

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 Alsman

August 16, 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: Administrator to the Town Council and Ad Hoc Committee unfortunately contracted Covid and will not be present at this afternoon's meeting, but wishes her well and hopes she is not hit hard hit with it.

Chair of Committee, Bob Schulte took Roll Call: Members present: Bob Schulte, Chair; Councilor Charles Bloom; Catherine Ledec; Ken Alsman; Councilor Kristen Terkelsen; Absent: Councilor Jeffrey Mendes; Councilor John Crow; Councilor Matthew Levesque

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 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 and put in the subject line AD HOC Zoning Committee, and she will distribute to the members once she receives them.

Chair of Committee recognized Mr. Seth Etienne as the newest member to the AD Hoc Committee who was appointed last night by the Town Council, and he looks forward to his participation once he is sworn in.

Chair of Committee congratulated Mr. Kupfer on his appointment as the next Director of Planning and Development.

Chair of Committee mentioned that the committee had received numerous 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 digs into the zoning discussion.

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

Dear Members of the Committee,

I am against any changes to the zoning laws throughout the Town of Barnstable to make it easier to clearcut land and build these industrial sized solar farms in our town and particularly in residential areas.

A good example of a poorly planned and located solar farm is the one built at Cape Cod Community College years ago. You might remember what was located there previously. It was a beautiful tall white pine forest with native walking trails throughout. That was leveled, originally wind turbines were planned there but when that fell through they built the present solar farm which has become overgrown and an eyesore that gets worse yearly.

Please keep the solar farms restricted to residential areas for the good of our Town. The proposed solar farm on a 20 acre lot at 810 Wakeby Rd should not be allowed nor should any in residential areas.

*Sincerely,
Andrew Packer
West Barnstable
Sent from my iPhone*

Dear Ms. Lovell

Please forward this letter to members of the Committee to Review and Assess Zoning and Review the Town's Use of Regulatory Agreements. Thank you

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

I am writing to express my concern over the recent changes to zoning to allow TJA Solar and other solar projects to built on residentially zoned property, specifically 810 Wakeby Road Marstons Mills. This property is surrounded by homes and a protected well field.

No residentially zoned land should be used for industrial purposes particularly when the health welfare and safety of neighboring communities and a water supply is at risk.

Please consider removing the solar overlay and make this town safe for everyone!

Thank you all for your dedication to our community.

*Nancy Minnigerode
95 Biscayne Dr
Marstons Mills
Sent from my iPhone*

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.

Thank you for your attention to this very important matter.

Sincerely,

*Hildy Paris
29 Emerson Way
Centerville MA 02632*

Chair of Committee opened it up to public comments for those in attendance: Generally, the public comment is three minutes, but seeing not too many here tonight we can be a little more lenient if needed but to be respectful of those at home as well that who may be waiting to speak by zoom.

Mr. Morin, Cotuit, said he is here because of Bob, and doing an incredible job as Chair and keeping this Committee running smoothly. Chair of Committee thanked Mr. Morin for the comment. Mr. Morin has gone as far as copying Chapter 168 has looked at it before, and has started to read it there are some things that have stuck out to him and he would like to contribute some thoughts on those points, but is not prepared to do that today, the one issue he does see right away is an overlap in between many entities in the town, his only suggestion he has is about the concept of communications and secrecy be brought under control, by that he means that if there is communication between Planning and Development and the Commission just as an example, that the public be made aware of that communication, and also between any other departments communications, let's not hide behind them, let's bring them out to have conversations.

Eric Schwaab wanted to bring attention to the Local Comprehensive Planning meeting coming up on August 22, at 5:30 where the Town's future land use map will be released and Mr. Kupfer clarified just the discussion of it. Mr. Schwaab believes it will dove tail into a discussion regarding zoning. There has been a lot of discussion at the Cape Cod Commission to expand and make room for multi housing units, and thinks individuals need to be part of that discussion, as it my effect some of the committee's recommendations to the Council. So, we need to be aware of these land use maps.

Chair of Committee mentioned that some of this Committee's future meetings might include some folks from the Local Comprehensive Planning Committee and the Housing Committee, as some of these issues will overlap in discussion.

Chair of Committee asked for any public comment from Zoom, there was none at this time.

Chair of Committee asked the Committee members response to public comment, Councilor Terkelsen, asked if Mr. Kupfer could bring the Committee members up to speed on where the permitting process is for the 810 Wakeby Road project.

Mr. Kupfer stated the project received a special permit from the Planning Board per the zoning ordinance and it is his understanding there is a building permit filed on August 14, but is under review, and has not progressed, there is a lot of information that needs to be provided that has not been provided yet.

