LLC,
 By,

PROPERTY DESCRIPTION

The land, together with the buildings thereon, situated in Barnstable (Hyannis), Barnstable County, Commonwealth of Massachusetts, consisting of two parcels, bounded and described as follows:

Parcel I

A certain parcel of land with the buildings thereon situated in Barnstable (Hyannis), Barnstable County, Commonwealth of Massachusetts, bounded and described as follows:

NORTHERLYby Iyannough Road - Route 28, a public way, as shown on a plan hereinafter mentioned, 175.90 feet;

EASTERLYby land now or formerly of Henry Murphy, et ali, as shown on said plan, 202.99 feet;

SOUTHERLYby land now or formerly of Allan F. Jones, as shown on said plan, by two courses, 96.24 feet and 49.34 feet, respectively; and

WESTERLYby Parcel II described below, as shown on said plan, 247.96 feet.

The above described parcel contains 34,450 square feet of land, more or less, according to said plan.

The above described premises are shown on a plan entitled "Plan of Land in Hyannis - Barnstable - Mass. for Armands Restaurant, Scale: 1 IN = 40 FT, Date: 3 July 1958, Charles N. Savery, Co., Engineers & Surveyors, Cotuit- Falmouth Mass., Plan No. 75839," which said plan is recorded with the Barnstable County Registry of Deeds in Plan Book 144, Page 85.

Property Address: 451 Iyannough Road - Route 28, Hyannis, Massachusetts.

Parcel II

A certain parcel of land with the buildings thereon situated in Barnstable (Hyannis), Barnstable County, Commonwealth of Massachusetts, bounded and described as follows:

NORTHERLYbyRoute 28, a public way, as shown on a plan hereinafter mentioned, 150.00 feet;

EASTERLYbyother land of the Town of Barnstable Cobb Trust as shown on said plan, 248.47 feet, being Parcel I described above;

SOUTHERLYbyland now or formerly of Allan F. Jones as shown on said plan, 231.98 feet;

WESTERLYby land now or formerly of N. W. Kalat and M. H. Segel, Trustees, as shown on said plan, 236.98 feet;

NORTHERLYby other land of the Town of Barnstable Cobb Trust as shown on said plan, 100.00 feet; and

WESTERLYby said Cobb Trust land as shown on said plan, 107.97 feet.

The above described parcel contains 1.34 acres of land, more or less, according to said plan.

The above described premises are shown on a plan entitled "Town of Barnstable Plan of a portion of a Cobb Lot in Hyannis (Barn's) Mass. to be conveyed to the Dennis F. Thomas Post No. 2578 Veterans Of Foreign Wars Building Association, Inc., Engineering Section D. P. W., Scale: 1 in. = 30 ft., Date: Aug. 18, 1982," and recorded with the Barnstable County Registry of Deeds in Plan Book 368, Page 97.

Property Address: 467 Iyannough Road – Route 28, Hyannis, Massachusetts 02601.

For title to Parcels and II see deed recorded in the Barnstable County Registry of Deeds in Book 28116, Page 008.

ASSENT TO REGULATORY AGREEMENT

The undersigned, Airview, LLC, a Massachusetts limited liability company, of 297 North Street, Hyannis, Massachusetts 02601, the owner of property in Hyannis, Barnstable County, Massachusetts, described in a Deed recorded in Book 28116, Page 008, does hereby consent to the recording of a Regulatory Agreement by and between Airview, LLC, a Massachusetts limited liability company and the Town of Barnstable dated _____, 2022. Airview, LLC further agrees to be bound by the terms and conditions contained in said Regulatory Agreement.

Executed this _____ day of _____, 2022.

Applicant:

Signature:

Print:

Date:

EXHIBIT A: REDEVELOPMENT PLANS

SPONSOR: Paul C. Neary, Councilor, Precinct 6

DATE	ACTION TAKEN
<u>01/06/2022</u>	<u>Refer to Public Hearing 02/03/2022</u>
<u>02/03/2022</u>	<u>Continued to 02/17/2022 requested by applicant</u>

- Read Item
- Motion to Open Public Hearing
- Rationale
- Public Hearing
- Close Public Hearing
- Council Discussion
- Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2022-069

