



TOWN COUNCIL MEETING

February 6, 2014



A quorum being duly present, Council President Jessica Rapp Grassetto called the February 6, 2014, Town Council meeting to order at 7:00 p.m. in the Hearing Room of Town Hall, 367 Main St., Hyannis, MA.

An announcement was made by President Rapp Grassetto regarding the meeting being televised live and questioning if anyone was actively taping the session to please make their presence known. This session is recorded and broadcast on Channel 18.

PRESENT: Ann Canedy, Frederick Chirigotis, James Crocker, Jr., William Crocker, Jr., Jennifer Cullum, Sara Cushing, Debra Dagwan, Jessica Rapp Grassetto, Paul Hebert, John Norman, Eric Steinhilber, James Tinsley, Jr., Philip Wallace. **Absent:** NONE

The Pledge of Allegiance was led by President Rapp Grassetto, followed by a Moment of Silence to remember Gretchen K. Farnham.

Julie Shultz, of the Cape Cod Regional Transit Authority, gave a presentation on the proposed Transportation Oriented Development (TOD). Her organization is looking to create transit oriented development.

- TOD opportunities outweigh constraints
- Explained two plans: illustrative plan & land use/Phasing, massing and height.
- Key goals: market-rate rental housing; neighborhood retail complementary to Main Street
- Increase business development
- Described permitting strategies.
- Parking Garages

Councilor discussion and questions for Julie Shultz:

It is important to look into the need of affordable housing in Barnstable. Is the Cape Flyer in the works this summer? Not this summer, working to lessen congestion. Is there funding regarding soil clean-up similar to the situation with Pufferbellies? TOD will have to do something whether it's a private developer or state clean up and will be addressed in first RFP. Not looking to sell off the sites in development –it's state owned land will either lease or purchase. How many cars and parking garages? 400 to 500 spaces in general in as many as 4 parking garages, it all depends on need.

PUBLIC COMMENT:

President Rapp-Grassetti stated that there is a public comment forum that's been created on the Town Council's website. Anyone who cannot attend a meeting may comment on issues online.

- Jane Saunders from West Barnstable protesting the treatment of Patrick Page. She stated that they have damages on their property and this has been an issue since 2006. Questions the stay away list and the action of the courts.
- Burt Russo from Cotuit stated there is a need for the ombudsman in Barnstable. Mr. Russo was involved in a lawsuit and met with the Town Manager. He suggested that perhaps there is a need for an ombudsman that stands alone. The Town Manager is involved with the fabric of the town.

COUNCIL RESPONSE TO PUBLIC COMMENT:

- Councilors commented that it is important for everyone in the community to be heard and it's important to look into the possibility of finding either a volunteer ombudsman or another option. The Councilors each respectively serve as ombudsman, but perhaps finding someone who stands alone and is not paid by the town might be another option.

ACT ON MINUTES:

Upon a motion duly made and seconded it was voted to approve the minutes of the January 16, 2013 meeting as written

VOTE: PASSES UNANIMOUS

COMMUNICATIONS – from elected officials, boards, committees, staff, commission reports, correspondence and announcements. Reports from Agricultural Commission and the Waterways Committee

William Plettner Chairman of Agriculture Commission:

- Discussed the Danforth Property, committee made inventory of farmland and worked to get horse manure accepted at the transfer pickup. Assisted farmers market with application process. Identified Danforth property and feasibility of management contract. Contacted different associations and organizations and people for universal support for the Danforth property. Reviewed state and local zoning regarding agricultural land. Wrote a book "keeping backyard chickens" and its helped people and organizations. Applauds Mr. Lynch's support, but sorry to see Danforth Property to be put on hold.

Councilor Questions and Comments to Mr. Plettner:

- Is Danforth Property conservation land? It is open space and does not have conservation restrictions. Quality of life with abutters effected? It's important to keep them into consideration. Why was Danforth Committee dissolved? Town Manager will get answer later. What type of farm? It would most likely be an organic farm and no large animals. Is a community garden in mind? Community garden is an option, but significant cost of clearing land (\$60,000). Most likely use of the property would be to sell to farmers markets. How does somebody take town property and rent it to other people? There is a precedent for leasing land out on the meeting house farm. They do sell organic fruits and

vegetables at meeting house farm. Revenues raised can be used to pay for restorations on property. Any other property available that can be used similar to the Danforth Property. Issue an RFP to determine interest. Awareness of cost and values of this endeavor.

Jack Meade, Chairman of Waterways Committee:

- Goal is to improve access to waterways. Mooring waiting lists have been a challenge. Moorings are a public commodity and the board is always working with its staff and the public to streamline the mooring field/permitting process.
- There was a feasibility study to increase the number of moorings. More boats registered in Town than any other part of the state. Substantial percentage of mooring permits that were issued and the mooring was never actually put in the water (10-20%). Commission enacted regulations regarding this issue.

