



## Town Council Meeting October 16, 2014



**A** quorum being duly present, Council President Jessica Rapp Grassetto called the October 16, 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.

The Pledge of Allegiance was led by President Rapp Grassetto, followed by a Moment of Silence.

### **PUBLIC COMMENT:**

Linda Roll spoke about the upcoming vote for the Hyannis Fire District Station and the high increase to the Hyannis Tax Payers.

John Julius talked about future consolidation of the Hyannis Fire Department and read from a Patriot article of 1936. He further spoke about private ambulance service (Exhibit A) and asked the leadership to speak to private ambulance companies, encouraged everyone to vote no on Hyannis Fire Department.

Brendan Clark spoke about a new position on the Youth Commission as a liaison to the Town Council to come to the meetings with updates from the Youth Commission.

### **COUNCIL RESPONSE TO PUBLIC COMMENT:**

- Councilor Norman regarding the exhibit from John Julius; this question was put out before, and was turned down. The people of the town have shown they want the individual fire departments. The question has been asked and answered.
- Councilor Dagwan as a resident of Hyannis, it is important the residents of Hyannis come out to vote. Please come out and vote on October the 25<sup>th</sup>
- Councilor Cullum the fire district isn't our jurisdiction, we need turnout at the meetings; get your neighbors to go vote. Thanked Brendan for coming out; Youth Commission and Human Services Committee are working together for a conference regarding drug problem.
- Councilor (J) Crocker the fire districts came about due to the size of the Town of Barnstable, our ambulances are very busy, about 90% of the calls to the fire districts. Right now we all have terrific emergency service. This is the form of government where you can make a difference with your vote. Thank a fireman

**ACT ON MINUTES:** Upon a motion duly made and seconded it was voted to approve the minutes of the October 2, 2014 meeting as amended

**VOTE: PASSES AS AMENDED UNANIMOUS**

**COMMUNICATIONS – from elected officials, boards, committees, staff, commission reports, correspondence and announcements**

▪ **Council on Aging – Paul Curley, Chair:**

- Major accomplishments to sign a contract for needs assessment
- Parking lot expansion
- Expanded the lobby space
- Gifts from the Friends of the Senior Center
- Sunshine fund to meet emergencies for the seniors that need immediate help
- Fundraiser at Alberto's
- Asked the Council to support expanding the staff at the Senior Center

**Councilor Discussion and Comment:**

Do you have a full committee [missing two associate members] date of the party [October 24<sup>th</sup>] Congratulations to the Director for becoming an American citizen; could you provide a link to the survey [random survey, coming in the mail, there will be an option to complete the survey online; the plan is to attend all Village Associations bring awareness of the needs assessment] Community questionnaire get to the Councilors to put that information out to the residents; ombudsman or conflict person to work things out at the Senior Center; drastic increase of the people over 80 years old; as a town have a responsibility to the Seniors; competition for every single dollar; population is fluctuating; need to look at the HYCC; use mutual resources within the town; increase of people living alone are you seeing more and more of that; [25% of the single elderly live on their own and want to remain in their homes] do you think the transportation is the most serious; [no the outreach services] expansion to satellite locations; [not yet, part of the consideration once we understand the need] are we doing any connection with churches that do driving; [great suggestion, our vehicles have to stay within Barnstable]

▪ **Disability Commission – Sheila Mulcahy, Chair, Merrill Blum and Jean Boyle (Exhibit B):**

- Gave an overview of the ADA with a slide show
- Accessibility
- By-law revisions
- Numbers of the people in the town that have a disability
- Beach Chair
- Work with the Recreation Department
  - Helped with money to purchase a van
  - Provided money for a ramp into the Police station on Main St
  - Construction of a new ramp
    - Worked with the polling places
    - Offer scholarships
    - Guide to accessible dining
    - Chairs with arms

**Councilor Discussion and Comment:**

When do you meet [third Wednesday of every month] if you need new members-write a letter to the appointments committee; to revise enabling ordinances that set out your charge; please advise your liaison to bring that forward to the Councilor President. What is the fee for parking illegally in a handicapped spot [\$100.00]

<b>2014-091      APPROPRIATION AND LOAN ORDER \$1,205,000 TO FUND DESIGN AND CONSTRUCTION OF AIRPORT FIXED BASE OPERATIONS BUILDING INTRO: 03/20/1404/03/14, 04/17/14, 05/01/14, 05/15/14, 08/07/14, 10/16/14</b>
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Motion was made and seconded to withdraw this item at the request of the Airport Manager

**VOTE: To Withdraw Unanimous**

**2015-005 APPROVAL OF THE CHANGE IN CARE, CUSTODY, MANAGEMENT CONTROL AND PURPOSE OF TWO PARCELS OF LAND, NAMELY A ±16.3 ACRE PORTION OF TRACT I OF THE WEST BARNSTABLE CONSERVATION AREA SHOWN ON ASSESSORS MAP 86 AS PARCEL 1 AND A ±17 ACRE PARCEL SHOWN ON ASSESSORS MAP 314 AS PARCEL 027001 INTRO: 08/07/14, 09/18/14, 10/16/14**

Town Manager, Thomas K Lynch and the Assistant Town Manager, Mark Ells gave an update on the signed memorandum of Agreement (MOA) Ells highlighted a power point presentation (Exhibit C). Town Attorney, Ruth Weil addressed the Councilors with the significant changes to the MOA. Is the revised version the same one that the Councilors received on Friday? [There were a few changes based on comments]

