

Town of Barnstable
Town Council
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TOWN COUNCIL MEETING AGENDA

September 01, 2022

6:00 PM

Councillors:

Matthew Levesque
President
Precinct 10

Paula Schnepf
Vice President
Precinct 12

Gordon Starr
Precinct 1

Eric R. Steinhilber
Precinct 2

Paul Hebert
Precinct 3

Nikolas Atsalis
Precinct 4

VACANT
Precinct 5

Paul C. Neary
Precinct 6

Jessica Rapp Grasseti
Precinct 7

Jeffrey Mendes
Precinct 8

Tracy Shaughnessy
Precinct 9

Kristine Clark
Precinct 11

Jennifer L. Cullum
Precinct 13

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

The September 01, 2022 Meeting of the Barnstable Town Council shall be conducted in person. The public may attend in person or participate remotely in Public Comment or during a Public Hearing via the Zoom link listed below.

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

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

3. Remote Participation: The public may participate in Public Comment or Public Hearings by utilizing the Zoom video link or telephone number and access meeting code:

Join Zoom Meeting <https://zoom.us/j/93316504474> Meeting ID: 933 1650 4474
US Toll-free 888 475 4499

PUBLIC SESSION

1. ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. MOMENT OF SILENCE

4. PUBLIC COMMENT

5. COUNCIL RESPONSE TO PUBLIC COMMENT

6. TOWN MANAGER COMMUNICATIONS

- Update on the 2022 Election: Ann Quirk, Town Clerk
- Update on the Local Comprehensive Planning Committee
Elizabeth Jenkins, Director, Planning and Development

7. ACT ON PUBLIC SESSION MINUTES

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

EXECUTIVE SESSION

The Town Council will enter executive session pursuant to G.L. c. 30A, § 21(a)(3) to discuss strategy with respect to litigation since a discussion in open session may have a detrimental effect on the litigating position of the Town and Town Council. Specifically, the Council will discuss a

lawsuit filed against the Town by TJA Clean Energy, LLC regarding claims under G.L. c. 40A, § 3(9).

9. ORDERS OF THE DAY

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

10. ADJOURNMENT

NEXT REGULAR MEETING: September 15, 2022

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2023-020	Authorization to expend a Fiscal Year 2023 State 911 Department Training Grant in the amount of \$22,743.95 from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security (May be acted upon) (Majority Vote)43-44
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Approve Minutes: July 21, 2022

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

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

BARNSTABLE TOWN COUNCIL

ITEM# 2022-034

INTRO: 10/07/2021; 05/19/2022; 09/01/2022

2022-034 AMENDING THE CODE OF THE TOWN OF BARNSTABLE, PART I, GENERAL ORDINANCES, CHAPTER 240 ZONING BY EXPANDING THE GROUND-MOUNTED SOLAR PHOTOVOLTAIC OVERLAY DISTRICT TO INCLUDE THE PROPERTY LOCATED AT 810 WAKEBY ROAD, MARSTONS MILLS (ASSESSORS' MAP 013 PARCELS 004, 005, 052) AND BY REQUIRING A SPECIAL PERMIT FOR LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATIONS LOCATED WITHIN ANY RESIDENTIAL DISTRICT LOCATED WITHIN THE OVERLAY DISTRICT

ORDERED: That the Code of the Town of Barnstable, Part I General Ordinances, Chapter 240 Zoning be amended as follows:

SECTION 1

That Chapter 240, Article II, Section 6, The Zoning Map of the Town of Barnstable Massachusetts is hereby amended to expand the Ground-Mounted Solar Photovoltaic Overlay District to include the parcels shown on Assessors' Map 013 as Parcels 004, 005, and 052 as shown on the maps entitled;

- "Proposed Amendment to the Town Zoning Map Expanding the Ground Mounted Solar Photovoltaic Overlay District In Marstons Mills"
- "Proposed Amendment to the Marstons Mills Zoning Map expanding the Ground Mounted Solar Photovoltaic Overlay District In Marstons Mills"

Each dated October 1, 2021, as prepared by the Town of Barnstable Geographical Information System (GIS) Unit.

SECTION 2

(1) By amending the definition of **AS-OF-RIGHT-SITING** in Section D of Article V, Section 240-44.2, Ground-Mounted Solar Photovoltaic Overlay District, by deleting the first sentence and inserting the following new sentence in place thereof:

"The ground-mounted solar photovoltaic installation may proceed without the need for a special permit, variance, amendment, waiver or other local discretionary approval, except that a special permit shall be required when located in a residential zoning district."

(2) By inserting the following definition of **HAZARDOUS PRODUCT** in said Section D immediately after the definition of **GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION**:

"HAZARDOUS PRODUCT

Any chemical or combination of chemicals which, in any form, is listed by trade name, chemical name, formula or otherwise as a product which is a hazard to public drinking water supplies if concentrations beyond a certain level are achieved therein. 'Hazardous product' shall also include

any product for which there is any listing, declaration, or announcement in any form issued by the United States Environmental Agency, the Massachusetts Department of Environmental Protection,

or by any other government agency having direct or indirect jurisdiction over public water supplies that such product is such a hazard or is a product known as an “emerging contaminant” suspected as being capable of being a carcinogen.”

SECTION 3

By amending Subsection (1) of Section E of Article V, Section 240-44.2 by adding the following sentence to the end of such subsection:

“Any ground-mounted, large-scale solar photovoltaic installation with 250 kw or larger of rated nameplate capacity located in a residential zoning district shall also be required to obtain a special permit from the Planning Board in accordance with Subsection (3).”

SECTION 4

By further amending Section E of Article V, Section 240-44.2 by adding the following new Subsection (3):

“(3) Special Permit Provisions.

A Special Permit shall be granted by the Planning Board if the Planning Board determines the following criteria have been met.

- (a) Site Plan Approval in accordance with subsections (1) and (2).
- (b) Adequate measures to contain and suppress noise and sound as deemed appropriate by the Planning Board, including, but not limited to, minimum 75-foot setback from all residential abutter property lines to the Ground-Mounted Solar Photovoltaic Installation.
- (c) Vegetative and/or hardscape screening with coniferous planting and earth berms of sufficient height, as determined by the Building Commissioner, to screen adjoining residential properties from the Ground-Mounted Solar Photovoltaic Installation.
- (d) Federal Aviation Administration (FAA) approval of Solar Glare Study, if such a study is deemed necessary by the FAA.
- (e) Cape Cod Commission approval as required.
- (f) Full disclosure of all hazardous products proposed to be used at any time at a project site shall be provided in writing to the Planning Board with the Special Permit application; no application for a special permit shall be considered complete until such disclosure is submitted to the Planning Board. No such hazardous materials shall be deployed or used at any time at a project site without approval of the Special Permit by the Planning Board.
- (g) Use, storage and containment of hazardous materials shall comply with all Federal, State, Regional, and local codes and regulations, including building, fire, and health codes.
- (h) Compliance with any other criteria found by the Planning Board as necessary to protect the public health, safety or welfare, which may include, without limitation, the revocation of any prior permits and previous uses that benefit the project site.”

SECTION 5

By amending Section I of Article V, Section 240-44.2 by deleting Section I in its entirety and inserting the following new Section I in its place:

“I. Dimensional requirements. Ground-mounted solar photovoltaic installations are subject to the front, side and rear yard setbacks as set forth in the underlying zoning district(s), except that any ground-

mounted, large-scale solar photovoltaic installation with 250 kw or larger of rated nameplate capacity located in a residential zoning district shall maintain a minimum 75-foot setback from all abutting residential property lines to contain noise as sound, as required by Subsection (3) (b).”

SECTION 6

By amending Section L of Article V, Section 240-44.2 by adding the following subsections after subsection 2(c):

- “(3) Federal Aviation Administration (FAA) approval of Solar Glare Study is required, if such a Study is deemed necessary by the FAA.
- (4) The project proponent shall provide full disclosure of all hazardous products proposed to be used at any time at a project site shall be provided in writing to the Building Commissioner with the Site Plan Review application; no application for Site Plan Review shall be considered complete until such disclosure is submitted to the Building Commissioner. No such hazardous materials shall be deployed or used at any time at a project site without Site Plan approval.
- (5) Use, storage and containment of hazardous materials shall comply with all Federal, State, Regional, and local codes and regulations, including building, fire, and health codes.
- (6) The project shall demonstrate compliance with any other criteria found by the Building Commissioner as necessary to protect the public health, safety or welfare, which may include, without limitation, the revocation of any prior permits and previous uses that benefit the project site.”

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>10/07/2021</u>	<u>First Reading, Refer to Planning Board</u>
<u>05/19/2022</u>	<u>Public Hearing opened and continued</u>
<u>08/18/2022</u>	<u>Public Hearing opened and continued</u>

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

BARNSTABLE TOWN COUNCIL

SUMMARY

ITEM# 2022-034
INTRO: 10/07/2021; 09/01/2022

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Elizabeth Jenkins, Director, Planning & Development Department; Charles S. McLaughlin, Jr., Senior Town Attorney
DATE: October 7, 2021
SUBJECT: Amending the Code of the Town of Barnstable, Part I, General Ordinances, Chapter 240 Zoning by expanding the Ground-Mounted Solar Photovoltaic Overlay District to include the property located at 810 Wakeby Road, Marstons Mills (Assessors' Map 013 Parcels 004, 005, 052) and by requiring a special permit for large-scale Ground-Mounted Solar Photovoltaic installations located within any residential district located within the overlay district

BACKGROUND: Since 1975, Section 3 of Massachusetts General Laws, Chapter 40A, the state Zoning Act, has allowed solar projects as of right in all zoning districts, subject only to regulations to protect public health, safety, and welfare. It reads:

No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.

In 2010, pursuant to the state Green Communities Act, the Town created a Ground-Mounted Solar Photovoltaic Overlay District (Section 240-44.2 of the Town Code), which governs where large-scale solar projects may be constructed in the Town.

PROPOSED ZONING AMENDMENT: TJA Clean Energy is now seeking to construct a solar energy project at 810 Wakeby Road in a residential district that is not within the Ground-Mounted Solar Photovoltaic Overlay District. TJA claims that the Town's Overlay District is unduly restrictive and not in compliance with M.G.L Chapter 40A and has filed a lawsuit seeking a permanent injunction ordering the Town to issue a building permit to TJA for the project. A similar lawsuit involving the Town of Waltham resulted in a decision by the Land Court that the Town of Waltham was not in compliance with M.G.L Chapter 40A, and that case is now pending in the Appeals Court.

To resolve the lawsuit involving TJA's proposed project, a zoning amendment is proposed, narrowly tailored to apply only to the three parcels at 810 Wakeby Road. The proposed zoning amendment creates a special permit process that would allow the TJA project to proceed after ensuring that public health, safety and welfare issues are addressed. Under the proposed zoning amendment, the Planning Board would be designated as the body to administer the special permit process in order to provide for public notice and input on these issues. For TJA to receive a special permit, it would have to meet specified criteria, including the revocation of all other existing permits for the property. The proposed zoning amendment identifies a number of issues that TJA must address in public before the Planning Board and standards that it must meet. If TJA is able to meet all of those standards, as determined by the Planning Board, it would be entitled to receive a special permit.

FISCAL IMPACT: The proposed zoning amendment, if adopted, would avoid protracted litigation and expense.

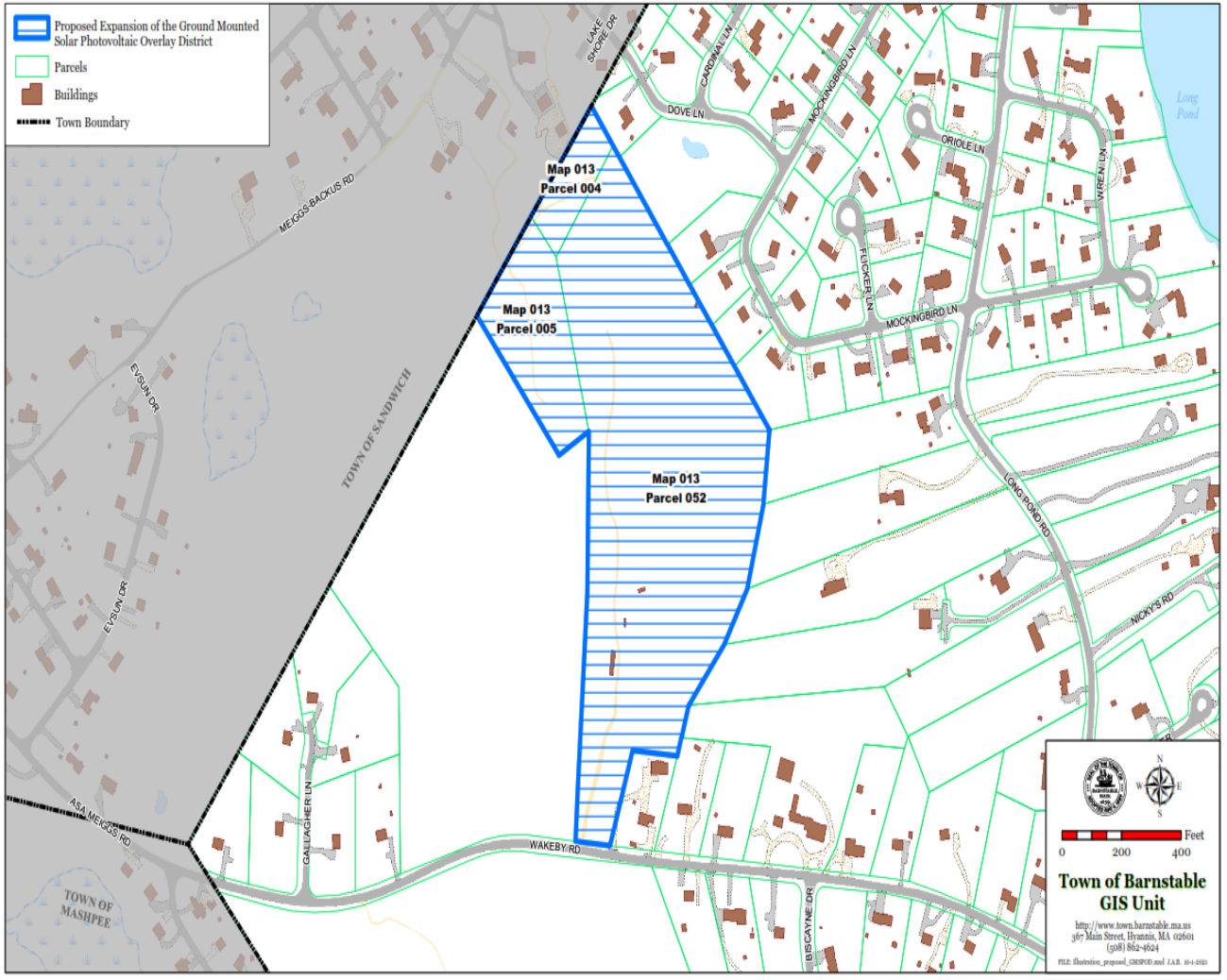
TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, supports this item.

STAFF SUPPORT: Planning & Development Department; Legal Department



PROPOSED AMENDMENT to the TOWN ZONING MAP
Expanding the GROUND MOUNTED SOLAR PHOTOVOLTAIC OVERLAY DISTRICT in Marstons Mills

October 1, 2021

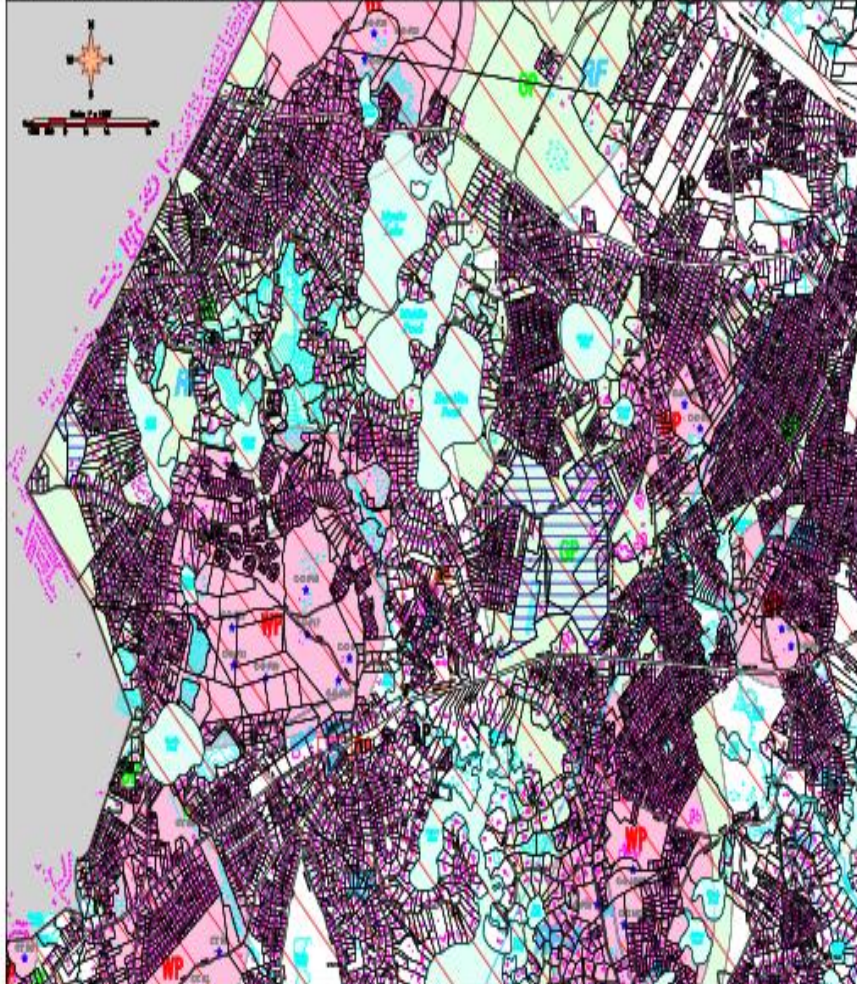




PROPOSED AMENDMENT to the MARSTONS MILLS ZONING MAP
expanding the GROUND MOUNTED SOLAR PHOTOVOLTAIC OVERLAY DISTRICT

04/20/2011, 1:28:11

MARSTONS MILLS - SHEET 6 OF 7



Map Legend			
	Existing District		Existing Public Well Site
	Wildland Protection Overlay District		Proposed Future Public Well Site
	Conservation Protection Overlay District		Proposed Future Public Well Site
	Agricultural Protection Overlay District		Fixed Lines (BY 2011)
	Adult Use Overlay District		Buildings
	District A, Plan Overlay District		Railroad Track
	Priority Grade II Inland Planned Unit Development Overlay District		Town Boundary Line
	Medical Services Overlay District		Wash Pits
	Resource Protection Overlay District		Stream / Edge-of-Water
	Shopping Center Redevelopment Overlay District		
	Order Contributing Core Redevelopment Community - 2020000 2000-I		
	International Shopping Area and Shopping Alley Area District A, Plan Overlay District		
	Ground Mounted Solar Photovoltaic Overlay District		

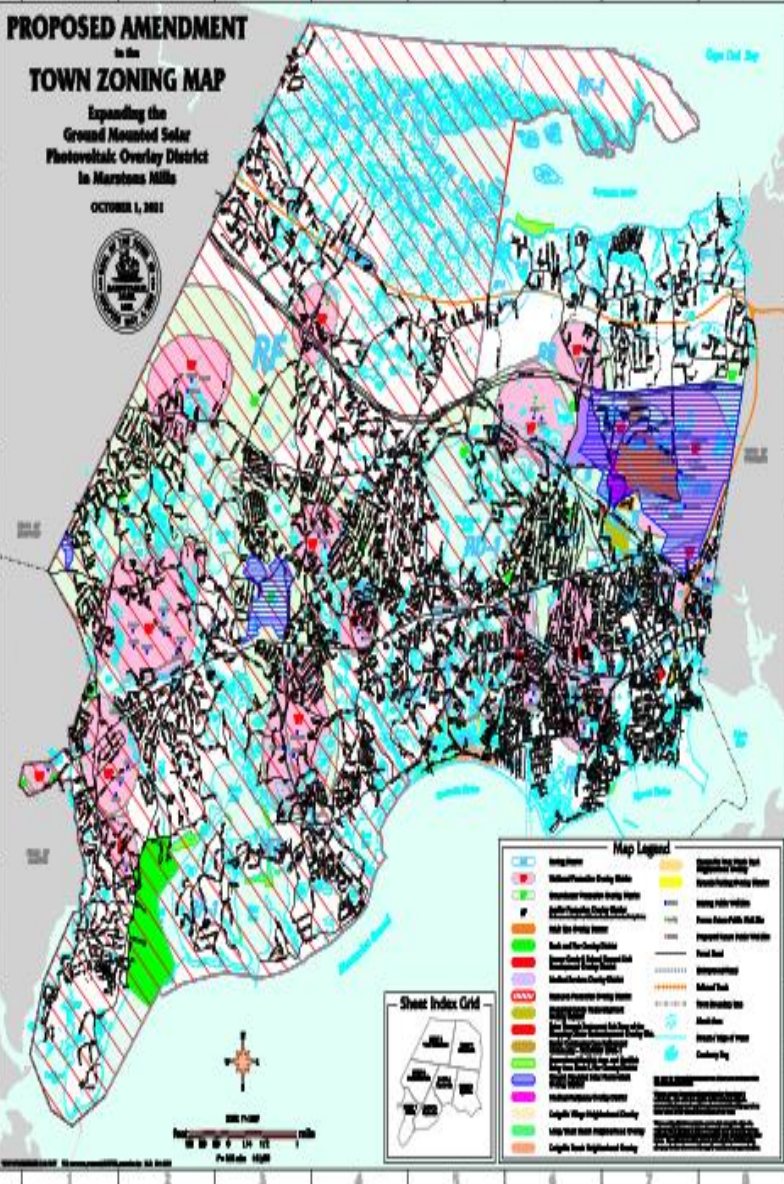
Map Legend

Map Scale: 1/4\"/>

PROPOSED AMENDMENT to the TOWN ZONING MAP

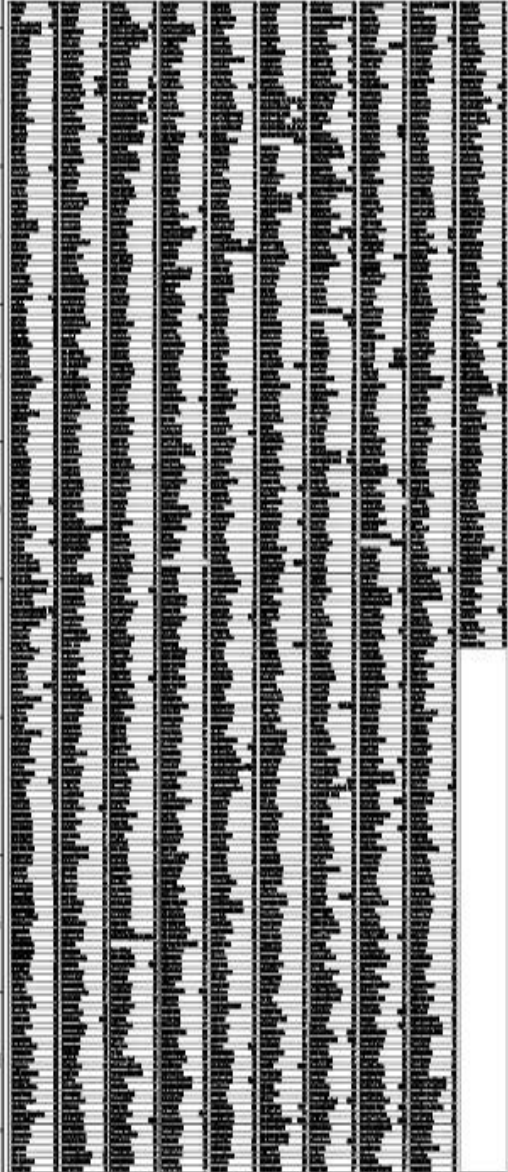
Expanding the
Ground Mounted Solar
Photovoltaic Overlay District
in Marston Mills