Ms. Ledec wanted to thank the members of the public for sending in their detailed comments about Solar, it is exactly what this Committee needs, what concerns the public has whether good or bad, and the details matter, because it's the members of the public that are directly affected that bring the

information forward, and it gives a sense of what we need to look at in the Ordinance when we start those discussions.

Chair of the Committee mentioned that once the public comment is closed the zoom link can no longer be accessed for public comment, but the public can continue to watch the live video stream.

Chair of the Committee asked Mr. Alsman regarding his statement submitted at the end of the last meeting, if he had any comments about that memo. Mr. Alsman believes there is a feeling that there is a need for a better first impression of what we are trying to do in our downtown, we have established a pretty good set of regulations for downtown, he is not sure from what he was reading that it was presented in a positive way, there is an aspiration for what the public would like to see, and its going to take a lot of builders a long the way to make that happen, He said lets look at the documentation we provide to people, especially those that are new to the area who are trying to figure out what the goals are and present them in a positive way, rather than in a regulation way. The first impression is key, also part of that is being proactive rather than reactive, what he means by that is instead of having the developer come in with his or her project for an area, we should be telling them what the town wants to see in that area. Communicate a more positive way of what we are in need of.

Chair of Committee said that in some of the committee's conversations with the Planning Board Chair and Mr. Kupfer, there was mention that more advance notice of a project is needed and to be more proactive rather than reactive. He stated that he felt Mr. Kupfer will be a breath of fresh air with new ideas he has to bring to the table, and the Chair of this Committee is excited for him to take over the role of Director.

Ms. Ledec wanted to mention that Mr. Alsman's comments are spot on, many of the documents presented do not give a positive outlook of what we really want here in the town. She mentioned the importance of the Local Comprehensive planning meetings, this is the committee meeting where a lot of this takes place, the sketches, drawings, it's a time to really get involved in that process with the Local Comprehensive Planning Committee, and encourages everyone to do so.

Mr. Alsman doesn't want to confuse the regulatory agreement with a visual image of something. What makes it work is too technical to begin with, but to say this is the area we have to develop, this is what the town wants there, and can it be done by the builder, or developer because it is what the town wants, not what the developer wants.

Chair of Committee recognized a member of the public who wanted to speak at public comment. Anne Salas of Marstons Mills read her comments into public record:

Dear Cynthia,

Please forward to the members of the ad hoc Zoning and Regulatory Review Committee at your earliest convenience.

Thank you,

Anne Salas

Dear Members of the Zoning and Regulatory Review Ad Hoc Committee,

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

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We urge you to recommend the Town Council to remove the solar overlay at 810 Wakeby road and amend our solar zoning bylaws 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.

Sincerely,

*Anne Salas
145 Mockingbird Lane
Marstons Mills
774 521 8810*



240-44 Ground
Mounted Solar Zoning

Councilor Bloom responded to Ms. Salas and commented that just because we can do something does not mean we have to. To have bad actors move into your neighborhood and destroy your way of living, at some point we have to say no, he is familiar with a little of the history on that property as it pertains to illegal dumping, how much do you need to take, and then on top of that a constant noise buzzing in the background every day, the new makeup of this Council if it does anything else, is we need to listen to our residents, he has seen in other committees where individuals are shut down during public comment, and your voices are not allowed to be heard if you don't play the game. Our residents pay our salaries up here and we should be listening to you.

Chair of the Committee assured Ms. Salas that this committee in the future will take up this subject and the concerns of the citizens involved. Ms. Salas is understanding that the Council can remove the Solar Overlay if they choose to, there is a process to do that.

Councilor Terkelsen asked Assistant Town Attorney Kathleen Connolly to explain to the committee what that process looks like, and how that happens. Councilor Terkelsen is trying to understand how this project got as far as it did.

Assistant Town Attorney, Kate Connolly, stated that there is a process for amending zoning ordinances and zoning maps which would include an overlay district, and that is under Chapter 40A Section 5;

someone would have to bring a petition forward to change the ordinance and map and that would go before the Planning Board for hearing, there is prohibition that also mentions that if this project within 2 years of it having been voted already, she is not speaking directly about 810 Wakeby, but more the process to do it. She was not part of the original litigation of this property, so she would have to gather information on it as far as the litigation goes. Councilor Terkelsen would like the information as soon as Attorney Connolly can provide it as it sounds like this is a time sensitive issue, and along the lines of before when this committee said information given to the Council before rather than later especially in these types of projects, so we are informed as much as possible before these projects come before us for a vote. We need an education in that in a transparent way, so everyone is aware of the discussions. Assistant Town Attorney Connolly will investigate this and report back.

