



# Town of Barnstable

## Town Council

March 1, 2012

**A** quorum being duly present, Council President Frederick Chirigotis called the March 1, 2012, Town Council meeting to order at 7:00 p.m. in the Hearing Room of Town Hall, 367 Main St., Hyannis, MA.

**PRESENT:** Janice Barton, Ann Canedy, Frederick Chirigotis, James Cote, Jennifer Cullum, Debra Dagwan, June Daley, Jessica Rapp Grasseti, Michael Hersey, Janet Joakim, John Norman, Thomas Rugo, James Tinsley, Jr.

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

### **Americorps – an update**

Three gentlemen, currently working in Barnstable, gave an update on projects that Americorps has worked on: herring runs, shellfish propagation projects, and gardens in Hyannis and Craigville Beach. They outlined their focus and funding. Further information can be found on [www.americorpscapecod.org](http://www.americorpscapecod.org)

### **PUBLIC COMMENT**

- William Doherty encouraged the Town Council to vote in favor of keeping open Taunton Hospital.
- Bruce Gilmore spoke to the Manager's search, and last year's contentious year. He suggested considering Acting Manager Lynch, who would not need training, is local and would save the town time and money.
- John Alden stated that since last year, things have gone down hill. We need to look at a group of candidates other than just Mr. Lynch.
- Robert Tucker asked where you are going to get the money to pay off Mr. Klimm. You have a good man up here, Tom is a good man. Don't spend money on a search.
- David Munsell would like to see a good search put on so we can get the best person for the job. You owe it to the town. He does not condone Patrick Page's actions but he needs help.
- Patrick Page said he has been bullied by the town. You have not answered my documents. It has been six years.
- Jane Saunders said we have asked for help. We want action on our problem. We were told to sue the town. We need a new town manager.
- Alan Burt felt last year and the issues with John Klimm were terrible. We have new councilors and hope you vote for an in town search and consider Tom Lynch.

- Dave Chase said the manager's position is a big ticket item and you need to look around to make the best selection.
- Susan Lemoncelli said it is important to do a full and thorough search. If the town can afford a legal suit, then we deserve a full manager's search (\$30,000).
- Taryn Thoman submitted a copy of an email (Exhibit A) that had been circulated. We should spend the \$30,000 and have a good search.

**COUNCIL RESPONSE TO PUBLIC COMMENT**

None.

**ACT ON MINUTES (Includes Executive Session)**

Councilor Joakim is concerned that there is way too much detail. We need to not get into the specifics and there are videos.

A motion was made and seconded to postpone action on the minutes of Feb. 2 and Feb. 16 until the next meeting..

**VOTE: 9 Yes, 4 No (Canedy, Rugo, Tinsley, Rapp Grasseti)**

**COMMUNICATIONS FROM ELECTED OFFICIALS, BOARDS, COMMISSIONS, STAFF, CORRESPONDENCE, ANNOUNCEMENTS AND COMMITTEE REPORTS**

- Vice President Barton announced a forum on March 5, 2012 (see Exhibit B) on Mental Health and Substance Abuse.
- Councilor Norman announced the Marstons Mills Village Association meeting March 6 (see Exhibit B-1).
- Councilor Dagwan thanked Lorraine Telo for fund raising to help students in need get memberships for the HYCC.
- Councilor Cullum noted the March 5, Hyannis Civic Association meeting with all Hyannis councilors.

**ORDERS OF THE DAY**

**A. OLD BUSINESS**

**2012-065 ORDER TO ENGAGE IN THE PROCESS TO CHANGE HEALTH INSURANCE BENEFITS UNDER MGL C.32B, §§ 21-23 – INTRO: 2/16/12, 03/01/12**

Brief 1 minute recess at 7:43 p.m.

A rule of necessity was invoked by Councilor James Tinsley. *(Under Chapter 69 of the Acts of 2011 (codified under G.L. c. 32B, sections 21-23) enacted changes to the municipal health care that provides cities and towns the opportunity to use some of the state's current cost control measure, Councilors, who receive the insurance are not required to withdraw*

*from participation as long as each councilor who wants to participate states on the record that he is a recipient of health insurance benefits, that this would normally disqualify him from participation, but that he chooses to invoke the rule of necessity because the Town Council, the only body in a city which can accept the provisions of Chapter 69 of the Acts of 2011, would otherwise be deprived of its ability to take any action due to a lack of a quorum. This was fully explained in the meeting of February 16, 2011 where 5 other councilors also invoked the said rule of necessity. .*

- Steve Seymour said BMEA wrote a letter to the councilors. The employees are not satisfied and they feel that this is not the best option.
- Dale Forrest from Mass Teachers Association said the MTA did not have any involvement with the GIC bill and were opposed to it. It does not solve the high rise in health care it shifts it to the workers.
- Jim Buckman, a school counselor, said the plans and options with the 50/50 split are not fair. You can't get sick, the burden is shifted to us. Don't you want to keep good people? It would be easier to swallow if the split was higher than 50/50.
- Robert Tucker said \$30,000 is a lot of money.
- Chris Kelsey with the police department said the law was not supposed to burden the employees. The deals that were shown were for one year – but with the co-pays and deductibles it is a loss to the employees.
- Acting Town Manager Tom Lynch appreciated the time the councilors have given the issue. He spoke to the core principles the coalition agreed on from an MTA web piece (see Exhibit C.) There are legitimate concerns. He thanked many including Bill Cole, Mark Milne and Debra Blanchette.
- Councilor Rugo said one of his priorities has been for the public schools. This town gives the least allowed by law to health on the Cape (50/50). He suggested that the council when they look at their goals and policies possibly look at this and address it somehow.
- President Chirigotis reminded all that the council does not negotiate contracts, they are done by the executive branch.
- Councilor Rugo feels a policy still could be brought forward.
- Councilor Joakim reminded all that we have an open contract in negotiation.
- Councilor Rugo said the money difference is significant between other towns when you only are covered 50/50. The town needs to address this issue.
- Attorney Ruth Weil reminded the town council that they can't get into negotiations.
- Councilor Daley noted that this is not the place for negotiations. She thinks it is important.

- Councilor Rapp Grassetti asked if we vote yes, will this affect the unions in their negotiations. She was told it would not. She asked if the health care plan benefits are changing.
- Human Resources Director Bill Cole said benefits are not changing just co-pays and deductibles. Rapp Grassetti believes a yes vote is a positive.
- Councilor Canedy said Councilor Rugo was eloquent. This is a question where we should consider all the taxpayers and I will be supporting this.
- Councilor Tinsley said he could switch insurance carriers, but some employees have no options. We are putting undo stress on the employees. This goes too far for me. I can't support it, there has to be a better way to do this. Not a way to say thank you.
- Councilor Cullum would love to see the split different, we need to attract the best. We don't have a say.
- Vice President Barton said we do support the employees. We have the best and the brightest. This is another unfunded mandate. We will be working on our priorities.
- Councilor Joakim said we can't discuss the 50/50 and it is not our place. Our town is unique.

A motion was made and seconded to move the question

**VOTE: 11 Yes, 2 No (Rugo and Tinsley)**

Upon motion duly made and seconded it was

**ORDERED:** The Town of Barnstable elects to engage in the process to change health insurance benefits under M.G.L. c. 32B, §§ 21-23.

**VOTE: 11 yes – 2 no (Rugo, Tinsley)**

**2012-066 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION – INTRO: 02/16/12, 03/01/12**

Upon motion duly made and seconded it was:

**RESOLVED,** that the Town Council appoint the following individuals to a multiple-member board/committee/commission:

**COMPREHENSIVE FINANCIAL ADVISORY COMMITTEE**

Laurie K. Young, 142 Great Bay Road, Osterville as a member, to a term expiring 6/30/2014

**CULTURAL COUNCIL**

Mary Carolla-Allen, 312B Pleasant Pines Avenue, Centerville as a member, to a term expiring 6/30/2013

**HISTORICAL COMMISSION**

Laurie K. Young, 142 Great Bay Road, Osterville as a member, to a term expiring 6/30/2014

**HOUSING COMMITTEE**

Sue W. Davenport, 148 West Main Street, Hyannis as a member, to a term expiring 6/30/2014

**PUBLIC WORKS COMMISSION**

Robin C. Young, 142 Great Bay Road, Osterville as a member, to a term expiring 6/30/2013

**WATERWAYS COMMITTEE**

Paul J. Everson, 21 Wren Lane, Marstons Mills as a member, to a term expiring 6/30/2014

**YOUTH COMMISSION**

Rose Silva, c/o BHS 744 W. Main Street, Hyannis as a member, to a term expiring 6/30/2012

**VOTE: 13 yes**

**2012-067 RE-APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION – INTRO:  
02/16/12, 03/01/12**

Upon motion duly made and seconded it was

**RESOLVED**, that the Town re-appoint the following individual to a multiple-member board/committee/commission:

**BOARD OF HEALTH**

Dr. Paul J. Canniff, 106 Hayes Road, Centerville, as a member to a term expiring 6/30/2014

**VOTE: 13 yes**

**2012-068 RESOLVE IN SUPPORT OF TAUNTON STATE HOSPITAL REMAINING OPEN –  
INTRO: 03/01/2012**

Councilor Canedy asked why is Taunton State Hospital closing?

Vice President Barton said they were just closing it and the money would go more to prevention. There is a shift in the monies.

Upon motion duly made and seconded it was

**RESOLVED:** That the Barnstable Town Council in recognition of the positive impact and the critical need of adequate treatment for mental health patients in crisis on Cape Cod, the Islands, and Southeastern Massachusetts, forward this resolution to State Senator Marc R. Pacheco:

**WHEREAS,** the Patrick Administration is considering closing the Taunton State Hospital; and

**WHEREAS,** that closing the Taunton State Hospital would put a tremendous strain on the Massachusetts mental health care system; and

**WHEREAS,** that closing the Taunton State Hospital would create a shortage of appropriate mental health care for its Cape Cod and Islands residents in need; and

**WHEREAS,** closing the Taunton State Hospital will require moving some patients to the Worcester facility, causing hardship for patient's families that may not have transportation, or access to transportation to be able to visit their family members.

**NOW THEREFORE BE IT RESOLVED,** that the Barnstable Town Council does hereby support and requests its elected officials of the Commonwealth of Massachusetts, to ensure that this most important mental health hospital remain open for the people of Cape Cod, the Islands, and Southeastern Massachusetts.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Frederick Chirigotis, President  
BARNSTABLE TOWN COUNCIL

**VOTE: 12 Yes 1 Ab. (Tinsley)**

**B. NEW BUSINESS**

**2012-069 EXTENSION TO THE APPOINTMENT OF THOMAS K. LYNCH AS ACTING TOWN MANAGER – INTRO: 03/01/12**

President Chirigotis gave a brief rationale. Councilor Tinsley asked what happens if we have no manager by June 16. President Chirigotis said we have to.

