

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 19, 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:

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, Bob Schulte asked for Roll Call: Members present: Councilor Jeffrey Mendes; Councilor John Crow; Councilor Charles Bloom; Catherine Ledec; Ken Alsmann; Bob Schulte, Chair; Councilor Kristen Terkelsen (arrived at 4:07) Absent: Councilor Matthew Levesque (prior commitment) Town Council President Felicia Penn (Ad Hoc Member)

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

The Chair of the Committee welcomed all those that attended in person as well as those attending and viewing at home. Chair of Committee believes he speaks for all the members and hopes this Committee is an opportunity for all residents and interested parties to provide input on their concerns, issues and thoughts regarding the Towns Zoning and use of Regulatory Agreements. We encourage and welcome that input, as the chair he views this Committee as a working group which will gather and discuss all information to the aspects of the Towns Zoning and use of Regulatory Agreements, and with that information make recommendations from this committee to the Town Council. The Chair also mentioned that he would like to see, if possible, future meetings held in a more collegial environment with tables set up at the front of the room to facilitate an easier exchange of and discussion of materials and ideas. Versus being spread out from one side of the room to the other.

Chair of Committee made the announcement of a few housekeeping items from the last meeting that needed to be mentioned; The Appointments Committee is looking to replace the member that had to resign before the Committee met due to work commitments that could not be changed.

The next Item was regarding the meeting minutes and dissemination of them. The Chair of the Committee had a conversation with Assistant Attorney Connolly the about the process of meeting minutes, what was said the Chair of the Committee was that no member of the Public should receive the meeting minutes of any committee meeting until the committee and its members have had a chance to review them, and approve them, then they can be released to the Public, but not before.

Last Item was feedback from a member of the Public to put all the information relevant to this Committee either be put on Laserfiche or on a committee page of its own so the members of the Public can access it. The Chair of the Committee will request this from the Town Council Administrator.

The Chair announced that a portion of the last meeting would be re-done today so that the members of the Public are aware of what had happened, due to the zoom link having to be shut down three times due to a Zoom bombing occurrence. The last meeting in June had to be shut down right after the Committee voted in its Chair of the Committee. The Chair of the Committee responded to a public comment that each member introduces themselves and state what they bring to the Committee. This was done at the June 28th meeting, but because it was not captured on video, the Chair of the Committee has asked the members to introduce themselves again.

1. Councilor Terkelsen, Precinct 2 states she brings a beginner's eye
2. Councilor Mendes, Precinct 8, lifelong resident of Hyannis, and generations of family here on Cape Cod, so he brings tradition and a forward-looking outlook and perspective of the needs and wants of the town.
3. Councilor John Crow, Precinct 5; he has been 24 years in the Osterville Village Association and hopes to learn as much as he can about these topics in a short time.
4. Catherine Ledec; resident of Barnstable village, brings 25 years' experience working with zoning regulations and implementing them in Fairfax Virginia, including work in environmental protection, and land use. Having moved back to Massachusetts she looks forward to bringing solutions for the committee's consideration.
5. Ken Alsman, resident of Cotuit background in city planning in California, also economic development in Mountain View California 20 years experience
6. Councilor Charles Bloom, Precinct 9, here to learn
7. Felicia Penn, Ad Hoc Member of this Committee, reminded everyone she does not have a vote on this Committee, but has an interest in Planning and Development, even as a child. Spent 9 years on the Planning Board and loves economic development that is good for the town and enhances the value of those that live in the villages.
8. Bob Schulte, resident of Centerville, and Chair of this Committee, use to make the commute to Boston for 25 years, but his heart remained in Barnstable, was a partner for an International Consultant firm for 30 years, dealing with finances, involved in civic and nonprofit in the Town of Barnstable and attends regular meetings with the Town Council.