Chair of the Committee would like an outline of the process to amend the solar overlay. If this is something that is time sensitive and will require action before this committee provides its recommendations to the Town Council, the Chair suggested Ms. Salas may need to get together with Mr. Kupfer and some the Town Council members to discuss what immediate actions may need to be taken.

Below is an update from Stephen Robichaud, Planning Board Chair Jim Kupfer, Interim Director, Planning and Development Re: Potential Amendments to Chapter 168 Regulatory Agreement Ordinance

*July 24, 2024,
Updated August 7, 2024*

To: Committee to Review and Assess Zoning and Regulatory Agreements From: Stephen Robichaud, Planning Board Chair Jim Kupfer, Interim 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 26th, 2024, the Committee reconvened to discuss the matter further. 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 26th.

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.

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.

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 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, 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 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.

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. The Committee also recommends the Council direct the Town to explore adding additional enforcement officers for regulatory and zoning compliance

Ms. Ledec comments regarding the above document is she has thoughts about the Regulatory Agreements and the 2 areas added after the Growth Incentive Zone, the Regulatory Agreements are designed to help the growth inside the Growth Incentive Zone that’s pretty specific to that area, but the two added are not even close to the Growth Incentive Zone, so her question is for Attorney Connolly is if there is a Regulatory Agreement outside of the Growth Incentive Zone is it legally binding. Attorney Connolly stated Regulatory agreements are not a zoning document, they are a contract, so they would have to be handled as a contract. We do not want to use Regulatory Agreements to get out of Zoning requirements. Ms. Ledec would like to see any Regulatory Agreements outside of the Growth Incentive Zone have really good benefits to the public built into them, so the community sees them.

Mr. Schulte agrees with that idea, some of the areas in Centerville, 35 Scudder and so on that are outside the Growth Incentive Zone to include those benefits to the community. The Village of Centerville those zones were established in the 2007 or so and that area has not had any development in years, nor do the business owners want to see any, so why would a Regulatory Agreement be needed, just something to look at for the future, possibly looking at those to be removed as well.

The second mention from the Chair is regarding the section of notification, specifically *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*. Mr. Schulte mentioned Mr. Kupfer clarified his question regarding the Cape Cod Commission, and needing a hearing, that they are the ones to decide that, and most often do not require one. The third mention by the Chair of the Committee is under enforcement; *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.*

Chair of Committee does not want the members mixing the second sentence *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.* When that conversation took place with the committee members it was with general enforcement of zoning and not the regulatory agreements, something to look at going forward with recommending staff to complete the recommendation, most of the zoning issues he believes would take place during business hours. Conservation bonds were mentioned at the last meeting but were not reflected in the memo and does not know if Ms. Ledec would like to comment further on this.

Ms. Ledec mentioned she has seen both, performance and conservation bonds, but it depends on the size of the project. If you have a massive project with landscaping and stormwater management improvements, then you would want to consider a conservation bond, impacts to the exterior of the building, landscaping around the project. Considering a performance bond now which is something never considered before is a huge step forward, the various ordinances reviewed going forward have the ability to improve, she does not believe it's a requirement.

Councilor Terkelsen asked Ms. Ledec, in her experience, who brings forward the Conservation Bond, who monitors and enforces that, is it the Conservation Commission. She like the idea but is unsure of the detail and unsure how that gets implemented. Ms. Ledec mentioned that it depends on the size of the project, but it would be an enforcement team that is enforcing the stormwater regulations and the landscaping has been handled correctly, and depending on those inspections, you release the bond, but it could be in a two year period three year period, you would not release it right away until the town was sure the landscaping was viable, the trees planted were the correct ones planted and that they lived.

Assistant Town Attorney Kate Connolly explained that performance bonds are a wonderful mechanism to get the developers to do what they say they are going to do, her only caution would be in issuing a conservation bonds you really have to be careful of enforcement the Conservation Commission does not have a statutorily authorized provision to do enforcement bonds, but what she does recommend under the Sub Division Control Law Chapter 41 Section 81B gives the right to the Planning Board to issue the performance bonds. The best way to this type of agreement is with the developer, if you can get the developer to agree, the Planning Board can do this at their hearings.

Ms. Ledec wanted to also clarify the conservation bond vs. the performance bond, they are basically the same thing, it is called a conservation bond but does not have anything to do with the conservation, it's a conservation related impact, it has to do with the landscaping.