INTRO: 01/06/2022, 02/03/2022, 02/17/2022

SUMMARY

TO: Town Council
FROM: Airview LLC
THROUGH: Elizabeth S. Jenkins, Director of Planning and Development
DATE: January 06, 2022
SUBJECT: Authorizing the Town Manager to execute a major amendment to the original Regulatory Agreement 2019-03 between the Town of Barnstable and Airview, LLC for the properties located at 451 and 467 Iyannough Road, Hyannis

RATIONALE: The Developer, Airview LLC, which entity has standing to proceed as owner of the properties at 467 and 451 Iyannough Road/Route 28, Hyannis, Massachusetts shown on Town of Barnstable Assessor's Map 311, as Parcels 027, 081 and 082 respectively, and which are more particularly described in the deed recorded with the Barnstable County Registry of Deeds in Book 28116, Page 008, consisting of approximately 2.108 acres, located within the Downtown Hyannis Growth Incentive Zone (GIZ), has filed an application to amend the original Regulatory Agreement with the Town of Barnstable under Chapter 168 and Chapter 240 of the Barnstable Code to incorporate a food service establishment/coffee shop with a drive-through within Building B.

The Developer has undergone several public hearings on the Amended Agreement application and received a unanimous vote from the Planning Board recommending the execution of the Regulatory Agreement on November 22, 2021.

The Developer has received approvals from Site Plan Review and Planning Board. The development is not subject to review by the Cape Cod Commission as a Development of Regional Impact as it does not trigger any Cape Cod Commission jurisdictional thresholds.

The Developer proposes to incorporate a 2,500 square foot food service establishment/coffee shop with a drive through to be located in Building B.

In order to understand the impact that the proposed food service establishment/coffee shop with a drive through would have on overall traffic, the Developer coordinated with WorldTech Engineering to provide a Traffic Impact and Access Study.

Additionally, the Developer agreed to and paid for a peer review of World Tech Engineering's Traffic Impact and Access Study which was achieved by Vanasse & Associates Inc. Vanasse and Associates provided comments with regard to the composition of the Traffic Impact and Access Study as a whole as well as comments with regard to the proposed site plan. Vanasse stressed that the use for the balance of Building B (3,500 square feet) should be reconciled as the use would impact both the trip generation and parking calculations for the overall development. In response, as defined in Condition #8, the Developer agreed that the remaining 3,500 square feet would be restricted strictly to office use or low impact retail not to exceed the traffic impact established for office use within the Traffic Impact and Access Study. Office was further defined not to include medical or dental offices or clinics unless approved by the Planning Board at a public hearing.

Vanasse also recommended incorporation of several site improvements including additional wayfinding signs and modifications to the parking layout such as angled parking for the row of spaces east of the Building B to reflect the one-way traffic flow and the reduced drive aisle width to accommodate the

drive-through which the applicant incorporated. The Developer has also made improvements to the median on Route 28 including the addition of two flexible bollards, to be coordinated with MassDOT for approval in an effort to further limit the ability to take a left turn into and out of the site.

Additional site improvements include enhanced pedestrian circulation through the addition of a new crosswalk and incorporation of a bike rack as a transportation demand management.

The Amended Redevelopment will provide the following traffic mitigation benefit:

- The Applicant has agreed to provide \$100,000 towards the study and/or design of roadway and multi-modal improvements along the Route 132 and/or Route 28 corridor(s).

FINANCIAL IMPACT: As a result of the traffic impacts to the surrounding roadways, the Applicant has agreed to provide \$100,000 towards the study and/or design of roadway and multi-modal improvements along the Route 132 and/or Route 28 corridor(s). This mitigation payment will provide the Town with resources to study and improve the corridors surrounding the Rotary.

STAFF ASSISTANCE: Elizabeth S. Jenkins, Director of Planning and Development; Kate Maldonado, Assistant Director of Planning & Development; Jim Kupfer, AICP, Senior Planner; Kathleen Connolly, Assistant Town Attorney

B. NEW BUSINESS (First Reading) (Refer to Planning Board)

BARNSTABLE TOWN COUNCIL

**ITEM# 2022-134
INTRO: 02/17/2022**

2022-134 ORDER PURSUANT TO M.G.L. CHAPTER 40A, SECTION 5 SUBMITTING TO THE PLANNING BOARD A PROPOSED ZONING AMENDMENT ESTABLISHING A TEMPORARY MORATORIUM ON THE CONSTRUCTION OF LARGE SCALE GROUND MOUNTED SOLAR PHOTOVOLTAIC SYSTEMS