Upon motion duly made and seconded it was

**ORDERED,** that the Town Council, acting under the provisions of Section 4-5 of the Charter of the Town of Barnstable, hereby extends the appointment of Thomas K. Lynch with an address of 95 Phinneys Lane, Centerville, MA, 02632, as Acting Town Manager to perform the duties of the Town Manager as outlined in Sections 4-2 and 4-3 of the Charter for the Town of Barnstable, until June 16, 2012

**VOTE: 13 Yes**

**2012-070 ADOPTION OF TOWN MANAGER SEARCH SUBCOMMITTEE'S RECOMMENDATION TO CONDUCT AN INTERNAL SEARCH FOR A PERMANENT TOWN MANAGER – INTRO: 03/01/12**

- Councilor Joakim gave a brief rationale – the search sub-committee voted 4-1 to post in-house to start. She read the reasons behind the vote. They felt they would benefit more from hiring within.
- Councilor Dagwan asked if we would move beyond internal.

- Councilor Hersey asked the committee if there were guidelines or qualifications identified for the job?
- Councilor Joakim said we would decide first where to go and then will develop the job description. The job description is in the charter.
- Councilor Cullum received a lot of emails and said it is a small pool if we fish just from Barnstable. We should cast the net farther and wider. We owe it to be braver.
- Councilor Canedy said Mr. Lynch has done a fantastic job and been very responsive. She copied a packet on recruitment she got at the MMA conference for the councilors. A successful recruitment should take time, not be limited to one candidate or one community.
- Councilor Tinsley completely agreed with the Councilor from Pr. 1. He hopes Mr. Lynch is the last man standing. We need to broaden the search.
- Councilor Rapp Grasseti changed her vote and wants to open the search and broaden it. There should be meaningful citizen input. Mr. Lynch is doing a superb job.
- Councilor Norman thanked Councilor Joakim who ran the meetings. This position justifies the expense of a large search. We send a bad message if we only have a narrow pool.
- Councilor Dagwan said the subcommittee was a good group. She noted a lot of people were upset that Mr. Klimm did not come back. She couldn't see doing an international search, but thought the Cape or a tri-State search would have good candidates.
- Councilor Joakim noted that at the MMA the assistants were not interested in the job.
- Councilor Daley suggested that if anyone does any research on what we have done to the last town manager, she doesn't think we will get qualified candidates. We have an internal candidate, we invest in our employees. There is no guarantee on a national search. Start with an internal search and then go wider.
- Vice President Barton said her correspondence was split. Now is the time to heal as a town and have stability. Hire from within.
- President Chirigotis said Chapter 401-90 of the Adm. Code talks about recruitment procedures.

Upon motion duly made and seconded it was voted to move the question.

**VOTE: 13 Yes**

Upon motion duly made and seconded it was

**RESOLVED:** That the Town Council hereby adopts the recommendation of the Town Manager Search Subcommittee to conduct an internal search for candidates qualified to be

appointed to the position of town manager under Section 4-1 of the charter of the town of Barnstable.

**VOTE: 5 yes 8 no – did not pass (Roll Call – Canedy, Cote, Cullum, Dagwan, Rapp Grasseti, Hersey, Norman, Tinsley – no votes)**

**Upon motion duly made and seconded, it was voted to move to conduct an external search.**

**VOTE: 12 yes – 1 No (Daley)**

(See Exhibit D – memo to Sub-Committee on Town Manager Search Options)

**2012-071 APPROPRIATION ORDER - \$72,452 TO FUND FY12 TOWN MANAGER PERSONNEL COST BUDGET – INTRO: 03/01/12**

Upon motion duly made and seconded it was voted to refer this item to a public hearing on March 15, 2012.

**VOTE: 13 yes**

**2012-072 APPROPRIATION-\$210,000 FOR ADDITIONAL ASBESTOS ABATEMENT MONITORING AND REMOVAL OF ASBESTOS-AIRPORT – INTRO: 03/01/12**

Upon motion duly made and seconded it was voted to refer this item to a public hearing on March 15, 2012.

**VOTE: 13 yes**

**2012-073 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION – INTRO: 03/01/2012**

Upon motion duly made and seconded it was voted to waive the rules and act on this item.

**VOTE: 12 Yes, 1 No (Canedy)**

Upon motion duly made and seconded it was

**RESOLVED**, that the Town appoint the following individual to a multiple-member board/committee/commission:

**CULTURAL COUNCIL**

Marlene Weir, 80 Pond Street, Osterville, as a member to a term expiring 6/30/2015

**VOTE: 13 yes**

**2012-074 AN AMENDMENT TO THE REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND ALAN GRANBY AND JANICE HYLAND – INTRO: 03/01/12**

Attorney John Kenney represented Alan Granby and Janice Hyland who wish to amend their agreement to extend time for permitting. He said the Planning Board has recommended passage.



Councilor Hersey asked about the construction deadline. There is one.

Upon motion duly made and seconded it was

**ORDERED:** That the Town Manager is authorized pursuant to Section 168-5, General Ordinances of the Code of the Town of Barnstable, to enter into and execute an Amendment to Regulatory Agreement between the Town of Barnstable and Alan Granby and Janice Hyland, for the property shown on Barnstable Assessor's Maps 327 Parcels 145, 146 and 257, and located within the MS zoning district and the Downtown Hyannis Growth Incentive Zone including but not limited to the following: Paragraph 4 is hereby deleted in its entirety and is hereby replaced by the following new Paragraph 4:

4. The development rights granted hereunder shall be exercised and development permits may be obtained hereunder on or before February 28, 2015. Upon receipt of necessary development permits construction shall proceed continuously and expeditiously, but in no case shall construction exceed three years from receipt of necessary development permits. The development rights granted under this agreement shall not transfer to another owner without the prior written permission of the Planning Board and the Town Manager.

The Town Manager shall execute the Regulatory Agreement on behalf of the Town within seven (7) days of the Town Council vote authorizing the execution of the Regulatory Agreement in accordance with Section 168 of the Code

**VOTE: 13 yes**

<b>2012-075 AUTHORIZING A CONSERVATION RESTRICTION – 153 FREEZER ROAD, BARNSTABLE – INTRO: 03/01/2012</b>
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Both 2012-075 and 2012-076 were opened. Attorney Kenney addressed the map of the Freezer Point area (see Exhibit E). He explained what would be done with the property, and with the restrictions there will be no further development in that area other than what has been described. The development is limited to a single family home.

- Councilor Cote asked about the amount of the acreage which in total is 7.3 acres.
- Councilor Canedy has not been in favor of development there; but it appears that there is a good faith effort with the restrictions and she is asking for approval.
- Councilor Rapp Grassetto asked about the 99 years instead of forever. ZBA suggested the 99 years. A prospective buyer in years to come has something to grasp on to.

Upon motion duly made and seconded it was voted to move the question.

**VOTE: 13 Yes**

Upon motion duly made and seconded it was

**RESOLVED:** That the Town Manager is hereby authorized to accept on behalf of the Town of Barnstable a Conservation Restriction having a term of ninety-nine (99) years covering the portion of the property located at 153 Freezer Road, Barnstable, MA containing 5.05 ± acres

and being shown as Parcel A on a plan entitled "81-X Plan of Land 153 Freezer Road In Barnstable, Massachusetts dated October 27, 2011 drawn by BSC Group".

**VOTE: 13 Yes**

### **CONSERVATION RESTRICTION**

**STUBORN LIMITED PARTNERSHIP**, a Massachusetts limited partnership, Stuart Bornstein, General Partner, of 297 North Street, Hyannis, MA 02601, its successors and assigns holding any interest in the Premises as hereinafter defined, ("Grantor") for and in consideration of the mutual covenants contained herein and the conditions in a use variance, grants to **THE TOWN OF BARNSTABLE, a Massachusetts municipal corporation with principal offices at 367 Main Street, Hyannis**, Barnstable County, Massachusetts, 02601-3907, its successors and permitted assigns, ("Grantee"), FOR A TERM OF 99 years and exclusively for conservation purposes, the following described CONSERVATION RESTRICTION, comprising approximately 5.05± acres, located at 153 Freezer Road in the Village of Barnstable, Town of Barnstable, County of Barnstable, Commonwealth of Massachusetts, said parcel being shown as "Area A" on a plan of land entitled 81-X Plan of Land 153 Freezer Road In Barnstable, Massachusetts dated October 27, 2011 drawn by BSC Group and recorded in the Barnstable Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_. and hereinafter referred to as the Premises. The Grantor and Grantee, their successors and assigns, are bound by and subject to the terms and conditions of this Conservation Restriction. For Grantor's title, see deed recorded in the Barnstable County Registry of Deeds in Book 12037, Page 257.

Purpose: The purpose of this Conservation Restriction is to retain the Premises substantially in its natural, scenic and open condition; and to prevent any use of the Premises that will significantly impair or interfere with the conservation values thereof. The conservation and protection of the Premises will yield a significant public benefit for the following reasons.

First, Goal 2 of the Town of Barnstable 2010 Open Space and Recreation Plan seeks the coordination and execution of open space protection measures that complement community efforts to protect water supply, protect fresh and marine surface waters, preserve historic, scenic and cultural resources, and provide opportunities for farming and agriculture.

Second, Objective 2.3 of the Town of Barnstable 2010 Open Space and Recreation Plan seeks the coordination of open space protection measures with efforts to protect fresh and marine wetlands and surface waters.

Third, the Town of Barnstable 2010 Comprehensive Plan contains a general land use policy against development in areas most vulnerable to flooding.

Preservation of the Premises satisfies each of these objectives enumerated above because they border on marine surface waters and are vulnerable to flooding.

NOW, THEREFORE, in consideration of the above, and the mutual covenants, terms, conditions and restrictions contained herein, the Grantor and the Grantee voluntarily agree that the CONSERVATION RESTRICTION described herein is an appropriate means to achieve the town's open space goals and objectives which thereby represents a significant public benefit.