OCTOBER 1, 2021



Map Legend

Singleplex	Singleplex Overlaid	Singleplex Overlaid
Medium-Density Energy Zone	Medium-Density Energy Zone	Medium-Density Energy Zone
Medium-Density Energy Zone	Medium-Density Energy Zone	Medium-Density Energy Zone
Medium-Density Energy Zone	Medium-Density Energy Zone	Medium-Density Energy Zone
Medium-Density Energy Zone	Medium-Density Energy Zone	Medium-Density Energy Zone
Medium-Density Energy Zone	Medium-Density Energy Zone	Medium-Density Energy Zone
Medium-Density Energy Zone	Medium-Density Energy Zone	Medium-Density Energy Zone
Medium-Density Energy Zone	Medium-Density Energy Zone	Medium-Density Energy Zone
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Medium-Density Energy Zone	Medium-Density Energy Zone	Medium-Density Energy Zone
Medium-Density Energy Zone	Medium-Density Energy Zone	Medium-Density Energy Zone



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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-002
INTRO: 07/21/2022; 09/01/2022

2023-002 SUPPLEMENTAL APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$6,007,000 FOR THE PURPOSE OF FUNDING THE RECONSTRUCTION OF RUNWAY 6-24 PROJECT AT THE CAPE COD GATEWAY AIRPORT

ORDERED: That the amount of \$13,045,000 appropriated under Town Council Order 2021-088 be increased by **\$6,007,000** for a total revised appropriation amount of \$19,052,000 for the purpose of funding the Airport’s Design and Reconstruction of Runway 6-24 Project, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow \$19,052,000 under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefor; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Cape Cod Gateway Airport Commission is authorized to contract for and expend the appropriation made available for these purposes.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>07/21/2022</u>	<u>Refer to Public Hearing 08/18/2022</u>
<u>08/18/2022</u>	<u>Public Hearing opened and continued</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-002
INTRO: 07/21/2022; 09/01/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Katie R. Servis, Airport Manager
DATE: July 21, 2022
SUBJECT: Supplemental Appropriation and Loan Order in the amount of **\$6,007,000** for the purpose of funding the Reconstruction of Runway 6-24 Project at the Cape Cod Gateway Airport

BACKGROUND: The Cape Cod Gateway Airport is scheduled to reconstruct Runway 6-24 in the spring of 2023. The project was conceived over five years ago as part of the Airport's Capital Improvement Plan (CIP) by the Airport and its former on-call engineering consultant (Jacobs). The Federal Aviation Administration (FAA) requires a 5-Year CIP for all airport improvements funded under the Airport Improvement Program (AIP), so the project was programmed as far back as 2017.¹ Up until this point in time Jacobs had designed many airfield reconstruction projects, including the following projects, using a standard pavement box section with four inches (4") of bituminous concrete:

- 2013 Reconstruct and Relocate Taxiway A and Other Miscellaneous Improvements;
- 2014 Reconstruct East Ramp and Reconstruct A Portion of Taxiway B;
- 2015 Reconstruct & Light Taxiway C and Reconstruct and Light A Portion of Taxiway C; and
- 2016 Reconstruct, Light, Groove & Mark Runway 15-33 and Re-Align A Portion of Taxiway C.

FAA Advisory Circular AC 150/5320-6G (Airport Pavement Design and Evaluation) provides guidance on the design and evaluation of pavements used by aircraft at civil airports; Section 3.5 (Stabilized Base Course) includes further guidance for the design of pavements for heavy aircraft. In 2014 JetBlue started using the Embraer 190 (E190) aircraft at KHYA with a gross weight of approximately 124,000 pounds. The Embraer 190 is considered a heavy aircraft. Section 3.5.1 of AC 5320-6G states, in part:

“When aircraft in the design traffic mix have gross loads of 100,000 pounds (45,359 kg) or more, then use of a stabilized base is required.”

Since the E190 exceeds 100,000 pounds, the use of a stabilized base in the pavement section is required.² To this end, Airport Solutions Group (ASG), the airport's on-call engineering firm, prepared a new pavement design for the Runway 6-24 project using the FAA's FAARFIELD 2.0.2 software. The new pavement section requires a stabilized (asphalt) base with a total of nine (9") of bituminous concrete versus the four inches (4") historically used at KHYA. ***This 225% increase in asphalt thickness more than doubled the cost associated with the bituminous concrete alone.*** Furthermore, under the current post-COVID bidding climate, and fluctuations in oil prices, the cost of bituminous concrete is greater today than it was when the project was originally programmed.

¹ ASG was selected as the new on-call engineer of record at the October 31, 2018 Airport Commission Meeting

² The 2022 Airport Master Plan Update indicates future use of the Airbus 220 with a gross weight of approx. 149,000 pounds

Additionally, upon review of the topographical survey secured by ASG under the 2022 project, it became clear that the existing safety area (500 feet wide, centered on the runway) along both sides of

Runway 6-24 does not meet FAA design criteria for transverse grades pursuant to FAA AC 150/5300-13B (Airport Design). ASG recommended, and the funding agencies agreed, that full safety area re-grading be included in the project. Additionally, the FAA Technical Operations Division requested ASG to design new surface grading for the entire (Runway 24) glide slope critical area to fix a long-standing concern with non-compliant grading. This extensive grading added significant cost to the project. The re-grading of the safety area and glide slope area produced an unanticipated amount of excess soils (100,000+ CY). The cost to dispose of these soils is also increased to comply with Mass DEP guidelines for the handling and disposition of soils which might contain PFAS. Soil sampling and testing for PFAS was conducted during design, and test results indicated only “background concentrations” of PFAS. Nevertheless, MassDEP still imposed specific material handling procedures including off-site disposal at certain pre-approved sites, as well as limitations for re-use of the material. This too added a significant cost to the project.

In summary, the cost increase for the reconstruction of Runway 6-24 from previous construction cost estimates is attributable to the following three (primary) factors:

1. A 225% increase in the thickness of the bituminous concrete pavement section (from 4” to 9”) to comply with FAA design criteria for a stabilized base to accommodate heavy aircraft (>100,000 lbs.);
2. Added safety area and glide slope critical area grading to comply with FAA design standards; and
3. General increase in construction costs for post-COVID bidding vs. pre-COVID estimates.

FISCAL IMPACT: The Airport’s net share for this project is 5% (\$300,350); however this is under a reimbursable agreement and the full additional amount of \$6,007,000 of funding is requested. The entire project will be funded 95% by the FAA and MassDOT Aeronautics Division; therefore the Airport will be reimbursed \$5,706,650 from the FAA and MassDOT. As of July 1, 2021 the Airport Enterprise Fund had \$6,240,318 certified in cash reserves with the airport’s cash balance as of May 11, 2022 of approximately \$14 million. The Airport Commission approved of the above expenditure, contingent on Town Council approval, during the June 28, 2022 Airport Commission Meeting.

STAFF ASSISTANCE: Mark A. Milne, CPA, Director of Finance

A. OLD BUSINESS (May be acted upon) (Majority Vote)

BARNSTABLE TOWN COUNCIL

ITEM# 2023-004
INTRO: 07/21/2022; 09/01/2022

2023-004 APPOINTMENT TO A BOARD/COMMITTEE/COMMISSION:

RESOLVED: That the Town Council appoints the following individual to a multiple-member Board/Committee/Commission: **Council on Aging:** Ellen Queeney, as a regular member to a term expiring 6/2025

SPONSOR: Appointment Committee Members

DATE	ACTION TAKEN
<u>07/21/2022</u>	<u>Refer to Second Reading 08/18/2022</u>
<u>08/18/2022</u>	<u>Continued to 9/01/2022</u>

- Read Item
- Rationale
- Council Discussion
- Vote

A. OLD BUSINESS (May be acted upon) (Majority Vote)

BARNSTABLE TOWN COUNCIL

ITEM# 2023-005
INTRO: 07/21/2022; 09/01/2022

2023-005 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION:

RESOLVED: That the Town Council reappoints the following individuals to a multiple-member Board/Committee/Commission: **Planning Board:** Raymond Sexton, as a regular member to a term expiring 06/2025; Robert Twiss, as a regular member to a term expiring 06/2025; **Sandy Neck Board:** William Monroe, as a member at large to a term expiring 06/2025; William Carey, as a member at large to a term expiring 6/2025

SPONSOR: Appointment Committee Members

DATE	ACTION TAKEN
<u>07/21/2022</u>	<u>Refer to Second Reading 08/18/2022</u>
<u>08/18/2022</u>	<u>Continued to 9/01/2022</u>

- Read Item
- Rationale
- Council Discussion
- Vote

A. OLD BUSINESS (Public Hearing) (Roll Call Majority Vote)

BARNSTABLE TOWN COUNCIL

ITEM# 2023-008

INTRO: 07/21/2022; 09/01/2022

2022-008 ORDER ACCEPTING THE PROVISIONS OF M.G.L. CHAPTER 59, SECTION 5N AND AMENDING CHAPTER 183 OF THE GENERAL ORDINANCES TO ADD A PROGRAM FOR A VETERANS PROPERTY TAX WORK-OFF ABATEMENT

ORDERED:

SECTION 1. That the Town Council hereby accepts the provisions of Massachusetts General Laws, Chapter 59, § 5N, effective for the fiscal year beginning July 1, 2022.

SECTION 2. That the General Ordinances, Part I, of the Code of the Town of Barnstable are hereby amended by deleting Chapter 183 in its entirety and inserting the following new Chapter 183 in its place:

“Chapter 183. Senior Citizen and Veterans Property Tax Work-Off Abatement Programs

§ 183-1. Purpose.

In accordance with the provisions of M.G.L. c. 59, § 5K and M.G.L. c. 59, § 5N, the Town is offering programs which allow certain eligible seniors aged 60 and older and veterans the opportunity to perform work for the Town in exchange for an abatement of property taxes for the maximum amount of \$1,500 yearly.

§ 183-2. Eligibility.

- A. In order to be eligible to apply for the Senior Property Tax Work-off Program, an individual shall meet all of the following requirements:
 - a. Owns and occupies a residential property in the immediate fiscal year preceding the fiscal year in which the taxpayer applies to volunteer his/her services;
 - b. Has reached 60 years of age by July 1 of the fiscal tax year for which the tax credit is given;
 - c. Has a gross yearly income from all sources of not more than \$40,000 for single taxpayers and \$50,000 for married taxpayers; and
 - d. Otherwise qualified municipal employees may participate in the program as long as they are able to secure an exemption to M.G.L. c. 268A, § 20.

- B. In order to be eligible to apply for the Veterans Property Tax Work-off Program, an individual shall meet all of the following requirements:
 - a. If the veteran has a service-connected disability or is deceased, the veteran’s spouse or surviving spouse may earn the abatement instead;
 - b. Owns and occupies a residential property in the immediate fiscal year preceding the fiscal year in which the taxpayer applies to volunteer his/her services;

- c. Has a gross yearly income from all sources of not more than \$40,000 for single taxpayers and \$50,000 for married taxpayers; and
- d. Otherwise qualified municipal employees may participate in the program as long as they are able to secure an exemption to M.G.L. c. 268A, § 20.

§ 183-3. Program administration.

- A. The Town Manager or his/her designee shall be responsible for administering the Senior and Veterans Tax Work-Off Programs.
- B. The Town Manager or his/her designee shall review and approve the volunteer services to be included in the programs and place and/or assign eligible residents to perform such services.
- C. The Town Manager or his/her designee shall certify the amount of volunteer services performed by each participating taxpayer to the Barnstable Board of Assessors on or before December 1 of the year for which tax credits are to be given. Upon timely receipt of this certification, the Board of Assessors shall credit the real property tax obligations of the participating taxpayers in an amount not to exceed \$1,500 per taxpayer. A copy of each taxpayer's certification will be given to that taxpayer. This credit shall be in addition to any exemption or abatement for which the volunteer may otherwise be eligible.
- D. There shall be a maximum number of 20 residents who may participate in the programs in a given year.

§ 183-4. Program criteria.

- A. The hourly rate at which the volunteer services are to be credited shall be the minimum wage of the Commonwealth in effect at the time the services are provided.
- B. The Town will pay the volunteer's share of FICA taxes.
- C. The maximum amount by which the real property tax obligation of any one volunteer may be reduced in any given tax year shall not exceed \$1,500 for each program.
- D. Tax credits may be applied only toward real property, which the volunteer occupies as a principal residence and has property tax liability.
- E. Only one tax abatement per property per year shall be allowed.
- F. Participation will be awarded using a lottery system if qualified applications received exceed the number of available slots.
- G. Taxpayers in the program may not participate in two consecutive years unless the number of applicants is less than the eligible slots.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>07/21/2022</u>	<u>Refer to Second Reading 08/18/2022</u>
<u>08/18/2022</u>	<u>Public Hearing opened and continued</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-008

INTRO: 07/21/2022; 09/01/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
DATE: July 21, 2022
SUBJECT: Order accepting the Provisions of M.G.L. Chapter 59, Section 5N and Amending Chapter 183 of the General Ordinances to add a Program for a Veterans Property Tax Work-Off Abatement

BACKGROUND: The Town has had a Senior Property Tax Work-off Program in place since fiscal year 2009 when it accepted MGL c. 59, § 5K and would like to expand the program to include veterans by accepting the provision of MGL C. 59, § 5N. Under the programs, participating taxpayers volunteer their services to the town in exchange for a reduction in their property tax bills. Acceptance of either statute may be revoked but the town must wait until at least three years after the statute was accepted to do so. Revocation is also made by the Town Council.

ANALYSIS: These programs would allow eligible seniors and veterans the opportunity to work off a portion of their annual property tax bill by providing volunteer services to the town. Work performed by these individuals is not replacing town employees. It will be augmenting services that are currently provided. The positions will be primarily clerical requiring mail sorting, copying, filing, phone work and reception as well as other appropriately identified tasks.

The maximum abatement taxpayers may earn is \$1,500 per fiscal year under each program. Individuals cannot receive credit for their services at an hourly rate higher than the state's minimum wage rate. As of January 1, 2022, the minimum wage rate is \$14.25 per hour resulting in an individual having to work approximately 105 hours to earn the maximum allowable abatement.

Taxpayers may earn abatements under the work-off programs in addition to any property tax exemptions they may be eligible for under other statutes, such as personal exemptions under G.L. Ch. 59 §5 or residential exemptions under G.L. Ch. 59 §5C. They may also defer the balance of their taxes under G.L. Ch. 59 §5 Clause 41A if they are eligible to do so. Additionally, seniors may be eligible for the State Senior Circuit Breaker Tax Credit. Participation in this tax work-off program may affect a taxpayer's eligibility under the State Circuit Breaker program if the tax work-off program reduces their tax liability to certain non-qualifying levels.

The Human Resources Division will certify to the Board of Assessors the hours of services performed by the taxpayer *before* the actual tax for the fiscal year is committed. The certification must state the amount actually earned as of that time. Services performed after that date is credited toward the next fiscal year's actual tax bill to the extent consistent with the program rules established by the town. A copy of the certification must also be given to the taxpayer before the actual tax bill is issued.

The amount of the property tax reduction earned by the taxpayer under these programs is not considered income or wages for purposes of *state* income tax withholding and workmen's compensation. However, the United States Internal Revenue Service (IRS) has ruled that under current federal law the abatement

amount is included in the taxpayer's gross income for both federal income tax and Federal Insurance Contribution Act (FICA) tax purposes. Participating seniors will receive a W2 under this program and

the maximum employee's share of FICA taxes (\$111.75) will be paid by the Town resulting in a maximum potential federal taxable income to the participant of \$1,611,75.

Earned reductions must be applied to the actual tax bills for the fiscal year. The assessors must commit the full tax for the year and process the gross amount earned as certified by Human Resources for the taxpayer's volunteer services as an abatement to be charged against the town's overlay account. The taxpayer's actual tax bill, however, should only show a credit for the amount earned net of any federal withholdings. The municipal share of federal Social Security and Medicare taxes may also be charged to the overlay account.

FISCAL IMPACT: The amounts earned under the program are charged to the Town's overlay account (reserve for abatements and exemptions); similar to other exemptions granted. The cost would be dependent upon the number of participants, the amount of the maximum abatement granted and the treatment of FICA taxes. If the town has full participation of 20 individuals who earned the maximum \$1,500 then the charge to the town's overlay account will be \$34,590.

STAFF ASSISTANCE: Mark A. Milne, CPA, Finance Director

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-012
INTRO: 07/21/2022; 09/01/2022**

2023-012 APPROPRIATION ORDER IN THE AMOUNT OF \$62,000 FOR THE PURPOSE OF FUNDING THE LOCAL MATCH REQUIREMENT FOR A FEDERAL GRANT FROM THE NATURAL RESOURCE CONSERVATION SERVICE IN THE AMOUNT OF \$320,000 FOR THE LONG POND FISHWAY PROJECT AS OUTLINED IN THE FISCAL YEAR 2023 - FISCAL YEAR 2027 CAPITAL IMPROVEMENT PLAN AND AUTHORIZATION TO EXPEND SAID GRANT

ORDERED: That the amount of **\$62,000** be appropriated and added to the amount appropriated under Town Council Order 2022-116, resulting in a revised appropriation amount of \$112,000, representing the local match requirement for the acceptance of a grant from the U.S. Department of Agriculture Natural Resource Conservation Service in the amount of \$320,000, and that to meet this appropriation, that \$62,000 be provided from the Capital Trust Fund, and that the Town Council does hereby authorize the Town Manager to contract for and expend this appropriation and grant for the purpose of funding the Long Pond Fishway Design, Permitting and Construction Project as outlined in the Fiscal Year 2023 – Fiscal Year 2027 Capital Improvement Plan, including the payment of costs incidental or related thereto.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>07/21/2022</u>	<u>Refer to Public Hearing 08/18/2022</u>
<u>08/18/2022</u>	<u>Public Hearing opened and continued</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-012

INTRO: 07/21/2022; 09/01/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: July 21, 2022
SUBJECT: Appropriation Order in the amount of **\$62,000** for the purpose of funding the local match requirement for a Federal Grant from the Natural Resource Conservation Service in the amount of **\$320,000** for the Long Pond Fishway Project as outlined in the Fiscal Year 2023 Fiscal Year 2027 Capital Improvement Plan and authorization to expend said Grant

BACKGROUND: This project will fund the design, permitting, and construction required of improvements to the outlet structure of Long Pond (Centerville) to improve the conveyance of river herring into and out of the pond. The project will design, permit, and construct a water control structure to be used in lieu of the existing sand bags to control water levels and flow out of Long Pond. This project will be completed in partnership with the United States Department of Agriculture Natural Resources Conservation Service (NRCS). NRCS will provide funding for the design and 75% of the construction costs, totaling up to \$320,000. The Town is responsible for the permitting and 25% of construction costs, totaling up to \$112,000.

ANALYSIS: Every spring, herring travel up the Centerville River through Long Pond and into Lake Wequaquet. Over the years, thousands of herring are counted entering Long Pond in the spring when groundwater levels are high. The Department of Marine and Environmental Affairs (MEA) has been managing this outlet with sandbags to ensure there is enough water to convey herring from Long Pond to the estuary in the fall. Installation of a water control structure is needed to provide consistent fish passage at this location.

FINANCIAL IMPACT: This is a reimbursement grant for \$320,000. The Town must expend the funds upfront and subsequently submit for reimbursement. The Town's matching funds for this project will be provided from the Capital Trust Fund which has an available balance of \$14,986,637.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, supports this item.

STAFF ASSISTANCE: Daniel W. Santos, P.E., Director of Public Works

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-013

INTRO: 07/21/2022; 09/01/2022

2023-013 AUTHORIZING THE TOWN MANAGER TO EXECUTE A REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND S&C REALTY INVESTMENT CO., LLC, FOR 442 MAIN STREET, HYANNIS

ORDERED: That the Town Council hereby authorizes the Town Manager pursuant to Section 168-5, General Ordinances of the Code of the Town of Barnstable (the “Code”), to enter into and execute a Regulatory Agreement between the Town of Barnstable S&C Realty Investment Co., LLC for the property at 442 Main Street, Hyannis, Massachusetts, and shown on Assessor’s Map 309 as Parcel 223, consisting of 35,531 square feet of land and located in the Hyannis Village Business District (HVB) zoning district; the Hyannis Main Street Waterfront Historic District; and the Aquifer Protection (AP) overlay district (hereafter, the “Property”); and further authorizing the redevelopment of the Property by enclosing the existing drive-through; creating a food service establishment/coffee shop restaurant in the back of the building with a new drive-through window; creating a patio area with seating for customers in the alley along the easterly side of the building; maintaining the first floor retail area in the front of the building for commercial tenants; adding five (5) residential apartments on the second floor; reconfiguring the parking lot; adding sidewalk to connect the sidewalk along Winter Street to the sidewalk along North Street; and adding new lighting, landscaping, and signage, all as shown on the plans submitted and attached hereto as **Exhibit A** (hereafter, the “Redevelopment Plans”, and such proposed site work, new buildings and improvements all as shown on the Redevelopment Plans are hereafter referred to herein, collectively, as the “Redevelopment”), and granting the requested zoning relief pursuant to and as described in this Regulatory Agreement.

REGULATORY AGREEMENT

**S&C REALTY INVESTMENT CO., LLC
442 MAIN STREET
HYANNIS, MA 02601**

This Regulatory Agreement ("Agreement") is entered into by and between the applicant, **S&C Realty Investment Co., LLC** (the "Applicant" and/or "Developer"), a Massachusetts limited liability company with a mailing address of 169 Main Street, Stoneham, MA 02180, and the **Town of Barnstable** (the "Town"), a municipal corporation with a mailing address of 367 Main Street, Hyannis, MA 02601, on this ____ day of _____, 2022, pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Chapter 168 of the Code of the Town of Barnstable.