Councilor Questions and Comments to Mr. Meade:

Regulations for kayaking or canoes? No issues except for storage of these craft in the area. Storage at times is excessive and perhaps some regulation regarding storage may be necessary. Shellfish Committee wants to extend aquaculture sites. Permit holders handle mooring preparations of inspection themselves. Mooring applications are due Feb 28. Channel index processes are aggressive regarding dredge process. Multi-use permits policy relative to multiple holders, they have to have separate boats. Homeowners rights regarding frontage? They are subject to same policy. Harbormaster is reasonable about homeowner's frontage preferences. You can't discriminate against one resident to another.

Councilor Communications:

- ✓ Councilor Steinhilber attended Barnstable Economic Commission importance of having liaisons with other committees in town. Make economic development a focus.
- ✓ Councilor Tinsley stated many attended MMA and thanked Vice President Ann Canedy.
- ✓ Councilor Cullum attended Barnstable County Substance Abuse Council looking forward to determining municipalities roll regarding prevention. Hoped for better topics at MMA.
- ✓ Councilor Hebert attended Attorney General's workshop on Abandoned Properties and Receivership. Encourage Town Manager's office to a keep look out for receivership properties.
- ✓ Councilor Chirigotis attended workshop clean water initiatives and wastewater. He recommended a workshop for Councilors so they can be brought up to date and has a discussion on these issues. He added, the Cotuit Center for the Arts is having a fundraiser and Death by Chocolate event will be held at High School.

ORDERS OF THE DAY:

2014-045 APPROPRIATION ORDER \$94,175 FROM THE BISMORE PARK SPECIAL REVENUE FUND FOR NEW PARKING STATION KIOSKS AT BISMORE PARK
INTRO: 12/20/13, 01/16/14, 02/06/14

Open Public Comment

Richard Scali, Interim Director of Regulatory Services gave the rationale and introduced members of his staff that enforce the parking code. Looking to upgrade and replace old kiosks. Pay by space eliminates customers to return to vehicles –park and go. Provides customers the ability of adding additional time for parking. The system increases payment options and has many other technological advances to modernize the parking experience.

Councilor questions and comments to Mr. Scali:

What is the time limit at Bismore Park? The parking lot of the park is enforced seasonally, and off season the limit is 12 hours. Pay by space is monitored by a smart phone app and a parking enforcer inspects if someone parks without paying. Using cameras to monitor might be a good idea. The kiosks that were purchased 5 years ago have become outdated. What will happen in the next 5 years? What is the funding for the kiosks? Meter receipts go into the Bismore park account. Can we create more jobs by hiring people instead of kiosks? What research was involved in picking these kiosks? Mr. Scali stated that after his staff coordinated with the purchasing department and after their due diligence, they felt this model was the best option. The same kiosks are used in Plymouth and are very effective. Can a smart phone really add dollars remotely? As long as you had the app. 6 hours is very generous perhaps that time should be rethought.

Close public comment

Upon a motion that was duly made and seconded

ORDERED: That the sum of \$94,175 be appropriated for the purpose of funding new parking station kiosks and related costs for Bismore Park; and to meet this appropriation, that \$94,175 be transferred from the Bismore Park Special Revenue Fund.

VOTE: Roll Call Passes 12 Yes – 1 No (Norman)

2014-050 AMENDING CHAPTER 240, ARTICLE III, OF THE ZONING ORDINANCES AMENDING CHAPTER 240, THE ZONING ORDINANCES TO CREATE A MEDICAL MARIJUANA OVERLAY DISTRICT AND DISTRICT REGULATIONS FOR ESTABLISHING AND OPERATING REGISTERED MARIJUANA DISPENSARIES.
INTRO: 01/16/14, 02/06/14

President Rapp-Grasseti opened a joint public hearing with the planning board.

Director of Growth Development Jo Anne Miller Buntich gave rationale and explained all the aspects of the zoning ordinance in regards to local regulatory oversight. The Town Attorney explained the prerequisites for passing a zoning amendment. The ordinance requires a 2/3 vote (9 positive votes are needed to pass). Planning board must hold a hearing as well and must make a recommendation to Town Council.

Public Comment:

- ✓ Stuart Bornstein requested to expand zoning ordinance to encompass an area more towards the rotary on 28.
- ✓ Christine Greeley from the Hyannis Park Civic Association is pleased with the research done and but has an issue with a particular location within the ordinance. Thanked everyone for their due diligence.
- ✓ Linda Rowell stated that on a recent documentary on Marijuana dispensaries in California are frequently robbed and clerks are murdered. She objects to having the dispensary located in Hyannis and would like to know why this village was chosen.

President Rapp-Grassetti stated that she will keep the public hearing open for discussion purposes.