The terms of this Conservation Restriction are as follows:

A. Prohibited Uses. Except as to reserved rights set forth in paragraph B. Reserved Rights and Obligations below, neither the Grantor nor its heirs, devisees, successors or assigns will perform or permit others to perform the following acts or uses, which are prohibited, in, on, over or under the Premises:

1. Construction or placing of any temporary or permanent building, structure, facility or improvement on, over or under the Premises, including but not limited to any dwelling unit or habitable living space, landing strip or helipad, mobile home, boats, trailers, swimming pool, tennis court, active recreational facility, dock, bulkhead, jetty, parking area, fence, shed or storage box, utilities, fuel storage tank, wells, asphalt or concrete pavement, antenna, satellite receiving dish, tower, windmill, sewage or septage disposal system, or other temporary or permanent structure or facility, on, under or above the Premises;
2. Construction of any roads, driveways, docks, piers, rafts or floats through or on the Premises;
3. The clearing of vegetation, or the addition, removal or movement of soil for such purpose except in the course of the exercise of the reserved rights set forth in paragraph B and in compliance with all regional and local permits and approvals;
4. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit, and constructing, bulldozing, excavating or drilling of dikes, ditches, holes, swales or other alterations in the natural topography of the Premises;
5. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, wood chips, tree cuttings, waste or other substance or material whatsoever;
6. Planting or otherwise introducing or nurturing any non-native tree or woody vegetation on the Premises;
7. Creation of a cultivated lawn or formal or cultivated gardens except in the course of the exercise of the reserved rights set forth in paragraph B and in compliance with all regional and local permits and approvals
8. Any commercial or industrial use; any animal husbandry or horse paddocking or stables, paddocks, grazing areas or other enclosures and the storage or dumping of manure or other animal wastes; any use or storage of water craft;
9. Cutting, removing or otherwise destroying trees, grasses or other vegetation except in the course of the exercise of the reserved rights set forth in paragraph B and in compliance with all regional and local permits and approvals
10. Activities detrimental to drainage, flood control, water or soil conservation, erosion control or the quality of surface or ground water; any removal of soil off-site;
11. The use, parking or storage of motorized trail bikes, all-terrain vehicles, snowmobiles, or any motorized vehicle except as necessary for emergency police and fire vehicles in pursuit of official duties on the Premises; and as minimally necessary for the rights delineated in Paragraphs B.5, B.6 and B.7 herein;
12. Hunting or camping;
13. Conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted); and,
14. Any other use of the Premises or activity thereon which is inconsistent with the purposes of this Conservation Restriction or which would materially impair its conservation interests.

In addition, Grantor, its successors and assigns, agree that all development rights in the Premises are suspended during the term of this Conservation Restriction, and that the Premises may not be used during the term of this Conservation Restriction for the purpose of calculating the amount of Grantor's or any other land available for additional subdivision or calculating the building requirements on this or any other land owned by the Grantor or any other person.

B. Reserved Rights and Obligations. Notwithstanding any of the prohibitions set forth in sections A(1) through (13) inclusive, the Grantor, its heirs, devisees, successors or assigns reserve and retain their residual rights as owners of such land, and are permitted to perform the following uses and activities on the Premises provided such uses and activities do not materially impair the conservation values or purposes of this Conservation Restriction, subject to any limitations noted below:

1. All work, including the installation, maintenance, repair, and replacement of mitigation measures authorized under the Order of Conditions dated April 21, 2010 recorded in Book 24592, Page 167 and any amendments, modifications or future Orders of Conditions subject to and in compliance with any other applicable conditions in such Order, amendments, modifications, future Orders of Conditions, regional or local permits and approvals;
2. Maintenance, repair and replacement of the riprap wall located primarily along the shore of Maraspin Creek at the time of recording of this Conservation Restriction in compliance with all applicable regional or local permits and approvals;
3. The right to install temporary or permanent boundary monuments delineating the Premises;
4. The right to take active measures in order to prevent unauthorized vehicle entry and dumping;
5. The right to take active measures allowed by the Order of Conditions to prevent erosion on the site and to replace mitigation measure plantings allowed by the Order of Conditions which are damaged or killed by natural causes in compliance with all applicable regional or local permits and approvals;
6. The creation, maintenance and use of walking trails and maintenance trails by mowing and power tool trimming in compliance with all applicable regional or local permits and approvals;
7. The erection and maintenance of small signs identifying ownership of the Premises, its boundaries, its status as conservation land, work pursuant to Orders of Conditions, the restrictions on the use of the Premises, the identity or location of natural features or other characteristics of the Premises, or for providing other like information. Signage will be consistent with the purposes of this Conservation Restriction and subject to any applicable regional or local approvals;
8. The right to convey the Premises in its entirety.

Any work undertaken in conjunction with the reserved rights mentioned above in Paragraph B shall seek to minimize disturbance on the Premises. Upon completion of any site work performed in conjunction with Paragraph B, any disturbed areas shall be restored substantially to match the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work.

The exercise of any right or obligation reserved by the Grantor under this paragraph B shall be in compliance with all permitting requirements, the then-current Zoning Ordinance of the Town of Barnstable, and all other applicable federal, state and local law. The inclusion of any reserved right in this Paragraph B requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position on whether such permit should be

issued, except Grantee will confirm, in writing, to such agency, if requested, the existence of such reserved right under this Conservation Restriction.

C. Notice and Approval. Whenever notice to or approval by the Grantee is required under the provisions herein, excepting any provisions wherein a different time frame specifically is prescribed, the Grantor shall notify the Grantee in writing not less than sixty (60) days prior to the date the Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where the Grantee's approval is required, the Grantee shall grant or withhold its approval in writing within sixty days (60) days of receipt of the Grantors' written request therefore.

D. Extinguishment. If circumstances arise in the future such as to render the purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction can be terminated or extinguished, whether in whole or in part, only by judicial proceedings in a court of competent jurisdiction, and after review and, if required, approval, by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then the Grantee, on a subsequent sale, exchange or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph D(1) below.

D.1 Proceeds. The Grantor and the Grantee agree that grant of this Conservation Restriction gives rise for purposes of this paragraph D to a property right, immediately vested in the Grantee, with a fair market value that is equal to \$100,000.00 . For the purposes of this and the preceding paragraphs, said fair market value shall remain constant.

D.2. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee under this paragraph shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and the Grantee in shares equal to their then proportionate value, as determined by an appraisal at the time of the taking.

E. Access. The Conservation Restriction hereby conveyed does not grant to the Grantee, to the public generally, or to any other person any right to enter upon the Premises, except as follows:

- (1) to the Grantee and its representatives the right to enter the Premises (a) after reasonable notification, at reasonable times and in a reasonable manner, for the purpose of inspecting the same to determine compliance with the provisions of this Conservation Restriction; and (b) after thirty (30) days prior written notice, to take any and all actions with respect to the Premises at the then fee owner's cost as may be necessary or appropriate, with or without order of court, to remedy, abate or enforce any violation hereof unless the Grantor has prior to the expiration of said thirty (30) days given written notice to the Grantee reasonably addressing all alleged violations and setting forth a reasonable plan to remedy any such alleged violation.

No provision of this Conservation Restriction provides or shall be construed to provide any limitation on the exercise by the public of public trust rights or any public rights arising pursuant to G. L. c. 91.

Neither the Grantor nor the Grantee assumes any obligation to maintain the Premises for public use. Grantor and Grantee claim all the rights and immunities against liability for injury

to the public to the fullest extent of the law.

F. Legal Remedies of the Grantee. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Premises to its condition at the time of this grant (it being agreed that the Grantee will have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee. If Grantee prevails in any action to enforce the terms of this Conservation Restriction, the Grantor, successors and assigns, as the case may be, shall reimburse the Grantee for all reasonable costs and expenses (not including attorney's fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy or abate any violation thereof. If Grantor prevails in any action brought by Grantee to enforce the terms of this Conservation Restriction, the Grantee, successors and assigns, as the case may be, shall reimburse the Grantor for all reasonable costs and expenses (not including attorney's fees) incurred in defending such action to enforce this Conservation Restriction.

The Grantor, its successors and assigns shall each be liable under this paragraph for only such violations of this Conservation Restriction as may exist during its or their respective periods of ownership of the Premises. By its acceptance, the Grantee does not undertake any liability or obligation relating to the condition of the Premises, including with respect to compliance with hazardous materials or other environmental laws and regulations, or acts not caused by the Grantee or its agents.

In the event of a dispute over the boundaries of the Premises, Grantor shall pay for survey and permanent boundary markers delineating the Premises.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of the Grantee, and any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver.

G. Acts Beyond Grantor's Control. Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any action against the Grantor, its successors and assigns for any injury to or change in the Premises resulting from causes beyond the Grantor's, its successors' and assigns' control, including, but not limited to, fire, road drainage, flood, storm, natural erosion, and acts caused by trespass on the Premises not contributed to by acts or omissions of the Grantor, its successors and assigns, or from any prudent action taken by the Grantor, its successors and assigns under emergency conditions with the prior written approval of the Grantee to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. Grantor and Grantee agree that in the event of damage to the Premises from acts beyond Grantor's control, that if Grantor and Grantee mutually agree that it is desirable that the Premises be restored, Grantor and Grantee will cooperate in attempting to restore the Property if feasible.

H. Duration and Assignability. The burdens of this Conservation Restriction shall run with the Premises for a term of ninety-nine (99) years and shall be enforceable against the Grantor, and its successors and assigns holding any interest in the Premises. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the enforceability of this Conservation Restriction; and the Grantor on behalf of its successors and assigns, may appoint the Grantee as their attorney-in-fact to execute, acknowledge and

deliver any such instruments on their behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instrument upon request.

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances from time to time:

1. Grantor gives its prior approval to such assignment in writing, which approval shall not be unreasonably withheld;
  2. as a condition of any assignment, the Grantee requires that the purpose of this Conservation Restriction continue to be carried out;
  3. the assignee, at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the General Laws if applicable as a donee eligible to receive this Conservation Restriction directly; and,
  4. the Grantee complies with the provisions required by Article 97 of the amendments to the State Constitution, if applicable.
- I. Subsequent Transfers. The Grantor, its successors and assigns agree to incorporate by reference the terms of this Conservation Restriction in any deed or other recordable legal instrument by which Grantor, its successors and assigns convey any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. Grantor, its successors and assigns, further agree to give written notice to the Grantee of the voluntary transfer of any interest at least thirty (30) days prior to the date of such transfer. Failure of the Grantor, its successors and assigns to do so shall not impair the validity of this Conservation Restriction or limit its enforceability in any way.
- J. Termination of Rights and Obligations. Notwithstanding anything to the contrary contained herein, the rights and obligations under this Conservation Restriction of any party holding an interest in the Premises terminate upon transfer of that party's interest, except that liability for acts or omissions occurring prior to the transfer, and liability for the transfer itself if the transfer is a violation of this Conservation Restriction, shall survive the transfer.
- K. Estoppel Certificates. Upon request by the Grantor, its successors or assigns, the Grantee shall, upon thirty (30) days prior written notice, execute and deliver to the Grantors any document, including an estoppel certificate, if appropriate, which certifies the Grantor's, its successors' and assigns' compliance with any obligation of the Grantor contained in this Conservation Restriction, and which otherwise evidences the status of this Conservation Restriction as may be requested by the Grantor, its successors and assigns.
- L. Amendment. If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, the Grantor, its successors and assigns and the Grantee may by mutual consent amend in writing any term or provision hereof provided that this Conservation Restriction as thus amended complies with the then-applicable requirements of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts; the then-applicable requirements Massachusetts General Law, Chapter 184, Sections 31-33; Internal Revenue Code of 1986 Section 170(h), as amended; any gifts, grants or funding requirements; and any conservation restriction program of the Town of Barnstable, or any successors thereto, and provided that any such amendment, together with any approvals necessary to its effectiveness, including that of the Massachusetts Secretary of Energy and Environmental Affairs, shall be recorded with the Barnstable County Registry of Deeds. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not diminish the conservation values of the Premises, and shall not affect its perpetual duration.

