

**SELECTMEN'S MEETING AGENDA**  
*Harwich Community Center, Room #2*  
*100 Oak Street*  
*Regular Session 6:00 P.M.*  
*Monday, May 1, 2017*

I. **CALL TO ORDER**

II. **CONSENT AGENDA**

- A. Approve request by Alzheimer's Family Caregiver Support Center Inc. to hold Annual Dave Birtwell Memorial Walk and approve request to waive tent permit fee for event
- B. Approve 2017 renewal of Junk Dealer License for Windsong Antiques
- C. Approve Chapter 90 Request for chipsealing various roads
- D. Confirm appointment of Denise Kopasz as Administrative Assistant in the Town Clerk's office as recommended

III. **PRE TOWN JOINT MEETING WITH FINANCE COMMITTEE**

- A. Potential Revisions to Motions for Annual/Special Town Meeting Articles – discussion & possible votes
- B. Operating Budget – discussion & possible votes
- C. Other Financial Matters – discussion & possible votes

IV. **NEW BUSINESS**

- A. Approve reauthorization of trust document for Friends of Council on Aging from construction of building to program support

V. **ADJOURNMENT**

<p><b>Authorized Posting Officer:</b></p> <p>_____</p> <p><b>Ann Steidel</b></p>	<p><b>Posted by:</b> _____</p> <p style="text-align: center;"><b>Town Clerk</b></p> <p><b>Date:</b> _____</p>
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OFFICE OF THE SELECTMEN  
732 MAIN STREET  
HARWICH, MA 02645  
Telephone: (508) 430-7513

FORM #7

COPY

APPLICATION FOR LICENSE/PERMIT

PLEASE CHECK

           ROAD RACE

           CRAFT FAIR

(walk)   X   OTHER

IN ACCORDANCE WITH THE PROVISIONS OF THE STATUTES RELATING THERETO, APPLICATION AS STATED ABOVE IS HEREBY MADE BY:

NAME OF BUSINESS Alzheimer's Family Caregiver Support Center, Inc. PHONE (508) 896-5170

BUSINESS ADDRESS 2095 Main Street, Brewster, MA, 02631

*Call to pick up*

MAILING ADDRESS Same

PLEASE STATE THE PURPOSE FOR WHICH LICENSE/PERMIT IS REQUESTED

Annual Remembery Walk- Dave Birtwell Memorial, raising money for free services for families living and individuals living with Alzheimer's and other dementia-related diseases on Cape Cod.

DESCRIPTION OF ROAD RACE/CRAFT FAIR/OTHER EVENT TO BE LICENSED, PLEASE LIST DATE, TIME, LOCATION/ROUTE, ETC.

DATE Saturday, May 13, 2017

TIME Walk/events begin at 11 am

ROUTE/LOCATION Bike path on Oak Street, crosses over with Harwich police on bike at Rte. 39 to Depot Road, then return to Oak Street and Brooks Park - 6K walk.

(please use reverse side if necessary)

*MULT*  
Signature of Applicant

Co-founder, AFCSC

Title

45-5545397

Social Security Number of Federal Identification Number

Tax Exempt ID (for non-profit organizations)

Signature of Individual or Corporate Name

By Corporate Officer (if applicable)

*Requesting waiver of tent permit fee \$55.*

**\*\*\*REGULATORY COMPLIANCE FORM\*\*\***

THE EVENT(S) TO BE LICENSED AS DESCRIBED HEREIN HAVE BEEN REVIEWED AND APPROVED BY:

[Signature] 4/19/17  
Police Department Date

[Signature] 4/25/17  
Building Commissioner Date

[Signature] 4/20-2017  
Recreation & Youth Commission Date

[Signature] 4-25-17  
Board of Health Date

[Signature] 4/19/17  
Fire Department Date

\*\*\*Required signatures are to be obtained by the Applicant prior to submission of application with the Selectmen's Office.