Vice President Canedy proposed a substitute amendment to Zoning Map Medical Marijuana District Agenda Item 2014-050; Map §240 moved to strike section 3 as it appears in Agenda Item 2014-050 and substitute in place the following zoning map change:

“Section 3

That the official zoning map of the Town of Barnstable is hereby amended by adding the Medical Marijuana Overlay District as shown on the maps entitled “Proposed Substitute Amendment to the Town Zoning Map creating the Medical Marijuana Overlay District” and “Proposed Substitute Amendment to the Barnstable Zoning Map creating the Medical Marijuana Overlay District” and “Proposed Substitute Amendment to the Hyannis Zoning Map Creating the Medical Marijuana Overlay District” all dated February 6, 2014 as prepared by the Town of Barnstable GIS Unit.”

Vice President Canedy gave a rationale behind the proposed amendment. There are three maps up for discussion: an overall Town zoning map, Barnstable Village zoning map, and a Hyannis Village zoning map. The later maps need to be amended. The proposed maps currently encroach on the Senior Living Center and Village Green. Ms. Canedy’s proposed amendment would pull back the zone to the originally proposed zone away from the Village Green and Senior Living Center.

The Town Attorney clarified what maps are being amended.

- ✓ Mr. David Munsell does not like this issue. Explained that this issue needs to be re-examined there is a school that is near the facility. This needs to come back to the planning board to be further investigated and reviewed.
- ✓ Councilors Cullum and Tinsley are concerned about areas on route 28 and uncomfortable with the designated areas on route 28. Where did we get the two original areas? The Director of Growth Development stated that they these areas were not near any incompatible land use areas.
- ✓ Councilor Tinsley does not like that patch on 28 and does not want to see that type of business in that area.
- ✓ Vice President Canedy stated that it's important to zone to protect ourselves.
- ✓ Matthew Teague, Planning Board Chair stated he met with applicants and these areas are very secure warehouse buildings. The expansion into the industrial park was a smart move and allows for development in that area. The product can't be controlled once it leaves the facility. Expansion into the industrial park is a smart move.

Raymond Lang of the Planning Board stated he was troubled by voting on marijuana and bothered by creation of overlay district. He was troubled that only two people commented publicly regarding this issue. Need to stimulate action when important votes are up. He questioned why this district is in Hyannis and would like to investigate putting it somewhere else. Marijuana is a business.

Town Attorney stated the moratorium ends through May 19th and advised this ordinance should be passed by April 19th.

Councilor Cullum was going to make another amendment, but it was not in writing.

President Rapp-Grassetti stated to allow time for the next amendment to be written, Town Council will move on to the next agenda items and return to this item at the end of the meeting.

2014-052 ACCEPTANCE OF \$4,600 HAZARDOUS MATERIALS EMERGENCY PLANNING GRANT PROVIDED BY BARNSTABLE COUNTY DEPARTMENT OF HEALTH AND ENVIRONMENT TO FUND ADDITIONAL INSPECTIONS BY THE PART-TIME HAZARDOUS MATERIALS SPECIALIST POSITION. INTRO: 02/06/14

Open public comment

Thomas McKean, Director, Board of Health gave rationale for the acceptance of this grant. He stated this will provide 100 additional inspections in Town and will allow for education regarding the violation process. He stated there will be no negative financial impact.

Close public comment

Upon a motion that was duly made and seconded it was

RESOLVED, that the Town Council hereby accepts a grant award in the amount of \$4,600.00 from the Barnstable County Department of Health & Environment for the purpose of enhancing the Town's Toxic and Hazardous Materials Program and that the Town Manager is authorized to expend the grant monies for the purpose specified therein.

VOTE: Passes Unanimous

2014-053 APPROPRIATION AND LOAN ORDER OF \$5,000,000 FOR THE DESIGN AND RECONSTRUCTION OF THE EAST RAMP AT THE BARNSTABLE MUNICIPAL AIRPORT. INTRO: 02/06/14

Upon a motion that was duly made and seconded it was moved and was referred to a public hearing on 2/27.

ORDERED: That the sum of Five Million Dollars and No Cents (\$5,000,000.00) be appropriated for the purposes of funding the design and reconstruction of the East Ramp at the Barnstable Municipal Airport; and that to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, is authorized to borrow \$5,000,000, and that the Barnstable Municipal Airport Commission is authorized to contract for and expend the Appropriation made available for these purposes and be authorized to accept any grants or gifts in relation thereto.

VOTE: Referred to a public hearing on 2/27.

2014-054 RESOLVE TO ESTABLISH TOWN COUNCIL AD-HOC COMMITTEES. INTRO: 02/06/14

Open public comment

President Rapp-Grassetti gave the rational for this resolve, this is in the contract for the Town Manager to have a yearly review and this committee is being established for this purpose.