In addition, the Grantee is not obligated to consider any amendments to this Conservation Restriction and shall not consider any amendment UNLESS all of the following conditions are met:

1. The minimum amount of amendment, as to terms, land area or structural dimensions, activity, or level of use, is proposed to accommodate the proposal;
2. Whenever possible, mitigation measures of like kind be proposed and the substitution be more advantageous to the cause of conservation;
3. There will be a net gain to conservation values offered through mitigation to the affected parcel or its immediate vicinity; and,
4. Cash values of items or areas proposed for release, amendment or mitigation may be disregarded by Grantee in the equation to determine net gain to conservation values; and,
5. The then-Grantor agrees to pay all costs involved in the amendment process.

M. Non-Merger: The parties intend that the doctrine of merger shall not apply to this conveyance, and that no transfer of Grantor's or Grantee's interest in the Premises and no acquisition of any additional interest in the Premises by Grantor or Grantee shall cause this Conservation Restriction to merge with the fee or have the effect of causing any of the terms hereof to be rendered unenforceable by reason of the so-called doctrine of merger. If it is determined that a transfer or assignment of any interest will result in a merger, no deed shall be effective until this Conservation Restriction has been assigned or other action taken to avoid a merger and preserve the terms and enforceability of this Conservation Restriction. It is the intent of the parties that the Premises will be subject to the terms of this Conservation Restriction for the term set forth in Paragraph H, notwithstanding any merger.

N. Subordination of Mortgage: Grantor shall record at the Barnstable County Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

O. Miscellaneous Provisions.

1. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.
2. Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purposes of this Conservation Restriction and the policies and purposes of the Grantee. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
3. Severability. If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.
4. Entire Agreement. This obligation sets forth the entire agreement of the parties with respect to the Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.
5. Joint Obligation. The obligations imposed by this Conservation Restriction upon the parties that together comprise "Grantor" shall be joint and several.
6. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.



P. Effective Date. This Conservation Restriction shall be timely recorded. Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this Conservation Restriction is registered in the official records of the Barnstable County Registry of Deeds.

No Massachusetts deed excise tax stamps are required by Chapter 64D, Section 1, as a municipality is a party to this instrument.

Executed under seal this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**Grantor:**

**Stuborn Limited Partnership**

\_\_\_\_\_  
COMMONWEALTH OF MASSACHUSETTS  
*Notary, etc.*

<b>2012-076 AUTHORIZING THE TOWN MANAGER TO ACCEPT A DECLARATION OF RESTRICTIVE COVENANT – 153 FREEZER ROAD, BARNSTABLE – INTRO: 03/01/2012</b>
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Upon motion duly made and seconded it was

**RESOLVED:** That the Town Manager is hereby authorized to accept on behalf of the Town of Barnstable a Declaration of Restrictive Covenant having a term of ninety-nine (99) years covering the entire property located at 153 Freezer Road, Barnstable, MA and being shown on a plan of land entitled “81-X Plan of Land 153 Freezer Road in Barnstable, Massachusetts dated October 27, 2011 drawn by BSC Group”.

**VOTE: 13 yes**

**Declaration of Restrictive Covenant**

This is a Declaration of Restrictive Covenant by Stuborn Limited Partnership, Stuart Bornstein, General partner, of 297 North Street, Hyannis, MA 02601 (hereinafter, “Grantor”, and

Whereas, the Grantor is the owner of real estate described in a certain deed recorded in the Barnstable County Registry of Deeds in Book 12037, Page 257, and said property is shown on a plan of land entitled “Plan of Land in Barnstable United Cape Cod Cranberry Co.”, recorded at said Registry in Plan Book 220, Page 85 and is also shown on a plan entitled “81-X Plan of Land 153 Freezer Road in Barnstable, Massachusetts dated October 27, 2011 drawn by BSC Group” recorded in Plan Book \_\_\_\_\_, Page \_\_\_\_\_ (hereinafter, the “Property”), and

Whereas, the Grantor petitioned the Town of Barnstable Zoning Board of Appeals (“ZBA”) for certain zoning relief related to the Property in case no. 2011-008, the requested relief was approved by the ZBA on October 26, 2011, and the decision has become final and is now recorded at said Registry in Book 25893, Page 157, and

Whereas, the Grantor intends to utilize the property as a single-family home and to develop a private dock with floats, and related supporting equipment and infrastructure as part of the conceptual development plan for the property , and

Whereas, the Town seeks assurance that the property will remain in single family use for a period of at least 99 years, and

Whereas, after consultation with his Counsel, the Grantor has volunteered to offer this Restrictive Covenant as an inducement to grant the zoning relief requested and as an assurance to the Town that the property will be used in accordance with the decisions of both the ZBA and the Order of Conditions solely for personal use, and not commercial use.

Now, therefore, the Grantor does hereby make and declare the Property subject to the following restrictive covenant and provisions:

1. RESTRICTION.

The Grantor may only construct one single-family home with the delineated accessory structures and a private dock development that are in all respects in substantial, material conformity with the final plans submitted to and approved by the ZBA and which are incorporated by reference in the decision referenced above. Further, the property shall not be divided, or sub-divided, or otherwise converted into a condominium form of ownership or used for other than one single-family residence.

Notwithstanding any subsequent decision of any local, state or federal board or agency having jurisdiction over any structures, uses, or activities on the property, including, without limitation, the ZBA and the Conservation Commission, the single-family home and private dock development shall be used solely for personal, non-commercial use to accommodate the personal needs of and equipment owned by the Grantor. Neither shall be materially changed in any respect and the footprint to be occupied by the home and structures shall be confined at all times to the footprints set forth in the plans accompanying the decision of the ZBA referenced above. In addition to commonly understood construction and meaning of such words, “Non-commercial use” shall mean the express prohibition at any and all times of renting or use of such facilities in exchange for any monies or other consideration, except that the entire property may be rented for use as a single-family residence in accordance with any Rental Ordinance of the Town of Barnstable as may be in effect from time to time.

2. Benefit.

The provisions contained herein shall run with the land and shall bind the Grantor and the Grantor’s heirs, devisees, legal representatives, successors, and assigns. These provisions contained herein are intended to benefit the Town’s abutting land, adjacent waters, and all Town land now or hereafter fronting on Barnstable Harbor, including that area known as Sandy Neck.

3. Duration.

This restrictive covenant shall expire ninety-nine (99) years from the date of execution of this covenant, and shall have legal significance pursuant to, be governed by and interpreted under the provisions of Massachusetts General Laws, Chapter 184, § 26.

4. Extension, Amendment, or Termination.

This restriction shall be held by the inhabitants of the Town of Barnstable, acting by and through its chief executive officer. It may only be extended, amended, or terminated with the express approval of the Barnstable Town Council or its successor.

5. Enforcement.

The Town shall have the option of seeking enforcement of these restrictive covenants via all remedies available to it in law and in equity in any forum of competent jurisdiction. In the event that the Town is successful in prosecuting or defending any actions relating to this covenant, the Town shall be entitled to recover all attorney's fees and costs associated with the prosecution or defense of such actions.

6. No Waiver.

In the event that the Town shall fail to enforce any provision hereof on any one or more occasions either intentionally or through oversight, or elects to waive enforcement thereof in any one or more instances, such action or failure to act shall not invalidate nor prejudice the Town's right to do so in the future with respect to the same or different rights created by these covenants and such failure or waiver shall not invalidate any other provision hereof which shall remain in full force and effect.

7. Severability.

In the event that any provision of this restrictive covenant shall be deemed void and/or unenforceable for any reason by a forum of competent jurisdiction, all other provisions hereof shall remain in full force and effect.

Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_ 2012.

\_\_\_\_\_  
, Grantor

COMMONWEALTH OF MASSACHUSETTS

*Notary, etc.*

**TOWN MANAGER COMMUNICATIONS**

Acting Manager Lynch announced the police contract was settled. He gave an update on the Citizens Resource Line. He visited with Senators Murray and Wolf and other legislators regarding support for dredging at Barnstable Harbor and is hopeful. He said the Sewer Trust Fund legislation now appears that it may move. The Capital budget is going forward.

**ADJOURNMENT**

Upon motion duly made and seconded it was voted

**To adjourn.**

**ADJOURNED: at 9:25 p.m.**

Respectfully submitted,

Linda E. Hutchenrider, MMC/CMMC  
Town Clerk/Town of Barnstable

Attachments:

Exhibit A	Copy of email from Barnstable CFG
Exhibit B	Notice on meeting on mental health and substance abuse
Exhibit B-1	Notice on Marstons Mills Village Association meeting
Exhibit C	Copy of page from MTA new archive from web
Exhibit D	Copy of memo from William Cole to Town Manager Search Sub-Com.
Exhibit E	81-X Plan of Land 153 Freezer Rd., Barnstable, MA

**NEXT REGULAR MEETING: March 15, 2012**



**NOTE: THE FOLLOWING ARE REVISIONS TO THE MARCH 1, 2012 MINUTES THAT THE TOWN COUNCIL APPROVED IN ADDITION TO THE ORIGINAL MINUTES OF MARCH 1 AS PREPARED BY THE TOWN CLERK**

**A** quorum being duly present, Council President Frederick Chirigotis called the March 1, 2012, Town Council meeting to order at 7:00 p.m. in the Hearing Room of Town Hall, 367 Main St., Hyannis, MA.

**PRESENT:** Janice Barton, Ann Canedy, Frederick Chirigotis, James Cote, Jennifer Cullum, Debra Dagwan, June Daley, Jessica Rapp Grasseti, Michael Hersey, Janet Joakim, John Norman, Thomas Rugo, James Tinsley, Jr.

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

**Americorps – an update**

Three gentlemen, currently working in Barnstable, gave an update on projects that Americorps has worked on: herring runs, shellfish propagation projects, and gardens in Hyannis and Craigville Beach. They outlined their focus and funding. Further information can be found on [www.americorpscapecod.org](http://www.americorpscapecod.org)

**PUBLIC COMMENT**

- William Doherty encouraged the Town Council to vote in favor of keeping open Taunton Hospital.
- Bruce Gilmore spoke to the Manager's search, and last year's contentious year. He suggested considering Acting Manager Lynch, who would not need training, is local and would save the town time and money.