**Councilor Discussion and Comment**

This parcel is important to the Water District, and the residents of the town of Barnstable; two versions of MOA, significant change is a problem; state has added another fence to jump over, imposes an additional cost on this town; extra hurdle, spend the money to start cleaning the parcel; we do not know how to respond to a letter we haven't seen; bothered that we have to wait on one persons decision; not bothered that we have to provide more information; no one up here has anything to hide; would like to move forward; two different contracts that may or may not be required [time frame to respond] concerned that this has been added at the eleventh hour; will cost us a lot of money and time; the next Secretary may not have the same thoughts; do what is right, move forward; public doesn't have any idea what we are doing; have this correctly done in accordance with the law; look at the swap; once we transfer the property to conservation it stays that way; provided that the safety issues are protected if the range is open again; simple four step procedure, it got clouded; completely changed the MOA; we have an election on November 4<sup>th</sup>; sign something to beat the November 4<sup>th</sup> election; to sign this MOA is absolutely wrong; see two valuable pieces of property; Breeds Hill was purchased by the whole town; do not move forward on one piece when you don't know what is going to happen with the other piece; talk about the escrow:[view this MOA as a contract, a new administration, things could change, this is a contract, this is a binding document] what if we postpone until December [Council's choice, would delay the opening of the range, no legal impediment] do not fear moving forward; it could be hung up; after the election is could be worse; will of the majority to get this range reopened; there are going to be costs associated; understand the concerns, get this ball rolling and get it into motion; at what point in time would the town be able to open the range? [we will reopen the range when we have all the steps set in place that we can reopen the range; can open and clean up at the same time, there is some value to the lead; this is going to function like an Enterprise account] how many letters were sent [Bob O'Connor, Division of Conservation Services...one letter; we have a recorded grant agreement 40 years ago, let the town make it's own decision] there is also going to be a two way information exchange, do we have a time line [no, MEPA is 22 pages, all the documents have been prepared; as for Mass Heritage, we do not know what their requirements might be, swap of land from conservation to municipal and vice versa] signing an MOA not about the reopening of the shooting range; now the MOA adds another wrench into the works; move this forward; we could be delayed we need to vote on this as a Council tonight; the letters were sent where did they come from [Bob O'Connor - letters came to our office; we signed this MOA and sent it over today, that was with good will] this is about a real estate deal, highest best zone, environmental issues on it we have the best asset in the deal; I need to know what they want; taking a piece of property that is in conservation property to municipal property; can we get through this an use that property; timeline working towards the by November 1<sup>st</sup> a determination by the Secretary would be in December; at any point in time that this deal goes down, it is over, so the land reverts back to conservation; [you have an MOA that is signed by the state, you can hold your signed MOA, you have the best of both worlds] is this an entire deal or no deal at all? We can hold that MOA and sign it when we are ready, file the environmental form, and do the discretionary report;

Upon a motion duly made and seconded it was

**ORDERED: SECTION 1:** That, having received notice that the conservation commission determined that the following parcel of land is no longer needed for the purposes set forth in section 8C of chapter 40 of the General Laws of Massachusetts, the care, custody, management and control of said parcel be transferred to the Town Manager to be held for general municipal purposes, namely a 16.3 acre, more or less, portion of Tract I of the West Barnstable Conservation Area having a street address of 875 Service Road shown on Assessors Map 86 as Parcel 1 taken by eminent domain pursuant to chapter 79 for purposes of said section 8C by order dated December 21, 1978 and recorded in the Barnstable County Registry of Deeds Book 2846, Page 129, which said 16.3 acres are further described on plan entitled "Plan of Land in Barnstable (West Barnstable ) MA Prepared for the town of Barnstable Prepared By: the Town of Barnstable - D. P. W. Survey Division Date: July 28, 2014 Scale: 1" = 80'"on file with the Town Clerk; and

**SECTION 2:** That, having received notice that the Town Manager determined that the following parcel of land containing 17 acres, more or less, is no longer needed for general municipal purposes, the care, custody, management and control of said parcel be transferred to the conservation commission to be held for the purposes set forth in section 8C of chapter 40 of the General Laws of Massachusetts, namely the land having a street address of 145 Breed's Hill Road shown on Assessors Map 314 as Parcel 027001 acquired by deed dated May 15, 1986 and recorded in said Registry in Book 5077 Page 300; and

**SECTION 3:** That the aforesaid transfers take effect upon recording of an instrument or instruments by the Town Manager in the Barnstable County Registry of Deeds following the effective date of legislation enacted by the General Court approving the transfer under section 1 of this order.

**VOTE: Does not carry...7 YES, 6 NO (Crocker, J; Crocker, W; Dagwan; Steinhilber; Tinsley; Wallace)**

**2015-006 ORDER TO PETITION THE GENERAL COURT OF THE COMMONWEALTH TO ENACT SPECIAL LEGISLATION APPROVING THE CHANGE IN CARE, CUSTODY, MANAGEMENT CONTROL AND PURPOSE OF TWO PARCELS OF LAND, NAMELY A ±16.3 ACRE PORTION OF TRACT I OF THE WEST BARNSTABLE CONSERVATION AREA SHOWN ON ASSESSORS MAP 86 AS PARCEL 1 AND A ±17 ACRE PARCEL SHOWN ON ASSESSORS MAP 314 AS PARCEL 027001 INTRO: 08/07/14, 09/18/14, 10/16/14**

Upon a motion duly made and seconded it was to withdraw this Item

**VOTE: To Withdraw 12 Yes (Cushing off the dais)**

**2015-023 APPROPRIATION AND TRANSFER ORDER \$555,000 FOR THE PURPOSE OF MAKING REPAIRS TO THE BARNSTABLE HIGH SCHOOL CAFETERIA WALLS INTRO: 10/02/14, 10/16/14**

Open for a public hearing, rationale given by Dave Kanyock regarding the repairs needed at BHS

**Councilor Discussion and Comment:**

If you don't do the repairs, is there any threat to the children or faculty [no] how soon would you start [immediately]

Upon a motion duly made and seconded it was

**ORDERED:** That the sum of \$555,000 be appropriated for the purpose of making repairs to the Barnstable High School cafeteria walls; and to meet this appropriation, that the sum of \$423,000 be transferred from Council Order 2013-106 from the balance remaining in the amount originally appropriated for the new air conditioning units at the Barnstable High School, and, that the sum of \$132,000 be appropriated from available funds within the Capital Trust Fund and that the Barnstable School Committee is authorized to contract for and expend the appropriation made available for this purpose.