WITNESSETH:

WHEREAS, this Agreement shall establish the following: permitted uses, densities, signage, and traffic within the proposed Redevelopment (as defined herein), the duration of this Agreement, and any other terms and conditions mutually agreed upon between the Applicant and the Town;

WHEREAS, pursuant to section 168-3 of the Code of the Town of Barnstable, the Town of Barnstable is authorized to enter into a Regulatory Agreement with a qualified applicant within the Downtown Implementation District as the Town's Local Comprehensive Plan has been

certified by the Cape Cod Commission as consistent with the Regional Policy Plan and said certification has not been revoked, and the Town has adopted the enabling regulation contained in §§ 168-1 through 168-10;

WHEREAS, Developer has an agreement to purchase the property located at 442 Main Street, Hyannis, Massachusetts consisting of 35,531± square feet, shown on Town of Barnstable Assessor's Map 309 as Parcel 223, the parcel is referred to herein as the "Property";

WHEREAS, the Property is developed with a two-story building consisting of approximately 11,736 square feet, formerly used as a bank with a two lane drive-through;

WHEREAS, the Property borders Main Street to the south, Winter Street to the west, and North Street to the north, and has access to Winter Street and North Street;

WHEREAS, the Property consists of approximately 35,531 square feet of land and is located in the Hyannis Village Business District (HVB) zoning district; the Hyannis Main Street Waterfront Historic District; and the Aquifer Protection (AP) overlay district.

WHEREAS, Developer proposes to: redevelop the property by enclosing the existing drive-through; creating a food service establishment/coffee shop restaurant in the back of the building with a new drive-through window; creating a patio area with seating for customers in the alley along the easterly side of the building; maintaining the first floor retail area in the front of the building for commercial tenants; adding five (5) residential apartments on the second floor; reconfigure the parking lot; adding sidewalk to connect the sidewalk along Winter Street to the sidewalk along North Street; and adding new lighting, landscaping, and signage, all as shown on the plans submitted and attached hereto as **Exhibit A** (hereafter, the "Redevelopment Plans", and such proposed site work, new buildings and improvements all as shown on the Redevelopment Plans are hereafter referred to herein, collectively, as the "Redevelopment");

WHEREAS, the Redevelopment is consistent with the Town of Barnstable's Design and Infrastructure Plan in that the proposed project provides a sidewalk which connects the existing sidewalks onto Winter Street and North Street; improves curb cuts along Winter Street and North Street; and provides access from Main Street to the North Street parking lot; the scale, placement, materials, design, and details of the re-developed building comply with the Design and Infrastructure Plan guidelines; and the project provides the infrastructure necessary to support the project.

WHEREAS, the Town and Applicant desire to set forth in this Agreement their respective understandings and agreements with regard to the Redevelopment;

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

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

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

WHEREAS, the Property is located in the Downtown Hyannis Growth Incentive Zone (GIZ) as originally approved by the Cape Cod Commission by decision dated April 6, 2006 and re-designated by decision dated April 19, 2018, and as authorized by Barnstable County Ordinance 2005-13, as amended by Barnstable County Ordinance 10-19, 14-05, 17-11, and 18-11, Chapter G,

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

WHEREAS, the Redevelopment is not subject to review by the Cape Cod Commission as a Development of Regional Impact due to its location in the GIZ and due to the adoption of Barnstable County Ordinance 2006-06 establishing a cumulative development threshold within the GIZ, under which this Redevelopment may proceed;

WHEREAS, the Redevelopment has undergone formal site plan review and the Town of Barnstable Site Plan Review Committee determined the Redevelopment Plans approvable by decision dated May 10, 2021, and Developer shall submit final plans consistent with the terms and conditions contained in this Agreement to the Building Commissioner to determine whether any modifications to the Site Plan Review approval are necessary prior to any building permits being issued for the Redevelopment;

WHEREAS, the Redevelopment has undergone formal review by the Hyannis Main Street Waterfront Historic District Committee on September 15, 2021 and October 6, 2021 and received a Certificate of Appropriateness for the proposed exterior renovations and addition to the building and a Certificate of Appropriateness for business signage;

WHEREAS, the Redevelopment proposal has undergone a public hearing before the Planning Board opened on May 9, 2022 and closed on May 9, 2022 on the Agreement application and received an affirmative majority vote from the Planning Board on May 9, 2022;

WHEREAS, the Redevelopment proposal has undergone a public hearing opened on _____ and closed on _____ on the Agreement application before the Barnstable Town Council and has received a two-thirds vote approving the Agreement on _____, 2022;

WHEREAS, this Agreement authorizes only the uses, intensity of uses, dimensions and signage specified herein. Any substantial deviation from the authorized terms of this Agreement shall require review by the Town Council and Planning Board pursuant to Chapter 168-10 of the Code;

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

1. Description of Existing and Proposed Conditions:

A. Existing Conditions

The Property is developed as follows:

- A two-story building consisting of approximately 11,376 square feet, formerly used as a bank;
- The Property contains two curb-cuts, one off of North Street and one onto Winter Street;
- No landscaping;
- A two-lane drive-through; and

- A parking lot with 35 spaces.

B. Proposed Redevelopment

The proposed Redevelopment involves development as follows and as shown on the Redevelopment Plans listed below:

- Adding a 2,524 square foot two-story addition to the North Elevation of the building;
- The second floor will contain two (2) two-bedroom apartments and three (3) one-bedroom apartments;
- The new addition will be brick matching as nearly as possible the existing brick (“Old Port”);
- Install new Anderson, white vinyl windows to match as nearly as possible the existing windows in appearance;
- Replace existing wood shutters with vinyl shutters to match as nearly as possible the existing appearance;
- The existing entrance way off of North Street and exit onto Winter Street will be reconfigured;
- Significant landscaping and vegetation improvements;
- Architectural and site design in accordance with the Design and Infrastructure Plans;
- Construction of a sidewalk connecting the existing sidewalks on Winter Street and North Street;
- Drive-through menu, directional signage, and a free-standing monument based sign (with brick base to match existing building brick) located next to the entrance along North Street;
- A total of 33 paved parking spaces.

2. The Developer agrees to construct the Redevelopment on the Property in accordance with the Redevelopment Plans which are submitted herewith and which are entitled as follows:

- “Proposed First Floor Plan Date: 10/06/21, Job Location Hyannis, MA 442 Main St. Hyannis, MA” drawn by James D. Smith Architects, Sheet A-1.0;
- “Proposed Second Floor Plan Date: 10/06/21, Job Location Hyannis, MA 442 Main St.” drawn by James D. Smith Architects, Sheet A-2.0;
“Proposed Elevations; Signage Information Plan Date: 10/06/2021, Job Location Hyannis, MA 442 Main St.” drawn by James D. Smith Architects, Sheet A-3.0;
- “Existing Conditions Plan, Prepared For Couto Management Group, LLC Date: March 4, 2021” drawn by Baxter Nye Engineering & Surveying, Sheet C1.0;
- “Site Layout Plan, Prepared For Couto Management Group, LLC Date: March 4, 2021” drawn by Baxter Nye Engineering & Surveying, Sheet C2.0;
- “Grading, Drainage & Utility Plan, Prepared For Couto Management Group, LLC Date: March 4, 2021” drawn by Baxter Nye Engineering & Surveying, Sheet C3.0;
- “Details Plan, Prepared For Couto Management Group, LLC Date: March 4, 2021” drawn by Baxter Nye Engineering & Surveying, Sheet C4.0 and C4.1; and
- “General Notes & Legend Plan, Prepared For Couto Management Group, LLC Date: March 4, 2021” drawn by Baxter Nye Engineering & Surveying, Sheet C5.0.

The Redevelopment has undergone formal site plan review and the Town of Barnstable Site Plan Review Committee determined the Redevelopment Plans approvable by decision dated May 10, 2021, and Developer shall submit final plans consistent with the terms and conditions contained in this Agreement to the Building Commissioner to determine whether any modifications to the Site

Plan Review approval are necessary prior to any building permits being issued for the Redevelopment.

3. The Redevelopment provides, without limitation, the following multi-modal transportation, economic, place-making, site design, traffic safety, and community benefits:
 - a. Redevelopment and significantly improved aesthetics at a historic, Main Street, Hyannis property.
 - b. Substantially increased landscaping.
 - c. Construction of a sidewalk along the Property's frontage along Winter Street and North Street connecting the existing sidewalks in accordance with the Department of Public Works specifications and review and approval by the Town Engineer.
 - d. Safe and well-marked interior pedestrian connections within the Property.
 - e. Exterior site lighting improvements, including use of LED lights.
 - f. Addition of five (5) new apartments on Main Street, Hyannis.
 - g. Improved access to and from Main Street to the North Street parking lots.
4. Outdoor storage is prohibited including storage in trailers, containers, trucks or other storage units. This prohibition shall be prominently noted on the final approved site plans.
5. The Developer currently owns and operates a coffee shop with drive through at the address 149 North Street Map 309 Parcel 226-001. The Developer agrees to abandon the drive-through use at 149 North Street within one year of receipt of an occupancy permit for the coffee shop with drive-through at the Property.
6. Prior to an occupancy permit granted, the Developer shall grant a public access easement from the North street parking lot to Main Street between the Property and 438 Main Street. Said easement shall be reviewed as to form by the Town Attorney and shall be granted in perpetuity and recorded at the Barnstable Registry of Deeds by the Developer.
7. This Agreement shall run with the land, and all of the terms, conditions, and obligations contained in this Agreement shall be binding on any successor or assignor of the Applicant for as long as the Property is used in accordance with this agreement and unless and until it is redeveloped further into some other use.
8. Prior to the issuance of the first building permit, the Developer shall provide a letter of credit or cash escrow in an amount equivalent to 150% of the total scope of the landscape plan proposed. Said letter of credit or cash to be expended on the replacement of landscape materials if such replacement becomes necessary. The letter of credit or cash escrow shall be approved by the Planning and Development Director, said letter of credit or cash escrow to be expended to replace landscape materials if such replacement becomes necessary because of the failure of Developer or its tenants to do so. An "acceptable" letter of credit is a letter of credit issued by a bank incorporated in the Commonwealth of Massachusetts or currently licensed to do business in the Commonwealth, and having at the time of issue of the letter of credit a Standard & Poor ("S&P") Rating of "BBB+" or better and/or a Bankrate.com rating of 4-star or better. Further, an acceptable letter of credit shall be approved as to issuer by the Treasurer of the Town of Barnstable and as to form by the Office of the Town Attorney. Any unexpended portion of said letter of credit or cash escrow shall be released by the Planning Board to the Developer or its successor(s), as directed by the Developer, after three years from the date of the landscape installation, such date to be determined by the Building Commissioner, upon the request of the Developer.
9. Developer is responsible for obtaining all applicable permits and licenses.

10. No Certificate of Occupancy shall be issued until all conditions of this Agreement have been met and Design and Infrastructure Plan approval has been issued.

This Agreement is transferable to a person or entity other than the Applicant (hereafter, the "Transferee") with prior written notice to the Town Manager and contingent upon the Applicant being in compliance with all the requirements of this Agreement. However, no such notice to the Town shall be effective unless it includes a written acknowledgement by the Transferee that they have read this Regulatory Agreement, and any amendments thereto, and they agree to be bound by the terms and conditions set forth herein, in which event after such assignment the transferor shall be relieved of liability from and after the date of transfer. Upon receipt of such written notice of transfer, and subject to a determination by the Town Manager that that the Applicant is in compliance with all the then applicable requirements of the Agreement, the Transferee and the Town Manager shall execute a minor amendment of this Regulatory Agreement acknowledging the

Transferee is a signatory of this Regulatory Agreement, agreeing to be bound by the terms and conditions set forth herein, and any subsequent amendments hereto, and assuming liability as of the date of transfer. No Planning Board or Town Council approval is required for such a minor amendment acknowledging such a transfer in ownership.

11. The development rights granted hereunder shall be exercised and development permits needed to commence construction may be obtained hereunder for a period of five (5) years from the effective date of this Agreement, provided, however, that prior to the expiration of said five year period, the Developer may request an extension to obtain development permits necessary to commence construction, said extension shall not exceed two years. Upon receipt of necessary development permits, construction shall proceed continuously and expeditiously, but in no case shall construction exceed two years from receipt of necessary development permits. In the event that this Agreement and/or any necessary development permits for the Project are appealed, the timeframes set forth in this section shall be tolled for the length of any such appeals.

12. Construction and demolition debris from the Project shall be removed and reused or recycled to the maximum extent possible.

13. No uses shall use, store, generate, treat or dispose of hazardous waste or hazardous materials and shall not generate hazardous waste as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR Section 30.353, except in compliance with all applicable laws.

14. To the extent that the Redevelopment Plans referenced in this Agreement do not depict all the findings and conditions set forth in this Agreement, revised plans and/or notations shall be provided in the final site plan. The Redevelopment shall remain in substantial conformance with the Site Plan Review approval dated May 10, 2021 and all conditions thereof and any modifications thereto as reflected in the final approved site plan.

15. Upon completion of all work, a registered engineer or land surveyor shall submit a letter of certification, made upon knowledge and belief in accordance with professional standards that all work has been done in substantial compliance with the approved site plan (Barnstable Code Section 240-104(G)). This document shall be submitted before the issuance of the final certificate of occupancy.

16. The term of this Agreement shall be five (5) years from the effective date of the Agreement (the "Term"), and the development rights authorized herein must be exercised prior to expiration of the Term or this Agreement shall be null and void, subject to the potential tolling due to litigation referenced in

paragraph 12. Once the development rights authorized herein have been timely exercised, all terms and conditions of this Agreement shall remain in effect until the Property is no longer used in accordance with the Redevelopment Plans.

17. The Town hereby grants the following waivers from the Town of Barnstable Zoning Ordinance for the Redevelopment, as requested by the Developer:

a. Section 240-24. 1.11(A)(3), Site Development Standard prohibits drive-through windows in the Hyannis Village Zoning Districts.
i. Redevelopment proposes one drive through window for restaurant use.

b. Section 240-24.1.3(D) (2) (a) and Section 240-56, Schedule of Parking Spaces.
ii. Redevelopment proposes 33 parking spaces and Ordinance requires 34 parking spaces.

c. Sections 240-24.1.11(A) (6); 240-71; and 240-65 Signage.
iii. Section 240-71A limits maximum height of all signs on buildings to 12 feet. The project proposes two signs on the South elevation of the building (“Tenant Sign” and “Dunkin” sign) and one sign on the North elevation (“DD” sign) which exceed the height limitation.

iv. Section 240-71 B limits the maximum square footage of all signs to the lesser of 50 square feet or 10% of the building face. The project proposes 71.84 square feet of signage.

v. Section 240-71C provides that the maximum size of any freestanding sign shall be 12 square feet. The project proposes two freestanding signs which exceed 12 square feet; the Monument Sign (14.27 sq. ft.) and the Menu Board (24.16 sq. ft.).

vi. Section 240-65A limits each business to two signs. The project proposes seven (7) signs for the Dunkin store as follows:

Monument Sign 14.27 sq. ft.
South Elevation 8.69 sq. ft. (“Dunkin”)
South Elevation 3.14 sq. ft. (“DD”)
East Elevation 2.00 sq. ft. (“DD”)
East Elevation 2.00 sq. ft. (“DD”)
North Elevation 17.58 sq. ft. (“DD”)
Menu Board 24.16 sq. ft.

The project also proposes one additional sign for a Tenant (South Elevation 8.69 sq. ft.). Further Tenant signage may be requested at a future date.

vii. Section 240-65D allows one freestanding sign per business, which may not exceed half the allowable size as permitted. The project proposes two freestanding signs for the Dunkin restaurant (Monument Sign on North Street and Menu Board).

viii. Section 240-65J limits the size of a menu sign or board to three square feet. The project proposes a menu sign containing 24.16 square feet.

ix. Section 240-75A allows for directional signs provided such signs do not exceed one square foot

in area or be more than three feet high. The project proposes five directional signs each containing 2.75 square feet, and each being 4 feet 10 inches tall.

x. Section 240-75 B allows a total of four directional signs. The project proposes five directional signs.

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

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

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

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

Applicant:Town of Barnstable:

Signature:Signature:

Print:Print:

Date:Date:

**EXHIBIT A
REDEVELOPMENT PLANS**

SPONSOR: Tracy Shaughnessy, Councilor Precinct 9

DATE	ACTION TAKEN
<u>07/21/2022</u>	<u>Refer to Public Hearing 08/18/2022</u>
<u>08/18/2022</u>	<u>Public Hearing opened and continued</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-013

INTRO: 07/21/2022; 09/01/2022

SUMMARY

TO: Town Council
FROM: S&C Realty Investment Co, LLC
THROUGH: Elizabeth S. Jenkins, AICP, Planning & Development Director
DATE: June 19, 2022
SUBJECT: Authorizing the Town Manager to execute a Regulatory Agreement between the Town of Barnstable and S&C Realty Investment Co., LLC, for 442 Main Street, Hyannis

BACKGROUND: Pursuant to Chapter 168 of the Code of the Town of Barnstable, the Town may enter into Regulatory Agreements in areas delineated on the Regulatory Agreements District Map. The subject property is located within the area delineated for Regulatory Agreements. Pursuant to Chapter 168 Section 5, no regulatory agreement may be executed by the Town Manager prior to an affirmative, majority vote by the Planning Board and the Town Council recommending the execution of the regulatory agreement. When a waiver from zoning is allowed under the negotiated regulatory agreement, there shall be a two-thirds vote of the Town Council recommending execution of the regulatory agreement.

S&C Realty Investment Co., LLC seeks to enter into a Regulatory Agreement for 442 Main Street with the Town of Barnstable. The Applicant proposes to redevelop the property at 442 Main Street. The current site fronts on Main Street and extends to North Street. The Site is improved with a 20,512 sq. ft. two-story building sited along Main Street with a rear parking area including a two-lane drive through that was formerly used for a bank.

The proposed agreement would allow for the repurpose of the existing structure to accommodate a retail use and a coffee shop with a drive through on the first level and five residential apartments on the second floor. The Applicant proposes to reduce the existing curb cuts on Winter and North Streets and install sidewalks where there are existing gaps on both Winter Street and North Street. Access for vehicles would be on North Street only. The Applicant also proposes to grant a pedestrian access easement between the subject property and 438 Main Street for pedestrian access from Main Street to the North Street parking lot.

On March 25, 2022, S&C Realty Investment Co., LLC submitted an application to the Planning Board for a Regulatory Agreement pursuant to Chapter 168 of the Code of the Town of Barnstable.

The Planning Board held a duly posted and noticed public hearing on the proposal on May 9, 2022. At the conclusion of the hearing, the Planning Board unanimously voted to recommend Town Council to execute the Regulatory Agreement consistent with the final agreement reviewed by the Board.

RATIONALE: Grant of the Regulatory Agreement to S&C Realty Investment Co., LLC allowing the specified zoning relief, and upon the terms and conditions, all as recommended by the Planning Board, will facilitate redevelopment of the Property and yield the following benefits to the Town:

- a. Redevelopment and significantly improved aesthetics at a historic Main Street, Hyannis property.
- b. Substantially increased landscaping.
- c. Construction of a sidewalk along the property's frontage along Winter Street and North Street connecting the existing sidewalks in accordance with the Department of Public Works specifications and review and approval by the Town Engineer.
- d. Safe and well-marked interior pedestrian connections within the Property.
- e. Exterior site lighting improvements, including use of LED lights.
- f. Addition of five (5) new apartments on Main Street, Hyannis.
- g. Improved access to and from Main Street to the North Street parking lots.

FINANCIAL IMPACT: Approval of the proposed Regulatory Agreement will have no significant Fiscal impact.

STAFF ASSISTANCE: Karen Nober, Town Attorney; Elizabeth Jenkins, Planning & Development Director; Kate Maldonado, Assistant Director; Jim Kupfer, Senior Planner

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

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-014
INTRO: 07/21/2022; 09/01/2022**

2023-014 APPROPRIATION ORDER IN THE AMOUNT OF \$150,000 FOR THE PURPOSE OF FUNDING THE LOCAL MATCH REQUIREMENT FOR A FEDERAL GRANT FROM THE NATURAL RESOURCES CONSERVATION SERVICE IN THE AMOUNT OF \$1,529,333 FOR THE UPPER MARSTONS MILLS FISHWAY PROJECT AND AUTHORIZATION TO EXPEND SAID GRANT

ORDERED: That the amount of **\$150,000** be appropriated and added to the amount appropriated under Town Council Order 2014-108, resulting in a revised appropriation amount of \$543,500, representing the local match requirement for the acceptance of a grant from the U.S. Department of Agriculture Natural Resources Conservation Service in the amount of \$1,529,333, and that to meet this appropriation, that \$150,000 be provided from the Capital Trust Fund, and that the Town Council does hereby authorize the Town Manager to contract for and expend this appropriation and grant for the purpose of funding the Upper Marstons Mills Fishway Design, Permitting and Construction Project, including the payment of costs incidental or related thereto.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>07/21/2022</u>	<u>Refer to Public Hearing 08/18/2022</u>
<u>08/18/2022</u>	<u>Public Hearing opened and continued</u>

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-014

INTRO: 07/21/2022; 09/01/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: July 21, 2022
SUBJECT: Appropriation Order for **\$150,000** for the purpose of funding the local match requirement and the authorization to expend a Federal Grant from the Natural Resource Conservation Service in the amount of \$1,529,000 for the Upper Marstons Mills Fishway Project

BACKGROUND: This project will fund the design, permitting, and construction required of improvements to replace a 1,100-foot failing timber/earthen fish bypass channel with a new Fishway to restore and improve fish passage to Middle Pond. The project will include stream channel work to restore and maintain flow from Middle Pond and a new screen structure to direct fish to the entrance of the new channel. The project will complete design, obtain permits, and construct structures necessary to convey fish into Middle Pond. This project will be completed in partnership with the United States Department of Agriculture Natural Resources Conservation Service (NRCS). NRCS will provide funding for the design and 75% of the construction costs, totaling up to \$1,529,333. The Town is responsible for the permitting and 25% of construction costs, totaling up to \$447,206. The town's revised appropriation amount of \$543,500 includes additional funding for consulting services on the project if needed.

ANALYSIS: The timber fish ladder and fish diversion structure to Middle Pond is in disrepair, requiring frequent maintenance. As the Town's largest fish run, conveying 10,000 to 25,000 fish to Middle Pond each year, the Town Marine and Environmental Affairs (MEA) staff has been conducting annual repairs to ensure fish passage. The Town and NRCS have a current agreement to design and construct improvements to the existing fish ladder. However, due to increased construction costs and changes in ownership of the adjacent bogs, the NRCS suggested an alternate route was feasible for fish passage. The Town staff is currently vetting this alternate route. In the meantime, NRCS has drafted a new agreement that will provide the additional funds necessary to complete this project for either the existing ladder or alternate route.

FINANCIAL IMPACT: This is a reimbursement grant for \$1,529,333. The Town must expend the funds upfront and subsequently submit for reimbursement. The Town's match funds for this project will be provided from the Capital Trust Fund which has an available balance of \$14,986,637.