Close public comment

Upon a motion that was duly made and seconded it was

RESOLVED, that the Council President in accordance with §241-8, B and Rule 11A, hereby designates the following ad-hoc committee:

Town Council Administrator Review Committee

VOTE: Passes Unanimous

2014-055 RESOLVE FOR COUNCIL ACTION ON THE TITLE OF LAND – WEST PARISH OF BARNSTABLE, 2049 MEETINGHOUSE WAY, WEST BARNSTABLE. INTRO: 02/06/14

Open public comment:

Councilor Wallace gave rational for this resolve. He stated there was a collaborative agreement to establish a preservation restriction agreement as previously voted by Town Council. This historical structure's roof is in disrepair and rehabilitation cannot begin unless this resolve is acted upon.

Councilor discussion and comment:

Vice President Canedy summarized the issues regarding the release of funds. The Community Preservation already approved and released funds, but the church cannot receive it because there is no deed. Attorney Houghton clarified that the Community Preservation Committee appropriated \$275K on February 28, 2013 on agenda item 2013-071.

Close public comment

Upon a motion that was duly made and seconded it was:

“Be it resolved that the Town Council of the Town of Barnstable vote to adopt the following resolution:

RELEASE to West Parish of Barnstable, a corporation sole with an address of 2049 Meetinghouse Way, West Barnstable, MA 02668, all of the Town’s right, title and interest, if any, in and to the land located in Barnstable County, Massachusetts, bounded and described as follows

EASTERLY by Route 149 (a.k.a. Meetinghouse Way), as shown on a plan hereinafter mentioned, ninety-seven and 60/100 (97.60) feet;

SOUTHEASTERLY by Route 149 (a.k.a. Meetinghouse Way as shown on a plan, hereinafter mentioned, ninety-seven and 60/100 (97.60) feet;

SOUTHWESTERLY by land of West Parish Memorial Foundation, Inc. as shown said plan ninety-

SOUTHWESTERLY again by land of West Parish Memorial Foundation Inc. as shown on said plan three hundred thirty-three and 33/100 (333.333)

NORTHWESTERLY by Crooked Cartway North, as shown on said plan, in two courses totaling two hundred forty five and 64/100 (245.64) feet;

NORTHERLY AND NORTHEASTERLY by Cedar Street, as shown on said plan, in two courses, totaling one hundred eighty and 45/100 (180.45) feet

Being shown as Parcel I containing 44, 41 5 + S.F., on a plan entitled "Plan of Land located at #2049 Meetinghouse Way, Barnstable, MA prepared for West Parish Congregational" dated December 12, 2000 and recorded in the Barnstable Registry of Deeds in Plan Book 561 Page 74, and further to authorize the Town Manager to execute a deed consistent with the above description on behalf of the Town and to execute any and all other documents as necessary to carry out the purposes of the resolution”

VOTE: Passes Unanimous

2014-056 ACCEPTANCE OF AN \$800 GRANT FROM THE MID-CAPE CULTURAL COUNCIL FOR A YOUTH-CENTERED PROGRAM AT GUYER BARN. INTRO: 02/06/14

Open public comment

Town Manager gave the rationale stating that it will be used by the youth center to provide opportunities for disadvantaged kids to get involved with activities they normally could not.

Close public comment

Upon a motion that was duly made and seconded it was

RESOLVED, That the Town Council hereby accepts a grant award in the amount of \$800.00 from the Mid Cape Cultural Council to support a youth-centered program for the Guyer Barn and that the Town Manager be authorized to contract for and expend the grant funds for the purpose stated herein.

VOTE: Passes Unanimous

**2014-057 ACCEPTANCE OF A \$ 1,150 GRANT FROM THE ARTS FOUNDATION OF CAPE COD SUPPORTING A YOUTH-CENTERED PROGRAM FOR THE GUYER BARN
INTRO: 02/06/14**

Open public comment

Town Manager gave the rationale for this grant. This money will support the same aforementioned program, but it comes from a different funding source.

Close public comment

Upon a motion that was duly made and seconded it was

RESOLVED: That the Town Council hereby accepts a grant award in the amount of \$1,150.00 from the Arts Foundation of Cape Cod for the purpose of supporting a youth-centered program for the Guyer Barn and that the Town Manager be authorized to contract for and expend the grant funds for the purpose stated herein.

VOTE: Passes Unanimous

**2014-058 ORDER DISCONTINUANCE OF A PORTION OF MAPLE STREET IN HYANNIS
TO BE HELD FOR PARK PURPOSES INTRO: 02/6/14**

Open public comment

The Town Manager gave the rationale stating the Director of Growth Development has been working on a development plan with the neighborhood residents around Ridgewood Park. There is a portion of roadway where illegal activities often occur and there have been a series of neighborhood meetings where discussions centered on removing that portion of roadway for park purposes.

