



Town Council Meeting  
December 16, 2021



A quorum being duly present, President Matthew Levesque called the December 16, 2021, Town Council meeting to order at 7:08 PM.

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

**PRESENT:** (On Zoom) Nikolas Atsalis, David Bogan, Kristine Clark, Jessica Rapp Grasseti, Paul Hebert, Matthew Levesque, Jeffrey Mendes, Paul Neary, Paula Schnepf, Tracy Shaughnessy, Gordon Starr, Eric Steinhilber **Absent:** Jennifer Cullum

The Pledge of Allegiance was led by Councilor Shaughnessy, followed by a moment of silence for those who are alone at this time of year.

**PUBLIC COMMENT:**

Kim McGuire of "Save Twin Brooks" group advocating saving this area for green space; she spoke of the petition filed with the Town Clerk to have a separate Town Council meeting with the voters of the Town of Barnstable. Many people helped gather the signature and over 600 voter's signatures were certified. Currently the Twin Brooks property is used by our community and visitors alike.

Betty Ludkte mentioned the agreement about 80 Pearl St; this is exactly how we are going to meet our housing needs for the town, how we can build communities and can be affordable. She is curious why the Town of Barnstable owns two golf courses, which does not bring in tax dollars to the town. We should sell them to private owners they are the worst producers of nitrogen. With the proceeds from the sale of the golf courses you could purchase the Twin Brooks golf course.

Deb McLister longtime resident talked about the Twin Brooks property. She could not imagine anyone thinking of building on the Twin Brooks property the land is soggy and wet in many areas. We have not been good stewards of the two streams on either side of the property. Not concerned about the golf course but of the natural resource that will be ruined if we allow it to be built on.

Greta Nelson urged the Council to pass the Stretch Code item on for later this evening. She expects the town to take action to do everything possible to fight against climate change. Vote to adopt the Stretch Code.

Jerry Vigil is against the monumental project scheduled for Twin Brooks, detrimental to the Cape's resources, our infrastructure is already overwhelmed, and save the space for green space, for community activities and park space; do your best to make sure this doesn't happen.

Eileen Elias from “Barnstable No Place for Hate, one of our key target areas is the housing, we must be sensitive to develop a housing plan that will ensure accessible and fair housing. Asking the Town Council to develop a housing plan, work with the Barnstable No Place for Hate to ensure accessible and available housing.

Lawrence Brown my daughter would like to move here but cannot afford it. He is against the development of the Twin Brooks property. We should be talking to each other, we need to be concerned about sea level rise, and we have to talk. We need a moratorium on new big projects that have not broken ground; we have been talking about affordable housing for years.

Peter Doyle of the Infrastructure and Energy Committee spoke in favor of the Green Community designation and for the Stretch Code; the committee voted in favor of this presentation. Climate change threatens the earth; we must now stabilize the earth. The Town has made significant progress in energy conservation. Vote favorably

Michelle Sgarlat speaking to the acceptance of the Green Communities and Stretch Code, these items need to be passed out of the 351 cities and towns in Massachusetts 299 have adopted the Stretch Code.

Alison Alessi in favor of the Green Community Act and the Stretch Code piece, our energy code is quite strict in Massachusetts right now. The process is seamless and is very important and you get incentives back. Reach out to experts on the Stretch Code.

Matt Teague a builder voices opposition for the Stretch Code, only impacts single family home construction which is a need in Barnstable. The overall cost of construction has doubled since 2010, why would you want to increase that with the Stretch Code. Reach out to a contractor, , or for immediate impact reduce the speed limits to 15 on all town roads.

Jim Wolf Sustainability Director at Cape Air wants the Council to vote for the Green Communities Act; on the Cape we are able to deal with buildings that may cost a little more but the pay back in reduced energy costs happens right away. What we need to worry about, can challenged economic businesses afford to make buildings more efficient. Barnstable is an early adopter of solar panels, the Stretch Code is do-able, and you get huge rebates. The payback is quick.

Tara Vargas Wallace advocating for any affordable housing, gave examples of a family losing their housing just before Christmas, with the children scattered with relatives. We need to provide housing and we need it now. People are working two or three jobs just to have a roof over their heads.

Jane Ward a physician is speaking in support of the Stretch Code and Green Communities, from the health perspective of the residents; indoor air and environment has to be healthy. Make sure the various rating systems of green buildings are concerned with the indoor air, adequate ventilation. Green buildings tend to be the healthiest buildings we have at this time. Vote for the Stretch Code.

Pete Sampou an Oceanographer has taught climate change, facing a crisis this century; Green Community and the Stretch Code is just the next step for our Town. Our public buildings will be more efficient, Barnstable is one of two towns on the Cape that have not gone this route, please adopt the Stretch Code.

Rob Brennan builder in Hyannis, agree with almost everything on both side, we are facing climate issues, carbon emissions, and a crisis of housing affordability on Cape Cod. As we are trying to meet the needs, the most expensive time to be building. The code you are being asked to commit to tonight, is dated and will be replaced in the next twelve months with net zero. Craft a roadmap on housing and climate that can be advanced hand in hand. What are the increase costs going forward, urges Barnstable to actively participate in net zero.

Eva and Patrick Golar's spoke against the Twin Brook's housing proposed project, Hyannis is very congested; keep it as open space, little attention to the environmental impacts on the community. Look to alternative sites that would have less of an impact. Very concerned about the additional traffic and would like to see a park area for the children.