The Chair of the Committee asked that the Administrator of the Town Council read the meeting minutes of the last meeting, and to pause at each major topic for any members of the Committee that may have questions, and asked that the public comment after, during this meetings public comment portion. Town Council Administrator read the following:

Chair of the Committee asked for Public Comment: Eric Schwaab has issues with commercial use in residential areas and hopes that this Committee will look at the inner neighborhoods where this takes place. He also hopes that public comments and correspondence will be looked at from residents that have similar problems, and issues.

(Administrator had to shut down the Zoom link because of being Zoom bombed by the public domain)

Councilor Bloom asked him about the map he had created to pinpoint locations in the Town of Barnstable that were having such issues. Mr. Schwaab reported that Hyannis had the most issues, West Barnstable had the least, he believes this is due to the density.

Councilor Crow asked what the most driven complaint was, Mr. Schwaab mentioned over crowding of cars in residential areas, basement apartments, auto body repairs and pouring hazardous waste down the storm drains

Discussion continued with the following topics: parking, single family homes, Chair of the Committee mentioned that the Local Comprehensive Planning Committee is also looking at the Zoning; Short Term

Rentals. Zoning seems to be a big issue in the Town as mentioned in the email we received, and the public comment made today.

Chair of Committee mentioned the DRAFT document put together by the Town Council leadership had some good talking points and will be discussed at a later meeting

Catherine Ledec commented that there are Boards/Committees/Commissions that deal with zoning daily, some of those sections could be tighten up to help the enforcement of them and she would like to hear from those Committees on the issues they typically face at their meetings, this might be helpful to us going forward if there was a particular issue they keep coming up against.

Councilor Terkelsen met with Brian Florence and recommended we have Brian come and explain enforcement to the committee, so we have an understanding of how enforcement works.

Councilor Mendes mentioned we need to be careful on limiting the number of cars at a residential home, he cited a case that went before a judge that the neighbors did not like the number of cars parked in the yard, it was taken to court by the neighbors, and the judge ruled in favor of the resident that had the cars stored on his property.

(Councilor Levesque had to leave at 5pm for another commitment)

At the Chair's request, Assistant Town Attorney Kathleen Connolly said that the Town is authorized to adopt and enforce a more stringent local ordinance provided they are not less stringent than the State statute, she also added that some small towns have by laws, along the lines of what Councilor Mendes said, to prohibit, for example more than one unregistered, disassembled vehicle per front yard.

Attorney Connolly will look at our current ordinances we have in place to see if the language needs to be tweaked or if language could be added but will also have to research the case law on these topics to make sure that state law does not preempt the Town ordinances.

Ken Alsman mentioned he struggled to understand Regulatory Agreements and why they exist. President Penn explained how the Regulatory Agreement happened in 2006, they are agreements that are waivers outside of the Zoning regulations and only pertain to the Growth Incentive Zone, not the entire Town.

Mr. Kupfer stated there are about 23 current Regulatory Agreements, but mentioned very few are asked for currently. These projects first go before the Planning Board, and if the Planning Board recommends them, they go to the full Council for approval, if the Planning Board does not approve it, it never reaches the Town Council for a vote.

The Chair of the Committee asked the members of the Committee for the next meeting if they would like a more descriptive analysis of the Regulatory Agreements and how they happen and what happens when there is one. The Committee members would like to invite Mr. Steven Robichaud, Chair of the Planning Board, and Mr. James Kupfer to come to the next meeting to explain this process so the members have a better understanding.

The Chair of the Committee asked for any comments from the members regarding the minutes that were read. There were no comments at this time from members of the Committee.

The Chair of the Committee re read the Purpose of this Committee which states the following:

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.

The Chair of the Committee moved to the next Item on the Agenda which was to have the Committee members review correspondence sent in from the Public.

The Chair of the Committee addressed the emails received from the Public regarding this Committee, although the Chair will not read each one, he wanted to let the public know that each member has received a copy of them, and wants to recognize those that sent them in.

1. Anne Salas
2. Steve Robichaud
3. Tim O'Neil
4. Eric Schwaab

The Chair of the Committee asked the members if they had any comments, they would like to make regarding any of the correspondence received.