Councilor Terkelsen asked if that is how the inspections do go. Mr. Kupfer mentioned yes, they actually have someone that goes out and inspect the landscaping, if the original design stated 17 trees of a certain type, then someone goes out and counts that there are 17 trees in that type planted, if there isn't, that is reflected in the report, and a communication goes out to the developer that they only counted 16 trees so you must comply and plant the other tree required.

Mr. Schulte suggested performance bonds/conservation bond be listed as a potential recommendation so that the conversation is started. Mr. Schultes's other concern was timing, how long

is the developer obligated to the Regulatory agreement, is it after 10 years the developer can do what they want, or how does that work, he would like to see a little more clarity on that.

The Chair of the Committee asked Mr. Kupfer if he had any thoughts on developers coming in to speak to this committee, Mr. Schulte is aware that our next meeting is the 23rd of August and it may be too soon to get anyone, but just some thought into that as well.

Mr. Kupfer introduced his next document for discussion:

Regulatory Agreement List

2006

1. 320 Stevens St – multifamily residential

2007

2. 1 Ocean Street –residential units with first floor commercial and parking underneath – has not proceeded/expired.

3. 89 Lewis Bay Court – Add fourth story, multifamily residential and offices on first floor.

2008

4. 37/53 School Street – multifamily residential in multiple buildings

5. 105 Ocean Street – Hostel

6. 35 Iyannough Rd – warehouse

2009

7. 46 North Street – offices with multiple primary structures

2011

8. 90 High School Rd – Car dealership

2014

9. 213 Ocean Street – Hyannis Harbor Hotel, 4 stories

2015

10. 30 Elm Street – multifamily residential

2017

11. Barnstable Road – CVS/Citizens Bank

12. 765 Main Street – Rockland Trust

2018

13. Pleasant Street – multifamily housing over multiple parcels – Rob Brennan

14. 49 Elm Ave – three residential units – Lyons Realty

15. 57 Ridgewood Ave - multifamily residential – Housing Assistance Corp.

16. 185 Ridgewood Ave - multifamily residential – Dennis and Deborah Mason, Seashore Homes

17. 720 Main Street – multifamily residential, has not proceeded

2020

18. 441 Iyannough Rd - Walgreens (with drive through) and Starbucks – Developer: Stuart Bornstein
2021

19. 565 Main Street (Centerville) – additional wireless antennas

20. 77 Pleasant Street – commercial parking - Developer: Wayne Kurker

21. 68 Yarmouth Rd - multifamily residential – Developer: Mark Hanson

2022

22. 80 Pearl St - multifamily residential – Developer: Lyons Realty

23. 442 Main Street – mixed use, commercial first floor and residential units on second floor – Developer: Sal Couto

24. 110 and 115 School Street - multifamily residential failed

Mr. Kupfer mentioned that it would be his suggestion to have the engineers and attorneys for the projects come in and talk about the Regulatory Agreements since they are the ones that do most of the negotiating of the project. They have more of a role in the process, he would be happy to reach out to any of the developers and also the engineers and attorneys, what ever works best for this committee. Chair of committee mentioned he would like to invite those to come in and talk about their experiences, good or bad, but does not want it to turn into a gripe session, hopefully talk about the experience they had in the developing of a regulatory agreement, any suggestions they may have to get their perspective on the process, the Chair also does not want to exclude anyone, or have anyone feel like they were left out of an invite, so he will leave this to Jim to figure out. Councilor Terkelsen was also asking about the Housing Ad Hoc Committee coming to a future meeting, Mr. Kupfer mentioned that this committee is moving right along, however the housing committee has only had one meeting due to illness, so he is not sure they are ready for a joint meeting yet, the Local Comprehensive Planning Committee is in a different direction right now, so Mr. Kupfer would like to invite the developers and engineers and attorney to the September meeting for a frank discussion on the Regulatory Agreement discussion and invite the Local Comprehensive Planning members just to send a representative member to listen and give feedback to their committees.

The next document Mr. Kupfer introduced was the list of Zoning Map Revisions.

ZONING
240 Attachment 1
Zoning Map Revisions

The following table lists amendments to the Zoning Map.