**Response to Public Comment:**

(Atslais) Twin Brooks is a consistent theme with the callers, that this has been rushed, this is not close to coming before us, it is now at the Cape Cod Commission. We have not rushed or approved anything yet at the Council level. Using the term "Twin Brooks Conservation Area" is incorrect it is private property, under contract to be sold. Get the information and make sure it is accurate. (Starr) Glad to hear about the Twin Brooks public meeting; the Stretch Code is important too. (Levesque) it is a possibility of having a meeting, we are waiting for the legal review, we will let everyone know. The selling of golf courses, Hyannis Golf is deed restricted, we could not sell it. The idea of buying it was a number of Council's ago; we use only organic material on our golf courses. Old Barnstable Golf Course is very profitable. It is important to make sure we have the correct information regarding the Twin Brooks property. Allow the process to take place, we will have more conversation. (Hebert) Very complicated to create housing today, the process is lengthy and costly.

**Town Manager's Report:**

- Budget Action Calendar for 2023
- Anticipates receiving 12,000 COVID tests from the Commonwealth intended for low-income population
- Local Comprehensive Plan (LCP) is proceeding and appointment of the Local Comprehensive Planning Committee (LCPC)
- Later this evening Town Council shall consider Resolve 2022-064 directing the Town Manager to prepare and submit for Town Council consideration a proposed ordinance providing for the Town's adoption for the "Stretch Code."

David Anthony, Director of Asset Management, appeared before the Airport Commission and presented the energy reduction plan and the green vehicle policy, endorsed and adopted both; at the School Committee meeting presented the same. The school committee put off an actual vote until February. These steps are necessary to further staff position to be able to make an application to the state for Green Communities.

**Town Manger's Report continues:**

- Cape Cod Gateway Airport will receive \$1,015,864 as part of a grant allocation in the recently enacted Bipartisan Infrastructure Law (IIJA)
- Department of Public Works continues numerous construction projects throughout Town.
- Deputy Building Commissioner Jeff Carter has met the qualifications and is now a Certified Building Official.

### **Councilor Questions and Comments:**

(Clark) The proposed fees for memorials and benches and plaques, is there a procedure to see this on the website. (Ells) Not yet, we will discuss with the individuals (Mendes) Is there a system in place for English as a second language to have access to these COVID test kits (Clyburn) Yes, we are working with health ministries and the schools, we are in contact with them to make sure we cover all those communities (Rapp Grassetti) At the last meeting I requested the costs for the Nor'easter clean up, is that clean up continuing today (Ells) To date in internal costs, 41,000; operating cost 382,000 for contracts for road side work which is complete we are waiting for final invoices, will share a spreadsheet. (Schnepp) Regarding the COVID tests, opportunity to educate the community to make sure that people know about the free testing (Clyburn) the number of tests is somewhat limited, targeted effort to get testing to the low-income residents; we are partnered with the schools, and health ministries to get this information out. Want to make everyone aware of all the opportunities in our community. (Schnepp) Are we doing contract tracing right now, or have we moved passed it? (Clyburn) we are doing contract tracing with these kits, we are moving away from centralization; if you test positive, you are to quarantine for 10 days.

- Dan Santos, Director of Public Works provided an update on the Comprehensive Wastewater Management Plan (CWMP). Shared a power point presentation to show the updates thus far.

### **Councilor Questions and Comments:**

(Clark) posted to the Town Council website, tracking of the COVID virus through wastewater/effluent (Santos) yes for viruses and bacteria but not for COVID (Starr) Updates on the on the Mill Pond dredging (Santos) We have been continuing the permitting and have been encouraged that it is possible and viable, but do not know if it will be approved (Mendes) Route 28 and Yarmouth Road work will that be night work (Santos) believe it will be both night and day, but they will have lanes open so traffic can pass (Rapp Grassetti) Was the Mothers Park virtual meeting recorded for future viewing (Atsalis) it was not. (Rapp Grassetti) Encouraged to hear the Joint Base Cape Cod (JBCC) is a significant alternative for effluent disposal (Schnepp) Impressive amount of work, any updates on the inter-municipal work with Mashpee, Sandwich and Yarmouth (Santos) Mashpee will probably go forward with JBCC, and possibly Sandwich will go along; Yarmouth was interested in an agreement, we will revisit our municipal agreement with them. (Ells) Yarmouth's former Town Administrator, hesitated due to his leaving Yarmouth, the new Town Administrator has a draft agreement in Yarmouth, but they are not ready yet. Once they are ready we will sit down together.

### **ACT ON MINUTES:**

Upon a motion duly made and seconded it was to accept the minutes of December 2, 2021 as presented.

### **VOTE: PASSES 12 YES**

**Roll Call: Atsalis, Bogan, Clark, Rapp Grassetti, Hebert, Mendes, Levesque, Neary, Schnepp, Shaughnessy, Starr, Steinhilber.**

### **COMMUNICATIONS- from elected officials, boards, committees, and staff commission reports, correspondence and announcements:**

(Clark) Friends of Barnstable Council on Aging, they pay for the truck rental for the brown bag once a month among other things, will gratefully accept donations (Atsalis) Pickle Ball courts at Marstons Mills Elementary School, getting lots of use; recreation has staffing needs; Barnstable High School vaccination rate is only at 50% (Rapp Grassetti) I have resigned from the Appointments Committee, it has been an honor to serve and to interview all of the volunteers.

(Bogan) no one was more disappointed when I heard you were resigning from the Appointments Committee.