Catherine Ledec thanked members of the Public who are in attendance as well as those at home listening, very interested in hearing from residents, businesses or other organizations in the Town that have in the past worked with Zoning issues (good and bad), and the Regulatory Agreements, and would like to hear from those individuals sharing feedback both negative or positive and ask that you be as specific as possible in your comments.

Assistant Attorney Connolly would like to clarify her statement for the meeting minutes before this Committee approves them and will provide that clarity to the Administrator. (which was done and inserted in her comments)

While Assistant Attorney Connelly was commenting on the clarification of the minutes, the Chair asked that the Town Attorney clarify the comments he made earlier referencing the meeting minutes and when those minutes are to be released. Assistant Attorney Connolly stated that minutes should not be distributed outside of the committee when they are in DRAFT form. They should be shared just amongst the members of the Committee until they are approved by the members of the committee and then they can be released to the Public.

The Chair moved into Public Comment portion of the meeting:

1. Nattalie Pittinger, Hyannis resident: She had received an output of a database that Brian Florence, Building Commissioner, and his staff uses to log incidents that happen in the Town. The original report was hard to read that she obtained so she put it in a format that was easier to read. There is a lot of knowledge in the database, the one thing she said that was missing was solutions, the report says if it is still active, or resolved, but there is no answer to how was it resolved. When there was a fire on Oakland Road recently, the first thing she did was go to this database and look to see if Oakland Road was listed, and it was, but that particular address was not listed. They should be expanded a bit to include how the permits came about, and if the construction continued, or what happened with the complaint. Enforcement is a problem, there are multiple property complaints with the same address, so why is that allowed.

The Chair asked Ms. Pittinger to share that report with the Administrator so that she can share it with the members of the Committee.

2. Steve Robichaud, Chair of the Planning Board; He would like to see a document storage or something like that for this Committee would be great appreciated and a benefit for the Public if they could look at what you're looking at for each Committee meeting, Laserfiche possible.

The Administrator will ask for this function. To have the Committee have its own web page and be able to publish all documents related to the meetings.

3. Larry Morin Cotuit, he has two concerns he would like to mention, (1) is with the way the purpose was written for this Committee, and hopes that the Town Council President could clarify, he has concerns with the role of the Planning and Development Department. We are here to help you define the term of Zoning, are they equal in partnership, or do they have a final say and the (2) issue he wants to bring up is

Enforcement you either enforce by failure to complete what the Regulatory Agreement says, or you just do what you want anyway regardless of what is in place. Decide how you want to enforce in the future.

4. Eric Schwaab, resident of West Hyannis, Hyannis is much bigger and much more diverse in downtown Hyannis, there is a height problem, but as you can see most who live in Hyannis do not agree, no one in Hyannis agrees with what is happening to Hyannis, the investors in Osterville, think its great, but the residents of Hyannis do not. He hopes that the zoning is looked at downtown.

As far as the data that the Town uses, there is no data that is actionable. Closed date is missing and the reason for the Close Date. Enhance the database by adding these two columns then you can start analytics. The biggest complaint he saw in this report was overcrowding, too many everything in residential areas, too many cars, people and trucks, because the Town does not regulate basements. There was a complaint in Centerville recently with 15 people living in the basement with only 1 point of entry, luckily Mr. Florence and his team were able to resolve this quickly, and get everyone out of there, but this house is a rental with open violations, and the owner is interviewing more tenants to move in with no fines associated, even though there are clear violations.

In his neighborhood alone, there are two Commercial business in a residential neighborhood, the individuals leave in the morning at 7:15, before the Inspectors get to work, and they return after 4:14 when the inspectors go home, so they know how to work the system. We are not doing something correctly, so there is consistency.