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

STAFF ASSISTANCE: Daniel W. Santos, P.E., Director of Public Works

A. OLD BUSINESS (May be acted upon) (Majority Vote)

BARNSTABLE TOWN COUNCIL

ITEM# 2023-016

INTRO: 07/21/2022; 09/01/2022

2023-016 ORDER TO APPROVE AN AMENDMENT TO THE HOST COMMUNITY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND PARK CITY WIND LLC (“HCA 2”) AMENDING THE SPECIAL MITIGATION PROVISIONS

ORDERED: To authorize and direct the Town Manager to execute an amendment to the Host Community Agreement between the Town of Barnstable and Park City Wind LLC, dated May 6, 2022 (“HCA 2”), deleting in the second paragraph of Section 9(d) of the Agreement the words “for the purpose of making improvements to public facilities on the route selected by PCW for cable installation or to an area within reasonable proximity of the cable route” and inserting the following words in their place: “to be used for the benefit of and improvements to Craigville Beach or to purchase or improve other Article 97 protected land located in the Town of Barnstable, as determined by the Town of Barnstable.”

SPONSOR: Mark S. Ells, Town Manager

DATE ACTION TAKEN

07/21/2022 First Reading, Refer to Second Reading 08/18/2022

08/18/2022 Continued to 09/01/2022

- Read Item
- Rationale
- Council Discussion
- Vote

B. NEW BUSINESS (May be acted upon) (Majority Vote)
BARNSTABLE TOWN COUNCIL ITEM

ITEM# 2023-017
INTRO: 09/01/2022

**2023-017 RESOLVE TO APPROVE THE APPOINTMENT OF SEAN O'BRIEN AS
TREASURER/COLLECTOR FOR THE TOWN OF BARNSTABLE**

RESOLVED: That the Town Council hereby approves the appointment by the Town Manager of Sean O'Brien as the Director of Assessing for the Town of Barnstable.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Rationale
- ___ Council Discussion
- ___ Vote

BARNSTABLE TOWN COUNCIL ITEM

ITEM# 2023-017
INTRO: 09/01/2022

SUMMARY

TO: Town Council
FROM: Mark Ells, Town Manager
THROUGH: Mark A. Milne, C.P.A., Director of Finance
DATE: August 18, 2022
SUBJECT: Resolve to approve the Appointment of Sean O'Brien, as Treasurer/Collector for the Town of Barnstable

BACKGROUND: An interview team comprised of the Director of Finance, Assistant Human Resources Director, Deputy Finance Director, Director of Assessing and a member of the Town's Trust Fund Advisory committee conducted the interviews. Mr. O'Brien was unanimously recommended for the position.

ANALYSIS: Mr. O'Brien has several years of experience in the municipal finance field, most recently working as the Assistant Finance Director/Treasurer for the Town of Littleton, MA. Prior to this Mr. O'Brien worked as the Assistant Finance Director in the Town of Natick and as a Senior Budget and Operations Analyst in the Town of Concord, MA. Mr. O'Brien received his undergraduate degree from Assumption College and earned a Master's in Public Administration from Suffolk University. Mr. O'Brien is also actively involved in the National Government Finance Officers Association, Massachusetts Government Finance Officers Association, Massachusetts Association of Public Purchasing Officials and the Massachusetts Treasurer and Collectors Association, continuously enhancing his professional development.

STAFF SUPPORT: Mark A. Milne, C.P.A., Director of Finance

B. NEW BUSINESS (May be acted upon) (Majority Vote)

BARNSTABLE TOWN COUNCIL ITEM

**ITEM# 2023-018
INTRO: 09/01/2022**

2023-018 RESOLVE AUTHORIZING THE TOWN MANAGER OR THE POLICE CHIEF AS THE TOWN MANAGER’S DESIGNEE TO ASSIGN POLICE OFFICERS AT POLLING PLACES

RESOLVED: In accordance with Section 72 of Chapter 54 of the Massachusetts General Laws, as amended by Section 13 of Chapter 92 of the Acts of 2022 (the “VOTES” Act), the Town Council does hereby authorize and direct the Town Manager, or the Police Chief as the Town Manager’s designee, in consultation with the Town Clerk and the Town registrars, to “detail a sufficient number of police officers or constables for each building that contains the polling place for 1 or more precincts at every election therein to preserve order and to protect the election officers and supervisors from any interference with their duties and to aid in enforcing the laws relating to elections.”

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

BARNSTABLE TOWN COUNCIL ITEM

ITEM# 2023-018
INTRO: 09/01/2022

SUMMARY

TO: Town Council
FROM: Ann Quirk, Town Clerk
THROUGH: Mark S. Ells, Town Manager
DATE: August 18, 2022
SUBJECT: Resolve authorizing the Town Manager or the Police Chief as his designee to assign Police Officers at polling places

BACKGROUND: On June 22, 2022, Chapter 92 of the Acts of 2022, the election reform law referred to as the “VOTES Act”, was signed into law by Governor Baker. The VOTES Act makes many of the changes from the pandemic permanent (i.e., Vote by Mail and Early In-Person Voting). In addition, the assignment of police officers at polling places, which was previously the responsibility of the Chief of Police, is now the responsibility of the Town Council.

The Town Clerk is requesting that the Town Council delegate to the Town Manager or to the Police Chief as his designee the responsibility given to the Council in Section 13 of Chapter 92 of the Acts of 2022 to detail a sufficient number of police officers or constables for each building that contains the polling places for one or more precincts at every election therein to preserve order and to protect the election officers and supervisors from interference with their duties and to aid in enforcing the laws relating to elections to the Chief of Police.

FISCAL IMPACT: No change.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends approval of this item.

STAFF ASSISTANCE: Karen L. Nober, Town Attorney

B. NEW BUSINESS (May be acted upon) (Majority Vote)

BARNSTABLE TOWN COUNCIL ITEM

**ITEM# 2023-019
INTRO: 09/01/2022**

2023-019 AUTHORIZATION TO EXPEND A FISCAL YEAR 2023 911 DEPARTMENT SUPPORT AND INCENTIVE GRANT IN THE AMOUNT OF \$270,026 FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 911 Department Support and Incentive Grant from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security in the amount of **\$270,026** for the purpose of funding overtime costs associated with shift shortages in the 911 center and a portion of the base salaries civilian dispatchers working in the 911 center.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Rationale
- ___ Council Discussion
- ___ Vote

BARNSTABLE TOWN COUNCIL ITEM

ITEM# 2023-019
INTRO: 09/01/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Matthew K. Sonnabend, Chief of Police
DATE: August 08, 2022
SUBJECT: Authorization to expend a Fiscal Year 2023 911 Department Support and Incentive Grant in the amount of **\$270,026** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security

BACKGROUND: The Police Department applied for and was awarded a 911 Support and Incentive Grant from the Commonwealth of Massachusetts, executive Office of Public Safety and Security, State 911 Department in the amount of \$270,026.00. The Barnstable Police Department serves as a primary Public Safety Answering Point (PSAP) in that it receives all categories of 911 calls (Fire, Police & Medical Emergency) and then dispatches to the appropriate service according to the type of call. Additionally, Emergency Medical Dispatch continues to be administered by the Barnstable Police Department throughout the duration of the call, in keeping with State 911 regulations. Eligible entities for this grant are primary, regional and regional secondary PSAPS and Regional Emergency Communications Centers (RECC). Additional monies are available under the grant guidelines pertinent to this grant, because the Barnstable Police Department serves as a Primary PSAP and also takes cell phone calls. The Barnstable Police Department proposes that this funding be used to fund personnel costs incurred in the operation of the department's 911 Telecommunications Center.

ANALYSIS: The acceptance of this grant will allow the Department to place qualified personnel in the communications center in order to provide adequate staffing to that area without incurring undo personnel expenses. As approved in the Fiscal Year 2022 Personnel Budget this grant will fund the base pay and/or overtime of 911 EMD certified civilian dispatchers up to the funding limit of \$270,026.00.

FISCAL IMPACT: This is a reimbursement grant for personnel costs. The town must expend the funds upfront and subsequently submit for reimbursement. The elimination of this source of grant funding would have a direct impact on future General Fund budgets, as the cost would still remain a mandatory recurring operational expense and therefore would have to be replaced with general fund revenue. All costs associated with this grant contract must be completed by June 30, 2022.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends acceptance of this grant.

STAFF ASSISTANCE: Matthew K. Sonnabend, Chief of Police; Anne Spillane, Director, Finance & Support Services; Lena Bevilacqua, Administrative Assistant to Investigative Services / Police Grant Coordinator

B. NEW BUSINESS (May be acted upon) (Majority Vote)

BARNSTABLE TOWN COUNCIL ITEM

**ITEM# 2023-020
INTRO: 09/01/2022**

**2023-020 AUTHORIZATION TO EXPEND A FISCAL YEAR 2023 STATE 911
DEPARTMENT TRAINING GRANT IN THE AMOUNT OF \$22,743.95 FROM
THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF
PUBLIC SAFETY AND SECURITY**

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 State 911 Department Training grant in the amount of **\$22,743.95** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security for the purpose of funding costs associated with the mandatory training of all 911 dispatchers who perform emergency dispatch operations.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

BARNSTABLE TOWN COUNCIL ITEM

ITEM# 2023-020
INTRO: 09/01/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Matthew K. Sonnabend, Chief of Police
DATE: August 08, 2022
SUBJECT: Authorization to expend a Fiscal Year 2023 State 911 Department Training Grant in the amount of **\$22,743.95** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security

BACKGROUND: The Department has been awarded a grant in the amount of \$22,743.95 relative to our role as a primary Public Safety Answering Point (PSAP) to fund the training and certification of enhanced 911 telecommunicators, including emergency medical dispatch (EMD).

This grant will fund 16 hours each of continuing education courses as required by law in such areas as CPR, EMD Recertification and specialized dispatch training on other topics including active shooter, domestic violence and suicide for 14 telecommunicators. Only telecommunicators who are trained/certified in basic telecommunications and EMD can work in the dispatch area and must complete 16 hours of continuing education annually. The grant will also fund the training costs associated with the initial training of newly hired civilian dispatchers.

ANALYSIS: Acceptance of this grant will enable the department to fulfill their training obligations as a primary PSAP as mandated by State 911.

GRANT DETAIL: \$22,743.65 will be directed to pay for class fees and personnel costs associated with the training.

FISCAL IMPACT: This is a reimbursement grant for all training costs, materials and overtime. The town must expend the funds upfront and subsequently submit for reimbursement. The elimination of this source of grant funding would have a direct impact on future General Fund budgets, as the cost would still remain a mandatory recurring operational expense and therefore would have to be replaced with general fund revenue. All costs associated with this grant contract must be completed by June 30, 2023.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends acceptance of this grant.

STAFF ASSISTANCE: Matthew K. Sonnabend, Chief of Police; Anne Spillane, Director, Finance & Support Services; Lena Bevilacqua, Administrative Assistant to Investigative Services / Police Grant Coordinator

B. NEW BUSINESS (May be acted upon) (Majority Vote)

BARNSTABLE TOWN COUNCIL ITEM

**ITEM# 2023-021
INTRO: 09/01/2022**

2023-021 AUTHORIZATION TO EXPEND A FISCAL YEAR 2023 STATE 911 DEPARTMENT EMERGENCY MEDICAL DISPATCH GRANT IN THE AMOUNT OF \$16,584.46 FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 State 911 Department Emergency Medical Dispatch Grant in the amount of **\$16,586.46** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security for the purpose of funding costs associated with emergency dispatch operations.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Rationale
- ___ Council Discussion
- ___ Vote

BARNSTABLE TOWN COUNCIL ITEM

ITEM# 2023-021
INTRO: 09/01/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Matthew K. Sonnabend, Chief of Police
DATE: August 8, 2022
SUBJECT: Authorization to expend a Fiscal Year 2023 State 911 Department Emergency Medical Dispatch grant in the amount of **\$16,584.46** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security

BACKGROUND: This grant will fund an annual software maintenance contract with PowerPhone in the amount of \$319.60; an annual Emergency Medical Dispatch medical director contract with Cape & Islands Emergency Medical Services in the amount of \$6,500; and the costs of 160 hours of overtime to complete quality assurance oversight and call review as required by State 911 in the amount of \$9,764.86. The total value of the grant is \$16,584.46.

ANALYSIS: Acceptance of this grant will enable the department to fulfill their obligations as a primary PSAP relative to the performance of Emergency Medical Dispatch, as mandated by State 911.

FISCAL IMPACT: This is a reimbursement grant for all contract costs and overtime. The town must expend the funds upfront and subsequently submit for reimbursement. The elimination of this source of grant funding would have a direct impact on future General Fund budgets, as the cost would still remain a mandatory recurring operational expense and therefore would have to be replaced with general fund revenue. All costs associated with this grant contract must be completed by June 30, 2023.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends acceptance of this grant.

STAFF ASSISTANCE: Matthew K. Sonnabend, Chief of Police; Anne Spillane, Director, Finance & Support Services; Lena Bevilacqua, Administrative Assistant to Investigative Services / Police Grant Coordinator

B. NEW BUSINESS (First Reading) (Refer to Second Reading 09/15/2022)

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-022
INTRO: 09/01/2022**

2023-022 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION:

RESOLVED: That the Town Council appoints the following individuals to a multiple-member Board/Committee/Commission: **Airport Commission:** Mark Guidod, as a regular member, to a term expiring 06/2025; **Human Services Committee:** Kimberly Crocker Crowther as a representative member to a term expiring 06/2025; **Land Acquisition and Preservation Committee:** Katherine Gulliver, as a regular member to a term expiring 06/2025

SPONSOR: Appointment Committee Members

DATE	ACTION TAKEN
_____	_____
_____	_____

- ___ Read Item
- ___ Rationale
- ___ Council Discussion
- ___ Vote

B. NEW BUSINESS (Refer to Planning Board)

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-023
INTRO: 09/01/2022**

2023-023 AMENDING THE CODE OF THE TOWN OF BARNSTABLE, PART I, GENERAL ORDINANCES, ARTICLE III, §240-39 BY REPEALING AND REPLACING THE SHOPPING CENTER REDEVELOPMENT OVERLAY DISTRICT

ORDERED: That the Code of the Town of Barnstable, Part I, General Ordinances, Chapter 240 Zoning, Article III, § 240-39 Shopping Center Redevelopment Overlay District be amended by deleting § 240-39 in its entirety and inserting the following new § 240-39 in its place:

“§ 240-39. Shopping Center Redevelopment Overlay District.

A. Purposes.

1. The purpose of this § 240-39 is to permit the renovation and redevelopment of a large-scale integrated retail shopping and mixed-use center on a large site with convenient highway access. The Shopping Center Redevelopment Overlay District is established as a special district which overlays another nonresidential zoning district or districts (including a Groundwater Protection Overlay District).
2. The Shopping Center Redevelopment Overlay District permits the redevelopment and expansion of a shopping center subject to the specific regulations and requirements contained in this § 240-39. If there is an inconsistency between the provisions of this Overlay District Section 240-39 and the underlying zoning district, even where the Overlay District provisions are less stringent than provisions of the underlying zoning district, the provisions of this Overlay District section 240-39 shall govern. The regulations of this § 240-39 relating to use, building and lot dimensions, development intensity, parking, signage and advisory site plan review shall apply only to a regional shopping center, and not to any other use that is allowed or permitted in the underlying zoning district.
3. The provisions of this § 240-39 are designed to assure that all development activities associated with a regional shopping center will be carried out so as to provide for and maintain:
 - (a) Protection of neighboring properties against harmful effects of uses on the development site;
 - (b) Protection of neighboring properties against harmful effects of uses on the development site;
 - (c) Convenience and safety of vehicular and pedestrian movement within the development site and in relation to adjacent streets, properties or improvements;
 - (d) Satisfactory methods of stormwater management and groundwater recharge shall be provided with due regard to the protection of the Town's groundwater resources;

- (e) Satisfactory methods for storage, handling and disposal of sewage, refuse and other wastes resulting from the normal operations of the establishments on the development site;
- (f) Convenience and safety of off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishments on the development site;
- (g) Adequate off-street parking and traffic mitigation measures that will enhance the efficiency of the transportation system taking into consideration the overall Town traffic needs.
- (h) Harmonious relationship to the terrain and to existing buildings in the vicinity of the development site; and
- (i) Attractive and functional design with due regard to the existing conditions of the development site and the use thereof for a regional shopping center, in order to promote the interests of the community.

B. Location. The boundary of the Shopping Center Redevelopment Overlay District is shown on a map of land entitled "Shopping Center Redevelopment Overlay Zoning District" filed with the Town Clerk, which map, together with all explanatory matter thereon, is hereby incorporated in and made a part of this chapter.

C. Relationship to underlying districts and regulations.

(1) The Shopping Center Redevelopment Overlay District shall overlay all underlying districts so that any parcel of land lying in a Shopping Center Redevelopment Overlay District shall also lie in the zoning district or districts in which it is otherwise classified by this chapter.

(2) All regulations of the underlying zoning district(s) shall apply within the Shopping Center Redevelopment Overlay District to the extent that they are not inconsistent with the specific provisions of this § 240-39. To the extent the provisions of this § 240-39 are in conflict with or are inconsistent with other provisions of this chapter, the provisions of this § 240-39 shall govern and prevail even if such other provisions are more restrictive than those set forth in this § 240-39.

D. Definitions. The following definitions shall be applicable to land and its use within the Shopping Center Redevelopment Overlay District:

ADVISORY SITE PLAN REVIEW - The process set forth in § 240-39L of this chapter, and shall not constitute a development permit within the meaning of the Cape Cod Commission Act (Chapter 716 of the Acts of 1989) or the Regional Policy Plan promulgated pursuant thereto.

AMUSEMENT USES -The principal use of stores or common areas in a regional shopping center for the operation of a coin-operated video arcade, game room, indoor playground, bowling alley or similar use (but restaurant and theater uses and amusement uses that are accessory to retail uses shall not constitute amusement uses).

GROSS FLOOR AREA - The meaning set forth in § 240-128 of this chapter.

GROSS LEASABLE AREA - Gross floor area, exclusive of mall areas, stairs, escalators, elevators, utility, storage and equipment rooms, mall offices, exit and service corridors, toilet rooms, maintenance areas, and mezzanine areas not used for the public sale or display of goods or services.

HOTEL – One or more buildings providing temporary lodging accommodations offered to the public on a daily rate for compensation. The building or buildings have an interior hall and lobby with access to each room from such interior hall or lobby, supervised by a person in charge at all hours. Accessory uses may include a restaurant, conference center facility, meeting rooms, health club and other customary uses.

INITIAL REDEVELOPMENT The expansion of existing improvements within the Shopping Center Redevelopment Overlay District which increases the gross floor area of all buildings within the district above that which is in existence on January 1, 1996, by 50,000 square feet of gross floor area or more in the aggregate pursuant to a special permit issued under § 240-39N hereof. ³

MEZZANINE(S) - An intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than 10% of the gross floor area of the store or area of the building in which the level or levels are located. Mezzanines which are not used for the public sale or display of goods shall not be treated as an additional story for purposes of calculating maximum building height. Mezzanine space may be used for storage and for backroom office functions incident to the operation of gross floor area within the regional shopping center, but shall not be rented for such purposes to persons not operating gross floor area within the regional shopping center. Mezzanines which are used for the public sale or display of goods shall be treated as gross leasable area.

MULTIFAMILY DWELLING - A structure containing three or more dwelling units offered for sale or rent, each of which shall contain separate living, sleeping, cooking, and bathroom facilities for the families residing there.

OFFICE – Includes professional, business, dental and/or medical offices, which are defined as a room, or group of rooms used for conducting the affairs of a business, service industry, or government entity.

REDEVELOPMENT AREA - Land within the boundaries of the Shopping Center Redevelopment Overlay District, which is used or proposed for use as part of a regional shopping center, and encompassing one or more individual lots on which the regional shopping center will be situated.

REGIONAL SHOPPING CENTER - A concentration of stores and establishments devoted to retail shopping center uses and amusement uses including an enclosed structure (which may consist of several buildings) containing a total of not less than 500,000 square feet of gross floor area and located on a redevelopment area, together with ancillary utility facilities, parking areas and driveways, landscaped areas, and stormwater detention facilities. A regional shopping center may also contain offices, hotels, and multifamily dwellings. A regional shopping center may consist of one or more lots and one or more buildings under separate ownership provided that:

(1) The lots and buildings are subject to an operating agreement or leasehold arrangements, provided that the areas used in common, including the central enclosed mall area, the parking structures and the exterior parking and circulation areas, will be under integrated management; and

(2) The separate lots and buildings are developed with a unified approach to architectural and landscape design, pedestrian ingress and egress, parking, truck loading, vehicular entrances and exits, drainage, groundwater recharge and utilities.

³ Editor's Note: The former definition of "major store," which immediately followed this definition, was repealed 1-17-2019 by Order No. 2019-064.

RETAIL SHOPPING CENTER USES — A concentration of retail stores and service establishments, including restaurants, movie theaters and such other uses as are customarily found in a regional shopping center, together with ancillary utility facilities, parking areas and driveways, landscaped areas, and stormwater detention facilities. Retail shopping center uses may include one area devoted to outdoor, tent-type sales of home and garden goods, provided that any such area is operated incident to a retail store having not less than 40,000 square feet of gross floor area and occupies not more than 5,000 square feet of area.

E. Application of requirements.

- (1) A redevelopment area may consist of more than a single building lot, and in such event the requirements of this chapter shall not be applied to individual building lots, but shall be applied to the entire redevelopment area as if the redevelopment area were a single building lot notwithstanding the fact that the building lots within the redevelopment area may be in different ownership.
- (2) The regional shopping center and other improvements within the redevelopment area may be developed in phases and may be developed and occupied under one or more building permits and occupancy permits.
- (3) The provisions of this § 240-39 shall not apply to any expansion of existing improvements within the Shopping Center Redevelopment Overlay District until the exercise of rights under a special permit issued under § 240-39N with respect to the initial redevelopment, and any such expansion which does not constitute the initial redevelopment shall be subject to all of the requirements of the underlying zoning district(s) including, without limitation, the requirement of a special permit for certain uses and structures within the district. Following the exercise of rights under a special permit issued under § 240-39N with respect to the initial redevelopment, this § 240-39 shall apply to all improvements thereafter constructed within the Shopping Center Redevelopment Overlay District.

F. Permitted and prohibited uses.

- (1) The following uses are permitted by right in the Shopping Center Redevelopment Overlay District:
 - (a) Retail Shopping Center Uses.
 - (b) Office.
 - (c) Hotels.
 - (d) Multifamily Dwellings.
 - (e) Amusement uses, provided that no more than 75,000 square feet of gross leasable area in a regional shopping center shall be devoted to amusement uses unless a special permit is issued therefor by the Zoning Board of Appeals.
- (2) The following uses are prohibited in the Shopping Center Redevelopment Overlay District:

- (a) All uses prohibited in § 240-35F (2) [GP Groundwater Protection Overlay District] of this chapter.
- (b) Parking and/or storage of transport vehicles for fuel, including but not limited to oil, coal and gas.
- (c) Parking and/or storage of transport vehicles for toxic and/or hazardous substances.
- (d) Drive-through restaurant or drive-through bank, except that a drive-through bank shall be permitted in so much of the Shopping Center Redevelopment Overlay District as lies within the underlying Highway Business District, subject to the special permit provisions of § 240-39N and a drive-through restaurant may be permitted only on that area within the SCROD identified as "Drive-Through Restaurant Sub Zone" as shown on the map entitled "Shopping Center Redevelopment Overlay District Amendment,"⁴ dated February 20, 2015, subject to the special permit provisions of § 240-39N.
- (e) Gasoline and oil filling stations.
- (f) Casinos and other gambling establishments (other than the incidental sale of lottery tickets as part of a use otherwise permitted in the Shopping Center Overlay District).