ORDERED: That the attached two-page proposal to amend the Town’s Zoning Ordinance to establish a Temporary Moratorium on the Construction of Large Scale Ground Mounted Solar Photovoltaic Systems” submitted to the Town Council on February 9, 2022 by 10 registered voters is hereby submitted to the Planning Board for review pursuant to the provisions of M.G.L. Chapter 40A, Section 5.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Motion to Open Public Hearing
- ___ Rationale
- ___ Public Hearing
- ___ Close Public Hearing
- ___ Council Discussion
- ___ Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2022-134
INTRO: 02/17/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Karen L. Nober, Town Attorney
DATE: February 17, 2022
SUBJECT: Order pursuant to M.G.L. Chapter 40A, Section 5 submitting to the Planning Board a proposed zoning amendment establishing a temporary moratorium on the construction of large scale Ground Mounted Solar Photovoltaic System

BACKGROUND: Section 5 of M.G.L. c. 40A, the state Zoning Act, provides that “[a]doption or change of zoning ordinances or by-laws may be initiated by the submission to the city council ... of a proposed zoning ordinance ... by ten registered voters in a city ...” Section 5 further provides that the City Council “shall within fourteen days of receipt of such zoning ordinance ... submit it to the planning board for review.”

On February 3, 2022, a resident of the Town submitted a proposed amendment to the Town’s zoning ordinance to the Town Clerk, along with the signatures of ten residents of the Town. On February 7, 2022, the Town Clerk certified that the petition was signed by ten certified voters of the Town. On February 9, 2022, the petition was submitted to the Town Council by one of the proponents of the petition. In accordance with G.L. c. 40A, section 5, the proposed amendment has been placed on this meeting’s agenda for referral to the Planning Board.

FISCAL IMPACT: There is no fiscal impact.

STAFF SUPPORT: Karen L. Nober, Town Attorney

We, the undersigned voters of the Town of Barnstable, request the following article be placed on the agenda of the Barnstable Town Council meeting pursuant to G.L. Ch. 40A, Sec. 5:

To see if the Town of Barnstable will amend the Town's Zoning Ordinance by adding a new section as follows:

Title: Temporary Moratorium on the Construction of Large Scale Ground Mounted Solar Photovoltaic Systems, that would provide as follows:

a) Purpose

The Town of Barnstable has a uniquely fragile sole source aquifer as identified by the United States Environmental Protection Agency and the Massachusetts Department of Environmental Protection. Industrial scale ground mounted photovoltaic solar systems pose a serious threat to this public water source and may have damaging effects on our ecology and therefore our economy.

The Town is being coerced through litigation to approve an amendment to its zoning ordinance to benefit a single property with the right to build an industrial scale ground mounted solar photovoltaic system in a residentially zoned district zone, threatening the safety and welfare of residents as well as the adjoining wellhead protection, conservation restriction land of the Centerville, Osterville, Marstons Mills Water District.

There is an urgent community need to establish long-term zoning ordinance provisions to ensure that such uses and development will be consistent with the Town's long term planning interests and the health, safety and welfare of its citizens. It is crucial that the Town establish a temporary moratorium on the use of land and the construction of structures related to such large scale ground mounted solar photovoltaic systems, structures, the issuance of permits in connection with same, and the amendment of zoning of residentially zoned properties in connection with same.

b) Moratorium

No building permit, special permit or site plan approval decision may be issued in connection to or for the construction of any large scale ground mounted solar photovoltaic system in size of more than 150% of the documented average use of a residential, commercial, business, municipal or agricultural application for any property for which such system is proposed, and not to exceed 35 kilowatts, for 11.5 months after the approval of said moratorium, or until sufficient deliberations

by the Town have been completed for the determination of its bylaws pertaining to such. No Ground Mounted Solar Photovoltaic Overlay District (GMSPVOD) may be adopted or imposed over a residential zone for 11.5 months after the approval of said moratorium, or until sufficient deliberations by the Town have been completed for the determination of its bylaws pertaining to such. The purpose of this moratorium is to allow sufficient time to engage in a planning process to address the effects of such structures and uses in the Town and to enact bylaws in a manner consistent with sound land use, planning goals and objectives, or take any action related thereto.