5. Chris Gregory commented on Zoom: He spoke at the Ad Hoc Committee the other night on Housing, and would like to say the same to this Committee as well, he stepped away from his work to make this comment, he is afforded this luxury, but those individuals that this Committee really needs to reach do not have that luxury at 3pm in the afternoon, most work until after 5 and would like to see those individuals represented in some way. It is also his hope that the Housing Committee and this Committee come together and make sure they are aligning on the proposals they are looking at so that a contradiction doesn't happen, he would like to see the SMART goals put in place and define affordable housing. He suggests that we lower the market rate by 10 percent over the next 30 years, convert the number of short-term rentals to year-round rentals by 10 percent each year. He also hopes that everyone has an open mind and the situation we have right now, whatever we did in the past isn't working, so there needs to be a little of everything in a thoughtful approach to housing.

Chair of the Committee asked the members if they had any comments to make after public comment:

Councilor Mendes personally believes that overcrowding is the number one issue right now in Hyannis, he asked Assistant Town Attorney Connolly if the town has an ordinance in place right now that can enforce the number of cars in a yard. Assistant Town Attorney Connolly asked that the Building Commissioner might answer that question, but she will look at the Ordinances and get back to the Committee. Councilor Mendes asked this question only because when he drove around his neighborhood in his Precincts and he knows the house is only a two bedroom home with 15 cars parked all over the yard, these are neighborhoods that used to be pristine neighborhoods, but now there are trucks, trailers, semi's in these residential neighborhoods, and all they do is put up fencing to hide the construction trucks and the amount of cars, but they are all there in backyards. The number of things this Town is doing to clean up our ponds, lakes, consideration of the wastewater, all the things I just mentioned contribute to the problem.

Brian Florence, Chapter 59 covers the number of people in a building and the number of cars at a residential home, the problem is we have brought this to court and lost, so he recommends to this Committee that they touch base with legal and find out the specifics of the case, it was before he was here. The Town tried to limit the number of vehicles according to that ordinance, and when it got to court, the Town was told no, you can't limit the number of vehicles. The Chair of the Committee would like legal to look at that case and if possible, report back to this Committee as much as possible.

Mr. Florence wanted to mention that there is some ideas in the Town that we don't enforce, the Town does enforce, but there are complications that arise when we enforce, he has records of enforcement he can share if needed. Councilor Mendes said in no way is he insinuating that we don't enforce, I know

you do because you have shared documents pertaining to enforcement, and Councilor Mendes appreciates it, he is not blaming your department, but hopefully we can put some tools in place to help your department enforce more. Councilor Mendes mentioned it is at the point now where individuals don't care about the rules, and that in itself is a problem

Mr. Alsman mentioned he came from California where the very thing was happening, which is one of the reasons he left, because when the towns try to enforce, and it gets to the Court, the Court is allowing it to continue.

Councilor Bloom agrees with Councilor Mendes about the overcrowding in the Village of Hyannis, Councilor Bloom stated we are on a collision course with density in Hyannis.

President Penn brought the discussion to land use, when she participated on the Local Comprehensive Planning Committee, she remembers individuals at other breakout groups that there was discussion on building in Independence Park in Hyannis, right away she thought no, needs to be preserved for the workers in the Town of Barnstable, this was the original intent for tradesman, after they graduating to set up shop if they choose with other tradesman to earn a living, so they would not denigrate the neighborhoods with their construction work materials and trucks, but what has happened now is there is housing being built in Independence park, and the tradesman are bringing their truck hoke to the neighborhoods, because there is no place else for them to go. All those uses used to happen in Independence Park, but the Town rezoned that area for big box business and house, which what was not the intended use of that property. We need to preserve that property for the tradesman and individual businesses. She would like to see the Town give the business and the tradesman some respect and find some space for these truck and stuff outside a residential neighborhoods, and return the land for its intentional use. Councilor Mendes thanked the Town Council for her comments, but she is saying everything correctly.

Councilor Crow states it happens in Osterville as well, there is an area in Osterville that is used by a nursery to store his inventory of plants, and we also have overcrowding, so it is not just Hyannis, its Town wide problem.

Commissioner Florence asked if this Committee does consider enforcement and ordinances, that they also identify the funding source for this to happen.

Councilor Terkelsen, whatever we suggest for enforcement that this Committee make it possible to be enforced, this committee needs to hand you something that can be enforced and thanked the Public for coming in tonight and sharing the information you have gathered.