\_\_\_\_\_  
\_\_\_\_\_  
For Office Use Only  
FEE \_\_\_\_\_ CASH \_\_\_\_\_ CHECK \_\_\_\_\_  
FOR \_\_\_\_\_  
REVIEWED BY \_\_\_\_\_  
DATE LICENSE ISSUED \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NUMBER

17-14

THE COMMONWEALTH OF MASSACHUSETTS

TOWN OF HARWICH

FEE

\$35.00

**JUNK DEALER'S LICENSE**

This is to certify that a license is hereby granted to Windsong Antiques, Inc.

346 Route 28, Harwich Port

**TO BE A DEALER IN OR KEEPER OF A SHOP FOR THE PURCHASE, SALE OR BARTER IN  
JUNK, OLD METALS AND SECOND HAND ARTICLES**

in said **South Harwich** in accordance with the laws of the Commonwealth of Massachusetts relating thereto, the ordinances and by-laws of **Harwich** and such rules and regulations provided for the supervision thereof.

This license shall continue in force until **May 1, 2017**, unless sooner revoked and is subject to sections two hundred and two to two hundred and five, inclusive, of the General Laws, Chapter 140, as amended.

By order of the licensing authorities this **First day of May, 2017**.

\_\_\_\_\_  
TOWN CLERK

EXTRACTS FROM GENERAL LAWS, CHAPTER 140, AS AMENDED

Section 55. Whoever acts as a collector of, dealer in or keeper of a shop for the purchase, sale or barter of junk, old metals or second hand articles without a license, or in any other place or manner than that designated in his license or after notice to him that his license has been revoked, or violates any such rule, regulation or restriction, shall forfeit twenty dollars. The purchase, sale or barter of books, prints, coins or postage stamps shall not be deemed to be the purchase, sale or barter of second hand articles within the meaning of this and the preceding section.

Section 56. A junk collector shall be deemed to be any person who by going from place to place collects by purchase or otherwise junk, old metals or second hand articles, whether or not by previous contract or arrangement.

Section 202. Licenses granted to keepers of intelligence offices, dealers in junk, old metals and second hand articles, junk collectors, pawn brokers and keepers of billiard saloons, pool or sippio rooms or tables, bowling alleys, skating rinks and picnic grounds shall, except as hereinafter provided, be signed by the clerk of the town where they are granted. Every such license shall, before being delivered to the licensee, be recorded by the town clerk, in a book kept for that purpose. Such license shall set forth the name of the licensee, the nature of the business, and the building or place in such town in which it is to be carried on, and shall continue in force until May first following unless sooner revoked. The board or officer issuing such a license shall, except as provided in section seventy-seven, receive for the use of the town such amount, not less than dollars for each license, as the board or officer considers reasonable. \*\*\*\*

Section 203. Such licenses may be granted in April, to take effect on May first following.

Section 204. A license issued as aforesaid shall not protect the holder thereof in a building or place other than that designated in the license unless consent to removal is granted by the licensing board or officer.

Section 205. Upon the revocation of such a license, such clerk shall note the revocation upon the face of the record thereof, and shall give written notice to the licensee by delivering it to him in person or by leaving it at the place of business designated in the license.

COPY



COPY

**CHAPTER 90 PROJECT REQUEST**

CONTRACT ID # 50829  
PROJECT # 17-04

CLASSIFICATION:  Primary Road  Local Road

Ch. # MA # \$  
Ch. # MA # \$

CITY/TOWN HARWICH

PROJECT: CHIPSEALING VARIOUS ROADS

LOCATION: VARIOUS LOCATIONS SEE ATTACHED LENGTH \_\_\_\_\_ WIDTH: \_\_\_\_\_

PROJECT TYPE:  Construction  Reconstruction  Resurfacing  Improvement  
 Other: \_\_\_\_\_

TYPICAL SECTION DETAILS: State depths, special treatments, etc...  
Include sketch for Construction/Improvement Projects and Resurfacing/Rehabilitation Schedule

Surface:  
Base Course:  
Foundation:  
Shoulders/Sidewalks:

Scope of Work: (Attach additional sheets if necessary to completely describe project)

**TO CHIPSEAL VARIOUS ROADS THROUGHOUT TOWN, PROVIDING A NEW WEAR SURFACE AND  
EXTENDING THE LIFE OF THE ROADS.**


Work to be done: Force Account  Advertised Contract  Other: COUNTY BID

Estimated Cost (Attach estimate and list funding sources) \$ 211,466.14

**CERTIFICATION**

The design, engineering, construction, and future performance of the project, including maintenance, is the responsibility of the Municipality. The proposed work will conform to recognized engineering practices and construction methods.

