

# Committee to Review and Assess Zoning and Review the Town's Use of Regulatory Agreements

James H. Crocker Jr. Hearing Room 2<sup>nd</sup> Floor Town Hall Building  
367 Main Street Hyannis, MA 02601

Councilor Jeffrey Mendes  
Councilor Matthew Levesque  
Councilor John Crow  
Councilor Kristen Terkelsen  
Councilor Charles Bloom  
Catherine Ledec  
Bob Schulte Chair  
Ken Alsman

August 23, 2024  
3:00PM

## MEETING MINUTES

Chair of Committee, Bob Schulte, opened the meeting of the Committee to Review and Assess Zoning and Review the Town's Use of Regulatory Agreements.

Administrator to the Town Council took Roll Call: Members present: Bob Schulte, Chair; Councilor John Crow; Councilor Charles Bloom; Catherine Ledec; Ken Alsman (arrived at 3:22pm); Seth Etienne (arrived at 3:30pm) Councilor Kristen Terkelsen; Absent: Councilor Jeffrey Mendes; Councilor Matthew Levesque.

Chair of the Committee made the following announcement:

**In Accordance with MGL, Chapter 30A, Section 20, I must inquire whether anyone is recording this meeting and if so, to please make your presence known.**

Chair of Committee read into the record the purpose of this Committee:

**PURPOSE:** Work with the Town's Planning & Development staff to review and reassess recently adopted zoning changes, review the Town's use of regulatory agreements, and make recommendations to the Town Council.

Chair of Committee wanted to again thank the public for their interest in the committee and their participation both in person and also via the zoom link provided for public comment. He encouraged the public to submit comments in writing as well, by sending the email to [Cynthia.lovell@town.barnstable.ma.us](mailto:Cynthia.lovell@town.barnstable.ma.us) and put in the subject line AD HOC Zoning Committee, and she will distribute to the members once she receives them.

Chair of Committee mentioned the email correspondence from the Town of Barnstable Building Commissioner, Brian Florence.

Chairman Schulte,

I hope this email finds you well. Sir, as you know I have attended one of your meetings; what you may not know is that I have watched the others, using video on demand. I have noted during my review that the committee has received some relevant information concerning zoning enforcement, but that there have been many more comments and questions that aren't necessarily derived from informed sources. These questions and comments seem to go unanswered, and I feel badly at the lack of complete information being presented, especially information that would be responsive to enforcement concerns since I am Barnstable's zoning enforcement officer.

I would like to request 30-40 minutes of the committee's time to make a presentation for you so that

your recommendations to the Town Council are fully informed. I would propose to use the following outline:

1. Clarification of zoning enforcement concerns including.
  - a. What is and what is not zoning.
  - b. What issues besides zoning may be relevant to the committee.
    1. How to address those issues and where to direct those concerns.
  - c. Business operations in residential zoning districts.
  - d. The efficacy of the zoning ordinance and enforcement tools as they exist.
  - e. The enforcement process.
  - f. The tools at our disposal.
2. Our software program.
  - a. Its functions and deficiencies.
  - b. Process for changes.
3. Staffing.
4. The Courts.
  - ii. What happens to a complaint when we receive it currently.
  - iii. What we know to be deficiencies in our system.
5. Policy
  - iv. What our needs are in order to improve our existing enforcement processes.
  - v. What we have been working on to improve enforcement processes in the future.
6. CC program
7. A review and answer of all of the questions and comments to date (these would be consolidated and batched so as to not be repetitive or time consuming).
  - a. I will also provide a written index to the videos with minute/second timestamps for cross reference.
8. Answer any questions the committee has after the presentation.
  - a. This includes the request made by you at the last committee meeting as to whether or not we could add a column in Open Gov can for “date closed” and “resolution description”.

I would also like to extend an invitation to the committee to come to our training room for a test drive of our code compliance system after the presentation (if you approve this request) to put our system into context.

And I would like to offer to follow-up visit before the committee concludes to answer any outstanding questions or concerns before you make your recommendations.

- b. I would also be available to review and comment on draft recommendations if the committee would be interested in that.

Thank you, Mr. Chairman, for your consideration. I hope to be able to shed some light on the myriad points of concern that have been raised and look forward to hearing from you.

Regards,  
Brian Florence

Chair of Committee mentioned that the committee had received emails with public comments, and many had to do with the Solar Overlay District with specific mention of 810 Wakeby Road in Marstons Mills, and stated he felt this issue should be added to the list of items to be discussed when the committee starts the conversation into the zoning discussion.

Below are public comments from emails sent to Committee mentioned by the Chair:

*Good morning, Cynthia,*

*Could you please forward this email to the members of the Zoning Ad-Hoc Committee and also to the members of the Housing Ad-Hoc Committee.*

*Thank you very much.*

*Regards,*

*Chris*

*Dear Members,*

*I apologize if my comments seem harsh, but I find the current situation and how we've arrived here more than a little concerning, and I truly hope I'm wrong.*

*Here is a breakdown of the apartment applications that have been filed with the Town since 2017. This information is gathered and provided by the Planning and Development Department. It's not very good news for the Hyannis Downtown Business District, or for affordable housing either. In fact, I think this very clearly shows just how disgraceful our efforts really are. Affordable housing which is coercively created through greed is not only disingenuous, but a disgrace and we will suffer the consequences of our actions. I've apparently been under the very mistaken belief that our goal and in fact our responsibility is to provide affordable housing for those individuals who are not fortunate enough to be able to provide it for themselves. Instead, it would seem those individuals are merely being used as pawns to allow developers to circumvent our zoning requirements and build huge numbers of high rent luxury apartments, which we clearly don't need.*

*Here are some numbers.*

*Since the Town adopted the new zoning back in February of 2023, the Town has been inundated with applications for new apartments in the Downtown Hyannis District.*

*The "Prior To The Zoning Change" chart shows that from 2017 until the adoption of the new zoning on February 2, 2023, which was a period of 6 years or 72 months, the Town permitted and constructed 216 apartments in the Hyannis Downtown District, and of those there are 13 (6%) designated as affordable. That left 203 at full market rent. If you dived 216 by 72 months that is 3 apartments per month.*

*In the "After the Zoning Change adopted on February 2, 2023", chart, but before July 22, 2024, which was the last date these charts were updated, and which is a period of only 1 1/2 years or 18 months, there were 545 apartments applied for and of those, there were 232 still in the permitting process, with 55 (24%) designated as affordable. That leaves 177 at full market rent. The balance of the 545, is 313 apartments and they are now fully permitted with 48 (15%) designated affordable. That leaves 265 at full market rent. These 313 are now ready for building permits. If you dived 545 by 18 months that is 30.27 apartments per month, which is ten times the rate of the prior 72 months.*

*In the "Under Construction" chart:*

*There are 14 being built, with 5 (36%) designated as affordable. This leaves 9 at full market rent.*

*So, in the 6 years, or 72 months prior to the adoption of the new zoning on February 2, 2023, the Town had permitted and under construction, or constructed 216 new apartments, 13 or (6%) of which are affordable.*

*Then zoning changes on February 2, 2023, and by July 22, 2024, and within 18 months) the Town had received applications for 545 new apartments, with 103 (19%) designated as affordable, and 14 under construction, 5 (36%) of which are affordable.*

*That's 775 full market rent and 121 (16%) affordable rent.*

*The Hyannis Inn Motel is going to re-submit their application as well and there are more still to be applied for, like the Christian Science Church property on Stevens Street and I'm sure there will be others.*

*Those numbers do not include all of the apartments "outside" of the Downtown Hyannis District. There's another 673 with 82 (12%) designated as affordable. This leaves 591 at full market rent. These are all pretty much out in Independence Park and almost completely built and being rented.*