The Chair of the Committee welcomed James Kupfer, Interim Director of Planning and Development and Steve Robichaud, Chair of the Planning Board to give an overview of the Regulatory Agreements.



Regulatory Agreements

Town of Barnstable
Committee to Review and Assess Zoning and
Regulatory Agreements

July 2024



Overview

- Authority
- Regulations
- Definition/Contents
- Purpose/Benefits
- Applicability
- Process
- Experiences

Authority

- **Cape Cod Commission Act (1989)**
Sections 2, 9 and 14
- **Home Rule Authority**

Regulations

- **Cape Cod Commission Development Agreement Regulations** governing the provisions for Development Agreements, Barnstable County Ordinance 92-1 (Chapter D)
- **Chapter 168 - Town Code (2004)**

Definition

- Voluntary, binding contract
- Establishes development regulations that apply to a property
- Conditions to which the development will be subject
- For an established term/duration

Contents

- Establishes permitted uses, densities, and all other aspects of development
- Establishes the conditions to which the development will be subject including, a schedule of impact fees and/or transfer development rights
- Any other terms or conditions mutually agreed upon

Public Benefit

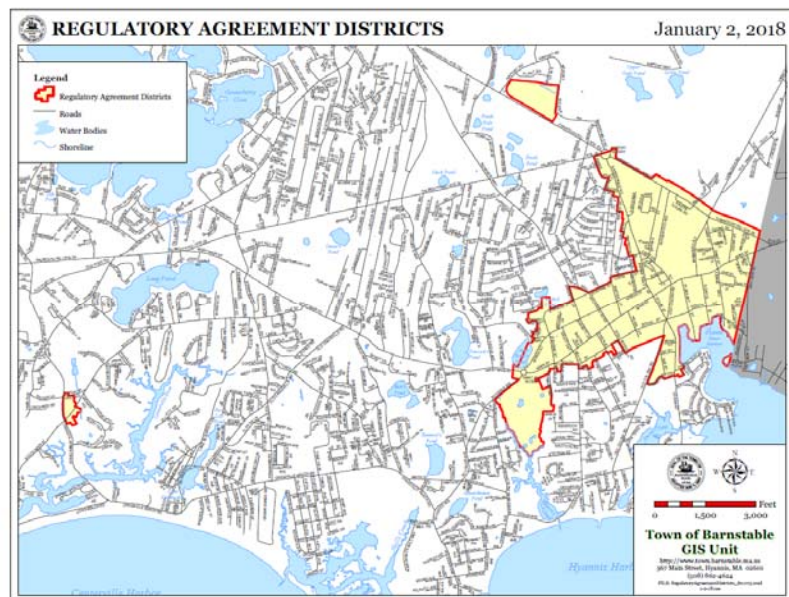
1. The Town's infrastructure.
2. Public capital facilities.
3. Land dedication and/ or preservation.
4. Affordable housing, either on or off site.
5. Employment opportunities.
6. Community facilities.
7. Recreational facilities.
8. Alternative mass transportation.
9. Any other benefit intended to serve the proposed development, municipality or county, including site design standards, to ensure preservation of community character and natural resources.

Purpose

- Regulatory flexibility
- Permit streamlining: Assistance in streamlining the local regulatory approval process, holding of joint hearings, coordination of permit applications and, where possible, accelerated review of permit approvals

Applicability

- This chapter shall apply within the Regulatory Agreement Districts, shown on the Regulatory Agreement Districts Map dated January 2, 2018.



Applicability - Parties

A qualified applicant and:

- The Town of Barnstable
- The Cape Cod Commission
- State agency or agencies

Process

From the Ordinance: Negotiation of the elements of a regulatory agreement between authorized parties and a qualified applicant shall be led by the Planning Board or its designee and shall include representatives from other municipal boards, departments and commissions where said joint participation will assist the negotiation process.