**VOTE: 12 YES (Steinhilber left the meeting (9:30 PM))**

**Back to 2015-005**

A motion was made and seconded to Reconsider Item 2015-005

**VOTE: 10 Yes**

**Council comment and discussion:** The intention to reopen and postpone this article, The Town Attorney was asked to give us the rules. [The process: reconsider, put the motion on the floor for debate, and then Revote for a postponement as opposed to a negative vote.]

A motion was made and duly seconded to put this reconsidered item on the floor for discussion

**VOTE: Unanimous**

After a discussion ensued regarding a date certain to postpone. [Ruth Weil stated the current Secretary is aware of this item and will be leaving January 1<sup>st</sup>; a whole new team would have to be educated and we may have to start all over, perhaps go for an update in December and then to the further date of January.]

A motion was made and seconded to postpone this item to January 22<sup>nd</sup>

**VOTE: 8 YES, 4 NO (Hebert, Wallace, Tinsley, Norman)**

**Back to 2015-006**

A motion was made and seconded to reconsider the motion to withdraw

**VOTE: 12 Yes**

A motion was made and seconded to postpone this item to January 22<sup>nd</sup>

**VOTE: 8 YES, 4 NO (Hebert, Wallace, Tinsley, Norman)**

<b>2015-026 AMENDING THE ADMINISTRATIVE CODE, CHAPTER 241, ARTICLE III, MULTIPLE-MEMBER APPOINTIVE ORGANIZATIONS, §241-30, PUBLIC WORKS COMMISSION INTRO: 10/02/14, 10/16/14</b>
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Upon a motion duly made and seconded it was

**ORDERED:** That §241-30 of Chapter 241, Administrative Code, Article III, Multiple-Member Appointive Organization be amended by striking § 241-30A in its entirety and substituting in its place the following:

“§ 241-30. Public Works Commission

A. Term of office. There shall be a Public Works Commission consisting of five regular members and one alternate member. The alternate shall have voting rights at meetings only in the absence of a regular member.”

So, §241-30 as amended will read as follows:

**“241-30. Public Works Commission**

Chapter 241. ADMINISTRATIVE CODE Article III. Multiple-Member Appointive Organization

§ 241-30. Public Works Commission

A. Term of office. There shall be a Public Works Commission consisting of five regular members and one alternate member. The alternate shall have voting rights at meetings only in the absence of a regular member.

B. Authorities and responsibilities. The Public Works Commission is responsible for providing the Town Manager and the Superintendent of Public Works with recommendations concerning the development of rules and regulations for the maintenance and sanitary operation of the solid waste disposal area, water pollution control facilities, public highways, bridges, sidewalks, parking lots, parks, bulkheads, docks, Town

landings, beaches playgrounds, recreation and conservation areas, cemeteries, Town forests, and public buildings, excluding schools. The Public Works Commission is an advisory committee of the Town.

**C. Interrelationships**

**(1) Town Council:** The Public Works Commission interacts with the Town Council to advise the Council on those policies and legislative matters concerning public works activities within the Town. The Commission interacts primarily with the Council Committee on Planning and Development for this purpose.

**(2) Town Manager:** The Public Works Commission provides the Manager with recommendations on those areas noted, in order to provide oversight to the Department of Public Works. Administrative support to the Commission shall be primarily through the department staff.

**(3) Other boards:** The Public Works Commission interacts, as necessary, with any body requiring or requesting assistance in matters of public works activities in the Town.”

**VOTE: Passes 12 YES**

**2015-027 TOWN COUNCIL RULE CHANGE REGARDING: AGENDA ORDER OF BUSINESS  
INTRO: 10/16/14**

Upon a motion duly made and seconded it was

**RESOLVED** That the Town Council Rules are hereby amended by striking out Rule 5E and inserting in place thereof the following:

**RULE 5E ORDER OF BUSINESS**

At every regular meeting of the Town Council, the order of business shall be as follows:

1. Roll Call
2. Pledge of Allegiance
3. Moment of Silence
4. Public Comment
5. Council Response to Public Comment
6. Town Manager Communications
7. Act on Minutes (including Executive Session)
8. Communications from Elected Officials, Boards and Commissions, Staff, Correspondence, Announcements and Committee Reports
9. Orders of the Day - A. Old Business B. New Business
10. Adjournment.

**VOTE: Move to a second reading on November 6<sup>th</sup>...10 YES (J Crocker left the meeting -10:00 PM)**

**2015-028 ACCEPTANCE OF A \$6,000 GRANT FROM ELDER SERVICES OF CAPE COD AND THE ISLANDS TO THE BARNSTABLE SENIOR SERVICES DIVISION FOR TRANSPORTATION SERVICES FOR THE ELDERLY INTRO: 10/16/14**

Lynne Poyant, Director of Community Services gave the rationale

Upon a motion duly made and seconded it was

**RESOLVED:** That the Town of Barnstable hereby accepts a grant from Elder Services of Cape Cod and the Islands in the amount of \$6,000 to support the ongoing provision of transportation services to local seniors and authorize the expenditure of monies for that purpose.