Short Break at 9:04 PM

**2022-044 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$2,750,000 FOR THE PURPOSE OF FUNDING DESIGN AND PERMITTING OF THE VINEYARD WIND 2 ROUTE SEWER EXPANSION PROJECT INTRO: 11/18/2021, 12/16/2021**

Dan Santos, Director of Public Works gave the rationale  
Open public comment seeing no one close public comment

**Councilor Questions and Comments:**

(Starr) Sewer line going north up the west side of Lake Wequaquet is that hooking up to 28  
(Santos) Yes, south to 28 (Schnepp) is this the design and permitting you showed earlier tonight  
(Santos) Yes (Schnepp) Was this in our CIP, trying to tie in costs (Santos) Yes this was contemplated and we reconfigured it, but it was about a year ago (Schnepp) estimated cost for construction (Santos) 28 million dollars (Schnepp) That will be 24-25? (Santos) Yes

Upon a motion duly made and seconded it was

**ORDERED:** That the sum of **\$2,750,000** be appropriated for the purpose of funding the Vineyard Wind 2 Route Sewer Expansion 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 \$2,750,000 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 therefore; 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 Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**VOTE: PASSES 12 YES**

**Roll Call: Atsalis, Bogan, Clark, Rapp Grasseti, Hebert, Mendes, Levesque, Neary, Schnepp, Shaughnessy, Starr, Steinhilber**

**2022-045 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$3,500,000 FOR THE PURPOSE OF FUNDING DESIGN AND PERMITTING OF THE ROUTE 28 WEST SEWER EXPANSION PROJECT INTRO: 11/18/2021, 12/16/2021**

Dan Santos, Director of Public Works gave the rationale  
Open public comment seeing no one close public comment

**Councilor Questions and Comments:**

(Schnepp) Do we know what our 12 month commitment for funding to CWMP is thus far (Milne) for the more than 12 months from the beginning, 49 million dollars in appropriations for the CWMP (Schnepp) is any of the cost tonight for in house design, (Santos) This part is for outside

Upon a motion duly made and seconded it was

**ORDERED:** That the sum of **\$3,500,000** be appropriated for the purpose of funding the Route 28 West Sewer Expansion 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 \$3,500,000 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 Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**VOTE: PASSES 12 YES**

**Roll Call: Atsalis, Bogan, Clark, Rapp Grassetto, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

**2022-050 SUPPLEMENTAL APPROPRIATION ORDER IN THE AMOUNT OF \$8,490 FOR THE HEAVY DUTY TRUCK SCALE REPLACEMENT PROJECT AT THE SOLID WASTE DIVISION OF THE DEPARTMENT OF PUBLIC WORKS INTRO: 11/18/2021, 12/16/2021**

Dan Santos, Director of Public Works gave the rationale  
Open public comment seeing no one close public comment

Upon a motion duly made and seconded it was

**ORDERED:** That the amount of **\$8,490** be appropriated and added to the \$100,000 appropriated under Town Council Order 2020-125 for a revised appropriation amount of \$108,490 for the purpose of funding the Heavy Duty Truck Scale Replacement Project at the Solid Waste Division; and that \$8,490 be transferred from the Solid Waste Enterprise Fund reserves to fund this appropriation.

**VOTE: PASSES 12 YES**

**Roll Call: Atsalis, Bogan, Clark, Rapp Grassetto, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

**2022-052 SUPPLEMENTAL APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$1,075,000 FOR THE PURPOSE OF FUNDING THE CONSTRUCTION OF SEWER INFRASTRUCTURE TO BE INSTALLED AS PART OF MASSDOT'S ROUTE 28 AND YARMOUTH ROAD INTERSECTION IMPROVEMENT PROJECT INTRO: 12/02/2021, 12/16/2021**

Dan Santos, Director of Public Works gave the rationale  
Open public comment seeing no one close public comment

**Councilor Questions and Comments:**

(Shaughnessy) Why was the Mass DOT off by so much? (Santos) It was estimated twice, not by us, just a case of how expensive construction has become post COVID. This project is subject to a 25% subsidy from the Cape Cod and Islands Water Protection Fund (Starr) how long is it going to take to be finished (Santos) project scheduled to be completed in 2026.

Upon a motion duly made and seconded it was

**ORDERED:** That the sum of \$700,000 appropriated under Town Council order 2020-002 be increased by **\$1,075,000** for a total revised appropriation amount of \$1,775,000 for the purpose of funding the construction of sewer infrastructure to be installed as part of the Massachusetts Department of Transportation (MassDOT) Route 28 and Yarmouth Road Intersection Improvement 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 \$1,775,000 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 Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

**VOTE: PASSES 12 YES**

**Roll Call: Atsalis, Bogan, Clark, Rapp Grassetto, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber.**

**2022-053 SUPPLEMENTAL APPROPRIATION ORDER IN THE AMOUNT OF \$48,000 FOR THE PURPOSE OF PAYING OPERATING EXPENSES OF THE LEGAL DEPARTMENT FOR THE SERVICES OF THE LAW FIRM OF ANDERSON & KREIGER WHICH IS SERVING AS OUTSIDE COUNSEL TO THE TOWN WITH RESPECT TO TWO LAWSUITS FILED AGAINST THE TOWN BY THE CONSERVATION LAW FOUNDATION INTRO: 12/02/2021, 12/16/2021**

Town Attorney, Karen Nober gave the rationale

Open public comment seeing no one close public comment

**Councilor Questions and Comments:** (Clark) please convey to CLF they are derailing our efforts to clean up the pollution and they are stealing money away from us to pay for this litigation (Starr) have we not paid them for three months (Nober) we have not (Starr) we should keep our payments up I am all for this (Atsalis) Agrees with Councilor Clark

Upon a motion duly made and seconded it was

**ORDERED:** That the amount of **\$48,000** be appropriated for the purpose of paying operating expenses of the Legal Department for the services of the law firm of Anderson & Kreiger, which is serving as outside counsel to the Town with respect to two lawsuits filed against the Town by the Conservation Law Foundation; and that to fund the appropriation, that \$48,000 be transferred from the General Fund surplus.

