



# The Town of Barnstable

## Town Council

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### TOWN COUNCIL AGENDA

September 19, 2002

7:00 PM

Councilors:

Gary C. Blazis,  
President

Gary R. Brown  
Vice-President

Richard G. Barry  
Richard W. Clark  
Richard D. Elrick  
Janet S. Joakim  
Robert R. Jones  
Audrey M. Loughnane  
J. Gregory Milne  
Royden C. Richardson  
Carl S. Riedell

Administrative  
Assistant:  
Donald M. Grissom  
Town Council  
Secretary  
Cheryl A. Phillips

- 1. ROLL CALL**
  - 2. PLEDGE OF ALLEGIANCE**
  - 3. MOMENT OF SILENCE**
  - 4. ACT ON MINUTES**
  - 5. PUBLIC COMMENT (also encouraged at the end of meeting)**
  - 6. COUNCIL RESPONSE TO PUBLIC COMMENT**
  - 7. COMMUNICATIONS FROM ELECTED OFFICIALS, BOARDS, COMMISSIONS AND STAFF, CORRESPONDENCE, ANNOUNCEMENTS AND COMMITTEE REPORTS**
  - 8. PRESIDENT/VICE PRESIDENT COMMUNICATIONS**
  - 9. TOWN MANAGER COMMUNICATIONS**
  - 10. ORDERS OF THE DAY**
    - A. OLD BUSINESS**
    - B. NEW BUSINESS**
-

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**A. OLD BUSINESS (JOINT PUBLIC HEARING)(MAY BE ACTED UPON)**

**BARNSTABLE TOWN COUNCIL**

**2003-008 DOWNTOWN ZONING DISTRICTS, ZONING AMENDMENT**

**NOW THEREFORE, THE TOWN COUNCIL OF THE TOWN OF BARNSTABLE MASSACHUSETTS DO ORDAIN AS FOLLOWS:**

**ORDERED:**

**SECTION 1**

**That Chapter III, Article III of the Ordinances, the Zoning Ordinance, be amended by striking out Paragraph 1 Principal Permitted Uses, Paragraph 2 Accessory Uses and Paragraph 3 Special Permit Uses, inclusive, of Section 3-3.10 MA-1 Business District, and inserting in place thereof the following:**

**“1. Principal Permitted Uses:** The following uses are permitted in the MA-1 Business District, provided that no drive-thru facilities are provided:

- A) Apartment or apartments subject to the following standards
  - a) The apartment or apartments shall be located above the ground floor story only.
  - b) Apartments shall have a minimum gross floor area, and a minimum number of bedrooms as follows:
    - i. A one bedroom apartment shall contain not less than 550 square feet of gross floor area;
    - ii. A two bedroom apartment shall contain not less than 720 square feet of gross floor area; and
    - iii. Studio apartments shall contain not less than 400 square feet of gross floor area.
    - iv. Apartments with three or more bedrooms shall not be permitted.
- B) Business and professional offices, not to include medical and dental offices, and not located on the ground floor story.
- C) Bank.
- D) Retail
- E) Research and development facility, not on the ground floor story.
- F) Publishing and printing establishment.
- G) Food service establishment.
- H) Membership club for a health or athletic facility, not on the ground floor story.
- I) Movie picture and live theater.

- J) Repair and servicing of appliances, computers, electronic equipment, tools and other small machinery common to homes and businesses, not to include any appliance, tool or small machinery which is powered by hydrocarbon fuels.
- K) Trade or professional school, not on the ground floor story.
- L) Artist and photographer's studio and gallery.”

**2. Accessory Uses:**

- A) Entertainment and/or dancing, as an accessory use to a full service, food service establishment, subject to the following requirements:
  - a) Food is served to customers at tables by waitpersons.
  - b) Bar seats and places do not exceed 20% of restaurant seats.
  - c) Any dance floor area shall not exceed 500 square feet, or 10% of the floor area of the restaurant, whichever is less.

**3. Special Permit Uses:** The following uses are permitted in the MA-1 Business District, provided a Special Permit is first obtained from the Zoning Board of Appeals subject to the provisions of Section 5-3.3 herein and subject to the following standards:

- A) Bed and breakfast subject to the following requirements:
  - a) The bed and breakfast operation shall be above the ground floor story only;
  - b) No cooking facilities including but not limited to stoves, microwave ovens, toaster ovens and hot plates shall be available to guests, and no meals except breakfast shall be served to guests;
  - c) No more than six (6) total rooms shall be rented to no more than 12 total guests at any one time. For the purposes of this section, children under the age of twelve (12) years shall not be considered in the total number of guests.
  - d) Bed and breakfast operations shall be either owner-occupied or subject to the supervision of a manager resident upon the premises.
- B) The Zoning Board of Appeals may permit apartments which do not meet the minimum gross floor area size requirements of Section 3-3.10(1)(A)(b) above, provided that:
  - a) The applicant demonstrates that the physical layout of any proposed or existing structure is such that the applicant cannot meet the minimum gross floor area requirements; and

- b) 80% of the apartment units comply with the minimum size requirements of paragraph 3-3.10(1)(A)(b) above. This shall apply to five or more units. Where there are less than five units, all units shall comply with the minimum bedroom and gross floor area requirements of Section 3-3.10(1)(A)(b); and
  - c) The Zoning Board of Appeals finds that the development as proposed will not have a detrimental impact upon surrounding businesses and residential uses.
- C) Medical and dental offices, laboratory services, not on the ground floor story.
  - D) Hotel and motel, subject to all the requirements of Section 3-3.1(6) above.
  - E) Outdoor commercial recreational use, miniature golf subject to the Zoning Board of Appeals finding that:
    - a) The use as proposed will not be detrimental to surrounding business or residential uses by reason of noise, excessive lighting, or flashing lights.
    - b) The proposed design of the facility is in keeping with the district and is harmonious with other, surrounding uses.
    - c) The facility is small in scale, and is not clustered with other such uses.
    - d) The Zoning Board of Appeals shall establish hours of operation for the facility.
  - F) Research and development facility, by Special Permit on the ground floor story. In reviewing the application, the Zoning Board of Appeals should take into consideration whether the use includes an active retail use or educational display along any Main Street frontage.
  - G) Business, professional offices, not to include medical and dental offices, by Special Permit on the ground floor story.
  - H) Bank Drive thru, provided that there is no access from Main Street
  - I) Pool and billiards hall, amusement arcade and bowling alley
  - J) Private club or lodge, operated not for profit, and for members only.
  - K) Delivery service, provided there is no access or frontage on Main Street.

**SECTION 2**

**That Chapter III, Article III of the Ordinances, the Zoning Ordinance, be amended by striking out 3-2.2 OR Office Residential District and inserting in place thereof the following:**

**“3-2.2 OR Office Residential District**

**1) Principal Permitted Uses:** The following uses are permitted in the OR Office Residential District:

A) Single-family residential (detached).

The following uses are permitted in a structure built prior to 1970, and any structural additions thereto:

B) Business and professional office, not to include a medical or dental office.

**2) Accessory Uses:** The following uses are permitted as accessory uses in the OR Office Residential District:

The following uses are permitted within a structure constructed prior to 1970 and any structural additions thereto:

A) Bed and Breakfast operation for no more than a total of six rooms rented to a total of no more than 12 guests at any one time, within an owner occupied single family residential structure, subject to the provisions of Section 3-1.1(3)(F), except paragraphs a) and b), and except that no Special Permit shall be required in the OR Office Residential District. For the purpose of this paragraph, children under the age of twelve shall not be considered in the total number of guests.

B) Renting of rooms for not more than three (3) non-family members by the family residing in a single-family dwelling.

C) An apartment, in addition to a principle permitted use, provided:

a) Where accessory to a single-family residential structure, the floor area of an accessory apartment shall not to exceed 50% of the floor area of a single-family residential structure.

D) Home Occupation, subject to all the requirements of Section 4-1.4(2), Home Occupation by Special Permit, except that no Special Permit shall be required in the OR Office Residential District.

**3) Special Permit Uses:** The following uses are permitted In the OR Office Residential District, provided a Special Permit is first obtained from the Zoning Board of Appeals, subject to the provisions of Section 5-3.3 herein, and subject to the following requirements, and as follows:

The following uses are permitted in a structure built prior to 1970, and any structural additions thereto:

A) Medical and dental office, laboratory services, subject to the Zoning Board of Appeals finding that:

a) The use has adequate parking and access;

b) That the use as proposed will not adversely affect surrounding business or residential uses; and

**4) (Reserved for future use)**

**5) Bulk Regulations:**

Zoning Districts	Min. lot area in sq. ft.	Min. lot frontage in ft.	Min. lot width in ft.	Minimum yard setbacks in ft. FRONT SIDE REAR			Maximum bldg height in ft.	Floor Area Ratio#
OR	10,000	50	100	30	10	20	30*	0.3

\* Or two and one half (2-1/2) stories whichever is lesser.

# Floor Area Ratio (FAR) is the ratio of gross building square feet to lot area.

Front Yard Landscaped Setback from the road right of way: 10 feet; 30 feet along South Street. Existing trees and shrubs shall be retained within the road right of way and within the required Front Yard Landscaped Setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the Front Yard Landscaped Setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three (3.0) inches, shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives, and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any Site Plan approved pursuant to Section 4-7 herein.”

(Voted by roll call vote of Town Council on 7/19//01 as item 2001-037-38-39)

**SECTION 3**

**That Chapter III, Article III of the Ordinances, the Zoning Ordinance, be amended by striking out 3-3.12 B-1 Business District and inserting in place thereof the following:**

**“3-3.12 B-1 Business District**

**1) Principal Permitted Uses:** The following uses are permitted in the B-1 Business District:

- A. Retail.
- B. Medical, dental office, laboratory services.
- C. All other business and professional offices.
- D. Bank.
- E. Personal Service business including but not limited to the following: barber, beauty shop, shoe repair, tailor and dressmaker.
- F. Restaurant.
- G. Research and development, technological and computer research, software development and data processing including computer operations services.
- H. Publishing and printing establishments.
- I. Hotel or motel subject to all the requirements of Section 3-3.1. (6).

J. Apartments subject to Section 3-2.1(1)(J), not to include paragraph J(c).

K. Packaging and delivery services.

L. Gas station, not to include auto repair or bodywork.

M. Dry-cleaner, laundry and laundromat.

N. Caterer

O. Artist and photographer’s studio and gallery.

2) **Accessory Uses:** The following uses are permitted as accessory uses in the B-1 Business District: (reserved for future use)

3) **Special Permit Uses:** The following uses are permitted as Special Permit uses in the B-1 Business District, provided a Special Permit is first obtained from the Zoning Board of Appeals, and as follows:

A) Parking facility to serve a use or uses, located in this zoning district, or in a contiguous, non-residential District.

B) Drive-in facilities, where such use is permitted in 3-3.11(1) above.