Process (Town)

Application

Planning Board

Public hearing

Affirmative majority vote
recommending execution

Town Council

Public hearing

Affirmative majority/two-thirds vote
recommending execution

Town Manager executes agreement

Amendments

Minor amendments vs Major amendments

The Town Manager may make minor amendments to the regulatory agreement recommended by the Planning Board and approved by the Town Council and execute said regulatory agreement as amended, **provided that such amendments do not alter the use, intensity or mitigation stipulations of the regulatory agreement.** However, in no instance may the Town Manager make substantial amendments to the regulatory agreement recommended by the Planning Board and approved by the Town Council without first receiving written concurrence from the Planning Board and the Town Council and qualified applicant that said substantial amendments are agreed to.

Past Agreements

23 regulatory agreements approved

1. 320 Stevens St – multifamily residential
2. 1 Ocean Street –residential units with first floor commercial and parking underneath – has not proceeded.
3. 37/53 School Street – multifamily residential in multiple buildings
4. 89 Lewis Bay Court – Add fourth story, multifamily residential and offices on first floor.
5. 105 Ocean Street – Hostel
6. 35 Iyannough Rd – warehouse
7. 46 North Street – offices with multiple primary structures
8. 90 High School Rd – Car dealership
9. 213 Ocean Street – Hyannis Harbor Hotel, 4 stories.
10. 30 Elm Street – multifamily residential
11. Barnstable Road – CVS/Citizens Bank
12. 765 Main Street – Rockland Trust
13. Pleasant Street – multifamily housing over multiple parcels
14. 49 Elm Ave – three residential units
15. 57 Ridgewood Ave - multifamily residential
16. 185 Ridgewood Ave - multifamily residential
17. 720 Main Street – multifamily residential, has not proceeded.
18. 565 Main Street (Centerville) – additional wireless antennas
19. 441 Iyannough Rd - Walgreens (with drive through) and Starbucks
20. 77 Pleasant Street – commercial parking
21. 68 Yarmouth Rd - multifamily residential
22. 80 Pearl St - multifamily residential
23. 442 Main Street – mixed use, commercial first floor and residential units on second floor

Mr. Kupfer provided the Committee members with the following Regulatory Agreements so the Committee has a better understanding of how they are written.



185 Ridgewood Ave



89 Lewis Bay



451_467 Iyannough



442 Main Street



213 Ocean Street

Recorded Regulatory Recorded Regulatory Road Recorded Regul Recorded Regulatory Recorded Regulatory

Mr. Robichaud mentioned that Regulatory Agreements are approved by the Planning Department and the Town Council. Form Base Code has made a huge difference and is a great tool for the Town to use and have, and created density, and by right projects. He believes Barnstable is the only Town that has the ability to do these agreements. We have only had 1 Regulatory agreement submitted since Form Base Code was put in place, and that was the Dockside project which was done twice. He reminds everyone as the Chair of the Planning Board at their meetings that this is a give and take process both with the Town and the applicant. The Town needs to get something in return for the Regulatory Agreements, what does the Town need and want in return for approving the waivers asked for.

Ms. Ledec asked for clarification about the process. When a developer or landowner comes to the Committee or the Town with their proposal, is there any interaction with the Public or engagement with the public before they come to the Planning Board with their proposal?

Mr. Kupfer stated no, the Planning Board is the first step in the process with Public Hearings for the public to get a chance to speak about their concerns.

Ms. Ledec said so the first time the Public hears about projects is at the first Public Hearing the Planning Board has. She suggested that it would be very helpful to have a discussions with the public before this formal process happens, so that the concerns/interests might be worked out in advance before it gets to a final vote. In Virginia where she lived before, the most successful projects are the ones that were talked about first with the public 2-3 years before the formal process began. By then most of the public's questions were resolved so the formal process and votes would go smoothly and without controversy. put before the individuals that needed to vote on it.

Mr. Robichaud says there are several Public Hearings on these Regulatory Agreements, they're not just a one and done meeting, these are several meetings.

Mr. Kupfer said that there is some tweaking that needs to be done in the front end of these Regulatory Agreements, he does agree with that.