G. Bulk and dimensional regulations.

(1) Land located within the Shopping Center Redevelopment Overlay District and used for a regional shopping center shall be subject to the dimensional controls set forth below:

- (a) Minimum area of redevelopment area: 50 acres.
- (b) Minimum lot size (individual building lots): none.
- (c) Minimum lot frontage (individual building lots): 20 feet.
- (d) Minimum side, front and rear yards (other than at the perimeter of the redevelopment area): none.
- (e) Minimum front yard setback (at perimeter of the redevelopment area): 30 feet.

[1] One hundred feet along Iyannough Road/Route 132 Road except 50 feet along that portion of Route 132/Iyannough Road on that area within the SCROD identified as "Drive-Through Restaurant Sub Zone."

[2] Within 100 feet of Route 28/Falmouth Road, the minimum setback shall be 20 feet, but there shall be a maximum setback of 50 feet.

- (f) Minimum side and rear yards (at perimeter of redevelopment area): 30 feet.
- (g) Maximum lot coverage as percentage of lot area of redevelopment area: 50%.
- (h) Maximum building height:
 - (1) The maximum building height for retail shopping center uses shall be 42.5 feet or two stories, whichever is lesser.
 - (2) The maximum building height for hotel and multifamily dwelling uses shall be 55 feet or four stories, whichever is lesser.
 - (3) The maximum building height may be increased by special permit issued by the Zoning Board of Appeals under § 240-39N.

⁴ Editor's Note: The map is on file in the office of the Town Clerk.

(2) Except as specifically stated to the contrary in Subsection G(1), the bulk and dimensional requirements set forth therein shall be applied to a redevelopment lot as if it were one lot, even though it may be comprised of several lots in different ownerships. More than one building may be located on a single lot within the Shopping Center Redevelopment Overlay District.

(3) Skylights, mechanical penthouses, rooftop mechanical features, and architectural features not designed for human occupancy (collectively, the "special features") shall be excluded in determining the height of any building within a regional shopping center. However, in no case shall such special features exceed ten (10) feet above the height of the building absent special permit relief issued pursuant to § 240-39N.

H. Maximum increase in gross leasable area. Retail shopping center uses within a regional shopping center shall not exceed 1,200,000 square feet of gross floor area within the redevelopment area, measured on an aggregate basis, unless the Zoning Board of Appeals has issued a special permit in accordance with the provisions of this § 240-39N. The maximum gross floor area of 1,200,000 square feet set forth above shall be reduced by 20,000 square feet of gross floor area for every acre by which the total area of the redevelopment area is less than 59 acres. For purposes of this § 240-39, the floor area of parking structures shall not be treated as gross floor area or gross leasable area.

I. Limitation on impervious surfaces; outdoor recreational areas; buffer strip landscaping.

(1) Impervious Surfaces. No more than 70% of the total redevelopment area shall be rendered impervious by the installation of buildings, structures and paved surfaces, measured on an aggregate basis, unless groundwater mitigation land is provided at a one-to-one ratio for any overage of impervious cover in the redevelopment area. Groundwater mitigation land shall mean land located within the same or a more restrictive Groundwater Protection District in a zone of contribution to the well fields operated as of January 1, 1996 by the Barnstable Water Company and/or the Barnstable Fire District which land is permanently restricted by or on behalf of the owners of the redevelopment area to be left in an open and natural state. However, even with the dedication of groundwater mitigation land, no more than 82.7% of the total redevelopment area shall be so rendered impervious. Rooftop and surface water drainage systems shall be designed and maintained in accordance with the standards set forth in § 240-39L(4)(j). For purposes of this § 240-39I, roadways (other than interior access drives) built in accordance with municipal specifications (as the same may be modified or waived by the Planning Board) and used as public way(s) or private way(s) shall not be treated as impervious surfaces and shall not be treated as part of the area of the district for purpose of such calculation.

(2) Outdoor Recreational Areas. Any new development or redevelopment within the Shopping Center Redevelopment Overlay District that proposes a hotel or multi-family use shall include an outdoor

recreational area for use by hotel guests or multi-family residents and visitors. Outdoor recreational areas should consist of a contiguous space containing a minimum width of 15 feet and a minimum tree canopy of 10%.

(3) Landscaped Buffer. As a part of the portion of the redevelopment area to be maintained in pervious condition, a landscaped buffer strip of variable width shall be provided and maintained along the redevelopment area's frontage on Route 28, Route 132 and any extension of Enterprise Road which is laid out in conjunction with the redevelopment. Said landscaped buffer strip shall be a minimum of 15 feet in depth from the property line. The design of this buffer strip may include sidewalks/bikepaths, berms, indigenous planting materials and other ground cover. Cross over

access drives and signs provided for herein shall be permitted in the landscaped buffer strip, but parking areas are prohibited. All other roadway frontages shall have a landscaped buffer strip of at least 10 feet.

J. Parking and loading. Uses within the Shopping Center Redevelopment Overlay District shall be subject to the following minimum off-street parking and loading requirements:

- (1) Required off-street parking for retail shopping center uses within a regional shopping center shall be provided at a ratio of not less than 4.0 parking spaces for each 1,000 square feet of gross leasable area.
- (2) Required off-street parking for office uses within a regional shopping center shall be provided at a ratio of not less than 1.0 parking space for each 300 square feet of gross leasable area plus 1.0 parking space per separate suite.
- (3) Required off-street parking for hotel uses within a regional shopping center shall be provided at a ratio of not less than .75 parking spaces per guest unit.
- (4) Required off-street parking for multifamily dwellings within a regional shopping center shall be provided at a ratio of not less than 1.5 parking space per dwelling unit.
- (5) The foregoing parking requirements may be reduced by Special Permit from the Zoning Board of Appeals if lesser off-street parking is shown to be adequate given such special circumstance as:
 - (a) Use of a common parking area by different uses having different peak hours of demand.
 - (b) Habits or other characteristics of occupants which result in reduced auto usage.
 - (c) Characteristics of use invalidating normal methods of calculating parking demand.
 - (d) Supplementary parking provided off premises.
 - (e) Demonstrated measures to lower parking demand to the regional shopping center.
- (6) All off-street parking spaces required by this § 240-39J shall be located within the redevelopment area, except that parking spaces may be located outside of the redevelopment area on another non-residentially zoned lot provided (a) such other lot is located within 300 feet of the redevelopment area on which the use for which such spaces are required is located, and (b) such lot is in common ownership with, or subject to a long term lease or easement for the benefit of, all or a portion of the redevelopment area. In addition, parking spaces may be located at such other locations as may be approved by the Zoning Board of Appeals as part of any Traffic Demand Management Plan which shall be incorporated as part of the special permit issued under § 240-39N hereof.
- (7) Each off-street parking space shall have minimum dimensions of nine by 18 feet, excluding the driveway to such space. Parking stalls within the Shopping Center Redevelopment Overlay District which are designed at 90° shall have the following minimum dimensions:
 - (a) Ninety-degree parking dimensions:

Stall width: nine feet, zero inches.
Stall length: 18 feet, zero inches.
Aisle width: 24 feet, zero inches.
Bay width: 60 feet, zero inches.

- (b) All parking stalls which are designed at angles other than 90° shall comply with the minimum parking space dimensions set forth in § 240-104 of this chapter.

(8) Parking Lot Landscaping

- (a) Application. This section shall apply to any new development or redevelopment within the Shopping Center Redevelopment Overlay District in which the limit of work exceeds one (1) acre (43,560 square feet). This section shall not apply to ordinary maintenance or repairs to buildings or parking areas within the Shopping Center Redevelopment Overlay District.
- (b) Procedure. Any project that satisfies the triggering requirements set forth in Subsection (a) above shall delineate on the accompanying plans the proposed limit of work. Only parking and loading areas within the limit of work shown on the plans shall be subject to the minimum requirements set forth below.
- (c) The surfaced area of a parking lot and all entrance and exit drives shall be set back from the side and rear lot lines, by a landscaped side and rear yard buffer at least five (5) feet in width.
- (d) A ten-foot minimum, landscaped perimeter buffer shall be maintained between a building and the surfaced area of a parking lot or drive, except at entrances, building loading and utility locations. A walkway may be located within the landscaped perimeter buffer, provided that the landscape area is not reduced to less than 40% of the area of the perimeter buffer.
- (e) At least 7% of the interior of a parking lot with 21 or more parking spaces shall be landscaped. Planting along the perimeter of a parking area shall not be considered as part of the 7% interior landscaping. Interior landscaped islands shall be distributed throughout the parking lot. At least one tree with a minimum 2.5-inch caliper or larger shall be provided per twelve spaces or any portion thereof, located within interior landscaped islands. Existing naturally occurring trees in good condition located in landscaped islands shall be credited towards this requirement only in those areas where the existing trees are located. No landscaped island shall have an overall width of less than six feet. A walkway may be located within an interior landscaped island, provided that the walkway is separated from the surfaced area of the drive or parking lot by a minimum of four feet of landscaped area. These interior landscape requirements shall not apply to interior parking spaces, parking garages, or parking lots used for sale and/or display of motor vehicles.
- (f) Where landscaped setbacks to parking areas, landscaped buffers to buildings, and landscaped islands within parking areas are required in Subsections (c) through (e) above, the following requirements shall apply:
- i. Existing natural trees and shrubs shall be retained within landscaped islands, and side and rear yard landscaped buffers to parking lots and drives wherever possible and supplemented with other landscape materials, in accordance with

accepted landscape practices. Specimen trees shall be retained and, if practical, relocated within the site where necessary. Where natural vegetation cannot be retained, these areas shall be landscaped with a combination of low-maintenance grasses, trees and shrubs commonly found on Cape Cod. A list of recommended plant materials is on file with the Town Clerk and may also be obtained from the Planning Department. Plant materials shall be of sufficient size and density to create an attractive appearance. Brick or stone mulch shall not be used in place of ground covers in landscaped islands. Where mulch is used, it shall be in such a manner that it will not wash into leaching catch basins located in a parking lot, or adjacent roadway.

- ii. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX. No occupancy certificate shall be issued until the landscape plan has been implemented according to an approved site plan, except that the Building Commissioner may issue an occupancy certificate prior to installation of landscape materials, provided that the applicant posts security with the Town for 150% of the estimated cost of installation and plant materials.

- (g) Landscape buffers and islands may be reduced by an amount sufficient to ensure the creation of a functional, attractive parking lot, subject to approval of site plan review.

K. Signs in the Shopping Center Redevelopment Overlay District. Only the following types of signs shall be permitted in the Shopping Center Redevelopment Overlay District:

(1) Large freestanding exterior signs:

(a) Maximum number: three signs.

(b) Maximum height: not to exceed 22 feet above grade.

(c) Maximum area: not to exceed 170 square feet per side exclusive of structures holding the sign. Reasonable efforts shall be exercised to minimize the size of any such supporting structures.

(2) Wall signs identifying uses permitted by right in the Shopping Center Redevelopment Overlay District having gross leasable area of greater than 25,000 square feet or having exterior public entrances; the food court; and the regional shopping center, provided that no wall sign shall extend higher than the top of the parapet wall:

(a) Maximum letter height: five feet for signs accessory to anchor and major stores, and four feet for other such signs. This letter height restriction shall not apply to emblems, logos, or other designs associated with the sign display.

(b) Maximum area:

[1] Anchor stores (for each tenant with a gross leasable area of 45,000 square feet or more): The maximum sign area for any one display shall not exceed 200 square feet for the first sign; the maximum sign area for any additional display shall be 150 square feet. There shall only be one sign display per eligible elevation. An additional sign allowance of 30 square feet shall be provided for entrance door and awning signs.

[2] Major stores (for each tenant with a gross leasable area of 12,000 square feet or more): The maximum sign area for any one display shall not exceed 120 square feet. There shall only be one sign display per eligible elevation. An additional sign allowance of 15 square feet shall be provided for entrance door and awning signs.

[3] In-line store (for each tenant with an exterior entrance): The maximum sign area for any one display shall not exceed 50 square feet for tenants with storefronts less than 50 linear feet in length. An additional square foot of sign area shall be allowed for each linear foot of storefront above 50; the maximum sign area for any one display shall not exceed 75 square feet. There shall only be one sign display per tenant. An additional sign allowance of 10 square feet shall be provided for entrance door and awning signs.

[4] Mall entrances: The maximum sign area for any one display shall not exceed 50 square feet. There shall only be one sign per each eligible mall entrance.

(3) Wall signs designating loading areas, service courts, employee entrances and similar areas:

- (a) Maximum number: no limit.
- (b) Maximum mounting height above ground: eight feet.
- (c) Maximum area: six square feet.

(4) Freestanding directional signs indicating access and egress to the site, as well as direction to department stores, services or other areas within the regional shopping center:

- (a) Maximum number: three times the total number of vehicular entrances.
- (b) Maximum height to top of sign above ground: seven feet.
- (c) Maximum area: 16 square feet per side.

(5) Hanging parking structure signs at vehicular entrances to parking structures:

- (a) Maximum number: one per vehicle ramp access point to parking structures.
- (b) Maximum height: one foot, six inches.
- (c) Maximum area: 16 square feet per side.
- (d) In addition, directional and parking area identification signs shall be permitted within the parking structures, and safety/height limitation markings shall be permitted on the exterior of the parking structures.

(6) Parking lot identification signs.

- (a) Maximum number: one per light post.
- (b) Maximum size: three square feet per side.

(7) ⁵Banners which do not advertise particular stores or articles for sale shall be permitted.

(8) In addition to the signs otherwise permitted under this § 240-39K, wall signs for freestanding buildings, including hotels, multifamily dwellings, and movie theaters (meaning buildings which are not physically connected to the enclosed mall of the regional shopping center) which are otherwise permitted in the underlying zoning district under this chapter shall be permitted in the Shopping Center Redevelopment Overlay District.

(9) In addition to the wall signs permitted under § 240-39K(2), one exterior wall sign for each movie theater, hotel, and multifamily dwelling located within a regional shopping center shall be permitted with a size of up to 150 square feet.

(10) In addition to the signs permitted under § 240-39K(1) hereof, up to two freestanding exterior signs for each movie theater, hotel, and multifamily dwelling located within a regional shopping center shall be permitted as follows:

(a) Maximum number: two.

(b) Maximum height: 14 feet above grade.

(c) Maximum area: not to exceed 175 square feet per side, exclusive of structures holding the sign.

(11) In addition to the signs permitted under § 240-39K (1) hereof, one freestanding exterior sign shall be permitted on that area within the SCROD identified as "Drive-Through Restaurant Sub Zone," provided that the maximum height of freestanding signs does not exceed 12 feet above grade and the maximum area of the freestanding signs does not exceed 50 square feet per side, exclusive of the structure holding the sign.

(12) No special permit shall be required for signs that are in conformance with the standards set forth above.

L. Advisory site plan review and provisions.

(1) Findings. Owing to their physical characteristic and the nature of their operations, a regional shopping center may affect neighboring properties and adjacent sidewalks and streets. It is in the interest of the community to promote functional and aesthetic design, construction and maintenance of a regional shopping center and to minimize any harmful effects on surrounding areas.

(2) Purposes. The provisions of this section are designed to assure that all development activities associated with a regional shopping center will be carried out in furtherance of the purposes articulated in § 240-39A, taking into account the existing condition of the redevelopment area, the large-scale character of developments such as the regional shopping center, the customary site layout of regional shopping centers, and the necessity to permit natural light to illuminate the common areas of the regional shopping center (hereinafter referred to as the "design constraints").

⁵ Editor's Note: Former Subsection K(7), pertaining to electronic reader boards, which immediately preceded his subsection, was repealed 1-17-2019 by Order No. 2019-064. This order also provided for the redesignation of former Subsection K (8) through (13) as Subsection K (7) through (12).

(3) Advisory site plan review/when required. The provisions of this § 240-39L shall apply to development within the Shopping Center Redevelopment Overlay District in lieu of the site plan review provisions of Article IX of this chapter. At least 60 days prior to filing any DRI application with the Cape Cod Commission, the proponent of a regional shopping center shall make an informal filing with the Building Commissioner, in draft form, of such plans and materials relating to the DRI application as the proponent intends to file with the Commission with its DRI application and such relevant plans and materials relating to the MEPA process as are then available. Within 30 days following such informal submission, the Building Commissioner and other members of the Site Plan Review Committee established under Article IX of this chapter and such other Town staff as may be designated by the Building Commissioner shall review, comment upon and make recommendations with respect to the plans and materials so submitted, provided that the Building Commissioner shall have the right to extend such thirty-day period by an additional 30 days at the request of the Site Plan Review Committee. In conducting its review the Site Plan Review Committee shall consider the consistency of such plans and materials with the site development standards set forth in Subsection L(4) hereof. The informal filing and review described in this Subsection L (3) requires no approval and therefore does not constitute a development permit within the meaning of the Cape Cod Commission Act (Chapter 716 of the Acts of 1989) or the Regional Policy Plan promulgated pursuant thereto; however, the Cape Cod Commission shall be invited to have representatives participate in the advisory site plan review process.

(4) Site development standards.

(a) A reasonable effort shall be made to improve, conserve and protect natural features that are of some lasting benefit to the site, its environs and the community at large.

(b) Slopes which exceed 10% shall be protected by appropriate measures against erosion, runoff, and unstable soil, trees and rocks. Measures shall be taken to stabilize the land surface from unnecessary disruption. Such stabilization measures shall be the responsibility of the property owner.

(c) The placement of buildings, structures, fences, lighting and fixtures on each site shall not interfere with traffic circulation, safety, appropriate use and enjoyment of adjacent properties.

(d) At any driveway, a visibility triangle shall be provided in which nothing shall be erected, placed, planted or allowed to grow so as to materially impede vision from within motor vehicles between a height of three feet and eight feet above the average center-line grades of the intersecting street and driveway, said triangle being bounded by the intersection of the street line and the edges of a driveway in a line joining points along said lines 20 feet distant from their projected intersection.

(e) Adequate illumination shall be provided to parking lots and other areas for vehicular and pedestrian circulation. All illumination shall be directed and/or shielded so as not to interfere with traffic beyond the perimeter of the site.

(f) All areas designed for vehicular use shall be paved with a minimum of either 2 1/2 inches bituminous asphalt concrete, a six-inch portland cement concrete pavement, or other surface, such as brick or cobblestone, as approved by the Town Engineer.

(g) All parking spaces shall be arranged and clearly marked in accordance with the parking lot design standards contained in § 240-39J herein. Signs and pavement markings shall be used as appropriate to control approved traffic patterns.

(h) All utility service transmission systems, including but not limited to water, sewer, natural gas, electrical and telephone lines, shall, whenever practicable, be placed underground. Electric, telephone, cable TV, and other such utilities shall be underground, except for transformers, electric switching boxes or similar equipment and gas meters, which may be above ground.

(i) All surface water runoff from structures and impervious surfaces shall be disposed of on site, but in no case shall surface water drainage be across sidewalks or public or private ways. In no case shall surface water runoff be drained directly into wetlands or water bodies (except for drainage structures in place as of the effective date of this § 240-39). All drainage systems shall be designed to minimize the discharge of pollutants by maximizing appropriately designed vegetated drainage channels and sedimentation basins that allow for adequate settling of suspended solids and maximum infiltration (with due regard to the design constraints). Dry wells, leaching pits and other similar drainage structures may be used only where other methods are not practicable. Subject to ambient surcharge conditions, roof runoff shall be recharged to the ground via a system of dry wells and/or infiltration systems. Nontoxic roof materials shall be used to minimize the leaching of toxic materials to the groundwater. To minimize water utilization, all new plumbing fixtures shall be designed to meet water conservation measures as required under the State Building and Plumbing Codes. All such drainage structures shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants. All calculations shall be for a twenty-five-year storm and shall be reviewed by the Town Engineer. The materials submitted shall include provision for an appropriate maintenance program for such drainage structures to be implemented and maintained by the proponent. The materials submitted shall show adequate measures to mitigate pollution of surface or groundwater to minimize erosion and sedimentation. All drainage shall be designed so that all runoff shall be disposed of on site, groundwater recharge is maximized, and neighboring properties will not be adversely affected.

(j) The materials submitted shall describe estimated average daily and peak hour vehicle trips to be generated by the site and traffic flow showing adequate access to and from the site and adequate circulation within the site. The proponent of a regional shopping center will include in such materials reasonable measures to lower traffic demand to the regional shopping center such as, by way of example only, working with other major retailers along the 132 corridor to promote bus and shuttle bus activity, encouraging carpooling among employees, and/or similar measures, which materials shall be referred to as the "Traffic Demand Management Plan." Reasonable efforts shall be made to provide vehicular and pedestrian connections within the redevelopment area to adjoining properties devoted to retail use.

M. Affordable Housing Units. Notwithstanding any other provisions as may be set forth in this Zoning Ordinance, any multifamily dwelling development in the Shopping Center Redevelopment Overlay District shall comply with either subsection (1) or (2) below, whichever calculation results in a greater number of restricted units. If the total number of restricted units is the same under subsection (1) and subsection (2), then the subsection with the greater number of deed restricted affordable units for individuals and families with the lowest percentage of Area Median Income (AMI) shall be required. The determination as to which calculation applies shall be made at the time that development permits are sought for a proposed multifamily development.

(1) The provisions of the Town of Barnstable Code, Chapter 9, Inclusionary Affordable Housing Requirements in effect at the time development approvals are sought for any multifamily dwelling development within the SCROD; or

(2) Ten percent (10%) of the multifamily dwelling units shall be deed restricted as affordable units for individuals and families earning up to 65% of the area median income and an additional three percent (3%) of the multifamily dwelling units shall be deed restricted as affordable housing units for individuals and families earning up to 80% of the median income for the Town of Barnstable, as determined annually by the Department of Housing and Urban Development. The affordable units shall conform to all Department of Housing and Community Development (DHCD) standards that must be met to qualify these units for inclusion in the DHCD Subsidized Housing Inventory (SHI) as Local Initiative Program units.

(3) No certificate of occupancy permit shall be issued until recordation of the Regulatory Agreement and Declaration of Restrictive Covenants.

N. Special permit provisions.

(1) Special permit for regional shopping center.

(a) No building permit or occupancy permit shall be issued for any expansion of a regional shopping center which increases the gross floor area of the regional shopping center above that existing on the effective date of this § 240-39 by more than 50,000 square feet of gross floor area unless the Zoning Board of Appeals has issued a special permit approving such use in accordance with the provisions of this § 240-39N. In addition, no building permit or occupancy permit shall be issued for a drive-through bank or drive-through restaurant unless the Zoning Board of Appeals has issued a special permit or a modification of a special permit issued under this section, approving such use, subject to the provisions of this § 240-39N.

(b) A special permit may provide for phased development (and, if applicable, a projected phasing plan shall be provided to the Zoning Board of Appeals as part of the special permit process under § 240-39N). A special permit shall become void two years from the date of issue unless any construction work contemplated thereby (or first phase thereof, if applicable) shall commence and proceed in good faith continuously to completion, or, if no construction work is contemplated by the special permit, the use authorized thereby is commenced.