I/We certify to the following: that the project is on a public way, and has a recorded layout; that all materials will comply with approved established specifications; that all weights and quantities will be accurate; that equipment rental rates are those established by the M.H.D. or the advertised low bid; that all documentation for expenditures will be for items incorporated into this project; that the documentation will be checked for accuracy, and will be endorsed in accordance with municipal procedures for accountability.

Prepared by:   
(Highway Official)

Signed: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Duly Authorized Municipal Official(s))

Reviewed by: \_\_\_\_\_  
(State Aid Engineer)

Approved by: \_\_\_\_\_  
(District Highway Director)

Approved for: \_\_\_\_\_ @ \_\_\_\_\_

Date: \_\_\_\_\_

# CHAPTER 90 ENVIRONMENTAL PUNCH LIST

City/Town HARWICH

MassHighway District # 5

Proposed Work Construction  Resurfacing  Improvement  Other: \_\_\_\_\_


**NOTE: ALL ENVIRONMENTAL PERMITS / APPROVALS MUST BE OBTAINED PRIOR TO CONSTRUCTION.**

1. Will the pavement width increase 4 ft. or more for an aggregate length of 1000 ft. or more? Yes  No
2. Will the bank or terrain (other than alteration required for installation of equipment or structures) be altered at a distance exceeding 10 ft. from the pavement? Yes  No
3. Will the removal of 5 or more trees with diameters of 14 inches or more be required? Yes  No
4. Will more than 300 ft. of stone wall be removed or altered? Yes  No
5. Will the project involve construction of a parking lot with capacity of 50 cars or more? Yes  No
6. Are any other MEPA review thresholds exceeded (see 301 CMR 11.00)? Yes  No   
If your answer is YES to any of questions 1-6, you must file an Environmental Notification Form (ENF).\*
7. Will the project be on a "Scenic Road" (Acts of 1973, C. 67)? Yes  No   
If your answer is YES, your Planning Board or Selectmen / City Council must give written consent for cutting / removal of trees or changes to stone walls.
8. Have all necessary takings, easements, rights of entry, etc. been completed? Yes  No   
If a County Hearing is required, it must be held prior to starting work.
9. Are archaeological, anthropological, historical, etc. problems / impacts anticipated? Yes  No
10. Is any work proposed in or within 100 ft. of a wetland (stream, pond, swamp, etc.)? Yes  No   
If your answer is YES, you must file the project with your local Conservation Commission prior to starting work.
11. If work is proposed in a wetland or water resource, a permit may be required from the Department of Environmental Protection, Corps of Engineers, etc.. Verify with agencies.\* Yes  No

\* See Appendix K for a List of Environmental Agencies.

## Validation

It is recognized that the purpose of this information is to assist the Massachusetts Highway Department in approving the Chapter 90 Project Request Form (of which this is a part). Accordingly, the information provided here is intended to be complete and correct with no intentional errors or material omissions. Any action taken by Mass. Highway on the basis of this information shall not legally or financially obligate Mass. Highway to support or defend the municipality, and the municipality shall save harmless Mass. Highway for any action.

Prepared by:   
(Highway Official)

Signed: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: 4/24/17

(Duly Authorized Municipal Official(s))



