



Town of Barnstable  
Town Council  
James H. Crocker Jr. Hearing Room  
367 Main Street, 2<sup>nd</sup> floor,  
Hyannis, MA 02601  
Office 508.862.4738 • Fax 508.862.4770  
E-mail: [council@town.barnstable.ma.us](mailto:council@town.barnstable.ma.us)

**TOWN COUNCIL MEETING AGENDA**  
**Including Joint Meeting with the School Committee**  
**October 20, 2022**  
**7:00 PM**

Councillors:

Matthew Levesque  
President  
Precinct 10

Paula Schnepf  
Vice President  
Precinct 12

Gordon Starr  
Precinct 1

Eric R. Steinhilber  
Precinct 2

Betty Ludtke  
Precinct 3

Nikolas Atsalis  
Precinct 4

Paul Cusack  
Precinct 5

Paul C. Neary  
Precinct 6

Jessica Rapp Grasseti  
Precinct 7

Jeffrey Mendes  
Precinct 8

Tracy Shaughnessy  
Precinct 9

Kristine Clark  
Precinct 11

Jennifer L. Cullum  
Precinct 13

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

The October 20, 2022 Town Council Meeting of the Barnstable Town Council shall be conducted remotely and shall be physically closed to the public. Alternative public access shall be provided as set forth below.

1. The meeting will be televised live via Comcast Channel 18 or may be accessed via the Channel 18 live stream on the Town of Barnstable's website:

<http://streaming85.townofbarnstable.us/CablecastPublicSite/watch/1?channel=1>

2. Written Comments may be submitted to:

[https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town\\_Council/Agenda-Comment.asp](https://tobweb.town.barnstable.ma.us/boardscommittees/towncouncil/Town_Council/Agenda-Comment.asp)

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

Join Zoom Meeting <https://zoom.us/j/95902034254> Meeting ID: 959 0203 4254  
US Toll-free 888 475 4499

**PUBLIC SESSION**

**1. ROLL CALL**

**2. PLEDGE OF ALLEGIANCE**

**3. MOMENT OF SILENCE**

**4. PUBLIC COMMENT**

**5. COUNCIL RESPONSE TO PUBLIC COMMENT**

**6. JOINT MEETING WITH SCHOOL COMMITTEE**

**School Committee Meeting – Call to Order and Roll Call**

Joint meeting of the Town Council and School Committee to review the financial condition of the town, revenue and expenditure forecasts and other relevant information in order to develop a coordinated budget

**Adjournment of School Committee Meeting**

**7. TOWN MANAGER COMMUNICATIONS**

- Elizabeth Jenkins, Director of Planning and Development, Introduction to Proposed Downtown Hyannis Zoning Revisions

**8. ACT ON PUBLIC SESSION MINUTES**

- Approve Public Session Minutes: October 06, 2022

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

**10. RECONSIDERATION OF TOWN COUNCIL AGENDA ITEM 2022-159 (amending the  
separation requirements of the Medical Marijuana Overlay District)**

- Motion to waive the provisions of Town Council Rule 6F to allow a motion for reconsideration of Item No. 2022-159 to be made at this meeting
- Motion to reconsider Item No. 2022-159 and readvertise the Public Hearing on that item to be held on November 17, 2022

**11. ORDERS OF THE DAY**

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

**12. ADJOURNMENT**

**NEXT REGULAR MEETING: November 03, 2022**

| ITEM NO.  | INDEX TITLE  | PAGE |
|-----------|--|------|
| <b>A.</b> | <b>OLD BUSINESS</b>  |      |
| 2023-032  | Appointments to a Board/Committee/Commission: <b>Housing Committee:</b> Emily Cornett as a regular member to a term expiring 06/2024; <b>Waterways Committee:</b> Gary Shramek as a regular member to a term expiring 06/2025 <b>(May be acted upon) (Roll Call Majority)</b>  |      |
| 2023-033  | Supplemental Appropriation Order in the amount of <b>\$19,350</b> for the Barnstable Police Department Fiscal Year 2023 Operating Budget for the purpose of funding a part-time Police Detail Coordinator position <b>(Public Hearing) (Roll Call Majority Full Council)</b>   |      |
| 2023-034  | Appropriation Order in the amount of <b>\$15,000</b> with such funds to be deposited into a dedicated account established for the purpose of acquiring property interests subject to the provisions of Article 97 of the Amendments to the Massachusetts Constitution <b>(Public Hearing) (Roll Call Majority Full Council)</b>  |      |
| 2023-035  | Appropriation and Loan Order in the amount of <b>\$400,000</b> for the purpose of funding the Lead Service Line Inventory and Replacement Plan Development <b>(Public Hearing) (Roll Call 2/3 Full Council)</b>  |      |
| <b>B.</b> | <b>NEW BUSINESS</b>  |      |
| 2023-041  | Authorization to expend a Fiscal Year 2023 Municipal Road Safety Grant in the amount of <b>\$65,000</b> from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security <b>(May be acted upon) (Roll Call Majority)</b>   |      |
| 2023-042  | Authorization to expend a Federal Fiscal Year 2022 Edward Byrne Memorial Justice Assistance Grant Program grant in the amount of <b>\$38,740</b> from the U.S. Department of Justice, with <b>\$18,183</b> allocated to the Town of Barnstable <b>(May be acted upon) (Roll Call Majority)</b>   |      |
| 2023-043  | Approval of a Conservation Restriction between Felicia R. Penn and Jocelyn Penn Bowman, as Co-Trustees of The Leona Penn Revocable Trust- 1989 to the Barnstable Land Trust of over 1.69 acres of land at 139 Tonela Lane in the village of Cummaquid, the land is shown as Barnstable Assessor's Map 336 Parcel 23 <b>(May be acted upon) (Roll Call Majority)</b>                                  |      |
| 2023-044  | A Resolution that the Town Council petition the County Commissioners of Barnstable County to formally discontinue five sections of County Highway, namely, the entire length of Scudder Avenue, which, combined, extend from Park Place to the West End Rotary <b>(May be acted upon) (Roll Call Majority)</b>   |      |
| 2023-045  | A Resolution that the Town Council petition the County Commissioners of Barnstable County to formally discontinue three sections of County Highway, namely, the entire length of Craigville Beach Road, which, combined, extend from Scudder Avenue to South Main Street and also includes Smith Street, formerly a portion of Craigville Beach Road <b>(May be acted upon) (Roll Call Majority)</b> |      |
| 2023-046  | Authorization of a Housing Development Incentive Program Tax Increment Exemption Agreement Between the Town of Barnstable and Seashore Homes, Inc. for 8 New Market Rate Residential Units Located at 63 Main Street, Hyannis MA <b>(First Reading) (Refer to Second Reading 11/03/2022)</b>   |      |