- John Alden stated that since last year, things have gone downhill. We need to look from a group of candidates other than just Mr. Lynch.
- Robert Tucker asked where you are going to get the money to pay off Mr. Klimm. You have a good man up here, Tom is a good man. Don't spend money on a search.
- David Munsell would like to see a good search put on so we can get the best person for the job. You owe it to the town. He does not condone Patrick Page's actions but he needs help.
- Patrick Page said he has been bullied by the town. You have not answered my documents. It has been six years.
- Jane Saunders said we have asked for help. We want action on our problem. We were told to sue the town. We need a new town manager.
- Alan Burt felt last year and the issues with John Klimm were terrible. We have new councilors and hope you vote for an in town search and consider Tom Lynch.
- Dave Chase said the manager's position is a big ticket item and you need to look around to make the best selection.
- Susan Lemoncelli said it is important to do a full and thorough search. If the town can afford a legal suit, then we deserve a full manager's search (\$30,000).
- Taryn Thoman submitted a copy of an email (Exhibit A) that had been circulated. We should spend the \$30,000 and have a good search.

**COUNCIL RESPONSE TO PUBLIC COMMENT**

None.

**ACT ON MINUTES (Includes Executive Session)**

Councilor Joakim is concerned that there is way too much detail. We need to not get into the specifics and there are videos.

A motion was made and seconded to postpone action on the minutes of Feb. 2 and Feb. 16 until the next meeting..

**VOTE: 9 Yes, 4 No (Canedy, Rugo, Tinsley, Rapp Grasseti)**

**COMMUNICATIONS FROM ELECTED OFFICIALS, BOARDS, COMMISSIONS, STAFF, CORRESPONDENCE, ANNOUNCEMENTS AND COMMITTEE REPORTS**

- Vice President Barton announced a forum on March 5, 2012 (see Exhibit B) on Mental Health and Substance Abuse.
- Councilor Norman announced the Marstons Mills Village Association meeting March 6 (see Exhibit B-1).

- Councilor Dagwan thanked Lorraine Telo for fund raising to help students in need get memberships for the HYCC.
- Councilor Cullum noted the March 5, Hyannis Civic Association meeting with all Hyannis councilors.

## ORDERS OF THE DAY

### A. OLD BUSINESS

**2012-065 ORDER TO ENGAGE IN THE PROCESS TO CHANGE HEALTH INSURANCE BENEFITS UNDER MGL C.32B, §§ 21-23 – INTRO: 2/16/12, 03/01/12**

Brief 1 minute recess at 7:43 p.m.

A rule of necessity was invoked by Councilor James Tinsley. *(Under Chapter 69 of the Acts of 2011 (codified under G.L. c. 32B, sections 21-23) enacted changes to the municipal health care that provides cities and towns the opportunity to use some of the state's current cost control measure, Councilors, who receive the insurance are not required to withdraw from participation as long as each councilor who wants to participate states on the record that he is a recipient of health insurance benefits, that this would normally disqualify him from participation, but that he chooses to invoke the rule of necessity because the Town Council, the only body in a city which can accept the provisions of Chapter 69 of the Acts of 2011, would otherwise be deprived of its ability to take any action due to a lack of a quorum. This was fully explained in the meeting of February 16, 2011 where 5 other councilors also invoked the said rule of necessity. .*

- Steve Seymour said BMEA wrote a letter to the councilors. The employees are not satisfied and they feel that this is not the best option.
- Dale Forrest from Mass Teachers Association said the MTA did not have any involvement with the GIC bill and were opposed to it. It does not solve the high rise in health care it shifts it to the workers.
- Jim Buckman, a school counselor, said the plans and options with the 50/50 split are not fair. You can't get sick, the burden is shifted to us. Don't you want to keep good people? It would be easier to swallow if the split was higher than 50/50.
- Robert Tucker said \$30,000 is a lot of money.(referring to the Town Manager search)
- Chris Kelsey with the police department said the law was not supposed to burden the employees. The deals that were shown were for one year – but with the co-pays and deductibles it is a loss to the employees.
- Acting Town Manager Tom Lynch appreciated the time the councilors have given the issue. He spoke to the core principles the coalition agreed on from an MTA web piece (see Exhibit C.) There are legitimate concerns. He thanked many including Bill Cole, Mark Milne and Debra Blanchette.

- Councilor Rugo said one of his priorities has been for the public schools. This town gives the least allowed by law to health on the Cape (50/50). He suggested that the council when they look at their goals and policies possibly look at this and address it somehow.
- President Chirigotis reminded all that the council does not negotiate contracts, they are done by the executive branch.
- Councilor Rugo feels a policy still could be brought forward.
- Councilor Joakim reminded all that we have an open contract in negotiation.
- Councilor Rugo said the money difference is significant between other towns when you only are covered 50/50. The town needs to address this issue.
- Attorney Ruth Weil reminded the town council that they can't get into negotiations.
- Councilor Daley noted that this is not the place for negotiations. She thinks it is important.
- Councilor Rapp Grasseti asked if we vote yes, will this affect the unions in their negotiations. She was told it would not. She asked if the health care plan benefits are changing.
- Human Resources Director Bill Cole said benefits are not changing just co-pays and deductibles. Rapp Grasseti believes a yes vote is a positive.
- Councilor Canedy said our job is very narrow; that she asked for and received a commitment from Administration for a side by side comparison of available plans and we are not locked into the Cape Cod Municipal Plan going forward.. This is a question where we should consider all the taxpayers and she will be supporting this.
- Councilor Tinsley said he could switch insurance carriers, but some employees have no options. We are putting undo stress on the employees. This goes too far for me. I can't support it, there has to be a better way to do this. Not a way to say thank you.
- Councilor Cullum would love to see the split different, we need to attract the best. We don't have a say.
- Vice President Barton said we do support the employees. We have the best and the brightest. This is another unfunded mandate. We will be working on our priorities.
- Councilor Joakim said we can't discuss the 50/50 and it is not our place. Our town is unique.

A motion was made and seconded to move the question

**VOTE: 11 Yes, 2 No (Rugo and Tinsley)**

Upon motion duly made and seconded it was

**ORDERED:** The Town of Barnstable elects to engage in the process to change health insurance benefits under M.G.L. c. 32B, §§ 21-23.

**VOTE: 11 yes – 2 no (Rugo, Tinsley)**

**2012-066 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION – INTRO: 02/16/12, 03/01/12**

Upon motion duly made and seconded it was:

**RESOLVED**, that the Town Council appoint the following individuals to a multiple-member board/committee/commission:

**COMPREHENSIVE FINANCIAL ADVISORY COMMITTEE**

Laurie K. Young, 142 Great Bay Road, Osterville as a member, to a term expiring 6/30/2014

**CULTURAL COUNCIL**

Mary Carolla-Allen, 312B Pleasant Pines Avenue, Centerville as a member, to a term expiring 6/30/2013

**HISTORICAL COMMISSION**

Laurie K. Young, 142 Great Bay Road, Osterville as a member, to a term expiring 6/30/2014

**HOUSING COMMITTEE**

Sue W. Davenport, 148 West Main Street, Hyannis as a member, to a term expiring 6/30/2014

**PUBLIC WORKS COMMISSION**

Robin C. Young, 142 Great Bay Road, Osterville as a member, to a term expiring 6/30/2013

**WATERWAYS COMMITTEE**

Paul J. Everson, 21 Wren Lane, Marstons Mills as a member, to a term expiring 6/30/2014

**YOUTH COMMISSION**

Rose Silva, c/o BHS 744 W. Main Street, Hyannis as a member, to a term expiring 6/30/2012

**VOTE: 13 yes**

**2012-067 RE-APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION – INTRO: 02/16/12, 03/01/12**

Upon motion duly made and seconded it was

**RESOLVED**, that the Town re-appoint the following individual to a multiple-member board/committee/commission:

**BOARD OF HEALTH**

Dr. Paul J. Canniff, 106 Hayes Road, Centerville, as a member to a term expiring 6/30/2014

**VOTE: 13 yes**



**2012-068 RESOLVE IN SUPPORT OF TAUNTON STATE HOSPITAL REMAINING OPEN –  
INTRO: 03/01/2012**

Councilor Canedy asked why is Taunton State Hospital closing?

Vice President Barton said they were just closing it and the money would go more to prevention. There is a shift in the monies.

Upon motion duly made and seconded it was

**RESOLVED:** That the Barnstable Town Council in recognition of the positive impact and the critical need of adequate treatment for mental health patients in crisis on Cape Cod, the Islands, and Southeastern Massachusetts, forward this resolution to State Senator Marc R. Pacheco:

**WHEREAS,** the Patrick Administration is considering closing the Taunton State Hospital; and

**WHEREAS,** that closing the Taunton State Hospital would put a tremendous strain on the Massachusetts mental health care system; and

**WHEREAS,** that closing the Taunton State Hospital would create a shortage of appropriate mental health care for its Cape Cod and Islands residents in need; and

**WHEREAS,** closing the Taunton State Hospital will require moving some patients to the Worcester facility, causing hardship for patient's families that may not have transportation, or access to transportation to be able to visit their family members.

**NOW THEREFORE BE IT RESOLVED,** that the Barnstable Town Council does hereby support and requests its elected officials of the Commonwealth of Massachusetts, to ensure that this most important mental health hospital remain open for the people of Cape Cod, the Islands, and Southeastern Massachusetts.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Frederick Chirigotis, President  
BARNSTABLE TOWN COUNCIL

**VOTE: 12 Yes 1 Ab. (Tinsley)**

**B. NEW BUSINESS**

**2012-069 EXTENSION TO THE APPOINTMENT OF THOMAS K. LYNCH AS ACTING  
TOWN MANAGER – INTRO: 03/01/12**

President Chirigotis gave a brief rationale. Councilor Tinsley asked what happens if we have no manager by June 16. President Chirigotis said we have to.