	LENGTH	WIDTH	SQ. YD.	CUL-DE-SAC DIAMETER	CUL-DE-SAC SQ. YD.	TOTAL SQ. YD.	BID PRICE	AMOUNT
PRINCE CHARLES DRIVE	990	24	2,640.00			2,640.00	\$3.50	\$9,240.00
BLACK LOCH DRIVE	590	24	1,573.33			1,573.33	\$3.50	\$5,506.67
SEQUATTOM ROAD	1,425	16	2,533.33			2,533.33	\$3.50	\$8,866.67
OAK STREET EXTENSION	1,575	21	3,675.00			3,675.00	\$3.50	\$12,862.50
COURTNEY ROAD	1,790	25	4,972.22			4,972.22	\$3.50	\$17,402.78
COURTNEY ROAD	2,125	23	5,430.56			5,430.56	\$3.50	\$19,006.94
KETTLE POND DRIVE	665	25	1,847.22			1,847.22	\$3.50	\$6,465.28
PLEASANT BAY ROAD EXT.	850	21	1,983.33	80	558.22	2,541.56	\$3.50	\$8,895.44
HALLMARK LANE	821	25	2,280.56			2,280.56	\$3.50	\$7,981.94
WALKERWOODS DRIVE	1,510	21	3,523.33			3,523.33	\$3.50	\$12,331.67
OLDE HOMESTEAD WAY	1,590	24	4,240.00			4,240.00	\$3.50	\$14,840.00
CHESTNUT LANE	960	24	2,560.00	140	1,709.56	4,269.56	\$3.50	\$14,943.44
MAPLE LANE	210	24	560.00	130	1,474.06	2,034.06	\$3.50	\$7,119.19
ELM DRIVE	1,050	24	2,800.00			2,800.00	\$3.50	\$9,800.00
CHARLENE LANE	805	22	1,967.78			1,967.78	\$3.50	\$6,887.22
VICTORIA ROAD	700	22	1,711.11			1,711.11	\$3.50	\$5,988.89
MCGUERTY RD (Town Section)	205	22	501.11			501.11	\$3.50	\$1,753.89
CONNECTICUT AVENUE	875	21	2,041.67			2,041.67	\$3.50	\$7,145.83
EVELYN'S DRIVE	1,750	22	4,277.78			4,277.78	\$3.50	\$14,972.22
CEMETERY RD (Rt 137-Church St)	1,900	22	4,644.44			4,644.44	\$3.50	\$16,255.56
						<b>59,504.61</b>		<b>\$208,266.14</b>

**TOTAL SECONDARY ROAD MAINTENANCE**

**\$208,266.14**



**OFFICE OF THE TOWN ADMINISTRATOR & TOWN CLERK**

Phone (508) 430-7513

Fax (508) 432-5039

**Christopher Clark, *Town Administrator***  
**Anita N. Doucette, *Town Clerk***

732 MAIN STREET, HARWICH, MA 02645



April 26, 2017

Denise Kopasz

Dear Ms. Kopasz:

We would like to offer you the position of Administrative Assistant in the Town Clerk's Office for the Town of Harwich. We look forward to your continued positive contributions to our community.

This conditional offer letter confirms our understanding of your pre-employment terms with the Town.

- Pursuant to the Town Charter the Town Administrator makes the appointment for this position subject to confirmation by the Board of Selectmen. Your name has been put forth for confirmation and the Board of Selectmen will be taking this up at their meeting on May 1, 2017. Successful confirmation will be needed to finalize appointment.

Please read the letter and confirm your understanding of the terms of your employment by signing the bottom of the letter and returning a copy to us for your personnel file.

Your position title will be Administrative Assistant and your starting date is May 8, 2017. This position is included in the Harwich Employees Association and your employment is subject to the rights and obligations included in the contract, which you have already received. Your starting salary will be \$26.66 per hour (Grade 5, Step 6).

Again, we are delighted that you are continuing to serve the Town's professional staff. Please feel free to contact me if you have any questions prior to beginning work.

Sincerely,

Christopher Clark  
Town Administrator

Anita Doucette  
Town Clerk

 4/26/17  
Denise Kopasz Date

CC: Board of Selectmen  
Town Accountant/Finance Director  
Town Treasurer/Collector

April 25, 2017

**John W. Giorgio**  
[jgiorgio@k-plaw.com](mailto:jgiorgio@k-plaw.com)**CONFIDENTIAL - NOT A PUBLIC DOCUMENT**Mr. Christopher Clark  
Town Administrator  
Harwich Town Hall  
732 Main Street  
Harwich, MA 02645Re: Friends of the Harwich Council on Aging, Inc. v. Attorney General and  
the Harwich Council on Aging

Dear Mr. Clark:

You have requested that I review the draft *cy pres* petition which the Friends of the Harwich Council on Aging ("Friends") is intending to file in the Barnstable Probate and Family Court. Counsel for the Friends has forwarded to me a copy of the draft complaint, a copy of which is attached, and has requested that the Town consent to the entry of the proposed judgment that is attached to the complaint.