**VOTE: PASSES 12 YES**

**Roll Call: Atsalis, Bogan, Clark, Rapp Grassetto, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

**2022-056 SUPPLEMENTAL APPROPRIATION ORDER IN THE AMOUNT OF \$350,000 FOR THE PURPOSE OF FUNDING THE FISCAL YEAR 2022 DEPARTMENT OF PUBLIC WORK'S FISCAL YEAR 2022 OPERATING CAPITAL BUDGET INTRO: 12/02/2021, 12/16/2021**

Dan Santos, Director of Public Works gave the rationale

Open public comment seeing no one close public comment

**Councilor questions and comments:**

(Rapp Grassetto) how are you doing with contractors for snow removal (Santos) we have more than in previous years, we are still looking for more.

Upon a motion duly made and seconded it was

**ORDERED:** That the amount of **\$350,000** be appropriated for the purpose of funding the Fiscal Year 2022 Department of Public Work's Fiscal Year 2022 Operating Capital Budget and that to fund the appropriation, that \$350,000 be transferred from the General Fund surplus.

**VOTE: VOTE: PASSES 12 YES**

**Roll Call: Atsalis, Bogan, Clark, Rapp Grassetto, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

**2022-059 ORDER TO APPROVE TERM OF CONTRACT FOR BARNSTABLE PUBLIC SCHOOLS FOOD SERVICE MANAGEMENT CONTRACT INTRO: 12/16/2021**

Upon a motion duly made and seconded it was

**ORDERED:** That the Town Council, under the provisions of M.G.L. c. 30B, § 12 (b), does hereby authorize the School Committee to enter into a one (1) year contract with up to four (4) one year extensions for the management of the Barnstable Public Schools Food Service program.

**VOTE: To a Second Reading on 1/6/2022 PASSES 12 YES**

**Roll Call: Atsalis, Bogan, Clark, Rapp Grassetto, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

**2022-060 AUTHORIZATION TO EXPEND A FEDERAL FISCAL YEAR 2021 EMERGENCY MANAGEMENT PERFORMANCE GRANT IN THE AMOUNT OF \$20,150 FROM THE MASSACHUSETTS EMERGENCY MANAGEMENT AGENCY INTRO: 12/16/2021**

Chief Sonnabend gave the rationale

Upon a motion duly made and seconded it was

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for a Federal Fiscal Year 2021 Emergency Management Performance Grant in the amount of **\$20,150** from the Massachusetts Emergency Management Agency for the purpose of funding costs associated with purchasing and set-up of a Town of Barnstable AM radio transmitter to be located at the Town transfer station, and further authorizes the Town Manager or his designee to expend such grant for the purpose stated herein.

**VOTE: PASSES 12 YES**

**Roll Call: Atsalis, Bogan, Clark, Rapp Grassetto, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

**2022-061 AUTHORIZATION TO EXPEND A 2021 MASSACHUSETTS DREDGING GRANT FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT IN THE AMOUNT OF \$55,000 FOR THE BARNSTABLE HARBOR OUTER ENTRANCE CHANNEL DREDGING PROJECT INTRO: 12/16/2021**

Dan Santos, Director of Public Works gave the rationale

(Schnepf)The agenda item mistakenly references the wrong dredging project

Upon a motion duly made and seconded it was

I move that Town Council Item No. 2022-061 be amended by deleting the words "Phase 3 of the Dead Neck/Sampson's Island Dredging Project" and inserting the words "the Barnstable Harbor Outer Entrance Channel Dredging Project" in their place."

**VOTE : To Amend PASSES 12 YES**

**Roll Call: Atsalis, Bogan, Clark, Rapp Grassetto, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

**Councilor questions and comments:**

(Clark) Will there be public notice of this project? (Santos) We will do a press release (Clark) the presentation gives the dates of December and January that notice needs to be soon

Upon a motion duly made and seconded it was



**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for a 2021 Massachusetts Dredging Grant in the amount of **\$55,000** from the Commonwealth of Massachusetts, Executive Office of Housing and Economic Development for the purpose of executing **the Barnstable Harbor Outer Entrance Channel Dredging Project**, and further authorizes the Town Manager or his designee to expend the grant funds for the purpose stated herein.

**VOTE As Amended: PASSES 12 YES**

**Roll Call: Atsalis, Bogan, Clark, Rapp Grassetto, Hebert, Mendes, Levesque, Neary, Schnepp, Shaughnessy, Starr, Steinhilber**

**2022-062 AUTHORIZATION TO EXPEND A FISCAL YEAR 2022 TECHNICAL ASSISTANCE GRANT FROM THE COMMONWEALTH OF MASSACHUSETTS, DEPARTMENT OF ENVIRONMENTAL PROTECTION BUREAU OF WASTE SITE CLEANUP IN THE AMOUNT OF \$15,000 FOR HIRING TECHNICAL SERVICES FOR TECHNICAL REVIEW AND PUBLIC ENGAGEMENT OF DISPOSAL SITE CLEANUP RESPONSE ACTIONS ASSOCIATED WITH THE BARNSTABLE FIRE TRAINING ACADEMY DISPOSAL SITE INTRO: 12/16/2021**

Dan Santos, Director of Public Works gave the rationale

Upon a motion duly made and seconded it was

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for a Fiscal Year 2022 Technical Assistance Grant from the Commonwealth of Massachusetts, Department of Environmental Protection Bureau of Waste Site Cleanup in the amount of **\$15,000** for hiring technical services for technical review and public engagement of disposal site cleanup response actions associated with the Barnstable Fire Training Academy disposal site, and further authorizes the Town Manager or his designee to expend the grant funds for the purpose stated herein.