Submitted by

Name - Printed number	Name - Signed	Residence Address with street
Anne Salas	Amy Salas	145 Mockingbird Lane Marstons Mills, MA
NANCY MINNIGERD	<i>[Signature]</i>	95 BISCAYNE DR MARSTONS MILLS MA 02648
CHRISTINE McDONOUGH	<i>[Signature]</i>	111 MOCKINGBIRD LN MARSTONS MILLS 02648
Cody P Jones	<i>[Signature]</i>	111 Mockingbird Ln Marstons Mills MA 02648
JAMES P. DONOHUE	<i>[Signature]</i>	111 MOCKINGBIRD LN MARSTONS MILLS MA 02648
Catherine McDonagh	<i>[Signature]</i>	111 Mockingbird Lane Marstons Mills, MA. 02648
Betsy K Godley	<i>[Signature]</i>	1037 Race Ln Marstons Mills MA 02648
Mary Burkinshaw	<i>[Signature]</i>	133 Mockingbird Lane Marstons Mills MA 02648
Debra Spavore	Debra Lavoie	32 Bay Road Rd Marstons Mills
Donna Lawson	Alana Lawson	46 Wood Truck Rd Marstons Mills

(2)

**B. NEW BUSINESS (First Reading) (Refer to Second Reading
03/03/2022)**

BARNSTABLE TOWN COUNCIL

**ITEM# 2022-135
INTRO: 02/17/2022**

2022-135 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION:

RESOLVED: That the Town Council appoints the following individuals to a multiple-member Board/Committee/Commission: **Registrar of Voters:** Lisa Gage, Barnstable; Michael R. Curtis, Cotuit

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
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_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

B. NEW BUSINESS (First Reading) (Refer to Second Reading 03/03/2022)

BARNSTABLE TOWN COUNCIL

**ITEM# 2022-136
INTRO: 02/17/2022**

2022-136 AMENDMENT TO THE ADMINISTRATIVE CODE TO DESIGNATE MEMBERS OF THE LOCAL COMPREHENSIVE PLANNING COMMITTEE AS SPECIAL MUNICIPAL EMPLOYEES FOR PURPOSES OF THE STATE CONFLICT OF INTEREST LAW

ORDERED: That the Town Council does hereby designate the members of the Local Comprehensive Planning Committee as special municipal employees for the purposes of G.L. c. 268A, the state conflict of interest law, and that the Code of the Town of Barnstable Section 241 Attachment 1 of the Administrative Code is hereby amended by adding the Local Comprehensive Planning Committee to the list of multiple member bodies so designated.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2022-136
INTRO: 02/17/2022

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Elizabeth Jenkins, Director, Planning & Development
DATE: February 17, 2022
SUBJECT: Amendment to the Administrative Code to designate members of the Local Comprehensive Planning Committee as Special Municipal Employees for purposes of the State Conflict of Interest Law

BACKGROUND: M.G.L. Chapter 268A, the state conflict of interest law, covers all municipal officials and employees, whether elected or appointed, paid or unpaid, full-time or part-time. However, in recognition of the need not to unduly restrict the ability of town volunteers and part-time employees to earn a living, the law is less restrictive for “special” municipal employees than for other employees.

Those who serve on unpaid part-time boards or commissions are considered a regular municipal employee unless the position has been expressly designated as having "special municipal employee" status by vote of the Town Council. It is the municipal position that is designated as having "special" status, not the person or persons holding the position.

Two sections of the conflict of interest law apply less restrictively to special employees: Sections 17 and 20. All other sections of the conflict law that govern regular municipal employees apply to "special municipal employees" in exactly the same way.

Section 17 - Acting on Behalf of Others

Section 17 generally prohibits municipal employees from representing a private party or anyone else before municipal boards or departments. It also prohibits municipal employees from acting as agent or attorney for, or receiving compensation from, any private party in connection with any matter of direct and substantial interest to the Town.

However, if a municipal position has been designated as “special,” a person holding that position may be paid by others and may act as agent or attorney for others with respect to matters before municipal boards other than his own, as long as he has not officially participated in the matter, and the matter is not now, and has not within the past year been, under his official responsibility.

Section 20 -- Restrictions on Having an Interest in Contracts with the Town

Section 20 generally prohibits municipal employees from having a direct or indirect financial interest in a contract with the Town, including having a second municipal job. This section has a number of exemptions, and there are two additional exemptions for special municipal employees.