**4) Reserved for Future Use**

**5) Bulk Regulations:**

Zoning Districts	Min. lot area in sq. ft.	Min. lot frontage in ft.	Min. lot width in ft.	Minimum yard setbacks in ft. FRONT SIDE REAR	Maximum bldg height in ft.	Floor Area Ratio#
B-1	10,000	20	100	20 10 10	30*	0.4

\* Or two and a half (2 1/2) stories whichever is lesser.

# Floor Area Ratio (FAR) is the ratio of gross building square feet to lot area.

Landscaped Setback from the road right of way: 10 feet.

The Front Yard Landscaped Setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three (3.0) inches, shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives, and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any Site Plan approved pursuant to Section 4-7 herein.”

(This district was added by vote of the Town Council on 6/28/2001 as item 2001-036)

**SECTION 4**

**That Chapter III, Article III of the Ordinances, the Zoning Ordinance, be amended by striking out 3-3.11 MA-2 Business District and inserting in place thereof the following:**

**“3-3.11 MA-2 Business District**

**1) Principal Permitted Uses:** The following uses are permitted in the MA-2 Business District:

A) Single-family residential (detached).

The following uses are permitted within a structure constructed prior to 1970 and structural additions thereto.

B) Retail.

C) Business and professional office, not to include medical office or dental office.

D) Personal Service Business including but not limited to the following: barber, beauty shop, shoe repair, tailor and dressmaker.

E) Artist and photographer's studio and gallery.

**2) Accessory Uses:** The following uses are permitted as accessory uses in the MA-2 Business District:

A) An apartment, in addition to the principal permitted uses, provided that:

a) Where it is accessory to a single-family residential structure, the floor area of an accessory apartment shall not to exceed 50% of the floor area of the single-family residential structure.

B) Bed and Breakfast operation for no more than a total of six rooms rented to a total of no more than 12 guests at any one time, within an owner occupied single family residential structure, constructed prior to 1970, subject to the provisions of Section 3-1.1(3)(F), except paragraphs a) and b), and except that no Special Permit shall be required in the MA-2 Business District. For the purpose of this paragraph, children under the age of twelve shall not be considered in the total number of guests.

**3. Special Permit Uses:** The following uses are permitted as Special Permit uses in the MA-2 Business District, provided a Special Permit is first obtained from the Zoning Board of Appeals and as follows: (Reserved for future use)

**4. (Reserved for future use)**

**5) Bulk Regulations:**

Zoning District	Min. lot area in sq. ft.	Min. lot frontage in ft.	Min. lot width in ft.	Minimum yard setbacks in ft. FRONT SIDE REAR	Maximum bldg height in ft.	Floor Area Ratio#
MA-2	7,500	50	-	20 10 20	30*	0.3

\* Or two and one half (2-1/2) stories whichever is lesser.

# Floor Area Ratio (FAR) is the ratio of gross building square feet to lot area.

Front Yard Landscaped Setback from the road right of way: 20 feet

The Front Yard Landscaped Setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three (3.0) inches, shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives, and road

intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any Site Plan approved pursuant to Section 4-7 herein.”

(Roll call vote of Town Council on 7/19/01 in item 2001-037, 38, 39 – added above item)

**SECTION 5**

**That Chapter III, Article 111, the Zoning Ordinance, Section 2-2 of the Ordinances, is hereby amended by adopting a Zoning Map to clarify the boundary of the downtown zoning districts as shown on maps on file with the Town Clerk entitled “Zoning Map of the Town of Barnstable, Massachusetts, Index Sheet”, and “Sheet 3 of 7, Hyannis”, both maps notated “Proposed Amendment File Copy date May 1, 2002”.**

**SPONSOR:** John C. Klimm, Town Manager

<b>DATE</b>	<b>ACTION TAKEN</b>
_____	_____
_____	_____

**AGENDA ITEM SUMMARY  
2003-008**

**TO:** Town Council  
**FROM:** John Klimm, Town Manager  
**THROUGH:** Thomas Broadrick, AICP, Planning Director  
**DATE:** May 21, 2002  
**SUBJECT:** Downtown Zoning District Revisions

**BACKGROUND:** Six downtown Zoning Districts were adopted in 2001, reflecting the very different areas of downtown Hyannis.

Minor revisions are presented to revise the new district designations. Changes include clarification of uses, particularly personal service businesses. Related changes to use provisions have then been carried forward to the other downtown districts, to ensure consistency.

The Zoning map has been re-drawn to clarify lines in the downtown area, and a large-scale insert map of the downtown districts has been added. The map has also been re-drawn along the shore, so that district lines are located along the water and do not cut across land. Map revisions have been worked out with GIS and Planning.

Additional changes may be proposed in the future, particularly regarding parking reductions, however, this type of change will require input and discussion with all parties. The changes presented in attached amendments are primarily redefinition and clarification, not major policy revisions, and can proceed independently.

## **SUMMARY OF DISTRICT CHANGES:**

### **SECTION 1**

#### **3-3.10 MA-1 BUSINESS DISTRICT (Main Street)**

##### **1 Principal Permitted Uses**

- To delete personal service businesses, many of which are not consistent with the retail, visitor orientated environment of Main Street.
- Artist, photographer's studio and gallery have been added as permitted uses.
- The minimum square footage of apartments has been reduced and studio apartments would be permitted. The requirement for a Special Permit for 10 or more apartments has been eliminated, and the minimum lot area of 2,000 sq ft per apartment has also been eliminated.

### **SECTION 2**

#### **3-2.2 OR Office Residential District (South Street, West of the Armory)**

- The floor area ratio (Paragraph 5, Bulk Regulations) has been increased from .2 to .3, allowing greater density. The adaptive re-use provision allowing offices and other uses in existing buildings built prior to 1970, has been broadened to include construction of new additions, which may be necessary to accommodate new uses. These changes rely upon jurisdiction of the Hyannis Main Street Waterfront District to control exterior changes.
- General Office uses were inadvertently omitted in the re-formatting that occurred after submission to the Town Council, and have been re-inserted, consistent with the original draft submitted to Town Council.
- Conditional Use provisions have been deleted. A Conditional Use is the same as a Special Permit and after discussion with the Town Attorneys, we have begun the process of combining Conditional Uses with Special Permitted Uses, district by district.

### **SECTION 3**

#### **3-3.12 B-1 BUSINESS DISTRICT (North Street, retail area, and Barnstable Road)**

- Personal Service businesses have been redefined by deletion of dry cleaning establishments. Dry cleaning is then permitted as a separate, permitted use together with laundries. Such uses are best located adjacent to Main Street, not along Main Street. A caterer has been added as a permitted use, and to be consistent with the Main Street District, artist and photographer studios and galleries have been added to the list of permitted uses.
- The Conditional Use provisions have been deleted.

### **SECTION 4**

#### **3-3.11 MA-2 BUSINESS DISTRICT**

- To be consistent with the Main Street District, artist and photographer studios and galleries have been added to the list of permitted uses.
- The Conditional Use provisions have been deleted.

## **SECTION 5**

### **2-2 MAP CHANGE**

Clarification of the downtown Zoning Districts is needed, particularly at the intersection of Main and South Street, where the final map print for Hyannis is unclear in two areas. A larger scale insert for the downtown districts has been added and the Hyannis sheet has also been better defined particularly along the shore where the zoning district now falls along the water. Other sheets will be similarly modified by GIS as revisions are made, village by village.

There is no change in the delineation of the districts as originally submitted to the Town Council. In order to avoid the problems that occurred with maps, GIS and Planning have developed a mutual review process.

**FISCAL IMPACT:** there is no impact to the town budget of these revisions.

**TOWN MANAGER RECOMMENDATION:** the Town Manager recommends that the proposed Ordinance be adopted after all issues raised at the Public Hearing have been satisfactorily addressed. (to be verified with the TM)

**STAFF ASSISTANCE:** Jacqueline Etsten, Principal Planner  
Doug Bill, Associate Planner  
James Benoit, GIS  
Thomas Broadrick, AICP, Director of Planning

### **COMPARISON OF PROPOSED CHANGES WITH CHANGES WITH EXISTING TEXT** **Deletions are shown as ~~strikethroughs~~ and additions to the text are shown bold and underlined.**

#### **Section 1**

#### **Revisions to MA-1 Paragraph 1 only**

1. Principal Permitted Uses: The following uses are permitted in the MA-1 Business District, provided that no drive-thru facilities are provided:
  - A. Apartment or apartments subject to the following standards
    - a) ~~There shall be no more than 10 apartments.~~
    - b) ~~There shall be a minimum of 2,000 square feet of lot area per apartment.~~
    - c) The apartment or apartments shall be located above the ground floor story only.
    - d) Apartment shall have a minimum gross floor area, and a minimum number of bedrooms as follows:
      - i. A one bedroom apartment shall contain not less than ~~800~~ 550 square feet of gross floor area;
      - ii. A two bedroom apartment shall contain not less than ~~1,000~~ 720 square feet of gross floor area; and

~~iii. Studio apartments and apartments with three or more bedrooms shall not be permitted.~~ **shall have not less than 400 square feet of gross floor area.**

~~iv.~~ **Apartments with three or more bedrooms shall not be allowed.**

- B. Business and professional offices, not to include medical and dental offices, and not located on the ground floor story.
- C. Bank.
- D. Retail
- ~~E. Personal Service business including but not limited to the following: barber, beauty shop, dry cleaning pick up service, shoe repair, tailor and dressmaker.~~
- E. Research and development facility, not on the ground floor story.
- F. Publishing and printing establishment.
- G. Food service establishment.
- H. Membership club for a health or athletic facility, not on the ground floor story.
- I. Movie picture and live theater.
- J. Repair and servicing of appliances, computers, electronic equipment, tools and other small machinery common to homes and businesses, not to include any appliance, tool or small machinery which is powered by hydrocarbon fuels.
- K. Trade or professional school, not on the ground floor story.
- L. Artist and photographer's studio and gallery.

## **2. Accessory Uses:**

- A. Entertainment and/or dancing, as an accessory use to a full service, food service establishment, subject to the following requirements:
  - a) Food is served to customers at tables by waitpersons.
  - b) Bar seats and places do not exceed 20% of restaurant seats.
  - c) Any dance floor area shall not exceed 500 square feet, or 10% of the floor area of the restaurant, whichever is less.

**3. Special Permit Uses:** The following uses are permitted in the MA-1 Business District, provided a Special Permit is first obtained from the Zoning Board of Appeals subject to the provisions of Section 5-3.3 herein and subject to the following standards:

~~A) Eleven (11) apartments or more, subject to all the requirements of Section 3-3.10(1)(A) above, sub-paragraphs (b) through (d).~~

B) Bed and breakfast subject to the following requirements:

- a. The bed and breakfast operation shall be above the ground floor story only;
- b. No cooking facilities including but not limited to stoves, microwave ovens, toaster ovens and hot plates shall be available to guests, and no meals except breakfast shall be served to guests;
- c. No more than six (6) total rooms shall be rented to no more than 12 total guests at any one time. For the purposes of this section, children under the age of twelve (12) years shall not be considered in the total number of guests.
- d. Bed and breakfast operations shall be either owner-occupied or subject to the supervision of a manager resident upon the premises.