(Refer to § 240-6.)Article/ Order No.	Warrant or Adoption Date	Description
L3	5-7-1988 ATM	Rezoning a portion of the RD-1 southeast of Route 132, Assessor's Map Number 253, Parcels 16, 15 and 18, for a depth of 300 feet to HB Highway Business District
4	11-5-1988 STM	Designating a portion of the RB Zoning District located southerly of Route 28 between Old Strawberry Hill Road and the westerly property line of Barnstable Middle School for a depth of 300 feet to HB Highway Business District
5	11-4-1989 ATM	Adopted "Revised Groundwater Protection Overlay District Map," dated October 1989
9	11-4-1989 ATM	Designating Assessor's Map 272, Parcel 2, and Assessor's Map 251, Parcel 99, from RC-1 Residence C-1 District to RAH Residence AH District
11	11-4-1989 ATM	Designating a portion of the RD-1 Residence D-1 District located northerly along Route 28 for a depth of 300 feet, starting at Strawberry Hill Road and continuing easterly for 800 feet to the HB Highway Business District
L1	5-6-1989 ATM	Designating a portion of the existing R-C and RD-1 Residential Zoning Districts, northerly of Route 28 (Falmouth Road) at Phinney's Lane, shown as portions of Assessor's Map 209, Parcels 18 and 19, to HB Highway Business District
95-175	6-15-1995	Map passed
99-012	9-17-1998	Subsequent map passed
2001-036	6-28-2001	B-1 Business District adopted as shown on the cover sheet map and Sheet 3 of 7 (Hyannis) entitled "Proposed amendment file copy date of February 1, 2001." The intent of the Town Council is to reserve its rights to act at a later date upon the other proposed zoning districts shown on a map.
2001-037, -038, -039	7-19-2001	MA-2, OR, O-1, O-2 and O-3 Districts adopted as shown on cover sheet map and Sheet 3 of 7
2001-117	8-16-2001	Redesignated a portion of the RF Residential District in Marstons Mills to the VB-A Village Business A District shown on the cover sheet and Sheet 6 of 7 (Marstons Mills) as shown on a map entitled "Proposed VB-A Zoning Change Requested by Vice President Gary C. Blazis," May 8, 2001, on file with the Town Clerk and specifically incorporated by reference

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Article/ Order No.	Warrant or Adoption Date Description	Description
2002-029	11-15-2001	A new zoning district, the MA-1 Business District, shown on the cover sheet and sheet 3, entitled "proposed amendment file copy date of September 15, 2001"
2003-008	9-19-2002	Amendment of the boundary of the downtown zoning districts as shown on maps filed with the Town Clerk entitled "Zoning Map of the Town of Barnstable, MA, Index Sheet" and "Sheet 3 of 7, Hyannis," both maps notated "Proposed Amendment File Copy," date May 1, 2002
2004-075	4-15-2004	Extend boundary of the MA-1 District as shown on file with the Town Clerk entitled "Zoning Map of the Town of Barnstable, MA, Index Sheet" and "Sheet 3 of 7, Hyannis," both maps notated "Proposed Amendment File Copy" date March 31, 2004
2004-115	11-18-2004	To reconfigure the boundary line of the Residential C-1 Zoning District and the B Business Zoning District in Hyannis as shown on maps on file with the Town Clerk entitled "Zoning Map of the Town of Barnstable, Massachusetts, Index Map," identified as "Proposed Amendment to Reconfigure the Boundary Line Between Residence C-1 Zoning District and the B Business Zoning District in Hyannis," file copy date June 9, 2004; and "Zoning Map of the Town of Barnstable, Massachusetts, Hyannis, Sheet 3 of 7," identified as "Proposed Amendment to Reconfigure the Boundary Line Between Residence C-1 Zoning District and the B Business Zoning District in Hyannis," file copy date June 9, 2004.
2004-128	9-2-2004	A new overlay district entitled "Former Grade 5 School Planned Unit Development Overlay District" shown as Parcels 1 and 5 on maps on file with the Town Clerk entitled "Grade Five School Property, Hyannis, Zoning Map of the Town of Barnstable, MA, Index Sheet" and "Sheet 3 of 7 Hyannis Proposed Amendment to add a Plan Unit Development Overlay District," all maps file copy date July 27, 2004.

ZONING

Order No.	Warrant or Adoption Date	Description
2005-100	7-14-2005	Establish the boundaries of the Hyannis Village Zoning Districts as shown on the map on file with the Town Clerk, entitled "Hyannis Village Zoning Districts, file copy dated July 14, 2005. The BL-B and RB-1 Zoning Districts are deleted and replaced by the Harbor District; portions of the PRD and HB Zoning Districts are amended to create the Medical Services District; the OR Zoning District is deleted and portions of the RB Zoning District are amended to create the Single Family Residential District; that portion of the OR Zoning District not included in the new Single Family Residential District is deleted and replaced by the RB Zoning District; the B-1, O-1, O-2, and O-3 Zoning Districts are deleted and portions of the UB Zoning District