My understanding from reviewing the draft complaint is that since the late 1980's, the Friends has been conducting fund raising activities in order to raise money for a senior center to be constructed on land owned by the Town in Harwich. There is no record, however, of the individual donors who have contributed the funds and no record of any express restrictions on the use of monies donated to the Fund. At the present time, the Fund has grown to approximately \$700,000.

Apparently, the original intent of the Friends was to use the donations to construct a senior center on land to be donated by the Town. It is my understanding, however, that the Town decided not to donate the land to the Friends, but instead constructed a senior center using Town appropriated funds. According to the complaint, while the Friends sought to donate the money to the Town for the purpose of contributing to the renovation of the Senior Center, Town Meeting rejected the renovation plan.

In its complaint, the Friends represents that since there is no longer a need for funds to renovate the Senior Center, the Friends would like to change the purpose of the donated funds to allow the funds to be used to provide a variety of services to seniors through the Council on Aging while leaving open the possibility that the funds could also be used in the future to renovate or enhance the existing space that the Council on Aging utilizes to provide its programs. Please see the specific proposed re-purposing of the funds set forth in the proposed judgment attached to the draft complaint.



Mr. Christopher Clark  
Town Administrator  
April 25, 2017  
Page 2

In my opinion, the funds received from the fundraising activities of the Friends constitute a charitable trust which generally means that the monies can only be used for the purposes for which the funds were donated. In order to change the purpose, the Friends are required to seek court approval for the re-purposing of the funds under the so-called *cypres* doctrine. In my opinion, the Friends is following the correct legal procedure to obtain court approval for the re-purposing of the funds. Because the Division of Public Charities of the Attorney General's Office has jurisdiction to ensure that charitable trusts comply with the law, the Friends has also named the Attorney General, along with the Town of Harwich, in the complaint. The issue for the Town to determine is whether the Town is in agreement with the proposed re-purposing of the gifts funds since the Friends will be seeking a consent from the Town as well as the Attorney General.

I recommend that this matter be brought to the Board of Selectmen, and if the Town has no objection to the re-purposing of the funds as proposed, I recommend that Town Counsel to sign the consent on behalf of the Town.

Please let me know if you have any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read "John W. Giorgio".

John W. Giorgio

JWG/bp  
Enc.  
581028/HARW/0001

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

PROBATE AND FAMILY COURT  
DOCKET NO.

\* \* \* \* \*

FRIENDS OF THE HARWICH  
COUNCIL ON AGING, INC.,

Plaintiff,

v.

ATTORNEY GENERAL and  
TOWN OF HARWICH COUNCIL ON  
AGING,

Defendants.

\* \* \* \* \*

ASSENT OF TOWN OF HARWICH

The Town of Harwich, as authorized by a vote of the Board of Selectmen on May 1, 2017, hereby assents to the relief requested in the Plaintiff's Complaint in the above-captioned matter.

Date: 5/1/17

Respectfully submitted,  
Town of Harwich:

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John W. Giorgio (BBO # 193540)  
Counsel for Town of Harwich  
KP Law, P.C.  
101 Arch Street  
Boston, MA 02110  
617-556-0007  
Fax: 1-800-951-5455  
jgiorgio@k-plaw.com

## Ann Steidel

---

**From:** Christopher Clark  
**Sent:** Tuesday, April 25, 2017 9:40 PM  
**To:** Ann Steidel; jbrown0614@aol.com  
**Subject:** Fwd: Re-purposing Friends Fund

Ann,

Please include Jack's email for BOS.

Chris

Sent from my iPhone

Begin forwarded message:

**From:** [jbrown0614@aol.com](mailto:jbrown0614@aol.com)  
**Date:** April 25, 2017 at 3:16:02 PM EDT  
**To:** [cclark@town.harwich.ma.us](mailto:cclark@town.harwich.ma.us)  
**Subject:** **Re-purposing Friends Fund**

Chris,

Thank you for your efforts to help us gain the Board of Selectmen's assent to our efforts to re-purpose the Friends' fund to allow us to spend the funds on areas that benefit Harwich's Seniors. The BoS assent will add its support to that of the COA Board, and the AG's Office as we proceed to the Probate Court where our case will be heard and, hopefully, be approved.