Councilor discussion and comment:

Councilor Tinsley stated this is a distressed park and urge support. The Director of Growth Management stated that there are many regulations when it comes to removing a roadway and she has already completed the necessary due diligence to remove this portion of road. She also described the concept of the new park.

Close public comment

Upon a motion that was duly made and seconded it was

ORDERED: That the portion of Maple Street between Locust Street and Oak Street through Ridgewood Park in Hyannis as shown and further described on a plan entitled "Plan Showing Discontinuance of a Portion of Maple Street in Barnstable (Hyannis), MA dated December 12, 2013" prepared by Town of Barnstable DPW be discontinued and held for park purposes, and further that the existing sewer and water supply infrastructure (shown on the plan within the "Utility Area") continue to be used and maintained consistent with the use of the park. The Town Manager is hereby authorized to execute, deliver and record any instruments to fulfill the purposes stated in this order.

VOTE: ROLL CALL PASSES 13 YES – 0 NO

2014-059 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION INTRO: 02/06/14

Upon a motion that was duly made and seconded it was referred to the February 27 meeting.

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

COUNCIL ON AGING

Katherine-Lee Evans, 2321 Meetinghouse Way, West Barnstable as an alternate member to a term expiring 6/30/2014

Herbert Bodensiek, 58 Loomis Lane, Centerville as a member to a term expiring 6/30/2014

GOLF COMMITTEE

Edin Nacar, 34 New Haven Avenue, Marstons Mills as a member to a term expiring 6/30/2014

Edward Hickey, 54 Narrows Way, Cotuit as a member to a term expiring 6/30/2014

HYANNIS MAIN STREET WATERFRONT HISTORIC DISTRICT COMMITTEE

Taryn Thoman, 22 Mountain Ash Road, Marstons Mills as an alternate member to a term expiring 6/30/2014

LAND ACQUISITION AND PRESERVATION COMMITTEE

Farley Lewis, 22 Wachusett Ave, Hyannisport as a member to a term expiring 6/30/2014

VOTE: First Reading, referred to second reading February 27.

2014-060 APPROPRIATION OF \$125,000 COMMUNITY PRESERVATION FUNDS TO ACQUIRE 1.05 ACRES OF LAND OFF LUMBERT MILL ROAD (HARJU ROAD), CENTERVILLE FOR OPEN SPACE PURPOSES. INTRO: 02/06/14

Upon a motion that was duly made and seconded it was referred to a public hearing on 2/27

ORDERED: That, pursuant to the provisions of G.L. c. 44B, the sum of One Hundred Twenty-five Thousand and NO/100 (\$125,000.00) Dollars be appropriated and transferred from the Open Space portion of the Community Preservation Fund; and that the Town Manager is authorized to contract for and expend the total amount appropriated, subject to oversight of the project expenses by the Community Preservation Committee, for the acquisition of 1.05 acres and other interests in land located off Lumbert Mill Road (Harju Road), map and parcel 147-079 (71 Harju Road) for the acquisition of open space and recreation and to grant conservation restrictions to government entities or nonprofit organizations.

VOTED: referred to a public hearing on February 27.

Town Manager Report:

- Thanked Mark Milne for Distinguished Budget Award 2014
- Performance Management Program will start on February 11.
- Broadway solar issues are still under discussion, they are switching to a new contractor
- Cape Cod Five has new project on Route 132.
- Over the past few weeks has had quite a few discussions regarding economic development, many are interested and bodes well for the Town.
- 12th Annual Red Cross Cape Cod Heroes Breakfast will be occurring in March.

Councilor J.Crocker thanked Mr. Lynch and Mr. Ells for all their work over the past few weeks. He also thanked the DPW for their efforts during the storm and added that it might be a worth a discussion in the future regarding GPS and other technologies made available to the DPW.

Vice President Canedy asked for an update on the Oil Spill on Route 6; there was no ramification on the wells. The spill is contained and it is continuously monitored.

CONTINUED:

2014-050 AMENDING CHAPTER 240, ARTICLE III, OF THE ZONING ORDINANCES AMENDING CHAPTER 240, THE ZONING ORDINANCES TO CREATE A MEDICAL MARIJUANA OVERLAY DISTRICT AND DISTRICT REGULATIONS FOR ESTABLISHING AND OPERATING REGISTERED MARIJUANA DISPENSARIES. INTRO: 01/16/14, 02/06/14

✓ Planning Board Chairman Teague adjourned the Planning Board public meeting and

stated they voted not make a positive recommendation on the map or the ordinance.