**VOTE: PASSES 12 YES**

**Roll Call: Atsalis, Bogan, Clark, Rapp Grassetto, Hebert, Mendes, Levesque, Neary, Schnepp, Shaughnessy, Starr, Steinhilber**

**2022-063 AUTHORIZING THE TOWN MANAGER TO EXECUTE A REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND LYON INVESTMENT REALTY TRUST FOR 80 PEARL STREET, HYANNIS INTRO: 12/16/2021**

Upon a motion duly made and seconded it was

**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 and Lyon Investment Realty Trust, for the property at 80 Pearl Street, Hyannis, 0.94± acres, shown on Town of Barnstable Assessor's Map 326 as Parcel 008, and whose boundaries are shown on Land Court Plan 25652-A ("the Property"); and further authorizing the renovation and reuse of the Property and granting the requested zoning relief pursuant to and as described in this Regulatory Agreement.

**REGULATORY AGREEMENT**  
LYON INVESTMENT REALTY TRUST  
80 PEARL STREET, HYANNIS, MA 02601

This Regulatory Agreement (the "Agreement") is entered into by Jennifer and Jeffrey Lyon, Trustees of the Lyon Investment Realty Trust u/d/t dated August 13, 2019, with an

abstract of trust recorded as Document No. 1,382,713, and an address of Post Office Box 611, Hyannis, Massachusetts 02647 (the "Applicant" and the "Developer"), including successors and assigns, and the Town of Barnstable, a municipal corporation with a place of business at 367 Main Street, Hyannis, MA 02601 (the "Town") on this \_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date") pursuant to Section 240-24.1 of the Barnstable Zoning Ordinance and Section 168 of the Barnstable Code.

WHEREAS, this Agreement shall establish the permitted use and density with the development on the hereinafter identified Property, the duration of the Agreement, and any other terms or conditions mutually agreed upon between the Applicant and the Town;

WHEREAS, the Applicant is the legal owner of the real property located at 80 Pearl Street, Hyannis, Massachusetts which has an area of approximately 0.94 acres and is shown on Barnstable Assessor's Map 326, Page 008, the title to which is evidenced by Certificate of Title No. 222052 recorded with the Barnstable Registry District of the Land Court and whose boundaries are shown on Land Court Plan 25652-A ("Property");

WHEREAS, the Property is located in the SF Single Family Residential District §240.24.1.5;

WHEREAS, the Property is improved with a two-story building with 3,285 square feet on the first and second floor and 1,196 square feet of a walkout basement (the "Building");

WHEREAS, the Building was constructed circa 1820 and has been used for the last forty plus years as office, day care, and commercial kitchen space by Cape Cod Child Development as an exempt zoning use;

WHEREAS, the Applicant proposes to renovate the Building into eight apartments (one rear walkout, four first floor, and three second floor units) which would be studio and one bedroom units as set forth in proposed plans submitted with the application for this Regulatory Agreement;

WHEREAS, the Property has sufficient parking in a pre-existing parking lot on the Property which is being modified solely to improve handicap parking;

WHEREAS, to proceed with the project, the Applicant requires relief from Section 240-24.1.5.A to allow a multi-family dwelling in a single family residence district;

WHEREAS all properties which abut the Property are not currently being used for single residential use and the Property is buffered from impacting the nearest single family neighborhood by natural and manmade impediments;

WHEREAS, the Town is authorized to enter into this Agreement pursuant to Chapter 168 of the Barnstable Code;

WHEREAS, the Town and the Applicant desire to set forth their respective understandings and agreements regarding the reuse of the Property;

WHEREAS, the Applicant shall reuse the Property substantially in accordance with this Agreement;

WHEREAS, the proposed development of the Property will not require regulatory review under the Massachusetts Environmental Policy Act (MEPA);

WHEREAS, the Development 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, as authorized by Barnstable County Ordinance 2005-13, as amended by Barnstable County Ordinance 10-19, 14-05, 17-11 and 18-02 Chapter G, Growth Incentive Zone Regulations of the Cape Cod Commission Regulations of General Application;

WHEREAS, the Development is not subject to review by the Cape Cod Commission as a Development of Regional Impact due to its location in the GIZ and due to the adoption of Barnstable County Ordinance 2006-06, as amended by Barnstable County Ordinance 10-19, 14-05, 17-11 and 18-02, establishing revised development thresholds within the GIZ, under which this development may proceed and Developer has submitted a Jurisdictional Determination to the Town of Barnstable Building Department to confirm the same;

WHEREAS, prior to applying for approval of this Agreement, the Development was reviewed by the Town of Barnstable Site Plan Review Committee and the Site Plan Review Committee voted to find the development proposal approvable subject to the grant of a Regulatory Agreement and other conditions on January 21, 2021 and Formal Site Plan Review on September 16, 2021;

WHEREAS, the Town acknowledges that this Regulatory Agreement will result in a material increase in the number of year-round residential units for lower to middle income residents;

WHEREAS, the Town acknowledged through the recently completed Housing Needs Assessment dated December 2014 that the Town of Barnstable's primary housing need is additional year-round rental housing and Hyannis is in need of additional rental housing stock;

WHEREAS, Applicant would require zoning relief to allow for multi-family residential development in the Single Family Residential District;