**VOTE: PASSES 10 YES, (CULLUM left the dais)**

**2015-029 ACCEPTANCE OF A \$15,500 GIFT FROM THE FRIENDS OF THE BARNSTABLE COUNCIL ON AGING TO SUPPORT STAFF SALARIES AND PROGRAMS OF THE BARNSTABLE SENIOR SERVICES DIVISION INTRO: 10/16/14**

Lynne Poyant, Director of Community Services gave the rationale

Upon a motion duly made and seconded it was

**RESOLVED:** That the Town of Barnstable hereby accept a gift in the amount of \$15,500 from the Friends of the Barnstable Council on Aging to support staff salaries and programs of the Senior Services Division and authorize the expenditure of monies for that purpose.

**VOTE: PASSES UNANIMOUS**

**2015-030 APPROPRIATION ORDER OF \$211,544 FOR THE ACQUISITION AND IMPLEMENTATION OF E PERMITTING SOFTWARE INTRO: 10/16/14**

Upon a motion duly made and seconded it was

**ORDERED:** That the sum of \$211,544 be appropriated from available funds in the General Fund for the purpose of acquiring and implementing ePermitting software.

**VOTE: referred to a Public hearing on 11/6/14- 10 YES, (CANEDY left dais)**

**2015-031 APPROPRIATION ORDER OF \$25,000 FOR THE INITIAL ENVIRONMENTAL ASSESSMENT AT THE WEST BARNSTABLE SHOOTING RANGE INTRO: 10/16/14**

Upon a motion duly made and seconded it was

**ORDERED:** That the sum of \$25,000 be appropriated from available funds in the General Fund for the purpose of conducting an initial environmental assessment at the shooting range in order to develop a plan for the long-range remediation and management of the property.

**VOTE: referred to a Public hearing on 11/6/14-9 YES 9 (CANEDY, TINSLEY left dais)**

**2015-032 TO SEE IF THE TOWN COUNCIL WILL AMEND THE GENERAL ORDINANCES BY ADDING A NEW CHAPTER 78 ON FERTILIZER INTRO: 10/16/14**

Upon a motion duly made and seconded it was

**ORDERED:** That the General Ordinances of the Code of the Town of Barnstable shall be amended by adding the following new Chapter 78 which will serve as the Town's Implementing Regulations pursuant to the Fertilizer Management District of Critical Planning Concern designation, Barnstable County Ordinance 13-07

**"CHAPTER 78"  
FERTILIZER**

**§78-1. Purposes and Intent**

- A. Mounting evidence supports the claim that excessive nutrient enrichment of the region's ground waters and surface waters may have significant public health significance, including direct detrimental effects on drinking water sources by increased concentrations of nitrates that can violate Safe Drinking Water Standards, and have significant negative impacts to economic, environmental and recreational resources and values in the Town and region.
- B. The Town has significant amounts of glacially deposited coarse, sandy soils that are subject to rapid water infiltration, percolation, and leaching of nutrients. These soil characteristics mean that agronomic practices of soil fertilization common in other parts of the region, state and country may not always apply in the Town, as these practices vary by soil type.
- C. The Town, recognizing that excessive, inappropriate or improper use of fertilizers is part of the overall problem of nutrient pollution promulgates the following Ordinance regarding the use of fertilizer on turf. This Ordinance incorporates by reference the University of Massachusetts Extension's Turf Management Best Management Practices. These practices, if followed, are deemed to protect the public health, safety and welfare and aid in achieving compliance with the Total Maximum Daily Loads (TMDL) for the Town's water resources prescribed by the

Commonwealth of Massachusetts while allowing reasonable use of fertilizers for the enhancement and maintenance of turf quality.

#### §78-2. Applicability

- A. It is necessary and desirable to control by regulation in the Town of Barnstable the use of fertilizer that contains phosphorus and nitrogen for the purposes set out herein.
- B. This Ordinance allows for a reduction of nitrogen and phosphorus going into the Town's waters and wetlands by means of an organized system of education, certification, standardization and regulation of practice. This Ordinance is not intended to eliminate the use of fertilizer but only to eliminate excess amounts of phosphorus and nitrogen from reaching our water and groundwater. This Ordinance adopts the Best Management Practices as the normal operating procedures for turf management throughout the Town.
- C. This Ordinance shall apply to turf management practices and to the application of nitrogen and phosphorus-containing fertilizer and other materials to turf within the Town, but not to plants other than turf.
- D. This Ordinance shall serve as the Town's Implementing Regulations pursuant to the Fertilizer Management District of Critical Planning Concern designation, Barnstable County Ordinance 13-07.

#### §78-3. Authority

This Ordinance is adopted as Implementing Regulations pursuant to and as authorized by the Fertilizer Management District of Critical Planning Concern designation, Barnstable County Ordinance 13-07, and by Section 9 of Chapter 262 of the Acts of 2012.

#### §78-4. Definitions

For the purposes of this Ordinance, the following words shall have the following meanings unless the context clearly indicates a different meaning:

"Agriculture/Agricultural Use" means farming in all of its branches including the cultivation and tillage of the soil, the production, cultivation, growing, and harvesting of any agricultural, floricultural or horticultural commodities, including but not limited to cranberries.

"Barnstable" is the Town and all of its waters.

"Best Management Practices" (BMP), means a sequence of activities designed to limit a nonpoint pollution source. For the purposes of this Ordinance and pursuant to §78-5A of this Ordinance, BMP means the edition of "Best Management Practices for Soil and Nutrient Management in Turf Systems," prepared by University of Massachusetts Extension, Center for Agriculture, Turf Program in effect on September 18, 2014.

"Certified Fertilizer Applicator" means an Applicator certified in the manner prescribed hereunder to apply fertilizer and manage turf in conformance with the BMP.

"Combination Products," sometimes known as "Weed and Feed," means any product that, in combination with fertilizer, contains pre- or post-emergence herbicides, insecticides other pesticides or plant growth regulators.



“Compost” is the biologically stable humus-like material derived from composting, or the aerobic, thermophilic decomposition of, organic matter, which is used as a fertility source for turf.

“Fertilizer Applicator” means any person who applies fertilizer to turf and soils.

“Fertilizer” means a substance that enriches turf with elements essential for plant growth, such as nitrogen, phosphorus, or other substances; fertilizer hereunder does not include dolomite, limestone, or lime, grass clippings, or compost/ compost tea. “Fertilize, fertilizing, or fertilization” means the act of applying fertilizer to turf.

“Impervious surface” means a surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water, except for compacted areas on athletic fields such as clay or baseball infields, intensely trafficked turf and the like.

“Landscape professional” means a person, either as a sole proprietor or as part of a company, who, in exchange for money, goods, services, or other consideration, performs landscaping services. A Landscape professional can include turf management staff at a private golf course operation or other private entity.

“Landscaping” means, for purposes of this Ordinance, establishment (including by sod, seeding, or transplanting), renovation, maintenance, management or fertilization of turf

“Municipal applicator” means a public employee of a city, town, the county, or the state or federal government (or an employee of a department of and within such public entity) who fertilizes and manages turf located on property owned or controlled by a town, the county, the state or federal government (including publicly owned golf courses and athletic fields) within the scope of their official public employment responsibilities.

“Non-Certified Fertilizer Applicator” means an Applicator who is not certified in the manner prescribed hereunder to manage turf and apply fertilizer in conformance with the BMP.

“Nutrient” means any of the following 17 elements needed for growth of a plant; the three (3) non-mineral elements: carbon, hydrogen, and oxygen; the six (6) macronutrients: nitrogen, phosphorus, potassium, calcium, magnesium, and sulfur; and the eight (8) micronutrients: boron, copper, iron, chloride, manganese, molybdenum, nickel and zinc.

“Nutrient management” means the systematic control of the application and availability of nutrients to plants in order to minimize nutrient loss and to maintain the productivity of the soil.

“Readily available nitrogen” means any water-soluble nitrogen (WSN) that is readily available to turf after application.

“Slow-release, controlled-release, timed-release, or slowly soluble/ available nitrogen” means nitrogen in a form that delays its availability for uptake and use after application, and is not rapidly available to turf.

“Soil” means the upper-most layer of the earth’s surface, comprised of mineral and organic matter, which can host biological communities.

“Soil test” means a technical analysis of soil conducted by a soil testing laboratory that uses standards recommended by and in agreement with the University of Massachusetts Amherst Extension Program BMP, including a Modified Morgan soil testing procedure and extractable nutrient values.

“Turf” means grass-covered soil held together by the roots of the grass, also known as “sod” or “lawn.”

“Waters” or “Water-bodies” include, but are not limited to, streams, including intermittent streams, creeks, rivers, freshwater and tidal wetlands, ponds, lakes, marine waters, canals, lagoons, and estuaries within the Town, including without limitation all waters defined in Massachusetts General Laws Chapter 131, Section 40 and Town Wetland Ordinance or Regulations with the exception of the following: coastal and inland banks, beaches, coastal dunes, dune fields, and lands subject to coastal storm flowage, inland or coastal flooding or inundation, or within 100 feet of the hundred-year storm line.

#### §78-5. STANDARDS OF PERFORMANCE

##### A. Best Management Practices

The Best Management Practices (“BMP”), as defined herein, shall be applied to the standards of performance.

##### B. Performance Standards for Non-Certified Fertilizer Applicators

Fertilizer Applicators who do not hold Fertilizer Certification issued in accordance with §78-6B of this Ordinance shall comply with the following standards for fertilizer applications to turf:

- (1) Non-Certified Fertilizer Applicators shall not apply fertilizer during or immediately prior to heavy rainfall, such as but not limited to thunderstorms, hurricanes, or northeastern storms, or when the soil is saturated due to intense or extended rainfall;
- (2) Non-Certified Fertilizer Applicators shall not apply fertilizer or compost between October 1 and the following March 31;
- (3) Non-Certified Fertilizer Applicators shall not apply, spill, or deposit fertilizer on any impervious surface and fail to remove the applied, spilled, or deposited fertilizer immediately (and in which case the Applicator shall then either contain, dispose of legally or apply the fertilizer as allowed), and shall not apply, spill or deposit fertilizer in a manner that allows fertilizer to enter into storm drains;
- (4) Unless the Town’s existing Laws and Regulations, including its Wetland Ordinance or Regulations, contain a stricter standard or other enforcement or approval mechanism such as through the Town’s Conservation Commission, which shall control, Non-Certified Fertilizer Applicators shall not apply fertilizer closer than 100 feet to any water-body, or within the Zone I of a public drinking water well unless permission is obtained through the enforcement authority set out in §78-6D(1) herein allowing such activity;
- (5) A Non-Certified Fertilizer Applicator shall not apply fertilizer that contains phosphorus, unless a soil test taken not more than three years before the proposed fertilizer application indicates that additional phosphorus is needed for growth of that turf, or unless establishing new turf or re-establishing or repairing turf after substantial damage or land disturbance, in which case the application shall be in compliance with the BMP;

- (6) A single application of fertilizer that contains nitrogen shall not exceed .9 pounds of actual nitrogen per thousand square feet, shall consist of at least 20% slow-release nitrogen fertilizer<sup>1</sup> and the annual rate shall not exceed 3.2 pounds of actual nitrogen per thousand square feet. Single applications shall be done at intervals of no less than four weeks until the annual maximum is reached;
- (7) The fertilizer application requirements of this §78-5B shall apply with the same limitations to Combination Products, i.e. amount of nitrogen applied, vicinity of water bodies, etc.
- (8) Non-Certified Fertilizer Applicators shall not deposit grass clippings, leaves, or any other vegetative debris into or within 50 feet of water-bodies, retention and detention areas, drainage ditches or storm water drains, or onto impervious surfaces such as, but not limited to, roadways and sidewalks, except during scheduled clean-up programs.

#### C. Performance Standards for Certified Fertilizer Applicators

Certified Fertilizer Applicators shall be exempt from the requirements set forth in §78-5B of this Ordinance, provided that they shall manage turf and apply fertilizer to turf in accordance with the BMP. The burden shall be on the Certified Fertilizer Applicator, if and as required, to show that he/she is applying fertilizer in accordance with the BMP.

#### D. Exemptions. The following activities shall be exempt from this Ordinance:

- (1) Application of fertilizer as a fertility source for Agriculture and Agricultural Use.
- (2) Application of fertilizer as a fertility source to home gardens, landscape ornamentals, shrubs, trees bushes, vegetables, fruit and container plants.

### §78-6. EDUCATION, CERTIFICATION, ENFORCEMENT, AND PENALTIES

#### A. Fertilizer/Turf Management Education

Fertilizer education may consist of, but is not limited to, collaboration with retailers to post in-store information on town fertilizer regulations, the BMP and Fertilizer Certification requirements; mailings and flyers for the general public concerning town fertilizer regulations, the BMP and Fertilizer Certification requirements; and outreach to Landscape professionals and Municipal Applicators concerning fertilizer-related laws, the BMP and Fertilizer Certification requirements. The Town may rely on Cape Cod Cooperative Extension to assist in maintaining a program of fertilizer and turf management education that is based on the BMP.

#### B. Fertilizer Certification

- (1) Any Non Certified Fertilizer Applicator may apply to the Town or Cape Cod Cooperative Extension, as the case may be, for Fertilizer Certification as a Certified Fertilizer Applicator.
- (2) The Town may seek the assistance of the Cape Cod Cooperative Extension, to establish application requirements for and the process required to obtain Fertilizer Certification and renewals thereof, including evidence that the applicant is proficient in the BMP.

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<sup>1</sup> **Note:** this represents the minimum percentage: use of higher SRN content is generally preferable, especially on sandy root zones, during stress and pre-stress periods, and when there are fewer annual applications of nitrogen made to a lawn.

- (3) Notwithstanding the requirement for a proficiency assessment set out in, §78-6B(2) above, Municipal applicators or Landscape professionals who meet the following criteria shall be presumed to be proficient in the BMP and may become Certified Fertilizer Applicators without the need for an additional proficiency assessment:
- (a) Current Massachusetts Pesticide Commercial Applicator License (category 00) or Commercial Applicator License with Turf Certification (category 37) or Commercial Applicator License with Shade Tree & Ornamentals Certification (category 36), with evidence of participation in a recognized continuing education program for turf management within the past year, or
  - (b) Active membership in the Cape Cod Landscapers Association, the Golf Course Superintendents Association of Cape Cod, Massachusetts Association of Lawn Care Professionals (MALCP) or a substantially similar organization and any one of the following:
    - (i) Associate's Degree or higher in Turf Management, or closely related field, with evidence of participation in a recognized continuing education program for turf management within the past year;
    - (ii) Current Massachusetts Certified Landscape Professional (MCLP) certification or current Massachusetts Certified Arborist (MCA) certification, or substantially similar professional certification with emphasis on turf management, with evidence of participation in a recognized continuing education program for turf management within the past year;
    - (iii) Certificate of Completion from the University of Massachusetts Extension Green School (Turf or Landscape sections) or the University of Massachusetts Winter School for Turf Managers, or a horticultural certificate from Cape Cod Community College, or substantially similar professional certification with emphasis on turf management, with evidence of participation in a recognized continuing education program for turf management within the past year.
- (4) The Town may seek the assistance of the Cape Cod Cooperative Extension to help develop or administer an assessment to determine an Applicator's proficiency of the BMP and to assist with or administer a Fertilizer Certification process, which if administered by Extension, may be a county-wide process.
- (5) Municipal applicators or Landscape professionals who are Non-Certified Fertilizer Applicators may nonetheless apply fertilizer and manage turf pursuant to the standards for Certified Fertilizer Applicators set out in §78-5C of this Regulation so long as they fertilize and manage turf under the direct supervision of a manager or supervisor who has attained Fertilizer Certification hereunder. "Direct supervision" shall mean the instruction and control by such manager or supervisor who is responsible for fertilizer applications made and that person making them, and who is either physically present at the time and place the fertilizer is applied, or if not physically present, is available if and when needed.
- (6) All Certified Fertilizer Applicators shall ensure that a copy of the official documentation of said Fertilizer Certification is readily available when and at the location fertilizer is

being applied, and shall provide such Certification when requested to do so by an officer or agent of the enforcement authority set out in §78-6D(1) herein.

(7) All Certified Fertilizer Applicators who apply plant nutrients shall maintain records for 3 years of each application made. The following information shall be recorded, when applicable:

- (a) Name of applicator;
- (b) Date of application;
- (c) Address or location description of the application site;
- (d) Type and amount of nutrients applied;
- (e) Size of the area being treated;
- (f) Representative nutrient value or values;
- (g) Plant nutrient analysis of product used;
- (h) Method and rate of application;
- (i) Total amount used;
- (j) An original or legible copy of the label of the plant nutrient; and
- (k) The implementation of all activities or protocols recommended or required by the nutrient management plan, if applicable.

(8) The records required under this §78-6B shall be made available for inspection by the Town's Director of Health Division.

#### C. Retailer Requirements

Any retailer who sells, or offers for sale, phosphorus containing fertilizer shall:

- (1) Display the product separately from non-phosphorus plant nutrients; and
- (2) Post in a location where phosphorus containing fertilizer is displayed a clearly visible sign, at least 11" x 17" in dimension, which reads as follows:

"PHOSPHORUS RUNOFF POSES A THREAT TO WATER  
QUALITY. THEREFORE, UNDER GL Ch. 128 sec. 65A,  
PHOSPHORUS CONTAINING FERTILIZER MAY ONLY BE  
APPLIED TO LAWN OR NON-AGRICULTURAL TURF WHEN

- (i) a soil test indicates that additional phosphorus is needed for the growth of that lawn or non-agricultural turf; or
- (ii) it is used for newly established lawn or non-agricultural turf during the first growing season."

#### D. Enforcement

(1) Enforcement Authority

This Ordinance shall be enforced by the Town's Director of Health Division

(2) Non-Criminal Disposition

Whoever violates any provision of this Regulation may be penalized by a noncriminal disposition process as provided in G.L. c.40, §21D and the Town's non-criminal disposition ordinance. If noncriminal disposition is elected, then any person who violates any provision of this Regulation shall be subject to a penalty in the amount of three hundred dollars (\$300.00) per day for each day of violation, commencing ten days following day of receipt of written notice from the

Town's Board of Health. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

(3) Other Remedies

The Town's Director of Health Division may enforce this Ordinance or enjoin violations thereof through any lawful process, and the election of one remedy by the Town's Director of Health Division shall not preclude enforcement through any other lawful means.

§78-7. SEVERABILITY CLAUSE

Should any section, part or provision of this Ordinance be deemed invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining terms of this Regulation as a whole or any part thereof, other than the section, part or provision held invalid, which shall remain in full force and effect.

§78-8. AMENDMENTS

- A. No amendment to this Regulation shall be adopted until such time as the Town Council shall hold a public hearing thereon, notice of the time, place and subject matter of which, sufficient for identification, shall be given by publishing in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than fourteen days prior to the date set for such hearing. No such amendment shall be effective unless the proposed amendment has been approved by the Town Council.
- B. Amendments shall also be subject to the procedures set out in Sections 10 and 11 of the Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended. Specifically, amendments must also be consistent with the Fertilizer Management District of Critical Planning Concern designation, Barnstable County Ordinance 13-07 and the Guidelines for Implementing Regulations set out herein, including the requirement for consistency with the BMP.

§78-9. EFFECTIVE DATE

The effective date of this Ordinance shall be the date provided under Section 2-8 of the Barnstable Charter or the date the Ordinance has been certified by the Cape Cod Commission as consistent with the Fertilizer Management District of Critical Planning Concern designation, Barnstable County Ordinance 13-07, whichever occurs later

§78-10. INTERIM PROVISION

Notwithstanding any provisions to the contrary contained herein, any application of fertilizer to turf shall be made in accordance with §78-5B herein unless and until the Fertilizer Certification process outlined in §78-6B herein is implemented and in effect."

**FISCAL IMPACT:** None

**VOTE:** referred to a Public hearing on 11/6/14-9 YES (CANEDY, TINSLEY left dais)

<b>2015-033 LETTER OF SUPPORT FOR THE YMCA "CAPE COD Y ACHIEVERS PROGRAM"</b> <b>INTRO 10/16/14</b>
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Rationale given by Councilor Cullum

Upon a motion duly made and seconded it was

**RESOLVED**, that the Town Council, pursuant to the policy adopted under Town Council Order 2015-024, hereby approves sending a letter of support for the Cape Cod Y Achievers Program, a collaborative program with the town of Barnstable, to benefit the town's at risk youth.

**VOTE: PASSES 11 YES**

<b>2015-034      RESOLVE IN OPPOSITION TO THE EXPANSION OF THE NSTAR SUBSTATION COMMUNICATION WAY, BARNSTABLE TO ACCOMMODATE CAPE WIND OIL-FILLED EQUIPMENT INTRO: 10/16/14</b>
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Councilor Canedy gave the rationale

**Councilor Discussion and Comment**

Appreciate your effort and thank you for bringing this forward to the Council; Should this get Cape Cod Commission review; [procedural standing, can override every single permitting authority, have had hearings on this item; fast track process] this information about toxicity is new information and our response is very time sensitive [Tom Rooney of Barnstable Water District, stated we have 4 drinking water wells near this project, one of the wells was closed down for 18 years because of chemicals from a factory] water districts should take similar action; united in protecting our water; get the Cape Cod Commission to write a resolve as well. Friendly postponement request was initiated; support protecting the water; yes the well was closed down for 18 years; just the way it was worded; do not have a problem protecting our water; if we could clean this up and tighten it up I will support it; cannot support this in this state; do we have any exemption for the testing of certain chemicals [DEP does stipulate the chemicals we test] do we have any exemptions for certain chemicals in our water? [If you test for certain chemicals and they are not found you can have exemption from further testing of the same chemicals]

Upon a motion duly made and seconded it was

**RESOLVED**, that the TOWN COUNCIL of the TOWN OF BARNSTABLE hereby opposes the placement of oil-filled equipment at the NSTAR substation on Communication Way, Barnstable.

