

Town of Barnstable  
Town Council  
James H. Crocker Jr. Hearing Room  
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## TOWN COUNCIL MEETING AGENDA

July 20, 2023

**6:00pm**

### Councillors:

Matthew Levesque  
President  
Precinct 10

Jennifer Cullum  
Vice President  
Precinct 13

Gordon Starr  
Precinct 1

Eric R. Steinhilber  
Precinct 2

Betty Ludtke  
Precinct 3

Nikolas Atsalis  
Precinct 4

Paul Cusack  
Precinct 5

Paul C. Neary  
Precinct 6

Jessica Rapp  
Grassetti  
Precinct 7

Jeffrey Mendes  
Precinct 8

Tracy Shaughnessy  
Precinct 9

Kristine Clark  
Precinct 11

Paula Schnepf  
Precinct 12

Administrator:  
Cynthia A. Lovell  
[Cynthia.Lovell@town.barnstable.ma.us](mailto:Cynthia.Lovell@town.barnstable.ma.us)

The July 20, 2023 Meeting of the Barnstable Town Council shall be conducted in person at 367 Main Street 2<sup>nd</sup> Floor James H. Crocker Jr. Hearing Room, Hyannis, MA. 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 on the Town of Barnstable's website:

<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://townofbarnstable-us.zoom.us/j/87025068110> Meeting ID: 870 2506 8110 US Toll-free • 888 475 4499

## PUBLIC SESSION

### 1. ROLL CALL

### 2. PLEDGE OF ALLEGIANCE

### 3. MOMENT OF SILENCE

Recognition of Ann M. Quirk, Massachusetts Town Clerk of the Year 2023

### 4. PUBLIC COMMENT

### 5. COUNCIL RESPONSE TO PUBLIC COMMENT

### 6. TOWN MANAGER COMMUNICATIONS (Pre-Recorded)

### 7. ACT ON PUBLIC SESSION MINUTES

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

### 9. ORDERS OF THE DAY

**A. Old Business**

**B. New Business**

### 10. ADJOURNMENT

**NEXT REGULAR MEETING: August 17, 2023**

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**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 (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-196**  
**INTRO: 06/15/2023, 07/20/2023**

**2023-196 AMENDING THE ADMINISTRATIVE CODE, CHAPTER 241, ARTICLE III, MULTIPLE-MEMBER APPOINTIVE ORGANIZATION, § 241-44.5 LAND ACQUISITION AND PRESERVATION COMMITTEE**

**ORDERED:** That the Administrative Code, Chapter 241, Article III, Multiple-Member Appointive Organization, § 241-44.5 Land Acquisition and Preservation Committee, is hereby amended as follows:

**SECTION 1.** By changing the name of the “Land Acquisition and Preservation Committee” wherever it so appears to the “Open Space Committee”.

**SECTION 2.** By deleting Section B in its entirety and inserting the following new Section B in its place:

**B. Authorities and responsibilities.**

1. The Open Space Committee shall be responsible for keeping the Open Space and Recreation Plan and the open space section of the Local Comprehensive Plan updated and current.
2. The Open Space Committee shall review conservation restrictions and make recommendations for approval to the Town Council.
3. The Open Space Committee may recommend parcels of land available for purchase or protection (a) to the Community Preservation Committee; or (b) to the Town Manager, if the funding will be from non-Community Preservation Act funds; provided that in making such recommendations, the Open Space Committee shall use as a guideline local and regional open space plans, master plans and the Local Comprehensive Plan.
4. The Open Space Committee shall assist Town departments in the management of Land Bank lands acquired under the Land Bank Act in accordance with the Act and its provisions.
5. A member of the Open Space Committee shall serve as the Town’s representative on the Santuit Preserve Management Committee.
6. The Open Space Committee shall be responsible for implementing and promoting the approved Cape Cod Pathways Plan within the Town of Barnstable; including but not limited to promoting and advising on the Town’s Walking Library, which is accessible to the public online and details the various walks throughout the Town.
7. The Open Space Committee shall educate the public about open space issues through speakers at meetings of the Open Space Committee.

8. Nothing in this section shall be construed to alter or change the responsibilities of the Community Preservation Committee as prescribed by law.”

**SPONSORS:** Councilor Jessica Rapp Grassetti, Precinct 7; Councilor Kristine Clark, Precinct 11

DATE	ACTION TAKEN
<u>06/15/2023</u>	<u>Referred to Second Reading 07/20/2023</u>
_____	_____

- \_\_\_\_\_ Read Item
- \_\_\_\_\_ Rationale
- \_\_\_\_\_ Council Discussion
- \_\_\_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-196  
INTRO: 06/15/2023, 07/20/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Councilor Jessica Rapp Grassetto; Councilor Kristine Clark  
**THROUGH:** Karen Nober, Town Attorney  
**DATE:** June 15, 2023  
**SUBJECT:** Amending the Administrative Code, Chapter 241, Article III, Multiple-Member Appointive Organization, § 241-44.5 Land Acquisition and Preservation Committee

This proposed amendment to the Administrative Code changes the name of the Land Acquisition and Preservation Committee to more accurately reflect its mission. The Committee's origins are in the Town's previous Open Space Committee, which recommended to the Town Council and Town Manager acquisition of land and appropriation of Land Bank funds. When the Land Bank was replaced by the Community Preservation Act (CPA), the Town Council created the Land Acquisition and Preservation Committee to represent the Town's open space interests.

Although most of the remaining provisions remain the same, this amendment makes the following additional changes:

The current language in § 241-44.5 B (1) (a) and (b) reads as follows:

- (a) The Land Acquisition and Preservation Committee shall recommend to the Community Preservation Board parcels of land available for acquisition.
- (b) The Land Acquisition and Preservation Committee, in conjunction with the Town Manager and the Town Council, will leverage non-CPA funding for purchase of additional land.

This language has been replaced with the proposed language in B (3) which provides:

- (3) The Open Space Committee may recommend parcels of land available for purchase or protection (a) to the Community Preservation Committee; or (b) to the Town Manager, if the funding will be from non-Community Preservation Act funds; provided that in making such recommendations, the Open Space Committee shall use as a guideline local and regional open space plans, master plans and the Local Comprehensive Plan.

The proposed language in B (6) keeps existing language and adds the following new language: "including but not limited to promoting and advising on the Town's Walking Library, which is accessible to the public online and details the various walks throughout the Town."

The proposed B (7) is new and adds the following language: "The Open Space Committee shall educate the public about open space issues through speakers at meetings of the Open Space Committee."

**FISCAL IMPACT:** None

**STAFF ASSISTANCE:** Karen Nober, Town Attorney

**A. OLD BUSINESS (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-197**  
**INTRO: 06/15/2023, 07/20/2023**

**2023-197 AMENDING THE ADMINISTRATIVE CODE, CHAPTER 241, ARTICLE III, MULTIPLE-MEMBER APPOINTIVE ORGANIZATION, § 241-38.A, HYANNIS WATER BOARD**

**ORDERED:** That the Administrative Code, Chapter 241, Article III, Multiple-Member Appointive Organization, § 241-38.A, is hereby amended by deleting “Hyannis Water Board” in the Section heading and in Section A, respectively, and inserting “Barnstable Municipal Water Supply Board” in place thereof.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>06/15/2023</u>	<u>Referred to Second Reading 07/20/2023</u>
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-197**  
**INTRO: 06/15/2023, 07/20/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** June 15, 2023  
**SUBJECT:** Amending the Administrative Code, Chapter 241, Article III, Multiple-Member Appointive Organization, § 241-38.A, Hyannis Water Board

**BACKGROUND:** The Hyannis Water Board voted on May 16, 2023, to change its name to the Barnstable Municipal Water Supply Board. The Board's position is that because its mission includes water supply and water quality matters Town-wide, the new name is better reflective of its role. Section 241-38.A of the Barnstable Administrative Code established the Hyannis Water Board in 2006, by Town Council Order 2006-05.

**FINANCIAL IMPACT:** There is no fiscal impact resulting from this name change.

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

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



**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-199**

**INTRO: 06/15/2023, 07/20/2023**

**2023-199 AMENDING THE CODE OF THE TOWN OF BARNSTABLE, PART I  
GENERAL ORDINANCES, CHAPTER 183, TO REMOVE THE INCOME  
LIMITATIONS FROM THE ELIGIBILITY REQUIREMENTS FOR THE  
SENIOR AND VETERANS PROPERTY TAX WORK-OFF ABATEMENT  
PROGRAMS**

**ORDERED:** That the Code of the Town of Barnstable, Part I General Ordinances, Chapter 183 Senior Citizen and Veterans Property Tax Work-Off Abatement Programs, be amended to remove the income limitations from the eligibility requirements as follows:

**SECTION 1.** By amending Section 183-2(A) by striking out paragraph (c) and re-lettering the existing paragraph (d) as new paragraph (c).

**SECTION 2.** By amending Section 183-2(B) by striking out paragraph (c) and re-lettering the existing paragraph (d) as new paragraph (c).

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>06/15/2023</u>	<u>Refer to Public Hearing 07/20/2023</u>

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_ Read Item
  - \_\_\_ Rationale
  - \_\_\_ Council Discussion
  - \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-199  
INTRO: 06/15/2023, 07/20/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Mark A. Milne, CPA, Finance Director  
**DATE:** June 06, 2023  
**SUBJECT:** Amending the Code of the Town of Barnstable, Part I General Ordinances, Chapter 183, to remove the income limitations from the eligibility requirements for the Senior and Veterans Property Tax Work-Off Abatement Programs

**BACKGROUND:** The Town has had a Senior Property Tax Work-off Program in place since fiscal year 2009 and expanded it to include a Veterans Property Tax work-Off Program as of July 1, 2022. Currently there are three seniors and no veterans participating in the program. In order to expand the participation rate in the program it is proposed that the income limitations be removed from the ordinance.

**ANALYSIS:** These programs were originally put in place to provide financial assistance to low income seniors and veterans. The current participation rate is well below the cap of 20 set for the program and it is proposed that the focus shift from assisting low income property owners to one that allows for seniors and veterans to share their extensive knowledge and experience with town staff and provide them an opportunity to learn more about town operations. Speaking with community officials in the cities of Holyoke and Northampton they have structured their programs in this manner, matching individual experience and interest with associated town tasks, and it has been very successful.

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, 2023, the minimum wage rate is \$15.00 per hour resulting in an individual having to work 100 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, which includes the tax abatement earned and FICA taxes, both employee (7.65%) and employer share (7.65%).

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

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

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-200  
INTRO: 06/15/2023, 07/20/2023**

**2023-200 APPROPRIATION ORDER IN THE AMOUNT OF \$3,500,000 FOR PORTABLE CLASSROOMS AT BARNSTABLE COMMUNITY INNOVATION SCHOOL AND HYANNIS WEST ELEMENTARY SCHOOL**

**ORDERED:** That the amount of **\$3,500,000** be appropriated for the purpose of funding the acquisition, installation and other associated costs for portable classrooms at Barnstable Community Innovation School and Hyannis West Elementary School; and that to fund this appropriation, **\$3,500,000** be provided from the Capital Trust Fund.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>06/15/2023</u>	<u>Refer to Public Hearing 07/20/2023</u>

\_\_\_\_\_

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

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-200

INTRO: 06/15/2023, 07/20/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Sara Ahern, Superintendent of Schools  
**DATE:** June 15, 2023  
**SUBJECT:** Appropriation Order in the amount of **\$3,500,000** for portable classrooms at Barnstable Community Innovation School and Hyannis West Elementary School

**BACKGROUND:** Barnstable Community Innovation School and Hyannis West Elementary School are experiencing space constraints due to their school enrollment and specialized services. There are not enough classroom spaces to accommodate an expansion of specialized services such as English language development, Title I, special education services, interventions, enrichment (Gateway), the library, and specials (e.g. art, music, etc.). Although all elementary schools are experiencing space constraints to a degree, the Barnstable Public Schools (BPS) initiated a plan in the spring of 2022 to install modular classrooms at the two most constrained schools. After the completion of the architectural design, the project was put out to bid in the spring of 2023. The BPS School Committee, at its June 7, 2023 meeting, accepted a bid from Aries Building Systems, LLC to construct and purchase 1 4-classroom modular unit at Barnstable Community Innovation School and 1 6-classroom modular unit at Hyannis West Elementary School. The School Committee also approved a motion to seek a supplemental appropriation from the Town Council for \$3,500,000 from the school savings account.

**ANALYSIS:** Construction is anticipated to begin in the fall for occupancy in the late fall. There is a possibility that up to \$1,000,000 may be available to offset this request through ESSER funding, however the Barnstable Public Schools must go through the appropriate approval process with the Department of Elementary and Secondary Education to secure that funding. Enrollment is expected to remain steady over the next decade, according to a population and enrollment forecast by McKibben Demographic Research, LLC that was completed in February 2023, so the need for this additional space is expected to be sustained. The purchase of 2 sets of modulars is an initial, mitigating step to address space constraints as part of an overall need to examine school facilities across the Barnstable Public Schools and develop a longer-term plan.