ANALYSIS: Town of Barnstable Board, Committee, and Commission members have been classified by the Town Council as special municipal employees. By designating the members of the Local Comprehensive Planning Committee as special municipal employees, the Town would be consistent in how it classifies its volunteer board members for purposes of the conflict of interest law. Furthermore, designating the unpaid members of Town boards as “specials” encourages those who wish to serve on such boards by not placing undue restrictions on their ability to earn a living. This item is being brought forward prior to appointments so applicants will know how the conflict of interest law will apply to them.

FISCAL IMPACT: There is no fiscal impact.

STAFF ASSISTANCE: Karen L. Nober, Town Attorney; Elizabeth Jenkins, Director, Planning & Development

B. NEW BUSINESS (Refer to Public Hearing 03/03/2022)

BARNSTABLE TOWN COUNCIL

**ITEM# 2022-137
INTRO: 02/17/2022**

2022-137 APPROPRIATION AND TRANSFER ORDER IN THE AMOUNT OF \$68,000 FOR THE PURPOSE OF ADDRESSING INFRASTRUCTURE AND CODE COMPLIANCE ISSUES IN SEVERAL BUILDINGS WITHIN THE GOLF OPERATIONS DIVISION

ORDERED: That the amount of **\$68,000** be appropriated for the purpose of remediating various facility infrastructure and code compliance issues at Hyannis Golf Course and Olde Barnstable Fairgrounds, and that to fund this appropriation, that the remaining available balance of \$27,000 in Town Council Order 2018-072 and the remaining available balance of \$12,000 in Town Council Order 2018-073 be transferred, and that \$29,000 be provided from the Golf Enterprise Fund reserves, and the Town Manager is authorized to contract for and expend the appropriation for the stated purpose.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Motion to Open Public Hearing
- ___ Rationale
- ___ Public Hearing
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- ___ Vote

BARNSTABLE TOWN COUNCIL

ITEM # 2022-137
INTRO: 02/17/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Madeline Noonan, Director, Community Services
DATE: February 17, 2022
SUBJECT: Appropriation and Transfer Order in the amount of **\$68,000** for the purpose of addressing infrastructure and code compliance issues in several buildings within the Golf Operations Division

BACKGROUND: The Golf Division has numerous infrastructure needs that are time sensitive. These items include air conditioning units at Old Barnstable Fairgrounds Golf Course (OBFGC) that were destroyed in a fire in the spring of 2021, a substantially sized hole in the roof of the cart barn at OBFGC, electrical service panels that are outdated, dangerous and not to code at Hyannis Golf Course, (HGC) failed air conditioning units in the administrative office at Hyannis GC, and several other issues.

ANALYSIS: These issues are large enough in scope to where the regular operating budget cannot accommodate them, and are time sensitive enough to be handled outside of the normal budget cycle. A fire destroyed the units providing A/C to the OBFGC clubhouse last spring, creating for many days during which employees were asked to work in 85-90 degree temperatures. The A/C units in the administrative office at HGC have also failed, creating for the same situation. These A/C issues need to be fixed to avoid losing staff and potential union grievances. This past December, a large hole was found in the roof of that cart barn at OBFGC. It was discovered after the CIP submission deadline, and cannot wait until Fiscal Year 2024 if we are to protect not only the building itself, but the \$300,000 worth of golf carts that it houses as well. During an inspection this past fall, the main electrical distribution panel at in the HGC clubhouse was found to be outdated and not to code. The panel model is widely known amongst electricians to be dangerous. Again, this cannot wait until FY24. Twice this past season the Golf Division has been required to spend \$4,000+ (each) on hazard pay to clean up a septic backup caused by a backup within the piping system. In light of all these issues, coupled with the knowledge that all of these buildings/structures are thirty, and in some cases 50 years old, it was decided that we are due for a comprehensive facility study which will greatly help us formulate the most prudent and cost effective plan for addressing the years of deferred maintenance.

FISCAL IMPACT: The total estimated cost of all projects is \$109,000. The majority of the total cost of these items is being covered by an insurance reimbursement for the fire at OBFGC of \$41,000 and \$39,000 in remaining funds in two Fiscal Year 2019 capital appropriations. The remaining amount needed of \$29,000 will be provided from the Golf Enterprise Fund reserves which were last certified on July 1 2021 in the amount of \$1,901,994.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends approval of this appropriation and transfer order.

STAFF ASSISTANCE: Madeline Noonan, Director, Community Services; Jesse Schechtman, Director, Golf Operations