WHEREAS, the Applicant has obtained administrative approval from the Barnstable Historical Commission (BHC) Chair to replace the existing window on the rear elevation with a door providing access to the proposed deck;

WHEREAS, the project is consistent with the Downtown Hyannis Design & Infrastructure Plan in that it contributes to the plan's goals of creating livable neighborhoods for year-round residents; creates housing opportunities for persons and households of all income levels; is compatible with the historic and maritime character of the Downtown Hyannis as it shall preserve an existing historic structure;

WHEREAS, the Property is within walking distance to the Downtown Hyannis business district and Cape Cod Regional Transit Authority Hyannis Transportation Center, making the multi-family residential reuse of Property appropriate;

WHEREAS, the proposal has undergone a public hearing opened on August 23, 2021 and closed on November 8, 2021 on the Agreement application and received an affirmative majority vote from the Planning Board on November 8, 2021;

WHEREAS, the proposal has undergone a public hearing opened on \_\_\_\_\_ and closed on \_\_\_\_\_ on the Agreement application before the Town Council and received no less than a two-thirds vote approving the application on \_\_\_\_\_;

NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which each of the parties hereto acknowledged to each other, the Applicant and Town do enter into this Agreement, and hereby agree to covenant as follows:

1. The Applicant shall renovate and maintain the Building and Property at 80 Pearl Street and construct eight apartment units, in substantial compliance with the site plan entitled "Site Improvement Plan" 80 Pearl Street, Hyannis, MA prepared for "Jeffrey Lyon" dated October 8, 2021 as revised November 5, 2021, scale 1'=20', prepared and stamped by Tarja McGrail, P.E., Coastal Engineering Co., 260 Cranberry Hwy, Orleans, MA 02653; and the floor plans entitled "Initial Drawing Release As Built Plan Showing Proposed Building Floor Plan" 5 Pages, client Jeff Lyon, 80 Pearl Street, Hyannis, MA dated December 22, 2020, prepared by Glen A. Mitchell.
2. The Applicant shall not change the exterior of the Building in any substantial or material manner.
3. This Agreement shall vest land use development rights with the Applicant/Owner and/or its successors for the duration of this Agreement and such rights shall not be subject to subsequent changes in local development ordinances, with the exception of changes necessary to protect the public health.
4. This Agreement authorizes only the uses and intensity of use and mitigation stipulation, if any, specified herein. Any minor amendment to the authorized terms of this Agreement may be made by the Town Manager pursuant to Section 168-5D; any substantial amendment to the authorized terms of this Agreement shall require review by the Town Council and Planning Board pursuant to Section 168-10 of the Town Code.
5. The Applicant is permitted to the use of one (1) residential unit in accordance with §240-24.1.5.A. In addition, this Agreement permits the construction of a total of seven additional units as shown on the Plan on file with the Barnstable Planning Board. All units shall remain rental units in perpetuity and shall not be converted into a condominium form of ownership.
6. Any future partial and/or to total demolition of the Building shall constitute a substantial change to the Property and require review by Town Council and Planning Board pursuant to Section 168-10 of the Town Code, in addition to any partial and/or total demolition of the Building shall require review and approval from the Barnstable Historical Commission (BHC) in accordance with Article I, Chapter 112, Sections 1-7.
7. The Applicant shall be responsible for obtaining all necessary building permits and all necessary approvals from the Town of Barnstable Public Works Water Supply Division as necessary and their use and construction of the Building shall be in compliance with all Building, Fire and Health Codes.

8. Prior to the issuance of any building permit, the Developer shall submit a Landscape Plan for the Property that is consistent with Downtown Hyannis Design & Infrastructure Plan. All landscaping within the development shall be low water use and shall minimize the use of fertilizers and pesticides. The Landscape Plan shall be approved by the Director of Planning & Development, or their designee, prior to issuance of any building permit. The implementation and completion of the Landscape Plan shall be reviewed and approved by the Director of Planning and Development, or their designee, prior to occupancy permit.
9. Lighting for the Development shall be contained on-site, shall be down cast, and shall not contribute to light pollution of the area.
10. The existing detached structure on the property shall be used exclusively for storage accessory to the multi-family use and shall not be used as living area.
11. Developer shall be responsible for snow plowing and snow removal on the Development site in perpetuity.
12. Developer shall be responsible for providing trash removal on the Development site in perpetuity as is required by Section 54-5(2) of the Code of the Town of Barnstable.
13. All plumbing fixtures in the new units and any replacement plumbing fixtures in the existing units shall be low water use fixtures and other water conservation measures are encouraged in the design and development of the project.
14. Developer's minimum lease term of rental units shall be twelve (12) months. Sublease of rental units, if permitted by the Developer, shall be for a minimum term of ninety (90) days. The lease documents shall be reviewed by the Town Attorney for consistency with the conditions of this Agreement prior to issuance of the first Certificate of Occupancy.
15. Subsequent to the issuance of a Certificate of Occupancy for the units, each apartment shall be registered with the Health Division's Rental Registration Program.
16. The Project shall be completed in compliance with all requirements and conditions of the Site Plan Review approval issued on January 21, 2021 and Formal Site Plan Review on September 16, 2021; the conditions of that approval are attached and shall be incorporated herein.
17. All development rights granted under the 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. However, the Applicant agrees that 30 days prior to any change of ownership of the Property that written notice shall be sent to the Planning Board, Town Council, and the Town Manager and further agrees that all terms and conditions of this Regulatory Agreement and amendments thereto, shall be binding on successive owners of the Property.
18. All terms, conditions, and obligations contained in this Regulatory Agreement shall be binding on any successor or assignee of the Applicant.