(c) Any work done in deviation from a special permit granted pursuant to this § 240-39N shall be a violation of this chapter, unless such deviation is approved in writing by the Zoning Board of Appeals. However, a special permit may be granted based upon plans showing one or more permissible building areas and/ or permissible parking structure areas, in which buildings and other structures are to be located, rather than with the locations of the buildings and other structures finally established. Provided the boundaries of such permissible building areas and/or permissible parking structure areas are approved by the Zoning Board of Appeals in connection with the special permit, once the special permit is granted, no separate approval of the Zoning Board of Appeals will be required for the actual location of the buildings or improvements within such permissible building areas and/or permissible parking structure areas [provided that no material change to the design or materials described in § 240-39N(2)(a) shall be made without the approval of the Zoning Board of Appeals.] The Zoning Board of Appeals may amend or modify a special permit upon the application of the developer of a regional shopping center and, if the Zoning Board of Appeals determines that such amendment or modification is minor in nature, such amendment or modification may be approved without a hearing upon the submission of plans and information that may, in the discretion of the Zoning Board of Appeals, be less extensive than the plans and information required in this § 240-39N. Amendments or modifications determined by the Zoning Board of Appeals not to be minor in nature shall require a public hearing.

(d) The purpose of the special permit for a regional shopping center is to assure that the development of a regional shopping center is carried out in a manner which is (1) consistent with the purposes set forth in § 240-39A hereof and the site development standards set forth in § 240-39L(4) hereof,

(2) consistent with the terms and conditions of any DRI permit issued by the Cape Cod Commission and the certificate of the Secretary of Environmental Affairs on the final environmental impact report, (3) with due regard given to the Design Guidelines for Cape Cod prepared by the Cape Cod Commission in light of the design constraints, and (4) consistent with such additional reasonable conditions as may be imposed by the Zoning Board of Appeals as are not inconsistent with the foregoing. The Zoning Board of Appeals shall grant a special permit for a regional shopping center upon its determination that the standards for the issuance of such special permit set forth in this Subsection M(1)(d) have been complied with, giving due regard to the design constraints.

(2) Required contents of special permit application. The application for a special permit under this § 240-39N shall include:

(a) Building elevation plans for all exterior facades of buildings and structures, at a scale of 1/16 inch equals one foot, or such scale as may be required by the Zoning Board of Appeals for detail drawings, indicating surface materials and colors, together with not less than three representative cross sections.

(b) A tabulation of the areas of the proposed site elements, including buildings (footprints and gross leasable area and gross floor area), parking structures and surface parking areas (square footage and number of parking spaces), stormwater management facilities, and landscaped areas (square footage, number of trees and other plantings).

(c) Updated versions of the materials submitted to the Building Commissioner in connection with the advisory site plan review process described in § 240-39L above.

(d) Any request for gross leasable area in excess of the use limitations set forth in § 240-39F (1) (e).

(e) Any request to permit the structure to exceed the maximum height limitation set forth in § 240-39G (1) (h).

(f) Any request to permit rooftop features to exceed the rooftop feature height limitation set forth in § 240-39G (3) (b).

(g) Any request to exceed the maximum allowable 1,200,000 square feet of gross leasable area for retail shopping center uses set forth in § 240-39H.

(h) Any request to permit a reduction in the required parking ratios under § 240-39J (5).

(i) All materials relating to any request to permit off-site parking under § 240-39J(6).

(j) A description of the operating agreement and/or leasehold agreements contemplated in the definition of "regional shopping center."

(k) Additional information as may be required by the Zoning Board of Appeals as reasonably necessary to making the determinations required by this section.

(3) Required procedures for special permit.

(a) At least two copies are required of all plans, drawings and written information. Copies of application materials shall also be submitted to the Zoning Board of Appeals electronically.

(b) The Zoning Board of Appeals may solicit the advice of any other Town agency or department it deems necessary to properly make the determinations required by this section.

(c) In issuing a special permit under this § 240-39N, the Zoning Board of Appeals shall give due regard to and shall not be inconsistent with the decisions and recommendations of the Cape Cod Commission as set forth in any DRI permit or similar approval.

(d) The Zoning Board of Appeals shall also include as a condition of its special permit the performance of any written commitments made by the developer of a regional shopping center to the Zoning Board of Appeals, the Planning Board or the Town Council intended to reduce or limit the impacts, financial or otherwise, of the regional shopping center on the Town. Such conditions shall be based on the written information furnished to the Zoning Board of Appeals by the Planning Board and Town Council. Such conditions shall be binding on the applicant for such special permit provided they are consistent with the provisions of Section 15 of Chapter 716 of the Acts of 1989 (the Cape Cod Commission Act).

(e) The Zoning Board of Appeals may include as a condition of its special permit that, prior to the issuance of a certificate of occupancy for the regional shopping center, the Building Commissioner shall be provided with evidence that the operating agreement and/or leasehold arrangements contemplated in the definition of "regional shopping center" are in place.

(f) If the proposed improvements which are the subject of an application for a special permit under this § 240-39N have not been subject to the review of the Cape Cod Commission because at the time of such application the Cape Cod Commission or the DRI process has been abolished, then the proposed improvements shall be subject to site plan review under Article IX of this chapter.”

SPONSOR: Councilor Jeffrey Mendes, Council Precinct 8

DATE

ACTION TAKEN

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-023
INTRO: 09/01/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Elizabeth Jenkins, Director, Planning & Development Department
DATE: August 18, 2022
SUBJECT: Amending the Code of the Town of Barnstable, Part I, General Ordinances, Article III, §240-39 by repealing and replacing the Shopping Center Redevelopment Overlay District.

BACKGROUND: Retail focused real estate requires constant evolution to meet ever changing market demands. Rapid changes in technology, resulting in the creation of e-commerce and online shopping, have intensified the significance of fundamental industry dynamics and presented an opportunity for embracing change. Shopping centers across the country are changing with the times to meet evolving customer needs. One major industry trend has focused on creating mixed use environments: incorporating varied uses within a traditional retail setting.

Cape Cod Mall has been evaluating how it can best adapt and update its spaces and strategies in this ever-changing retail environment. As part of that process, and in consultation with Town Planning and Development Staff, amendments are proposed to the Shopping Center Redevelopment Overlay District regulations. Collectively, the amendments would authorize a broader range of uses, ease parking requirements to allow for a more productive use of the property, create a more pleasant visitor experience with improvements to landscaping and pedestrian access, and promote the creation of new affordable housing.

RATIONALE: The Shopping Center Redevelopment Overlay District (SCROD) was created in 1996, when shopping malls consisted primarily of retail and restaurants. In its current form, the SCROD provisions prohibit both hotels/motels and multi-family dwellings. Given the Cape Cod Mall's desire to create a more mixed-use environment, one of the main goals of the proposed amendment is to expand the allowable uses within the SCROD to include multi-family dwellings, hotel uses and office uses, as defined in the proposed amendments. To accommodate the new, additional uses, the proposed amendment would increase the allowable building height for hotel and multi-family dwelling uses to four stories or 55 feet, whichever is lesser.

The proposed amendment also seeks to redefine the parking demand requirements. Currently, many of the parking spaces at Cape Cod Mall are underutilized and those areas could be redeveloped and put to a more productive use. Accordingly, the proposed amendment addresses the parking requirement for each of the proposed allowable uses and creates a special permit mechanism by which the requirement may be reduced upon meeting defined criteria.

Additionally, the proposed amendment modernizes the current landscape requirements. Modeled after Section 240-53 of the Ordinance, the proposed landscape provisions would apply to any new development or redevelopment within the SCROD in which the limit of work exceeds one acre. Thus, as the Mall is redeveloped, those portions would comply with the proposed parking lot landscape and buffer requirements.

Finally, the proposed amendment would require that any multifamily dwelling development within the SCROD would comply with: (i.) the Town of Barnstable Code, Chapter 9, Inclusionary Housing Requirements in effect at the time multifamily development is proposed *or* (ii) provide 10% of the units restricted to individuals or families at 65% of AMI and an additional 3% restricted to individuals or families at 80% AMI, whichever calculation method results in more restricted units. As the Town begins to evaluate the inclusionary ordinance and to make recommendations for possible amendments, the proposed language in the zoning amendment requires compliance with the ordinance as drafted (10% at 65% AMI and an additional 3% at 80% AMI) or the inclusionary ordinance that is in effect at the time of filing development permits, whichever is greater.

FISCAL IMPACT: Mayflower Cape Cod, LLC, owner of the Cape Cod Mall properties, is one of the largest taxpayers in the Town of Barnstable. In addition, the Cape Cod Mall is a major employer with nearly 1,000 individuals employed at the mall. The proposed amendment modernizes the SCROD zoning overlay language, allowing complementary uses and encouraging development of under-utilized portions of the property which will result in positive fiscal impact.

STAFF SUPPORT: Elizabeth Jenkins, Director of Planning & Development; Kate Maldonado, Assistant Director of Planning & Development, Jim Kupfer, Senior Planner

RED LINE VERSION

§ 240-39. Shopping Center Redevelopment Overlay District. [Added 4-24-1996]

A. Purposes.

1. The purpose of this § 240-39 is to permit the renovation and redevelopment of a largescale integrated retail shopping **and mixed-use** center on a large site with convenient highway access. The Shopping Center Redevelopment Overlay District is established as a special district which overlays another nonresidential zoning district or districts (including a Groundwater Protection Overlay District).
2. The Shopping Center Redevelopment Overlay District permits the redevelopment and expansion of a shopping center subject to the specific regulations and requirements contained in this § 240-39. **If there is an inconsistency between the provisions of this Overlay District Section 240-39 and the underlying zoning district, even where the Overlay District provisions are less stringent than provisions of the underlying zoning district, the provisions of this Overlay District section 240-39 shall govern which regulations and requirements shall govern even where they are inconsistent with or less restrictive than the other requirements of this chapter.** The regulations of this § 240-39 relating to use, building and lot dimensions, development intensity, parking, signage and advisory site plan review shall apply only to a regional shopping center, and not to any other use that is allowed or permitted in the underlying zoning district
3. The provisions of this § 240-39 are designed to assure that all development activities associated with a regional shopping center will be carried out so as to provide for and maintain:
 - (a) Protection of neighboring properties against harmful effects of uses on the development site;
 - (b) Protection of neighboring properties against harmful effects of uses on the development site;
 - (c) Convenience and safety of vehicular and pedestrian movement within the development site and in relation to adjacent streets, properties or improvements;
 - (d) Satisfactory methods of stormwater management and groundwater recharge shall be provided with due regard to the protection of the Town's groundwater resources;
 - (e) Satisfactory methods for storage, handling and disposal of sewage, refuse and other wastes resulting from the normal operations of the establishments on the development site;
 - (f) Convenience and safety of off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishments on the development site;
 - (g) Adequate off-street parking and traffic mitigation measures that will enhance the efficiency of the transportation system taking into consideration the overall Town traffic needs. **identified in the Barnstable/Yarmouth Transportation Study prepared by the Town in conjunction with the Town Local Comprehensive Plan;**
 - (h) Harmonious relationship to the terrain and to existing buildings in the vicinity of the development site; and
 - (i) Attractive and functional design with due regard to the existing conditions of the development site and the use thereof for a regional shopping center, in order to promote the interests of the community.

B. Location. The boundary of the Shopping Center Redevelopment Overlay District is shown on a map of land entitled "Shopping Center Redevelopment Overlay Zoning District" filed with the Town Clerk, which map, together with all explanatory matter thereon, is hereby incorporated in and made a part of this chapter.

C. Relationship to underlying districts and regulations.

(1) The Shopping Center Redevelopment Overlay District shall overlay all underlying districts so that any parcel of land lying in a Shopping Center Redevelopment Overlay District shall also lie in the zoning district or districts in which it is otherwise classified by this chapter.

(2) All regulations of the underlying zoning district(s) shall apply within the Shopping Center Redevelopment Overlay District to the extent that they are not inconsistent with the specific provisions of this § 240-39. To the extent the provisions of this § 240-39 are in conflict with or are inconsistent with other provisions of this chapter, the provisions of this § 240-39 shall govern and prevail even if such other provisions are more restrictive than those set forth in this § 240-39.

D. Definitions. The following definitions shall be applicable to land and its use within the Shopping Center Redevelopment Overlay District:

ADVISORY SITE PLAN REVIEW - The process set forth in § 240-39L of this chapter, and shall not constitute a development permit within the meaning of the Cape Cod Commission Act (Chapter 716 of the Acts of 1989) or the Regional Policy Plan promulgated pursuant thereto.

AMUSEMENT USES -The principal use of stores or common areas in a regional shopping center for the operation of a coin-operated video arcade, game room, indoor playground, bowling alley or similar use (but restaurant and theater uses and amusement uses that are accessory to retail uses shall not constitute amusement uses).

GROSS FLOOR AREA - The meaning set forth in § 240-128 of this chapter.

GROSS LEASABLE AREA - Gross floor area, exclusive of mall areas, stairs, escalators, elevators, utility, storage and equipment rooms, mall offices, exit and service corridors, toilet rooms, maintenance areas, and mezzanine areas not used for the public sale or display of goods or services.

HOTEL – One or more buildings providing temporary lodging accommodations offered to the public on a daily rate for compensation. The building or buildings have an interior hall and lobby with access to each room from such interior hall or lobby, supervised by a person in charge at all hours. Accessory uses may include a restaurant, conference center facility, meeting rooms, health club and other customary uses.

INITIAL REDEVELOPMENT The expansion of existing improvements within the Shopping Center Redevelopment Overlay District which increases the gross floor area of all buildings within the district above that which is in existence on January 1, 1996, by 50,000 square feet of gross floor area or more in the aggregate pursuant to a special permit issued under § 240-39M 39N hereof. 1

MEZZANINE(S) - An intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than 10% of the gross floor area of the store or area of the building in which the level or levels are located. Mezzanines which are not used for the public sale or display of goods shall not be treated as an additional story for purposes of calculating maximum building height. Mezzanine space may be used for storage and for backroom office functions incident to the operation of gross floor area within the regional shopping center, but shall not be rented for such purposes to persons not operating gross floor area within the regional

shopping center. Mezzanines which are used for the public sale or display of goods shall be treated as gross leasable area.

MULTIFAMILY DWELLING - A structure containing three or more dwelling units offered for sale or rent, each of which shall contain separate living, sleeping, cooking, and bathroom facilities for the families residing there.

OFFICE – Includes professional, business, dental and/or medical offices, which are defined as a room, or group of rooms used for conducting the affairs of a business, service industry, or government entity.

REDEVELOPMENT AREA - Land within the boundaries of the Shopping Center Redevelopment Overlay District, which is used or proposed for use as part of a regional shopping center, and encompassing one or more individual lots on which the regional shopping center will be situated.

REGIONAL SHOPPING CENTER - A concentration of stores and establishments devoted to retail shopping center uses and amusement uses including an enclosed structure (which may consist of several buildings) containing a total of not less than 500,000 square feet of gross floor area and located on a redevelopment area, together with ancillary utility facilities, parking areas and driveways, landscaped areas, and stormwater detention facilities. **A regional shopping center may also contain offices, hotels, and multifamily dwellings.** A regional shopping center may consist of one or more lots and one or more buildings under separate ownership, provided that:

(1) The lots and buildings are subject to an operating agreement or leasehold arrangements, provided that the areas used in common, including the central enclosed mall area, the parking structures and the exterior parking and circulation areas, will be under integrated management; and

(2) The separate lots and buildings are developed with a unified approach to architectural and landscape design, pedestrian ingress and egress, parking, truck loading, vehicular entrances and exits, drainage, groundwater recharge and utilities.

RETAIL SHOPPING CENTER USES — A concentration of retail stores and service establishments, including restaurants, movie theaters and such other uses as are customarily found in a regional shopping center, together with ancillary utility facilities, parking areas and driveways, landscaped areas, and stormwater detention facilities. **Regional Retail** shopping center uses may include one area devoted to outdoor, tent-type sales of home and garden goods, provided that any such area is operated incident to a retail store having not less than 40,000 square feet of gross floor area and occupies not more than 5,000 square feet of area.

1 Editor's Note: The former definition of "major store," which immediately followed this definition, was repealed

1-17-2019 by Order No. 2019-064.

E. Application of requirements.

(1) A redevelopment area may consist of more than a single building lot, and in such event the requirements of this chapter shall not be applied to individual building lots, but shall be applied to the entire redevelopment area as if the redevelopment area were a single building lot notwithstanding the fact that the building lots within the redevelopment area may be in different ownership.

(2) The regional shopping center and other improvements within the redevelopment area may be developed in phases and may be developed and occupied under one or more building permits and occupancy permits.

(3) The provisions of this § 240-39 shall not apply to any expansion of existing improvements within the Shopping Center Redevelopment Overlay District until the exercise of rights under a special permit issued under § 240-39M39N with respect to the initial redevelopment, and any such expansion which does not constitute the initial redevelopment shall be subject to all of the requirements of the underlying zoning district(s) including, without limitation, the requirement of a special permit for certain uses and structures within the district.

Following the exercise of rights under a special permit issued under § 240-39M39N with respect to the initial redevelopment, this § 240- 39 shall apply to all improvements thereafter constructed within the Shopping Center

Redevelopment Overlay District.

F. Permitted and prohibited uses.

(1) The following uses are permitted by right in the Shopping Center Redevelopment Overlay District:

(a) Retail Shopping Center Uses.

(b) Office Uses.

(c) Hotels.

(d) Multifamily Dwellings.

(e) Amusement uses, provided that no more than 25% of the gross leasable area within the regional shopping center shall be devoted to uses other than retail shopping center uses, and not more than 75,000 square feet of gross leasable area in a regional shopping center shall be devoted to amusement uses unless a special permit is issued therefor by the Zoning Board of Appeals.

(2) The following uses are prohibited in the Shopping Center Redevelopment Overlay District:

(a) All uses prohibited in § 240-35F(2) [GP Groundwater Protection Overlay District] of this chapter.

(b) Parking and/or storage of transport vehicles for fuel, including but not limited to oil, coal and gas.

(c) Parking and/or storage of transport vehicles for toxic and/or hazardous substances.

(d) Hotel/motel.

(e) Multifamily dwellings.

(df) Drive-through restaurant or drive-through bank, except that a drive-through bank shall be permitted in so much of the Shopping Center Redevelopment Overlay District as lies within the underlying Highway Business District, subject to the special permit provisions of § 240-39M39N and a drive-through restaurant may be permitted only on that area within the SCROD identified as "Drive-Through Restaurant Sub Zone" as shown on the map entitled "Shopping Center Redevelopment Overlay District Amendment," 2 dated February 20, 2015, subject to the special permit provisions of § 240-39M39N. [Amended 9-18-2008 by Order No. 2009-08; 5-7- 2015 by Order No. 2015-071]

(eg) Gasoline and oil filling stations (other than a tire, battery and auto accessories store which is operated incident to a retail store having not less than 40,000 square feet of gross floor area in the regional shopping center and which does not provide for the changing of oil or lubrication of motor vehicles).

(fh) Casinos and other gambling establishments (other than the incidental sale of lottery tickets as part of a use otherwise permitted in the Shopping Center Overlay District).

G. Bulk and dimensional regulations.

(1) Land located within the Shopping Center Redevelopment Overlay District and used for a regional shopping center shall be subject to the dimensional controls set forth below:

(a) Minimum area of redevelopment area: 50 acres.

(b) Minimum lot size (individual building lots): none.

(c) Minimum lot frontage (individual building lots): 20 feet.

(d) Minimum side, front and rear yards (other than at the perimeter of the redevelopment area): none.

(e) Minimum front yard setback (at perimeter of the redevelopment area): 30 feet. [Amended 9-18-2008 by Order No. 2009-08]

[1] One hundred feet along Iyannough Road/Route 132 Road except 50 feet along that portion of Route 132/Iyannough Road on that area within the SCROD identified as "Drive-Through Restaurant Sub Zone."

[2] One hundred feet along the easterly side of the roadway which would be created if Independence Drive were extended from its existing terminus on the northerly side of Route 132 along its current trajectory across Route 132 and the redevelopment area.

[3] [2] Within 100 feet of Route 28/Falmouth Road, the minimum setback shall be 20 feet, but there shall be a maximum setback of 50 feet.

(f) Minimum side and rear yards (at perimeter of redevelopment area): 30 feet.

2 Editor's Note: The map is on file in the office of the Town Clerk.

(g) Maximum lot coverage as percentage of lot area of redevelopment area: 50%.

(h) Maximum building height:

(1) The maximum building height for retail shopping center uses shall be 42.5 feet or two stories, whichever is lesser.

(2) The maximum building height for hotel and multifamily dwelling uses shall be 6055 feet or three four stories, whichever is lesser.

(3) The maximum building height [for hotel and multifamily uses] may be increased by special permit issued by the Zoning Board of Appeals under §240-39M39N.

(2) Except as specifically stated to the contrary in Subsection G(1), the bulk and dimensional requirements set forth therein shall be applied to a redevelopment lot as if it were one lot, even though it may be comprised of several lots in different ownerships. More than one building may be located on a single lot within the Shopping Center Redevelopment Overlay District.

(3) Skylights, mechanical penthouses, rooftop mechanical features, and architectural features not designed for human occupancy (collectively, the "special features") shall be excluded in determining the height of any building within a regional shopping center. However, in no case shall such special features

shall exceed ten (10) feet above the height of the building absent special permit relief issued pursuant to § 240-39N. be subject to the following restrictions and limitations:

(a) Provided the same are approved in the special permit issued pursuant to § 240-39M hereof, architectural features shall be permitted above each entrance to the regional shopping center in excess of the maximum building height, provided such architectural features do not exceed 60 feet in height, and the length of the architectural features over any single entrance shall not extend over more than 25% of the entire length of the building wall above which such architectural features are located (measured on a building-by-building basis); and

(b) Rooftop mechanical features (such as heating and air-conditioning units, vents, stacks and mechanical penthouses), rooftop screening elements and skylight features over the food court and over the enclosed mall (collectively, the "rooftop features") shall be permitted to exceed the maximum building height, provided that they remain within the rooftop feature height limitation. A rooftop feature shall be considered to remain within the rooftop feature height limitation if it falls below a sight line running 10° above the horizontal starting from a height of 42.5 feet. Rooftop features may exceed the rooftop feature height limitation only if the special permit described in § 240-39M so provides. In no case shall a rooftop feature exceed 60 feet in height. Rooftop mechanical features (such as heating and air-conditioning units, vents, stacks and mechanical penthouses) shall in any event be screened by use of parapet walls or similar elements if necessary. [Amended 1-20-2005 by Order No. 2005-038]

H. Maximum increase in gross leasable area. Retail shopping center uses within a No regional shopping center shall result not exceeding more than 1,200,000 square feet of gross floor area within the redevelopment area, measured on an aggregate basis, unless the Zoning Board of Appeals has issued a special permit in accordance with the provisions of this § 240-39M39N. The maximum gross floor area of 1,200,000 square feet set forth above shall be reduced by 20,000 square feet of gross floor area for every acre by which the total area of the redevelopment area is less than 59 acres. For purposes of this § 240-39, the floor area of parking structures shall not be treated as gross floor area or gross leasable area.

