

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

James H. Crocker Jr. Hearing Room 2nd 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 Alsmann

July 26, 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 and made the following announcement:

Chair of Committee, Bob Schulte asked for Roll Call: Members present: Bob Schulte, Chair; Councilor Jeffrey Mendes; Councilor John Crow; Councilor Charles Bloom; Catherine Ledec; Ken Alsmann; Councilor Kristen Terkelsen (arrived at 3:20pm); Absent: Councilor Matthew Levesque (prior commitment)

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 encouraged the public if they have comments in writing to send them to 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 that the Appointments Committee met and have recommended Mr. Seth Etienne to serve as the newest member of the Committee to Review and Assess Zoning and Review the Town's Use of Regulatory Agreements, he will replace the resident who could not be a part of the committee due to work commitments.

Chair of Committee would like to establish a web page to include all Agendas and meeting material for each meeting of this committee, and he has asked the Administrator to do this with the IT Department. *Update from Administrator: The Town Council web page is where this Committee is located right now, so if the public wants to see any meeting materials they would go first to the Town Council web page <https://www.town.barnstable.ma.us/BoardsCommittees/TownCouncil> click on the link, the next step is over to the right of the Town Council web page you will see a heading of **SUB COMMITTEES** <https://www.town.barnstable.ma.us/BoardsCommittees/TownCouncil/#collapse2> click the arrow down button and all of the 5 Ad Hoc Committees are listed, this is where you will find the Agendas and meeting materials.*

<https://www.town.barnstable.ma.us/boardscommittees/CommitteetoReviewandAssessZoning/default.asp?brd=CommitteetoReviewandAssessZoning&brdid=99&year=2024>

Chair of Committee read the Purpose of the 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 Council.

Also in Attendance were Kathleen Connolly, Assistant Town Attorney and James Kupfer, Interim Director, Planning and Development; Steve Robichaud, Chair Planning Board

Public in Attendance: Eric Schwaab, West Hyannis Resident

The Chair of the Committee welcomed all those that attended in person as well as those attending and viewing at home. Public comment submitted by residents below:

The Chair mentioned the following: Nattalie Pittinger submitted the complaint report discussed at the last meeting which was given to the committee members: (see below) and emails from Francis Parks (see below)



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From: fsp67@comcast.net <fsp67@comcast.net>

Sent: Monday, July 22, 2024, 3:05 PM

To: Town Main Mailbox <email@town.barnstable.ma.us>

Subject: Committee to Review and Assess Zoning and Review the Towns Use of Regulatory Agreements

I could not find an email for this committee.

My concern is the that homes that have a large number of derelict construction equipment and derelict vehicals. One address is 137 Old Stage Rd and the other is (the Baker Brother's House) 1635 intersection Falmouth Rd and Santuit Newtown Rd. Some of the hoard could be seen driving by the rest is in the area behind the house. There is also a house behid Mahoneys that appears to contain quite a bit of construction equipment. My concern is any toxic fluids that may be escaping from the rusting equipment.

Frances S. Parks

67 Eaglestone Rd

Cotuit, MA.

From: fsp67@comcast.net <fsp67@comcast.net>

Sent: Monday, July 22, 2024, 3:46 PM

To: Town Main Mailbox <email@town.barnstable.ma.us>; feliciaprecinct13@gmail.com

Subject: Fwd: Committee to Review and Assess Zoning and Review the Towns Use of Regulatory Agreements

One other concern of mine is form based building. I think it needs to go to the shredder. I read the information about the end product of the plan and it looks like a bunch of lined up of rectangular boxes. The Winn project was just building design pulled off the shelf. No concern for where it was going to go.

Fran Parks

67 Eaglestone Way

Cotuit, MA

Committee members were asked for any comments regarding the public comments submitted: Ms. Ledec shares the concerns of Ms. Parks regarding the derelict construction equipment and derelict vehicles in the residential yards, and the environmental impacts.

Chair of Committee welcomed Mr. Kupfer, Planning and Development and Steve Robichaud, Chair of the Planning Board who will present today, and also for sending the memo to us clarifying some of the questions we had our last meeting. The following was presented this evening for discussion.

Chair of the Committee opened the discussion to the Committee members:

Ms. Ledec wanted to add a comment on the importance of reporting out, once a project has one of the Regulatory Agreements and received the occupancy certificate, and the developer is ready to walk away, she believes that there should be a reporting out mechanism in place. Put the onus on the developer to make a presentation after the completion of the project, a formal reporting out mechanism as part of the Regulatory Agreements.

Councilor Terkelsen thought it was a great idea and thought of letting us know about the pre-planning process before a project is complete, or if the Regulatory Agreement is coming down the pike, and also to be able to share with everyone what benefits the Town receives each time a Regulatory Agreement is done. It may not directly affect her precinct, but it would be nice for all to know before everything is complete and the agreement is put before the Council for a vote, and that the Town is receiving what benefits from the Regulatory Agreements.

Chair of the Committee had a couple of questions regarding procedure and asked that Mr. Kupfer might want to come to the podium; going through the memo and it is a great model to use and this committee can use it as a road map for recommendations, for instance (1) **Potential Recommendation to Town Council:** *The Committee recommends the Regulatory Agreement District Map be amended by adding or removing certain properties from the Map.* Chair of committee recommended for the next meeting a better understanding of what the actual process is to make a change to any map either by adding or deleting a piece of property. Mr. Kupfer explained that he will put together a road map to explain that process, but essentially it is similar to a zoning change, it also has to go before the Cape Cod Commission as well, but he will explain that for the next meeting. The second question the Chair had regarding (2) **Potential Recommendation to Town Council:** *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. In addition, 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, 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. This recommendation may be by ordinance amendment or policy by Town Council.* Possibly a questionnaire or survey on the front end be given to the Council, so that the Planning Board does not go through an entire process just to have the Town Council reject it, so maybe some work in the front end would save time; the third mention was (3) **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.* Chair thought this was a good thought as well, as well as possibly setting a minimum hold back on the performance bonds, Ms. Ledec had mentioned also a Conservation bonds, the Chair was uncertain how that would work, but something to look into. When Mr. Florence attended and said it was not his group that would enforce Regulatory Agreements, maybe this is something that needs some thought creating a role for someone that does follow up on these Items.

Mr. Robichaud really liked the early participation idea with the Town Council regarding early public involvement, he liked the words “*the Town shall provide all applicable materials provided by the applicant*” in what he was referring to was if the plans, renderings, landscaping ideas, application and explanations were all submitted in the start of the project, to him visual is better than written explanations, if you can see the project it is better, and this can be done all up front and very helpful. Some of the smaller projects may not have all these things a larger project does, which is why we did not require it. Mr. Robichaud agrees with Ms. Ledec about hearing from developers, this is very

important to hear their side of the process. We don't want to over burden them, so they do not want to come to Barnstable, but there is a balance.

Ms. Ledec said in her prior workings with other communities sometimes it is just a conversation with the smaller project developers, they may not have plans and drawings and such, but just a simple conversation can also be helpful. Possible conception plans, just locations of buildings and parking, just so you have a sense of what might be built. Mr. Robichaud said that would be valuable feedback in the beginning so that when the project is talked about all that is worked out prior to the start. Ms. Ledec mentioned the other benefit of conceptual planning is the buy in from the community because they can see and hear about it before its final.

Mr. Alsman asked if Mr. Kupfer was the first stop when these Regulatory Agreements happen, Mr. Kupfer explained that when a Regulatory Agreement starts it's because a developer of a project in the district does not meet the zoning, the next question from the developer is what is my path to permitting which starts the conversation and the process.

Mr. Alsman asked if it's the developer that has the conversation or is it the developer and the owner. Mr. Kupfer said the developer has the details of the project, but the owner and developer can make those suggestions on what they want or seeking, and the Regulatory Agreements evolve around that.

Councilor Mendes too likes the early involvement with the Public, how do you decide what projects require a Regulatory Agreement, and does the Council have to be involved in every one that is developed. Mr. Kupfer said that if the project needed early public involvement, there would be notice to that effect so that the opportunity was there for early involvement. Mr. Kupfer mentioned that policy could stipulate on whether all regulatory agreement come before the Council, or depending on a criteria that is decided on which Regulatory Agreements would go before the Council, but that would be a policy written as to which ones do and don't.

Mr. Robichaud said it is his opinion that all Regulatory Agreements come before Council, this will give everyone a heads up about what is out there in the planning stages, it could be an Item on the Agenda every time the Council meets, if there is one in the future the Council is briefed that night at a Council meeting and if there isn't one then there is no report.

Councilor Terkelsen asked if there was an opportunity for the Public to comment that night at a Council meeting or is it just the Council that can ask questions after the presentation.

It would be at the discretion of the Town Council President to either allow public comment at the time of the presentation or not allow public comment. Mr. Kupfer stated that is correct, it's not a formal public hearing of the Council its just a presentation, so he believes it is up to the Town Council President.

Assistant Town Attorney Katheleen Connolly said she believes the process is the Regulatory Agreements go before the Planning Board first then comes to the Council, and the Town Council President could accept comments at that meeting on the Regulatory Agreement, but then it goes back to the Planning Board for Public Hearings, and then the Planning Board would take those comments under advisement.

Chair of the Committee said yes, he assumes it would go back to the Planning Board for consideration, these would be just preliminary discussions and comments.

Ms. Ledec would like to see the conversations happen before the formal application and discussions happen, and the Regulatory Agreements start to take shape. Try to get the community to buy in before the formal process happens, it would be nice to get a head of it before the actual formal process of Public Hearings.

Councilor Mendes mentioned that in theory it's a great idea, but it won't happen here, and here is why.

As Councilors as soon as it hits us, its formal, and we can't ask developers in the concept stage to start introducing it to the public because that is a great cost to the developers, we should wait until the developers have something on paper to look at. To float ideas is a very costly process for the developers, and we may turn them away.

Mr. Alsman believes that if the town is trying to improve certain areas in the town to developers, why would you not put ideas as to what can be built in a certain area that will attract a developer. If the developer knows ahead of time what the town wants built where, then that may attract developers to say this is what the town wants here, let's do that. He has a little concern about wanting the public ideas on what they want to see in a project because he sees the public divided and it may not come to consensus prior to the project being developed. Mr. Alsman has worked with this type of approach in California, and most of the time it worked but there were often times it did not, and it cost the developer a lot of money designing each new idea along the way with additional plans, so he agrees with Councilor Mendes, wait until the project is on paper. He would give more responsibility to the Planning Board to iron out these so there is a better sense of what is happening. He believes the process the Planning Board has now is a good one, they should do the preliminary work, then present to the public for comments.

Councilor Mendes suggested a workshop on the project, then work the comments into the Regulatory Agreement, some sort of blueprint for the Public to weigh in and then the developer can see what the public wanted so the developer has an idea what the community wants.

Chair of the Committee asked if we ever thought of flipping the process and attracting the developer to an area. Identify what the town wants in a certain area, and then attract the developer to that area.

Mr. Kupfer said that is exactly what the Zoning Incentive is, having to do with Form Base Code which is why we do not see as many Regulatory Agreements because form base codes say this is what can be built here, this is what the Town wants built here so if your project fits into this, great, if not what does the developer have to do to comply.

The Committee will discuss the best options for getting this in front of the Public sooner rather than later for input.

Councilor Crow said he would like to see the developer look at a list of what the Town wants in a certain area to attract walking, or something that is going to be useful for the community to use rather than the big box stores being built. Mr. Kupfer said that would be a great exercise to have, it would give the developers an idea of what needs to be where. Councilor Crow said this area needs a small grocery store within walking distance for the community, if we start having the conversations of what is needed rather than what the developer wants to build will give the Town the edge.

Mr. Alsman said he has always struggled with the parking issues. Mr. Kupfer said yes, the Town needs to do an assessment of the parking areas and finding ways to better utilize those lots.

Ms. Ledec mentioned that the other part missing from the conversation is the Comprehensive Plan, the plan is designed to tell us what we want built in certain areas of the Town. That process is ongoing right now. It defines for the developers and the public what the Town wants.

Mr. Kupfer mentioned the next phase of the Local Comprehensive Plan is land use and hopes that people come out and give us feedback, and that starts in August.

Councilor Mendes believes each village should have an opinion of what they want to see in their villages. Everyone believes that everything needs to be built in Hyannis, and it doesn't, but every village should have a say in what they have in vision for their village.

Councilor Crow agrees with Councilor Mendes, not everything that is built in another village will fit in another village. Every Village in the Town has its own unique look at it should be kept that way, and every village should have a voice in what's built; one size in zoning does not fit all.

The Chair sees the conversation tonight as attracting the developer to build what is needed for the town.

The Committee discussed the possibility of having the Chair of the Local Comprehensive Planning Committee come to one of our meetings to coordinate efforts.

The Chair of the Committee asked how the timing works in Regulatory Agreements, is there a time limit to complete the agreements are there restrictions that expire when the Regulatory Agreements are complete; the Chair also asked Mr. Kupfer about having a developer or two come in and discuss the other side of the Regulatory agreements to get their thoughts.

Possible joint meeting with the Ad Hoc Committee on Housing as that committee has also asked for a developer to come to their meeting to discuss the process of developing.

Enforcement is a big issue, so to think about recommendations on enforcement.

Assistant Town Attorney looked into the parking issue that the Town took to court in 2007 on an individual in Osterville, there is still more research she needs to do, but initially it looks like the Town had won the case but it was sent back to the Appeals Court, because the owner must have appealed it, but she will have to go to the Court to find the actual case for its findings, her conversation was based on notes in her office. Assistant town Attorney Connolly will get more clarification as to why the Board of Health was the defendant in the case and report back to the Committee.

Chair of Committee asked Assistant Town Attorney Connolly to provide a copy of the Parking Ordinance for the members for the next meeting so that we can understand what it says and what can be enforced.

Chair of Committee recognized Eric Schwaab who has an ask of the members, if they are going to look at parking, could they also focus on people, the number of illegal boarding house, number of adults per bedroom, and any other mechanisms that can be used to measure how many people are allowed per house according to bedroom size.

Ms. Ledec mentioned what else is missing is consistency in the Regulatory Agreement language. The committee was given 5 examples, and the language in all of them was very different from one another. Possibly look at consistency in the language so they are all the same, and you're not writing them as you go. There should be a format used for all of them so you're not reinventing the wheel each time.

Councilor Mendes wanted to mention the performance bond, it's simple, you hold back 1/3; 1/3; 1/3 until the work is completed, as far as the enforcement he does not know who it would be under, but the Town needs a full time enforcement officer or two to really go out into the communities to look at the occupancy and the overloading of cars, he believes this is the biggest problem in town.

Councilor Crow agrees with Councilor Mendes, he believes the person needs to work weekends when the individuals in violation are home, because Monday through Friday they are working, but in the weekends, they are all home, and that's when the overcrowding can be seen.

Councilor Terkelsen agrees with both Councilors and had a conversation that Mr. Florence may seek this type of individual, he does not have enough help, and she would be in full support of more staff for him, and if it does reach the Council level, she will be in support of that.

Councilor Mendes wanted to make sure that he was heard in saying he is not talking about the family that has their family staying temporarily at a home, until they find housing, he is talking about the two-bedroom house that he knows is two bedrooms but has rented to 10 or more people, and there are 15 cars parked on the front lawn. Places like this that exist contribute to the infrastructure issues, water, sewer, so he wanted to make sure that he was clear regarding the discussion that he wasn't looking family members staying temporarily. Councilor Crow mentioned that when it comes down to it and you ask, everyone is a family member, so it still comes down to the number of individuals in a home in ratio to bedrooms.

Chair of the Committee wanted to mention that this committee is not looking at all the zoning in the town, the committee has been asked to review and reassess recently adopted zoning changes, the Chair asked Mr. Kupfer to put together a list of the significant zoning changes within the last 7 years that the Town has done, this will be a discussion on our next agenda. The Chair said for future thoughts he would like a presentation on Form Base Code.

Councilor Mendes also mentioned any zoning that was antiquated that needed to be looked at.

Mr. Alzman like the data that Ms. Pittinger put together, there was so much information he could not get through it. He asked where the data came from; Mr. Schwaab explained he lives in the third precinct and in that precinct, there are a lot of home occupations, so with the help of Councilor Ludtke, they were able to pull data from Health and Building inspection on Open Gov on the Town's web site, and the data is over 4 1/2-year span. The data was jumbled on the Town web page, so we normalized the data.

Chair of Committed mentioned that Ms. Pittinger said the only thing missing from the data was a closed date and explanation of what was done. That is no where on the report, so perhaps we can suggest that it be added to it.

Jim and Steve to invite developers.

Provide a list of amendments for the last 7-10 years

Chair of Committee asked for a motion to approve the meeting minutes of July 19, 2024, this was made by Councilor Terkelsen, seconded by Ken Alzman, all members present voted in favor of approving the meeting minutes of July 19, 2024, as presented

Chair of Committee asked the Committee members to look at the calendar provided by Sarah Beal for scheduling the next meeting. The Committee members decided on August 16, 2025, from 3-to 5p in the James H. Crocker Jr. Hearing Room; and August 23rd from 3 to 5pm in the James H. Crocker Jr. Hearing Room.

Chair of Committee asked for a motion to adjourn, all members present voted in favor of adjournment



Town of Barnstable
Planning & Development Department
www.townofbarnstable.us/planninganddevelopment

July 24, 2024

To: Committee to Review and Assess Zoning and Regulatory Agreements

From: Jim Kupfer, Interim Director, Planning and Development
Stephen Robichaud, Planning Board Chair

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. Below please find the main topic areas discussed as possible ways to improve the ordinance and recommendations for further discussion.

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 and 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.

Earlier Public Involvement

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.

Potential Recommendation to Town Council: 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. In addition, 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, 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. 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 with strict limitations on access to the bond until such time as the agreement is completed in full. 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.

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.

ADJOURN: 5:35 pm