*Where will all these tenants come from and where are the jobs, they will need to be able to pay the crazy expensive rent, and where the hell are they going to park. If they park on Main Street or in one of the Town's lots they can be ticketed and or towed. But if they park on private property, they can only get towed, which requires the owner to have to police the lot for themselves and how will they possibly know whether the owner of a car that is parked isn't spending money in one of the businesses in the area. It's going to be a complete nightmare for property owners and merchants to now have to manage the whole parking issue. It will cost them.*

*It certainly doesn't seem as though this new zoning was well thought out at all. These tenants are not going to pay to park anywhere as long as there are empty spaces close to their apartment, particularly in the bad weather.*

*So, "121 affordable apartments" out of "775" in Downtown Hyannis. What a sham. How is that "affordable housing". How does that really help all the people who truly and legitimately need an affordable place to live. And there are more apartment applications on the way. Supply and demand will absolutely rule the day, and it will become a complete slum when the apartment owners start undercutting each other to try and keep their apartments fully occupied. There will be rent wars, which will make apartments cheaper so more people can afford them, which may be a good thing, but the quality of those tenants will be a lot different than the landlord's preferred tenants.*

*Can our Downtown Business District and the related infrastructure really handle a thousand new apartments???*

*I don't think so!!!*

*This is the absolute epitome of poor planning, which I believe was very naive and shortsighted and now we are completely screwed because there is no possible way to turn back. There is no viable exit strategy. We are at the entrance of the proverbial rat hole and there is no solution.*

*Ultimately everyone, the property owners, merchants and tenants, will be pointing their fingers at the Town to take care of the problems, because it's the Town that gave the permits which allowed and created them, so get ready to spend more money, because it's going to be a very expensive fix. Think multilevel parking garage and say goodbye to Hyannis as we've known it.*

*It would be very helpful to know exactly what the actual rent is and what the vacancy rate is at each of the existing apartment complexes. That's something that should be required to be provided by all landlords on an annual basis, as well as the actual number of tenants living in each of the apartments and how many cars they have and whether they are employed full time or part time, retired or disabled.*

These are important demographics the Town should have to better understand and manage our housing and infrastructure needs.

Don't forget that we've actually paid millions of dollars to the developers to bring us here.

It's very disheartening.

What's next? I think we must do better.

Chris Kuhn

Ps. I apologize for any mistakes or confusion.

Last Updated 7/22/2024

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Prior to Downtown Hyannis Zoning							
In Permitting							
Project is before the Town's Site Plan Review Committee or, as applicable, zoning relief is being sought							
	Total Units	Total Affordable Units	50 % AMI	65 % AMI	80% AMI	100% AMI	Regulatory Agreement
-	-	-	-	-	-	-	
-	-	-	-	-	-	-	
-	-	-	-	-	-	-	
-	-	-	-	-	-	-	
-	-	-	-	-	-	-	
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-	-	-	-	-	-	-	
-	-	-	-	-	-	-	
-	-	-	-	-	-	-	
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Permitted							
Project has come before the Town's Site Plan Review Committee and has been approved to proceed and, as applicable, project has been granted zoning relief							
	Total Units	Total Affordable Units	50 % AMI	65 % AMI	80% AMI	100% AMI	Regulatory Agreement
310 Barnstable Road	30	3	-	3	-	-	
442 Main Street	5	-	-	-	-	-	X
Sea Captains Row Phase 2 24, 28, 43, 44, 53, 56, 64 and 66 Pleasant Street and 86 South Street	14	2	2	-	-	-	X
68 Yarmouth Road	8	-	-	-	-	-	X
-	-	-	-	-	-	-	
-	-	-	-	-	-	-	
-	-	-	-	-	-	-	
-	-	-	-	-	-	-	
-	-	-	-	-	-	-	
<b>TOTAL</b>	<b>57</b>	<b>5</b>	<b>2</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>3</b>

Under Construction							
Building Permit has been issued							
	Total Units	Total Affordable Units	50 % AMI	65 % AMI	80% AMI	100% AMI	Regulatory Agreement
252 Main Street	2	-	-	-	-	-	
171 Main Street	9	-	-	-	-	-	
78 North Street	11	1	-	1	-	-	
77 Pleasant Street	2	-	-	-	-	-	X
<b>TOTAL</b>	<b>24</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>

Final Construction							
Final Certificate of Occupancy has been issued							
	Total Units	Total Affordable Units	50 % AMI	65 % AMI	80% AMI	100% AMI	Regulatory Agreement
Sea Captains Row Phase I 24, 28, 43, 44, 53, 56, 64 and 66 Pleasant Street and 86 South Street	46	-	-	-	-	-	
80 Pearl Street	8	-	-	-	-	-	X
63 Main Street	8	-	-	-	-	-	
49 Center Street	5	-	-	-	-	-	
49 Elm Avenue	3	-	-	-	-	-	X
255 Main Street	10	2	-	-	-	2	
57 Ridgewood Avenue	8	2	-	-	2	-	X
Cape Cod Times 319 and 331 Main Street	22	2	-	2	-	-	
39 Pearl Street	9	-	-	-	-	-	
High School Road 0 and 17 High School Road	8	-	-	-	-	-	
185 Ridgewood Avenue	8	1	-	-	1	-	X
<b>TOTAL</b>	<b>135</b>	<b>7</b>	<b>0</b>	<b>2</b>	<b>3</b>	<b>2</b>	<b>4</b>

*Here's a picture of #68 Center Street and #190 Stevens Street. I think they're attractive buildings setback nicely and don't feel overwhelming for the site.*



*Now envision a fourth floor on these buildings and how they would fit in and look on Main Street, ten feet, or less, from the sidewalk. 🤖*

*Take a few minutes and go onto Google Earth, Street View and look at any Town in New England, not a city, but a Town. You will not find one Town with four story buildings on their Main*

*Streets and in fact not anywhere within almost any Town. You won't find four story buildings on Main Streets pretty much anywhere other than in Cities, or industrialized Mill Towns. For the most part and in most cases these buildings were built before the adoption of zoning, so they certainly could have built as many stories as they wanted, but they didn't, either because elevators hadn't been invented, or most likely, because the cost of an elevator was way too expensive. Once you build above two stories your pool of tenants greatly decreases, just because of all the stairs to climb, so three stories are a little bit of a challenge, but four stories just never happened. The second floor was historically for the merchant and their family, or employees, not mass affordable apartments. These are some of the reasons why we actually have lots of very quaint historic Towns and villages, with wonderful unimposing buildings that create the beautiful character we enjoy when we visit. We typically don't go to Brockton to visit and enjoy the scenery. Our Main Street is one of our biggest and best assets and as such it provides a lot of extremely important jobs for some of our residents. It brings in millions of dollars annually, so why would we dare to jeopardize that? In contrast we should be doing everything humanly possible to improve and enhance all of the building facades, eliminating all the overhead wires and make changes that will add to the pedestrian traffic and improve their experience, so they will rave about how great a time they had and how wonderful Downtown Hyannis was on their vacation. It might be that the Town has to put up the funds to make it all happen, but it's an investment in our community and its future. We obviously can't rely on the individual property owners to do this, so we need to get very creative and just make it happen.*

*Sorry for the length of this.*

*Chris*

*Dear Members of the Committee to Review and Assess Zoning and Review the Town's Use of Regulatory Agreements,*

*Thank you for your hard work on this committee and for your vision for the best future of our town.*

*Re: the GMSPVOD or Ground Mounted Solar Photo Voltaic Overlay District on residentially zoned 810 Wakeby Road, Marstons Mills*