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

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-032**  
**INTRO: 10/06/2022, 10/20/2022**

**2023-032 APPOINTMENTS TO A BOARD/COMMITTEE/COMMISSION**

**RESOLVED:** That the Town Council appoints the following individuals to a multiple-member Board/Committee/Commission: **Housing Committee:** Emily Cornett as a regular member to a term expiring 06/2024; **Waterways Committee:** Gary Shramek as a regular member to a term expiring 06/2025

**SPONSOR:** Appointment Committee Members

| DATE              | ACTION TAKEN                                 |
|-------------------|--|
| <u>10/06/2022</u> | <u>Referred to Second Reading 10/20/2022</u> |

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

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-033**  
**INTRO: 10/06/2022, 10/20/2022**

**2023-033 SUPPLEMENTAL APPROPRIATION ORDER IN THE AMOUNT OF \$19,350 FOR THE BARNSTABLE POLICE DEPARTMENT FISCAL YEAR 2023 OPERATING BUDGET FOR THE PURPOSE OF FUNDING A PART-TIME POLICE DETAIL COORDINATOR POSITION**

**ORDERED:** That the amount of **\$19,350** be raised from current year revenue and added to the Fiscal Year 2023 Barnstable Police Department Operating Budget of \$16,423,419 appropriated under Town Council Order 2022-162, resulting in a revised Fiscal Year 2023 Operating Budget of \$16,442,769

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

| DATE              | ACTION TAKEN                              |
|-------------------|---|
| <u>10/06/2022</u> | <u>Refer to Public Hearing 10/20/2022</u> |

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

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-033

INTRO: 10/06/2022, 10/20/2022

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Matthew Sonnabend, Chief of Police  
**DATE:** October 06, 2022  
**SUBJECT:** Supplemental Appropriation Order in the amount of **\$19,350** for the Barnstable Police Department Fiscal Year 2023 Operating Budget for the purpose of funding a part-time Police Detail Coordinator position.

**BACKGROUND:** A police detail is the assignment of one or more officers for a particular and dedicated duty. Details are typically present at any road work where traffic must be diverted or events with special safety or security concerns. The Barnstable Police Department schedules approximately 5,000 police details annually, generating approximately \$2 Million in gross revenue. In recent years the number of detail requests has increased exponentially, largely attributable to an uptick in road-work-related projects. Currently, an officer assigned to the department's Traffic Division spends approximately 4 hours a day in booking and making arrangements for details. Road construction projects and large community events entail a great deal of planning with construction companies, the Department of Public Works, other town departments, and vendors to ensure that adequate detail coverage can be fully scheduled to meet the public safety needs of the project. It would be more beneficial to the community to have a traffic officer out on the road performing traffic-related duties such as speed monitoring and assistance to motorists involved in accidents rather than assigned indoors working on the coordination of police details. To address this concern, the Police Department has developed a job description for a part-time Police Detail Coordinator, who would assist on the coordination of police details.

**ANALYSIS:** The Town is allowed by law to add an administrative fee of ten percent to every police detail bill. Revenue collected from this administrative fee goes into the Town's General Fund. This fee is designed to cover the administrative costs incurred by the Town for administering the outside detail program. A job description for a Police Detail Coordinator has been developed and the position will be part-time at 19.5 hours per week. Due to the part time status the position will not be eligible for benefits, nor will it be union affiliated. Initially, the incumbent in this position will work Monday to Friday between 12:30 and 4:30pm, but the hours may differ during the day depending upon various factors, such as the time of year.

**FISCAL IMPACT:** Due to an increase in outside detail activity the Town has realized an increase in the administrative fee revenue which will more than offset the cost of this position. The Fiscal Year 2023 revenue estimated will be increased by a corresponding amount for the cost of this position resulting in no need for a corresponding budget reduction elsewhere.

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

**STAFF ASSISTANCE:** Matthew K. Sonnabend, Chief of Police; Troy Perry, Traffic Unit Sergeant; Anne E. Spillane, Finance & Support Services

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-034  
INTRO: 10/06/2022, 10/20/2022**

**2023-034 APPROPRIATION ORDER IN THE AMOUNT OF \$15,000 WITH SUCH FUNDS TO BE DEPOSITED INTO A DEDICATED ACCOUNT ESTABLISHED FOR THEPURPOSE OF ACQUIRING PROPERTY INTERESTS SUBJECT TO THE PROVISIONS OF ARTICLE 97 OF THE AMENDMENTS TO THE MASSACHUSETTS CONSTITUTION**

**ORDERED:** That the amount of **\$15,000** be raised from current year revenue within the sewer enterprise fund and deposited into a dedicated account for the purpose of acquiring property interests subject to the provisions of Article 97 of the Amendments to the Massachusetts Constitution in accordance with the terms of a Declaration of Restriction recorded September 4, 2008, in the Barnstable County Registry of Deeds in Book 23135, Page 316, for the property at 725 Main Street, Hyannis, Massachusetts, which requires that the appraised value of the sewer easement on 725 Main Street be placed in such a dedicated account prior to utilizing the sewer easement for sewer purposes.

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

| DATE  | ACTION TAKEN |
|-------|--------------|
| _____ | _____        |
| _____ | _____        |

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

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-034  
INTRO: 10/06/2022, 10/20/2022

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** October 06, 2022  
**SUBJECT:** Appropriation Order in the amount of **\$15,000** with such funds to be deposited into a dedicated account established for the purpose of acquiring property interests subject to the provisions of Article 97 of the Amendments to the Massachusetts Constitution

**BACKGROUND:** In 2002, sewer and access easements on the property at 725 Main Street, Hyannis, were conveyed to the Town, and simultaneously the property at 725 Main Street was also conveyed to the Town with the easements recorded first. The deed conveying the property provided that the grant of the property to the Town was subject to the two easements and also subject to the restrictions set forth in Chapter 293 of the Acts of 1998, as amended (the “Act”), which established the Cape Cod Open Space Land Acquisition Program (the “Land Bank Program”). The Land Bank Program provided the funding for this acquisition and required that the land may only be used for the purposes outlined in the Act, i.e., land to be retained in a natural, scenic or open condition.

In 2008, after consulting with the Attorney General’s Office, the Town recorded a Declaration of Restriction ratifying and confirming the restrictions on the property, including a declaration that the land was subject to the provisions of Article 97 of the Amendments to the Massachusetts Constitution, and requiring the Town, prior to exercising the rights granted by the sewer easement, to place the appraised value of the easement into an account reserved by the Town for the acquisition of property interests subject to the provisions of Article 97, i.e., open space purposes.