I. Limitation on impervious surfaces; outdoor recreational areas; buffer strip landscaping.

(1) **Impervious Surfaces.** No more than 70% of the total redevelopment area shall be rendered impervious by the installation of buildings, structures and paved surfaces, measured on an aggregate basis, unless groundwater mitigation land is provided at a one to- one ratio for any overage of impervious cover in the redevelopment area. Groundwater mitigation land shall mean land located within the same or a more restrictive Groundwater Protection District in a zone of contribution to the well fields operated as of January 1, 1996 by the Barnstable Water Company and/or the Barnstable Fire District which land is permanently restricted by or on behalf of the owners of the redevelopment area to be left in an open and natural state. However, even with the dedication of groundwater mitigation land, no more than 82.7% of the total redevelopment area shall be so rendered impervious. Rooftop and surface water drainage systems shall be designed and maintained in accordance with the standards set forth in § 240-39L(4)(j). For purposes of this § 240- 39I, roadways (other than interior access drives) built in accordance with municipal specifications (as the same may be modified or waived by the Planning Board) and used as public way(s) or private way(s) shall not be treated as impervious surfaces and shall not be treated as part of the area of the district for purpose of such calculation.

(2) **Outdoor Recreational Areas.** Any new development or redevelopment within the Shopping Center Redevelopment Overlay District that proposes a hotel or multi-family use shall include an outdoor recreational area for use by hotel guests or multi-family residents and visitors. Outdoor recreational areas

should consist of a contiguous space containing a minimum width of 15 feet and a minimum tree canopy of 10%.

(3) **Landscaped Buffer.** As a part of the portion of the redevelopment area to be maintained in pervious condition, a landscaped buffer strip of variable width shall be provided and maintained along the redevelopment area's frontage on Route 28, Route 132 and any extension of Enterprise Road which is laid out in conjunction with the redevelopment. Said landscaped buffer strip shall be a minimum of 15 feet in depth from the property line **and contain at least 2.5% of the total redevelopment area.** The design of this buffer strip may include sidewalks/bikepaths, berms, indigenous planting materials and other ground cover. Cross over access drives and signs provided for herein shall be permitted in the landscaped buffer strip, but parking areas are prohibited. All other roadway frontages shall have a landscaped buffer strip of at least 10 feet.

J. Parking and loading. **A regional shopping center uses within the Shopping Center Redevelopment Overlay District** shall be subject to the following minimum off-street parking and loading requirements:

(1) (1) Required off-street parking for **retail shopping center uses within** a regional shopping center shall be provided at a ratio of not less than **4.3 0** parking spaces for each 1,000 square feet of gross leasable area.

(2) Required off-street parking for office uses within a regional shopping center shall be provided at a ratio of not less than **1.0** parking space for each 1,300 square feet of gross leasable area plus **1.0** parking space per separate suite.

(3) Required off-street parking for hotel uses within a regional shopping center shall be provided at a ratio of not less than **.75** parking spaces per guest unit.

(4) Required off-street parking for multifamily dwellings within a regional shopping center shall be provided at a ratio of not less than **1.5** parking space per dwelling unit.

(5) of all buildings located in the regional shopping center. The foregoing parking requirements may be reduced by Special Permit from the Zoning Board of Appeals if lesser off-street parking is shown to be adequate given such special circumstance as:

(a) Use of a common parking area by different uses having different peak hours of demand

(b) Habits or other characteristics of occupants which result in reduced auto usage

(c) Characteristics of use invalidating normal methods of calculating parking demand.

(d) Supplementary parking provided off premises.

(e) Demonstrated measures to lower parking demand to the regional shopping center.

shall be calculated without regard to the multiple uses that may be contained in the regional shopping center.

(6) All off-street parking spaces required by this § 240-39J shall be located within the redevelopment area, except that parking spaces may be located outside of the redevelopment area on another non-residentially zoned lot provided (a) such other lot is located within 300 feet of the redevelopment area on which the use for which such spaces are required is located, and (b) such lot is in common ownership with, or subject to a long term lease or easement for the benefit of, all or a portion of the redevelopment area. In addition, parking spaces may be located at such other locations as may be approved by the Zoning Board of Appeals as part of any Traffic Demand Management Plan which shall be incorporated as part of the special permit issued under § 240- **39M39N** hereof.

(7) Each off-street parking space shall have minimum dimensions of nine by 18 feet, excluding the driveway to such space. Parking stalls within the Shopping Center Redevelopment Overlay District which are designed at 90° shall have the following minimum dimensions:

(a) Ninety-degree parking dimensions:

Stall width: nine feet, zero inches.

Stall length: 18 feet, zero inches.

Aisle width: 24 feet, zero inches.

Bay width: 60 feet, zero inches.

(b) All parking stalls which are designed at angles other than 90% 90° shall comply with the minimum parking space dimensions set forth in § 240-104 of this chapter.

(8) Parking Lot Landscaping

(a) Application. This section shall apply to any new development or redevelopment within the Shopping Center Redevelopment Overlay District in which the limit of work exceeds one (1) acre (43,560 square feet). This section shall not apply to ordinary maintenance or repairs to buildings or parking areas within the Shopping Center Redevelopment Overlay District.

(b) Procedure. Any project that satisfies the triggering requirements set forth in Subsection (a) above shall delineate on the accompanying plans the proposed limit of work. Only parking and loading areas within the limit of work shown on the plans shall be subject to the minimum requirements set forth below.

(c) The surfaced area of a parking lot and all entrance and exit drives shall be set back from the side and rear lot lines, by a landscaped side and rear yard buffer at least five (5) feet in width.

(d) A ten-foot minimum, landscaped perimeter buffer shall be maintained between a building and the surfaced area of a parking lot or drive, except at entrances, building loading and utility locations. A walkway may be located within the landscaped perimeter buffer, provided that the landscape area is not reduced to less than 40% of the area of the perimeter buffer.

(e) At least 7% of the interior of a parking lot with 21 or more parking spaces shall be landscaped. Planting along the perimeter of a parking area shall not be considered as part of the 7% interior landscaping. Interior landscaped islands shall be distributed throughout the parking lot. At least one tree with a minimum 2.5-inch caliper or larger shall be provided per twelve spaces or any portion thereof, located within interior landscaped islands. Existing naturally occurring trees in good condition located in landscaped islands shall be credited towards this requirement only in those areas where the existing trees are located. No landscaped island shall have an overall width of less than six feet. A walkway may be located within an interior landscaped island, provided that the walkway is separated from the surfaced area of the drive or parking lot by a minimum of four feet of landscaped area. These interior landscape requirements shall not apply to interior parking spaces, parking garages, or parking lots used for sale and/or display of motor vehicles.

(f) Where landscaped setbacks to parking areas, landscaped buffers to buildings, and landscaped islands within parking areas are required in Subsections (c) through (e) above, the following requirements shall apply:

i. Existing natural trees and shrubs shall be retained within landscaped islands, and side and rear yard landscaped buffers to parking lots and drives wherever possible and supplemented with other landscape materials, in accordance with accepted landscape practices. Specimen trees shall be retained and, if practical, relocated within the site where necessary. Where natural vegetation cannot be retained, these areas shall be landscaped with a combination of low maintenance grasses, trees and shrubs commonly found on Cape Cod. A list of recommended plant materials is on file with the Town Clerk and may also be obtained from the Planning Department. Plant materials shall be of sufficient size and density to create an attractive appearance. Brick or stone mulch shall not be used in place of ground covers in

landscaped islands. Where mulch is used, it shall be in such a manner that it will not wash into leaching catch basins located in a parking lot, or adjacent roadway.

ii. All landscaped areas shall be continuously maintained, substantially in accordance with any site plan approved pursuant to Article IX. No occupancy certificate shall be issued until the landscape plan has been implemented according to an approved site plan, except that the Building Commissioner may issue an occupancy certificate prior to installation of landscape materials, provided that the applicant posts security with the Town for 150% of the estimated cost of installation and plant materials.

(g) Landscape buffers and islands may be reduced sufficient to ensure the creation of a functional, attractive parking lot, subject to approval of site plan review. Landscaping shall be provided at the rate of one tree of three-inch caliper per eight spaces, and such trees shall be located within the parking area. Such parking area landscaping areas shall constitute not less than 5% of the land area devoted to grade-level parking fields. Above-grade parking structures shall be designed so as to provide a visual screen to shield, to the extent practicable, cars parked on the upper level from the view of pedestrians.

K. Signs in the Shopping Center Redevelopment Overlay District. Only the following types of signs shall be permitted in the Shopping Center Redevelopment Overlay District:

(1) Large freestanding exterior signs:

(a) Maximum number: three signs.

(b) Maximum height: not to exceed 22 feet above grade.

(c) Maximum area: not to exceed 170 square feet per side exclusive of structures holding the sign.

Reasonable efforts shall be exercised to minimize the size of any such supporting structures. [Amended 1-17-2019 by Order No. 2019-064]

(2) Wall signs identifying **retail stores or restaurants uses permitted by right in the Shopping Center Redevelopment Overlay District** having gross leasable area of greater than 25,000 square feet or having exterior public entrances; the food court; and the regional shopping center, provided that no wall sign shall extend higher than the top of the parapet wall:

(a) Maximum letter height: five feet for signs accessory to anchor and major stores, and four feet for other such signs. This letter height restriction shall not apply to emblems, logos, or other designs associated with the sign display.

(b) Maximum area:

[1] Anchor stores (for each tenant with a gross leasable area of 45,000 square feet or more): The maximum sign area for any one display shall not exceed 200 square feet for the first sign; the maximum sign area for any additional display shall be 150 square feet. There shall only be one sign display per eligible elevation. An additional sign allowance of 30 square feet shall be provided for entrance door and awning signs.

[2] Major stores (for each tenant with a gross leasable area of 12,000 square feet or more): The maximum sign area for any one display shall not exceed 120 square feet. There shall only be one sign display per eligible elevation. An additional sign allowance of 15 square feet shall be provided for entrance door and awning signs.

[3] In-line store (for each tenant with an exterior entrance): The maximum sign area for any one display shall not exceed 50 square feet for tenants with storefronts less than 50 linear feet in length. An additional square foot of sign area shall be allowed for each linear foot of storefront above 50; the maximum sign area for any one display shall not exceed 75 square feet. There shall only be one sign display per tenant. An additional sign allowance of 10 square feet shall be provided for entrance door and awning signs.

[4] Mall entrances: The maximum sign area for any one display shall not exceed 50 square feet. There shall only be one sign per each eligible mall entrance.

(3) Wall signs designating loading areas, service courts, employee entrances and similar areas:

(a) Maximum number: no limit.

(b) Maximum mounting height above ground: eight feet.

(c) Maximum area: six square feet.

(4) Freestanding directional signs indicating access and egress to the site, as well as direction to department stores, services or other areas within the regional shopping center:

(a) Maximum number: three times the total number of vehicular entrances.

(b) Maximum height to top of sign above ground: seven feet.

(c) Maximum area: 16 square feet per side.

(5) Hanging parking structure signs at vehicular entrances to parking structures:

(a) Maximum number: one per vehicle ramp access point to parking structures.

(b) Maximum height: one foot, six inches.

(c) Maximum area: 16 square feet per side.

(d) In addition, directional and parking area identification signs shall be permitted within the parking structures, and safety/height limitation markings shall be permitted on the exterior of the parking structures.

(6) Parking lot identification signs.

(a) Maximum number: one per light post.

(b) Maximum size: three square feet per side.

(7) 3Banners which do not advertise particular stores or articles for sale shall be permitted.

(8) In addition to the signs otherwise permitted under this § 240-39KJ, wall signs for freestanding buildings, **including hotels, multifamily dwellings**, and movie theaters (meaning buildings **and movie theaters** which are not physically connected to the enclosed mall of the regional shopping center) which are otherwise permitted in the underlying zoning district under this chapter shall be permitted in the Shopping Center Redevelopment Overlay District. **In addition, for so long as fewer than two of the freestanding signs described in Subsection K(11) are installed, one freestanding exterior sign shall be permitted for freestanding movie theaters, which sign shall have dimensions which meet the size requirements of the underlying zoning district.**

3 Editor's Note: Former Subsection K(7), pertaining to electronic reader boards, which immediately preceded his subsection, was repealed 1-17-2019 by Order No. 2019-064. This order also provided for the re-designation of former Subsection K (8) through (13) as Subsection K (7) through (12).

(9) In addition to the wall signs permitted under § 240-39K(2), one exterior **marquee** wall sign for **each** movie theaters, **hotels, and multifamily dwellings** located within a regional shopping center shall be permitted with a size of up to 150 square feet.

(10) In addition to the signs permitted under § 240-39K(1) hereof, up to two freestanding exterior signs for **each** movie theaters, **hotels, and multifamily dwellings** located within a regional shopping center shall be permitted as follows:

(a) Maximum number: two.

(b) Maximum height: 14 feet above grade.

(c) Maximum area: not to exceed 175 square feet per side, exclusive of structures holding the sign.

(11) In addition to the signs permitted under § 240-39K (1) hereof, one freestanding exterior sign shall be permitted on that area within the SCROD identified as "Drive-Through Restaurant Sub Zone," provided that the maximum height of freestanding signs does not exceed 12 feet above grade and the maximum area of the freestanding signs does not exceed 50 square feet per side, exclusive of the structure holding the sign. [Added 5-7-2015 by Order No. 2015-0714]

(12) No special permit shall be required for signs that are in conformance with the standards set forth above.

L. Advisory site plan review and provisions.

(1) Findings. Owing to their physical characteristic and the nature of their operations, a regional shopping center may affect neighboring properties and adjacent sidewalks and streets. It is in the interest of the community to promote functional and aesthetic design, construction and maintenance of a regional shopping center and to minimize any harmful effects on surrounding areas.

(2) Purposes. The provisions of this section are designed to assure that all development activities associated with a regional shopping center will be carried out in furtherance of the purposes articulated in § 240-39A, taking into account the existing condition of the redevelopment area, the large-scale character of developments such as the regional shopping center, the customary site layout of regional shopping centers, and the necessity to permit natural light to illuminate the common areas of the regional shopping center (hereinafter referred to as the "design constraints").

(3) Advisory site plan review/when required. The provisions of this § 240-39L shall apply to development within the Shopping Center Redevelopment Overlay District in lieu of the site plan review provisions of Article IX of this chapter. At least 60 days prior to filing any DRI application with the Cape Cod Commission, the proponent of a regional shopping center shall make an informal filing with the Building Commissioner, in draft form, of such plans and materials relating to the DRI application as the proponent intends to file with the Commission with its DRI application and such relevant plans and materials relating to the MEPA process as are then available. Within 30 days following such informal submission, the Building Commissioner and other members of the Site Plan Review Committee established under

4 Editor's Note: This order also renumbered former Subsection K (12) as Subsection K (13). Article IX of this chapter and such other Town staff as may be designated by the Building Commissioner shall review, comment upon and make recommendations with respect to the plans and materials so submitted, provided that the Building Commissioner shall have the right to extend such thirty-day period by an additional 30 days at the request of the Site Plan Review Committee. In conducting its review the Site Plan Review Committee shall consider the consistency of such plans and materials with the site development standards set forth in Subsection L (4) hereof. The informal filing and review described in this Subsection L (3) requires no approval and therefore does not constitute a development permit within the meaning of the Cape Cod Commission Act (Chapter 716 of the Acts of 1989) or the Regional Policy Plan promulgated pursuant thereto; however, the Cape Cod Commission shall be invited to have representatives participate in the advisory site plan review process.

(4) Site development standards.

(a) A reasonable effort shall be made to improve, conserve and protect natural features that are of some lasting benefit to the site, its environs and the community at large.

(b) Slopes which exceed 10% shall be protected by appropriate measures against erosion, runoff, and unstable soil, trees and rocks. Measures shall be taken to stabilize the land surface from unnecessary disruption. Such stabilization measures shall be the responsibility of the property owner.

(c) The placement of buildings, structures, fences, lighting and fixtures on each site shall not interfere with traffic circulation, safety, appropriate use and enjoyment of adjacent

properties.

(d) At any driveway, a visibility triangle shall be provided in which nothing shall be erected, placed, planted or allowed to grow so as to materially impede vision from within motor vehicles between a height of three feet and eight feet above the average center-line grades of the intersecting street and driveway, said triangle being bounded by the intersection of the street line and the edges of a driveway in a line joining points along said lines 20 feet distant from their projected intersection.

(e) Adequate illumination shall be provided to parking lots and other areas for vehicular and pedestrian circulation. All illumination shall be directed and/or shielded so as not to interfere with traffic beyond the perimeter of the site.

(f) All areas designed for vehicular use shall be paved with a minimum of either a 2 ½ inches bituminous asphalt concrete, a six-inch portland cement concrete pavement, or other surface, such as brick or cobblestone, as approved by the Town Engineer.

(g) All parking spaces shall be arranged and clearly marked in accordance with the parking lot design standards contained in § 240-39J herein. Signs and pavement markings shall be used as appropriate to control approved traffic patterns.

(h) The provisions of § 240-52 of this chapter shall not apply to land within the Shopping Center Redevelopment Overlay District. Instead, exterior landscaping of a regional shopping center shall be subject to review in connection with the advisory site plan review process described herein.

(ih) All utility service transmission systems, including but not limited to water, sewer, natural gas, electrical and telephone lines, shall, whenever practicable, be placed underground. Electric, telephone, cable TV, and other such utilities shall be underground, except for transformers, electric switching boxes or similar equipment and gas meters, which may be above ground.

(ji) All surface water runoff from structures and impervious surfaces shall be disposed of on site, but in no case shall surface water drainage be across sidewalks or public or private ways. In no case shall surface water runoff be drained directly into wetlands or water bodies (except for drainage structures in place as of the effective date of this § 240-39). All drainage systems shall be designed to minimize the discharge of pollutants by maximizing appropriately designed vegetated drainage channels and sedimentation basins that allow for adequate settling of suspended solids and maximum infiltration (with due regard to the design constraints). Dry wells, leaching pits and other similar drainage structures may be used only where other methods are not practicable. Subject to ambient surcharge conditions, roof runoff shall be recharged to the ground via a system of dry wells and/or infiltration systems. Nontoxic roof materials shall be used to minimize the leaching of toxic materials to the groundwater. To minimize water utilization, all new plumbing fixtures shall be designed to meet water conservation measures as required under the State Building and Plumbing Codes. All such drainage structures shall be preceded by oil, grease and sediment traps to facilitate removal of contaminants. All

calculations shall be for a twenty-five-year storm and shall be reviewed by the Town Engineer. The materials submitted shall include provision for an appropriate maintenance program for such drainage structures to be implemented and maintained by the proponent. The materials submitted shall show adequate measures to mitigate pollution of surface or groundwater to minimize erosion and sedimentation. All drainage shall be designed so that all runoff shall be disposed of on site, groundwater recharge is maximized, and neighboring properties will not be adversely affected.

(kj) The materials submitted shall describe estimated average daily and peak hour vehicle trips to be generated by the site and traffic flow showing adequate access to and from the site and adequate circulation within the site **taking into account the Barnstable/Yarmouth Transportation Study**. The proponent of a regional shopping center will include in such materials reasonable measures to lower traffic demand to the regional shopping center such as, by way of example only, working with other major retailers along the 132 corridor to promote bus and shuttle bus activity, encouraging carpooling among employees, and/or similar measures, which materials shall be referred to as the "Traffic Demand Management Plan." Reasonable efforts shall be made to provide vehicular and pedestrian connections within the redevelopment area to adjoining properties devoted to retail use.

M. Affordable Housing Units. Notwithstanding any other provisions as may be set forth in this Zoning Ordinance, any multifamily dwelling development in the Shopping Center Redevelopment Overlay District shall comply with either subsection (1) or (2) below, whichever calculation results in a greater number of restricted units. If the total number of restricted units is the same under subsection (1) and subsection (2), then the subsection with the greater number of deed restricted affordable units for individuals and families with the lowest percentage of Area Median Income (AMI) shall be required. The determination as to which calculation applies shall be made at the time that development permits are sought for a proposed multifamily development.

(1) The provisions of the Town of Barnstable Code, Chapter 9, Inclusionary Affordable Housing Requirements in effect at the time development approvals are sought for any multifamily dwelling development within the SCROD; or

(2) Ten percent (10%) of the multifamily dwelling units shall be deed restricted as affordable units for individuals and families earning up to 65% of the area median income and an additional three percent (3%) of the multifamily dwelling units shall be deed restricted as affordable housing units for individuals and families earning up to 80% of the median income for the Town of Barnstable, as determined annually by the Department of Housing and Urban Development. The affordable units shall conform to all Department of Housing and Community Development (DHCD) standards that must be met to qualify these units for inclusion in the DHCD Subsidized Housing Inventory (SHI) as Local Initiative Program units.

(3) No certificate of occupancy permit shall be issued until recordation of the Regulatory Agreement and Declaration of Restrictive Covenants.

N. Special permit provisions.

(1) Special permit for regional shopping center.

(a) No building permit or occupancy permit shall be issued for any expansion of a regional shopping center which increases the gross floor area of the regional shopping center above that existing on the effective date of this § 240-39 by more than 50,000 square feet of gross floor area unless the Zoning Board of Appeals has issued a special permit approving such use in accordance with the provisions of this § 240-39M39N. In addition, no building permit or occupancy permit shall be issued for a drive-through bank or drive-through restaurant unless the Zoning Board of Appeals has issued a special permit or a modification of a special permit issued under this section, approving such use, subject to the provisions of this § 240-39M39N. [Amended 9-18-2008 by Order No. 2009-08; 5-7-2015 by Order No. 2015-071]

(b) A special permit for a regional shopping center may provide for phased development (and, if applicable, a projected phasing plan shall be provided to the Zoning Board of Appeals as part of the special permit process under § 240-39M39N). A special permit for a regional shopping center shall become void two years from the date of issue unless any construction work contemplated thereby (or first phase thereof, if applicable) shall commence and proceed in good faith continuously to completion, or, if no construction work is contemplated by the special permit, the use authorized thereby is commenced.

(c) Any work done in deviation from a special permit granted pursuant to this § 240-39M39N shall be a violation of this chapter, unless such deviation is approved in writing by the Zoning Board of Appeals. However, a special permit may be granted based upon plans showing one or more permissible building areas and/or permissible parking structure areas, in which buildings and other structures are to be located, rather than with the locations of the buildings and other structures finally established. Provided the boundaries of such permissible building areas and/or permissible parking structure areas are approved by the Zoning Board of Appeals in connection with the special permit, once the special permit is granted, no separate approval of the Zoning Board of Appeals will be required for the actual location

of the buildings or improvements within such permissible building areas and/or permissible parking structure areas [provided that no material change to the design or materials described in § 240 39M39N

(2)(a) shall be made without the approval of the Zoning Board of Appeals.] The Zoning Board of Appeals may amend or modify a special permit upon the application of the developer of a regional shopping center and, if the Zoning Board of Appeals determines that such amendment or modification is minor in nature, such amendment or modification may be approved without a hearing upon the submission of plans and information that may, in the discretion of the Zoning Board of Appeals, be less extensive than the plans and information required in this § 240-39M39N. Amendments or modifications determined by the Zoning Board of Appeals not to be minor in nature shall require a public hearing.