*My community and I are deeply concerned about the recent solar zoning overlay (GMSPVOD) placed on the residentially zoned, 20-acre lot, 810 Wakeby Rd. in Marstons Mills. This lot is surrounded by homes and families including children and elderly people with hearing and mobility challenges. It also abuts 830 Wakeby, which was recently purchased by the town to protect the Hayden Well Field, a currently active source of water for 30,000+ people.*

*The solar overlay allows the construction of a 5MW solar electric power plant with substations, that would be surrounded by hundreds of people and their homes. It would pose an unmitigated danger for Barnstable residents. With two other 5MW plants existing now, 2.5 miles west and 3 miles east of 810 Wakeby, we must question the necessity/wisdom of another Industrial Scale Solar Installation (ISSI) in Barnstable. This 20-acre parcel is residentially zoned. It could answer some critical housing needs. Or, acquired by eminent domain, to provide much needed protection for our aquifer. We must decide if Barnstable will be a place to live or become a toxic industrial wasteland.*

*With extensive plans for offshore wind substations, we're all aware of the dangers posed by hundreds of thousands of gallons of toxic oils in substations above our sole source aquifer. The deafening 71+ decibel transformers and inverters, the health dangers of close proximity to massive sources of electromagnetic radiation. The Fire Dept.'s mandatory "Let it Burn" policy due to the aquifer directly beneath these structures, leaving insufficient access for emergency responders to protect our homes. In the case of 810 Wakeby Rd.; all concessions to the solar developer, TJA Solar, were granted under duress of the lawsuit they filed against the town of Barnstable. Having achieved all their goals, the case was dismissed "with prejudice" at Mass Land Court. Meaning there can be no further litigation on this matter.*

*This presents an opportunity to take back some control of our town.*

*Construction has not begun at 810. Removing the solar overlay district at 810 Wakeby Road will put an end to this dangerous threat to our drinking water, our families and homes. At the same time amend the solar bylaws to prohibit ISSI in all residential zones. Countless communities across the U.S. have done this with success. Former town Attorney Charlie McLaughlin estimated Barnstable has already overly fulfilled its quota for renewable energy, as determined by the SJC. See; Tracer Lane II Realty v. the City of Waltham, April 2022.*

*To protect the people and resources of the town of Barnstable further, I propose this amendment to Barnstable e-code Solar Zoning, Section 240-44.2, as follows:*

*D.) As of Right Siting. All Residentially Zoned siting is prohibited. Solar Overlay (GMSPVOD) is prohibited on residentially zoned land.*

*Toxic, heavy industry in Res. Zoning is a clear violation of MGL Ch. 40A, section 3, paragraph 9: "...to protect the public health, safety and welfare."*

*If a total prohibition is impossible, a 650' setback from residential properties should be required and never subject to variances.*

*The National Cancer Institute's 33year study concludes that there is a 70% greater risk of Leukemia and Central Nervous System cancers in people living within 650' of power lines. Our homes will be within 140' of a Power Plant, if TJA Solar's project is built at 810 Wakeby.*

*It's critical to know that TJA Solar did not fulfil most of the requirements of the special permit in e-code 240-44.2. For example, they issued a 2 page Letter of Assurance instead of a List of Hazardous Materials. They claimed there are no hazardous materials in solar panels, though panels are globally considered hazardous waste. Most of the required information TJA presented was incomplete, contradictory and inaccurate. Data for 6 different transformers was presented (fine print noting each transformer produced 68-71 decibels measured at 33' distance! EPA states one hour exposure to 70 dBs is deafening.) with 48 transformers in the original plan and in the decommissioning plan. Tja claimed there would be only 4, then 3, then finally just 2 transformers, depending on what town board meeting you attended. Some of the transformers are within 100' of residential homes, not property lines, putting these homeowners at greater risk for hearing loss as well as fire. The homeowners next to the 810 Wakeby Road entrance have no setback at all. Presumably because this entrance is the sole access to 810. Which is another great concern for first responder access.*

*We urge you to recommend the Town Council to remove the solar overlay at 810 Wakeby road and amend our solar zoning bylaws to industrial zones only, to protect our drinking water and the health, safety and welfare of Barnstable's families.*

*Attached below is a copy of the solar zoning bylaws, amended last year to accommodate TJA's project.*

*Thank you,*

*Andrea Goode  
29 Emerson Way  
Centerville, MA 02632*

*Dear Cynthia,*

*Please forward to Committee Members to review & assess Zoning and Review the Town's use of Regulatory agreements.*

*Catherine Berkey  
148 Wianno Ave  
Osterville*

*Dear Members of the Committee to Review and Assess Zoning and Review the Town's Use of Regulatory Agreements,*

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*Catherine Berkey  
148 Wianno Ave  
Osterville*

*From: Larry Morin*

*submitted: 8/20/24*

*To: Bob Schulte, Chair and to all of the Committee members*

*Ad Hoc Committee (Zoning and Regulatory Agreements)*

*Re: Scheduled and Posted meeting for Friday, August 23, 2024*

*Subject: Chapter 168 questions and concerns*

*Preface:*

*At first, as I usually do, I went line by line through each section under Chapter 168, and had started writing down my comments, questions, etc..... only to realize that first, I have to admit and acknowledge that there's too much that I do not know, so that whatever provisions I may contest or disagree with really may be off track as to what you, as a Committee, really want to accomplish.*

*From the "strange reasons/justifications(?)" as to why "development agreements" was replaced with "Regulatory agreements", when and under who's control and decision?*

*Reason for my concern?: from the descriptions as to activities, etc., this remains as all about developments, but by replacing with "regulatory" is way too vague and general to convey what these procedures are really all about.*

*Therefore, at least for now, I am submitting some general questions (a few of which I am including subsection numbers). Hopefully, either at the meeting this Friday (8/23) or some written responses from Bob or Jim, I can use your answers to present comments that might be somewhat relevant.*

*1. Who's in charge or control of the various matters, rulings, etc. under this Chapter?*

*---- is the Cape Cod Commission (CCC) the "leader of the pack"?*

*---- what role or limits does The Town of Barnstable (168-8.B) play and what bodies (ie. Town Council?) have a say?*

*---- what about the following:*

*---- Town Council, ---- Planning Board, ---- Town Manager*

*---- LCPC --- speaking of which, the agenda for their meeting at 5:30 on 8/22/24 reveals a too vague recitation of issues, etc. and other than in person attendance, why are there no links for Zoom/Remote communication?*

*2. From my limited familiarity, I would greatly appreciate the following documents (either hard copies or at least links to Town sites that can be read/downloaded)*

*--- Cape Cod Commission Act, Ch. 716 Acts of 1989*

*--- Chapter D. Development Agreement Regulations, Code of the CCC Regs (168-1)*

*--- Regulatory Agreement Districts*

*(including criteria, revisions, etc.)*

--- Under what conditions/requests does the CCC:

--- become a party to a regulatory agreement? OR

--- does NOT become or allowed to become a party? (168-8)

--- is or is not a development of regional impact described as to its criteria, control, etc.?

3. Miscellaneous provisions:

--- abutters (168-D.(3)) .... should be cross-referenced and compatible with other distances

--- termination date/duration (168-9)... who decides and on what basis?

**DRAFT provision for Chapter 168 [Regulatory Agreement], Section 168-11, "Enforcements".**

The singular sentence says absolutely nothing as to what is meant by the singular word, except to the extent that reference is made to "binding contract" and "Massachusetts court". This lone sentence, as written, is highly likely to make developers think more than just once: "do I/we really want to do business in this state?!!". So, perhaps (at least in draft form) the following words will be received more positively, clearly and effectively.