- ✓ Barbara Curley stated she is a cancer survivor and urged the councilors to take into consideration people with cancer who have a real need for this product. She thinks the route 28 site is good, but supports the site at Independence Park

Close the public hearing

Councilor comments and discussion :

- ✓ Councilor Norman stated that managing medical marijuana through pharmacies is the preferred direction. More due diligence is needed on these maps; these buildings will be too close to churches and other day care facilities. Councilor Norman is not prepared to act on this tonight and will vote no on the issue.
- ✓ Director and Growth and Development, Jo Anne Miller Buntich stated the goal was to put this in a commercial area and federal law states that medical marijuana is not to be dispensed through pharmacies. Some parcels would not be eligible for this use. This is a first bite of an apple; a provision is needed to control the land use. Once the ordinance is adopted the map can later be amended to other areas.
- ✓ Councilor Cushing asked Jo Anne Miller Buntich for to report the minutes of the Planning Board's vote. She stated the vote regarding the adoption of the Medical Marijuana Overlay District (text that changes the amendment) was 3-2 (quorum is 4), the positive motion failed and they made no recommendation. The Planning Board made another motion to adopt the amendment to the map without the Route 28 corridor, the vote was 3-2, the positive motion failed and they made no recommendation.
- ✓ Councilor James Crocker stated that the amended area would be the smallest ever approved and the map can be amended later to other areas.
- ✓ Councilor Chirigotis agreed stating that while the Planning Board worked very hard to vet this issues, the reason their vote failed was simply because they were short a few people this evening.

Vice President Canedy made a motion which was duly made and seconded to withdraw her first proposed substitute amendment to accept a friendly amendment.

VOTE: Passes Unanimous

Councilor Cullum proposed a substitute amendment to Zoning Map Medical Marijuana District Agenda Item 2014-050; Map §240 moved to strike section 3 as it appears in Agenda Item 2014-050 and substitute in place the following zoning map change:

“Section 3

That the official zoning map of the Town of Barnstable is hereby amended by adding the Medical Marijuana Overlay District as shown on maps entitled “Proposed

Substitute Amendment to the Town Zoning Map creating the Medical Marijuana Overlay District” and “Proposed Substitute Amendment to the Hyannis Zoning Map Creating the Medical Marijuana Overlay District” all dated February 6, 2014 as prepared by the Town of Barnstable GIS Unit”, with the exception that the portion of the “Proposed Substitute Amendment to the Town Zoning Map creating the Medical Marijuana Overlay District” and “Proposed on Substitute Amendment to the Hyannis Zoning Map Creating the Medical Marijuana Overlay District” showing the district on Route 28/Iyannough Road in Hyannis shall be eliminated.”

A motion was made and duly seconded to accept the proposed substitute amendment.

VOTE: Passes Unanimous

Upon a motion that was duly made and seconded it was

ORDERED:

Section 1

That Chapter 240, Article III of the Zoning Ordinance is hereby amended by adding a new §240-30 "Medical Marijuana Overlay District" as follows:

§240-30 Medical Marijuana Overlay District.

A. District established. A Medical Marijuana Overlay District is hereby established, and shall be considered as superimposed over any other districts established by this chapter, and is shown as an overlay on the Official Zoning Map established pursuant to §240-6, Zoning Map, herein.

B.

(1) Purpose. The purpose of the Medical Marijuana Overlay District is to provide for the limited establishment of Registered Marijuana Dispensaries as they are authorized pursuant to state regulations set forth at 105 CMR 725.000, Implementation of an Act for the Humanitarian Medical Use of Marijuana. Given that Registered Marijuana Dispensaries shall be limited in number and strictly regulated by the Massachusetts Department of Public Health, these zoning regulations intend to permit them where there is access to both regional roadways and public transportation, where they may be readily monitored by law enforcement for health and public safety purposes, and where their impacts are ameliorated by these locations.

(2) Use. Within the Medical Marijuana Overlay District a Registered Marijuana Dispensary that dispense, cultivates and prepares marijuana products may be permitted as a Conditional Use only within the Overlay District provided a special permit is first obtained from the Zoning Board of Appeals, subject to the provisions of Section 240-125.C herein and subject to the all additional standards and conditions of this section.

C. Special Permit Granting Authority. Within the MMOD the zoning Board of Appeals shall be the Special Permit Granting Authority.

2014-050 (Continued)

D. Use. Notwithstanding the use limitations of the base zoning district or any other overlay zoning district, a Registered Marijuana Dispensary shall be allowed within the Medical Marijuana Overlay District upon the granting of a special permit, subject to the requirements set forth in this Section. Within the Medical Marijuana Overlay District, and only within the Medical Marijuana Overlay District, a Registered Marijuana Dispensary may be permitted, provided that a special permit is first

obtained from the Zoning Board of Appeals, subject to the following standards and conditions