Upon motion duly made and seconded it was

**ORDERED**, that the Town Council, acting under the provisions of Section 4-5 of the Charter of the Town of Barnstable, hereby extends the appointment of Thomas K. Lynch with an address of 95 Phinneys Lane, Centerville, MA, 02632, as Acting Town Manager to perform the duties of the Town Manager as outlined in Sections 4-2 and 4-3 of the Charter for the Town of Barnstable, until June 16, 2012

**VOTE: 13 Yes**

<p><b>2012-070 ADOPTION OF TOWN MANAGER SEARCH SUBCOMMITTEE'S RECOMMENDATION TO CONDUCT AN INTERNAL SEARCH FOR A PERMANENT TOWN MANAGER – INTRO: 03/01/12</b></p>
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- Councilor Joakim gave a brief rationale – the search sub-committee voted 4-1 to post in-house to start. She read the reasons behind the vote. They felt they would benefit more from hiring within.
- Councilor Dagwan asked if we would move beyond internal.
- Councilor Hersey asked the committee if there were guidelines or qualifications identified for the job?
- Councilor Joakim said we would decide first where to go and then will develop the job description. The job description is in the charter.
- Councilor Cullum received a lot of emails and said it is a small pool if we fish just from Barnstable. We should cast the net farther and wider. We owe it to be braver.
- Councilor Canedy said that she and other councilors attended an MMA seminar on recruitment. Barnstable is a \$160 million dollar corporation and it is our fiduciary duty to insure the integrity of the process. It is important for people to have confidence in the search which should include citizens, all councilors and staff. . A successful recruitment should take time, not be limited to one candidate or one community.
- Councilor Tinsley completely agreed with the Councilor from Pr. 1. He hopes Mr. Lynch is the last man standing. We need to broaden the search.
- Councilor Rapp Grassetti changed her vote and wants to open the search and broaden it. There should be meaningful citizen input. Mr. Lynch is doing a superb job.
- Councilor Norman thanked Councilor Joakim who ran the meetings. This position justifies the expense of a large search. We send a bad message if we only have a narrow pool.
- Councilor Dagwan said the subcommittee was a good group. She noted a lot of people were upset that Mr. Klimm did not come back. She couldn't see doing an international search, but thought the Cape or a tri-State search would have good candidates.

- Councilor Joakim noted that at the MMA the assistants were not interested in the job.
- Councilor Daley suggested that if anyone does any research on what we have done to the last town manager, she doesn't think we will get qualified candidates. We have an internal candidate, we invest in our employees. There is no guarantee on a national search. Start with an internal search and then go wider.
- Vice President Barton said her correspondence was split. Now is the time to heal as a town and have stability. Hire from within.
- President Chirigotis said Chapter 401-90 of the Adm. Code talks about recruitment procedures.

Upon motion duly made and seconded it was voted to move the question.

**VOTE: 13 Yes**

Upon motion duly made and seconded it was

**RESOLVED:** That the Town Council hereby adopts the recommendation of the Town Manager Search Subcommittee to conduct an internal search for candidates qualified to be appointed to the position of town manager under Section 4-1 of the charter of the town of Barnstable.

**VOTE: 5 yes 8 no – did not pass (roll call) (List names: No: Canedy, Cote, Cullum, Dagwan, Hersey, Rapp Grassetti, Tinsely)**

**Upon motion duly made and seconded, it was voted to move to conduct an external search.**

**VOTE: 12 yes – 1 No (Daley)**

(See Exhibit D – memo to Sub-Committee on Town Manager Search Options)

<p><b>2012-071 APPROPRIATION ORDER - \$72,452 TO FUND FY12 TOWN MANAGER PERSONNEL COST BUDGET – INTRO: 03/01/12</b></p>
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Upon motion duly made and seconded it was voted to refer this item to a public hearing on March 15, 2012.

**VOTE: 13 yes**

<p><b>2012-072 APPROPRIATION-\$210,000 FOR ADDITIONAL ASBESTOS ABATEMENT MONITORING AND REMOVAL OF ASBESTOS-AIRPORT – INTRO: 03/01/12</b></p>
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Upon motion duly made and seconded it was voted to refer this item to a public hearing on March 15, 2012.

**VOTE: 13 yes**

<p><b>2012-073 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION – INTRO: 03/01/2012</b></p>
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Upon motion duly made and seconded it was voted to waive the rules and act on this item.  
**VOTE: 12 Yes, 1 No (Canedy)**

Upon motion duly made and seconded it was  
**RESOLVED**, that the Town appoint the following individual to a multiple-member board/committee/commission:

**CULTURAL COUNCIL**

Marlene Weir, 80 Pond Street, Osterville, as a member to a term expiring 6/30/2015

**VOTE: 13 yes**

**2012-074 AN AMENDMENT TO THE REGULATORY AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND ALAN GRANBY AND JANICE HYLAND – INTRO: 03/01/12**

Attorney John Kenney represented Alan Granby and Janice Hyland who wish to amend their agreement to extend time for permitting. He said the Planning Board has recommended passage.

Councilor Hersey asked about the construction deadline. There is one.

Upon motion duly made and seconded it was  
**ORDERED**: That the Town Manager is authorized pursuant to Section 168-5, General Ordinances of the Code of the Town of Barnstable, to enter into and execute an Amendment to Regulatory Agreement between the Town of Barnstable and Alan Granby and Janice Hyland, for the property shown on Barnstable Assessor's Maps 327 Parcels 145, 146 and 257, and located within the MS zoning district and the Downtown Hyannis Growth Incentive Zone including but not limited to the following: Paragraph 4 is hereby deleted in its entirety and is hereby replaced by the following new Paragraph 4:

4. The development rights granted hereunder shall be exercised and development permits may be obtained hereunder on or before February 28, 2015. Upon receipt of necessary development permits construction shall proceed continuously and expeditiously, but in no case shall construction exceed three years from receipt of necessary development permits. The development rights granted under this agreement shall not transfer to another owner without the prior written permission of the Planning Board and the Town Manager.

The Town Manager shall execute the Regulatory Agreement on behalf of the Town within seven (7) days of the Town Council vote authorizing the execution of the Regulatory Agreement in accordance with Section 168 of the Code

**VOTE: 13 yes**

**2012-075 AUTHORIZING A CONSERVATION RESTRICTION – 153 FREEZER ROAD, BARNSTABLE – INTRO: 03/01/2012**

Both 2012-075 and 2012-076 were opened. Attorney Kenney addressed the map of the Freezer Point area (see Exhibit E). He explained what would be done with the property, and with the restrictions there will be no further development in that area other than what has been described. The development is limited to a single family home.

- Councilor Cote asked about the amount of the acreage which in total is 7.3 acres.
- Councilor Canedy has not been in favor of development there; but it appears that there is a good faith effort with the restrictions and she is asking for approval.
- Councilor Rapp Grasseti asked about the 99 years instead of forever. ZBA suggested the 99 years. A prospective buyer in years to come has something to grasp on to.

Upon motion duly made and seconded it was voted to move the question.

**VOTE: 13 Yes**

Upon motion duly made and seconded it was

**RESOLVED:** That the Town Manager is hereby authorized to accept on behalf of the Town of Barnstable a Conservation Restriction having a term of ninety-nine (99) years covering the portion of the property located at 153 Freezer Road, Barnstable, MA containing 5.05 ± acres and being shown as Parcel A on a plan entitled "81-X Plan of Land 153 Freezer Road In Barnstable, Massachusetts dated October 27, 2011 drawn by BSC Group".

**VOTE: 13 Yes**

### **CONSERVATION RESTRICTION**

**STUBORN LIMITED PARTNERSHIP**, a Massachusetts limited partnership, Stuart Bornstein, General Partner, of 297 North Street, Hyannis, MA 02601, its successors and assigns holding any interest in the Premises as hereinafter defined, ("Grantor") for and in consideration of the mutual covenants contained herein and the conditions in a use variance, grants to **THE TOWN OF BARNSTABLE, a Massachusetts municipal corporation with principal offices at 367 Main Street, Hyannis** , Barnstable County, Massachusetts, 02601-3907, its successors and permitted assigns, ("Grantee"), FOR A TERM OF 99 years and exclusively for conservation purposes, the following described CONSERVATION RESTRICTION, comprising approximately 5.05± acres, located at 153 Freezer Road in the Village of Barnstable, Town of Barnstable, County of Barnstable, Commonwealth of Massachusetts, said parcel being shown as "Area A" on a plan of land entitled 81-X Plan of Land 153 Freezer Road In Barnstable, Massachusetts dated October 27, 2011 drawn by BSC Group and recorded in the Barnstable Registry of Deeds in Plan Book \_\_\_\_\_, Page \_\_\_\_\_. and hereinafter referred to as the Premises. The Grantor and Grantee, their successors and assigns, are bound by and subject to the terms and conditions of this Conservation Restriction. For Grantor's title, see deed recorded in the Barnstable County Registry of Deeds in Book 12037, Page 257.

Purpose: The purpose of this Conservation Restriction is to retain the Premises substantially in its natural, scenic and open condition; and to prevent any use of the Premises that will significantly impair or interfere with the conservation values thereof. The conservation and protection of the Premises will yield a significant public benefit for the following reasons.

First, Goal 2 of the Town of Barnstable 2010 Open Space and Recreation Plan seeks the coordination and execution of open space protection measures that complement community efforts to protect water supply, protect fresh and marine surface waters, preserve historic, scenic and cultural resources, and provide opportunities for farming and agriculture.

Second, Objective 2.3 of the Town of Barnstable 2010 Open Space and Recreation Plan seeks the coordination of open space protection measures with efforts to protect fresh and marine wetlands and surface waters.

Third, the Town of Barnstable 2010 Comprehensive Plan contains a general land use policy against development in areas most vulnerable to flooding.

Preservation of the Premises satisfies each of these objectives enumerated above because they border on marine surface waters and are vulnerable to flooding.

NOW, THEREFORE, in consideration of the above, and the mutual covenants, terms, conditions and restrictions contained herein, the Grantor and the Grantee voluntarily agree that the CONSERVATION RESTRICTION described herein is an appropriate means to achieve the town's open space goals and objectives which thereby represents a significant public benefit.

The terms of this Conservation Restriction are as follows:

A. Prohibited Uses. Except as to reserved rights set forth in paragraph B. Reserved Rights and Obligations below, neither the Grantor nor its heirs, devisees, successors or assigns will perform or permit others to perform the following acts or uses, which are prohibited, in, on, over or under the Premises:

10. Construction or placing of any temporary or permanent building, structure, facility or improvement on, over or under the Premises, including but not limited to any dwelling unit or habitable living space, landing strip or helipad, mobile home, boats, trailers, swimming pool, tennis court, active recreational facility, dock, bulkhead, jetty, parking area, fence, shed or storage box, utilities, fuel storage tank, wells, asphalt or concrete pavement, antenna, satellite receiving dish, tower, windmill, sewage or septage disposal system, or other temporary or permanent structure or facility, on, under or above the Premises;
11. Construction of any roads, driveways, docks, piers, rafts or floats through or on the Premises;
12. The clearing of vegetation, or the addition, removal or movement of soil for such purpose except in the course of the exercise of the reserved rights set forth in paragraph B and in compliance with all regional and local permits and approvals;
13. Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit, and constructing, bulldozing, excavating or drilling of dikes, ditches, holes, swales or other alterations in the natural topography of the Premises;
14. Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, wood chips, tree cuttings, waste or other substance or material whatsoever;
15. Planting or otherwise introducing or nurturing any non-native tree or woody vegetation on the Premises;
16. Creation of a cultivated lawn or formal or cultivated gardens except in the course of

the exercise of the reserved rights set forth in paragraph B and in compliance with all regional and local permits and approvals

17. Any commercial or industrial use; any animal husbandry or horse paddocking or stables, paddocks, grazing areas or other enclosures and the storage or dumping of manure or other animal wastes; any use or storage of water craft;
18. Cutting, removing or otherwise destroying trees, grasses or other vegetation except in the course of the exercise of the reserved rights set forth in paragraph B and in compliance with all regional and local permits and approvals
10. Activities detrimental to drainage, flood control, water or soil conservation, erosion control or the quality of surface or ground water; any removal of soil off-site;
11. The use, parking or storage of motorized trail bikes, all-terrain vehicles, snowmobiles, or any motorized vehicle except as necessary for emergency police and fire vehicles in pursuit of official duties on the Premises; and as minimally necessary for the rights delineated in Paragraphs B.5, B.6 and B.7 herein;
12. Hunting or camping;
13. Conveyance of a part or portion of the Premises alone, or division or subdivision of the Premises (as compared to conveyance of the Premises in its entirety which shall be permitted); and,
14. Any other use of the Premises or activity thereon which is inconsistent with the purposes of this Conservation Restriction or which would materially impair its conservation interests.