To better advise the parties....whether developers, applicants, property owners, local/town governmental departments and others .... as a condition incident to the "developments" and "regulatory" aspects of projects, the concept, nature and conditions of property upon which the contracts to be negotiated, the following subsections are provided:

A. The measurement or description as to **Adverse Impacts** incident to the conditions of the property and the performance of the project duties as defined in the contract, inspections as to the conditions may be based upon:

(1.) natural causes, preferably evaluated, described and measured prior to completing the terms and conditions of any properties upon which projects are to be proposed and considered;

(2.) known or historical conditions are to be used to establish "base lines" or "standards" as conditions to be retained, corrected or included as parts of the project descriptions;

(3.) during the performance of contracts, periodic inspections are to be prescribed within each contract, so that if any "impacts" are considered to be "adverse" or of concern, remedies can be anticipated and addressed, without imposition of enforcements or fines, during the performance of each contract; AND

(4.) at the conclusion of the project, to be followed by application for requesting a Certificate of Compliance, any further "impacts" can be identified and resolved; OR

(5.) if any "adverse impacts" are identified, as discussed more fully below, whether intentional, deliberate or accidentally, the conditions shall be described and measured, and proposed remedies submitted or negotiated.

B. For those conditions that are identified as "deliberate", "intended" or resulting from negligence, following the confirmation of "baselines" and/or "standards" as noted above under A. (1) and (2), responses shall be described in Enforcement Orders as follows:

(1.) for those conditions or incidents that may result from the clearing and/or

initial phases of construction and following the approval of the application, the contractor, developer or other parties involved may request waivers as to fines based upon determinations that the extent of the “impacts” are readily able to be fixed and corrected;

(2.) however, for those “adverse impacts or conditions” that are discovered prior to the approval, or without a prior submission of a project application, the conditions are not entitled to waivers unless requested and granted by the regulatory authorities;

C. The CAUSE(S) can be based on one or more of the following:

(1.) actions taken by property owners and/or contractors/developers prior to seeking or submitting applications for the changes and impacts upon the property;

(2.) actions taken or caused by the failures of property owners and/or contractors/developers to comply with the criteria and terms of conditions in the approval of a project whether by neglect or failure [whether accidental or intentional] to comply with the project descriptions.

D. The SOURCES of information and/or reports of damages and violations, may occur from one or more of the following:

(1.) from Anonymous calls or letters (without identification of author) wherein the alleged damages are described as to location and the nature of the damages;

(a.) if based upon the notification as having been anonymous, the property owner or contractor may not be subjected to fines or penalties, providing that the alleged violator agrees to perform such repairs and remedies deemed reasonable and necessary as outlined and prescribed in the resulting Enforcement Order.

(b.) if based upon observation from (identified) neighbors, inspectors and others (ie. not from anonymous sources), the Enforcement Order issued shall require that the damages incurred shall be corrected in a timely manner, and that waivers of fees and penalties may, at the discretion of the inspector, be waived or suspended.

Chair of Committee opened the meeting to public comment and welcomed Mr. Larry Morin. Mr. Morin thanked the Committee members for allowing him to submit things in writing, he looks forward to the discussion with Mr. Florence, the Building Commissioner.

Chair of Committee asked the members of the Committee for any comments they would like to make after hearing the public comments.

Catherine Ledec thanked Mr. Morin for submitting his comments, while enforcement is not really this committee’s charge, with that said enforcement can often come with challenges, if there are challenges of enforcement, it might mean the zoning may have to be tightened or more specific in order to make enforcement happen.

Councilor Terkelsen appreciates Mr. Morin and his comments, and especially with the Solar Array, she would like to be pro active and not reactive when these types of projects come forward.

Mr. Kupfer introduced the following documents for discussion: A few items for the Committee to Review and Assess Zoning and Review the Town’s Use of Regulatory Agreements. Attached please find the Order and Rationale for each of the zoning ordinances requested (except exempt uses which is the ordinance itself). Below you will find links to each of the ordinances as they stand today (except Short Term Rentals which was not passed). Also attached please find the regulatory memo updated to reflect last week’s conversation. July 24, 2024, [Updated August 7, 2024](#), [Updated August 23, 2024](#), Mr.

Kupfer stated the only change made to the memo was adding the language under enforcement for the **and/or conservation bonds**.

To: Committee to Review and Assess Zoning and Regulatory Agreements  
From: Stephen Robichaud, Planning Board Chair  
Jim Kupfer, Director, Planning and Development

**Re: Potential Amendments to Chapter 168 Regulatory Agreement Ordinance and Map**

At the July 19, 2024 meeting of the Town Council Ad-Hoc Subcommittee entitled Committee to Review and Assess Zoning and Regulatory Agreements, the Chairman of the Planning Board along with the Planning and Development Interim Director presented an overview of Chapter 168 of the General Ordinance: Regulatory Agreements. In that presentation, the Interim Director provided an overview of the ordinance, how the process has functioned to date, a comprehensive list of regulatory agreements executed, and map amendments that have been made since inception of the district. The presentation led to committee conversation as to ways in which the ordinance and process may be improved. The request at the conclusion of the meeting was for the Chairman and Planning and Development staff to expand on the issues and opportunities discussed. Subsequently, on July 26<sup>th</sup>, 2024, the Committee reconvened to discuss the matter further as well as on August 16<sup>th</sup> and 23<sup>rd</sup>. Below please find the main topic areas discussed as possible ways to improve the ordinance and recommendations for further discussion. Track changes reflect further edits and updates from July 26<sup>th</sup> and August 23, 2024.

Potential Chapter 168 Policy or Ordinance Amendments

***Map Amendments***

The Regulatory Agreement District Map was adopted along with the ordinance in 2004. The original district was to match the Growth Incentive Zone. In 2007 two small properties abutting 291 Barnstable Road were added to the district, in what appears to be a clean up to match the Growth Incentive Zone boundary. In 2009, Town Council added properties on and near Centerville Main Street to the Regulatory Agreement District. In 2012, Town Council added 35 Scudder Avenue to the Regulatory Agreement District. Lastly, in 2018, Town Council added 790 Iyannough Road (Former K-Mart Plaza) to the Regulatory Agreement District.

The Committee suggested that these additions may need to be re-evaluated. If ultimately the Committee recommends an amendment to the map to Town Council, Planning and Development can assist Town Council in developing a formal process for map amendment(s) that shall require authorization by the Town Council during a public hearing and notification to the Cape Cod Commission.

Potential Recommendation to Town Council: The Committee recommends the Regulatory Agreement District Map be amended by adding or removing certain properties from the Map. **Priority consideration for removal should be given to the Regulatory Agreement District parcels outside of the Growth Incentive Zone.**

***Earlier Public Involvement and Final Reporting***

Chapter 168 identifies a process for receipt of a regulatory agreement application, requiring at least two public hearings. The application is to be deemed complete when all materials, draft agreement, and a plan are provided to the Town. The regulatory agreement process, as identified in the ordinance, begins with the Planning Board as the lead negotiator, who may or may not recommend the agreement to Town Council. Both Planning Board and Town Council shall hear the matter during public hearings.

The Committee raised concern about the lack of public notice of new proposed regulatory agreement applications. Staff agreed that the process could use improvement as recent agreements have spent months at Planning Board, only to be immediately turned away at Town Council. Enhanced early engagement with Town Council and the public could improve the process. The Committee may recommend adding language to this effect, either formally through an amendment to the Ordinance, or through policy directed by Town Council to the Planning and Development Department. **The Committee also recommended a template agreement be established, with standard terms, to provide consistency to the agreement negotiation process.**

Additionally, the Committee suggested a final reporting out process may benefit both the Town Council and the process. Some on the Committee recommended adding a requirement for applicants to be required to provide a formal presentation or report to the Council as a condition of final approvals.

Potential Recommendation to Town Council: **The Committee recommends Staff develop a template regulatory agreement for use by applicants. In addition, the Committee** recommends adding an introductory presentation to Town Council by the applicant at a regularly scheduled meeting of the Council prior to a public hearing being held by the Planning Board. The Town shall provide all applicable materials provided by the applicant on a town project webpage prior to the regularly scheduled meeting of Town Council. **Lastly, and** the Chair of the Planning Board shall provide notice of an application submitted at a regularly scheduled meeting of the Board upon notice of said application. Lastly, all regulatory agreements shall be conditioned to provide a final report/presentation to Town Council prior to final approvals. This recommendation may be by ordinance amendment or policy by Town Council.

### ***Defined Public Benefit***

The Committee reviewed the “public benefits” as identified in the ordinance which include contributions to, Town infrastructure, public capital facilities, land dedication and/ or preservation, affordable housing, either on or off-site, employment opportunities, community facilities, recreational facilities, alternative mass transportation and/or any other benefit intended to serve the proposed development, municipality or county, including site design standards, to ensure preservation of community character and natural resources.

The Committee has asked for any suggested additions to this list of potential contributions. After further consideration we believe the list is fairly comprehensive in broad strokes. If the Committee were to consider a change to the procedural process, a recommendation may be to request Town Council offer more defined suggested public benefits, perhaps in their annual Strategic Plan, to offer proactive guidance to applicants and the Planning Board.

Potential Recommendation to Town Council: The Committee recommends Town Council consider adding a section to their annual Strategic Plan or other applicable guiding document, outlining certain current public benefit priorities in the District and update these priorities annually.

### ***Enforcement***

The Committee discussed enforcement measures available to the Town when a Regulatory Agreement is not adhered to. The Committee heard from the Building Commissioner and Assistant Town Attorney. As was explained, regulatory agreements are contracts and not zoning decisions. The agreements are enforced through local review of a team made up of Building, DPW, and Planning but any refusal of compliance is directed to “a Massachusetts court of competent jurisdiction” as a legal matter per the ordinance. In order to limit noncompliance the committee suggested inserting performance bonds **and/or conservation bonds** with strict limitations on access to the bond until such time as the agreement is completed in full, such as minimum hold backs. The Town has experience with performance bonds in other permitting processes and could facilitate this as standard practice. If the Committee would like to recommend to Town Council that they may wish to consider instituting this process, they may do so in the form of a policy or a formal amendment to the ordinance.

**The Committee also discussed the need to clearly articulate to an applicant that certain conditions are required to be adhered to for the life of the agreement, which may well be in perpetuity. The Committee recommended language be added to the ordinance to reflect that certain conditions shall extend beyond the 10-year time frame to complete an agreement. Furthermore, the Committee recommended included language in the ordinance that if ownership of the agreement was to transfer, that the Town Council would be notified.**

Additionally, the Committee suggested the Town investigate whether dedicated enforcement officers may improve compliance and may be utilized for enforcement beyond just regulatory agreements. The Committee suggested that if officers are considered, they may need to be staggered in hours and geography, so compliance is enforced in off hours and across Town.

Potential Recommendation to Town Council: The Committee recommends a formal policy or an amendment to the ordinance under subsection 168-11 Enforcement, that a performance guaranty through bond or other measure shall be required for a certain value as defined in the agreement and not released until full completion of the agreement. **In addition, the Committee recommends amending 168-9B to add language regarding explicit enhanced timeframes for certain conditions and change of ownership. The Committee also recommends the Council direct the Town to explore adding additional enforcement officers for regulatory and zoning compliance.**

Mr. Kupfer discussed Chapter 168 subsection C (This is regarding Mr. Schulte's question regarding the timing of Regulatory Agreements) <https://ecode360.com/6557575#6557575> (Chapter 168) <https://ecode360.com/6557628#6557628> (§ C)

*The Town of Barnstable shall assume the responsibility for overseeing the regulatory agreement process. The Town of Barnstable shall hold a public hearing after receipt of a fully completed application from a qualified applicant for consideration of a proposed regulatory agreement. The Town of Barnstable shall hold at least **two public hearings**. The public hearings regarding review of a regulatory agreement shall not exceed 60 days, unless extended by mutual agreement of the parties. **Failure to close the public hearings within 60 days shall not result in a constructive grant of the proposed development.***

Mr. Kupfer explained in a typical permit structure a town has the obligation to hear a project in a reasonable amount of time, so the last line of (§ C) is very important, it defines the timeline. The Chair of the Committee thanked Mr. Kupfer for that explanation, but said what he was really asking about was the actual timing of the obligations/conditions of the project. He understood there was a 10 year time frame for the execution of the contract, and that we have had some regulatory agreements approved but never executed because the time expired on them. However, the Chair asked how long do the obligations/conditions specified in the regulatory agreement run? For example, if the project owner changes hand, do the conditions run with the land and extend to the new owner. The conditions run with the property, but it is done on a case-to-case basis and explained out specific to the language in the regulatory agreement.

Catherine Ledec mentioned the possibility of using a management company to manage the property to make sure the regulatory agreement was executed and completed properly. What happens in 20 years when the owner wants to sell the land, does the agreement stay. Mr. Kupfer stated these agreements are not zoning agreements, you have the 10 years to execute the agreement.

Councilor Terkelsen asked how long does a project take to execute the agreement, she believes 10 years is a very long time to complete the regulatory agreement, is the 10-year come from a standard form? Mr. Kupfer said it is the Cape Cod Commission that put the 10 years mark on it.

Mr. Kupfer mentioned the following under Chapter 168. Regulatory Agreements

***§ 168-9. Limitations on regulatory agreements.***

***A. Nothing in this chapter may be construed to permit a municipality to require a qualified applicant to enter into a regulatory agreement.***

***B. A regulatory agreement will commence and terminate as agreed by the parties, in writing, except as otherwise provided in this section. Where the Cape Cod Commission is not a party, a regulatory agreement shall not exceed 10 years; however, provisions in the regulatory agreement pertaining to the preservation of open space and park areas, and agreement to pay for maintenance of utilities and other infrastructure may exceed such ten-year limitation. Where the Cape Cod Commission is a party, a regulatory agreement may extend for a longer period of time than that noted above, as set forth in Section 7 of the Code of Cape Cod Commission Regulations of General Application, as revised.***

*C. A regulatory agreement may not be used to prevent the Town of Barnstable or other governmental agency from requiring a qualified applicant to comply with the laws, rules and regulations and policies enacted after the date of the regulatory agreement, if the Town of Barnstable or governmental agency determines that the imposition of and compliance with the newly effective laws and regulations are essential to ensure the public health, safety or welfare of the residents of all or part of the jurisdiction*

Mr. Schulte would like to see it in writing for the developers in the regulatory agreements that the requirements and conditions of the agreements of the subject project goes beyond the 10 years, they have to complete the project. The way regulatory agreements are currently written, that fact is vague. Councilor Crow would also like to see the subsequent owner is subject to the same regulations.

Catherine Ledec asked about the subject of regulatory agreements, how different the language is in each of the regulatory agreements we have, she understands that the lawyers of the project are typically the ones that draft these, but she was asking if there could be standardized language for them, this committee was given 6 to look at and in each one the language is different, some have more detail than others, there is an opportunity to look at the language in all of them to come up with standardized language. We need to make sure the public benefits are easy to measure. If we have standard language then it may be easier to manage for the staff that deals with these, and possibly a list of the public benefits so they stand out.

The public benefit does need to be defined and made to stand out, Mr. Kupfer said that these agreements could make that easier to read for the public and agrees that it is a good idea and will work on a template with the legal department to come up with it.

Mr. Schulte said that there is probably some familiar language and standardized template that can be used for all regulatory agreements, and then if there is different language that needed to be added according to the specific project you could add it, but there probably is some standardized language for all of them.

Councilor Terkelsen agreed that the standardization of language will also make it easier to manage the project. We have a standardized tools in my job that measures everything so that you can pull data from these standardized forms. It appears the developers are driving these agreements, it seems the Town should be in the driver's seat, not the developers.

Mr. Robichaud mentioned that there is some standardization language in all of them, as a member of the Planning Board we see the standardization of language in all of them, but there needs to be more formalization of this. Mr. Robichaud also stated there are limitations to standard language, but it depends on the project, but there is definite language in each that read the same in each and can be used in each.

Mr. Schulte would like to see put in the memo some sort of standardized language with the understanding that other items may be added and mentioned because the project is different and be proactive rather than reactive.

Mr. Schulte requested Mr. Kupfer to do a brief presentation regarding the Great Streets Project at the last meeting. Mr. Kupfer presented the following:

This project that was started in 2022. This project was meant to improve the safety of Main Street and the connecting streets, prioritizing walking, this project will result in a two-way Main Street and a two-way South Street. The majority of change is signs and lines change for this project.





# Great Streets Downtown Hyannis: A Walkable Heart for Cape Cod

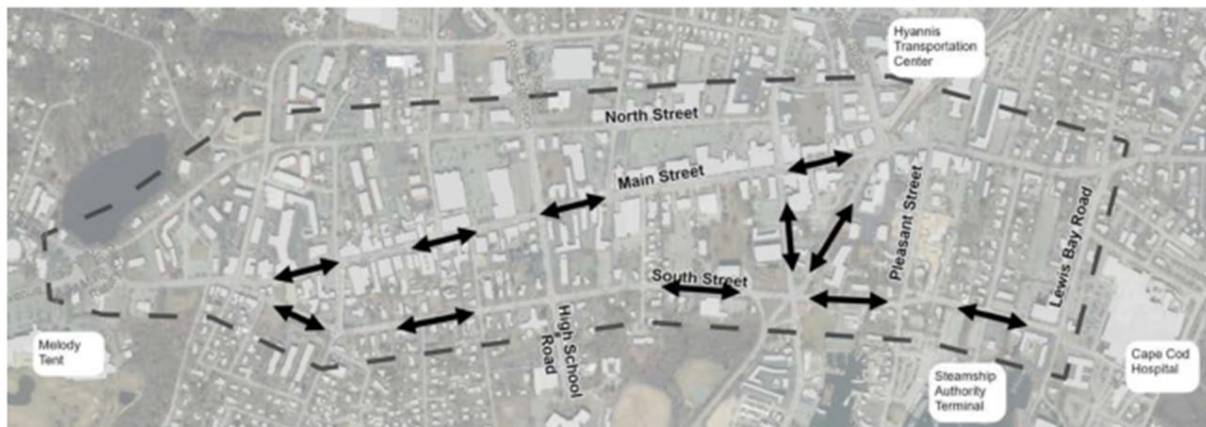
September 2024 Update

Town of Barnstable

DPW & Planning & Development

## PROJECT GOALS

- ▶ Enhance the public realm through placemaking in support of economic development
- ▶ Emphasize and prioritize people walking
- ▶ Address congestion that could increase as residential density is increased
- ▶ Employ traffic calming to enhance safety
- ▶ Encourage multi-modal transportation



*Proposed changes to street direction downtown.*

Proposed (Facing East)

Proposed (Facing East)

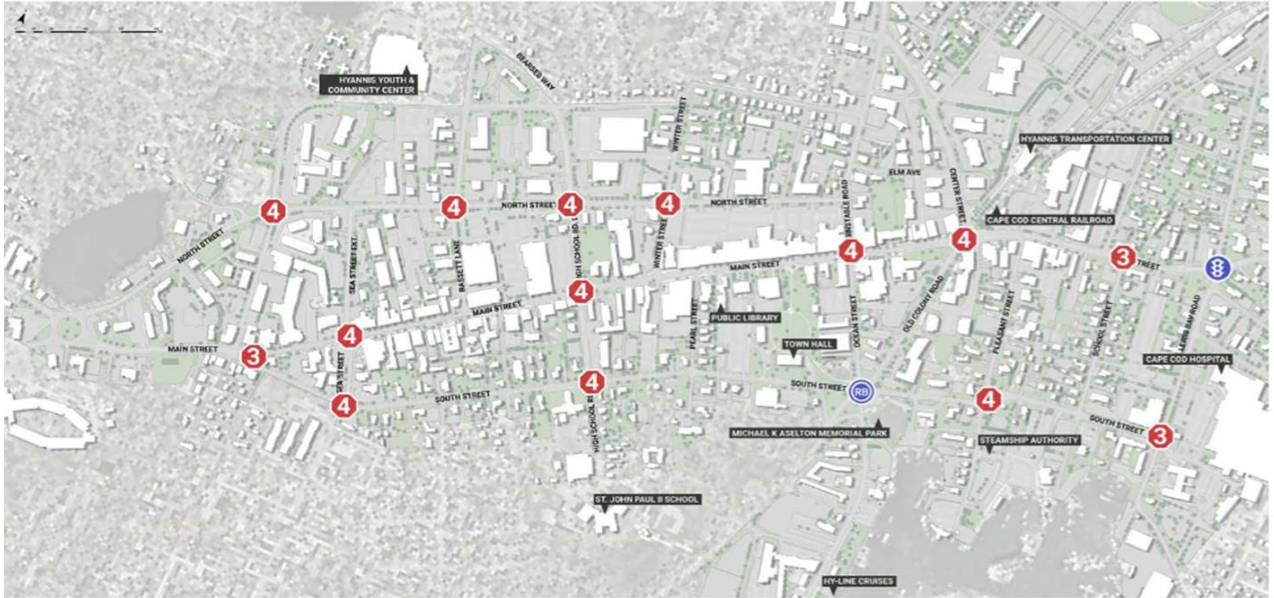
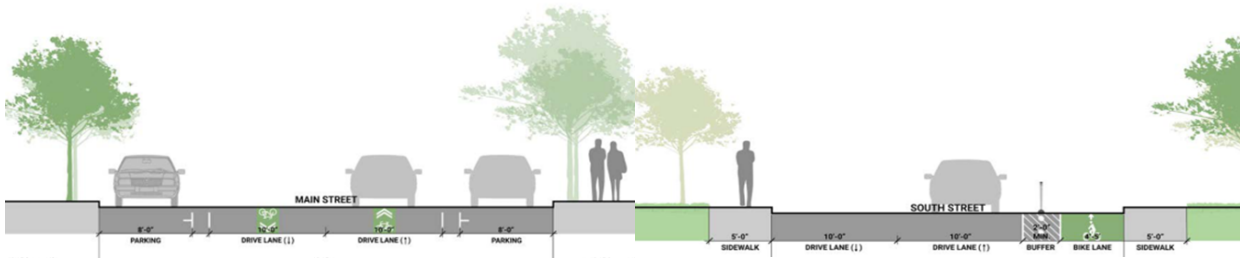


Figure 35 Existing Pleasant and South Street Intersection



Figure 36 Proposed Pleasant and South Street Intersection



### Six-Points Intersection Roundabout

Designed for WB-62 (can accommodate WB-67)

Closing Old Colony Leg

Slip lane for right onto Old Colony



## Next Steps

Continue Design – fully funded design.

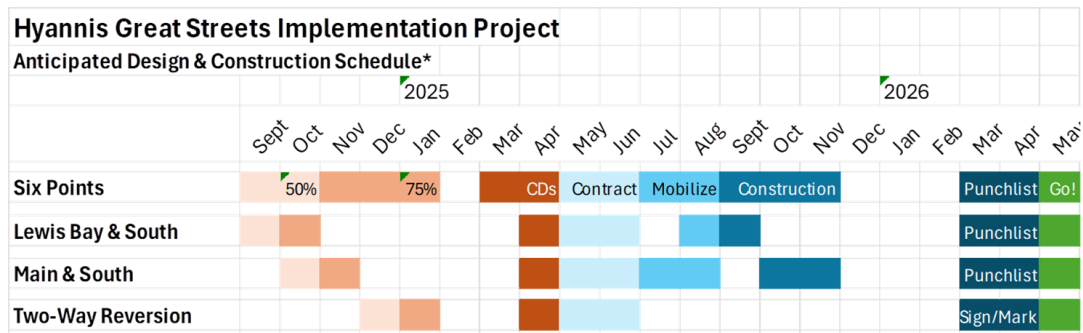
Finalize Utility Relocation

DPW led 75% 6-Points Design Public Review

Public Communications Plan

Implementation – 1.8 Million Mass Works Grant combined with 2 million in Chapter 90 funding.

Milestone	MM-YYYY
Design, Survey, and Engineering Complete	03-2025
Bids Opened	05-2025
Construction Started	09-2025
Construction 50% Complete	12-2025
Construction 100% Complete	05-2026



Councilor Crow asked Mr. Kupfer what was the meaning of “Designed for WB-62 (can accommodate WB-67)” Mr. Kupfer answered that measures the truck size and the turning capacity of the larger vehicles. Mr. Kupfer stated there is a program that is used by the project that measures the turning radius of a vehicle, and this is done so that they know how large a vehicle can turn and make it around the roundabout safely. Ms. Ledec also said she had concerns with the large trucks being able to make the turn, is there a way to make the lanes wider.

Mr. Kupfer said that in the illustration above of the light grey area in the center roundabout is street level and flat, so if there was an issue driving around it, a driver could ride in that part, if

necessary, much like the roundabout by the Hyannis Youth and Community Center where the brick is flat, and if necessary, you can drive on it. Ms. Ledec asked about underground utilities and would like to see underground utilities in this whole area, Mr. Kupfer said he did put that ask out there, and was quickly hushed and it was never brought up again by the utility companies, so he wasn't sure if it was cost preventative to do this, or what the reason is not to do it, other than what he suspected was the Cape Cod Hospital being right down the street, and for various reasons it may be one of them for the communication they need and where that needs to be.

Mr. Alsmann loves the idea about pedestrian friendly area, but he would like to see a limited amount of signage, we have a lot of signs and they are everywhere, and they are oversized and frankly ugly and not suitable for the area, different colors, and sizes, so he can see this are becoming over used with signs, and if there is a way to limit that. Mr. Kupfer said they are looking at that and will be using lighting and hopefully replacing the overuse of signs, but we also have to follow regulations of roadways.

Councilor Bloom agrees it is a great start for those that live and work in the area for safety reasons, and he liked Mr. Kupfer remarks regarding "this design is not intended to speed things up in Hyannis, if anything it will slow others down" Councilor Bloom agrees, we need to slow things down and make this a walkable area again.

Mr. Schulte asked about the total cost, and if that is the total cost to completion. Mr. Kupfer said the longer we wait to start the project the cost will rise, however from the conversations he has had with others, this cost will cover the completion of this project as of right now.

Mr. Etienne asked why in the diagram of the traffic going both ways, that there is only one bike lane on South Street, but then on the new version of the 6-point intersection there is a two-way bike lane. Mr. Kupfer said it has everything to do with the width of the current road and the space we have to work in, the bike lane on South Street may not come together, we are still looking at, and whether or not the bike lanes become part of final layout. Mr. Kupfer also wanted to mention that Aselton Park will also not be touched and will remain the same.

Attorney Connolly spoke about the parking case in Osterville, a challenge was brought by the property owner, because of the imposition of fines the Town issued to him because of the number of cars he had parked on his front yard. The judge made the ruling according to Chapter 59 (see below)

Town of Barnstable, MA  
Wednesday, August 14, 2024

## Chapter 59. Comprehensive Occupancy

[HISTORY: Adopted by the Town of Barnstable 6-1-2006 by Order No. 2006-126.<sup>[1]</sup> Amendments noted where applicable.]

### GENERAL REFERENCES

Noncriminal enforcement of violations — See Ch. 1, Art. I.  
Rental property — See Ch. 170.  
Zoning — See Ch. 240.  
Subdivision regulations — See Ch. 801.

[1] *Editor's Note: This order also provided that its subject matter shall be examined by a committee appointed by the President of the Council before 10-1-2007, to report to the Council by 2-1-2008, with respect to any changes which may be deemed necessary or advisable.*

### § 59-1. Purpose and intent.

The purpose and intent of this chapter is to guide growth in accordance with the local comprehensive plan, so as to promote beneficial and convenient relationships between the natural resources of the Town and its inhabitants, to address nutrient management and other environmental, health and safety issues resulting from overcrowding in residential dwellings.

### § 59-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

#### BEDROOM

A room providing privacy, intended primarily for sleeping and consisting of all of the following: (a) floor space of no less than 70 square feet; (b) a ceiling height of no less than seven feet; (c) an electrical service and ventilation; and (d) at least one window large enough to provide emergency egress. Living rooms, dining rooms, kitchens, halls, bathrooms, unfinished cellars and unheated storage areas over garages are not considered bedrooms.  
[Amended 10-19-2006 by Order No. 2007-033]

#### OCCUPANT

Any person who has attained the age of 18 who has resided in a residential dwelling for any length of time.  
[Amended 1-17-2013 by Order No. 2013-033]

#### RESIDENTIAL DWELLING

A single unit providing complete independent living facilities for one or more persons, including provisions for living, sleeping, eating, cooking and sanitation.

### § 59-3. Maximum number of occupants.

The maximum number of occupants in a residential dwelling shall be determined by the number of bedrooms contained therein. A maximum number of two occupants is permitted for each of the first two

bedrooms; for each additional bedroom a maximum number of one occupant is permitted. It shall be a violation of this chapter for any person in excess of that provided herein to occupy any residential dwelling.<sup>[1]</sup>

[1] Editor's Note: Former Subsection B, regarding the maximum number of motor vehicles permitted, which immediately followed, was repealed 1-17-2013 by Order No. 2013-033.

#### § 59-4. Exemptions.

[Amended 1-17-2013 by Order No. 2013-033]

Children, grandchildren and foster children of an owner or occupant shall be exempt from these provisions.

#### § 59-5. Enforcement; violations and penalties.

- A. This chapter may be enforced by the Building Commissioner, or his designee, the Board of Health and/or its designees or the police.
- B. The owner, lessee or person in a position of control of any dwelling unit found in violation of this chapter shall be subject to a fine not to exceed \$300. Each day of continued violation may be deemed to be a separate offense.
- C. This chapter may be enforced under the provisions of MGL c. 40, § 21D. The fine for any violation under the provisions of MGL c. 40, § 21D shall be \$100. Each day of continued violation may be deemed to be a separate offense.

#### § 59-6. Severability; construal of provisions.

- A. Each provision of this chapter shall be construed as separate. If any part of this chapter shall be held invalid for any reason, the remainder shall continue in full force and effect.
- B. Nothing herein shall be construed as allowing for more bedrooms in any residential dwelling than are otherwise permitted by any state or local law or regulation governing health and safety.

Assistant Town Attorney Connolly stated that the Court mentioned the Superior Court was wrong in upholding the fine and found Chapter 59 section 3B, there is no 3B section because it was repealed after the Court found it was invalid, the Court said it was the Board of Health regulations and thought it should have been in the Zoning Ordinance and it wasn't. Councilor Crow asked so there is no way to limit the number of cars on a property unless it is in our Zoning Ordinance, Assistant Town Attorney Connolly stated that is correct. Assistant Town Attorney Connolly said that Brian Florence, the Building Commissioner would be better to speak on this. Assistant Town Attorney Connolly said she is not aware of any ordinance in the Town that regulates the number of cars at a residence, however she will look into this further. Councilor Crow said this is the problem, how do we know that there is only 3-4 people in a 3-bedroom house, but there are 15 cars parked all over the place. This is an area we need to look at.

Assistant Town Attorney Connolly updated the members on the 810 Wakeby Project which is the Ground Mounted Solar Array, the project has applied for and received a special permit that has not been appealed, they just need to go through the next steps. Addressing some of the concerns of Ms. Salas wanting to remove the Solar Array District from 810 Wakeby, Assistant Town Attorney Connolly asked what is the goal in doing that removal, if the goal to remove it is to stop the project from happening, it will not do that, if the goal is to remove solar in general from Barnstable, it will not do that either because of the Mass. Zoning Act Chapter 40A Section 3 (see below)

**Section 3.** *No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, except that all such activities may be limited to parcels of 5 acres or more or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. For such purposes, land divided by a public or private way, or a waterway shall be construed as 1 parcel. No zoning ordinance or by-law shall exempt land or structures from flood plain or wetlands regulations established pursuant to the General Laws. For the purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128, and the term*

*horticulture shall include the growing and keeping of nursery stock and the sale thereof. Said nursery stock shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises.*

*No zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building nor shall any such ordinance or by-law prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. Lands or structures used, or to be used by a public service corporation may be exempted in particular respects from the operation of a zoning ordinance or by-law if, upon petition of the corporation, the department of telecommunications and cable or the department of public utilities shall, after notice given pursuant to section eleven and public hearing in the town or city, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public; provided however, that if lands or structures used or to be used by a public service corporation are located in more than one municipality such lands or structures may be exempted in particular respects from the operation of any zoning ordinance or by-law if, upon petition of the corporation, the department of telecommunications and cable or the department of public utilities shall after notice to all affected communities and public hearing in one of said municipalities, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public. For the purpose of this section, the petition of a public service corporation relating to siting of a communications or cable television facility shall be filed with the department of telecommunications and cable. All other petitions shall be filed with the department of public utilities.*

*No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. As used in this paragraph, the term "childcare facility" shall mean a childcare center or a school-aged childcare program, as defined in section 1A of chapter 15D.*

*Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination. The provisions of this paragraph shall apply to every city or town, including, but not limited to the city of Boston and the city of Cambridge.*

*Family childcare home and large family childcare home, as defined in section 1A of chapter 15D, shall be an allowable use unless a city or town prohibits or specifically regulates such use in its zoning ordinances or by-laws.*

*No provision of a zoning ordinance or by-law shall be valid which sets apart districts by any boundary line which may be changed without adoption of an amendment to the zoning ordinance or by-law.*

*No zoning ordinance or by-law shall prohibit the owner and occupier of a residence which has been destroyed by fire or other natural holocaust from placing a manufactured home on the site of such residence and residing in such home for a period not to exceed twelve months while the residence is being rebuilt. Any such manufactured home shall be subject to the provisions of the state sanitary code.*

*No dimensional lot requirement of a zoning ordinance or by-law, including but not limited to, set back, front yard, side yard, rear yard and open space shall apply to handicapped access ramps on private property used solely for the purpose of facilitating ingress or egress of a physically handicapped person, as defined in section thirteen A of chapter twenty-two.*

*No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.*

*No zoning ordinance or by-law shall prohibit the construction or use of an antenna structure by a federally licensed amateur radio operator. Zoning ordinances and by-laws may reasonably regulate the location and height of such antenna structures for the purposes of health, safety, or aesthetics; provided, however, that such ordinances and by-laws reasonably allow for sufficient height of such antenna structures so as to effectively accommodate amateur radio communications by federally licensed amateur radio operators and constitute the minimum practicable regulation necessary to accomplish the legitimate purposes of the city or town enacting such ordinance or by-law.*

Assistant Town Attorney Connolly stated there is not a building permit yet issued, just the special permit. Councilor Crow asked if that area is a residentially zoned area. Mr. Kupfer said that specific site is basically right now a junk yard but is a residential zone as its first zoning layer, then the solar array in the overlay district, the overlay district does not do away with the initial zoning, which is residential, but this project does require a special permit to build, and that is what they have currently. Councilor Crow asked if the Town could in the future could only build these in industrial areas only and not residential. Assistant Town Attorney Connolly said you could, but you would have to be careful of the Tracer lawsuit, and that the Town has enough land to use in an industrial area. Councilor Bloom asked if there is anything that could stop this project, Assistant Town Attorney Connolly said no, its too late to file an appeal. Mr. Alsman asked if the project can be tweaked at all if it can't be stopped, can we at least minimize the impact to the residents before the project starts. Mr. Kupfer said in a quick answer, yes it can.

Ms. Ledec asked How many megawatts is this project, Mr. Kupfer answered just over 5 megawatts, Ms. Ledec asked we have opportunities to manage this type of project possibly coming forward again with inserting language in our Solar Array District by introducing a buffer between neighbors, or limiting to how many can be put in the town in residential areas, just suggestions because she has not followed the project and does not know too much about it. Ms. Ledec asked if there was any kind of ordinance in place about degrading your property. Assistant Town Attorney Connolly said she is not aware of any.

Chair of Committee asked that the dates and meeting materials of the Solar Array discussion at the Planning Board be sent to the members of this committee so they can see the discussions that took place to follow how the project got this far.

**Topics for future discussions:**

Joint meeting with the Local Comprehensive Planning Committee, and the Committee to recommend strategies for Housing Creation in the Town

Invite attorneys and engineers to discuss the regulatory agreements (pros and cons)

Presentation on Enforcement (Building Commissioner, Brian Florence) (Mr. Kupfer will reach out to him)

Single family residential zoning

Form Base Code

Solar Array Overlay Districts

Explanation on the definition of exempt uses (Ms. Ledec)

Land uses practices around schools (Ms. Ledec)

Written guidelines on Municipal uses (Ms. Ledec)

Councilor Crow would like an update on the new state guidelines on owner occupied ADU's, the state no longer requires it, but we do.

Mr. Kupfer said that's correct, we need to change our ordinance to match the states, and we are currently discussing this with legal.

Chair of Committee asked for a motion to accept the meeting minutes of August 16, 2024, as written. Councilor Crow made the motion to accept the meeting minutes of August 16, 2024, this was seconded by Councilor Terkelsen, all members voted in favor of accepting the meeting minutes of August 16, 2024, as written.

Committee members looked at the next date for the meeting and decided on September 6 from 3:30pm to 5:30pm and September 20 for 3:30pm to 5:30pm in the Hearing Room

Chair of Committee asked for a motion to adjourn, Councilor Terkelsen made the motion, this was seconded by Councilor Bloom, all members voted in favor of adjournment

ADJOURN: 5:30pm