A qualified appraisal was undertaken which valued the easement as of July, 2022, at \$15,000. This appropriation will fulfill the requirements of the Declaration of Restriction and will be deposited into a restricted account for acquisition of property interests subject to the provisions of Article 97 prior to any use of the sewer easement at 725 Main Street for sewer purposes.

**ANALYSIS:** This new sewer pump proposed for 725 Main Street will replace and upgrade an existing sewer pump station located at 720 Main Street, Hyannis, which was constructed in 1972. As a result of the pump station’s age, the station is in poor condition and has reached the end of its design life. It also has reached its pumping capacity. A new, improved pump station within the sewer easement at 725 Main Street will address the capacity and condition of the 720 Main Street Pump Station and will also address the capacity restrictions of the South Street sewers by redirecting sewer flow from the intersection of South Street and Sea Street to the new pump station.

**FINANCIAL IMPACT:** There will be no net financial impact from this transaction. Funds will be raised from the current year revenue generated by the Sewer Enterprise Fund and transferred into a Town-controlled account dedicated to the acquisition of property interests subject to Article 97.

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

**STAFF ASSISTANCE:** Mark Milne, Director of Finance; Daniel W. Santos, P.E., Director of Public Works; Griffin Beaudoin, P.E., Town Engineer; Karen L. Nober, Town Attorney; Charles S. McLaughlin, Jr., Senior Counsel

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-035  
INTRO: 10/06/2022, 10/20/2022**

**2023-035 APPROPRIATION AND LOAN ORDER IN THE AMOUNT OF \$400,000 FOR THE PURPOSE OF FUNDING THE LEAD SERVICE LINE INVENTORY AND REPLACEMENT PLAN DEVELOPMENT**

**ORDERED:** That the amount of **\$400,000** be appropriated for the purpose of funding the Lead Service Line Inventory and Replacement Plan Development within the Hyannis Water System, required for compliance with the U.S Environmental Protection Agency’s Lead and Copper Rule Revisions, including the payment of costs incidental or related thereto; and that to meet this appropriation, that the Town Treasurer, with the approval of the Town Manager, is authorized to borrow \$400,000 under and pursuant to M.G.L. c. 44, §§7 or 8, or pursuant to any other enabling authority, and to issue bonds or notes of the Town therefore; and that in accordance with M.G.L. c. 44, §20, any premium received by the Town upon the sale of any bonds or notes authorized by this order, less any such premium applied to the payment of the costs of issuance of such bonds and notes, may be applied to pay such project costs, thereby reducing the amount authorized to be borrowed by this order by a like amount; and that the Town Manager is authorized to contract for and expend the appropriation made available for these purposes.

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

| DATE              | ACTION TAKEN                              |
|-------------------|---|
| <u>10/06/2022</u> | <u>Refer to Public Hearing 10/20/2022</u> |

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

# BARNSTABLE TOWN COUNCIL

ITEM# 2023-035  
INTRO: 10/06/2022, 10/20/2022

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Daniel W. Santos, P.E., Director of Public Works  
**DATE:** October 06, 2022  
**SUBJECT:** Appropriation and Loan Order in the amount of **\$400,000** for the purpose of funding the Lead Service Line Inventory and Replacement Plan Development

**BACKGROUND:** This funding request is the result of a federal requirement to develop a plan for replacement of lead service lines in the Hyannis Water System (HWS). The US EPA's Lead and Copper Rule Revisions (LCRR) requires public water systems to develop and publish a lead service line inventory, develop a replacement plan, and an updated sampling by October 2024. In addition, the Drinking Water State Revolving Funds (DWSRF) is providing 100% funding reimbursement for this work on a first come, first served basis.

**ANALYSIS:** In order to be an eligible Drinking Water SRF project and comply with the US EPA's Lead and Copper Rule Revisions, the town must first appropriate the funding for this work. This funding will be used for the development of the Lead Service Line Inventory and Replacement Plan which will identify and quantify public/private water service lines which may be source(s) of lead contamination in the HWS, and put in place a plan for their eventual replacement. While compliance with the program is required by the EPA, development of the plan will also be beneficial to the HWS by helping to modernize the inventorying of the water distribution network, help provide missing information, and aid in replacement water service line prioritization. The Hyannis Water Board unanimously approved the funding of this work during their meeting on August 16, 2022.

**FINANCIAL IMPACT:** The funding for this appropriation is provided from the issuance of a bond for the Water Supply Enterprise Fund. Future operating budgets will include any annual loan payment as a result of this bond issue and user rates will be adjusted accordingly. If the project is awarded by the DWSRF, there will be no financial impact to the Hyannis Water System rate payers.

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

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

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-041  
INTRO: 10/20/2022**

**2023-041 AUTHORIZATION TO EXPEND A FISCAL YEAR 2023 MUNICIPAL ROAD SAFETY GRANT IN THE AMOUNT OF \$65,000 FROM THE COMMONWEALTH OF MASSACHUSETTS, EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for and expend a Fiscal Year 2023 State Municipal Road Safety Grant in the amount of **\$65,000** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security, Highway Safety Division for the purpose of funding the cost of traffic enforcement mobilizations and equipment and driver education for minors.

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

DATE

ACTION TAKEN

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- Read Item
- Rational
- Council Discussion
- Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-041**  
**INTRO: 10/20/2022**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Matthew K. Sonnabend, Chief of Police  
**DATE:** October 20, 2022  
**SUBJECT:** Authorization to expend a Fiscal Year 2023 Municipal Road Safety Grant in the amount of **\$65,000** from the Commonwealth of Massachusetts, Executive Office of Public Safety and Security

**BACKGROUND:** The Department applied for and was awarded this grant in the amount of \$65,000. This funding will enable the Traffic Division to participate in five traffic mobilizations designed to target specific areas of concern with motorists as follows:

1. Winter Impaired Driving Focus (December - 2022)
2. Distracted Driving (April 2023)
3. Click It or Ticket (May 2023)
4. Summer Speed (June 2023)
5. Summer Impaired Driving Focus (August 2023 – September 2023)

This grant helps to raise awareness of both traffic safety challenges involving drinking and driving, distracted driving, and seatbelt usage. This grant also funds traffic enforcement equipment that is needed by the traffic division, as well as the cost of materials to conduct distracted driver and drunk driver education to junior high and high school students. This MRS grant will also fund the new Child Passenger Seat Safety Program (CPS).

**ANALYSIS:** Acceptance of this grant will enable the Department to continue to participate in these important traffic safety mobilizations, as we have in previous years. Traffic related concerns continue to remain as one of our top priorities.

**GRANT DETAIL:** \$47,963.30 of this grant award is allocated entirely to traffic enforcement; \$4,002.52 will be allocated to four handheld Stalker Radar units; and \$3,739.60 will be allocated for pedestrian and bicycle safety enforcement and safety. \$9,294.58 will be allocated for non-enforcement CPS activates and training and driver education for minors using Roadster Pedal Kart and substance consumption goggles.

**FISCAL IMPACT:** This grant funds the overtime costs of conducting the five mobilizations, equipment, educational materials, training, and community events. There is no required match and the overtime costs, equipment, and materials of the grant will be reimbursed following the completion of each mobilization and submission of payment for materials and equipment.

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

**STAFF ASSISTANCE:** Matthew K. Sonnabend, Chief of Police; Anne Spillane, Finance Director, Barnstable Police Department; Lena Bevilacqua, Police Grant Coordinator

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-042  
INTRO: 10/20/2022**

**2023-042 AUTHORIZATION TO EXPEND A FEDERAL FISCAL YEAR 2022 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM GRANT IN THE AMOUNT OF \$38,740 FROM THE U.S. DEPARTMENT OF JUSTICE, WITH \$18,183 ALLOCATED TO THE TOWN OF BARNSTABLE**

**RESOLVED:** That the Town Council does hereby authorize the Town Manager to contract for and expend a Federal Fiscal Year 2022 Edward Byrne Memorial Justice Assistance Grant Program grant from the U.S. Department of Justice in the amount of **\$38,740** for the purpose of funding specific policing services and programs under a disparate certification grant that includes the towns of Barnstable, Yarmouth and Falmouth; and that, in accordance with the terms and conditions of the grant, the Barnstable Police Department shall serve as grant administrator and fiscal agent and shall distribute the grant funds on a reimbursement basis as follows: up to **\$18,183** to the Town of Barnstable; up to \$10,516 to the Town of Falmouth; and up to \$10,041 to the Town of Yarmouth.

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

DATE

ACTION TAKEN

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- Read item
- Rationale
- Council Discussion
- Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-042**  
**INTRO: 10/20/2022**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Matthew K. Sonnabend, Chief of Police  
**DATE:** October 20, 2022  
**SUBJECT:** Authorization to expend a Federal Fiscal Year 2022 Edward Byrne Memorial Justice Assistance Grant Program grant in the amount of **\$38,740** from the U.S. Department of Justice, with **\$18,183** allocated to the Town of Barnstable

**BACKGROUND:** The Police Department applied for and was awarded Federal Fiscal Year 2022 Byrne Memorial Justice Assistance Grant: Local Solicitation from the United States Department of Justice in the amount of \$38,740. The grant has been deemed to be a disparate certification allocation to be distributed among three towns as outlined below based on a prescribed grant formula amount for each town and the Town of Barnstable Police Department will act as the grant administrator and fiscal agent for all towns:

**Town of Barnstable:** **\$18,183** Currently there are two open positions on CCRLEC SWAT waiting to be filled by the Barnstable Police Department. Each officer will need initial equipment, firearms, clothing, first aid kits, and lights to attach to their firearms. Along with outfitting two new officers, the Barnstable Police needs Aimpoint Pistol Optics that will be mounted on 10 SWAT Barnstable Police Department officer's department issued pistols and the non-SWAT firearms instructors.

**Town of Falmouth:** **\$10,516** to be expended on the purchase of two pieces of traffic investigative tools. The first is a Bosch Crash Data Retriever (CDR) and the second is a Bosch CDR Upgrade kit that will be utilized by newly trained officers in crash reconstruction investigations. The CDR equipment is required for accident reconstruction and newly trained officers will be able to perform accident reconstruction investigation in the town of Falmouth.

**Town of Yarmouth:** **\$10,041.** to be expended on personnel overtime for leadership training. There are four different types of leadership training that Yarmouth Police Department would like to utilize. These programs will allow the department to train and utilize their leadership programs at all levels; the LEEDA FBI Leadership program, the Dean Crips Leaders Helping Leaders Program, The Command Leadership Institute Program, and The Massachusetts Police Training Council Leadership Program.

**ANALYSIS:** The acceptance of this grant will allow the aforementioned police departments to purchase necessary equipment and program not currently funded in their respective municipal budgets

**FISCAL IMPACT:** There is no matching funding required for this grant. This is a reimbursement grant as expenses are incurred up to the total dollar amount of the grant. The Town of Barnstable Police Department will serve as the fiscal agent and grant administrator for all the towns and will be responsible for all grant oversight, grant reporting, reimbursement of funds and draw downs.

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

**STAFF ASSISTANCE:** Matthew K. Sonnabend, Chief of Police; Anne Spillane, Finance Director, Barnstable Police Department; Lena Bevilacqua, Police Grant Coordinator

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-043  
INTRO: 10/20/2022**

**2023-043 APPROVAL OF A CONSERVATION RESTRICTION BETWEEN FELICIA R. PENN AND JOCELYN PENN BOWMAN, AS CO-TRUSTEES OF THE LEONA PENN REVOCABLE TRUST- 1989 TO THE BARNSTABLE LAND TRUST OF OVER 1.69 ACRES OF LAND AT 139 TONELA LANE IN THE VILLAGE OF CUMMAQUID**

**RESOLVED:** That, pursuant to G.L. c. 184, §§ 31-33, the Town Council does hereby approve and authorize the Town Manager to sign on behalf of the Town of Barnstable the Conservation Restriction between Felicia R. Penn and Jocelyn Penn Bowman, as co-Trustees of The Leona Penn Revocable Trust-1989 (grantor), and the Barnstable Land Trust, Inc. (grantee), over approximately 1.69 acres of land located at 139 Tonela Lane in the village of Cummaquid, shown on Town of Barnstable Assessors' Map 336, Parcel 23, for conservation purposes.

**SPONSOR:** Councilor Gordon Starr, Precinct 1

DATE

ACTION TAKEN

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- Read item
- Rationale
- Council Discussion
- Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-043**  
**INTRO: 10/20/2022**

## SUMMARY

**TO:** Town Council  
**FROM:** Kate Connolly, Assistant Town Attorney  
**DATE:** October 20, 2022  
**SUBJECT:** Approval of a Conservation Restriction between Felicia R. Penn and Jocelyn Penn Bowman, as Co-Trustees of The Leona Penn Revocable Trust- 1989 to the Barnstable Land Trust of over 1.69 acres of land at 139 Tonela Lane in the village of Cummaquid. The land is shown as Barnstable Assessor's Map 336 Parcel 23

**SUMMARY:** All Conservation Restrictions (CRs) held by non-profits must be approved by the Town (and the State) in which the subject property sits under G.L. c. 184, ss. 31-33. Therefore, Town Council action is needed for the Town to approve the CR. This item has been placed on the agenda for the Council's approval of a conservation restriction (CR) to be granted to the Barnstable Land Trust, Inc. by Felicia R. Penn and Jocelyn Penn Bowman, as co-Trustees of The Leona Penn Revocable Trust-1989, over approximately 1.69 acres of land located at 139 Tonela Lane in the village of Cummaquid. The land is shown as Barnstable Assessor's Map 336 Parcel 23.

**BACKGROUND:** The Penn Family has owned the property for forty-six years. They have a home on the abutting 1 acre property, and propose to donate a perpetual conservation restriction on this 1.69 acre property to Barnstable Land Trust (BLT). They were qualified under the State tax credit program in 2019 and would donate the CR in 2022.

The property contributes to the protection of the scenic and natural character of Cummaquid on Barnstable Harbor, and the protection of the property will enhance the open-space value of these and nearby lands. The property abuts land already conserved by the Barnstable Land Trust on the western boundary of the property which creates an open space corridor that extends across Indian Trail to a large historic farm whose shoreline is protected by Conservation Restrictions.

The property consists of a combination of former farmland, wetland, upland forest, shrub land/thicket, a small pond and a stream - varied habitats within the parcel which together with the adjacent 2.18-acre Barnstable Land Trust property along the western boundary, creates a natural corridor covered by pine-oak forest, with occasional eastern red cedars, red maple and cherry trees. This corridor continues through forested land, honeysuckle/catbrier thicket to the west across quiet Indian Trail Road, and additional farmland and forest. The 1.69-acre property therefore is part of a larger continuum of open space that enhances its ecological value and impact.

By maintaining this property as undeveloped open space, the functioning coastal wetland which filters runoff from roads and homes in the area will continue to benefit Barnstable Harbor. Protection of the stream and pond enhance the biodiversity of the area, by supporting nursery grounds for freshwater invertebrates, amphibians and reptiles, as well as provide drinking water for birds and mammals.

Public access is being granted under the CR for passive recreational activities.

**ANALYSIS:** This proposed conservation restriction conforms to the Open Space Policy of the Town, adopted in 1981, which "encouraged grants of conservation restrictions" which yielded "benefits to the Town," and furthers the Town of Barnstable's 2018 Update to its Open Space Plan.

Specifically, the Conservation Restriction has the following public benefits and will:

- ◆ increase the amount of protected open space in town;
- ◆ preserve important wildlife habitat;
- ◆ prevent the disturbance of wetlands;
- ◆ preserve the scenic quality and character of this undisturbed area.

**APPROVALS:** The Land Acquisition and Preservation Committee approved the Conservation Restriction on May 9, 2022. The Conservation Commission voted its approval on June 14, 2022.

**FISCAL IMPACT:** There is no fiscal impact on the general fund.

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

**STAFF ASSISTANCE:** Kate Connolly, Assistant Town Attorney

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-044  
INTRO: 10/20/2022**

**2023-044 A RESOLUTION THAT THE TOWN COUNCIL PETITION THE COUNTY COMMISSIONERS OF BARNSTABLE COUNTY TO FORMALLY DISCONTINUE FIVE SECTIONS OF COUNTY HIGHWAY, NAMELY, THE ENTIRE LENGTH OF SCUDDER AVENUE, WHICH, COMBINED, EXTEND FROM PARK PLACE TO THE WEST END ROTARY**

**RESOLVED:** That, pursuant to General Laws Chapter 82, Section 5, the Town Council petition the County Commissioners of Barnstable County to formally discontinue five sections of County Highway, these five sections consisting of the entire length of Scudder Avenue, as described in five (5) Orders of Taking by the Barnstable County Commissioners, as follows:

The first section is a 1924 Barnstable County Taking, being recorded in the Barnstable County Registry of Deeds in Book 402, Page 352, dated April 4, 1924, also shown on a Plan of Land recorded in said Registry in Plan Book 12, Page 19;

The second section is a 1927 Barnstable County Taking, being recorded in the Barnstable County Registry of Deeds in Book 451, Page 17, dated October 27, 1927, also shown on a Plan of Land recorded in said Registry in Plan Book 21, Page 129;

The third section is a 1930 Barnstable County Taking, being recorded in the Barnstable County Registry of Deeds in Book 476, Page 381, dated September 27, 1930, also shown on a Plan of Land recorded in said Registry in Plan Book 42, Page 29;

The fourth section is a 1937 Barnstable County Taking, being recorded in the Barnstable County Registry of Deeds in Book 525, Page 91, dated February 9, 1937, also shown on a Plan of Land recorded in said Registry in Plan Book 54, Page 77; and

The fifth section is a 1937 Barnstable County Taking, being recorded in the Barnstable County Registry of Deeds in Book 526, Page 95, dated February 9, 1937, also shown on a Plan of Land recorded in said Registry in Plan Book 54, Page 79.

It is the intent thereby to render said sections of the County Highway a Town way by operation of G.L. c. 82, § 5; and further, that said petition request that the discontinued sections of said County highway remain a public way, and that the Town Manager be authorized to execute and deliver any documents on behalf of the Town necessary to effectuate this Resolve.

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

| DATE  | ACTION TAKEN |
|-------|--------------|
| _____ | _____        |
| _____ | _____        |

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

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

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-045  
INTRO: 10/20/2022**

**2023-045 A RESOLUTION THAT THE TOWN COUNCIL PETITION THE COUNTY COMMISSIONERS OF BARNSTABLE COUNTY TO FORMALLY DISCONTINUE THREE SECTIONS OF COUNTY HIGHWAY, NAMELY, THE ENTIRE LENGTH OF CRAIGVILLE BEACH ROAD, WHICH, COMBINED, EXTEND FROM SCUDDER AVENUE TO SOUTH MAIN STREET AND ALSO INCLUDES SMITH STREET, FORMERLY A PORTION OF CRAIGVILLE BEACH ROAD**

**RESOLVED:** That, pursuant to General Laws Chapter 82, Section 5, the Town Council petition the County Commissioners of Barnstable County to formally discontinue three sections of County Highway, these three sections consisting of the entire length of Craigville Beach Road, also including Smith Road (formerly a portion of Craigville Beach Road) as described in three (3) Orders of Taking by the Barnstable County Commissioners, as follows:

The first section is a 1927 Barnstable County Taking, being recorded in the Barnstable County Registry of Deeds in Book 451, Page 17, dated October 27, 1927, also shown on a Plan of Land recorded in said Registry in Plan Book 21, Page 129;

The second section is a 1931 Barnstable County Taking, being recorded in the Barnstable County Registry of Deeds in Book 480, Page 30, dated February 9, 1931, also shown on a Plan of Land recorded in said Registry in Plan Book 43, Page 13; and

The third section is a 1962 Barnstable County Taking, being recorded in the Barnstable County Registry of Deeds in Book 1153, Page 444, dated April 13, 1962, also shown on a Plan of Land recorded in said Registry in Plan Book 169, Page 31.

It is the intent thereby to render said sections of the County Highway a Town way by operation of G.L. c. 82, § 5; and further, that said petition request that the discontinued sections of said County highway remain a public way, and that the Town Manager be authorized to execute and deliver any documents on behalf of the Town necessary to effectuate this Resolve.

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

| DATE  | ACTION TAKEN |
|-------|--------------|
| _____ | _____        |
| _____ | _____        |

- Read item
- Rationale
- Council Discussion
- Move/Vote

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-045**  
**ITEM# 2023-044**  
**INTRO: 10/20/2022**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Charles McLaughlin, Senior Counsel  
**DATE:** October 20, 2022  
**SUBJECT:** Two Resolutions that the Town Council petition the County Commissioners of Barnstable County to formally discontinue Craigville Beach Road in its entirety, including a portion thereof now known as Smith Street, and to formally discontinue Scudder Avenue in its entirety.

**BACKGROUND:** Craigville Beach Road, including a portion of what is now known as Smith Street, was laid out as a county road in the 1930's as a county way as was Scudder Avenue. Neither Craigville Beach Road or Scudder Avenue have been maintained by the County for generations and, to accommodate the Town's sewer expansion program as well as other potential uses of these two roads it is necessary to request that the County abandon them and that the Town take these roads over as public roads and that the Town agree to maintain them as such.

**ANALYSIS:** Craigville Beach Road and Scudder Avenue are vital in-road routes for sewer lines that will be installed by the Town. State statute, G.L. c. 82, §5, establishes a clear procedure for obtaining this discontinuance, via petition by a town to a county requesting that the county discontinue a county way (or a section thereof). A county way discontinued by following this procedure automatically becomes a town way, and if requested, remains a public way.

**FISCAL IMPACT:** The Town has operated for years in the belief that both Craigville Beach Road including Smith Street and Scudder Avenue are owned by the Town. The Town has maintained these roads and has budgeted accordingly. There is no impact on the general fund operating budget resulting from the legal formality of transferring these roads from the County to the Town's control or from petitioning that these ways remain public ways.

**STAFF SUPPORT:** Charles McLaughlin, Senior Counsel; Griffin Beaudoin, Town Engineer; Shane Brenner, Town Surveyor

**B. NEW BUSINESS (First Reading) (Refer to Second Reading 11/03/2022)**

**BARNSTABLE TOWN COUNCIL**

**ITEM# 2023-046  
INTRO: 10/20/2022**

**2023-046 AUTHORIZATION OF A HOUSING DEVELOPMENT INCENTIVE PROGRAM TAX INCREMENT EXEMPTION AGREEMENT BETWEEN THE TOWN OF BARNSTABLE AND SEASHORE HOMES, INC. FOR 8 NEW MARKET RATE RESIDENTIAL UNITS LOCATED AT 63 MAIN STREET, HYANNIS, MA**

**ORDERED:** That the Town Council hereby authorizes a Tax Increment Exemption (TIE) Agreement between the Town of Barnstable and Seashore Homes, Inc. pursuant to the Housing Development Incentive Program, M.G.L. c. 40V, and the regulations promulgated thereunder at 760 CMR 66.00, for eight (8) new market rate residential units located at 63 Main Street, Hyannis, MA (Assessor’s Map 342, Parcel 017), substantially in the form as presented to the Town Council at this meeting, and further authorizes the Town Manager to execute the TIE Agreement and submit it to the Massachusetts Department of Housing and Community Development for approval.

**SPONSOR:** Town Council Tax Incentive Committee: Councilor Nikolas Atsalis, Precinct 4; Councilor Jennifer Cullum, Precinct 13; Councilor Eric Steinhilber, Precinct 2

Tax Increment Financing/Tax Increment Exemption Committee voted unanimously on 10/03/2022 to approve this Tax Increment Exemption (TIE) Agreement

| DATE  | ACTION TAKEN |
|-------|--------------|
| _____ | _____        |
| _____ | _____        |

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

# BARNSTABLE TOWN COUNCIL

**ITEM# 2023-046**  
**INTRO: 10/20/2022**

## SUMMARY

**TO:** Town Council  
**FROM:** Mark S. Ells, Town Manager  
**THROUGH:** Elizabeth S. Jenkins, Planning & Development Director  
**DATE:** October 20, 2022  
**SUBJECT:** Authorization of a Housing Development Incentive Program Tax Increment Exemption Agreement between the Town of Barnstable and Seashore Homes, Inc. for 8 New Market Rate Residential Units Located at 63 Main Street, Hyannis MA

**RATIONALE:** The Tax Incentive Committee of the Town Council recommends approval of the Housing Development Incentive Program (HDIP) Tax Increment Exemption request from developer Dennis and Deborah Mason of Seashore Homes, Inc. for property located at 63 Main Street, Hyannis. The proposed redevelopment will consist of 8 new market rate rental units on a parcel previously containing commercial office space.

In January 2018, the Barnstable Town Council approved the Downtown Hyannis HD Zone and Plan, and in March 2018 the Town received approval of its zone from the Massachusetts Department of Housing and Community Development. Approval of this zone allows the Town to enter into Tax Increment Exemption Agreements with property owners within the HD Zone.

The goals of the HDIP, which authorizes Tax Increment Exemption (TIE) Agreements, are to increase residential growth, expand diversity of housing supply, support economic development and promote neighborhood stabilization.

The HDIP Staff Review working group and the Town Council Tax Incentive Committee reviewed the application from Seashore Homes, Inc. and found it to be complete and that this development meets the objectives of the HDIP Plan including increasing residential stock and diversity of housing choice. The operating pro forma is reasonable and in line with industry standards. The proposed rents of \$1,650 per month plus utilities are prices consistently with prevailing rents. The development will have a positive impact on housing supply and in turn support economic development.

The TIE Agreement is a contract between the property and the municipality with sets forth the amount of the tax exemption and the duration of the benefits. The sponsor has requested, and the Tax Incentive Committee recommends an 80% tax exemption for years 1 through 5, and a 50% tax exemption for years 6 through 10 on the increased value, anticipated to be approximately \$1.3 million. If approved by the Town, this TIE Agreement must also be approved by the Massachusetts Department of Housing and Economic Development.

**FISCAL IMPACT:** Using the Fiscal Year 2022 tax rate as the base assumption (this rate will change over the course of the TIE agreement) the following estimates show the tax savings to the owner, which is equal to the one time only increase or growth to the Town levy.

- \$7,350 at 80% (years 1-5) = \$5,880/year
- \$7,350 at 50% (years 6-10) = \$3,675/year

**STAFF ASSISTANCE:** Ryan Bennett, Housing Coordinator; Mark Milne, Director, Finance; Lane Partridge, Assessor

# HOUSING DEVELOPMENT INCENTIVE PROGRAM

## TAX INCREMENT EXEMPTION (TIE) AGREEMENT

between

**Town of Barnstable**

and

**Seashore Homes, Inc.**

This AGREEMENT is made this \_\_\_ day of \_\_\_\_, 2022 by and between the Town of Barnstable, (“Municipality”) and Seashore Homes, Inc. (“Sponsor”) a Massachusetts Corporation with an address at 10 Embassy Lane, Yarmouth Port MA.

### Section 1 – Agreement

The Municipality and the Sponsor, for good and valuable consideration and in consideration of the covenants and agreements herein contained, hereby make this agreement regarding a tax increment exemption pursuant to the Housing Development (HD) Incentive Program, M.G.L. c. 40V and the regulations promulgated thereunder at 760 CMR 66.00 (HD TIE), with respect to the Property as herein defined.

### Section 2 – Definitions

Each reference in this Agreement to the following terms shall be deemed to have the following meanings:

Act: M.G.L. c. 40V as may be amended from time to time.

Completion: Certificates of occupancy have been issued for the entire Project.

DHCD: Department of Housing and Community Development

Event of Default: An “Event of Default” as defined in Section 5 below.

Final Certification: Determination by DHCD that the Sponsor has completed the new construction or substantial rehabilitation of the Property, consistent with the New Construction or Rehabilitation Plans, including the creation of MRRUs, as set forth in the Act and the Regulations.

Fiscal Year: An annual period of July 1 through June 30.

HD Project: A Certified Housing Development Project as defined in the Act and the Regulations.

HD Zone: The Housing Development Zone adopted by the Town of Barnstable on January 18, 2018 and approved by DHCD as evidenced by a Certificate of Approval dated March 9, 2018 and recorded with the Barnstable County Registry of Deeds at Book 32703, Page 1.

Lead Municipality: Town of Barnstable

MRRU: Market Rate Residential Unit(s) as defined at Section 3.B.1.

Property: 63 Main St., Hyannis MA as shown in Exhibit 1, “Map of Property” and further described in Exhibit 2, “Legal Description of Property”.

Regulations: 760 CMR 66.00.

New Construction or Rehabilitation Plans: The material submitted for Conditional Certification pursuant to 760 CMR 66.05(3) (a) and approved by DHCD.

Sponsor: Seashore Homes, Inc., a corporation of the Commonwealth of Massachusetts, with an address at, 10 Embassy Lane, Yarmouth Port MA 02675 its successors and assigns.

### **Section 3 – Sponsor’s Covenants**

- A. New Construction or Substantial Rehabilitation of the Property. Sponsor will undertake the new construction or substantial rehabilitation of the Property in accordance with the work and schedule set forth in the New Construction or Rehabilitation Plans.
- B. Market Rate Residential Units.
- 1) There shall be a total of 8 residential rental units created in the Project of which 8 shall be MRRUs comprised of 1 bedroom and 1 bath in each unit. The monthly rent for such units shall be priced consistently with prevailing rents or sale prices in the Municipality as determined based on criteria established by the Department, as set forth in Exhibit 3, “Market Rate Residential Units – Pricing Plan”.
  - 2) Sponsor shall use good faith efforts to maintain the units as MRRUs for a minimum of 10 years.
- C. Marketing. Sponsor shall cause the MRRU to be marketed in a manner that is consistent with the strategies, implementation plan and affirmative fair housing efforts set out in the New Construction or Rehabilitation Plans.
- D. HD Project Certification. Sponsor shall take all actions reasonably necessary to obtain Final Certification of the Property as an HD Project including but not limited to submitting applications to DHCD for Conditional Certification and Final Certification consistent with the requirements of the Act and the Regulations.

### **Section 4 – Tax Increment Exemption**

Municipality agrees to grant Sponsor an exemption to the real property taxes due on the Property pursuant to G.L. c.59 according to the following terms.

- A. Base Value. Consistent with 760 CMR 66.06(1)(c), the Base Value is \$441,500 and equal to the assessed value (or aggregate thereof) of the parcel(s) that comprise the property as of the fiscal year in which a HD Tax Increment Exemption Agreement is executed by the Sponsor and the Municipality with respect to the parcel or parcels, as the case may be, and prior to the start of any new construction or Substantial Rehabilitation activities, including demolition, minus the assessed value attributable to any portion of the property that was assessed as other than residential in the applicable fiscal year and remains nonresidential after completion of new construction or Substantial Rehabilitation.
- B. MRRU Percentage. 100 percent (100%) of total residential units (8) on site. The MRRU Percentage shall be confirmed as required in paragraph F, below.
- C. Exemption Percentage. Commencing on the Effective Date which shall be (starting Fiscal Year 1): 80%:  
Years 1-5  
50%: Years 6-10
- D. The Increment. As defined at 760 CMR 66.06(1) (b) (1).
- E. Calculation. For each Fiscal Year during the term of this Agreement, the HD TIE shall be determined by applying the Exemption Percentage to the property tax on the Increment.
- F. Confirmation or Amendment of Calculation. Upon Completion, and prior to applying for Final Certification of the Project, the Sponsor and Municipality shall file a “Tax Increment Exemption – Confirmation of Calculation” in the form attached as Exhibit 4 (“TIE Confirmation”). To the extent that the dates or figures in the TIE Confirmation differ from those set forth in this Agreement, the contents of the TIE Confirmation shall control and shall be deemed to have amended this Agreement.

## Section 5 – Default

A. Event of Default. An “Event of Default” shall arise under this Agreement upon the occurrence of any one or more of the following events:

1) Breach of Covenant Prior to Final Certification. Subject to the limitations set forth in the Regulations at section 66.05(4)(b), Sponsor defaults in the observance or performance of any material covenant, condition or agreement to be observed or performed by Sponsor pursuant to the terms of this Agreement, and the continuance of such default for thirty (30) days after written notice thereof from the Municipality; provided, however, that if the curing of such default cannot be accomplished with due diligence within said period of thirty (30) days, then Sponsor shall have such additional reasonable period of time, not to exceed thirty (30) days, to cure such default provided the Sponsor shall have commenced to cure such default within the initial thirty (30) day period, such cure shall have been diligently prosecuted by the Sponsor thereafter to completion.

2) Breach of Covenant Subsequent to Final Certification. Sponsor’s conduct is materially at variance with the representations made in its New Construction or Rehabilitation Plans; such variance is found to frustrate the public purposes that Final Certification was intended to advance, and the continuance of such default for thirty (30) days after written notice thereof from the Municipality; provided, however, that if the curing of such default cannot be accomplished with due diligence within said period of thirty (30) days, then Sponsor shall have such additional reasonable period of time, not to exceed thirty (30) days, to cure such default provided the Sponsor shall have commenced to cure such default within the initial thirty (30) day period, such cure shall have been diligently prosecuted by the Sponsor thereafter to completion.

3) Misrepresentation. Any representation made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement shall prove to be false in any material respect.

B. Rights on Default.

1) Prior to Final Certification. Upon the occurrence of an Event of Default prior to Final Certification, then this Agreement shall become null and void.

2) Subsequent to Final Certification. Upon the occurrence of an Event of Default subsequent to Final Certification, then:

a. Revocation of Certification. Pursuant to the terms of the Act, the Municipality, may, at its sole discretion, request that DHCD revoke the Final Certification of the Project, such revocation to take effect on the first day of the fiscal year in which DHCD determines that a material variance commenced.

b. Termination of Agreement. Upon revocation of certification, this Agreement shall become null and void as of the effective date of such revocation.

c. Recoupment of Economic Benefit. Upon revocation of certification, the Municipality may bring a cause of action against Sponsor for the value of any economic benefit received by Sponsor prior to or subsequent to such revocation.

3) Other Remedies. The Municipality’s rights upon the occurrence of an Event of Default are in addition to those granted to DHCD and the Massachusetts Commissioner of Revenue under the terms of the Act.

## Section 6 – Miscellaneous

A. Effective Date. The effective date of the HD TIE shall be July 1st of the first Fiscal Year following DHCD's Final Certification of the HD Project pursuant to the requirements of the Act and the Regulations. The Effective Date shall be confirmed as required under Section 4.F above.

B. Term of Agreement. This Agreement shall expire upon the Municipality's acceptance of the annual report, as required below, for the final Fiscal Year for which the Municipality is granting the TIE.

C. Reporting. Sponsor shall submit reports to the Municipality not later than thirty (30) days after June 30 of each Fiscal Year for the term of this Agreement. Each report shall contain the following information:

- 1) Until Completion, the status of construction in relation to the schedule contained in the New Construction or Rehabilitation Plan;
- 2) Until Completion, the status of marketing in relation to the New Construction or Rehabilitation Plans; and
- 3) For each MRRU, the number of bedrooms in the unit, whether it was leased as of the end of the most recent fiscal year and the monthly rent charged.

D. Assignment. The Sponsor shall not assign any interest in this Agreement, and shall not transfer any interest in the same, without the prior written consent of the Municipality, which approval shall not be unreasonably withheld. The foregoing notwithstanding, the rights and obligations of this Agreement shall inure to the benefit of any entity succeeding to the interests of the Sponsor by merger.

E. Notices. In conjunction with concurrent electronic submission as provided for below or, if reasonable efforts can determine that such information is no longer current, otherwise reasonably obtainable and verifiable electronic contact information, any notice, request, instruction or other document to be given hereunder to either party by the other shall be in writing and delivered personally or sent by recognized overnight courier, receipt confirmed or sent by certified or registered mail, postage prepaid, as follows, and, unless general measures for electronic receipt as a substitute are in place at such time or can otherwise be reasonably assumed due to publicized or immediately foreseeable remote working conditions, shall be conclusively deemed to have been received and be effective on the day on which personally delivered or, if sent by certified or registered mail, three (3) days after the day on which mailed or, if sent by overnight courier, on the day after delivered to such courier.

1) Municipality: Town Manager  
Town of Barnstable  
367 Main St.  
Hyannis, MA 02601  
Email: [mark.ells@town.barnstable.ma.us](mailto:mark.ells@town.barnstable.ma.us)

2) Sponsor: Seashore Homes, Inc.  
10 Embassy Lane  
Yarmouth Port, MA 02675  
Email: [deb@seashorehomescapcod.com](mailto:deb@seashorehomescapcod.com)

3) Copy to DHCD: All such notices shall be copied to DHCD at:

HDIP Program Coordinator  
Department of Housing & Community Development  
100 Cambridge Street, Suite 300  
Boston, MA 02114  
[dhcdhdip@mass.gov](mailto:dhcdhdip@mass.gov)

4) Change of Address. Either party may change the address to which notices are to be sent to it by giving written notice of such change of address to the other party in the manner herein provided for giving notice.

F. Modifications. No modification or waiver of any provision of this Agreement, nor consent to any departure by the Sponsor therefrom shall in any event be effective unless the same shall be in writing and signed by duly authorized representatives of the parties hereto. No failure or delay on the part of Municipality in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**IN WITNESS WHEREOF**, the Sponsor has caused this Agreement to be duly executed in its name and behalf and its seal affixed by its duly authorized representative, and the Municipality has caused this Agreement to be executed in its name and behalf and its seal duly affixed by its Town Manager as of the day and year first above written.

[SIGNATURES ON NEXT PAGE]

By: Mark S. Ells, Town Manager  
Its: President

By: Deborah A. Mason,

**EXHIBIT 1**

**MAP OF PROPERTY**

**EXHIBIT 2**

**DESCRIPTION OF PROPERTY**

**EXHIBIT 3**

**MARKET RATE RESIDENTIAL UNITS – PRICING PLAN**

Proposed Initial  
Monthly Rent(s)\*: \$1,650

\*units shall be priced in compliance with DHCD’s HDIP Guidelines and 760 CMR 66.04(2) (f)

**EXHIBIT 4**

**TAX INCREMENT EXEMPTION – CONFIRMATION OF CALCULATION**

**[FORM TO REMAIN BLANK UNTIL PROJECT COMPLETED AND ELIGIBLE FOR FINAL CERTIFICATION]**

In connection with the Tax Increment Exemption Agreement dated \_\_\_\_\_, 20\_\_\_\_ by and between the MUNICIPALITY, and \_\_\_\_\_, a STATE FORM OF ORGANIZATION with an address at \_\_\_\_\_, with respect to the property at \_\_\_\_\_ (the “Agreement”), the parties hereby confirm the following elements of the Agreement. Unless otherwise stated, capitalized terms have the meaning set forth in the Agreement.

1. The effective date of the Agreement is: \_\_\_\_\_
2. The MRRU Percentage is: \_\_\_\_\_
3. The assessed value of the of the residential portion of the Property upon Completion is: \_\_\_\_\_

To the extent that the dates or figures in this “Tax Increment Exemption – Confirmation of Calculation” differ from those set forth in the Agreement, the contents of this document shall control and shall be deemed to have amended the Agreement.

MUNICIPALITYSPONSOR

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By: [CHIEF EXECUTIVE OFFICER]  
Its:

By:

---

By: [LEGISLATIVE BODY]

By:

Its:

Dated: \_\_\_\_\_