I want to make a couple comments:

As I mentioned to you some time back, there has been, and there is, no "Trust" that was set up for these monies. Successive Boards of the Friends have none-the-less treated the funds as if it were in trust. It has been zealously held tightly since day one, and remains so today. It has also been invested quite conservatively. even while invested quite conservatively, the fund has grown tremendously.

As there is no ""Trust" may I suggest the following statement be considered for the BoD motion and vote:

"I move that the Harwich Board of Selectmen authorize filing an assent to Petition filed by the Friends of Council on Aging seeking approval to repurpose previously collected funds from use for construction of building to program support."

If you choose not to change the language, Atty. Giorgio's terminology ( I assume it is his) will work for what we are trying to accomplish.

Best regards,  
Jack Brown  
President of the Harwich Council on Aging, Inc.

P Phone: 508-432-5956 (H)  
508-868-0743 (C)



## **Ann Steidel**

---

**From:** Barbara-Anne Foley  
**Sent:** Tuesday, April 25, 2017 2:08 PM  
**To:** Ann Steidel  
**Subject:** RE: Board of Selectmen Agenda - May 1st

Yes our COA Board took a formal vote to approve this thank you very much for checking.  
Barbara-Anne

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**From:** Ann Steidel  
**Sent:** Tuesday, April 25, 2017 11:22 AM  
**To:** Barbara-Anne Foley <bfoley@town.harwich.ma.us>  
**Subject:** Board of Selectmen Agenda - May 1st

Barbara-Anne,

The Board of Selectmen has the following item on their agenda for May 1<sup>st</sup>. He asked that I make sure you are ok with it. Please let me know.

"Approve reauthorization of trust document for Friends of Council on Aging from construction of building to program support"

*Ann Steidel  
Administrative Secretary  
Board of Selectmen/Town Administrator's Office  
Town of Harwich  
732 Main Street  
Harwich, MA 02645  
Phone 508-430-7513 x2  
Fax 508-432-5039*

## Ann Steidel

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**From:** Sandy Robinson  
**Sent:** Tuesday, April 25, 2017 11:58 AM  
**To:** Ann Steidel  
**Subject:** FW: Complaint - JSDR revisions - 20170411 - scrubbed  
**Attachments:** Complaint - JSDR revisions - 20170411 - scrubbed.pdf; ATT00001.htm

*Sandra Robinson*  
*Administrative Secretary*  
*Selectmen/Administrator's Office*  
[srobinson@town.harwich.ma.us](mailto:srobinson@town.harwich.ma.us)  
*(508) 430-7513*

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**From:** John Giorgio [mailto:JGiorgio@k-plaw.com]  
**Sent:** Friday, April 14, 2017 2:15 PM  
**To:** Christopher Clark <cclark@town.harwich.ma.us>  
**Cc:** Sandy Robinson <srobinson@town.harwich.ma.us>; Ann Steidel <asteidel@town.harwich.ma.us>  
**Subject:** Fwd: Complaint - JSDR revisions - 20170411 - scrubbed

Chris

This looks to be a straight forward cry pres petition. In my opinion, based on the information contained in the complaint, the cry pres petition is the appropriate course of action for the Friends to pursue. Please review the attached complaint. Does the Town have any issue with the request to repurpose the funds?

This is something that needs to be brought before the Board of Selection for consideration.

Let's talk when you have a chance.