		are amended to create the Office/Multi-Family Residential District; the B-1, MA-1, MA-2, O-2, and RB-1 Zoning Districts are deleted and portions of the B, RB, and UB Zoning Districts are amended to create the Hyannis Village Business District; the B-1 Zoning District is deleted and portions of the B and HB Zoning Districts are amended to create the Hyannis Gateway District; portions of the B and HB Zoning District are amended to create the Transportation District.
2006-136	6-1-2006	Extension of the boundary of the HG Zoning District within the Hyannis Village Zoning Districts as shown on maps on file with the Town Clerk entitled "Zoning Map of the Town of Barnstable, Massachusetts, Index Sheet" and "Sheet 3 of 7, Hyannis" and to extend the boundary of the HVB Zoning District within the Hyannis Village Zoning Districts as shown on maps on file with the Town Clerk entitled "Zoning Map of the Town of Barnstable, Massachusetts Index Sheet" and "Sheet 3 of 7, Hyannis."
2007-101	5-10-2007	Creation of a new zoning district known as "R-2C" which covers the area shown on a reference map entitled "Proposed Pond Village DCPCs 1 and 2, Draft Map" and described as follows: the northerly boundary is Cape Cod Bay/Barnstable Harbor; the easterly boundary includes those parcels on the east side of Scudder Lane; the southerly boundary includes those parcels on the south side of Route. 6A from the Scudder Lane intersection to the railroad overpass; and the westerly boundary follows the property line of the so-called Blair parcel up to the Mass Audubon parcels to Barnstable Harbor
2008-077	2-28-2008	Addition of a Multifamily Affordable Housing District as shown on the map entitled "Proposed Multi-Family Affordable Housing District," dated 12-19-2007

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Article/ Order No.	Warrant or Adoption Date	Description
2008-090	2-28-2008	Creation of a new overlay zoning district known as "SCCRCOD 2008-1," which includes the area shown on the reference map entitled "Senior Continuing Care Retirement Community Overlay District, 2008-#1," dated 1-29-2008
2008-091	4-3-2008	Addition of a new overlay zoning district known as "Temporary Recreational Shellfish Area and Shellfish Relay Area Overlay District," as shown on the map entitled "Temporary Recreational Shellfish Area and Shellfish Relay Area Overlay District," dated 2-28-2008
2009-137	7-16-2009	Adding the boundary of the Centerville Village District replacing portions of the Business A, RC and RD-1 Districts in the vicinity of Main Street and South Main Street in Centerville and rezoning portions of the BA Zoning District that lie outside the Centerville Village District boundary to the RC Zoning District as shown on a map on file with the Town Clerk entitled "Proposed Amendment to the Town Zoning Map Creating the Centerville Village District" dated May 28, 2009, and "Proposed Amendment to the Centerville Zoning Map Sheet 4 of 7" dated May 28, 2009.
2010-122	6-17-2010	Rezoning the VB-A Zoning District located near the intersection of Route 149, River Road and Main Street in the Village of Marstons Mills to the MMV District and RF as shown on the map

2010-159	10-7-2010	Amending the Official Zoning Map as shown on a map entitled "Proposed Recreational Shellfish Area and Shellfish Relay Area Dock and Pier Overlay District Map," dated June 17, 2010, and Proposed Amendment to the Barnstable Zoning Map - Sheet 1 of 7, Cotuit Zoning Map Sheet 7 of 7, Hyannis Zoning Map Sheet 3 of 7, Centerville Zoning Map Sheet 4 of 7, Osterville Zoning Map Sheet 5 of 7, all dated June 17, 2010
Barnstable County Assembly of Delegates Ord. No. 11-01 pursuant to Ch 716 of the Acts of 1989 (Cape Cod Commission Act)	1-19-2011	Rezoning portions of the RB, RC, RD and RD-1 Zoning Districts in Centerville and a small portion of western Hyannis to the Craigville Beach District as shown on a map on file with the Town Clerk entitled "Proposed Amendment to the Town Zoning Map Creating the Craigville Beach District," dated July 16, 2009, Index Sheets Hyannis Sheet 3 of 7 and Centerville Map 4 of 7 creating the Craigville Beach District