In addition, Grantor, its successors and assigns, agree that all development rights in the Premises are suspended during the term of this Conservation Restriction, and that the Premises may not be used during the term of this Conservation Restriction for the purpose of calculating the amount of Grantor's or any other land available for additional subdivision or calculating the building requirements on this or any other land owned by the Grantor or any other person.

**B. Reserved Rights and Obligations.** Notwithstanding any of the prohibitions set forth in sections A(1) through (13) inclusive, the Grantor, its heirs, devisees, successors or assigns reserve and retain their residual rights as owners of such land, and are permitted to perform the following uses and activities on the Premises provided such uses and activities do not materially impair the conservation values or purposes of this Conservation Restriction, subject to any limitations noted below:

2. All work, including the installation, maintenance, repair, and replacement of mitigation measures authorized under the Order of Conditions dated April 21, 2010 recorded in Book 24592, Page 167 and any amendments, modifications or future Orders of Conditions subject to and in compliance with any other applicable conditions in such Order, amendments, modifications, future Orders of Conditions, regional or local permits and approvals;
2. Maintenance, repair and replacement of the riprap wall located primarily along the shore of Maraspin Creek at the time of recording of this Conservation Restriction in compliance with all applicable regional or local permits and approvals;
3. The right to install temporary or permanent boundary monuments delineating the Premises;
4. The right to take active measures in order to prevent unauthorized vehicle entry and dumping;
5. The right to take active measures allowed by the Order of Conditions to prevent erosion on the site and to replace mitigation measure plantings allowed by the Order of Conditions which are damaged or killed by natural causes in compliance with all applicable regional or local permits and approvals;

6. The creation, maintenance and use of walking trails and maintenance trails by mowing and power tool trimming in compliance with all applicable regional or local permits and approvals;
7. The erection and maintenance of small signs identifying ownership of the Premises, its boundaries, its status as conservation land, work pursuant to Orders of Conditions, the restrictions on the use of the Premises, the identity or location of natural features or other characteristics of the Premises, or for providing other like information. Signage will be consistent with the purposes of this Conservation Restriction and subject to any applicable regional or local approvals;
8. The right to convey the Premises in its entirety.

Any work undertaken in conjunction with the reserved rights mentioned above in Paragraph B shall seek to minimize disturbance on the Premises. Upon completion of any site work performed in conjunction with Paragraph B, any disturbed areas shall be restored substantially to match the conditions with respect to soil material, grade, and vegetated ground cover that existed prior to said work.

The exercise of any right or obligation reserved by the Grantor under this paragraph B shall be in compliance with all permitting requirements, the then-current Zoning Ordinance of the Town of Barnstable, and all other applicable federal, state and local law. The inclusion of any reserved right in this Paragraph B requiring a permit from a public agency does not imply that the Grantee or the Commonwealth takes any position on whether such permit should be issued, except Grantee will confirm, in writing, to such agency, if requested, the existence of such reserved right under this Conservation Restriction.

C. Notice and Approval. Whenever notice to or approval by the Grantee is required under the provisions herein, excepting any provisions wherein a different time frame specifically is prescribed, the Grantor shall notify the Grantee in writing not less than sixty (60) days prior to the date the Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the purposes of this Conservation Restriction. Where the Grantee's approval is required, the Grantee shall grant or withhold its approval in writing within sixty days (60) days of receipt of the Grantors' written request therefore.

D. Extinguishment. If circumstances arise in the future such as to render the purpose of this Conservation Restriction impossible to accomplish, this Conservation Restriction can be terminated or extinguished, whether in whole or in part, only by judicial proceedings in a court of competent jurisdiction, and after review and, if required, approval, by the Massachusetts Secretary of Energy and Environmental Affairs. If any change in conditions ever gives rise to extinguishment or other release of the Conservation Restriction under applicable law, then the Grantee, on a subsequent sale, exchange or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds in accordance with Paragraph D(1) below.

D.1 Proceeds. The Grantor and the Grantee agree that grant of this Conservation Restriction gives rise for purposes of this paragraph D to a property right, immediately vested in the Grantee, with a fair market value that is equal to \$100,000.00 . For the purposes of this and the preceding paragraphs, said fair market value shall remain constant.

D.2. Grantor/Grantee Cooperation Regarding Public Action. Whenever all or part of the Premises or any interest therein is taken by public authority under power of eminent domain or other act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee under this paragraph shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed



between the Grantor and the Grantee in shares equal to their then proportionate value, as determined by an appraisal at the time of the taking.

E. Access. The Conservation Restriction hereby conveyed does not grant to the Grantee, to the public generally, or to any other person any right to enter upon the Premises, except as follows:

(2) to the Grantee and its representatives the right to enter the Premises (a) after reasonable notification, at reasonable times and in a reasonable manner, for the purpose of inspecting the same to determine compliance with the provisions of this Conservation Restriction; and (b) after thirty (30) days prior written notice, to take any and all actions with respect to the Premises at the then fee owner's cost as may be necessary or appropriate, with or without order of court, to remedy, abate or enforce any violation hereof unless the Grantor has prior to the expiration of said thirty (30) days given written notice to the Grantee reasonably addressing all alleged violations and setting forth a reasonable plan to remedy any such alleged violation.

No provision of this Conservation Restriction provides or shall be construed to provide any limitation on the exercise by the public of public trust rights or any public rights arising pursuant to G. L. c. 91.

Neither the Grantor nor the Grantee assumes any obligation to maintain the Premises for public use. Grantor and Grantee claim all the rights and immunities against liability for injury to the public to the fullest extent of the law.

F. Legal Remedies of the Grantee. The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Premises to its condition at the time of this grant (it being agreed that the Grantee will have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee. If Grantee prevails in any action to enforce the terms of this Conservation Restriction, the Grantor, successors and assigns, as the case may be, shall reimburse the Grantee for all reasonable costs and expenses (not including attorney's fees) incurred in enforcing this Conservation Restriction or in taking reasonable measures to remedy or abate any violation thereof. If Grantor prevails in any action brought by Grantee to enforce the terms of this Conservation Restriction, the Grantee, successors and assigns, as the case may be, shall reimburse the Grantor for all reasonable costs and expenses (not including attorney's fees) incurred in defending such action to enforce this Conservation Restriction.

The Grantor, its successors and assigns shall each be liable under this paragraph for only such violations of this Conservation Restriction as may exist during its or their respective periods of ownership of the Premises. By its acceptance, the Grantee does not undertake any liability or obligation relating to the condition of the Premises, including with respect to compliance with hazardous materials or other environmental laws and regulations, or acts not caused by the Grantee or its agents.

In the event of a dispute over the boundaries of the Premises, Grantor shall pay for survey and permanent boundary markers delineating the Premises.

Enforcement of the terms of this Conservation Restriction shall be at the discretion of the Grantee, and any election by the Grantee as to the manner and timing of its right to enforce this Conservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver.

G. Acts Beyond Grantor's Control. Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any action against the Grantor, its successors and assigns for any injury to or change in the Premises resulting from causes beyond the Grantor's, its successors' and assigns' control, including, but not limited to, fire, road drainage, flood, storm, natural erosion, and acts caused by trespass on the Premises not contributed to by acts or omissions of the Grantor, its successors and assigns, or from any prudent action taken by the Grantor, its successors and assigns under emergency conditions with the prior written approval of the Grantee to prevent, abate, or mitigate significant injury to the Premises resulting from such causes. Grantor and Grantee agree that in the event of damage to the Premises from acts beyond Grantor's control, that if Grantor and Grantee mutually agree that it is desirable that the Premises be restored, Grantor and Grantee will cooperate in attempting to restore the Property if feasible.

H. Duration and Assignability. The burdens of this Conservation Restriction shall run with the Premises for a term of ninety-nine (99) years and shall be enforceable against the Grantor, and its successors and assigns holding any interest in the Premises. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the enforceability of this Conservation Restriction; and the Grantor on behalf of its successors and assigns, may appoint the Grantee as their attorney-in-fact to execute, acknowledge and deliver any such instruments on their behalf. Without limiting the foregoing, the Grantor and its successors and assigns agree themselves to execute any such instrument upon request.

The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances from time to time:

5. Grantor gives its prior approval to such assignment in writing, which approval shall not be unreasonably withheld;
  6. as a condition of any assignment, the Grantee requires that the purpose of this Conservation Restriction continue to be carried out;
  7. the assignee, at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the General Laws if applicable as a donee eligible to receive this Conservation Restriction directly; and,
  8. the Grantee complies with the provisions required by Article 97 of the amendments to the State Constitution, if applicable.
- I. Subsequent Transfers. The Grantor, its successors and assigns agree to incorporate by reference the terms of this Conservation Restriction in any deed or other recordable legal instrument by which Grantor, its successors and assigns convey any interest in all or a portion of the Premises, including, without limitation, a leasehold interest. Grantor, its successors and assigns, further agree to give written notice to the Grantee of the voluntary transfer of any interest at least thirty (30) days prior to the date of such transfer. Failure of the Grantor, its successors and assigns to do so shall not impair the validity of this Conservation Restriction or limit its enforceability in any way.
- J. Termination of Rights and Obligations. Notwithstanding anything to the contrary contained herein, the rights and obligations under this Conservation Restriction of any party holding an interest in the Premises terminate upon transfer of that party's interest, except that liability for acts or omissions occurring prior to the transfer, and liability for the transfer itself if the transfer is a violation of this Conservation Restriction, shall survive the transfer.
- K. Estoppel Certificates. Upon request by the Grantor, its successors or assigns, the Grantee shall, upon thirty (30) days prior written notice, execute and deliver to the Grantors any document, including an estoppel certificate, if appropriate, which certifies the

Grantor's, its successors' and assigns' compliance with any obligation of the Grantor contained in this Conservation Restriction, and which otherwise evidences the status of this Conservation Restriction as may be requested by the Grantor, its successors and assigns.