Ms. Ledec would like to see dates on the list of Regulatory Agreements presented in the slide to the Committee members, without dates, it's difficult to know how old these are, can we look at them online, were the projects successful or not. The other part that is missing from our discussion about Regulatory Agreements is the developer's perspective, are developers that Mr. Kupfer or Mr. Robichaud may know who could come share their experiences with this Committee about how the process was for them. Ms. Ledec thanked Mr. Kupfer for sending the 5 examples of the Regulatory Agreements, but the one thing that striking in her review was the lack of specificity in the performance criteria. The public benefits as described are not specific enough. There should be a clear data point or something that is easily measurable in the performance criteria. There seem to be no performance bonds, and this should be considered. The developer should be posting a performance bond and it should not be released only when all the Regulatory Agreement criteria are satisfied, we need the developers to adhere to the criteria, to make sure the work is done. The other thing she noticed that was missing was a conservation bond. Mitigation, open space and conservation should be prioritized as well, especially if it is a land swap, something of the same value or more. There are different types of mitigation criteria and in some cases it may be advised to ask for more valuable mitigation.

Mr. Alzman asked how we allow good developers to come here for the use needs of the community, there are good developers out there, the regulatory agreements are very cumbersome to him with a lot of language that are in these that make it very complicated, and we need to make them simple. It is a delicate balance of needs and wants for the applicant and the town but having conversations about it first. There are a lot of great ideas here, but how do we spread the great ideas out there to start a conversation on what do you want to see in this area, or over in this area, an initial sense of what could really happen here, but simplify the process and the documents so your average individual understands them. The Town has some very strong tools in place.

Mr. Robichaud agrees with Mr. Alzman and it is balance on both sides, he mentioned that Mr. Kupfer does a great job with the applicant before this even reaches the Planning Board, he does a lot of the up-front work and does it very well, so a lot of what you're talking about is already worked on before it reaches us.

Councilor Mendes stated that he hopes that anything that comes out of this committee he hopes that the document has teeth in it to make it easier to enforce and for these Regulatory Agreements adhered to.

Councilor Crow appreciated the presentation this evening and would like to see some sort of public announcement prior to the project reaching the Council. His thought was if something along the lines of the headlines is “This developer is proposing vs This developer has proposed” He likes the idea that Catherine mentioned about the performance bond, holding that until the project is completed the way it was intended. Councilor Crow also liked all the ideas expressed tonight on how to communicate to the public as soon as possible. He doesn’t agree with the two-read process at the Council level, a lot of times the Council is not aware of the project until it is time to vote on it, he does not want to see this happen anymore and hopes we can come up with a process to inform the public well before it reaches the first stage at the Planning Board.

Mr. Kupfer mentioned that the Town does have a performance bond, but that part is missing from all of these Regulatory Agreements, and he will work on cleaning that up moving forward. There is a process for these projects but will also incorporate those in the Regulatory Agreements.

President Penn wanted to mention the map of the Growth Incentive Zone, but wanted to draw attention to a couple of areas added into the Growth Incentive Zone that allowed certain aspects of the Zoning areas to now have Regulatory Agreements, the Growth Incentive Zone was mapped for a reason, because the infrastructure was there to handle it, 35 Scudder was the first parcel to be added to the Growth Incentive Zone, it is a very sensitive area with marsh and protected species. The developer that owned the parcel was before the Planning Board twice to get his parcel of land in the Growth Incentive Zone, the Planning Board listened and denied him twice. A few years later he came back and hired a new Attorney, and the Regulatory Agreement was granted, this can’t keep happening, the town is giving away land to developers and blowing away all the parameters of zoning, and she does not believe in giving things away for free. It’s a shame, which is why we have what we have. Is it possible to go back and re look at this area and change it, President Penn does not know if it can be changed but we out to look at it.