ZONING

Article/ Order No.	Warrant or Adoption Date	Description
2011-006	10-7-2010	Addition of Ground-Mounted Solar Photovoltaic Overlay District
2011-138	9-8-2011	Renaming the VB-B Zoning District located near the intersection of Meetinghouse Way (Route 149) and Main Street (Route 6A) in the Village of West Barnstable to the WBVBD Zoning District
2014-050	2-6-2014	Adding the Medical Marijuana Overlay District
2015-071	5-7-2015	Amend to identify the Drive-Through Restaurant Sub Zone within the Shopping Center Redevelopment Overlay District (SCROD)
2016-117	5-19-2016	Extending the HB Highway Business District along Iyannough Road (Route 132) to include Parcel 254015, also known as 10 Attucks Lane
2016-166	7-21-2016	Adding the Hyannis Parking Overlay District
2017-100	4-27-2017	Creating a new zoning district known as "Gateway Medical District" which includes the area shown on the maps entitled "Proposed Amendment to the Town Zoning Map creating the Gateway Medical District" and "Proposed Amendment to the Hyannis Zoning Map creating the Gateway Medical District" dated February 8, 2017, prepared by the Town of Barnstable GIS Department
2017-102	6-1-2017	Rezoning property from the Residence C Zoning District to the Marine Business A-1 Zoning District as shown on maps entitled "Proposed Amendment to the Town Zoning Map expanding the MB-A1 District in Osterville - Index Map" and "Proposed Amendment to the Osterville Zoning Map expanding the MB-A1 District in Osterville - Sheet 5 of 7"

		and dated February 24, 2017, as prepared by the Town of Barnstable GIS (Geographical Information System) Unit
2019-092	2-28-2019	Rezoning property from the Marine Business A-2 Zoning District to the Residence C Zoning District as shown on maps entitled “Proposed Amendment to the Town Zoning Map expanding the Residence C District in Osterville” and “Proposed Amendment to the Osterville Zoning Map expanding the Residence C District in Osterville”

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Article/ Order No.	Warrant or Adoption Date	Description
2021-010	8-20-2020	Rezoning property from the Residence C-1 Zoning District to the Multifamily Affordable Housing Zoning District as shown on maps entitled “Proposed Amendment to the Town Zoning Map Expanding the MAH District in Hyannis”; and “Proposed Amendment to the Hyannis Zoning Map Expanding the MAH District in Hyannis – Sheet 3 of 7”; and “Proposed Amendment to the Centerville Zoning Map Expanding the MAH District in Centerville – Sheet 4 of 7”
2021-058	2-4-2021	Rezoning property from the Residence C-1 Zoning District to the Multifamily Affordable Housing Zoning District as shown on maps entitled: “Proposed Amendment to the Town Zoning Map Expanding the MAH District in Hyannis”; “Proposed Amendment to the Hyannis Zoning Map Expanding the MAH District in Hyannis – Sheet 3 of 7”; and “Proposed Amendment to the Centerville Zoning Map expanding the MAH District in Centerville – Sheet 4 of 7”
2022-007	10-21-2021	Creating the Mixed-Use Subzone of the Medical Services Overlay District
2022-034A	9-1-2022	Expanding the Ground-Mounted Solar Photovoltaic Overlay District to include the property located at 810 Wakeby Road, Marston Mills, shown on Assessors’ Map 013 as Parcels 004, 005, and 052
2022-144	2-2-2023	Repealing the zoning districts known as the “Hyannis Village Zoning Districts” and replacing them with revised and updated districts collectively known as the “Downtown Hyannis Zoning Districts”
2022-146	2-2-2023	Adding a Registered Recreational Marijuana Cultivators, Research Facilities, and Testing Laboratories Overlay District

Chair of Committee would like to use this document as guide to choose some on the list and deal with them one at a time. Mr. Kupfer explained that the list is the most recent list of zoning. Mr. Kupfer will explain any of the projects listed in detail if the committee needed.

A question was asked about how to get a parcel added, what is the procedure:

Attorney Connolly provided the procedure for Chapter 40A Section 5

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A/Section5#:~:text=Section%205%203A%20Adoption%20or%20change,in%20the%20manner%20hereinafter%20provided.>

Councilor Bloom asked where the Registered Recreational Marijuana Cultivators, Research Facilities, and Testing Laboratories Overlay District is. Mr. Kupfer stated in the Industrial area over by Barbyann’s and in that area.

Chair of Committee asked where the Form Base Code was. Mr. Kupfer stated 2022-144 is the Form Base Code.

2022-144	2-2-2023	Repealing the zoning districts known as the “Hyannis Village Zoning Districts” and replacing them with revised and updated districts collectively known as the “Downtown Hyannis Zoning Districts”
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The other Item the Chair was looking for on the list was the ADU zoning (Accessory Dwelling Units), Given the new state regulations, do they supersede the local ordinance? Mr. Kupfer said the town has 180 days to make sure that our ordinance is in line with the state. From the initial reading of it, Mr. Kupfer stated the state is no longer requiring owner occupancy, so we will have to adjust ours to that, we are currently looking into it, and will report back the changes, and bring ours in line with he states. Those recommendations will come back to the Council for approval.