IT IS FURTHER RESOLVED, that the Town Council requests the Environmental Protection Agency exercises its authority to undertake a discretionary review.

IT IS FURTHER RESOLVED, that, in the event placement of oil-filled equipment is approved at this substation location , impervious containment, satisfactory to the Barnstable Town Council, Barnstable Town Manager, Barnstable Water District and Hyannis Water Board, is provided to protect the sole source aquifer and the Town's public wells against oil spills.

IT IS FURTHER RESOLVED that the Barnstable Town Council directs the Barnstable Town Manager and/or designee to express this strong opposition of the Town Council in all matters related to this proposed placement.

**RATIONALE:**

1. All of Cape Cod depends exclusively for its drinking water on a series of underground lakes collectively known as the Sole Source Aquifer. Poison that water and the very livelihood of thousands of Barnstable residents and employees will be put at risk because one gallon of oil will render undrinkable at least 5,000,000 gallons of water, per MADEP regulations.
2. To accommodate the Cape Wind project's impact on the regional electric grid, Cape Wind and NSTAR recently petitioned the Energy Facilities Siting Board to approve the installation of equipment at the NSTAR substation on Communication Way, Barnstable. Through litigation, we have learned that the equipment will collectively contain 1,534 gallons of so-called dielectric oil which is used to cool electrical elements of supporting equipment.

3. As part of the litigation, NSTAR and Cape Wind reluctantly provided Material Safety Data Sheets for the two types of dielectric fluid that they propose to use at the site.
4. The MSDS sheets demonstrate that the dielectric fluids contain very dangerous chemicals and they also provide a number of warnings, including:
  - **“Prevent material from entering storm sewers, ditches, or drains that lead to waterways”.**
  - **“Do not allow product to reach ground water, waterways, or sewage systems”.**
  - **“Do not release into the environment. Do not let product enter drains. Dam up”.**
  - **“Keep container tightly closed in a dry and well-ventilated place. . . Provide impermeable floor.”**
  - **“Destroy the product by incineration (in accordance with local and national regulations. Do not dispose of waste into sewer.”**
5. If these highly toxic oils reach groundwater under any circumstances, they would reach Barnstable Fire District and Hyannis Water Department wells in as little as seven or eight days and would likely cause the wells to be closed, pending an expensive and time-consuming cleanup.
6. The worst case cost estimate to place impervious containment under the oil-filled equipment is about equal to 0.00015% of the publicized cost of the Cape Wind project, or about \$240,000.
7. The Town’s water quality experts cite critical variables that must be thoroughly studied and understood in order to determine the likelihood that a dielectric spill could reach groundwater and time within which that disaster would unfold. The variables include at the very least groundwater height below the substation (unknown), viscosity of the dielectric fluid (unknown), solubility of the dielectric fluid in storm water (unknown), porosity of the ground beneath the substation (unknown), and rate of hydraulic flow under the substation when wells are drawing (unknown).
8. Cape Wind and NSTAR have refused to conduct such testing and refuse to provide impervious containment basins under the oil-filled equipment.
9. A spill of less than five gallons of cleaning fluid in Independence Park closed a Fire District well for 18 years and cost \$1,000,000 to remediate.
10. A spill that closes more than one well would leave the Hyannis system with no emergency reserve. A closure of two Hyannis wells would cause mandatory water rationing to be implemented. There could be similar effects on the Barnstable Fire District water supply, depending on the number of wells affected.
11. The risk created for Barnstable residents is completely unacceptable. Cape Wind and NSTAR’s refusal to mitigate this critical public health risk that they alone will have created is intolerable.

**VOTE: PASSES 10 YES, 1 NO (TINSLEY)**



## **TOWN MANAGER COMMUNICATIONS:**

- E-permitting software next meeting
- Seniors identified concerns
- Free Cash
- School early childhood learning Center
- Smarter Government Steering Committee
- Ridgewood park area is almost complete
- Little League ground breaking on Saturday

Vice President Canedy clarified that Monday's meeting, is on the Early Learning Center  
Councilor Norman thanked the Barnstable Police Department on the apprehension of the suspects involved in the bank robbery.

Councilor Cushing does it make sense to postpone our meeting (Early Learning Center) until the Bids come back, [need to discuss the viability of the program]

Councilor Hebert gave kudos to the Board of Health for removing the chestnuts that were making people sick.

Vice President Canedy spoke about an Ebola conference call which was taped; she will try to get her hands on it.

Councilor Dagwan said the Senior Center has a focus group for baby boomers, what are there needs and interests; give your feedback

President Rapp Grassetti the Strategic Planning Session results will be out soon; the Councilors will be receiving the draft and we will share with the Department Heads.

## **ADJOURNMENT:**

Upon a motion duly made and seconded it was

**VOTED to adjourn.**

**Unanimous**

**Adjourned at 10:40 PM**

Respectfully submitted,

Ann M. Quirk, CMC  
Town Clerk – Town of Barnstable

**NEXT REGULAR MEETING: November 6, 2014**

## **EXHIBITS**

- A. Patriot article from 1936
- B. Disability Commission slides
- C. West Barnstable Shooting Range