**FISCAL IMPACT:** The School Savings account balance is currently \$7.9 million; however, due to the end of the fiscal year approaching, no appropriations can be made from savings after June 30, 2023 until the Town's free cash is certified by the Department of Revenue. Certification is expected to happen in October which is too late for this project's implementation. It is proposed that the Capital Trust Fund initially provide the funding which will subsequently be reimbursed from the school savings account. A transfer from the savings account to the Capital Trust Fund will be brought forward to the Town Council after certification is received. The Town is projecting to generate \$6 million of savings at the close of Fiscal Year 2023 which will essentially replace the savings used for this project.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends approval of this Appropriation Order.

**STAFF ASSISTANCE:** Christopher Dwelley, Deputy Director for School Finance

**A. OLD BUSINESS (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-202**  
**INTRO: 06/15/2023, 07/20/2023**

**2023-202 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION**

**RESOLVED:** That the Town Council reappoints the following individuals to a multiple-member Board/Committee/Commission: **Comprehensive Financial Advisory Board:** Wendy Soloman, as a regular member to a term expiring 06/30/2026; **Land Acquisition and Preservation Committee:** Elissa Crowley, as a regular member to a term expiring 06/30/2026; Douglas Payson, as a regular member to a term expiring 06/30/2026; **Shellfish Committee:** Patricia Farinha, as a member holding a family permit, to a term expiring 06/30/2026; **Zoning Board of Appeals:** Denise Thorne-Johnson, as an associate member, to a term expiring 06/2026; Mark Hansen, as a regular member to a term expiring 06/30/2026

**SPONSORS:** Appointments Committee Members: Councilor Paula Schnepf, Chair; Councilor Tracy Shaughnessy; Councilor Jeffrey Mendes; Councilor Nikolas Atsalis; and Councilor Gordon Starr

DATE	ACTION TAKEN
<u>06/15/2023</u>	<u>First Reading, Referred to Second Reading 07/20/2023</u>
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote

**A. OLD BUSINESS (Public Hearing) (Roll Call) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-203  
INTRO: 06/15/2023, 07/20/2023**

**2023-203 AMENDING THE CODE OF THE TOWN OF BARNSTABLE, PART I, GENERAL ORDINANCES, CHAPTER 168, SECTION 168-5, TO CONFORM TO CHAPTER D OF THE CODE OF THE CAPE COD COMMISSION REGULATIONS OF GENERAL APPLICATION**

**ORDERED:**That the Code of the Town of Barnstable, Part I, General Ordinances, Chapter 168 Regulatory Agreements be amended as follows:

**SECTION 1.**By amending Section 168-5(C) by deleting the last sentence thereof and replacing it with the following sentence:

When a waiver from zoning is allowed under a regulatory agreement, there shall be a vote of the Town Council recommending execution of the regulatory agreement by the same quantum of vote as would be required by M.G.L. Chapter 40A, Section 5 to amend the Zoning Ordinance of the Town to allow the development contemplated by such regulatory agreement. Prior to the Town Council taking such vote, the Planning Board, in consultation with the Town Attorney’s Office, will determine the applicable voting threshold. If there is more than one type of zoning relief required for a project under a regulatory agreement, and a different quantum of vote is required for each type of relief, then the higher voting threshold will apply to the entire vote (i.e., two-thirds versus simple majority).

**SECTION 2.** By amending Section 168-5(E) by deleting the second sentence thereof and replacing it with the following sentence:

Prior to executing said regulatory agreement, the Town Manager shall obtain a majority vote of the Town Council to authorize the execution, unless the regulatory agreement authorizes a waiver from the Barnstable Zoning Ordinance, in which case the Town Manager shall obtain a vote authorizing execution of the regulatory agreement from the Town Council by the same quantum of vote as would be required by M.G.L. Chapter 40A, Section 5 to amend the Barnstable Zoning Ordinance to allow the development contemplated by such regulatory agreement.

**SPONSOR:** Matthew P. Levesque, President, Town Council

DATE	ACTION TAKEN
<u>06/15/2023</u>	<u>Refer to Public Hearing 07/20/2023</u>

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

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-203  
INTRO: 06/15/2023, 07/20/2023

## SUMMARY

**TO:** Town Council  
**THROUGH:** Kate Connolly, Assistant Town Attorney  
**DATE:** June 15, 2023  
**SUBJECT:** Amending the Code of the Town of Barnstable, Part I, General Ordinances, Chapter 168, Section 168-5, to conform to Chapter D of the Code of the Cape Cod Commission Regulations of General Application

**BACKGROUND:** Chapter 358 of the Acts of 2020 made changes to G. L. c. 40A, the state Zoning Act; most notably, it changed the required voting threshold for municipal legislative bodies to approve several categories of zoning changes from a two-thirds (“2/3”) supermajority to a simple majority. The Commonwealth’s stated goal in passing this law was to make it easier for municipalities to achieve the minimum vote for zoning changes with respect to housing. The stated intent behind the amendments to the Zoning Act was to remove the barriers to development of more housing throughout the state.

The Town’s authority to enter into regulatory agreements under Chapter 168 derives from the Cape Cod Commission regulations. When Chapter 168 was adopted by the Town in 2004, the 2/3 quantum of vote requirement for regulatory agreements that provided zoning relief matched the voting requirements applicable to all zoning amendments, as set forth in Section 5 of the Zoning Act. This quantum of vote requirement was also consistent with the language in Section 4(c) of “Chapter D” of the Cape Cod Commission’s Regulations, which states that “a development agreement that is inconsistent with local zoning shall require either a zoning amendment to remove the inconsistency or the development agreement shall be approved by the same entity and the same quantum of votes as would be required to amend the zoning bylaws of the Town.”

In light of the Commonwealth’s stated goals in amending the Zoning Act, whether to amend the Town’s regulatory ordinance to lower the voting threshold for regulatory agreements that provide certain types of waivers from zoning is an important policy issue for the Town. The Town must decide what is required in its own Ordinance in accordance with state law. The Town Council may decide that, notwithstanding the voting threshold changes to the Zoning Act, it wants to maintain the higher quantum of vote for regulatory agreements that provide zoning relief, in which case the Council has the authority to do so under the Town’s home rule powers, granted to municipalities by the Home Rule Amendment, Article 89 of the Massachusetts Constitution. A Town Council vote in the negative on this item would maintain the higher 2/3 quantum of vote requirement. In the alternative, the Town Council may decide it wants to lower the quantum of vote for regulatory agreements that provide certain types of zoning relief. A vote approving this item would result in a lower quantum of vote to a majority, consistent with the Cape Cod Commission regulations. It is also worth noting that if no changes are made to the Town’s ordinance on regulatory agreements, thereby keeping in place the higher voting threshold for agreements that provide zoning relief, the proponent still has the option to forego a regulatory agreement and seek a zoning amendment, in which case the lower voting thresholds would apply in certain circumstances.

**FISCAL IMPACT:** No fiscal impact

**STAFF ASSISTANCE:** Elizabeth Jenkins, Director of Planning and Development, Karen L. Nober, Town Attorney



**A. OLD BUSINESS (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-204**

**INTRO: 06/15/2023, 07/20/2023**

**2023-204 ORDER AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AND EXECUTE A 99-YEAR LEASE WITH THE TRUSTEE OF THE PARKER LOMBARD TRUST FOR THE BUILDING KNOWN AS THE WEST BARNSTABLE TRAIN STATION AND THE LAND ON WHICH IT IS LOCATED**

**ORDERED:** That the Town Manager is hereby authorized to negotiate and execute on behalf of the Town a 99-year lease for the nominal rent of \$1.00 per year with the Trustee of the Parker Lombard Trust for the building known as the West Barnstable Train Station and the land on which it is located, on such other additional terms and conditions as may be determined by the Town Manager, including, but not limited to, public access and use requirements, repair and maintenance obligations and insurance obligations, subject to approval as to form by the Town Attorney; provided that such lease shall be subject to the approval of the Barnstable County Probate Court.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
<u>06/15/2023</u>	<u>Refer to second reading 07/20/2023</u>

\_\_\_\_\_

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

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-204  
INTRO: 06/15/2023, 07/20/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Charles S. McLaughlin, Jr., Senior Counsel  
**DATE:** June 15, 2023  
**SUBJECT:** Order authorizing the Town Manager to negotiate and execute a 99-year lease with the trustee of the Parker Lombard Trust for the building known as the West Barnstable Train Station and the land on which it is located

**BACKGROUND:** The will of the late Parker Lombard left his farmland in West Barnstable in trust to the Town. The will instructed that the land should never be sold but instead should be used to generate income in support of the poor of the Town, and the Trust has been administered for that purpose since the mid-1700's. The will expressly provide that none of the land should ever be sold.

In the mid-1800's, the Selectmen, purporting to act on behalf of the Lombard Trust but without legal authority to do so, conveyed a parcel of land at the intersection of what is now Route 6A and Route 149 to the Cape Cod Railroad for purposes of building a railroad depot on the site. A depot structure was then built and subsequently re-built as the structure that now sits at that intersection. Without reciting the tortured title history to the land and building that followed, the Lombard Trustee and the Town legal staff concur that the Lombard Trust is the rightful owner of the land under the old railroad station as well as the owner of the depot building itself.

The depot building has begun to fall into serious disrepair and to stabilize the structure and prevent further deterioration will require the expenditure of perhaps \$700,000 or more. The Lombard Trustee does not believe that the Trust should bear that expense as it would limit the Trust's ability to attend to its primary function of providing financial aid to townspeople in need. The Trustee has proposed that the Town lease the lot and building from the Trust for the sum of \$1.00 per year and that the Town take over the maintenance and repair responsibilities for this historically significant structure which is an inherent part of the historic fabric of the Town and the Village.

If this lease is approved by the Council and then the Probate Court, the Town intends to seek approval of Community Preservation Act funds to repair the structure. CPA funding was previously approved for this purpose but the real estate title issues prevented title certification, thus blocking access to CPA funds. With the Town as an approved tenant, CPA funding will again be sought but this time by the Town as tenant. If approved by CPA and the Town Council, the funding would then be applied to the repair and reconstruction effort. The Trustee has agreed to seek separate Probate Court approval for the Trustee to place an historic preservation restriction on the structure, a necessary prerequisite to an historic preservation grant of CPA funds for such work.

**FISCAL IMPACT:** Upon passage of this item future improvements and annual maintenance will become the responsibility of the Town and the associated costs will need to be included in future capital and operating budgets. As the structure is of historical significance, capital improvements could be funded from the Community Preservation Fund.

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

**STAFF ASSISTANCE:** Charles S. McLaughlin, Senior Counsel, David Anthony, Property Manager

**A. OLD BUSINESS (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-205**

**INTRO: 06/15/2023, 07/20/2023**

**2023-205 ORDER AUTHORIZING THE TAKING OF ROAD EASEMENTS BY EMINENT DOMAIN FOR SEWER AND WATER PURPOSES OVER CERTAIN PRIVATE ROADS IN CENTERVILLE AND HYANNIS KNOWN AS SUNRISE ROAD, LAURA ROAD, AURORA AVENUE, WEQUAQUET AVENUE, GREGOIRE CIRCLE, PORTION OF MIDWAY DRIVE, DACEY DRIVE, CRESTVIEW CIRCLE, REGATTA DRIVE, AND CROSBY ROAD**

**ORDERED:** That the Town Council hereby authorizes the Town Manager to purchase, take by eminent domain under chapter 79 of the General Laws of Massachusetts, or otherwise acquire for sewer and water purposes a perpetual easement through, under, across, and on the following described roads for the installation, operation, maintenance, repair, relocation, and replacement of sewer and water lines and infrastructure for the same and for all purposes for which such easements are commonly used in the Town of Barnstable:

SUNRISE ROAD, LAURA ROAD, AURORA AVENUE AND WEQUAQUET AVENUE, all as shown on Land Court Plan No. 35367A, Sheets 1 and 2; and

GREGOIRE CIRCLE and a portion of MIDWAY DRIVE, all as shown on a plan filed in the Barnstable County Registry of Deeds in Plan Book 147, Page 73; and

DACEY DRIVE, CRESTVIEW CIRCLE and REGATTA DRIVE, all as shown on Land Court Plan No. 36669C, Sheets 1 and 2, and as shown on a plan filed in the Barnstable County Registry of Deeds in Plan Book 505, Page 78; and

CROSBY ROAD as shown on a plan filed in the Barnstable County Registry of Deeds in Plan Book 389, Page 96.

Any trees, buildings, and other structures located within said roads are not included in this Order and the owners of the same may have a period of up to sixty (60) days after the recording of this Order of Taking to remove the same.

Betterments will be assessed for the associated sewer and water improvements made by the Town of Barnstable.

The names and addresses of the owners of said interests taken and their mortgagees as far as can be ascertained by the Town are as set forth on Exhibit A attached hereto, along with any awards, if any, for damages sustained by said owners.

**SPONSOR:** Mark S. Ells, Town Manager

DATE

ACTION TAKEN

06/15/2023

Refer to second reading 07/20/2023

\_\_\_\_\_

\_\_\_\_\_

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

# EXHIBIT A

<b>Parcel Number</b> <b>Street Address</b>	<b>Current Owner:</b> <b>Name &amp;</b> <b>Mailing Address</b>	<b>Award</b>
251-126 <u>718 Phinney's Lane</u>	Allen & Katherine Colvin 718 Phinney's Lane Centerville MA 02632	None
251125 <u>15 Wequaquet Ave</u>	Laura Silva 15 Wequaquet Ave Centerville MA 02632	None
251124 H00 251124 T00 <u>25 Wequaquet Ave</u>	Stanley Smith Tr Jayess Nominee Trust 21 Petipas Lane Randolph MA 02368	None
251123 <u>35 Wequaquet Ave</u>	Bruce Gladstone & Richard Bibeault 35 Wequaquet Ave Centerville MA 02632	None
251120 <u>732 Phinney's Lane</u>	Thomas Knapp, Tr 732 Phinney's Lane Realty Trust 331 Old Jail Ln Barnstable MA 02630	None
2511121 <u>16 Wequaquet Ave</u>	Richard & Maureen Mahoney PO Box 242 West Barnstable MA 02668	None
251142 <u>26 Wequaquet Ave</u>	Maxsuel Docarmo 216A Higgins Crowell Rd West Yarmouth 02673	None
2511122 H00 2511122 T00 <u>36 Wequaquet Ave</u>	Benjamin & Amy K. Guibal 36 Wequaquet Ave Centerville MA 02632	None

<b>Parcel Number</b> <b>Street Address</b>	<b>Current Owner:</b> <b>Name &amp;</b> <b>Mailing Address</b>	<b>Award</b>
251119 <u>5 Aurora Ave</u>	Barry Shore Tr Shore Investment Realty Trust  PO Box 845 Framingham MA 01701	None
251118 <u>15 Aurora Ave</u>	Gemma V. & Daniel Simson  15 Aurora Ave Centerville MA 02632	None
251141 H00 251141 T00 <u>25 Aurora Ave</u>	Cynthia Welsch-Kelly Tr Cynthia Welsch-Kelly Revocable Trust  25 Aurora Ave Centerville MA 02632	None
251115 <u>758 Phinney's Lane</u>	Colbey P. Harrington  758 Phinney's Lane Centerville MA 02632	None
251116 <u>16 Aurora Ave</u>	Katherine a. Jones Tr Katherine Jones Revocable Trust  16 Aurora Ave Centerville MA 02632	None
251117 <u>26 Aurora Ave</u>	Jessica Stoebel  26 Aurora Ave Centerville MA 02632	None
251114 <u>5 Laura Road</u>	Gretchen Golembewski  5 Laura Road Centerville MA 02632	None
251113 <u>13 Laura Road</u>	Kurt & Sheila Kiessling  43 Woodbrier Road West Roxbury MA 02132  13 Laura Rd Centerville MA 02632	None

<b>Parcel Number</b> <b>Street Address</b>	<b>Current Owner:</b> <b>Name &amp;</b> <b>Mailing Address</b>	<b>Award</b>
251112 <u>23 Laura Road</u>	Edward & Kathleen Flynn  23 Laura Road Centerville MA 02632	None
251110 <u>8 Laura Road</u>	William J. Jr & Michelle Corcoran  8 Laura Road Centerville MA 02632	None
251111 <u>22 Laura Road</u>	Barbara Turner  22 Laura Road Centerville MA 02632	None
251109 <u>790 Phinney's Lane</u>	Corey R. & Lauren C.Blair  103 Farrar Farm Rd Norwell MA 02061	None
251108 <u>19 Sunrise Road</u>	Karim Rizki  24 South Street #3 Medford MA 02155	None
251107 <u>806 Phinney's Lane</u>	Cailyn H. & Douglas B. Rood Tr, G & K Rood Irrevocable Trust  806 Phinney's Lane Centerville MA 02632	None
251106 <u>816 Phinney's Lane</u>	Kerry A. & Adam S. Cutler  816 Phinney's Lane Centerville MA 02632	None
251105 <u>18 Sunrise Road</u>	Matthew J. & Michelle J. Moynihan  18 Sunrise Road Centerville MA 02632	None
251103 <u>834 Phinney's Lane</u>	David S. Horgan  41 Baxter Neck Rd Marstons Mills MA 02648	None
251104 H00 251104 T00 <u>900 Phinney's Lane</u>	Job Dos Santos  129 Longview Drive Centerville MA 02632	None

<b>Parcel Number Street Address</b>	<b>Current Owner: Name &amp; Mailing Address</b>	<b>Award</b>
251104 H01 251104 T01  <u>0 Phinney's Lane</u>  (Rear of 888, 854, 844 Phinney's Lane And 18 Sunrise)	Lacey Prior & Guy Patston  PO Box 1073 Barnstable MA 02630	None
251104 H02 251104 T02  <u>0 Phinney's Lane</u>  (Rear of 26 & 25 Aurora and 36 & 35 Wequaquet)	Karim Rizki  13 Silverbrook Rd Boxford MA 01921	None
251104 H03 251104 T03  <u>0 Phinney's Lane</u>  (Rear of 23 Laura)	Edward & Kathleen Flynn  23 Laura Road Centerville MA 02632	None
251104 H04 251104 T04  <u>0 Phinney's Lane</u>  (Rear of 22 Laura and 19 Sunrise)	Karim Rizki  13 Silverbrook Rd Boxford MA 01921	None
251104 H05 251104 T05  <u>0 Phinney's Lane</u>  (Rear of 18 Sunrise/ Rear of 129 Longview)	Job Dos Santos  129 Longview Dr Centerville MA 02632	None
251104 H06 251104 T06  <u>0 Phinney's Lane</u>  (Rear of 18 Sunrise)	Job Dos Santos  129 Longview Dr Centerville MA 02632	None



<b>Parcel Number</b> <b>Street Address</b>	<b>Current Owner:</b> <b>Name &amp;</b> <b>Mailing Address</b>	<b>Award</b>
252065 <u>44 Midway Drive</u>	Dennis D. & Grace P. Theoharidis, Tr., Dennis D. & Grace P. Theoharidis Trusts  31 Bristol Street Dennis MA 02638	None
252066 <u>50 Midway Drive</u>	Brendan and Destiny Lee Edwards  50 Midway Drive Centerville MA 02632	None
252067 <u>58 Midway Drive</u>	Raymond Carozzi 185 Timber Lane Marstons Mills MA 02648	None
252068 <u>78 Midway Drive</u>	Tadeu E. & Cleuzimere R. Andrade  47 Samoset Road Marstons Mills MA 02648	None
252069 <u>71 Midway Drive</u>	Justino Reis  PO Box 2641 Hyannis, MA 02601	None
252070 <u>63 Midway Drive</u>	Brenda Evans  63 Midway Drive Centerville MA 02632	None
252079 <u>53 Midway Drive</u>	Wallace DaSilva  53 Midway Drive Centerville MA 02632	None

<b>Parcel Number</b> <b>Street Address</b>	<b>Current Owner:</b> <b>Name &amp;</b> <b>Mailing Address</b>	<b>Award</b>
252078 <u>47 Midway Drive</u>	Heather Kay Scozzarella 47 Midway Drive Centerville MA 02632	None
252071 <u>39 Midway Drive</u>	Jennifer Lynn Johnson 39 Midway Drive Centerville MA 02632	None
252072 <u>31 Midway Drive</u>	Obed S.Woodson 31 Midway Drive Centerville MA 02632	None
273014 <u>89 Midway Drive</u>	Dimas A. Pleitez Tejada 89 Midway Drive Centerville MA 02632	None
273015 <u>73 Midway Drive</u>	Donna O'Hearn 73 Midway Drive Centerville MA 02632	None
252188 <u>21 Midway Drive</u>	Bernard T. Kilroy, Tr., Laurie Warren Trust 41 Overlea Drive Hyannisport MA 02647	None
273011 <u>14 Gregoire Circle</u>	Lyn A. Vazquez & Carol A. Stewart 14 Gregoire Circle Centerville MA 02632	None
273012 <u>20 Gregoire Circle</u>	Barnstable Housing Authority 146 South St Hyannis MA 02601	None
273013 <u>17 Gregoire Circle</u>	Gay Jane Maiolo 17 Gregoire Cir Centerville MA 02632	None
273007 <u>593 Old Strawberry Hill Rd</u>	Ricardo DeSouza 593 Old Strawberry Hill Rd Centerville MA 02632	None

<b>Parcel Number</b> <b>Street Address</b>	<b>Current Owner:</b> <b>Name &amp;</b> <b>Mailing Address</b>	<b>Award</b>
252051029 <u>10 Regatta Drive</u>	James R. Hamilton, Jr. & Elizabeth M. Hamilton  10 Regatta Drive Centerville MA 02632	None
252051026 <u>76 Regatta Drive</u>	Eugene J. Mahlstadt & Christine L. Mahlstadt  669 College Rd Farmington NY 11738	None
252051025 <u>96 Regatta Drive</u>	Edward Cotter and Janice Cotter  96 Regatta Drive Centerville MA 02632	None
252051032 <u>20 Dacey Drive</u>	Robert G. Doe & Silvia A. Doe as Trustees of the Doe Family Trust  20 Dacey Drive Centerville MA 02632	None
252051030 <u>25 Dacey Drive</u>	John H. Johnson & Virginia B. Johnson as Trustees of the Leonard-Johnson Family Trust  17 Cochituate St Natick MA 01760	None
252051031 <u>19 Dacey Drive</u>	John M. Callan & Gail E. Callan  19 Dacey Drive Centerville MA 02632	None
252183 <u>9 Dacey Drive</u>	Patrick F. Curley, Jr. and Mary L. Curley  9 Dacey Drive Centerville MA 02632  and Cynthia Lipsett 8 Townside Lane Walpole MA 02082	None
252184 <u>130 Regatta Drive</u>	Herbert M. DaSilva & Carol DaSilva, Tr DaSilva Family Realty Trust  130 Regatta Drive Centerville MA 02632	None

<b>Parcel Number</b> <b>Street Address</b>	<b>Current Owner:</b> <b>Name &amp;</b> <b>Mailing Address</b>	<b>Award</b>
252185 <u>129 Regatta Drive</u>	James E. Lloyd & Susan A. Lloyd Tr James Lloyd 2013 Trust  129 Regatta Drive Centerville MA 02632	None
252186 <u>115 Regatta Drive</u>	Kathrin Mann and Eric Manley  115 Regatta Drive Centerville MA 02632	None
252187 <u>103 Regatta Drive</u>	Matthew and Naomi Jean Kalliath  103 Regatta Drive Centerville MA 02632	None
252051024 <u>93 Regatta Drive</u>	Michael S. Crismond & Jennifer G. Crismond  93 Regatta Drive Centerville MA 02632	None
252051023 <u>20 Crestview Circle</u>	Doris M. Judge, Tr Doris Judge Revocable Trust Agmt  624 Lake Orchid Circle Vero Beach FL 32960	None
252051022 <u>30 Crestview Circle</u>	Karen Pim  30 Crestview Circle Centerville MA 02632	None
252051x01 0 Crestview Circle 252051x02 <u>0 Regatta Drive</u>	James Hamilton Edward Cotter Trustees Lake Isle Woods Open Space Trust  PO Box 357 Centerville MA 02632	None

<b>Parcel Number Street Address</b>	<b>Current Owner: Name &amp; Mailing Address</b>	<b>Award</b>
252051 021 <u>44 Crestview Circle</u>	Barry G. & Pauline T. Curtis, Tr Barry Revocable Trust  44 Crestview Circle Centerville MA 02632	None
252051 020 <u>54 Crestview Circle</u>	Linton & Cynthia Campbell  54 Crestview Circle Centerville MA 02632  Priscilla Campbell-Klock 1252 Hill Rd Littleton MA 01460 (Personal Representative)	None
252051 019 <u>64 Crestview Circle</u>	Thomas E. & Sandra Minchello  7 Ella Ave Wilmington MA 01887	None
252051 018 <u>70 Crestview Circle</u>	Rodriguez-Munoz, Andres, Tr. Sandra Russo Rodriguez 2005 Rev Trust  70 Crestview Circle Centerville MA 02632	None
252051 017 <u>72 Crestview Circle</u>	John Lynch Tr. Maxwell and Marley Living Trust dtd 1/18/2013  72 Crestview Circle Centerville MA 02632	None
252051 016 <u>67 Crestview Circle</u>	Hymie & Angela Rimer  67 Crestview Circle Centerville MA 02632	None

<b>Parcel Number Street Address</b>	<b>Current Owner: Name &amp; Mailing Address</b>	<b>Award</b>
252051 015 <u>55 Crestview Circle</u>	Marie E. & John A. McConnell  55 Crestview Circle Centerville MA 02632	None
252051 X13 252051 X14 <u>37 Crestview Circle</u>	Stacey A. Kennedy, Tr Olcott Family Irrevocable Trust  37 Crestview Circle Centerville MA 02632	None
252051 012 <u>9 Crestview Circle</u>	Patricia C. Sonntag  9 Crestview Circle Centerville MA 02632	None
252051 011 <u>67 Regatta Drive</u>	Patricia A. Wilcox  67 Regatta Drive Centerville MA 02632	None
252051 X09 252051 X10 <u>59 Regatta Drive</u>	Judith O. MacDonald, Tr Judith MacDonald Revocable Trust  59 Regatta Drive Centerville MA 02632	None
252051 X07 252051 X08 <u>51 Regatta Drive</u>	Mary Lou Fornicola  1609 Martin Rd Neptune NJ 07753	None
252051 006 <u>45 Regatta Drive</u>	Dennis & Alice Walczewski  Gary Walczewski Tr of the Dennis Walczewski Family Irrevocable Trust and as Tr of the Alice Walczewski Family Irrevocable Trust  45 Regatta Drive Centerville MA 02632	None

<b>Parcel Number</b> <b>Street Address</b>	<b>Current Owner:</b> <b>Name &amp;</b> <b>Mailing Address</b>	<b>Award</b>
252051 005 <u>35 Regatta Drive</u>	Andrea M. Cain 35 Regatta Drive Centerville MA 02632	None
252051 004 <u>21 Regatta Drive</u>	Norman F. & Marilyn A. Chalupka 21 Regatta Drive Centerville MA 02632	None
252051 003 <u>11 Regatta Drive</u>	David & Denise Heath 11 Regatta Drive Centerville MA 02632	None
252051 028 <u>30 Regatta Drive</u>	Marvin Hoovis 30 Regatta Drive Centerville MA 02632	None
252051 027 <u>50 Regatta Drive</u>	Petrina P. Fernandes 50 Regatta Drive Centerville MA 02632	None

<b>Parcel Number</b>	<b>Current Owner: Name &amp; Mailing Address</b>	<b>Award</b>
229125 <u>30 Crosby Road</u>	Kelly Ann Waugh 30 Crosby Road Centerville, MA 02632	None
229126 <u>36 Crosby Road</u>	Lorna M.and Daniel S. Bandstra 36 Crosby Road Centerville, MA 02632	None
229127 <u>38 Crosby Road</u>	Casey L. Upton 38 Crosby Road Centerville MA 02632	None
229128 <u>42 Crosby Road</u>	Adrienne Siegel PO Box 26 Cummaquid MA 02637	None
229129 <u>32 Crosby Road</u>	Janet E. Sheehan 32 Crosby Road Centerville MA 02632	None
230169 <u>28 Crosby Road</u>	Mark M. and Judith J. Joseph 28 Crosby Road Centerville MA 02632	None
230170 <u>26 Crosby Road</u>	Stacey J. Greaves 26 Crosby Road Centerville MA 02632	None
230171 <u>20 Crosby Road</u>	Kelsey A. Welgert Travis Gray 20 Crosby Road Centerville MA 02632	None



<b>Parcel Number</b> <b>Street Address</b>	<b>Current Owner:</b> <b>Name &amp;</b> <b>Mailing Address</b>	<b>Award</b>
230131 <u>314 Phinney's Lane</u>	Stephen J. Heckler 314 Phinney's Lane Centerville MA 02632	None
230132 <u>300 Phinney's Lane</u>	Jeffrey D. Erving, Jr 300 Phinney's Lane Centerville MA 02632	None

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-205**  
**INTRO: 06/15/2023, 07/20/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** June 15, 2023  
**SUBJECT:** Order authorizing the taking of road easements by eminent domain for sewer and water purposes over certain private roads in Centerville and Hyannis known as Sunrise Road, Laura Road, Aurora Avenue, Wequaquet Avenue, Gregoire Circle, Portion of Midway Drive, Dacey Drive, Crestview Circle, Regatta Drive and Crosby Road

**BACKGROUND:** The Town is proceeding with plans to install sewers and related infrastructure in Centerville. These proposed takings of easements in existing private ways are the second in a series of takings that are contemplated in order to deploy sewer lines in accordance with the Town's approved Comprehensive Wastewater Management Plan. The timely completion of these takings will also qualify this work for State Revolving Fund (SRF) monies in accordance with state funding. Utilizing the eminent domain procedure to acquire these easements will assure clear title to the property which is necessary to qualify for SRF funding.

Because the value of the improvements exceeds the value of the easement within the travelled roadways, there is no provision for the award of monetary damages.

**FISCAL IMPACT:** None

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

**STAFF ASSISTANCE:** Charles S. McLaughlin, Senior Counsel; Griffin Beaudoin, Town Engineer; Daniel W. Santos, Director, Department of Public Works; Shane Brenner, Town Surveyor

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-206  
INTRO: 06/15/2023, 07/20/2023**

**2023-206 APPROPRIATION ORDER IN THE AMOUNT OF \$195,000 FOR THE PURPOSE OF ACQUIRING BY PURCHASE OR EMINENT DOMAIN A FIVE-YEAR TEMPORARY CONSTRUCTION EASEMENT AND A PERMANENT EASEMENT FOR SHARED USE PATH, SEWER AND WATER PURPOSES IN LAND ABUTTING BEARSE’S WAY, WITH AN ADDRESS OF 1174 PITCHER’S WAY, HYANNIS, MA, OWNED BY WINDMILL SQUARE LLC**

**ORDERED:** The Town Council hereby authorizes the Town Manager to purchase, take by eminent domain under Chapter 79 of the General Laws of Massachusetts, or otherwise acquire both a five-year temporary construction easement and a separate permanent easement for shared use path, sewer and water purposes through, under, across, and on a certain parcel of land fronting on Bearse’s Way, for the installation, operation, maintenance, repair, relocation, and replacement of sewer and water lines for the same and for all purposes for which such infrastructure is commonly used in the Town of Barnstable, Hyannis, MA, with an address of 1174 Pitcher’s Way, Hyannis, MA, as more fully shown on Sheet 7 of a plan entitled “Windmill Square, LLC”, said plan being entitled, “Plan of Road in the Town of Barnstable, Massachusetts, Barnstable County, Showing Location of easements for the purpose of constructing the Bearse’s Way shared use path for the Town of Barnstable, Date: May 12, 2023, Scale: 20 Feet to the Inch”. The temporary construction easement containing 6,374 square feet is shown as parcel “TE-5” thereon. The permanent easement for sewer and water purposes consisting of 9,133 square feet is shown thereon as parcel “E-2”. This plan will be filed in the office of the Town Council. To fund the same, **\$195,000** is to be provided from the reserves in the Sewer Construction and Private Way Improvement Special Revenue Fund, and the Town Manager is authorized to contract for and expend said appropriation for such purposes and accept any gifts or grants in relation thereto.

Any trees, buildings, and other structures located within said roads are not included in this Order and the owners of the same may have a period of up to sixty (60) days after the recording of the Order of Taking to remove the same.

The names and addresses of the owners of said interests taken and their mortgagees as far as can be ascertained by the Town are as set forth on Exhibit A attached hereto, along with any awards, if any, for damages sustained by said owners.

Betterments will be assessed for the associated sewer and water improvements made by the Town of Barnstable.

**SPONSOR:** Mark S. Ells, Town Manager

DATE

ACTION TAKEN

06/15/2023

Refer to Public Hearing 07/20/2023

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\_\_\_\_\_

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

		<b>EXHIBIT A</b>		
<b>Owner</b>	<b>Street</b>	<b>Side of Street</b>	<b>Area</b>	<b>Damages</b>
	<b>Address</b>	<b>WEST</b>		
<b>WINDMILL SQUARE, LLC</b>	1174 Pitcher's Way, Hyannis	Temporary Construction Easement	square feet 6,374	\$36,429.55
		Permanent easement	9,133	\$158,570.45
				<b>TOTAL: \$195,000.00</b>

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-206  
INTRO: 06/15/2023, 07/20/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**DATE:** June 15, 2023  
**SUBJECT:** Appropriation Order in the amount of **\$195,000** for the purpose of acquiring by purchase or eminent domain a five-year temporary construction easement and a permanent easement for shared use path, sewer and water purposes in land abutting Bearse's Way, with an address of 1174 Pitcher's Way, Hyannis, MA, owned by Windmill Square LLC

**BACKGROUND:** The Town is proceeding with plans to install sewers and related infrastructure in and along Bearse's Way, Hyannis, creating a so-called "shared use path" that will accommodate the underground infrastructure as well as pedestrian and other usage at the surface level. With the exception of a private parcel owned by Windmill Square, LLC, all of the subject installations will be in property owned by the Town. The sewer and water installations on the Windmill Square property (for reference, the current location of the Tractor Supply store) will run parallel to Bearse's Way close to the road layout and will be the subject of a permanent easement to be acquired by agreement or via an eminent domain taking. The Town also needs to acquire a temporary, 5-year construction easement on the property to facilitate equipment and related storage needs.

Because the project will use MassDOT funding, which is subject to federal regulations, an appraisal and a separate "review" appraisal using Mass-DOT approved appraisers were required in order to qualify for the available state grant estimated at \$3,000,000, which is pending. The two takings were valued in combination at \$195,000.00 by the state's approved appraisers. As required by state and federal rules, an offer in that amount has been tendered to the property owner who has 30 days from the offer to accept it. The offer is pending and information will be updated for the Council at the time of the public hearing and vote on this matter.

The timing of this proposed vote is intended to keep this project on a time track consistent with the broad scope of the Comprehensive Wastewater Management Plan requirements. If the Mass-DOT grant is not approved and/or the property owner refuses the tender offer and commences litigation to challenge the damage award, alternate funding analysis may require that the eminent domain taking be postponed.

**FISCAL IMPACT:** Funding for this item will be provided from the Sewer Construction and Private Way Improvement Special Revenue Fund which has a current balance of \$19.9 million.

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

**STAFF ASSISTANCE:** Charles S. McLaughlin, Senior Counsel; Robert Steen, Assistant Director of Public Works; Griffin Beaudoin, Town Engineer; Shane Brenner, Town Surveyor

**B. NEW BUSINESS (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-001  
INTRO: 07/20/2023**

**2024-001 AUTHORIZATION TO REALLOCATE THE REMAINING \$36,714 OF COMMUNITY PRESERVATION HISTORIC PRESERVATION FUNDS GRANTED UNDER APPROPRIATION ORDER 2022-035 FOR THE RESTORATION WORK AT STURGIS LIBRARY TO BE USED FOR THE REPLACEMENT OF THE FAILING CLIMATE CONTROL SYSTEM AT STURGIS LIBRARY**

**RESOLVED:** That the remaining portion in the amount of Thirty-Six Thousand Seven Hundred Fourteen Dollars (\$36,714) in Community Preservation Historic Preservation Funds appropriated under Town Council Order 2022-035 for restoration work at Sturgis Library be reallocated for the replacement of the failing climate control system located at Sturgis Library, 3090 Main Street/Route 6A, Barnstable.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2024-001**  
**INTRO: 07/20/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Lindsey Counsell, Chair, Community Preservation Committee on behalf of the Community Preservation Committee  
**DATE:** July 20, 2023  
**SUBJECT:** Authorization to reallocate the remaining **\$36,714** of Community Preservation Historic Preservation Funds granted under appropriation order 2022-035 for the restoration work at Sturgis Library to be used for the replacement of the failing climate control system at Sturgis Library

**BACKGROUND:** On November 4, 2021, the Barnstable Town Council appropriated \$165,000 in Community Preservation Historic Preservation Funds for restoration of the Sturgis Library building. The completed restoration work included in the Community Preservation Application cost less than the original budget, resulting in \$36,714 of unspent grant funds.

At the June 26, 2023 Community Preservation Committee meeting, the 8 members present voted unanimously to support and recommend Sturgis Library's request to use the remaining portion of their Community Preservation Historic Preservation grant in the amount of \$36,714 for replacement of their failing climate control system.

**ANALYSIS:** The use of Community Preservation Historic Preservation funds for replacement of the climate control system is an eligible use of Community Preservation Act funds.

**FISCAL IMPACT:** Approval of this request will result in the remaining appropriation being expended for the requested purpose; otherwise, the funds will revert to the Community Preservations Fund's reserve balance.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, upon recommendation of the Community Preservation Committee

**VOLUNTEER ASSISTANCE:** Lindsey Counsell, Chair, Community Preservation Committee



**B. NEW BUSINESS (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-002  
INTRO: 07/20/2023**

**2024-002 RESCISSION OF PREVIOUSLY AUTHORIZED LOAN ORDERS**

**ORDERED:** That the unissued loan authorizations in the total amount of **\$12,829,386** of the following Loan Orders be rescinded as follows:

**Council Order Authorized Rescind**

2013-100	Airport Lighting Regulators & Runway Signs	\$260,000	\$123,050
2014-086	Permitting & Dsgn Runway 6-24 Reconst	\$400,000	\$400,000
2016-081	School Roof Improvement	\$4,236,000	\$886,000
2017-091	FAA Airport Layout Plan	\$700,000	\$700,000
2017-093	Vegetation & Obstruction Removal Project	\$300,000	\$300,000
2018-008	Runway Reconst & Generator Replacement	\$2,077,481	\$1,000,000
2018-069	Comp. Airport Layout & Master Plan	\$300,000	\$300,000
2018-070	Airport Snow Removal Eq. Replacement	\$975,000	\$975,000
2018-080	Pleasant Street Sewer Line Upgrade	\$350,000	\$350,000
2018-074	Cotuit Bay Entrance Channel Dredging	\$1,000,000	\$1,000,000
2019-104	Arpt. Aircraft Rescue & FF Bldg. Roof Repairs	\$490,000	\$490,000
2019-105	Kodiak Snow Blower	\$800,000	\$800,000
2019-106	Airport Snow Removal Equipment	\$230,000	\$230,000
2019-107	Airport Main Terminal Ramp Hardstands	\$280,000	\$280,000
2019-108	Airport Runway 15-33 Surface Treatment	\$475,000	\$475,000
2019-111	Airport's Airfield Mowing Eq. Replacement	\$165,000	\$165,000
2019-134	South Street Sewer Rehabilitation	\$4,019,000	\$4,019,000
2019-196	Private Roads Repairs	\$62,900	\$16,484
2019-197	Private Roads Repairs	\$675,000	\$19,852
2020-093	Airport Phase II Tree Clearing	\$300,000	\$300,000

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2024-002**  
**INTRO: 07/20/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Sean O'Brien, Treasurer/Collector  
**DATE:** July 20, 2023  
**SUBJECT:** Rescission of Previously Authorized Loan Orders

**BACKGROUND:** Many of the town's capital projects are financed by issuing municipal bonds to cover the costs. Subsequent to the borrowing authorizations to finance these projects, federal or state grants were received to cover most if not all of the costs. In addition, some projects came in under budget and the total original borrowing authorization is not needed.

**ANALYSIS:** Periodically, the Finance Division reviews all authorized and unissued debt and will conduct the house-cleaning task of rescinding unissued borrowing authorizations that are determined unnecessary. This procedure keeps the Town's status of authorized and unissued debt current. A total of \$12,829,386 has been identified that the Town will not need to borrow.

**FISCAL IMPACT:** The rescinding of these borrowing authorizations lowers the Town's authorized debt total which will have a favorable impact on our borrowing capacity.

**RECOMMENDATION:** Mark S. Ells, Town Manager, recommends that the Town Council approve these rescissions.

**STAFF SUPPORT:** Sean O'Brien, Treasurer/Collector

**B. NEW BUSINESS (Refer to Public Hearing 08/17/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-003  
INTRO: 07/20/2023**

**2024-003 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$1,400,000 FOR THE PURPOSE OF FUNDING SEWER LATERAL RISER CONSTRUCTION**

**ORDERED:** That the sum of **\$1,400,000** be appropriated for the purpose of funding sewer lateral riser construction, 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 \$1,400,000 under and pursuant to M.G.L. c. 44, §§7 or 8, M.G.L. c. 29, 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.

**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# 2024-003  
INTRO: 07/20/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** July 20, 2023  
**SUBJECT:** Appropriation and Loan Order in the amount of **\$1,400,000** for purpose of funding Sewer Lateral Riser Construction

**BACKGROUND:** The Town has completed sewer construction of the Strawberry Hill Road Sewer Expansion Project. The project was designed and executed in coordination with the Vineyard Wind project. As a result of the sizeable Vineyard Wind duct bank, it was necessary to install the sewer laterals to the properties deeper than they are traditionally constructed. Concerns of the additional cost to homeowners to connect to the deeper laterals were identified. Department of Public Works (DPW) has identified the installation of riser pipes as the technical resolution to improve convenience and reduce the cost of connection.

**ANALYSIS:** Upon order to connect, property owners along the sewer expansion project route will be required to hire a contractor to connect their property to the sewer lateral installed for their property. Deeper laterals have the technical benefit of maximizing a property's ability to connect via gravity, ultimately limiting the number of properties that will need grinder pumps. However, connecting to deeper laterals is expected to increase cost to the homeowner and may limit the number of contractors that can perform the work. For these reasons, it was determined that installing riser pipes on the laterals would improve convenience and reduce the cost of connection. DPW sought a proposal from the project contractor and felt the price was too high, so will be competitively bidding this work with the goal of minimizing the cost of this effort.

**FINANCIAL IMPACT:** This project will be funded with a bond issue. Future debt service payments will be included in the Sewer Enterprise Fund Operating Budgets with a corresponding transfer from dedicated sewer expansion program funds so the ratepayers are not impacted by this expense. If determined to be eligible, State Revolving Loan funding (SRF) and corresponding principal subsidy from both SRF and the Cape and Islands Water Protection Fund will be pursued.

**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 (First Reading) (Refer to Second Reading 08/17/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-004  
INTRO: 07/20/2023**

**2024-004 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION**

**RESOLVED:** That the Town Council appoints the following individuals to a multiple-member Board/Committee/Commission: **Historical Commission:** Robert Frazee, as a Regular Member to a term expiring 06/2026; **Human Services Committee:** Sheree Kay, as a regular member to a term expiring 06/2024

**SPONSORS:** Appointments Committee Members: Councilor Paula Schnepf, Chair; Councilor Tracy Shaughnessy; Councilor Jeffrey Mendes; Councilor Nikolas Atsalis; and Councilor Gordon Starr

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

**B. NEW BUSINESS (First Reading) (Refer to Second Reading 08/17/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-005  
INTRO: 07/20/2023**

**2024-005 REAPPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION**

**RESOLVED:** That the Town Council reappoints the following individuals to a multiple-member Board/Committee/Commission: **Human Services Committee:** Representative Steven Xiarhos as a regular member to a term expiring 06/2026; **Hyannis Main Street Waterfront Historic District Commission:** Kevin Matthews as an alternate member to a term expiring 06/2026; **Waterways Committee:** Paul Everson as a regular member to a term expiring 06/2026

**SPONSORS:** Appointments Committee Members: Councilor Paula Schnepf, Chair; Councilor Tracy Shaughnessy; Councilor Jeffrey Mendes; Councilor Nikolas Atsalis; and Councilor Gordon Starr

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

**B. NEW BUSINESS (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-006  
INTRO: 07/20/2023**

**2024-006 RESOLVE AUTHORIZING SALE OF SURPLUS MUNICIPAL PROPERTY AT 259 BARNSTABLE ROAD, AS SHOWN ON ASSESSORS MAP 310, PARCEL 171, IN HYANNIS, MA, TO BASS RIVER PROPERTIES MANAGEMENT CORP., INC.**

**RESOLVED:** That the Town Council hereby authorizes the Town Manager and/or the Assistant Town Manager to dispose of all right, title and interest in the property located at 259 Barnstable Road, as shown on Assessors Map 310, Parcel 171, in Hyannis, Massachusetts, which has been declared surplus property, for the price of \$220,000, being the highest bid received, to Bass River Properties Management Corp., Inc., and further authorizes the Town Manager and/or Assistant Town Manager to execute, deliver and record any and all documents necessary to effectuate the terms of this Resolve.

**SPONSORS:** Matthew P. Levesque, President, Town Council

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2024-006**  
**INTRO: 07/20/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark Ells, Town Manager  
**DATE:** July 20, 2023  
**SUBJECT:** Resolve authorizing sale of surplus municipal property located at 259 Barnstable Road, as shown on Assessors Map 310, Parcel 171, in Hyannis, MA, to Bass River Properties Management Corp., Inc.

**BACKGROUND:** This Five Thousand Six Hundred Thirty-three (5,633) Square Foot (0.13 acre) parcel located at 259 Barnstable Road, Hyannis (Assessors Map: 310, Parcel: 171) is an undeveloped parcel that the town acquired on May 27, 2005 as part of a negotiated Cape Cod Commission mitigation agreement associated with the BJ's development on Attucks Road extension in Hyannis.

Following an internal process developed by the Town Manager's office to allow every Town Department to review the potential sale of land, there was found to be no Town use identified for the parcel. The Town Manager declared the property surplus to the Town's needs on February 16, 2023.

A title search and a commercial appraisal were conducted. The value of the land was most recently assessed by the Town of Barnstable at \$165,000 and was appraised at \$100,000, with the appraiser noting that its smaller size would make it more valuable to abutters than to a stand-alone owner.

A Request for Proposals ("RFP") was developed under M.G.L. chapter 30B, Section 16 ("the Uniform Procurement Act") and issued on March 29, 2023. Abutters were notified of the potential property sale which was also advertised twice in a local paper of circulation, as required by Chapter 30B. The notification was posted on our Procurement Website, which allowed several third party bid posting agencies to alert their subscribers to this land disposition. In addition, we were required to post this in the Central Register through the Commonwealth of Massachusetts, which invited people to come to our Town website to view the RFP documents.

On May 3, 2023, when Proposals were due, we received an offer of \$220,000 from Bass River Properties Management Corp, Inc., Ronald Bourgeois, Owner/President. This entity owns the abutting parcel, which was accepted and signed by the Town Manager on June 1, 2023.

**ANALYSIS:** The Town Council, in its strategic plan, has prioritized the evaluation of assets, and upon fully vetting the best use of those assets for municipal use, when there is no evident municipal use in the short or long term, the asset is considered for disposal.

This item authorizes the Town Manager and/or Assistant Town Manager to dispose of all right, title and interest in the surplus parcel of land; and to execute and deliver any and all document necessary in accordance with the terms of this Resolve.



**FISCAL IMPACT:** This sale of this property would result in a sum of money to be deposited into a Special Revenue Receipt Reserved for Appropriation Fund from which the Town Council could appropriate for any purpose for which the Town is authorized to incur debt for a period of five years or more. Approval of this item would also return the property to a taxable status which would likely generate a small amount of additional annual taxes for the general fund.

**TOWN MANAGER RECOMMENDATION:** Mark S. Ells, Town Manager, recommends the sale of this property.

**STAFF ASSISTANCE:** David Anthony, Director of Asset Management; Kate Connolly, Assistant Town Attorney

**B. NEW BUSINESS (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-007  
INTRO: 07/20/2023**

**2024-007 AUTHORIZATION TO EXPEND A FISCAL YEAR 2024 JAIL/ARREST  
DIVERSION PROGRAM COMPONENT GRANT IN THE AMOUNT OF  
\$103,236 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 2024 Jail/Arrest Diversion Program Component Grant from the Commonwealth of Massachusetts, Department of Mental Health in the amount of **\$103,236** 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# 2024-007  
INTRO: 07/20/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Matthew Sonnabend, Chief of Police  
**DATE:** July 20, 2024  
**SUBJECT:** Authorization to expend a Fiscal Year 2024 Jail/Arrest Diversion Program Component Grant in the amount of **\$103,236** from the Commonwealth of Massachusetts, Department of Mental Health

**BACKGROUND:** Since initially awarded a Department of Mental Health (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 Community Service Officer (CSO) Program has been very successful in assisting the Community Impact Unit (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 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 Crisis Intervention 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 the Community Service Officer Program training and for the period from Labor Day to Columbus Day, enabling the program to continue into the shoulder season.

**FISCAL IMPACT:** There will be no negative financial impact. The total grant award of \$103,236 covers the period of 7/1/23-6/30/24.

This DMH grant will specifically pay for:

- Overtime costs to provide training for 6 Patrol Officers of the Barnstable Police Department in Crisis Intervention Team(CIT) and 6 Supervisors to attend Community Crisis Intervention Team (CCIT) training through the National Alliance on Mental Illness (NAMI) of Cape Cod & the Islands or another DMH approved site
- 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
- Outreach to the population served by this grant
- Funding for Community Service Officers during the shoulder season (Labor Day to Columbus Day) and training for 10 CSO's in MHFA and other supportive training

- CCIT Management/Coordination; and Grant Management/Reporting
- Substance Abuse Forum Overtime
- Travel overtime to attend the Mental Health Law Enforcement Conference

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;
- 3 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 E. Spillane

**B. NEW BUSINESS (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-008  
INTRO: 07/20/2023**

**2024-008 AUTHORIZATION TO EXPEND A FISCAL YEAR 2024 JAIL/ARREST  
DIVERSION PROGRAM CO-RESPONDER GRANT IN THE AMOUNT OF  
\$106,757 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 2024 Jail/Arrest Diversion Program Co-Responder Grant from the Commonwealth of Massachusetts, Department of Mental Health in the amount of **\$106,757** 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# 2024-008  
INTRO: 07/20/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Matthew Sonnabend, Chief of Police  
**DATE:** July 20, 2023  
**SUBJECT:** Authorization to expend a Fiscal year 2024 Arrest/Jail Diversion Co-Response Grant in the amount of **\$106,757** from the 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 \$106,757 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, 2023 to June 30, 2024 is \$106,757 and represents Year 3 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, 2024.

**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# 2024-009  
INTRO: 07/20/2023**

**2024-009 AUTHORIZATION TO EXPEND MASSACHUSETTS DEPARTMENT OF TRANSPORTATION – AERONAUTICS DIVISION FISCAL YEAR 2023 GRANTS FOR AIRPORT PROJECTS, AUTHORIZATION TO SIGN THE RELATED GRANT ASSURANCES AND DELEGATION OF AUTHORITY TO THE TOWN MANAGER TO SIGN FUTURE GRANT ASSURANCES**

**RESOLVED:** That the Town Council does hereby authorize the Barnstable Municipal Airport to expend the following grants and further authorizes the Town Manager to sign four (4) Massachusetts Department of Transportation Aeronautics Division Grant Assurances for such grants:

Reconstruct Runway 6/24 in the amount of Project Number: AIP No.3-25-0025-076-2022	\$936,205
Replace Runway 6/24 EMAS in the amount of Project Number: AIP No. 3-25-0025-077-2022	\$326,520
Purchase Snow Removal Truck in the amount of Project Number: ASIMP-2023-HYA-30	\$42,880
Environmental Assessment in the amount of Project Number: AIP No. 3-25-0025-080-2023	\$54,676.50

**AND IT IS FURTHER RESOLVED:** That the Town Council does hereby delegate to the Town Manager the authority to execute future MassDOT Aeronautics Division Grant Assurances for grant awards to the Barnstable Municipal Airport, provided that the projects to which such Grant Assurances relate have been approved by the Council as part of a Capital Improvement Plan budget.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

# BARNSTABLE TOWN COUNCIL

ITEM# 2024-009  
INTRO: 07/20/2023

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Katie Servis, Airport Manager; Matt Elia, Airport Assistant Manager  
**DATE:** July 20, 2023  
**SUBJECT:** Authorization to expend a Massachusetts Department of Transportation – Aeronautics Division Fiscal Year 2023 Grants for airport projects, authorization to sign the related grant assurances and delegation of authority to the Town Manager to sign future grant assurances

**BACKGROUND:** The Town is the intended recipient of four separate grants from the Aeronautics Division of the Massachusetts Department of Transportation (MassDOT) as more fully described in the Item. MassDOT requires that the Town sign so-called Grant Assurances that commit the Town to complete each of the projects or actions in accordance with the Town’s project applications. The Assurances also commit the Town to continue to service the transportation needs of the public by maintaining the Airport for a period of twenty years following the acceptance of the Grants, among other obligations. MassDOT requires evidence that the legislative body of the Town, i.e., the Town Council, has expressly authorized the Town Manager to sign the Grant Assurances identified in the proposed Item. This proposed vote will fulfill that condition of the Grant.

These Grant Assurances contain commitments, the effect of which would commit the Town’s General Funds to back up the Airport Enterprise Fund in the event that the Enterprise Fund is insufficient to meet that obligation. The Legal Department has opined that such a contractual obligation is illegal on its face because it intrudes on the authority of the Council to prioritize, and if necessary, decline to fund future Airport projects of the Town from the General Fund. It is also illegal because a Town cannot commit to financial obligations unless a specific appropriation has been approved. Obviously, a blanket commitment to future expenditures of unknown amounts, in uncertain financial circumstances, where other financial priorities may take precedence in the judgment of the Council, violates both of these well-founded legal mandates, the latter of which is based on clear requirements of the Constitution of the Commonwealth.

These concerns have been raised with MassDOT and rejected outright. MassDOT’s position is that the Grant Assurances must be signed as drafted without any changes whatsoever, or the Town will forfeit the grant monies. As we are unable to satisfactorily resolve this issue, the Town will forward a cover letter attached to each Grant Assurance that states that the Town is making the necessary commitments “to the extent permitted by law.” The second part of the proposed vote delegates to the Town Manager the authority to sign future Grant Assurances for projects, as long as those projects have previously been approved by the Town Council as part of the Town’s Capital Improvement Plan budget. This will avoid duplication of effort and ensure that grant assurances can be signed in a timely fashion.

**FISCAL IMPACT:** Approval of this item will allow the town to secure \$1,360,281 in grant funds for airport improvement projects; otherwise, local funding would have to replace the grant resources. Future financial commitments to maintain the airport in accordance with the grant assurances are subject to the extent permitted by law.

**STAFF ASSISTANCE:** Karen L. Nober, Town Attorney; Charles S. McLaughlin, Jr., Senior Counsel; Katie Servis, Airport Manager; Matt Elia, Airport Assistant Manager; Mark Milne, Finance Director



**B. NEW BUSINESS (Refer to Public Hearing 08/17/2023)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-010  
INTRO: 07/20/2023**

**2024-010 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$75,000 FOR TEMPORARY REPAIRS TO ROSEWOOD LANE IN THE VILLAGE OF COTUIT PURSUANT TO TEMPORARY REPAIRS TO PRIVATE ROADS PROGRAM FOR CERTAIN PRIVATE WAYS**

**ORDERED:** That the sum of **\$75,000** be appropriated for the purposes of making temporary repairs to Rosewood Lane, a private road in the village of Cotuit within the Town of Barnstable, and that to meet this appropriation, the Town Treasurer, with the approval of the Town Manager, be authorized to borrow \$75,000 under and pursuant to Chapter 174 of the Acts of 1994, as amended by Chapter 350 of the Acts of 2014, 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 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, and for these purposes to assess betterments in accordance with M.G.L. c. 80.

**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# 2024-010**  
**INTRO: 07/20/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director, Department of Public Works  
**DATE:** July 20, 2023  
**SUBJECT:** Appropriation and Loan Order in the amount of **\$75,000** for the purpose of funding temporary repairs to Rosewood Lane in the Village of Cotuit pursuant to Temporary Repairs to Private Roads Program for Certain Private Roads

**BACKGROUND:** Chapter 174 of the Acts of 1994, as amended by Chapter 350 of the Acts of 2014, authorized the Town to borrow funds to repair and improve private roads within the Town. Under this Program, the abutters to roads being repaired can be charged betterment assessments for 100% of the actual costs of repairs which they can elect to pay in one lump sum or over a period of up to 20 years (with interest). This road will not be taken by the Town of Barnstable and will remain a private road. A majority of the property abutters to Rosewood Lane in the Village of Cotuit have expressed an interest in having repairs made to their private road and 100% of the abutters have signed a Consent and Acknowledgement Agreement for Betterment Assessment. The proposed work includes a 2 inch asphalt overlay of the roadway.

**FINANCIAL IMPACT:** There is no cost to the Town, as all costs will be recovered by betterments assessed to the abutters. The Town will issue a bond to cover the cost of the repairs and use the revenue collected from the betterment assessments to make the annual loan repayments on the bond.

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

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

**B. NEW BUSINESS (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-011  
INTRO: 07/20/2023**

**2024-011 DETERMINATION UNDER SECTION 19 OF G.L. C. 268A REGARDING PARTICIPATION IN DECISIONS RELATING TO POTENTIAL CHANGES TO EMPLOYEE BENEFITS**

**RESOLVED:** That the Town Council does hereby determine that the financial interest of Mark S. Ells in decisions regarding and relating to potential changes to the benefits afforded to the non-union employees of the Town, as described in Mr. Ells’ disclosure form presented to the Town Council at this meeting in accordance with G.L. c. 268A, § 19, is not so substantial as to be deemed likely to affect the integrity of the services which the Town may expect from Mr. Ells, thereby authorizing Mr. Ells to participate as Town Manager in such decisions during the term of his employment with the Town; and further authorizes and directs the President of the Town Council to make such determination on Mr. Ells’ disclosure form on behalf of the Town Council.

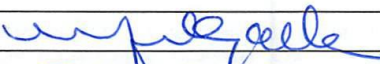
**SPONSOR:** Matthew P. Levesque, President, Town Council

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote

**DISCLOSURE BY NON-ELECTED MUNICIPAL EMPLOYEE OF FINANCIAL INTEREST  
AND DETERMINATION BY APPOINTING AUTHORITY  
AS REQUIRED BY G. L. c. 268A, § 19**

<b>MUNICIPAL EMPLOYEE INFORMATION</b>	
Name:	Mark S. Ells
Title or Position:	Town Manager
Municipal Agency:	Town of Barnstable
Agency Address:	Town Hall 367 Main Street Hyannis, MA 02601
Office Phone:	508-862-4610
Office E-mail:	Mark.ells@town.barnstable.ma.us
	My duties require me to participate in a particular matter, and I may not participate because of a financial interest that I am disclosing here. I request a determination from my appointing authority about how I should proceed.
<b>PARTICULAR MATTER</b>	
Particular matter  E.g., a judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, or finding.	Please describe the particular matter.  I am seeking to review and potentially modify various benefits currently extended to the non-union employees of the Town. Examples of such benefits include those relating to sick leave, longevity pay, merit bonuses, education/tuition reimbursement, vacation time, personal time, bereavement leave and holidays.  The review that is the subject of this disclosure does not include any potential changes to employee health care contributions, which will be the subject of a separate disclosure.
Your required participation in the particular matter:  E.g., approval, disapproval, decision, recommendation, rendering advice, investigation, other.	Please describe the task you are required to perform with respect to the particular matter.  As Town Manager, I am responsible for establishing and amending, from time to time, the Personnel Code of the Town, which sets forth the personnel policies and regulations adopted by the Town Manager, including, but not limited to, all forms of employee benefits. I will also need to make Section 19 determinations for other employees of the Town who may need to assist me in this benefits review.
<b>FINANCIAL INTEREST IN THE PARTICULAR MATTER</b>	
<b>Write an X by all</b>	

that apply.	<input checked="" type="checkbox"/> I have a financial interest in the matter. <input type="checkbox"/> My immediate family member has a financial interest in the matter. <input type="checkbox"/> My business partner has a financial interest in the matter. <input type="checkbox"/> I am an officer, director, trustee, partner or employee of a business organization, and the business organization has a financial interest in the matter. <input type="checkbox"/> I am negotiating or have made an arrangement concerning future employment with a person or organization, and the person or organization has a financial interest in the matter.
Financial interest in the matter	Please explain the financial interest and include a dollar amount if you know it.  Pursuant to my employment contract with the Town, I receive all benefits that are currently extended to Non-Affiliated Executive Group employees (Department Heads) of the Town. If I were to make changes to the benefits afforded to non-union employees, I would be affected by those changes and, therefore, I would have a financial interest in such decisions. The dollar amount of any such changes cannot be determined at this time.
Employee signature:	
Date:	7-17-2023

**DETERMINATION BY APPOINTING OFFICIAL**

APPOINTING AUTHORITY INFORMATION	
Name of Appointing Authority:	
Title or Position:	
Agency/Department:	
Agency Address:	
Office Phone:	
Office E-mail	
DETERMINATION	
Determination by appointing authority:	As appointing official, as required by G.L. c. 268A, § 19, I have reviewed the particular matter and the financial interest identified above by a municipal employee. I have determined that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.
Appointing Authority signature:	
Date:	

Comment:	
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Attach additional pages if necessary.

The appointing authority shall keep this Disclosure and Determination as a public record.

Form revised February, 2012

# BARNSTABLE TOWN COUNCIL

**ITEM# 2024-011**  
**INTRO: 07/20/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Karen L. Nober, Town Attorney  
**DATE:** July 20, 2023  
**SUBJECT:** Determination under Section 19 of G.L. c. 268A Regarding Participation in Decisions Relating to Potential Changes to Employee Benefits

Section 19 of G.L. c. 268A, the state conflict of interest law, prohibits a municipal employee from participating in a particular matter in which he or she has a financial interest, unless the employee's appointing authority makes a determination that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the Town may expect from the employee. Section 19 requires that an employee who wishes to participate in such a matter file a disclosure with the employee's appointing authority of the nature and circumstances of the particular matter and make full disclosure of the employee's financial interest prior to participating. If the appointing authority makes such a determination, then the employee may participate in the matter, notwithstanding his or her financial interest.

As set forth in the attached disclosure, under Chapter 242, Personnel, of the Town Code, Mark S. Ells' duties as Town Manager include the establishment of a Personnel Code, setting forth the personnel policies and regulations adopted by the Town Manager, including, but not limited to, all forms of employee benefits. Mr. Ells is also authorized to amend the Personnel Code from time to time.

To maximize the Town's ability to successfully compete with other employers in recruiting and retaining employees, Mr. Ells seeks to review and potentially modify various benefits currently extended to the non-union employees of the Town. Examples of such benefits include those relating to sick leave, longevity pay, merit bonuses, education/tuition reimbursement, vacation time, personal time, bereavement leave and holidays. Pursuant to Mr. Ells' employment contract with the Town, he receives all benefits that are currently extended to Non-Affiliated Executive Group employees (Department Heads) of the Town. Therefore, if Mr. Ells were to make any changes to the benefits afforded to non-union employees, he would be affected by those changes, and he would have a financial interest in such matters. Accordingly, before he may make any such decisions, he needs to obtain the Town Council's authorization to participate in such matters, and the Council would need to make the required determination under Section 19 of the conflict of interest law. It is important to note that the benefits that are the subject of this disclosure do not include changes to health care contributions, which are the subject of a separate vote. As such, the benefits that Mr. Ells seeks to potentially change are not benefits that are afforded to the members of the Town Council, and, therefore, Council members do not themselves have a financial interest in these matters.

**FINANCIAL IMPACT:** There is no immediate and direct fiscal impact on the Town's Operating Budget as a result of this action.

**STAFF ASSISTANCE:** Karen L. Nober, Town Attorney; William Cole, Director of Human Resources; Mark Milne, Director of Finance

**B. NEW BUSINESS (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-014  
INTRO: 07/20/2023**

**2024-014 AUTHORIZATION TO EXPEND A FISCAL YEAR 2023 GRANT FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE NATURAL RESOURCES CONSERVATION SERVICE IN THE AMOUNT OF \$100,000 FOR THE EVALUATION AND DESIGN OF MILL POND DAM FISH PASSAGE IMPROVEMENTS**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 Grant from the United States Department of Agriculture Natural Resources Conservation Service in the amount of **\$100,000** for the purpose of an evaluation and design of the Mill Pond Dam Fish Passage Improvements Project.

**SPONSOR:** Mark S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote



# BARNSTABLE TOWN COUNCIL

**ITEM# 2024-014**  
**INTRO: 07/20/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director, Department of Public Works  
**DATE:** July 20, 2023  
**SUBJECT:** Authorization to Expend a Fiscal Year 2023 Grant from the United States Department of Agriculture Natural Resources Conservation Service in the amount of **\$100,000** for the evaluation and design for the Mill Pond Dam Fish Passage Improvements Project

**BACKGROUND:** The Town of Barnstable has been awarded a \$100,000 Technical Assistance Grant from the United States Department of Agriculture Natural Resources Conservation Service. This grant will supplement funding of the evaluation and design of the Mill Pond Dam Fish Passage Improvements Project as outlined in appropriation order 2022-118 of the FY23-27 Capital Improvement Plan.

**ANALYSIS:** The Marstons Mills River is the Town's longest rivers and is one of the Town's largest herring runs. River herring travel nearly 2.5 miles from the Three Bays Estuary to Middle Pond each spring for spawning. Currently, the Town is working with their consultant, Alden Research Group, to evaluate fish passage along this section of the Marstons Mills River. Initial evaluation found that the culverts underneath Route 28 and Route 149 present a velocity barrier to smaller fish trying to pass through this area. In order to advance the project, additional evaluation of potential modifications to the culvert is needed. Funding from this grant will supplement appropriation order 2022-118 outlined in the Capital Improvement Plan Fiscal Year 2023-2027. It is anticipated the additional grant funding from NRCS and other agencies will be pursued to fund future phases of work for this project.

**FINANCIAL IMPACT:** This is a reimbursement grant for \$100,000. The Town must expend the funds upfront and subsequently submit for reimbursement.

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

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

**B. NEW BUSINESS (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-015  
INTRO: 07/20/2023**

**2024-015 RESOLUTION TO DEDICATE TOWN LAND THAT IS PART OF THE BEARSE’S WAY SHARED USE PATH PROJECT TO PUBLIC USE**

**RESOLVED:** That the Town Council does hereby dedicate land that is part of the Bearse’s Way Shared Use Path Project, as shown on a plan of land dated May 12, 2023, entitled “PLAN OF ROAD IN THE TOWN OF BARNSTABLE, MASSACHUSETTS, BARNSTABLE COUNTY, SHOWING LOCATION OF EASEMENTS FOR THE PURPOSE OF CONSTRUCTING THE BEARSE’S WAY SHARED USE PATH FOR THE TOWN OF BARNSTABLE”, attached hereto and incorporated herein by reference, for the purposes of construction, installation, maintenance, improvement, repair, replacement and/or relocation in order to provide public access of rights of way, sidewalks, drainage, sewer and other utilities, driveways, guardrails, slopes, grading, rounding, landscaping, parking areas and other appurtenances and/or facilities, in, on, over, across, under, and along all or any portions of land as shown on said plan, and that the Town Manager is authorized to execute and record any and all documents necessary to effectuate this Resolution.

**SPONSOR:** Marks S. Ells, Town Manager

DATE	ACTION TAKEN
_____	_____
_____	_____

- \_\_\_ Read Item
- \_\_\_ Rationale
- \_\_\_ Council Discussion
- \_\_\_ Vote



FALMOUTH ROAD  
(RTE 28 - 1932 SH.L.O #23902  
& 2015 SH.L.O #B4032)

6.5  
TOP OF BENCHMARK MARK  
NE POINT 100+00.00  
ELEV. 111.00  
FROM BENCH. 6. ADJUSTED TO DATA

EXISTING UTILITY PATH  
UNDERMINED BY BENCH-MARK SET  
WASHER (ONLY OCCASION 11-14-02)  
ELEV. OF MARK - 100.00 (SEE PAGE 1)

EXISTING UTILITY PATH  
UNDERMINED BY BENCH-MARK SET  
WASHER (ONLY OCCASION 11-14-02)  
ELEV. OF MARK - 100.00 (SEE PAGE 1)

BEARSE'S WAY  
(STATE HIGHWAY, COUNTY &  
TOWN LAYOUT - VARIABLE WIDTH)

SECTION OF 2015 SH.L.O #B4032  
SECTION OF 2015 SH.L.O #B4032  
SECTION OF 2015 SH.L.O #B4032  
SECTION OF 2015 SH.L.O #B4032

6.7  
TOP OF BENCHMARK MARK  
NE POINT 100+00.00  
ELEV. 111.00  
FROM BENCH. 6. ADJUSTED TO DATA



FOR RECORD USE

Certification

I HEREBY CERTIFY THAT THE PLAN WAS PREPARED BY  
APPROPRIATE AND IN ACCORDANCE WITH THE REGULATIONS OF THE  
COMMISSION OF PROFESSIONAL ENGINEERS AND ARCHITECTS OF THE  
COMMONWEALTH OF MASSACHUSETTS.

I HEREBY CERTIFY THAT THE PLAN SHOWS THE PROPERTY LINES  
AND THE LAYOUT OF EXISTING IMPROVEMENTS AND THE LAYOUT  
OF STREETS AND WAYS SHOWN ARE TRUE TO THE RECORDS OF  
TOWN RECORDS AND WERE ALREADY CONVEYED AND THAT NO  
NEW DATA FOR EXISTING IMPROVEMENTS OR FOR NEW  
WAYS ARE SHOWN. ENCL. FOR LAYOUT #1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.



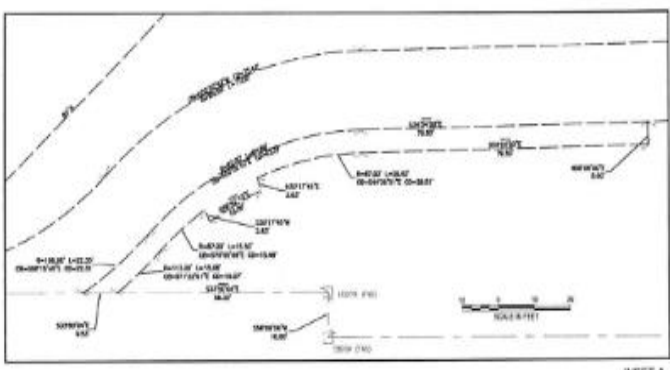
NOTES

1. THE EXISTING BENCHMARK MARK SET FOR THE  
SURVEY DATA WAS PROVIDED BY THE TOWN OF  
BARNSTABLE, IN 2013. SUPPLEMENTAL SURVEYS WERE  
BENCH CONTROLLED BY THE TOWN IN 2014, 2015, 2016,  
2017, 2018, AND 2019. BY APRIL 2020, THE  
PROVISIONAL LEGISLATION SYSTEM IS ON THE MASS GIS  
SYSTEM MARKS.
2. THE LOCATION OF EXISTING UTILITY LINES SHOWN ON  
THIS PLAN ARE BASED ON RECORD RECORDS.
3. THE PURPOSE OF THIS PLAN IS TO SHOW PROPOSED  
PLACEMENT AND COMPONENT LOCATIONS FOR THE  
CONSTRUCTION OF THE BEARSE'S WAY SHARED USE  
PATH.

SYMBOL	DESCRIPTION
1	PROPOSED EASEMENT
2	EXISTING EASEMENT
3	PROPOSED EASEMENT
4	PROPOSED EASEMENT
5	PROPOSED EASEMENT
6	PROPOSED EASEMENT
7	PROPOSED EASEMENT
8	PROPOSED EASEMENT
9	PROPOSED EASEMENT
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100	PROPOSED EASEMENT



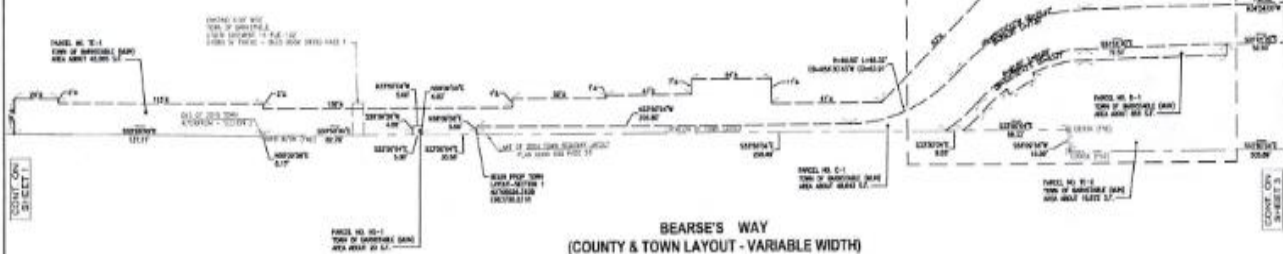
PLAN OF ROAD  
IN THE TOWN OF  
BARNSTABLE, MASSACHUSETTS  
SHOWING LOCATION OF EASEMENTS  
FOR THE PURPOSE OF CONSTRUCTING  
THE BEARSE'S WAY SHARED USE PATH  
FOR THE TOWN OF BARNSTABLE  
DATE: MAY 12, 2023  
SCALE: 25 FEET TO THE INCH



INSET A



BY  
TOWN OF BARNSTABLE (SHEED)  
THE TOWN ENGINEER  
DATE: 01-20-2023  
(SEE SHEET 6 OF 7 FOR THE PLAN)



**BEARSE'S WAY**  
(COUNTY & TOWN LAYOUT - VARIABLE WIDTH)



**Certification**

I, TOWN ENGINEER, DO HEREBY CERTIFY THAT THIS PLAN WAS PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTERED PROFESSION OF ENGINEERS IN THE COMMONWEALTH OF MASSACHUSETTS.

I HEREBY CERTIFY THAT THIS PLAN SHOWS THE PROPERTY LINES THAT ARE THE BASIS OF EXISTING EASEMENTS AND THE LAYOUT OF STREETS AND HIGHWAYS AS THEY EXIST OR SHALL BE OPENED TO PUBLIC USE AND THAT THE LAYOUT OF STREETS AND HIGHWAYS IS IN ACCORD WITH THE ACTS AND LAWS OF THE COMMONWEALTH OF MASSACHUSETTS.

DATE: 01-20-2023

TOWN ENGINEER



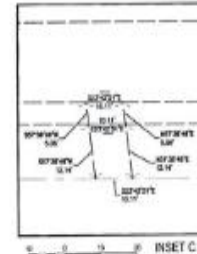
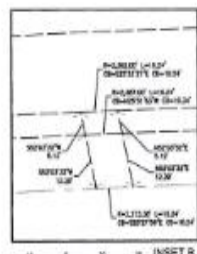
- NOTES**
- THE EXISTING ROADWAY AND ITS FOR THE SHARED USE PATH WAS PREPARED BY THE TOWN OF BARNSTABLE IN 2011. THE EXISTING ROADWAY HAS BEEN IMPROVED BY THE TOWN IN 2011, 2012, AND 2023. THE SHARED USE PATH IS SHOWN BY THE DASHED LINE.
  - THE LOCATION OF NEIGHBORING PROPERTY LINES SHOWN ON THIS PLAN ARE BASED ON RECORDS.
  - THE PURPOSE OF THIS PLAN IS TO CLARIFY THE LOCATION OF THE SHARED USE PATH FOR THE CONSTRUCTION OF THE BEARSE'S WAY SHARED USE PATH.

LEGEND	
—	PROPERTY EASEMENT
- - -	PROPERTY EASEMENT
---	TOWN STREET EASEMENT
---	SHARED USE PATH
---	SHARED USE PATH EASEMENT
---	SHARED USE PATH EASEMENT
---	SHARED USE PATH EASEMENT
---	SHARED USE PATH EASEMENT

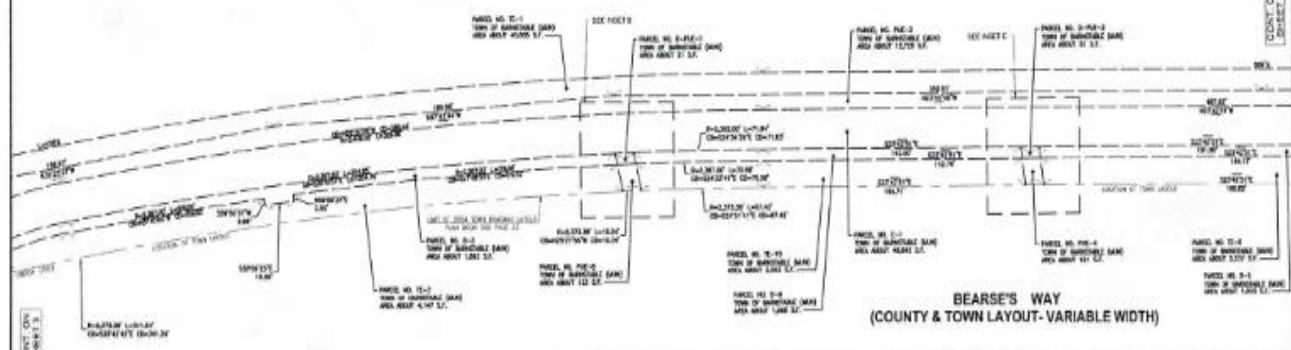
**vhb** PLAN PREPARED BY

PLAN OF ROAD  
IN THE TOWN OF  
BARNSTABLE, MASSACHUSETTS  
BARNSTABLE COUNTY  
SHOWING LOCATION OF EASEMENTS  
FOR THE PURPOSE OF CONSTRUCTING  
THE BEARSE'S WAY SHARED USE PATH  
FOR THE TOWN OF BARNSTABLE  
DATE: MAY 12, 2023  
SCALE: 20 FEET TO THE INCH





NOT TO SCALE  
SEE PLAN FOR  
SECTION 20-10-10  
SECTION 20-10-10  
SECTION 20-10-10



**BEARSE'S WAY  
(COUNTY & TOWN LAYOUT - VARIABLE WIDTH)**



**Certification**  
I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.  
I HEREBY CERTIFY THAT THIS PLAN SHOWS THE PROPERTY LINES AND THE LOCATION OF EXISTING BUILDINGS, AND THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE RIGHTS AS SHOWN BY RECORDS, AND THAT NO NEW LINES FOR DIVISION OF EXISTING OR OTHER ARE SHOWN UNLESS THEY ARE SHOWN BY THE RECORDS.  
DATE: MAY 12, 2020

**NOTES**  
1. THE EXISTING ROADWAY AND TIES FOR THE COUNTY FILE PLAN WERE PREPARED BY THE TOWN OF BARNSTABLE IN 2013. SUPPLEMENTAL SURVEYS WERE COMPLETED BY THE TOWN IN 2016, 2017, AND 2018 AND ARE SHOWN ON THIS PLAN.  
2. THE LOCATION OF BUILDINGS SHOWN ON THIS PLAN ARE BASED ON RECORD DEEDS.  
3. THE PURPOSE OF THIS PLAN IS TO SHOW RECORDS AND TOWN RECORDS FOR THE CONSTRUCTION OF THE BEARSE'S WAY SHOWN AND SHOWN ON THIS PLAN.



**LEGEND**

1	EXISTING ROADWAY
2	PERMANENT CENTERLINE
3	PERM. LAYOUT CENTERLINE
4	SHOWN PROPERTY
5	SHOWN PROPERTY CENTERLINE
6	SHOWN ROAD CENTERLINE
7	NEW ROAD CENTERLINE
8	SHOWN TIES

**vhb** PLAN PREPARED BY  
111 SOUTH STREET  
BARNSTABLE, MA 02706  
508-255-1234

**PLAN OF ROAD  
IN THE TOWN OF  
BARNSTABLE, MASSACHUSETTS  
SHOWING LOCATION OF EXISTING  
FOR THE PURPOSE OF CONSTRUCTING  
THE BEARSE'S WAY SHOWN ON THIS  
DATE: MAY 12, 2020  
SCALE: 20 FEET TO THE INCH**









# BARNSTABLE TOWN COUNCIL

**ITEM# 2024-015**  
**INTRO: 07/20/2023**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Charles S. McLaughlin, Jr., Senior Counsel  
**DATE:** July 20, 2023  
**SUBJECT:** Resolution to dedicate town land that is part of the Bearse's Way Shared Use Path Project to public use

**BACKGROUND:** The Town has entered into an agreement with the Massachusetts Department of Transportation ("MassDOT") whereby MassDOT will construct sidewalks and other improvements that will encourage public use that will be made safer and more accessible because of the work that will be undertaken. The MassDOT work will be coordinated with the Town's Department of Public Works sewer installation project below the surface area of the Shared Use Project. The area of land that will be so dedicated is indicated on a plan of land entitled, "PLAN OF ROAD IN THE TOWN OF BARNSTABLE, MASSACHUSETTS, BARNSTABLE COUNTY, SHOWING LOCATION OF EASEMENTS FOR THE PURPOSE OF CONSTRUCTING THE BEARSE'S WAY SHARED USE PATH FOR THE TOWN OF BARNSTABLE."

MassDOT requires that the Town agree to dedicate the project area to public use as a condition of MassDOT's commitment and expenditure. This vote will satisfy the required commitment.

**FISCAL IMPACT:** Future maintenance of the improvements on this land will be the responsibility of the town and will be included in future operating and capital budgets. Annual maintenance is expected to be minimal and capital improvements should not be necessary for several years.

**STAFF ASSISTANCE:** Charles S. McLaughlin, Jr., Senior Counsel; Mark Milne, Director of Finance; Griffin Beaudoin, Town Engineer

**B. NEW BUSINESS (May be acted upon) (Majority vote)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2024-016  
INTRO: 07/20/2023**

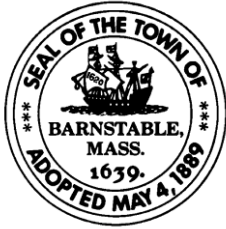
**2024-016 RESOLVE APPROVING A LETTER TO THE GOVERNOR OF MASSACHUSETTS IN SUPPORT OF ENSURING THE LONG-TERM FINANCIAL VIABILITY OF THE CAPE COD & ISLANDS WATER PROTECTION FUND**

**RESOLVED:** That the Town Council does hereby approve sending a letter to the Governor of Massachusetts from the Town Council President on behalf of the Town Council, substantially in the form as presented at this meeting, requesting assistance in ensuring the long-term financial viability of the Cape Cod & Islands Water Protection Fund, a critical source of funding that towns on Cape Cod rely upon to clean up the region’s coastal waterways and embayments.

**SPONSOR:** Matthew P. Levesque, President, Town Council

DATE	ACTION TAKEN
_____	_____
_____	_____

- Read Item
- Rationale
- Council Discussion
- Vote



**Town of Barnstable  
Town Council**

367 Main Street, Village of Hyannis, MA 02601  
508-862-4738 • 508-862-4770  
E-mail: [council@town.barnstable.ma.us](mailto:council@town.barnstable.ma.us)  
[www.town.barnstable.ma.us](http://www.town.barnstable.ma.us)

Councilors:

Matthew Levesque  
President  
Precinct 10

Jennifer Cullum  
Vice President  
Precinct 13

Gordon Starr  
Precinct 1

Eric R. Steinhilber  
Precinct 2

Betty Ludtke  
Precinct 3

Nikolas Atsalis  
Precinct 4

Paul Cusack  
Precinct 5

Paul C. Neary  
Precinct 6

Jessica Rapp Grassetti  
Precinct 7

Jeffrey Mendes  
Precinct 8

Tracy Shaughnessy  
Precinct 9

Kristine Clark  
Precinct 11

Paula Schnepf  
Precinct 12

Administrator:  
Cynthia A. Lovell  
[Cynthia.Lovell@town.barnstable.ma.us](mailto:Cynthia.Lovell@town.barnstable.ma.us)

July 21, 2023

The Honorable Maura Healey  
Governor of Massachusetts  
Massachusetts State House  
24 Beacon Street, Room 280  
Boston, MA 02133

RE: Funding Nutrient Reduction on Cape Cod

Dear Governor Healey,

I am writing on behalf of the Barnstable Town Council to request your assistance in ensuring the long-term financial viability of a critical source of funding that towns on Cape Cod rely upon to clean up our coastal waterways and embayments, the Cape Cod & Islands Water Protection Fund (CCIWPF). This letter is in support of the Cape Cod & Islands Water Protection Fund Management Board's letter dated June 30, 2023 (attached).

Since its inception in 2019, the CCIWPF has awarded approximately \$140 million in subsidies to Cape Cod wastewater and water quality projects. The CCIWPF has helped support Cape Cod communities in the advancement of their wastewater solutions to address nutrient loading on Cape Cod. As a result, the number of wastewater management projects in the region has increased significantly, underscoring the important role the CCIWPF plays in advancing wastewater projects on Cape Cod – even at the same time of unprecedented inflation and increased project costs.

An initial financial model indicated that a 25% principal subsidy could be provided to eligible projects. In 2021, 2022 and 2023, the Clean Water Intended Use Plan (IUP) included over \$300 million in wastewater projects from Cape Cod, which are the greatest amounts we have seen for Cape Cod, illustrating the commitment of our region to addressing water resource management.

However, based on current assumptions for project costs and revenues, the CCIWPF cannot continue to award subsidies at this rate. The financial impacts on the Town of Barnstable of this action are significant. Barnstable is identified as a Disadvantaged Community Tier 1 based on adjusted per capita income and, as such, needs the continued principal subsidy of 25%. The CCIWPF Management Board has voted to reduce the subsidy to 12% for 2024 IUP projects, absent any additional sources of funding. We believe this reduction in principal subsidy will greatly impact the ability of communities in proceeding with these priority infrastructure projects; particularly Barnstable, which is also

a Gateway City. As stated in its June 30, 2023 letter, the CCIWPF Board's financial consultant has modeled the additional revenue necessary to allow the Fund to maintain a 25% principal subsidy through FY30. Additional revenues of \$5 million in FY24, followed by approximately \$66 million in revenue spread over the following three fiscal years, are needed to allow the Fund to support continuing the 25% subsidy through the end of the decade.

The Town of Barnstable appreciates the Administration and the Legislature's support of the CCIWPF and its commitment to improving water quality on Cape Cod. We stand ready to work with you to achieve this critical funding challenge.

I am available at your convenience to further discuss this important matter.

Sincerely,

Matthew P. Levesque, President  
Barnstable Town Council

cc: State Senator Julian Cyr  
State Senator Susan Moran  
State Representative Kip Diggs  
State Representative Sarah Peake  
State Representative Dylan Fernandes  
State Representative Chris Flanagan  
State Representative David Vieira  
State Representative Steven Xiarhos

# CAPE COD AND ISLANDS WATER PROTECTION FUND

June 30, 2023

Governor Maura Healey  
Massachusetts State House  
24 Beacon Street, Room 280  
Boston, MA 02133

Dear Governor Healey,

I am writing to you on behalf of the entire Cape Cod and Islands Water Protection Fund (Fund) Management Board to request your urgent assistance in sustaining the long-term financial viability of a critical source of funding that towns on Cape Cod rely upon to clean up our coastal waterways and embayments.

Since its inception in 2019, the Fund has awarded approximately \$140 million in subsidies to Cape Cod wastewater and water quality projects. The Fund has helped spur Cape Cod communities to advance their wastewater planning in earnest. As a result, the number of wastewater management projects in the region has increased significantly, underscoring the important role the Fund plays in accelerating the pace of wastewater projects on Cape Cod – even at the same time of unprecedented inflation and increased project costs. This highlights the impact of Fund subsidy on town's abilities to advance pollution abatement projects with financing from the Clean Water Trust.

A cash flow model developed in 2021 by PFM Financial Advisors LLC to support administration of the Fund projects the Fund's cash flow based on certain assumptions, including annual tax collections and annual State Revolving Fund (SRF) eligible Clean Water Intended Use Plan (IUP) projects. Initial assumptions to create the model included eligible annual project costs of approximately \$60 million and annual tax collections of approximately \$20 million. The results of the model were supportive of providing a 25% subsidy to eligible projects while maintaining a Fund balance of at least 50% of annual collections.

In 2022 and 2023, the IUP included over \$108 million and \$167 million in wastewater projects from Cape Cod, respectively – which are the greatest amounts we have seen for Cape Cod in a single year. With some adjustments to the financial model, including reducing subsidies from the Fund for projects that have received additional state subsidies from the American Rescue Plan Act and reducing the set-aside for critical water quality monitoring, the Board was able to award 25% subsidies to 2023 IUP projects.

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[www.capecodcommission.org/cciwpf](http://www.capecodcommission.org/cciwpf)

## CAPE COD AND ISLANDS WATER PROTECTION FUND

However, based on current assumptions for project costs and revenues, the Board cannot continue to award subsidies at this rate. The Management Board has voted to reduce the subsidy to 12% for 2024 IUP projects, absent any additional sources of funding.

PFM Financial Advisors LLC has modeled for us the additional revenue we believe is necessary to allow the Fund to remain solvent through FY30. We need additional revenues of \$5 million in FY24, followed by approximately \$66 million in revenue spread over the following three fiscal years, to allow the Fund to support continuing the 25% subsidy through the end of the decade.

The Management Board appreciates the Administration and the Legislature's support of the Fund and its commitment to improving water quality on Cape Cod. We look forward to working with you collaboratively to develop a solution to this important funding challenge.

Should you have any questions, please do not hesitate to reach out.

Sincerely,



Kevin Galligan  
Chair, Cape Cod and Islands Water Protection Fund Management Board

cc: State Senator Julian Cyr  
State Senator Susan Moran  
State Representative Kip Diggs  
State Representative Sarah Peake  
State Representative Dylan Fernandes  
State Representative Chris Flanagan  
State Representative David Vieira  
State Representative Steven Xiarhos