The Chair stated his understanding was that our local ordinances can’t contradict what the states says, but they do not have to mirror the state’s language. Assistant Town Attorney stated the town can’t be less stringent, but there is tons of case law that says a municipality can be more stringent, as long as it is consistent with state statue. The Chair said, for example, if the state says nothing about the length of rental, the town could say in the ordinance that it has to be a year-round and not a short-term rental. Assistant Town Attorney answered yes, but she has not read it in its entirety, but as an example, that would be correct.

Mr. Kupfer said if the state has not mentioned an issue, but the town sees it as one, you could add language to the ordinance to address that, but if the state has addressed a certain issue, the town can’t contradict that with more stringent ordinance language.

Ms. Ledec wanted to know how these overlay districts are added, who makes the decision on making or creating an overlay district. Mr. Kupfer said overlay districts are considered without touching the underlying zoning. Discussion continued regarding overlay and how they are developed. Ms. Ledec asked when these are developed are the conservation areas looked at first to make sure the overlay is not disrupting a sensitive area. Mr. Kupfer stated yes, the project would have to go before the Conservation Commission. Mr. Kupfer said that depending on the project, there are multiple departments involved. Ms. Ledec said what might be missing is a strategic assessment of where it is appropriate to do certain things, it seems we are reacting instead of identifying what uses are needed in certain areas of the town. Mr. Kupfer said there are some that we are reacting to. Ms. Ledec said maybe by doing a process like this in a strategic assessment as to where the Solar projects may be located in the town, and this will also tell us where it should not go.

Councilor Terkelsen asked how much outreach is done to the Council when a project is in the pipeline, there is a tremendous amount of work being done in the Town, and at what point is the Council briefed on the projects that eventually do come before the Council. Is there a point where the Town Council sees the project before a vote is taken, and she feels the education portion is missing from the Council, so that when we do have to vote on it, we have all the information needed to make an educational vote and a vote that is best for the residents of the Town. Mr. Kupfer said he is always available with information come ask him any time, his door is always open. Councilor Terkelsen asked how the

Council knows that there is even a project, is there an email system we can utilize as a notification that this project is coming up, or this one was just applied for. Mr. Kupfer will take that suggestion under advisement. Ms. Ledec said maybe a web page with upcoming projects listed for all to see. Councilor Terkelsen said she believes the gap is from conception to vote and would like to close that gap.

The Chair of the Committee stated that going forward, he sees the following topics being included on future agendas:

- Form base code
- Solar
- ADU
- short term rentals
- Joint meeting with Housing and the Local Comprehensive Planning Committee

Chair of Committee asked that the discussion on Chapter 59 be addressed at the next meeting along with parking ordinances. Assistant Town Attorney will gather information on these and report back at the next meeting.

- Possibly looking at developers and attorneys coming to a meeting in September.
- Ms. Ledec asked about Enforcement, how are fines selected and the structure of such fines. This would be Mr. Florence to come speak on this, but that will also be a future Agenda.
- Mr. Alsman asked for an update on the Great Street Improvement from Mr. Kupfer. Councilor Terkelsen asked if that update has anything to do with this Zoning Committee, and should we be spending time on that. Councilor Terkelsen wants to make sure it is in this Committee's purview to address that right now. Mr. Schulte said maybe a brief update on the project for this committee without going into full detail. Mr. Kupfer will address that for the August 23, 2024, meeting.

Chair of Committee asked Mr. Etienne if he had any concerns or ideas that he sees as a hot topic for the next Agenda. Mr. Etienne stated he was here to listen and to absorb the material presented tonight, and he did not have a topic right now to discuss but is eager to participate at the next meeting. The thing he would like everyone to keep in mind is the changes or proposals made for change that everyone be considered on the impact of that change to everyone, the great streets update, how is that change going to effect people, is it going to be better for all, or just for some, and what can we do to make it better for all.

Councilor Terkelsen would like an update from Assistant Town Attorney Connolly regarding 810 Wakeby Road. Assistant Town Attorney did gather some information but will look for more and present to the committee.

Chair of Committee asked for a motion to accept the meeting minutes of July 26, 2024, Councilor Terkelsen made the motion to approve the meeting minutes of July 26, 2024, this was seconded by Councilor Bloom, all members present voted in favor of approving the meeting minutes 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

ADJOURN: 4:45pm