19. The Town hereby grants the following waiver from the Town of Barnstable Zoning Ordinance for the Redevelopment, as requested by the Developer:
- A. Section 240-24.1.5.A Principal permitted uses to allow multi-family development comprised of eight units in a single family residence district.
20. The Redevelopment provides, without limitation, the following site design, traffic safety, and community benefits:  
 An enhanced landscape setback along Pearl Street to improve the neighborhood streetscape and to provide a buffer between the redevelopment and the adjacent property to the south.
21. The term of this Agreement shall be five (5) years from the effective date of the Agreement (hereafter, the "Term"), and the development rights authorized herein must be exercised prior to expiration of the Term of this Agreement or it shall be null and void. 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 in a manner that requires additional zoning relief.
22. The development allowed in this permit shall be considered full build-out of the property. The structures authorized shall not be expanded nor other buildings and structures added without compliance with §168-10 of the Barnstable Code.

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

Town of Barnstable,  
 By,

Lyon Investment Realty Trust,  
 By,

\_\_\_\_\_  
 Mark S. Ells, Town Manager

\_\_\_\_\_  
 Jennifer Lyon, Trustee

\_\_\_\_\_  
 Jeffrey Lyon, Trustee

Certificate of Trustee

We, Jennifer Lyon and Jeffrey Lyon, Trustees of the Lyon Investment Realty Trust, u u/d/t dated August 13, 2019, with an abstract of trust recorded as Document No. 1,382,713, and an address of Post Office Box 611, Hyannis, Massachusetts 02601, hereby certify as follows:

1. We are presently the Trustees of said Trust;
2. That said Trust has not been altered, revoked, or terminated since its inception of August 13, 2019;
3. That pursuant to said Trust, upon the specific direction of the Beneficiaries of the Trust, the Trustee(s) have the power and authority to purchase and sell real estate, to construct or alter buildings, to borrow money, to grant the Trust estate as security for such borrowing and to execute and deliver all notes, mortgages, discharges, and assignments to implement the

purposes of the Trust including the power and authority to enter into a regulatory agreement; with the Town of Barnstable

4. That all of the Beneficiaries of the Trust have authorized and directed the Trustee(s) to enter into a regulatory agreement with the Town of Barnstable.

5. That pursuant to the terms of the Trust every agreement or action authorization to be taken by the Trustee(s) may be taken by the Trustee(s) of record;

6. That the undersigned Trustee has been authorized and empowered to execute such documentation as they deem necessary in order to effectuate the above-described documentation as they deem necessary in order to effectuate the above described conveyance as the Trustee(s) so determines; and

7. That all of the beneficiaries of the Trust are the age of majority and are not under any disability.

WITNESS my hand and seal this \_\_\_\_ day of November 2021.

Lyon Investment Realty Trust,  
By,

\_\_\_\_\_  
Jennifer Lyon  
Trustee

\_\_\_\_\_  
Jeffrey Lyon  
Trustee

#### **EXHIBIT A: REDEVELOPMENT PLANS**

**VOTE: To a Second Reading on 1/6/2022-PASSES 12 YES**

**Roll Call: Atsalis, Bogan, Clark, Rapp Grasseti, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

<b>2022-064 RESOLVE DIRECTING THE TOWN MANAGER OR HIS DESIGNEE(S) TO PREPARE AND SUBMIT FOR THE TOWN COUNCIL'S CONSIDERATION A PROPOSED ORDINANCE PROVIDING FOR THE TOWN'S ADOPTION OF THE STRETCH ENERGY CODE INTRO: 12/16/2021</b>
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Mark Ells, Town Manager gave the rationale. David Anthony and Brian Florence and other staff as needed to answer any questions.

#### **Councilor questions and comments:**

(Hebert) Whichever would like to answer this, understand the cost to increase insulation and the efficiencies of the house, other sources can give rebates and something from the state back to the town, where does that money come from (Ells) These funds would go to the municipality if available for municipal purposes (energy efficiency) and awarded to us (Florence) Fund that was established, divvies that fund up to the Green Communities every year, allows energy conservation projects on the municipal buildings. (Hebert) thank you all for the hard work (Starr) The initial grant for the town would be \$210,000 and every year additional grants, grant money is based on population, Mashpee has been a Green Community since 2010 (Mendes) What prevents the Department of Energy Resources (DOER) who now controls the code what prevents them from expanding the code or change it and does the town lose control over occupancy? (Florence) true the Board of Building Regulators and Standards (BBRS) used to be the authority, they are now an advisory committee to the DOER. The DOER now manages the Stretch Code, do not know what mechanisms are in place to stop amendments to the code with the Stretch Code there is a third party inspector who can stop an occupancy.