L. Amendment. If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, the Grantor, its successors and assigns and the Grantee may by mutual consent amend in writing any term or provision hereof provided that this Conservation Restriction as thus amended complies with the then-applicable requirements of Article 97 of the Amendments to the Constitution of the Commonwealth of Massachusetts; the then-applicable requirements Massachusetts General Law, Chapter 184, Sections 31-33; Internal Revenue Code of 1986 Section 170(h), as amended; any gifts, grants or funding requirements; and any conservation restriction program of the Town of Barnstable, or any successors thereto, and provided that any such amendment, together with any approvals necessary to its effectiveness, including that of the Massachusetts Secretary of Energy and Environmental Affairs, shall be recorded with the Barnstable County Registry of Deeds. Any amendment shall be consistent with the purposes of this Conservation Restriction, shall not diminish the conservation values of the Premises, and shall not affect its perpetual duration.

In addition, the Grantee is not obligated to consider any amendments to this Conservation Restriction and shall not consider any amendment UNLESS all of the following conditions are met:

4. The minimum amount of amendment, as to terms, land area or structural dimensions, activity, or level of use, is proposed to accommodate the proposal;
5. Whenever possible, mitigation measures of like kind be proposed and the substitution be more advantageous to the cause of conservation;
6. There will be a net gain to conservation values offered through mitigation to the affected parcel or its immediate vicinity; and,
4. Cash values of items or areas proposed for release, amendment or mitigation may be disregarded by Grantee in the equation to determine net gain to conservation values; and,
5. The then-Grantor agrees to pay all costs involved in the amendment process.

M. Non-Merger: The parties intend that the doctrine of merger shall not apply to this conveyance, and that no transfer of Grantor's or Grantee's interest in the Premises and no acquisition of any additional interest in the Premises by Grantor or Grantee shall cause this Conservation Restriction to merge with the fee or have the effect of causing any of the terms hereof to be rendered unenforceable by reason of the so-called doctrine of merger. If it is determined that a transfer or assignment of any interest will result in a merger, no deed shall be effective until this Conservation Restriction has been assigned or other action taken to avoid a merger and preserve the terms and enforceability of this Conservation Restriction. It is the intent of the parties that the Premises will be subject to the terms of this Conservation Restriction for the term set forth in Paragraph H, notwithstanding any merger.

N. Subordination of Mortgage: Grantor shall record at the Barnstable County Registry of Deeds simultaneously with this Conservation Restriction all documents necessary to subordinate any mortgage, promissory note, loan, equity credit line, refinance assignment of mortgage, lease, financing statement or any other agreement which gives rise to a surety interest affecting the Premises.

P. Miscellaneous Provisions.

7. Controlling Law. The interpretation and performance of this Conservation Restriction shall be governed by the laws of the Commonwealth of Massachusetts.

8. Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Restriction shall be liberally construed in favor of the grant to effect the purposes of this Conservation Restriction and the policies and purposes of the Grantee. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Restriction that would render the provision valid shall be favored over any interpretation that would render it invalid.
9. Severability. If any provision of this Conservation Restriction shall to any extent be held invalid, the remainder shall not be affected.
10. Entire Agreement. This obligation sets forth the entire agreement of the parties with respect to the Conservation Restriction and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Restriction, all of which are merged herein.
11. Joint Obligation. The obligations imposed by this Conservation Restriction upon the parties that together comprise "Grantor" shall be joint and several.
12. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

P. Effective Date. This Conservation Restriction shall be timely recorded. Grantor and Grantee intend that the restrictions arising hereunder take effect on the day and year this Conservation Restriction is registered in the official records of the Barnstable County Registry of Deeds.

No Massachusetts deed excise tax stamps are required by Chapter 64D, Section 1, as a municipality is a party to this instrument.

Executed under seal this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**Grantor:**

**Stuborn Limited Partnership**

\_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS  
*Notary, etc.*

**2012-076 AUTHORIZING THE TOWN MANAGER TO ACCEPT A DECLARATION OF RESTRICTIVE COVENANT – 153 FREEZER ROAD, BARNSTABLE – INTRO: 03/01/2012**

Upon motion duly made and seconded it was  
**RESOLVED:** That the Town Manager is hereby authorized to accept on behalf of the Town of Barnstable a Declaration of Restrictive Covenant having a term of ninety-nine (99) years covering the entire property located at 153 Freezer Road, Barnstable, MA and being shown

on a plan of land entitled "81-X Plan of Land 153 Freezer Road in Barnstable, Massachusetts dated October 27, 2011 drawn by BSC Group".

**VOTE: 13 yes**

### **Declaration of Restrictive Covenant**

This is a Declaration of Restrictive Covenant by Stuborn Limited Partnership, Stuart Bornstein, General partner, of 297 North Street, Hyannis, MA 02601 (hereinafter, "Grantor", and

Whereas, the Grantor is the owner of real estate described in a certain deed recorded in the Barnstable County Registry of Deeds in Book 12037, Page 257, and said property is shown on a plan of land entitled "Plan of Land in Barnstable United Cape Cod Cranberry Co.", recorded at said Registry in Plan Book 220, Page 85 and is also shown on a plan entitled "81-X Plan of Land 153 Freezer Road in Barnstable, Massachusetts dated October 27, 2011 drawn by BSC Group" recorded in Plan Book \_\_\_\_\_, Page \_\_\_\_\_ (hereinafter, the "Property"), and

Whereas, the Grantor petitioned the Town of Barnstable Zoning Board of Appeals ("ZBA") for certain zoning relief related to the Property in case no. 2011-008, the requested relief was approved by the ZBA on October 26, 2011, and the decision has become final and is now recorded at said Registry in Book 25893, Page 157, and

Whereas, the Grantor intends to utilize the property as a single-family home and to develop a private dock with floats, and related supporting equipment and infrastructure as part of the conceptual development plan for the property , and

Whereas, the Town seeks assurance that the property will remain in single family use for a period of at least 99 years, and

Whereas, after consultation with his Counsel, the Grantor has volunteered to offer this Restrictive Covenant as an inducement to grant the zoning relief requested and as an assurance to the Town that the property will be used in accordance with the decisions of both the ZBA and the Order of Conditions solely for personal use, and not commercial use.

Now, therefore, the Grantor does hereby make and declare the Property subject to the following restrictive covenant and provisions:

#### **8. RESTRICTION.**

The Grantor may only construct one single-family home with the delineated accessory structures and a private dock development that are in all respects in substantial, material conformity with the final plans submitted to and approved by the ZBA and which are incorporated by reference in the decision referenced above. Further, the property shall not be divided, or sub-divided, or otherwise converted into a condominium form of ownership or used for other than one single-family residence.

Notwithstanding any subsequent decision of any local, state or federal board or agency having jurisdiction over any structures, uses, or activities on the property, including, without limitation, the ZBA and the Conservation Commission, the single-family home and private dock development shall be used solely for personal, non-commercial use to accommodate the personal needs of and equipment owned by the Grantor. Neither shall be materially

changed in any respect and the footprint to be occupied by the home and structures shall be confined at all times to the footprints set forth in the plans accompanying the decision of the ZBA referenced above. In addition to commonly understood construction and meaning of such words, "Non-commercial use" shall mean the express prohibition at any and all times of renting or use of such facilities in exchange for any monies or other consideration, except that the entire property may be rented for use as a single-family residence in accordance with any Rental Ordinance of the Town of Barnstable as may be in effect from time to time.

9. Benefit.

The provisions contained herein shall run with the land and shall bind the Grantor and the Grantor's heirs, devisees, legal representatives, successors, and assigns.

These provisions contained herein are intended to benefit the Town's abutting land, adjacent waters, and all Town land now or hereafter fronting on Barnstable Harbor, including that area known as Sandy Neck.

10. Duration.

This restrictive covenant shall expire ninety-nine (99) years from the date of execution of this covenant, and shall have legal significance pursuant to, be governed by and interpreted under the provisions of Massachusetts General Laws, Chapter 184, § 26.

11. Extension, Amendment, or Termination.

This restriction shall be held by the inhabitants of the Town of Barnstable, acting by and through its chief executive officer. It may only be extended, amended, or terminated with the express approval of the Barnstable Town Council or its successor.

12. Enforcement.

The Town shall have the option of seeking enforcement of these restrictive covenants via all remedies available to it in law and in equity in any forum of competent jurisdiction. In the event that the Town is successful in prosecuting or defending any actions relating to this covenant, the Town shall be entitled to recover all attorney's fees and costs associated with the prosecution or defense of such actions.

13. No Waiver.

In the event that the Town shall fail to enforce any provision hereof on any one or more occasions either intentionally or through oversight, or elects to waive enforcement thereof in any one or more instances, such action or failure to act shall not invalidate nor prejudice the Town's right to do so in the future with respect to the same or different rights created by these covenants and such failure or waiver shall not invalidate any other provision hereof which shall remain in full force and effect.

14. Severability.

In the event that any provision of this restrictive covenant shall be deemed void and/or unenforceable for any reason by a forum of competent jurisdiction, all other provisions hereof shall remain in full force and effect.

Witness my hand and seal this \_\_\_\_ day of \_\_\_\_\_ 2012.

\_\_\_\_\_  
, Grantor

COMMONWEALTH OF MASSACHUSETTS

*Notary, etc.*

## **TOWN MANAGER COMMUNICATIONS**

Acting Manager Lynch announced the police contract was settled. He gave an update on the Citizens Resource Line. He visited with Senators Murray and Wolf and other legislators regarding support for dredging at Barnstable Harbor and is hopeful. He said the Sewer Trust Fund legislation now appears that it may move. The Capital budget is going forward.

## **ADJOURNMENT**

Upon motion duly made and seconded it was voted

**To adjourn.**

**ADJOURNED: at 9:25 p.m.**

Respectfully submitted,

Linda E. Hutchenrider, MMC/CMMC  
Town Clerk/Town of Barnstable

### Attachments:

Exhibit A	Copy of email from Barnstable CFG
Exhibit B	Notice on meeting on mental health and substance abuse
Exhibit B-1	Notice on Marstons Mills Village Association meeting
Exhibit C	Copy of page from MTA new archive from web
Exhibit D	Copy of memo from William Cole to Town Manager Search Sub-Com.
Exhibit E	81-X Plan of Land 153 Freezer Rd., Barnstable, MA

**NEXT REGULAR MEETING: March 15, 2012**