E. Requirements/Standards

- (1) **Registration.** All permitted Registered Marijuana Dispensaries shall be properly registered with the Massachusetts Department of Public Health pursuant to 105 CMR 725.100 and shall comply with all applicable state and local public health regulations and all other applicable state and local laws, rules and regulations at all times. No Building Permit or Certificate of Occupancy shall be issued for a Registered Marijuana Dispensary that is not properly registered with the Massachusetts Department of Public Health.
- (2) **Building.** A Registered Marijuana Dispensary shall be located only in a permanent building and not within any mobile facility. All sales shall be conducted either within the building or by home deliveries to qualified clients pursuant to applicable state and local regulations.
- (3) **Proximity to Residential Uses.** A Medical Marijuana Treatment Center shall not be allowed within a building containing residential use, or upon a lot with residential use except an incidental residential use that may be necessary for RMD security.
- (4) **Separation Requirements.** The site is located at least one thousand feet (1000') distant from a religious institution/place of religious assembly, school, daycare center, preschool or after school facility or any facility in which children commonly congregate, or if not located at such a distance, it is determined by the Zoning Board of Appeals to be sufficiently buffered from such facilities such that its users will not be adversely impacted by the operation of the Registered Marijuana Dispensary but in no case shall the distance be less than 500' measured from parcel boundary to parcel boundary. In no case shall and RMD directly abut another RMD or any Medical Marijuana use.
- (5) **Dimensional Requirements.** Except where it is explicitly stated otherwise in this Section, Registered Marijuana Dispensary shall conform to the dimensional requirements applicable to non-residential uses within the underlying and other overlaying zoning districts.
- (6) **Parking.** The required number of parking (both long-term and short-term) spaces for a Registered Marijuana Dispensary shall be 1 space for every 200 SF of gross floor area for an RMD; and 1 space for every 700 SF of gross floor area for RMD Marijuana Infused Product manufacturing or marijuana cultivation. The Board of Appeals shall also rely on the recommendation of Site Plan Review.
- (7) **Loading.** The Board of Appeals may require loading bays based on the recommendation of Site Plan Review and/or based on the needs of the proposed use.
- (8) **Signage.** Signage shall not exceed 12 SF in area and no part of the sign shall exceed 8' above existing average grade. For other site signage, the requirements of Article VII of this Ordinance shall also apply through the underlying zoning district. The Zoning Board of Appeals may impose additional restrictions on signage as appropriate to mitigate any aesthetic impacts.
- (9) **Consistency with Registration Materials.** Plans and information provided to the Zoning Board of Appeals shall be consistent with the with the registration materials issued by the

Massachusetts Department of Public Health and any other information and materials provided to the Massachusetts Department of Public Health.

F. Special Permit Requirements

- (1) Application Requirements.** An application to the Zoning Board of Appeals shall include, at a minimum, the following information:

 - (a) Complete application form.
 - (b) **Description of Activities:** A narrative providing information about the type and scale of all activities that will take place on the proposed site, including but not limited to cultivating and processing of marijuana or marijuana infused products (MIPs), on-site sales, off-site deliveries, site security, hours of operation, community benefit, distribution of educational materials, and other programs or activities.
 - (c) **Service Area:** A scaled map and narrative describing the area proposed to be served by the Registered Marijuana Dispensary and the anticipated number of clients that will be served within that area. This description shall indicate where any other Registered Marijuana Dispensaries exist or have been proposed within the expected service area.
 - (d) **Context Map:** A scaled map depicting all properties and land uses within a two thousand-foot (2,000') radius of the project site, whether such uses are located in Barnstable or within surrounding communities, including but not limited to all religious institutions/places of religious assembly, schools, daycare centers, preschool or afterschool facilities or any facilities in which children commonly congregate .
 - (e) **Site Plan:** The proposal is subject to the provisions of Article IX, Section 240-102 Site Plan Review.
 - (f) **Security Plan:** The security plan shall be submitted to the Chief of Police who shall provide written comment to the Board as to the adequacy or inadequacy of the security provisions and plans.
 - (g) **Building Elevations and Signage:** Architectural drawings of all exterior building facades and all proposed signage, specifying materials and colors to be used. Perspective drawings and illustrations of the site from public ways and abutting properties are recommended but not required.
 - (h) **Registration Materials:** Copies of registration materials issued by the Massachusetts Department of Public Health and any materials submitted to the Massachusetts Department of Public Health for the purpose of seeking registration, to confirm that all information provided to the Zoning Board of Appeals is consistent with the information provided to the Massachusetts Department of Public Health.
- (2) Special Permit Criteria.** In granting a special permit for a Registered Marijuana Dispensary, in addition to the general criteria for issuance of a special permit as set forth in § 240-

125C herein

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and in consideration of all application materials submitted and testimony received, the Zoning Board of Appeals shall find that the following criteria are met:

- (a) The Registered Marijuana Dispensary complies with all requirements of this Section including but not limited to subsections E and F in their entirety.
 - (b) The Registered Marijuana Dispensary is located to serve an area that currently does not have reasonable access to medical marijuana, or if it is proposed to serve an area that is already served by other Registered Marijuana Dispensaries, it has been established by the Massachusetts Department of Public Health that supplemental service is needed.
 - (c) The site is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the site using all modes of transportation, including drivers, pedestrians, cyclists and public transportation users.
 - (d) Traffic generated by client trips, employee trips, and deliveries to and from the Registered Marijuana Dispensary shall not create a substantial adverse impact on nearby residential uses.
 - (e) Where necessary to shield adjacent uses, the Zoning Board of Appeals may require buffering by fencing, vegetation or other screening methods.
- (3) **Prohibition on Transfer.** The special permit shall be issued to the owner of the Medical Marijuana Treatment Center and shall not transfer with a change in ownership of the business and/or property.
- (4) **Limitation of Approval.** A special permit authorizing the establishment of a Registered Marijuana Dispensary shall be valid only for the registered entity to which the special permit was issued, and only for the site on which the Registered Marijuana Dispensary has been authorized by special permit. If the registration for a Registered Marijuana Dispensary has been revoked, transferred to another controlling entity, or relocated to a different site within the Medical Marijuana Overlay District, a new special permit shall be required prior to issuance of a Certificate of Occupancy.
- (5) **Revocation/Nonrenewal.**
- (a) In accordance with 105 CMR 725.100(E) Expiration and Renewal of Registration, all materials submitted pursuant to the RMD compliance with that section shall also be submitted to the Zoning Board of Appeals record file. The Board reserves the right to hold a public hearing based on a review of the materials showing inconsistencies with special permit conditions and/or the requirements and standards of this section.
 - (b) In accordance with 105 CMR 105 (O) Requirements Upon Expiration, Revocation or Voiding of Certificate of Registration of RMD should DPH take action under this section the special permit shall be null and void.

E. Relationship to Other Laws. Nothing in this law poses an obstacle to federal enforcement of federal law. Nothing in this law supersedes Massachusetts law prohibiting the possession, cultivation, transport, distribution, or sale of marijuana for nonmedical purposes. Nothing in this law requires the violation of federal law or purports to give immunity under federal law.

F. Severability. The provisions of this law are severable and if any clause, sentence, paragraph or section of this measure, or an application thereof, shall be adjudged by any court of competent jurisdiction to be

2014-050 (Continued)

invalid, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or application adjudged invalid.

Section 2

That Chapter 240, Article XIII §240-128 "Definitions" of the Zoning Ordinance is hereby amended by adding the following definitions:

Marijuana - has the meaning given “marihuana” in Chapter 94C of the General Laws

Marijuana Dispensary, Registered. Registered Marijuana Dispensary, also known as RMD or Medical Marijuana Treatment Center, shall mean an establishment properly registered with the Massachusetts Department of Public Health under 105 CMR 725.100 that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana infused products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers.

Section 3

That the official zoning map of the Town of Barnstable is hereby amended by adding the Medical Marijuana Overlay District as shown on maps entitled “Proposed Substitute Amendment to the Town Zoning Map creating the Medical Marijuana Overlay District” and “Proposed Substitute Amendment to the Hyannis Zoning Map Creating the Medical Marijuana Overlay District” all dated February 6, 2014 as prepared by the Town of Barnstable GIS Unit”, with the exception that the portion of the “Proposed Substitute Amendment to the Town Zoning Map creating the Medical Marijuana Overlay District” and “Proposed on Substitute Amendment to the Hyannis Zoning Map Creating the Medical Marijuana Overlay District” showing the district on Route 28/Iyannough Road in Hyannis shall be eliminated

Section 4

That Chapter 240, Article II, § 240-5 "Establishment of Districts" of the Zoning Ordinance is hereby amended by adding the "Medical Marijuana Overlay District" under "Overlay Districts."

VOTE: Roll Call Passes 10 Yes – 3 No (Norman, Dagwan, W.Crocker)

ADJOURNMENT:

Upon a motion duly made and seconded it was

VOTED to adjourn.

Unanimous

Adjourned at 10:55 PM

Respectfully submitted,

Philip Gaudet, Assistant Town Clerk

NEXT REGULAR MEETING: February 27, 2014

Exhibits:

A: Transit Oriented Development Master Plan Study

B. Town Manager Communications covers Friday, January 17th – Tuesday, February 4.

C. Assistant Town Manager Communications – Memo to Dennis Houle, Chairman of Conservation Commission regarding the West Barnstable Shooting Range

D. 1st Proposed Substitute Amendment for 2014-050 -withdrawn

E. 2nd Proposed Substitute Amendment for 2014-050

F. Medical Marijuana Moratorium Study, November 2013

G. Map: Proposed Marijuana Overlay District

H. Map: Proposed Amendment to the Barnstable Zoning Map

I. Map: Proposed Amendment to the Hyannis Zoning Map