B. The Zoning Board of Appeals may permit apartments which do not meet the minimum gross floor area size requirements of Section 3-3.10(1)(A)(d) above, provided that:

- a) The applicant demonstrates that the physical layout of any proposed or existing structure is such that the applicant cannot meet the minimum gross floor area requirements; and
- b) 80% of the apartment units comply with the minimum size requirements of paragraph 3-3.10(1)(A)(d) above. This shall apply to five or more units. Where there are less than five units, all units shall comply with the minimum bedroom and gross floor area requirements of Section 3-3.10(1)(A)(d); and
- c) The Zoning Board of Appeals finds that the development as proposed will not have a detrimental impact upon surrounding businesses and residential uses.

C) Medical and dental offices, laboratory services, not on the ground floor story.

D) Hotel and motel, subject to all the requirements of Section 3-3.1(6) above.

E) Outdoor commercial recreational use, miniature golf subject to the Zoning Board of Appeals finding that:

- a) The use as proposed will not be detrimental to surrounding business or residential uses by reason of noise, excessive lighting, or flashing lights.
- b) The proposed design of the facility is in keeping with the district and is harmonious with other, surrounding uses.
- c) The facility is small in scale, and is not clustered with other such uses.

- d) The Zoning Board of Appeals shall establish hours of operation for the facility.
- F) Research and development facility, by Special Permit on the ground floor story. In reviewing the application, the Zoning Board of Appeals should take into consideration whether the use includes an active retail use or educational display along any Main Street frontage.
- G) Business, professional offices, not to include medical and dental offices, by Special Permit on the ground floor story.
- H) Bank Drive thru, provided that there is no access from Main Street
- I) Pool and billiards hall, amusement arcade and bowling alley
- J) Private club or lodge, operated not for profit, and for members only.
- K) Delivery service, provided there is no access or frontage on Main Street.

## **SECTION 2**

### **3-2.2 OR Office Residential District**

1) Principal Permitted Uses: The following uses are permitted in the OR Office Residential District:

A. Single-family residential (detached).

The following uses are permitted in a structure built prior to 1970, **and any structural additions thereto:**

**B. Business and professional office, not to include a medical or dental office.**

2) Accessory Uses: The following uses are permitted as accessory uses in the OR Office Residential District:

The following uses are permitted within a structure constructed prior to 1970 **and any structural additions thereto:**

- A) Bed and Breakfast operation for no more than a total of six rooms rented to a total of no more than 12 guests at any one time, within an owner occupied single family residential structure, subject to the provisions of Section 3-1.1(3)(F), except paragraphs a) and b), and except that no Special Permit shall be required in the OR Office Residential District. For the purpose of this paragraph, children under the age of twelve shall not be considered in the total number of guests.
- B) Renting of rooms for not more than three (3) non-family members by the family residing in a single-family dwelling.
- C) An apartment, in addition to a principle permitted use, provided:

- a) Where accessory to a single-family residential structure, the floor area of an accessory apartment shall not to exceed 50% of the floor area of a single-family residential structure.

D) Home Occupation, subject to all the requirements of Section 4-1.4(2), Home Occupation by Special Permit, except that no Special Permit shall be required in the OR Office Residential District.

~~3) Conditional Uses: The following uses are permitted as conditional uses in the OR Office Residential District, provided a Special Permit is first obtained from the Zoning Board of Appeals subject to the provisions of Section 5-3.3 herein and subject to the specific standards for such conditional uses as required in this section:~~

3) 4) **Special Permit Uses:** The following uses are permitted In the OR Office Residential District, provided a Special Permit is first obtained from the Zoning Board of Appeals, subject to the provisions of Section 5-3.3 herein, and subject to the following requirements, and as follows:

The following uses are permitted in a structure built prior to 1970, **and any structural additions thereto:**

A. Medical and dental office, laboratory services, subject to the Zoning Board of Appeals finding that:

- a) The use has adequate parking and access;
- b) That the use as proposed will not adversely affect surrounding business or residential uses; and
- ~~e) Subject to the conditions of paragraph 3-2.2(1)(A) above.~~

4) (Reserved for future use)

5) Bulk Regulations:

Zoning Districts	Min. lot area in sq. ft.	Min. lot frontage in ft.	Min. lot width in ft.	Minimum yard setbacks in ft.			Maximum bldg height in ft.	Floor Area Ratio#
				FRONT	SIDE	REAR		
OR	10,000	50	100	30	10	20	30*	<u>0.3</u>

\* Or two and one half (2-1/2) stories whichever is lesser.

# Floor Area Ratio (FAR) is the ratio of gross building square feet to lot area.

Front Yard Landscaped Setback from the road right of way: 10 feet; 30 feet along South Street. Existing trees and shrubs shall be retained within the road right of way and within the required Front Yard Landscaped Setback and supplemented with other landscape materials, in accordance with accepted landscape practices. Where natural vegetation cannot be retained, the Front Yard Landscaped Setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three (3.0) inches, shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives, and road intersections.

All landscaped areas shall be continuously maintained, substantially in accordance with any Site Plan approved pursuant to Section 4-7 herein.

(Voted by roll call vote of Town Council on 7/19//01 as item 2001-037-38-39)

### **SECTION 3**

#### **3-3.12 B-1 Business District**

**1) Principal Permitted Uses:** The following uses are permitted in the B-1 Business District:

- A) Retail.
- B) Medical, dental office, laboratory services.
- C) All other business and professional ~~and government~~ offices.
- D) Bank.
- E) Personal Service business including but not limited to the following: barber, beauty shop, ~~dry-cleaning~~, shoe repair, tailor and dressmaker.
- F) Restaurant.
- G) Research and development, technological and computer research, software development and data processing including computer operations services.
- H) Publishing and printing establishments.
- I) Hotel or motel subject to all the requirements of Section 3-3.1. (6).
- J) Apartments subject to Section 3-2.1(1)(J), not to include paragraph J(c).
- K) Packaging and delivery services.
- L) Gas station, not to include auto repair or bodywork.

#### **M) Dry-cleaner, laundry and laundromat.**

#### **N) Caterer**

#### **O) Artist and photographer's studio and gallery.**

**2) Accessory Uses:** The following uses are permitted as accessory uses in the B-1 Business District: (reserved for future use)

~~**3) Conditional Uses:** The following uses are permitted as conditional uses in the B-1 Business District, provided a Special Permit is first obtained from the Zoning Board of Appeals subject to the provisions of Section 5-3.3 herein and subject to the specific standards for such conditional uses as required in this section: (reserved for future use)~~

**3) ~~4) Special Permit Uses:~~** The following uses are permitted as Special Permit uses in the B-1 Business District, provided a Special Permit is first obtained from the Zoning Board of Appeals, and as follows:

A) Parking facility to serve a use or uses, located in this zoning district, or in a contiguous, non-residential District.

B) Drive-in facilities, where such use is permitted in 3-3.11(1) above.

**4) Reserved for Future Use**

**5) Bulk Regulations:**

Zoning Districts	Min. lot area in sq. ft.	Min. lot frontage in ft.	Min. lot width in ft.	Minimum yard setbacks in ft. FRONT SIDE REAR			Maximum bldg height in ft.	Floor Area Ratio#
B-1	10,000	20	100	20	10	10	30*	0.4

\* Or two and a half (2 1/2) stories whichever is lesser.

# Floor Area Ratio (FAR) is the ratio of gross building square feet to lot area.

Landscaped Setback from the road right of way: 10 feet.

The Front Yard Landscaped Setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three (3.0) inches, shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives, and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any Site Plan approved pursuant to Section 4-7 herein.

(This district was added by vote of the Town Council on 6/28/2001 as item 2001-036)

**SECTION 4**

**3-3.11 MA-2 Business District**

**1) Principal Permitted Uses:** The following uses are permitted in the MA-2 Business District:

A) Single-family residential (detached).

The following uses are permitted within a structure constructed prior to 1970 **and structural additions thereto.**

B) Retail.

C) Business, **and** professional ~~and governmental~~ office, not to include medical office or dental office.

D) Personal Service Business including but not limited to the following: barber, beauty shop, ~~photographer's studio~~, shoe repair, tailor and dressmaker.

**E) Artist and photographer's studio and gallery.**

**2) Accessory Uses:** The following uses are permitted as accessory uses in the MA-2 Business District:

A) An apartment, in addition to the principal permitted uses, provided that:

a) Where it is accessory to a single-family residential structure, the floor area of an accessory apartment shall not to exceed 50% of the floor area of the single-family residential structure.

B) Bed and Breakfast operation for no more than a total of six rooms rented to a total of no more than 12 guests at any one time, within an owner occupied single family residential structure, constructed prior to 1970, subject to the provisions of Section 3-1.1(3)(F), except paragraphs a) and b), and except that no Special Permit shall be required in the MA-2 Business District. For the purpose of this paragraph, children under the age of twelve shall not be considered in the total number of guests.

~~**3) Conditional Uses:** The following uses are permitted as conditional uses in the MA-2 Business District, provided a Special Permit is first obtained from the Zoning Board of Appeals subject to the provisions of Section 5-3.3 herein and subject to the specific standards for such conditional uses as required in this section: (reserved for future use)~~

~~**3. 4) Special Permit Uses:** The following uses are permitted as Special Permit uses in the MA-2 Business District, provided a Special Permit is first obtained from the Zoning Board of Appeals and as follows: ~~Planning Board~~ (Reserved for future use)~~

**4. (Reserved for future use)**

5) Bulk Regulations:

Zoning District	Min. lot area in sq. ft.	Min. lot frontage in ft.	Min. lot width in ft.	Minimum yard setbacks in ft. FRONT SIDE REAR			Maximum bldg height in ft.	Floor Area Ratio#
MA-2	7,500	50	-	20	10	20	30*	0.3

\* Or two and one half (2-1/2) stories whichever is lesser.

# Floor Area Ratio (FAR) is the ratio of gross building square feet to lot area.  
Front Yard Landscaped Setback from the road right of way: 20 feet

The Front Yard Landscaped Setback shall be landscaped with a combination of grasses, trees and shrubs commonly found on Cape Cod. A minimum of one street tree with a minimum caliper of three (3.0) inches, shall be provided per 30 feet of road frontage distributed throughout the front yard setback area. No plantings shall obscure site at entrance and exit drives, and road intersections. All landscaped areas shall be continuously maintained, substantially in accordance with any Site Plan approved pursuant to Section 4-7 herein.