(Mendes) examples of what would stop occupancy (Florence) Not compiling with the design used to get a building permit and gave examples of what could stop occupancy (Mendes) is there any recourse for the homeowner, because they cannot move into their house (Florence) not sure if there is an appeals process through the DOER (Schnepp) Stretch Code only applies to new construction (Mendes) I realize what it pertains to, who says that these people who do not answer to anyone says they want this to apply to renovations or additions (Starr) No talk yet of expanding to additions/renovations. Net zero is going forward, will be finished probably by November 2022; If the insulation isn't up to code, the building department would not give an occupancy permit. Energy function and the design, it will be tested along the way; they are not out there trying to stop people for occupying their home. (Atsalis) Our town in effect is already operating as a Green Community; to me the word redundancy, government oversight or additional checks and balances it is going to cost more money. Wonder if the title is worth the cost to the consumer (Steinhilber) Comments we heard earlier, we are a Green Community, the Stretch Code adds cost of construction, lose local control of your occupancy; the net zero code is very close to how we operate in the Town, we know what we are, in October of next year net zero will be optional to begin with; with all of the unknowns, shifting of priorities, Barnstable should continue to be a leader and look towards that net zero code, get training for our current group to go forward to the net zero (Neary) Spoke to representatives from other towns, staff, inspectors, contractors, residents, and the grant program; however, have not been able to ascertain the 210,000 anywhere. The pro side, the inspectional services, most are okay after the first year, this is an additional inspection (with the Stretch Code) we could be listed as a Green Community if we accept this; there is a cost for the additional inspector, our current building code is the same as the Stretch Code; this is on residential building and commercial. Not sure if the funds are winding down, the set aside is annual, less money in the pot as more towns get involved. Houses are extremely tight, you need to have measures put in place to have fresh air/ventilation, in regards to cost, adopting the Stretch Code does add cost, and the rebates come in the type of equipment you put in your house. How many properties are we talking about on an annual basis (Florence) the average are about 60 new houses each year. (Neary) I am just not there yet. (Rapp Grasseti) We are not going to be voting on this tonight, who is going to work on this and what is the possible man hours (Ells) David Anthony and Karen Nober will spend the bulk of the time working on this, we have not quantified the number of hours, we have brought this forward in the past and if we are not serious about this, I would rather spend those man hours elsewhere, this would require two reads. (Rapp Grasseti) Once an ordinance comes before the Council we can expect a lot more public comment, this is a pretty controversial subject. (Starr) There are 299 towns out of the 351 who have accepted this Stretch Code, we can use their examples, and it should be quick to write the ordinances. The fear is evident, the Stretch Code is close to the base energy code, the tighter the houses now, the better off we will be for energy savings. (Mendes) Everybody here is environmentally conscious, try to buy a stove right now, could take six months up to a year, cannot support this (Levesque) How many years of education must be obtained to be certified as a Building Inspector (Florence) took about four years (Levesque) how much education does it take to be a HERS Rater (Florence) 14 weeks (Schnepp) believe my fellow councilors are environmentally conscious, it says something to our larger community if we go for Green Community; it is a collaborative process and is beneficial to have a lower cost to run the house. Lots of tear downs, and many new larger houses are being built, a lot of the low income housing, have been extremely energy efficient. We have to keep at it, we have sources of money available for Green Communities, lots of grant opportunities, maybe we should pass this resolve to keep the communication open (Steinhilber) significant amount of man hours, really for not, because the net zero is 10 months away (Florence) the state code is 2021, the Stretch Code right now is falling behind, net zero is where we net out to zero we are very close to that now, International Code Council (ICC) promulgates their code every three years (Steinhilber) people really need to



understand what is factual, and how great our code is right now, loss of local control is still legitimate (Starr) The International Energy Conservation Code (IECC) has nothing to do with the Stretch Code or the net zero code, it won't be in place for years, we should move this forward (Clark) Do want to echo, too often our town leaves money on the table, this maximizes use of our money (Levesque) don't think we leave money on the table. (Starr) We built 47 new houses last year; we do need more houses, 49,000 people versus 47 people. (Levesque) Thanked the staff, we have met 4 of the 5 steps to become a Green Community and kept up to date on them. (Starr) always signs petition, just so that it comes to the public

Upon a motion duly made and seconded it was

**RESOLVED:** That the Town Council does hereby direct the Town Manager or his designee(s) to prepare and submit for the Town Council's consideration a proposed ordinance providing for the Town's adoption of the Board of Building Regulations and Standards Stretch Energy Code, codified at 780 CMR 115.AA, an appendix to the Massachusetts State Building Code.

**VOTE: FAILS 6 YES (Bogan, Clark, Rapp Grassetto, Hebert, Schnepf, Starr) 6 NO (Atsalis, Levesque, Mendes, Neary, Shaughnessy, Steinhilber)**

<b>2022-065 ADOPTION OF THE 2020 TOWN OF BARNSTABLE PRECINCT MAP, WHICH MAP SUPERSEDES AND REPLACES THE MAP PREVIOUSLY APPROVED ON OCTOBER 7, 2021 INTRO: 12/16/2021</b>
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Ann Quirk, Town Clerk gave the rationale

Upon a motion duly made and seconded it was

**ORDERED:** That the Town Council hereby approves the 2020 Re-precincting Map prepared for the Town of Barnstable through the courtesy of William F. Galvin, Secretary of the Commonwealth and Census Liaison, as presented to the Town Council at this meeting, which Map supersedes and replaces the Re-precincting Map previously approved by the Town Council on October 7, 2021; and requests that the Town Clerk forward said map, a physical boundary description of each precinct, population figures for each precinct, a list of census block numbers for each precinct, and a certified copy of this vote to the Local Election Districts Review Commission for approval.

**VOTE: PASSES 12 YES**

**Roll Call: Atsalis, Bogan, Clark, Rapp Grassetto, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber**

**VOTE: ADJOURNMENT:**

Upon a motion duly made and seconded it was

**VOTED TO ADJOURN:**

**VOTE: PASSES 12 YES**

**Roll Call: Atsalis, Bogan, Clark, Rapp Grassetto, Hebert, Mendes, Levesque, Neary, Schnepf, Shaughnessy, Starr, Steinhilber.**

**Adjourned at 11:10 PM**

Respectfully submitted,

Town Clerk/Town of Barnstable

NEXT MEETING: January 6, 2022

Exhibits:

A Town Manager update