(d) The purpose of the special permit for a regional shopping center is to assure that the development of a regional shopping center is carried out in a manner which is (1) consistent with the purposes set forth in § 240-39A hereof and the site development standards set forth in § 240-39L(4) hereof, (2) consistent with the terms and conditions of any DRI permit issued by the Cape Cod Commission and the certificate of the Secretary of Environmental Affairs on the final environmental impact report, (3) with due regard given to the Design Guidelines for Cape Cod prepared by the Cape Cod Commission in light of the design constraints, and (4) consistent with such additional reasonable conditions as may be imposed by the Zoning Board of Appeals as are not inconsistent with the foregoing. The Zoning Board of Appeals shall grant a special permit for a regional shopping center upon its determination that the standards for the issuance of such special permit set forth in this Subsection M(1)(d) have been complied with, giving due regard to the design constraints.

(2) Required contents of special permit application. The application for a special permit under this § 240-39M39N shall include:

(a) Building elevation plans for all exterior facades of buildings and structures, at a scale of 1/16 inch equals one foot, or such scale as may be required by the Zoning Board of Appeals for detail drawings, indicating surface materials and colors, together with not less than three representative cross sections.

(b) A tabulation of the areas of the proposed site elements, including buildings (footprints and gross leasable area and gross floor area), parking structures and surface parking areas (square footage and number of parking spaces), stormwater management facilities, and landscaped areas (square footage, number of trees and other plantings).

(c) Updated versions of the materials submitted to the Building Commissioner in connection with the advisory site plan review process described in § 240-39L above.

(d) Any request for gross leasable area in excess of the use limitations set forth in § 240- 39F

(1)(e) applicable to retail shopping center uses.

(e) Any request to permit the structure to exceed the maximum height limitation set forth in § 240-39G (1) (h).

(ef) Any request to permit rooftop features to exceed the rooftop feature height limitation set forth in § 240-39G (3) (b).

(g) Any request to exceed the maximum allowable 1,200,000 square feet of gross Leasable area for retail shopping center uses set forth in § 240-39H.

(h) Any request to permit a reduction in the required parking ratios under § 240-39J (5).

(fi) All materials relating to any request to permit off-site parking under § 240-39J (26).

(gj) A description of the operating agreement and/or leasehold agreements contemplated in the definition of "regional shopping center."

(hk) Additional information as may be required by the Zoning Board of Appeals as reasonably necessary to making the determinations required by this section.

(3) Required procedures for special permit.

- (a) At least **two six** copies are required of all plans, drawings and written information. **Submissions Copies of application materials** shall also be **delivered submitted** to the Zoning Board of Appeals **electronically**.
- (b) The Zoning Board of Appeals may solicit the advice of any other Town agency or department it deems necessary to properly make the determinations required by this section.
- (c) In issuing a special permit under this § 240-**39M39N**, the Zoning Board of Appeals shall give due regard to, and shall not be inconsistent with the decisions and recommendations of the Cape Cod Commission as set forth in any DRI permit or similar approval.
- (d) The Zoning Board of Appeals shall also include as a condition of its special permit the performance of any written commitments made by the developer of a regional shopping center to the Zoning Board of Appeals, the Planning Board or the Town Council intended to reduce or limit the impacts, financial or otherwise, of the regional shopping center on the Town. Such conditions shall be based on the written information furnished to the Zoning Board of Appeals by the Planning Board and Town Council. Such conditions shall be binding on the applicant for such special permit provided they are consistent with the provisions of Section 15 of Chapter 716 of the Acts of 1989 (the Cape Cod Commission Act).
- (e) The Zoning Board of Appeals may include as a condition of its special permit that, prior to the issuance of a certificate of occupancy for the regional shopping center, the Building Commissioner shall be provided with evidence that the operating agreement and/or leasehold arrangements contemplated in the definition of "regional shopping center" are in place.
- (f) If the proposed improvements which are the subject of an application for a special permit under this § 240-**39M39N** have not been subject to the review of the Cape Cod Commission because at the time of such application the Cape Cod Commission or the DRI process has been abolished, then the proposed improvements shall be subject to site plan review under Article IX of this chapter.

B. NEW BUSINESS (Refer to Public Hearing 09/15/2022)

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-024
INTRO: 09/01/2022**

2023-024 APPROPRIATION ORDER IN THE AMOUNT OF \$75,000 FOR THE PURPOSE OF FUNDING THE LOCAL MATCH REQUIREMENT FOR A FEDERAL GRANT FROM THE U.S. DEPARTMENT OF AGRICULTURE, NATURAL RESOURCES CONSERVATION SERVICE IN THE AMOUNT OF \$200,000 FOR DESIGN AND CONSTRUCTION OF STORMWATER IMPROVEMENTS AT OLD SHORE ROAD, COTUIT AND AUTHORIZATION TO EXPEND SAID GRANT

ORDERED: That the amount of **\$75,000** be appropriated for the purpose of funding permitting and construction expenses for the implementation of Stormwater Improvements at Old Shore Road, Cotuit, representing the local match requirement for the acceptance of a grant from the U.S. Department of Agriculture, Natural Resources Conservation Service in the amount of **\$200,000**, and that to meet this appropriation, that \$75,000 be provided from the Capital Trust Fund, and that the Town Council does hereby authorize the Town Manager to contract for and expend this appropriation and grant for the purpose of funding design, permitting, and construction of Stormwater Improvements at Old Shore Road in Cotuit, including the payment of costs incidental or related thereto.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-024
INTRO: 09/01/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: August 18, 2022
SUBJECT: Appropriation Order in the amount of **\$75,000** for the purpose of funding the local match requirement for a Federal Grant from the United States Department of Agriculture, Natural Resources Conservation Service in the amount of **\$200,000** for design and construction of Stormwater Improvements at Old Shore Road, Cotuit

BACKGROUND: This project will fund the design, permitting, and construction required for implementing stormwater improvements at Old Shore Road in Cotuit for the purposes of improving water quality in nearby shellfishing areas of Cotuit Bay. This project will be completed in partnership with the Natural Resources Conservation Service (NRCS). NRCS will provide funding for the design and 75% of the construction costs, totaling up to \$200,000. The Town is responsible for the permitting and 25% of the construction costs, totaling up to \$75,000.

ANALYSIS: This grant is for the for the design and implementation of the Old Shore Road Stormwater Treatment Project to improve water quality in nearby shellfishing areas under the Watershed Flood Prevention Operations (WFPO) Program's Cape Cod Water Resources Restoration Project. The project will install a stormwater BMP adjacent to the boat ramp on Old Shore Road in order to improve water quality.

FINANCIAL IMPACT: This grant opportunity is a reimbursable grant for expenses up to \$200,000. The Town is required to provide a minimum of a 25% match, and anticipates the Town's total expenses to be \$75,000 for the project. The Town's matching funds for this project will be provided from the Capital Trust Fund which has an available balance of \$14,774,637.

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

STAFF ASSISTANCE: Daniel W. Santos, P.E., Director of Public Works

B. NEW BUSINESS (Refer to Public Hearing 09/15/2022)

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-025
INTRO: 09/01/2022**

**2023-025 APPROPRIATION ORDER IN THE AMOUNT OF \$145,000 FOR THE
PURPOSE OF FUNDING STORMWATER IMPROVEMENTS AT SHUBAEL
POND, MARSTONS MILLS**

ORDERED: That the amount of **\$145,000** be appropriated for the purpose of funding stormwater improvements at Shubael Pond, Marstons Mills, including the payment of costs incidental or related thereto; and that to meet this appropriation, that \$145,000 be provided from the Capital Trust Fund, and that the Town Council does hereby authorize the Town Manager to contract for and expend this appropriation made available for these purposes.

SPONSOR: Mark S. Ells, Town Manager

DATE

ACTION TAKEN

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-025
INTRO: 09/01/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: August 18, 2022
SUBJECT: Appropriation Order in the amount of **\$145,000** for the purpose of funding stormwater improvements at Shubael Pond, Marstons Mills

BACKGROUND: In response to deteriorating water quality in Shubael Pond, the Department of Public Works (DPW) retained the Coastal Systems Program at UMass Dartmouth School for Marine Science and Technology (SMAST) to conduct a diagnostic assessment of Shubael Pond and develop a management plan to address water quality issues. SMAST has completed the diagnostic assessment and developed a final management plan for the pond.

ANALYSIS: The findings of the SMAST report can be summarized as follow:

- The pond is being negatively impacted by excess phosphorus loading
- The largest source of which is septic systems (59%-74%), followed by internal sediments (14% to 23%), and stormwater (4% to 7%).
- Management of phosphorus inputs is necessary to improve water quality.

Ultimately SMAST has determined that most effective long term solution to manage the pond and improve water quality is wastewater management for those properties with septic systems contributing phosphorus load to the pond (those within 300 feet up-gradient of the pond). These properties are currently identified in Phase 3 of the Town's Comprehensive Wastewater Management Plan (CWMP). As a result, the DPW recommends advancing the timeline for sewer expansion of these properties to Phase 2 of the CWMP.

The various sources of direct stormwater inputs into the pond were found to contribute a relatively small amount of the total phosphorus input into the pond 4% to 7% equating to approximately 0.5 kg) with the largest of these sources being the Shubael Pond Road outfall pipe. In order to further reduce the phosphorus input from stormwater, it is recommended that improvements be made to reduce the inputs from the Shubael Pond Road outfall pipe. The other sources of stormwater runoff into the pond were found to contribute negligible amounts of nutrients into the pond. The proposed improvements to the Shubael Pond Road outfall pipe will consist of the installation of additional infiltration facilities up-gradient to reduce/eliminate direct discharge to the pond from the pipe. Due to the large contributing area to the Shubael Pond Road outfall pipe, the pipe will remain in service, but only as an overflow for large storm events.

FINANCIAL IMPACT: Funding for this project will be provided from the Capital Trust Fund which currently has a balance of \$14,774,637.

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

STAFF ASSISTANCE: Daniel W. Santos, P.E., Director of Public Works

B. NEW BUSINESS (Refer to Public Hearing 09/15/2022)

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-026
INTRO: 09/01/2022**

2023-026 APPROPRIATION ORDER IN THE AMOUNT OF \$95,000 FOR THE PURPOSE OF FUNDING AN ALUM TREATMENT FOR SHUBAEL POND, MARSTONS MILLS

ORDERED: That the amount of **\$95,000** be appropriated for the purpose of funding an alum treatment for Shubael Pond, Marstons Mills including the payment of costs incidental or related thereto; and that to meet this appropriation, that \$95,000 be provided from the Capital Trust Fund, and that the Town Council does hereby authorize the Town Manager to contract for and expend this appropriation made available for these purposes.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

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

BARNSTABLE TOWN COUNCIL

ITEM# 2023-026
INTRO: 09/01/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: August 18, 2022
SUBJECT: Appropriation Order in the amount of **\$95,000** for the purpose of funding an Alum treatment for Shubael Pond, Marstons Mills

BACKGROUND: In response to deteriorating water quality in Shubael Pond, the Department of Public Works (DPW) retained the Coastal Systems Program at UMass Dartmouth School for Marine Science and Technology (SMAST) to conduct a diagnostic assessment of Shubael Pond and develop a management plan to address water quality issues. SMAST has completed the diagnostic assessment and developed a final management plan for the pond.

ANALYSIS: The findings of the SMAST report can be summarized as follow:

- The pond is being negatively impacted by excess phosphorus loading
- The largest source of which is septic systems (59%-74%), followed by internal sediments (14% to 23%), and stormwater (4% to 7%).
- Management of phosphorus inputs is necessary to improve water quality.

Ultimately SMAST has determined that most effective long term solution to manage the pond and improve water quality is wastewater management for those properties with septic systems contributing phosphorus load to the pond (those within 300 feet up-gradient of the pond). These properties are currently identified in Phase 3 of the Town's Comprehensive Wastewater Management Plan (CWMP). As a result, the DPW recommends advancing the timeline for sewer expansion of these properties to Phase 2 of the CWMP.

In the interim (prior to sewer expansion), it is recommended that alum treatment(s) be used to address the internal phosphorus loading source (sediments) and improve water quality. Given that the internal sediments only contribute 14% to 23% (2.3 to 4.4 kg) of the phosphorus load to the pond, alum treatments will not eliminate all potential for cyanobacteria blooms. However, the alum treatments will help reduce the available phosphorus and as a result are expected to improve water quality and reduce the frequency of water quality impairments such as cyanobacteria blooms. It is expected that alum treatments will be required approximately every 3 to 7 years. DPW recommends incorporating adaptive management through water quality monitoring to evaluate the effectiveness of the alum treatments and assess if or when additional treatments are needed.

FINANCIAL IMPACT: Funding for this project will be provided from the Capital Trust Fund which currently has a balance of \$14,774,637.

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

STAFF ASSISTANCE: Daniel W. Santos, P.E., Director of Public Works

B. NEW BUSINESS (May be acted upon) (Majority Vote)

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-027
INTRO: 09/01/2022**

**2023-027 AUTHORIZATION TO EXPEND A FISCAL YEAR 2023 JAIL/ARREST
DIVERSION PROGRAM COMPONENT GRANT IN THE AMOUNT OF \$92,000
FROM THE COMMONWEALTH OF MASSACHUSETTS, DEPARTMENT OF
MENTAL HEALTH**

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 Jail/Arrest Diversion Program Component Grant from the Commonwealth of Massachusetts, Department of Mental Health in the amount of **\$92,000** for the purpose of funding costs to support police jail diversion programs, trainings, outreach, and stakeholder engagement.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read item
- Rationale
- Council Discussion
- Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2023-027
INTRO: 09/01/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Matthew Sonnabend, Chief of Police
DATE: September 01, 2022
SUBJECT: Authorization to expend a Fiscal Year 2023 Jail/Arrest Diversion Program Component Grant in the amount of **\$92,000** from the Commonwealth of Massachusetts, Department of Mental Health

BACKGROUND: The Barnstable Police Department has been awarded a one-year grant with extensions to reapply into future years through the Department of Mental Health (“DMH”) to fund a Component Jail Arrest Diversion Project in the Town of Barnstable. The FY2023 Department of Mental Health grant will provide funding to support police jail/arrest diversion programs, trainings, outreach, and stakeholder engagement. The grant will reimburse the Department for the cost of training time and/or backfilling shifts to cover for personnel to send 3 officers to the 40-hour Community Crisis Intervention Team (CCIT) training hosted by National Alliance on Mental Illness (NAMI) of Cape Cod & the Islands or another DMH approved site. Grant funds will also be used to train 10 additional new officers and 10 Community Service Officers (CSO) in Mental Health First Aid (MHFA).

The grant will support also provide supportive funding for the Barnstable PD CCIT/Community Impact Unit's involvement with stakeholder meetings and outreach efforts including increased efforts to address overdoses, attendance at community meals for the at-risk population, and mental health emergency follow-ups. The Department will also use grant funds to manage CCIT meetings, further train CSO's, maintain oversight of the CSO program, and extend CSO coverage through Columbus Day Weekend. The grant will also fund a part-time Clinician to work with the Community Impact Unit and provide clinical expertise to mental health related calls.

Since initially awarded a DMH grant in 2014, the Community Impact Unit has successfully established an Innovative Jail Diversion Program and Community Crisis Intervention Team designed to divert persons in mental health and/or substance abuse crisis away from the Criminal Justice System and towards appropriate services and support by using a collaborative inter-agency approach. Additionally, our summer CSO Program has been very successful in assisting the CIU in serving persons in mental health and/or substance abuse crisis, while at the same time improving quality-of-life issues for the residents, businesses, and the overall community of the Town of Barnstable. We will also continue to fund 2 CSO's through a Community Development Block Grant who will work on weekends over the winter to continue a police presence downtown.

ANALYSIS: This DMH grant will pay for valuable training for members of the Barnstable Police Department in Community Crisis Intervention Team and Mental Health First Aid training and will pay overtime costs for valuable consultation and grant management to reflect on the overall program. The grant will also provide funding for Community Service Officer Program training and for the period from Labor Day to Columbus Day, enabling the program to continue into the shoulder season. Additionally, a part-time Clinician will be available to work in conjunction with the Community Impact Unit.

FISCAL IMPACT: There will be no negative financial impact. The total grant award of \$92,000 covers the period of 7/1/22-6/30/23.

This DMH grant will specifically pay for:

- Overtime costs to provide valuable training for 3 members of the Barnstable Police Department in Community Crisis Intervention Team training;
- Overtime costs to conduct MHFA training to 10 officers;
- Overtime costs for valuable consultation and weekly stakeholder meetings with area social service agencies and medical/behavioral health liaisons;
- Funding for Community Service Officers during and shoulder season and for training for 10 in MHFA
- Funding for a Clinician for 32 hours/mo.;
- CCIT Management/Coordination; Grant Management/Reporting; and Supervision of the Clinician

The police department provides In-Kind Contributions as follows:

- 1 Lieutenant assigned to the Community Services Division, which includes oversight of the CIU, SROs, and the Hyannis Youth and Community Center;
- 1 Sergeant assigned to the CIU;
- 2 full-time officers assigned to the CIU;
- 10 Summer Community Service Officers; 2 Winter CSOs, and
- 1 Financial Administrator

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends acceptance of this grant.

STAFF ASSISTANCE: Matthew K. Sonnabend, Chief of Police; Deputy Chief Jean Challies; Lieutenant Michael L Riley; Anne Spillane, Director, Finance & Support Services

B. NEW BUSINESS (May be acted upon) (Majority Vote)

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-028
INTRO: 09/01/2022**

**2023-028 AUTHORIZATION TO EXPEND A FISCAL YEAR 2023 JAIL/ARREST
DIVERSION PROGRAM CO-RESPONDER GRANT IN THE AMOUNT OF
\$99,000 FROM THE COMMONWEALTH OF MASSACHUSETTS,
DEPARTMENT OF MENTAL HEALTH**

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 Jail/Arrest Diversion Program Co-Responder Grant from the Commonwealth of Massachusetts, Department of Mental Health in the amount of **\$99,000** for the purpose of funding the costs of contracting for the services of a full-time licensed clinician as part of the Barnstable Police Department’s Co-Response Jail Diversion Program.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read item
- Rationale
- Council Discussion
- Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2023-028
INTRO: 09/01/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Matthew Sonnabend, Chief of Police
DATE: September 01, 2022
SUBJECT: Authorization to expend a Fiscal Year 2023 Jail/Arrest Diversion Program Co-Responder Grant in the amount of **\$99,000** from the Commonwealth of Massachusetts, Department of Mental Health

BACKGROUND: The Department has been awarded a grant from the Massachusetts Department of Mental Health (DMH) in the amount of \$99,000 relative to the continuation of a Co-Response Jail Diversion Program. This grant will fund a full-time licensed clinician from Bay Cove to serve the Barnstable Police Department. Bay Cove operates the Cape Cod Behavioral Health Program. The licensed clinician will respond to calls with officers as well as provide essential follow up services. The goal of the Jail Diversion Program (JDP) will be to divert individuals suffering from mental health related issues away from the criminal justice system and from the Cape Cod Hospital Emergency Department when appropriate. The co-responder program closely mirrors the goals and mission of DMH, which are to provide early intervention to individuals in a mental health crisis in lieu of an arrest. The presence of the clinician promotes access to timely and immediate mental health intervention.

ANALYSIS: Acceptance of this grant will enable the department to fund the continuation of a full time licensed mental health clinician in order to provide more timely response to individuals in crisis. The long-term goals for the Barnstable JDP include increasing access to arrest and jail diversion options and reducing the number of unnecessary transports to the emergency department.

GRANT DETAIL: The grant award for the period of July 1, 2022 to June 30, 2023 is \$99,000 and represents Year 2 of a 3-Year grant program. The grant must be reapplied for renewal each of the 3-year term of the grant. This covers the personnel cost, travel, indirect cost, and other expenses incurred by the Bay Cove licensed clinician.

FISCAL IMPACT: Barnstable Police Department will be billed quarterly by Bay Cove and a drawdown from the DMH grant funds will be submitted. When the funds are received from DMH, Barnstable Police Department will pay the Bay Cove invoice. All costs associated with this grant cycle must be completed by June 30, 2023.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends acceptance of this grant.

STAFF ASSISTANCE: Matthew K. Sonnabend, Chief of Police; Jean Challies, Deputy Chief
Anne Spillane, Finance and Support Services Director

B. NEW BUSINESS (May be acted upon) (Majority Vote)

BARNSTABLE TOWN COUNCIL

**ITEM# 2023-029
INTRO: 09/01/2022**

**2023-029 AUTHORIZATION TO EXPEND A FISCAL YEAR 2023 COASTAL ZONE
MANAGEMENT COASTAL HABITAT AND WATER QUALITY GRANT
FROM THE COMMONWEALTH OF MASSACHUSETTS IN THE
AMOUNT OF \$27,000 FOR THE SNOWS CREEK CULVERT PROJECT**

RESOLVED: That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 Coastal Zone Management Coastal Habitat and Water Quality Grant from the Commonwealth of Massachusetts in the amount of **\$27,000** for the permitting and design of the Snows Creek Culvert.

SPONSOR: Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rational
- Council Discussion
- Vote

BARNSTABLE TOWN COUNCIL

ITEM# 2023-029
INTRO: 09/01/2022

SUMMARY

TO: Town Council
FROM: Mark S. Ells, Town Manager
THROUGH: Daniel W. Santos, P.E., Director of Public Works
DATE: September 01, 2022
SUBJECT: Authorization to expend a Fiscal Year 2023 Coastal Zone Management Coastal Habitat and Water Quality Grant from the Commonwealth of Massachusetts in the amount of **\$27,000** for the Snows Creek Culvert Project

BACKGROUND: The Town of Barnstable Department of Public Works has received a grant award in the amount of \$27,000 for the purpose of permitting and designing the Snows Creek Culvert Replacement. This project will acquire permits and complete designs to replace the existing 36” diameter pipe located at Ocean Street with a larger box culvert to improve flushing to the upstream Snows Creek Estuary.

ANALYSIS: The existing small culvert under Ocean Street is in disrepair with cracked headwalls and eroded embankments. Installation of a new larger culvert will address the aged infrastructure and provide increased “flushing” into the upstream creek, which is expected to improve water quality. This culvert replacement will complement plans to improve sidewalks between Downtown Hyannis and Kalmus Beach. This project is informed by previous data collection and once constructed will restore tidal flow and improve water quality and habitat for fish, birds, and shellfish in the estuary.

FISCAL IMPACT: This grant is a reimbursement grant in the amount of \$27,000. The Town must expend funds upfront and subsequently request for reimbursement. The Town’s matching funds for this project will be provided from the Snows Creek Culvert Project Appropriation approved under Town Council order 2021-184 for \$150,000. All costs associated with this grant must be expended prior to June 30, 2023.

TOWN MANAGER RECOMMENDATION: Mark S. Ells, Town Manager, recommends acceptance of this grant.

STAFF ASSISTANCE: Daniel W. Santos, P.E., Director of Public Works