(Roll call vote of Town Council on 7/19/01 in item 2001-037, 38, 39 – added above item)

## **B. NEW BUSINESS (To Be Referred To Public Hearing On October 3rd)**

### **BARNSTABLE TOWN COUNCIL**

<b>2003-019AMNESTY AFFORDABLE HOUSING PROGRAM</b>
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**ORDERED:** that Chapter III, Article III of the General Ordinances is hereby amended by striking out ARTICLE LXV - Comprehensive Permits for Pre-Existing and Un-permitted Dwelling Units and for New Dwelling Units in Existing Structures, and inserting in place thereof the following:

**“ARTICLE LXV - Comprehensive Permits for Pre-Existing and Un-permitted Dwelling Units and for New Dwelling Units Accessory to Single Family Dwellings.**

**SECTION 1.0: INTENT AND PURPOSE.**

1.1 The intent of this Ordinance is to provide an opportunity to bring into compliance many of the currently un-permitted accessory apartments and apartment units in the Town of Barnstable, as well as to allow the construction of new dwelling units accessory to existing single-family homes to create additional affordable housing.

1.2 This Ordinance recognizes that although un-permitted and unlawfully occupied, these dwelling units are filling a market demand for housing at rental costs typically below that of units which are and have been, lawfully constructed and occupied.

1.3 It is in the public interest and in concert with its obligations under state law, for the Town of Barnstable to offer a means by which so-called un-permitted and illegal dwelling units can achieve lawful status, but only in the manner described below.

1.4 It is the position of the Town of Barnstable that the most appropriate mechanism for allowing for the conversion of unlawful dwelling units to lawful units is found in GL c.40B, ss. 20-23, the so-called “Comprehensive Permit” program. This provision of state law encourages the development of low and moderate-income rental and owner occupied housing and provides a means for the Board of Appeals to remove local barriers to the creation of affordable housing units. These barriers include any local regulation such as zoning and general ordinances that may be an impediment to affordable housing development.

1.5 The Local Comprehensive Plan states that the town should commit appropriate resources to support affordable housing initiatives. Under this ordinance, the town commits the following resources to support this affordable housing initiative:

**a. Waiver of fees for the inspection and monitoring of the properties identified under this ordinance;**

**b. Designation of town staff to assist the property owner in navigating through the process established under this ordinance;**

**c. To the extent allowable by law, the negative effect entailed by the deed restriction involved will be reflected in the property tax assessment, and**

**d. To assist property owners in locating available municipal, state and federal funds for rehabilitating and upgrading the properties identified under this ordinance.**

1.6 The Local Comprehensive Plan supports, in conjunction with a variety of other strategies, the conversion of existing structures for use as affordable housing.

1.7 Through the creation of a local Chapter 40B program, which uses state and federal subsidies, the town can create a mechanism to utilize existing structures and to construct new accessory structures for the creation of affordable housing units that is consistent with the town's identified housing needs.

## **SECTION 2.0: CREATION OF LOCAL CHAPTER 40B PROGRAM:**

As part of the town's efforts to create the type of affordable housing that best meets the needs of the town and its residents, the town manager and staff designated by the town manager, shall establish a screening process and criteria for the preexisting and un-permitted units described herein, as well as for the construction of new units accessory to single-family homes, as part of a local Chapter 40B program which program will provide the state or federal subsidy necessary to establish standing under Chapter 40B for units being created and/or permitted.

## **SECTION 3:0: AMNESTY PROGRAM**

Recognizing that the success of this Ordinance depends, in part, on the admission by real property owners that their property may be in violation of the zoning ordinances of the town, the town hereby establishes the following Amnesty Program:

**3.1: The threshold criteria for units being considered as units potentially eligible for the Amnesty Program are:**

a) Real property containing a dwelling unit or dwelling units for which there does not exist a validly issued variance, special permit or building permit, does not qualify as a lawful, non-conforming use or structure, for any or all the units, and that was in existence on a lot of record within the Town as of January 1, 2000; or

**b) Real property containing a dwelling unit or dwelling units which was in existence as of January 1, 2000 and which has been cited by the Building Department as being in violation of the zoning ordinance and**

**(c) The property owner has the burden of demonstrating to the Building Commissioner that the criteria in either paragraphs (a) and/or (b) have been satisfied.**

**d) If any dwelling unit or units identified herein are occupied during the period of time when amnesty is in effect, said unit must be inspected by the entity designated by the town manager and found to be in conformance with the State Building Code and State Sanitary Code.**

3.2: The procedure for qualifying units that meet the threshold criteria for the amnesty program is as follows:

a) **The unit or units must either be a single unit accessory to an owner occupied single family dwelling or one or more units in a multifamily dwelling where there exists a legal multifamily use but one or more units are currently un-permitted;**

b) The unit(s) must receive a site approval letter under the town's local chapter 40B program;

c) The property owner must agree that if s/he receives a comprehensive permit, the unit or units for which amnesty is sought will be rented to a person or family whose income is 80% or less of the Area Median Income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and shall further agree that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.

d) The property owner must agree, that if s/he receives a comprehensive permit, that s/he will execute a deed restriction for the unit or units for which amnesty is sought, prepared by the Town of Barnstable, which runs with the property so as to be binding on and enforceable against any person claiming an interest in the property and which restricts the use of one or more units as rental units to a person or family whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area (MSA).

e) Upon receiving the site approval letter under 3.2(b) above, the property owner shall within three (3) months file an application for a comprehensive permit under the local Chapter 40B program with the Barnstable Zoning Board of Appeals.

3.3: The procedure for obtaining amnesty is as follows:

a) No zoning enforcement shall be undertaken against any property owner who demonstrates that s/he meets the threshold criteria under section 3.1 and further demonstrates that s/he is proceeding in good faith to comply with the procedures under Section 3.2 to obtain a comprehensive permit.

b) Any protection from zoning enforcement under this ordinance shall terminate when: 1) A written determination is issued under the local Chapter 40B program that the criteria under Section 3.2 and the local Chapter 40B program cannot be satisfied; or 2) it is determined that the property owner is not proceeding diligently with his/her Chapter 40B application; or 3) the property owner's Chapter 40B application is denied. A person is deemed "not to be proceeding diligently" if s/he does not receive a comprehensive permit within twelve months from the date of issuance of the site approval letter under the local Chapter 40B program.

c) This amnesty program shall be reviewed by the town council no later than October 1, 2003.

#### **SECTION 4.0: NEW UNITS ACCESSORY TO SINGLE FAMILY OWNER OCCUPIED DWELLINGS.**

For a proposed new unit to be eligible for consideration under the local chapter 40B program, it must be a single unit accessory to an owner occupied single-family dwelling to be located within or attached to an existing residential structure or within an existing building located on the same lot as said residential structure and comply with the following:

a) The unit(s) must receive a site approval letter under the town's local chapter 40B program;

b) The property owner must agree that if s/he receives a comprehensive permit, the accessory dwelling unit will be rented to a person or family whose income is 80% or less of the Area Median Income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and shall further agree that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.

c) The property owner must agree, that if s/he receives a comprehensive permit, that s/he will execute a deed restriction for the unit, prepared by the Town of Barnstable, which runs with the property so as to be binding on and enforceable against any person claiming an interest in the property and which restricts the use of the one unit as a rental unit to a person or family whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area (MSA).

d) Upon receiving the site approval under 4(a) above, the property owner shall file an application for a comprehensive permit under the local Chapter 40B program with the Barnstable Zoning Board of Appeals.

**SECTION 5.0: QUARTERLY REPORTING.**

The Town Manager shall report to the Town Council no less than quarterly as to the use of this ordinance, paying particular regard to the level of participation."

**SPONSOR:** John C. Klimm, Town Manager

<b>DATE</b>	<b>ACTION TAKEN</b>
_____	_____
_____	_____

**AGENDA ITEM SUMMARY  
2003-019**

**TO:** Town Council  
**FROM:** John Klimm, Town Manager  
**THROUGH:** Kevin Shea, Paulette Theresa-McAuliffe  
Office of Community & Economic Development  
**DATE:** August 22, 2002  
**SUBJECT:** Accessory Affordable Housing Program

**BACKGROUND:** Article LXV – Comprehensive Permits for Pre-Existing and Un-permitted Dwelling Units and for New Dwelling Units Accessory to Single Family Dwellings approved by Town Council November 16, 2000. The Program more commonly known as the Accessory Affordable Housing or Amnesty Program with (Section 1.0): the intent of bringing into compliance many of the currently un-permitted accessory apartments and apartment units in the Town of Barnstable, as well as to allow the construction of new dwelling units accessory to existing single-family homes to create additional affordable housing. Although as many as 45 Amnesty Units have been approved to date, the Town Council realized during its action of adopting the ordinance that future revisions would be made to the program. As a result, we propose some changes to the ordinance.

**ANALYSIS:** Throughout the course of this program the most reoccurring questions have centered around two issues: 1) Creating Amnesty Apartments within Existing Detached (Accessory) Structures, and 2) Creating Amnesty Apartments within Newly Attached Structures. Two minor revisions would help to clarify the purpose and intent of the Program with respect to these areas. A change to include these measures would allow the opportunity to create additional units for the Town. The Accessory Affordable Housing Program has been running successfully for over a year and we would like to see it continue to do well. As a result, we suggest the following:

**ARTICLE LXV - Comprehensive Permits for Pre-Existing and Un-permitted Dwelling Units and for New Dwelling Units Accessory to Single Family Dwellings.**

**SECTION 1.0: INTENT AND PURPOSE.**

1.1 The intent of this Ordinance is to provide an opportunity to bring into compliance many of the currently un-permitted accessory apartments and apartment units in the Town of Barnstable, as well as to allow the construction of new dwelling units accessory to existing single-family homes to create additional affordable housing.

1.2 This Ordinance recognizes that although un-permitted and unlawfully occupied, these dwelling units are filling a market demand for housing at rental costs typically below that of units which are and have been, lawfully constructed and occupied.

1.3 It is in the public interest and in concert with its obligations under state law, for the Town of Barnstable to offer a means by which so-called un-permitted and illegal dwelling units can achieve lawful status, but only in the manner described below.

1.4 It is the position of the Town of Barnstable that the most appropriate mechanism for allowing for the conversion of unlawful dwelling units to lawful units is found in GL c.40B, ss. 20-23, the so-called “Comprehensive Permit” program. This provision of state law encourages the development of low and moderate-income rental and owner occupied housing and provides a means for the Board of Appeals to remove local barriers to the creation of affordable housing units. These barriers include any local regulation such as zoning and general ordinances that may be an impediment to affordable housing development.

1.5 The Local Comprehensive Plan states that the town should commit appropriate resources to support affordable housing initiatives. Under this ordinance, the town commits the following resources to support this affordable housing initiative:

**a. Waiver of fees for the inspection and monitoring of the properties identified under this ordinance;**

**b. Designation of town staff to assist the property owner in navigating through the process established under this ordinance;**

**c. To the extent allowable by law, the negative effect entailed by the deed restriction involved will be reflected in the property tax assessment, and**

**d. To assist property owners in locating available municipal, state and federal funds for rehabilitating and upgrading the properties identified under this ordinance.**

1.6 The Local Comprehensive Plan supports, in conjunction with a variety of other strategies, the conversion of existing structures for use as affordable housing.