Councilor Terkelsen asked about Main Street Centerville, and why are Regulatory Agreements here. Mr. Kupfer explained a Town Council action in 2009 that resulted in the following:

The CVD regulations respond to and support the purposes of the District of Critical Planning Concern which included protecting village cultural, historic and architectural character which is accomplished through use regulations, dimensional regulations and design guidelines. The locally owned businesses, the economic resource, are supported through allowed by-right uses and a formula business prohibition. The inclusion of the regulatory agreement process will allow the Town and business uses to work together to address additional needs as they may arise. (June 04, 2009 Town Council Agenda)

Councilor Terkelsen asked if the map could be changed, or what is the process of doing this. If it is counterintuitive. Councilor Terkelsen asked the Chair if he could find out how to change this map.

Ms. Ledec wanted to add a formal reporting back feature to the Regulatory Agreements, it seems odd that there is not one. Perhaps this could be a formal presentation to the Planning Board or to the Town Council. Mr. Kupfer said that’s correct, there is no reporting back, but inspections are done to obtain an occupancy permit, to make sure that the work has been completed.

Mr. Schulte asked if we ever considered flipping the process, it seems as though these Regulatory Agreements are started by the developer, has there been a discussion possibly on the town initiating them first to attract the developer to the areas. Is there time limits on these Regulatory Agreements, so after a certain amount of time, can the developers do what they want after 10 years? What is the process on changing maps that in the past have been granted Regulatory Agreements that should not be. Given the town is seeing less Regulatory Agreements, however if there is one coming up he agrees that there should be aware much earlier in the process it would give the town the ability to inform the public and start the discussions earlier that the vote or it reaching the Council.

Chair of Committee welcomed Brian Florence, Building Commissioner, Town of Barnstable. He explained that Regulatory Agreements do not have anything to do with the Building Commissioner, they are the Cape Cod Commission and the Town of Barnstable, and State Agencies, or Agencies, I am the Zoning Enforcement Agent is statutory under the state, this can be found in Chapter 168 (4) Its contract law and should be enforced by attorneys in a court setting. The Building Commissioner has been asked to look at a project to see if the project has been completed correctly, but they do not do enforcement if the Regulatory Agreement is not completed. We are asked by the Director of Planning and Development to look at a project, we do that and then we deliver our thoughts back to the individual that requested the information. What happens after that, Mr. Florence does not know. Mr. Kupfer added that the performance bond is held until the project is completed, but if they forget a piece of lattice then the performance bond is decreased by the value of the lattice.

Chair of Committee thanked Mr. Florence for his information and time tonight. Councilors Crow and Mendes both mentioned that we would like to look at any way we can hold the developer's performance bond until the entire list is complete. The Chair of the Committee suggested that we consider establishing a material minimum holdback for developers until they complete the work and meet all the requirements of a Regulatory Agreement. Councilor Crow said we should not allow them to draw down any amount, the list should be completed to the end, and they get the amount back.

A discussion was held about how to summarize a list of issues discussed today as well as those that warrant further discussion. Attorney Connolly advised the Committee that in order to avoid an Open Meeting Law violation, the Committee should wait until draft minutes are circulated for review and then send Administrator Lovell any corrections or additions they might have to the draft in advance of the next meeting. Once those minutes are approved, the Committee can use the approved minutes as a guide for further discussion.

President Penn asked that this Committee try and schedule the meetings in advance to get two dates in August and in September so that IT has our meetings in advance, to schedule the staff needed to make these meetings work.

Councilor Terkelsen asked if there is any public comment, the Public can submit them in writing to the Administrator, so that should not be a reason not to schedule a meeting.

Chair of Committee asked for a motion to accept the amended minutes of June 28, 2024 (with Assistant Attorney Connolly's amended statement) a motion was made by Councilor Crow, and seconded by Councilor Terkelsen, all members voted in favor of the amended minutes.

Chair of the Committee asked for a motion to adjourn, Catherine Ledec made the motion, this was seconded by Councilor Mendes, all members voted in favor of adjournment at 5:35pm

Next Meeting July 26, 2024, at 3pm in the James H. Crocker Hearing Room

ADJOURN: 5:35 pm