John

John W. Giorgio, Esq.  
KP | LAW  
101 Arch Street  
12th Floor  
Boston, MA 02110  
igiorgio@k-plaw.com  
Phone: (617) 556-0007  
Direct: (617) 654-1705  
Fax: (617) 654-1735  
Mobile Phone: (617) 785-0725

Begin forwarded message:

**From:** Lisa Sherman <[LSherman@latanzi.com](mailto:LSherman@latanzi.com)>  
**Date:** April 14, 2017 at 1:35:12 PM EDT  
**To:** John Giorgio <[JGiorgio@k-plaw.com](mailto:JGiorgio@k-plaw.com)>  
**Subject:** Complaint - JSDR revisions - 20170411 - scrubbed

Hello John

As per our email exchange yesterday, attached please find the Complaint we plan on filing with the Barnstable Probate Court. If the Town is in accord with the relief requested, I'd like to get your assent to file along with the AG's assent and the Complaint.

I realize you will not be able to look at the Complaint until next week; following your review, kindly let me know if the Town will assent (and of course let me know if you have any questions).

Regards,  
Lisa

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

PROBATE AND FAMILY COURT  
DOCKET NO.

\* \* \* \* \*

FRIENDS OF THE HARWICH  
COUNCIL ON AGING, INC.,  
  
Plaintiff,  
  
v.  
  
ATTORNEY GENERAL and  
TOWN OF HARWICH COUNCIL ON  
AGING,  
  
Defendants.

\* \* \* \* \*

ASSENT OF TOWN OF HARWICH

The Town of Harwich, as authorized by a vote of the Board of Selectmen on May 1, 2017, hereby assents to the relief requested in the Plaintiff's Complaint in the above-captioned matter.

Date: 5/1/17

Respectfully submitted,  
Town of Harwich:

---

John W. Giorgio (BBO # 193540)  
Counsel for Town of Harwich  
KP Law, P.C.  
101 Arch Street  
Boston, MA 02110  
617-556-0007  
Fax: 1-800-951-5455  
jgiorgio@k-plaw.com

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

PROBATE AND FAMILY COURT  
DOCKET NO.

\* \* \* \* \*

FRIENDS OF THE HARWICH  
COUNCIL ON AGING, INC.,

Plaintiff,

v.

ATTORNEY GENERAL and  
TOWN OF HARWICH COUNCIL ON  
AGING,

Defendants.

\* \* \* \* \*

COMPLAINT

Parties

1. Plaintiff Friends Of The Harwich Council On Aging, Inc. ("Friends") is a non-profit corporation organized under the laws of the Commonwealth of Massachusetts and has its principal place of business at 100 Oak Street, Harwich, Massachusetts.

2. Defendant Attorney General of the Commonwealth of Massachusetts has a principal place of business at One Ashburton Place, Boston, Massachusetts and is a necessary party to this action pursuant to Uniform Probate Court Practice XXXIV: Charitable Interests.

3. Defendant Town of Harwich ("the Town"), acting through its Council On Aging ("COA"), is an interested party with respect to the matters raised herein.



## Background

4. Friends was organized in 1974 under the name of "Friends of Albro House, Inc."

5. In 1975, Friends' Articles Of Organization were amended, and as so amended, now provide the following description of the purpose for which Friends is organized:

The Corporation is organized exclusively for charitable and educational purposes, including, for such purposes the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code of 1954 or the corresponding provisions of any further United States Internal Revenue Law. These programs also include the following: To provide facilities, programs, counseling, and assistance of every nature and kind relating to, and for the use and benefit of, the Senior Citizens of the Town of Harwich, including assisting in the operation of the Harwich Council On Aging; to apply for grants, enter into contracts, receive funds from public and private citizens; to acquire or lease property, both real and personal by purchase, gift, devise, or grant, and to maintain, sell, lease or mortgage said property in order to attain the purposes of the Corporation.

6. Commencing in the late 1980s, Friends began raising funds ("the Fund") through a variety of efforts, including, for example, bake sales, for a senior center to be constructed on land owned by the Town in Harwich.

7. There is no record of the individual donors who contributed to the Fund during the period of active fund raising and no record of any express restriction on the monies donated to the Fund; in particular, there is no restriction that the

monies so donated be used solely to construct a senior center and for no other purpose.

8. Since this effort began, the Fund has grown to approximately \$700,000 as a result of conservative investments by Friends.

9. Subsequent to Friends' fundraising efforts, the Town determined not to donate the land on which it had been anticipated that the senior center would be constructed.

10. Also subsequent to Friends' fundraising efforts, the Town constructed a community center which has housed the COA since its construction.