1.7 Through the creation of a local Chapter 40B program, which uses state and federal subsidies, the town can create a mechanism to utilize existing structures and to construct new accessory structures for the creation of affordable housing units that is consistent with the town’s identified housing needs.

## **SECTION 2.0: CREATION OF LOCAL CHAPTER 40B PROGRAM:**

As part of the town’s efforts to create the type of affordable housing that best meets the needs of the town and its residents, the town manager and staff designated by the town manager, shall establish a screening process and criteria for the preexisting and un-permitted units described herein, as well as for the construction of new units accessory to single-family homes, as part of a local Chapter 40B program which program will provide the state or federal subsidy necessary to establish standing under Chapter 40B for units being created and/or permitted.

## **SECTION 3:0: AMNESTY PROGRAM**

Recognizing that the success of this Ordinance depends, in part, on the admission by real property owners that their property may be in violation of the zoning ordinances of the town, the town hereby establishes the following Amnesty Program:

**3.1: The threshold criteria for units being considered as units potentially eligible for the Amnesty Program are:**

a) Real property containing a dwelling unit or dwelling units for which there does not exist a validly issued variance, special permit or building permit, does not qualify as a lawful, non-conforming use or structure, for any or all the units, and that was in existence on a lot of record within the Town as of January 1, 2000; or

**b) Real property containing a dwelling unit or dwelling units which was in existence as of January 1, 2000 and which has been cited by the Building Department as being in violation of the zoning ordinance and**

**(c) The property owner has the burden of demonstrating to the Building Commissioner that the criteria in either paragraphs (a) and/or (b) have been satisfied.**

**d) If any dwelling unit or units identified herein are occupied during the period of time when amnesty is in effect, said unit must be inspected by the entity designated by the town manager and found to be in conformance with the State Building Code and State Sanitary Code.**

3.2: The procedure for qualifying units that meet the threshold criteria for the amnesty program is as follows:

**a) The unit or units must either be a single unit accessory to an owner occupied single family dwelling or one or more units in a multifamily dwelling where there exists a legal multifamily use but one or more units are currently un-permitted;**

b) The unit(s) must receive a site approval letter under the town's local chapter 40B program;

c) The property owner must agree that if s/he receives a comprehensive permit, the unit or units for which amnesty is sought will be rented to a person or family whose income is 80% or less of the Area Median Income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and shall further agree that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.

d) The property owner must agree, that if s/he receives a comprehensive permit, that s/he will execute a deed restriction for the unit or units for which amnesty is sought, prepared by the Town of Barnstable, which runs with the property so as to be binding on and enforceable against any person claiming an interest in the property and which restricts the use of one or more units as rental units to a person or family whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area (MSA).

e) Upon receiving the site approval letter under 3.2(b) above, the property owner shall within three (3) months file an application for a comprehensive permit under the local Chapter 40B program with the Barnstable Zoning Board of Appeals.

3.3: The procedure for obtaining amnesty is as follows:

a) No zoning enforcement shall be undertaken against any property owner who demonstrates that s/he meets the threshold criteria under section 3.1 and further demonstrates that s/he is proceeding in good faith to comply with the procedures under Section 3.2 to obtain a comprehensive permit.

b) Any protection from zoning enforcement under this ordinance shall terminate when: 1) A written determination is issued under the local Chapter 40B program that the criteria under Section 3.2 and the local Chapter 40B program cannot be satisfied; or 2) it is determined that the property owner is not proceeding diligently with his/her Chapter 40B application; or 3) the property owner's Chapter 40B application is denied. A person is deemed "not to be proceeding diligently" if s/he does not receive a comprehensive permit within twelve months from the date of issuance of the site approval letter under the local Chapter 40B program.

c) This amnesty program shall be reviewed by the town council no later than October 1, 2003.

#### **SECTION 4.0: NEW UNITS ACCESSORY TO SINGLE FAMILY OWNER OCCUPIED DWELLINGS.**

For a proposed new unit to be eligible for consideration under the local chapter 40B program, it must be a single unit accessory to an owner occupied single-family dwelling to be located within or attached to an existing residential structure or within an existing building located on the same lot as said residential structure and comply with the following:

a) The unit(s) must receive a site approval letter under the town's local chapter 40B program;

b) The property owner must agree that if s/he receives a comprehensive permit, the accessory dwelling unit will be rented to a person or family whose income is 80% or less of the Area Median Income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and shall further agree that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.

c) The property owner must agree, that if s/he receives a comprehensive permit, that s/he will execute a deed restriction for the unit, prepared by the Town of Barnstable, which runs with the property so as to be binding on and enforceable against any person claiming an interest in the property and which restricts the use of the one unit as a rental unit to a person or family whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area (MSA).

d) Upon receiving the site approval under 4(a) above, the property owner shall file an application for a comprehensive permit under the local Chapter 40B program with the Barnstable Zoning Board of Appeals.

#### **SECTION 5.0: QUARTERLY REPORTING.**

The Town Manager shall report to the Town Council no less than quarterly as to the use of this ordinance, paying particular regard to the level of participation.



**B. NEW BUSINESS (First Reading)**

**BARNSTABLE TOWN COUNCIL**

**2003-020 APPOINTMENTS**

That the Barnstable Town Council appoints the following to a multiple member board:

**COMPREHENSIVE FINANCIAL ADVISORY COMMITTEE**

James Sproul, 804 Main St., Bldg. B., Osterville, MA, 02655, to serve until 6/30/2005

**OLD KING’S HIGHWAY**

George Jessop, 863 Bumps River Road, Centerville, MA 02632, to serve until 6/30/2005

**PORT COUNCIL**

Robert Jones, PO Box 324, Hyannisport, MA 02647, to serve until 6/30/2005

**ROADS COMMITTEE**

Philip McCartin, 20 Hollingsworth Road, Osterville, MA 02655, to serve until 6/30/2005

**STEAMSHIP AUTHORITY**

Robert O’Brien, 41 Deacon Court, Barnstable, MA 02630, to serve until 6/30/2005

**YOUTH COMMISSION**

Hope Taylor, 86 Skating Rink Road, Hyannis, MA 02601, to serve until 6/30/2005

Stephanie Jeffers, 4 Mountain Ash Road, Marstons Mills, MA 02648, to serve until 6/30/2005

**SPONSOR:** Gary R. Brown, Chairman Appointments Committee

**DATE**

**ACTION TAKEN**

_____	_____
_____	_____

**B. NEW BUSINESS (MAY BE ACTED UPON)**

**BARNSTABLE TOWN COUNCIL**

**2003-021 CAPE COD PATHWAYS GRANT ACCEPTANCE**

**RESOLVED:** That the Town Council hereby accepts a Cape Cod Pathways grant in the amount of \$5,000 from Barnstable County for the purpose of conducting a Walking Trail Feasibility Study. The Study will focus on the feasibility of an east – west trail through Barnstable which would make linkages with a proposed route through the Town of Sandwich and existing trails through the Town of Yarmouth.

**SPONSOR:** John C. Klimm, Town Manager

<b>DATE</b>	<b>ACTION TAKEN</b>
_____	_____
_____	_____

**AGENDA ITEM SUMMARY  
2003-021**

**TO:** Town Council  
**FROM:** John C. Klimm, Town Manager  
**THROUGH:** Thomas F. Geiler, Director, Regulatory Services Department  
**DATE:** August 23, 2002  
**SUBJECT:** Acceptance of Cape Cod Pathways Grant

**BACKGROUND:** The Town of Barnstable was one of five Cape Towns awarded \$5,000 grants by Barnstable County to assist with planning a walking path (through-trail) which would connect with a similar trail being planned in Sandwich and one already in place in Yarmouth.

**ANALYSIS:** The feasibility study will be undertaken by a consulting firm with inputs from the Conservation Division, Planning Department and the Open Space Committee.

**FISCAL IMPACT:** No Town matching funds are required for the Pathways Grant.

**TOWN MANAGER RECOMMENDATION:** The Town Manager requests favorable action by the Town Council.

**BOARD AND COMMISSION ACTION:** None required. Supported by Conservation Commission

**STAFF ASSISTANCE:** R. Gatewood

**B. NEW BUSINESS (To Be Referred To Public Hearing October 3rd)**

**BARNSTABLE TOWN COUNCIL**

**2003-022 APPROPRIATION ORDER FOR FY 2003 MARINE & ENVIORNMENTAL SERVICES CAPITAL OUTLAY BUDGET**

**ORDERED:** that the Town Council hereby appropriate \$16,500 from available funds for the purpose of funding the FY 2003 Marine & Environmental Services capital outlay budget.

**SPONSOR:** John C. Klimm, Town Manager

<b>DATE</b>	<b>ACTION TAKEN</b>
_____	_____
_____	_____

**AGENDA ITEM SUMMARY  
2003-022**

**TO:** Town Council  
**FROM:** John Klimm, Town Manager  
**THROUGH:** Daniel J. Horn  
**DATE:** September 9, 2002  
**SUBJECT:** Appropriation order for the purchase of an outboard engine

**BACKGROUND:** the outboard engine on the Division’s 25’ Whaler has reached the end of it’s useful life. Request approval of funding to replace the existing engine.

**ANALYSIS:** The funding request is for \$16,500. The existing engine, purchased in April of 1997, has been in service for over 5 ½ years. It has 1,436 engine hours on it, has lost all compression on one cylinder, and has less than 20% compression on at least 2 other cylinders. The engine does not operate at speeds less than 1500 RPMs, and is dangerous to operate at all other speeds. The boat the engine powers is the “workhorse” for all harbormaster related programs including the placement and retrieval of aids to navigations, harbor patrol, mooring enforcement, search and rescue, and other maritime emergencies.

**FISCAL IMPACT:** The request is for \$16,500 to be taken from the Town’s free cash.

**MANAGER RECOMMENDATION:** The Town Manager recommends approval of the funding request.

**BOARD/COMMITTEE ACTION:** The Waterways Committee supports the funding request.

**STAFF ASSISTANCE:** Prepared by Daniel Horn and Eric Shufelt, Marine and Environmental Affairs.

**B. NEW BUSINESS (MAY BE ACTED UPON)**

**BARNSTABLE TOWN COUNCIL**

**2003-023 RESOLVE ENDORSING PAY AS YOU THROW PILOT PROGRAM**

**RESOLVED** that the Town Council hereby endorses the Pay As You Throw Pilot Program to be instituted commencing January 1, 2003 for the period of 6 months.

**SPONSORS:** Councilor’s Audrey Loughnane and Carl Riedell

<b>DATE</b>	<b>ACTION TAKEN</b>
_____	_____
_____	_____

**AGENDA ITEM SUMMARY  
2002-023**

**TO:** Town Council  
**FROM:** Adhoc Pay as You Throw Committee  
**THROUGH:** Thomas J. Mullen, Director of Public Works  
**DATE:** September 11, 2002  
**SUBJECT:** Pay-as-you-Throw Pilot Program

**BACKGROUND:** The Massachusetts Department of Environmental Protection has promoted the implementation of pay-as-you-throw programs across Massachusetts in an effort to reach their waste reduction goals. The Town of Barnstable has been considering implementation of a pay-as-you-throw program since 1999. This Pilot Program is designed to develop the information necessary to identify requirements, develop an implementation structure, and carry out a program of initiatives for achieving the Town of Barnstable’s solid waste unit-based pricing program, generally called “pay-as-you-throw.” The pilot program has been reviewed and endorsed by the Town’s pay-as-you-throw ad hoc committee.

**ANALYSIS:** To commence this pilot program we need to advertise for participants (100-200 customers). The participants will agree to participate in the program for six (6) months. After that time they will be able to dispose of their trash for the rest of the year with their pilot program sticker and receive a free recycling container. The participants will be asked to stop at the gate at the Transfer Station every time they enter to have their bags counted. The participants will be required to fill out a questionnaire after the pilot program is completed. The participants that are accepted should be from a diverse group of residents, including; low income, seniors, over 5 occupants in a household, etc. The participants of the Pilot Program will have a different color sticker than other customers in CY 2003. This will alert the gate attendants as to the participants of the Pilot Program. A 30 to 33 gallon bag will be the maximum size allowed. The Town will determine the price but is estimating a base sticker of \$40 and \$1/bag.

**FISCAL IMPACT:** The fiscal impact to implement the pilot program is negligible. A full pay-as-you-throw program at the Solid Waste Division will require additional staff and expense to support such an effort, but at this point we are only requesting to gather information through a pilot program and report the results of this study. The municipality may not be eligible for MRIP grant assistance if a pay-as-you-throw program has not been implemented.

**TOWN MANAGER RECOMMENDATION:** The Town Manager recommends that the Town Council approve this resolve.

**BOARD AND COMMISSION ACTION:** N/A

**STAFF ASSISTANCE:** Thomas J. Mullen, Director of Public Works  
Mark S. Ells, Assistant Director of Public Works  
Louis G. Santos, Supervisor Solid Waste Division

**2003-010W – CLUSTER ZONING WORKSHOP**

**11. PUBLIC COMMENT**

**12. ADJOURNMENT**

**NEXT MEETING IS OCTOBER 3RD.**

## BARNSTABLE TOWN COUNCIL MINUTES

August 22, 2002

A quorum being duly present, Town Council President, Gary Blazis, called the meeting of the Barnstable Town Council to order at 7:00 pm, on August 22, 2002 at the Barnstable Town Hall, 367 Main Street, Hyannis, MA.

**PRESENT:** Richard Barry, Gary Blazis, Gary Brown, Richard Clark, Richard Elrick, Janet Joakim, Robert Jones, Audrey Loughnane, Gregory Milne, Carl Riedell and Royden Richardson.

President Blazis lead the Council in the Pledge of Allegiance and a moment of silence.

Upon a motion duly made and seconded it was voted to accept the minutes of July 18, 2002 as presented.

**VOTE: Unanimous**

President Blazis wished Town Attorney Robert Smith a happy birthday. He read a proclamation and presented Atty. Smith with a plaque containing the proclamation (see exhibit A). Robert Smith said he was touched and moved. He had no idea.

### **PUBLIC COMMENT**

Lynn Poyant, Executive Director of the Hyannis Chamber of Commerce, supports the assessors' residential factor of 1 which results in the same tax rate for business properties and residential properties. She complemented Councilor Janet Joakim for her efforts towards an equitable funding formula for schools.

Eugenia Fortes spoke about the light at Pitcher's Way. It is too long making it hard to get through it from that street. She hopes the council doesn't just talk about it.

Kelly Garoufes of the Mayflower Realty Trust asked the council to remove language restricting business and professional offices on the ground floor of buildings. It is especially a problem for one story buildings because the entire building is then exempted from certain uses. She enumerated several locations on Main Street that are in this situation. It will be a financial hardship to find tenants to fill those grandfathered first floor businesses. Diminishing the rights of the property diminishes the value of that property. She asked for relief from the language of law or an abatement.

### **COUNCIL RESONSE TO PUBLIC COMMENT**

Councilor Milne suggested the town manager or planning department respond to her. The zoning in that area has been made more flexible to enhance property usage. Perhaps she is misinformed about the ordinance.

Town Manager John Klimm suggested the council might want to refer it to the planning department. She has a specific and compelling case for which the planning board might make a recommendation or consider a change.

President Blazis commented on the light. That corner had the same light in 1969. Perhaps it can be put on the fast track to get it fixed.

## **COMMUNICATIONS FROM ELECTED OFFICIALS, BOARDS, COMMISSIONS & STAFF**

President Blazis recognized Demetrius Atsalis, State Representative and Patricia Austin, Cultural Council. Austin also recognized Shirley Flynn and Alice Williams who are on Cultural Council. Atsalis read a partial list of recipients of various grants including Arts Foundation of Cape Cod, Barnstable Public Schools, Cape Cod Ballet Society, Eventide Arts Festival, Guyer Barn Gallery, Hyannis Elementary School, Project Concern and the Zeiterion Theatre. The council has been able to give out about 20 grants. Applications for the next season need to be received by Oct 15<sup>th</sup>. They will be getting only \$3,000 this year since 67% of the funding was cut.

Laura Shufelt spoke about the affordable housing plan for the Darby property. The Housing Committee hopes the council's goal is still the increase of affordable housing stock.

Councilor Joakim said that a liaison was needed to the equitable funding subcommittee.

Councilor Jones made all aware that Blazis, Riedell and he accompanied people from the Massachusetts Technology Collaborative, which is a neutral group doing research on the wind farm, on a boat trip that ran the northern perimeter of where the wind farm would be located. The councilors pointed out the numerous landmarks that might be impacted by the wind farm. The collaborative members saw the reasons for trying to protect the sound. They are sponsoring a forum in October to bring both sides together for discussion.

Councilor Milne offered kudos to Councilor Barry, Mark Ells and Neil Andres for being dunked in the tank at the Main St. Festival. He hopes to see President Blazis in the dunk tank next week. He read a quote by Ben Thompson, designer of the Walkway to the Sea, excerpted from his recent obituary. He announced he was hosting a meeting on Wed., Sept. 4<sup>th</sup> at 9 AM to meet with some staff and others on the open space cluster ordinance. He was upset by a two-day notice given to the council for a meeting. At least a week to 10 days would be professional. He hopes the council will be able to come. There will also be a workshop on the same subject Sept. 10<sup>th</sup>.

Councilor Richardson said the town was presented an award for its efforts to preserve Long Pond and rid it of Hydrilla. It was a very successful process.

## **PRESIDENT/VICE PRESIDENT COMMUNICATIONS**

President Blazis read a letter by Sheila Place on mandatory water restrictions (See Exhibit B). He asked a director of COMM, Carl Riedell, to respond.

Councilor Riedell gave the facts about the water situation. As of Aug 1 there are 15M gallons less than a year ago. As of Aug. 20, the district had pumped 8M gallons less than last year. COMM has been progressive and proactive. The district has been able to maintain the pace of water consumption. The lower pumping rate shows that there have been savings. Riedell recommends using the water only to keep something alive. That makes sense. The water table has dropped 7 feet but the district is pumping deep. If this winter follows suit, next year there will be a water emergency. There is no emergency right now but people should not take it for granted.

## **TOWN MANAGER COMMUNICAITONS**

Town Manager Klimm reminded the council of several appointments coming up including appointing a representative to the SSA. He updated the council on three items: the Walkway to the Sea, the airport terminal study and the amnesty program.

1. Tony Troiano spoke on the Walkway. So far he has updated the records to document public ways and easements as well as resolve disputed ways. Some of the new home owners on Long Beach needed some education regarding public ways. Engineer Frank Schlegel has helped to document the ways to the water. The town owns the way on 7<sup>th</sup> Ave., which had been disputed. DPW cleaned up a vacant lot; erosion concerns were addressed at Mystic Lake; the development at Darby properties has been followed; and there have been conversations about Wequaquet Lake with the rowing club. He hopes to target some of these areas and have some concrete suggestions for the council.

Councilor Loughnane asked if there had been some ways to the water within some of the land bank purchases. Also she asked if there will be money in upcoming budgets for beginning this process every year in a scheduled, thoughtful way. Troiano said they have approached the land bank people to help target some properties for purchase. There is money for title research, but no specific funds to buy properties at this time. Once properties have been identified, a purchase mechanism can be addressed. Klimm said there was no silver bullet to increasing the points of access, but there have been years of loss of ways. He is trying to reverse that trend. Troiano will be working with several state agencies for funding.

Councilor Brown was pleased with all the work. He asked if we could purchase the three parking places at Bone Hill. Troiano believes it was purchased by the Audubon Society.

Councilor Jones asked if the 7<sup>th</sup> Ave. way was laid out. Yes, on a town layout. DPW has been maintaining the signs. The public should let them know if there are sign problems.

Councilor Milne stated (regarding Hawes Ave.) that it was the right of way at the end of the road not the promenade. David Houghton updated the council on Hawes Ave. as well. It is partially in litigation in Land Court so his comments were limited. He is providing support for the position that the area might not be completely private and therefore not subject to fee simple registration.

2. In response to Councilor Elrick's earlier questions on the airport, Klimm introduced Doc Mosby, Airport Manager, who gave an update. The evaluation is not complete as yet. The status of ponds is contingent on the placement of the terminal. There are elevated levels of nitrogen, metals and sediments in the ponds. Mediation mechanisms, which have been in place for several years, have lowered levels. Over the years there has been much debris left on the banks and they are in terrible condition. Sediment does not pose any threat to Barnstable's drinking water. Sediments are acting as an additional filter to the aquifer. Elrick asked about the date of completion. A draft ERR will be released around mid October, early November.

3. Klimm introduced Paulette McCauliffe, Special Projects Coordinator, who has brought the amnesty program from its infancy a year and a half ago to where it is today. The program is seen as a state-wide model on how to develop affordable housing from existing structures. McCauliffe said she appreciated Klimm's faith in her and gave a summary. This owner/government partnership has been a win-win. The DHCD has put the town through rigorous scrutiny and many town and cities have shown interest in the ordinance. She gave a Power Point presentation. (See exhibit C) The program has helped people find a place to call home. The process takes about 4 months and they have tried to use staff to move these Comprehensive Permit applications through the system. She acknowledged various people and departments who have been involved in the process: Art Traczyk from Planning, Gail Nightingale, ZBA Hearings Officer, Gloria Uranus, Building Department, and other members

who provide referrals for the program and do the final inspections. Ruth Weil provided legal input and authored the ordinance and I.S. and G.I.S. departments were also helpful. Bob Shea inspects each unit twice and Laura Shuflet, Housing Authority, and Tom Lynch, Director, have been supportive.

McCauliffe invited some of the program participants to comment. Lloyd Montcalm spoke about his experience. When his mother passed away he couldn't use the in-law apartment as a rental until this program came to pass. People may have the sense that it addresses something that is wrong. This is not true. He suggested changing the name of the program and promoting it in the media. Anthony Fife also told his story. Ed Flynn had buildings with one too many apartments that was remedied by the program. Roxanne Pappas said the process had been very seamless. There has been help with loans to bring it up to code. Thirteen units are still in the hopper. The council has been provided the recommended changes to the ordinance for them to view.

Councilor Loughnane asked if anyone has requested that a new house be built with an affordable apartment. President Blazis said he would bring it forward quickly.

On a motion duly made and seconded item 2003-009 was taken out of order.  
Councilor Clark left the room.

**VOTE: Unanimous**

The Planning Board also moved to taken item 2003-009 out of order.

**VOTE: Unanimous**

Upon a motion duly made and seconded it was voted to go into a public hearing on **2003-009 ZONING ORDINANCE REVISION, SECTION 2-4, EXEMPT USES, TEMPORARY USES AND PROHIBITED USES; TRAILERS at 8:30 PM.**

**VOTE: Unanimous**

Planning Board Chairman Roy Fogelgren also took a roll call vote to open the public hearing.

**VOTE: Unanimous**

Chairman Fogelgren gave an explanation of the ordinance. There are over 40 documented violations and in many cases it is permanent storage, located in setback areas or parking areas. The town bears the cost of answering complaints while receiving no revenue or taxes from the trailer owners. They chose not to grandfather existing trailers. Linens and Things already have had two storage trailers in their parking lot and they just opened. The use of trailers is not decreasing and it affects residents of Hyannis most. Temporary use should be limited to 30 to 60 days. It is now years. Jackie Etsten gave a slide presentation with an overview of the changes. (See Exhibit D.)

Lisa Cox of Nutter, McClennen and Fish, expressed her concerns about the impact on local businesses that depend on using trailers during the summer season. This ordinance will cause countless applications for permits. She asked that the council consider deferring this item and establishing a working group, with local representation from the business community, to jointly draft the amendment in order to insure local business needs are protected.

Eugenia Fortes is happy about these changes for Hyannis, the dumping ground. If business can't afford a place they shouldn't take it. Trailers are an eyesore. She is so happy the council will consider Hyannis.

Peter Demetriades a business owner in Centerville relies on the use of trailers. He gets taxed on what is kept in the trailer. It would be wonderful if a small building could go up, but he rents. It is impossible to get anything comparable in price or location. His trailers are stored behind the building and out of sight. He suggests getting a committee together to come up with something feasible for all.

Jackie Etsten pointed out that trailers are prohibited for any permanent uses. It is not a new prohibition. Many of the ones around may be illegal as far as zoning.

Tony Shepley pointed out that the MRI at hospital is a trailer and asked where Spaggs would be without trailers. It is very tough paying for storage space. He asked the council to consider ways to allow it in reasonable spots for small businesses. It is a necessary and useful accessory.

Ryan Alty, who has a bike shop in Centerville, has already overgrown the building and is not allowed to build. He has four trailers, one of which is used for servicing. There is not a lot of real estate to purchase or rent. Initially he did not know they were prohibited when they began the business. The lot was cleared and the trailers sit pretty far back. He is willing to do anything to keep the business going. He uses them constantly. He would be willing to use shrubs or whatever else to be able to keep them.

Robert Stahley, Planning Board, invites all to view the Route 6 and 132 Mobile Mart. They have constructed a building and are pay taxes on it.

Councilor Jones said that prohibition is the law of the land. The ordinance is a little mitigation. He is sympathetic with some of the comments he has heard. He suggested a parachute for businesses to wean themselves and would like to form that group to see if there are times or occasions where trailers could be permitted. He would like to find alternatives.

Councilor Elrick seconded Jones on the working group idea. Many trailers in Centerville are not visible. How many would be severely harmed and put out of business? It has been this way for so long why not consider the working group.

Councilor Richardson feels this kind of legislation is fraught with unintended consequences. Keeping local businesses is within the LCP and there is a need to have a working group. The Planning Board already has a subcommittee. Perhaps President Blazis could appoint representatives from the business community who would be impacted. He wants to protect the businesses and keep a healthy economy.

Councilor Brown said if it is out of sight he doesn't see anything wrong with it. But illegal is illegal. We need the committee. Maybe it could look at a trailer tax. There is no need to jump into this.

Councilor Loughnane is in favor of sending it back to the planning board. There might be a place in town that could be zoned for it. They can bring in businessmen to work with them. This hearing was to get a feel from us. She would rather see them work on it.

Councilor Joakim said it could be a committee of the planning board and businessmen. There are few alternatives and not much storage space to rent.

Councilor Barry agrees. Schools are using trailers to educate the children and zoning exempts the educational trailers. It is a 'holier than thou' attitude. Maybe a special permit for permanent use is needed.

Fogelgren spoke with several businesses on the impact. No one came up with solutions. He wanted to find a way to allow them, but trailer use is expanding and it is not a pretty sight. Maybe they can come up with a solution that doesn't create other violations.

President Blazis asked Chairman Fogelgren to help him develop a committee and to leave the hearing open.

A motion was made and seconded to continue the public hearing.

**VOTE: Unanimous**

The Planning Board made a motion which was seconded to continue the public hearing.

**VOTE: Unanimous (roll call)**

Recess from 9:10 to 9:15

Councilor Clark returned.

## **COUNCIL COMMUNICATIONS, ANNOUNCEMENTS & COMMITTEE REPORTS**

Councilor Elrick made some comments about some of the occurrences in the community. He took pause at the rejection of New Bedford to be part of SSA. Other towns will never have a way to pass a vote with the vote weighted for the islands. It is their life line but it is on the back of Barnstable. He is also upset at President Blazis's comments on the Stop and Shop proposal and the baseball proposal. He didn't want the public to feel Blazis spoke for the entire council. He is also taken pause at Councilor Riedell trying to attempt to stop the Darby project from going forward.

President Blazis explained that his recommendation was that the Stop & Shop proposal should go before the 132 Committee along with the BJs proposal. Regarding the golf course and Councilor Riedell, if the audit were done from April through October you would find there were many golfers. Regarding the baseball comment, he suggested taking a look at it.

Councilor Loughnane feels that when it is your precinct, you have an obligation to talk to them. No one asked her about the Otis Atwood land. It has trails, hunting, is in a zone of contribution, etc. The golf audit said there was a glut of golf courses. There is no extra money for golf courses, etc. There is no reason to swap land in West Barnstable with Osterville because of the Darby property. It pits one village against the other which is totally wrong. Osterville people are being duped. They are not being told the truth, just being used. She is appalled at the proposal. She agrees with Elrick but feels there is an obligation to the village. She was also concerned that no overrides occur between January and May when voters are not here.

Councilor Jones said it was the first time he has heard of a golf course. Councilor projects should be brought up at an appropriate time. Maybe there are undercurrents, but we should be a little more understanding of fellow councilors.

Councilor Riedell said the village people from Osterville agree with affordable housing but they don't want it all in one spot on the Darby property. They are coming up with an alternative plan to be presented on Sept 9<sup>th</sup>. The proposal coming forward puts it in several locations throughout the village. He does not apologize.

Councilor Milne feels the council has to move forward to make the affordable housing happen. The golf course is not the real stuff that the council should work on. There are 222,000 golf acres while people are paying for busing.

## **ORDERS OF THE DAY**

### **A: OLD BUSINESS**

Upon a motion duly made and seconded it was voted to go into a public hearing on **2003-001 PRIVATE ROAD TAKING** at 9:35 PM.

**VOTE: Unanimous**

Klimm gave the rationale. Unfortunately he is not able to be more aggressive and commit more funding, but will try to do the best over subsequent years.

Upon a motion duly made and seconded it was voted to close the public hearing at 9:37 PM.

**VOTE: Unanimous**

### **2003-001 PRIVATE ROAD TAKINGS**

Upon a motion duly made and seconded it was

**ORDERED:** that the layout of the following streets with areas and dimensions as shown on plans which are on file with the Town Clerk's Office are hereby accepted:

Althea Drive – Barnstable  
Brentwood Lane – Barnstable  
Desert Sands Lane – Barnstable  
Dromoland Lane – Barnstable  
Hamstead Lane - Barnstable  
Iris Lane – Barnstable  
Medinah Drive – Barnstable  
Oakmont Road – Barnstable  
Spyglass Hill Road – Barnstable  
Anchor Lane – Cotuit  
Mariner Circle - Cotuit  
Mooring Drive – Cotuit  
Whitmar Road – Cotuit  
Aldeas Avenue – Hyannis  
Arbeta Road – Hyannis  
Checkerberry Road - Hyannis  
Fawcett Lane – Hyannis  
Ferndale Road – Hyannis  
LaFrance Avenue Extension – Hyannis

Wellesley Circle – Hyannis  
Weston Circle - Hyannis  
Wolley Road – Hyannis  
Woodland Avenue – Hyannis  
Worcester Lane – Hyannis  
Dove Lane – Marstons Mills  
Eastview Terrace – Marstons Mills  
Head Of The Pond Lane – Marstons Mills  
Berkshire Trail – West Barnstable  
Bursley Path – West Barnstable  
Capes Trail – West Barnstable  
Desire's Lane – West Barnstable  
Hezekiah's Way – West Barnstable  
Homestead Lane – West Barnstable  
Josiah's Path – West Barnstable  
Kettle Hole Road – West Barnstable  
Lothrop's Lane – West Barnstable  
North Winds Lane – West Barnstable  
Old Toll Road – West Barnstable

Lexington Drive – Hyannis  
Princess Pines Road – Hyannis  
Sudbury Lane – Hyannis  
Wayland Road - Hyannis

Parrish Way – West Barnstable  
Peter Blossom Lane – West Barnstable  
Sheep Meadow Lane – West Barnstable  
Wagon Turn Road – West Barnstable  
Wayside Lane – West Barnstable

and that the Town Manager is authorized to take by eminent domain easements for highway purposes over the parcels of land shown as abutting the said streets and to appropriate the sum of \$1.00 therefore.

Councilor Riedell pointed out that there was not a single road from Osterville. Will Centerville and Osterville come up later on? Tom Mullin said there were 1,100 roads. The plan for the takings was established by the road committee and they are trying to follow it. They will take connector roads first and the side street adjacent to those areas. It has to be objective. This set of roads are all adjacent to collector roads. The town is taking the roads for \$1 or less, why not take others, like Hickory Hill, Riedell asked. Mullin said they have priority roads. Hickory Hill does not add to the transportation system of the town. Takings involve title searches, there are survey requirements, and it takes time and money. He is trying to stick with the objective prioritized system. He has to have an engineer to help with the roads that need work and now they have an engineer on the staff.

Councilor Loughnane is glad to see a woman in DPW. Is there a plan to reconstruct Cedar Street, which is a connector road in West Barnstable? Engineer Bob Burgman said Cedar Street has been a town road. When it was taken in 1933 it was only 30 feet wide. They have to do a wider layout for Cedar but that will be delayed to determine new boundaries.

**VOTE: Unanimous roll call**

**2003-006 APPOINTMENTS**

Upon a motion duly made and seconded it was

That the Barnstable Town Council appoint the following to a multiple member board:

**OPEN SPACE COMMITTEE**

Charles Baskin, PO Box 171, Barnstable, MA 02630, to serve until 6/30/2005

Kris Clark, 398 Woodside Road, West Barnstable, MA 02668, to serve until 6/30/2004

Lindsey Counsell, 1183 Old Stage Road, Centerville, MA 02632, to serve until 6/30/2005

Henry Farnham, 127 Coachman Lane, West Barnstable, MA 02668, to serve until 6/30/2005

Deb Fitton, 282 Church Street, West Barnstable, MA 02668, to serve until 6/30/2003

Susan Rohrbach, 432 Main Street, Centerville, MA 02632, to serve until 6/30/2004

Mark Wirtanen, 1894 Main Street, West Barnstable, MA 02668, to serve until 6/30/2003

Scott Schofield, 45 Partridge Way, Centerville, MA 02632, to serve until 6/30/2004

William Cutcliffe, PO Box 335, Osterville, MA 02655, to serve until 6/30/2003

**REGISTRAR OF VOTERS**

John Sheehan, 100 Marston Lane, Cummaquid, MA 02675, to serve until 6/30/2005

**TRUST FUND ADVISORY COMMITTEE**

Erin Moore, 10 Captains Way, Centerville, MA 02632, to serve until 6/30/2005

Frances Parks, 1441 Old Post Road, Marstons Mills, MA 02648, to serve until 6/30/2005

Jane Scanlon, PO Box 537, Osterville, MA 02632, to serve until 6/30/2005

**WATER QUALITY ADVISORY COMMITTEE**

David Condry, PO Box 326, 47 Old Yarmouth Road, Hyannis, MA 02601, to serve until 6/30/2005

**WATERWAYS COMMITTEE**

Thomas McKenzie, PO Box 748, Barnstable, MA 02630, to serve until 6/30/2005

**VOTE: Unanimous**

Councilor Brown introduced Item **2003-019 APPOINTMENTS** as a late file. This item was intended as a late file for the July meeting and was omitted due to an oversight. Brown requested that the rules be suspended in order to waive the second reading for these appointments, allowing them to be voted tonight.

A motion was made and seconded to suspend the rules pertaining to a second reading.

**VOTE: 10 Yes, 1 No**

**2003-019 APPOINTMENTS**

Upon a motion duly made and seconded it was voted that  
The Barnstable Town Council appoint the following to a multiple member board:

**COMPREHENSIVE FINANCIAL ADVISORY COMMITTEE**

John F. Curtis, 290 Cotuit Bay Drive, Cotuit, MA 02635 to serve until 6/30/2005  
Joseph Cottellessa, 21 Sylvan Drive, Hyannis, MA 02601 to serve until 6/30/2005  
Jefferson Slater, 16 Juniper Road, Centerville, MA 02632 to serve until 6/30/2005

**VOTE: Unanimous.**

Upon a motion duly made and seconded it was voted to go into a public hearing on **2003-012 BEACH NOURISHMENT TAKINGS** at 9:50 PM.

**VOTE: Unanimous**

Klimm gave the rationale.

Upon a motion duly made and seconded it was voted to close the public hearing at 9:53 PM.

**VOTE: Unanimous**

**2003-012 BEACH NOURISHMENT TAKINGS**

Upon a motion duly made and seconded it was  
**ORDERED:** that the Town Manager is authorized to take by eminent domain or to acquire by gift for the purpose of beach nourishment easements on and over the 16 parcels of land located in Barnstable, Barnstable County, Massachusetts, as shown on a plan of land entitled “Plan Showing Proposed Taking On Long Beach in Barnstable (Centerville & Osterville) Mass. Date: April 16, 2002, Scale 1” = 60’, “a copy of which is filed with the Barnstable Town Clerk’s Office; and to authorize the Town Manager to take all necessary steps to obtain said easements; and to appropriate the sum of One Dollar (\$1.00) for said acquisition.

Councilor Clark asked about the lack of damage action. Burgman said they were just taking the right to place sand on the land. There will be no damage to the land because it will create more beach space and enhances the usability of the land. They are not crazy about signing documents that might make them pay the cost of legal fees.

**VOTE: Unanimous (roll call)**

**B. NEW BUSINESS**

**2003-014 RESOLUTION GIFT ACCEPTANCE FOR LAW ENFORCEMENT**

Upon a motion duly made and seconded it was

**RESOLVED:** that the Town Council hereby gives approval for the Chief of Police with the approval of the Town Manager to accept and expend gifts of property and money received for the specific purpose of augmenting law enforcement functions.

**VOTE: Unanimous**

**2003-015 ACCEPTANCE OF A BYRNE GRANT AWARD FROM THE COMMONWEALTH OF MASSACHUSETTS EXECUTIVE OFFICE OF PUBLIC SAFETY IN THE AMOUNT OF \$250,000**

Upon a motion duly made and seconded it was

**ORDERED:** that the Barnstable Town Council does hereby accept a Byrne Grant award from the Commonwealth of Massachusetts Executive Office of Public Safety in the amount of \$250,000.

**VOTE: Unanimous**

Councilor Barry had a question about fresh pursuit. Is there collaboration between Mashpee and Yarmouth to recognize officers from adjacent towns? Chief John Finnegan said they are working with all towns on the Cape to be able to do it proactively before an emergency takes place.

**2003-016 AMENDMENT TO THE RULES OF THE COUNCIL CHANGING THE ORDER OF BUSINESS**

**Upon a motion duly made and seconded it was**

**ORDERED:** that the Rule of the Council are hereby amended by striking out rule 5E and inserting in place thereof the following:

**“RULE 5E ORDER OF BUSINESS**

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

1. Roll Call
2. Pledge of Allegiance
3. Moment of Silence
4. Act on Minutes
5. Public Comment
6. Council Response to Public Comment
7. Communications, Correspondence, Announcements and Committee Reports, Communications from Elected Officials, Boards, Commissions and Staff
8. President/Vice President Communications
9. Town Manager Communications

10. Orders of the Day            A. Old Business            B. New Business  
11. Public Comment/Council response  
    Adjournment”

**President Blazis explained this item. It takes two items and combines them, moving the meeting along a little smoother and efficiently.**

**Councilor Elrick was concerned about the language. The council does not ‘receive committee reports from elected officials.’ Also, there is no place for council response at the end. Blazis agreed that the language in #7 could be improved and the addition of ‘council response’ to #11 was fine.**

**Councilor Loughnane said correspondence has always stood alone. She will support the item if correspondence is made a separate entry.**

**President Blazis asked for a vote of those who agreed with his two suggested changes.**

On item 2003-016 with changes incorporated.

VOTE: 9 Yes, 2 No

2003-017 RESOLVE ACCEPTING CHAPTER 116 OF THE ACTS OR 2002

Upon a motion duly made and seconded it was

**RESOLVED:** that the Town Council hereby accepts the provisions of Section 1 of Chapter 116 of the Acts of 2002 – An Act Providing for Local government Workforce Reduction Through an Early Retirement Incentive Program for Certain Employees.

Klimm gave the rationale. The Statute was designed as a workforce reduction and will be a valuable tool to do that. Nancymarie Schwinn and Mark Milne have done analysis of this. He will offer the limited early retirement program to 20 people: 17 in Group 1 – town employees except police and teachers - and 3 in Group 4 - police. They will receive 5 years total credit. The County Retirement Board will come up with the seniority list and it will be based solely on seniority of all credible service. Applications will be in by Oct 1<sup>st</sup>. Klimm is pleased to be able to benefit those who have served, but it should be understood that it will reduce the number of people who will be let go. It makes sense for Barnstable and is a critical part of his overall strategy.

Councilor Clark wanted a confirmation of the 20 person limit.

Councilor Loughnane asked if the council vote would affect the fire districts. No, it would not.

**VOTE: Unanimous**

Upon a motion duly made and seconded it was voted to go into a public hearing on **2003-018 RESOLVE ALLOCATION OF TAX LEVY** at 10:14 PM.

**VOTE: Unanimous**

Upon a motion duly made and seconded it was voted to close the public hearing at 10:14 PM.

**VOTE: Unanimous**

**2003-018 RESOLVE ALLOCATION OF TAX LEVY**

Upon a motion duly made and seconded it was

**RESOLVED:** the Town Council hereby votes to classify the Town of Barnstable under the Classification Act at a Factor of One for the Fiscal Year 2003, and votes, further, that the Residential Exemption and the Small Commercial Exemption are not adopted for Fiscal year 2003.

**VOTE: 8 Yes, 2 No**

**PUBLIC COMMENT**

None

On a motion duly made and seconded it was voted to adjourn the meeting at 10:15 PM.

**VOTE: Unanimous**

Respectfully submitted,

Lucia Fulco  
Assistant Town Clerk



**BARNSTABLE TOWN COUNCIL MEETING  
SEPTEMBER 5, 2002**

An informal session of the Barnstable Town Council was opened at 7:00 p.m. on September 5, 2002, in the 2<sup>nd</sup> floor hearing room of the Town Hall, 367 Main Street, Hyannis, by President Gary Blazis with Councilor Audrey Loughnane, Manager John Klimm, Asst. Manager Joellen Daley, Town Attorney Robert Smith, and Attorney Ruth Weil also present.

President Blazis announced that a public hearing would be held on September 19, 2002 with the planning board and the town council on item **2003-008 – DOWNTOWN ZONING DISTRICTS, ZONING AMENDMENT.**

**PUBLIC COMMENT:**

Eugenia Fortes: She reminded all that the stop light at Pitchers Way has not been fixed. Also the busing issue is bothering the whole town. She said the traffic is awful around the schools, and noted that there are parents who cannot afford the bus passes. You need to do something. It is not fair to Barnstable, she said.

Al Baker: Thanked John Klimm for improvements to Channel 18. He noted that the Marstons Mills Village Day would be held at Marstons Mills West Elementary School on Sunday September 8<sup>th</sup> from noon to 5 p.m. He said that there would be fun and food and great times for the whole family. He announced that the River Committee meets on the 16<sup>th</sup> of September at the Marstons Mills Library. After talking to a number of people he said he hopes there will be more time for suggestions on what to do with the South/Ocean/Old Colony area. He understood the Armory may be up for sale and possible we could reconfigure the area and have the walkway not at the intersection of the 3 roads but further west.

President Blazis noted that at 3 p.m. on the village day he will be dunked in the dunking tank.

The session was adjourned at 7:08 p.m.

Respectfully submitted,

Linda E. Hutchenrider, Town Clerk  
Town of Barnstable