11. For the past several years, Friends has investigated whether and to what extent the COA needed additional and/or new space for which the Fund could be used.

12. In 2013, Friends and the Town entered into a memorandum of understanding pursuant to which Friends would allocate funds to finance a portion of the Town's proposed renovations to the community center, namely to build a senior lounge.

13. At town meeting, the voters rejected the Town's plan to renovate the community center, which would have included the senior lounge.

14. Because there is no longer a need for funds to construct a senior center (the Town-owned land is no longer

available, the COA has space in the community center, and the effort to renovate the community center was rejected by the voters), Friends desires to repurpose the Fund to support Harwich elder citizens and the COA as follows: (1) to provide emergency assistance for food, fuel, medical needs and/or minor emergency home repairs, as requested by the director of the COA; (2) to provide medical equipment such as incontinence products, canes and bed railings, as requested by the COA's director; (3) to support meal programs, holiday meal packages, and supermarket gift cards; (4) to provide transportation assistance by financing and running a minibus; (5) to support socialization programs such as dances, concerts, educational programs, etc.; (6) to pay for equipment that supports music appreciation, such as a new piano, and awareness of current events and entertainment, such as a new TV; and (7) to consider future needs of the COA, including the need to renovate or enhance its existing space, that are not eligible for funding from other sources.

Count I

15. Plaintiff repeats and re-alleges each and every allegation above as though fully set forth herein.

16. The cy pres doctrine applies to gifts to charitable corporations. Smith v. Livermore, 298 Mass. 223 (1937).

17. A liberal construction is to be given to charitable donations, with a view to promote and accomplish the general charitable intent of the donor. Rogers v. Attorney General, 347 Mass. 126, 131 (1964).

18. Plaintiff requests that this Court apply the cy pres doctrine to repurpose the Fund as described above and as set forth in the proposed form of judgment attached hereto as Exhibit A, or in such other way that this Court deems will accomplish the general charitable purpose of the donors as nearly as it can be conveniently done.

Count II

19. Plaintiff repeats and realleges each and every allegation set forth above as though fully set forth herein.

20. Alternatively, plaintiff requests that this Court instruct it as to how to dispose of the Fund in conformity with plaintiff's fiduciary duties.

WHEREFORE, plaintiff Friends Of The Harwich Council On Aging respectfully requests this this Court enter a judgment:

- a. On Count I, applying the cy pres doctrine to repurpose the Fund as set forth above or as this Court deems proper;
- b. Alternatively, on Count II, instructing plaintiff as to how to dispose of the Fund in conformity with its fiduciary duties; and
- c. Grant such other and further relief as this Court deems equitable and just.

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Dated:



# EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

PROBATE AND FAMILY COURT  
DOCKET NO.

\* \* \* \* \*

FRIENDS OF THE HARWICH  
COUNCIL ON AGING, INC.,

Plaintiff,

v.

JUDGMENT

ATTORNEY GENERAL and  
TOWN OF HARWICH COUNCIL ON  
AGING,

Defendant.

\* \* \* \* \*

This matter having come on for hearing, all parties having assented to the plaintiff Friends Of The Harwich Council On Aging, Inc.'s requested relief, and this Court having determined that the Fund that is the subject of this action should be repurposed pursuant to the cy pres doctrine in order to accomplish the general charitable purposes of the donors to the Funds, it is hereby ORDERED that the Fund be repurposed to support Harwich elder citizens and the Harwich Council On Aging as follows: (1) emergency assistance for food, fuel, medical needs and/or minor emergency home repairs, as requested by the director of the COA; (2) medical equipment such as incontinence products, canes, bed railings, as requested by the COA's director; (3) support of meal programs, holiday meal packages, and supermarket gift cards; (4) support of the COA's minibus; (5) support of socialization programs such as dances, concerts, educational programs, etc.; (6) pay for equipment that supports music appreciation, such as a new piano, and awareness of current events and entertainment, such as a new TV; and (7) to consider future needs of the Harwich Council On Aging, including the need to renovate or enhance its existing space.

SO ORDERED.

\_\_\_\_\_  
, J.

Dated: