

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

December 13, 2024
3:30PM

MEETING MINUTES

Chair of the 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:

This meeting is being recorded and will be rebroadcast on the Town of Barnstable's Government Access Channel. In accordance with Massachusetts General Laws Chapter 30A, Section 20, the Chair must inquire whether anyone else is recording this meeting and, if so, to please make their presence known. This meeting will replay via Xfinity Channel 8 or high-definition Channel 1072. It may also be accessed via the Government Access Channel live video on demand archives on the Town of Barnstable's website: <https://streaming85.townofbarnstable.us/CablecastPublicSite/?channel=1>

Chair of the Committee, Bob Schulte asked for Roll Call: Members present: Bob Schulte, Chair Councilor Charles Bloom; Catherine Ledec; Ken Alsman; Seth Etienne. Absent: Councilor John Crow; Councilor Jeffrey Mendes; Councilor Kristen Terkelsen; Councilor Matthew Levesque (prior commitment)

Also in Attendance were Rick Presbrey, Chair, Ad Hoc Committee to Recommend Strategies for Housing Creation in the Town; Committee member Laura Shufelt; James Kupfer, Interim Director, Planning and Development.

Chair of Committee read 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 the Committee wanted to remind everyone that this committee will not be meeting again until January and he wishes everyone Happy Holidays.

Chair of the Committee wanted to again thank the public for their interest in the committee and their participation both in person and via the zoom link provided for public comment. He encouraged the public to submit comments either in person or 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 the Committee wanted to handle a couple housekeeping issues, two members of the Committee did let us know that they would not be here today, Councilor John Crow, who is traveling and Councilor Kristen Terkelsen who is not feeling well, and did not want to get anyone sick.

Chair of the Committee presented an update to the Town Council at the November 15, 2024, Town Council meeting, and he believes it was well received, both Council members and members of the public had positive comments regarding the work we have done so far. Vice President Tamash, who was just elected as Council President had announced that the Ad Hoc Committees will have until March 31, 2025 to complete their work, the Chair mentioned he realizes that this committee had agreed on February 28, 2025, but the additional time has been granted, not sure if this committee will need that additional time, but it is nice to have if needed.

Chair of the Committee asked for any public comment, and reminded the public that once the public comment has been closed, the zoom link goes away, but the public can still watch the meeting via Channel 8 or 1072.

Chair recognized no one from the public in attendance today in person, and there was no one via the zoom link. Chair closed public comment. Chair also mentioned that there were no new correspondences sent in from the public to review.

Chair of the Committee moved onto Item D. which is the continued discussion of proposed recommendations for the following Downtown Hyannis zoning subtopics in a DRAFT Memo dated October 11, 2024, and presented to the Committee by Jim Kupfer regarding the following

- Parking
- Building Heights
- District Boundaries
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but decided to move up Item G up which is the discussion of Inclusionary Housing Ordinance Percentage with Rick Presbrey, Chair, Ad Hoc Committee to Recommend Strategies for Housing Creation in the Town and Committee member Laura Shufelt, and asked James Kupfer, Director, Planning and Development to first give an overview of the Inclusionary Affordable Housing Requirements. Chair of the Committee believes this is an overlap discussion of both committees, so the members of this committee want to make sure we are on the same page in these discussions with the members of the Ad Hoc Committee to Recommend Strategies for Housing Creation in the Town and Committee.

James Kupfer, Director, Planning and Development presented the following:

Town of Barnstable
Chapter 9 Affordable Housing
Article I
Inclusionary Affordable Housing Requirements



Purpose and intent.

The purpose of this article is to define a coherent set of policies and objectives for the development of affordable housing in compliance with MGL, Ch. 40B, §§ 2023, the Cape Cod Commission's Regional Policy Plan for Cape Cod, the Town of Barnstable's Comprehensive Plan and various initiative programs developed by Federal State, County and Town government. It is intended that affordable housing units that result from this article be considered as affordable housing units for the purposes of MGL Ch. 40B §§ 20 - 23. This article is also intended to assure that an appropriate share of the remaining undeveloped land in the Town is used to meet the Town's critical need for affordable housing and to promote the inclusion of a fair share of the cost of construction of affordable housing in all residential and nonresidential land development activity in the Town of Barnstable.

Applicability

Developments with 10 or more units, at least 10% of the residential units constructed shall be dedicated by deed restriction to affordable housing units

Deed Restriction- A provision, acceptable in form and substance to the Town of Barnstable, in a deed to real property that runs with the land in perpetuity so as to be binding on and enforceable against any person claiming an interest in the property.

An individual or household with total annual income that does not exceed the following percentages of the median income for the Town of Barnstable, as determined annually by the United States Department of Housing and Urban Development:

(1) For the purchaser of a single-family home: 80%.

(2) For the purchaser of a condominium unit: 65%.

(3) For the tenant in a rental unit: 65%.

Typology

Affordable housing units and/or lots within market rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with the other units and/or lots.

Interior features of affordable units shall comply in all respects with the minimum design and construction standards set forth in the Local Initiative Guidelines, by the Division of Housing and Community Development, July 1996, or as amended.

Development agreement.

A. In lieu of applying the specific provisions of this article, a person seeking to undertake a development described in § 9-3 may apply to the Town to enter into a development agreement pursuant to the Town's Development Agreement Ordinance. The Barnstable Housing Committee shall act as a reviewing body for any development agreement proposed under this section and shall advise the Town Council if such development agreement provides benefits to the Town that are at least as beneficial to the Town as the affordable housing benefits provided for in this article. In deliberating possible development agreement provisions, the Town shall take into consideration any combination of the following:

- (1) Conveyance to the Town or the Town's designee of land that the Town determines to be suitable for the construction of at least as many dwelling units as are required by § 9-4.
- (2) The construction of required dwelling units at locations in the Town of Barnstable other than the location that is the subject of the application.
- (3) Payment into the Local Housing Fund in lieu of dedication or construction of each whole residential lot or residential unit required by § 9-4B or D.

Inclusionary Evaluation/Findings

- Minimum size of developments for inclusionary zoning to work.
 - Strict greater than 10 units, 10%
- Income limits and affordable housing costs for renters and homebuyers.
 - 65% AMI/80% AMI
- Impact on feasibility for allowing off-site affordable units or a combination of on- and off- site.
 - Currently unavailable
- Fee in lieu
 - Currently unavailable
- Incentives
 - More may be needed and not just dollars

Minimum size of developments for inclusionary zoning to work.

Larger projects are typically able to offset funding gaps more effectively and efficiently than small projects.

Funding Gap needs to be studied further if moving off of 10% so that the percent can be identified before subsidies are required.

If Affordable units are 10 percent of total project units at 65 percent of AMI, capital sources for subsidy are fewer than less abundantly available than more deeply Affordable projects with larger set asides. The typical threshold for a variety of state sponsored capital sources, such as the MassHousing Workforce Housing Program is a minimum of 20 percent Affordable units in order to qualify for subsidy.

At 10 percent affordable a funding gap emerges, but additional resources are available through capital subsidy programs such as local affordable housing trust dollars for affordable units and potentially HDIP dollars for market rate units. However, these sources are often utilized less than would be expected in an efficient market.

When higher levels of inclusionary zoning are introduced the funding gap without subsidy increases, but so does the viability of additional capital funding sources. For example, when the number of affordable units is increased to 20 percent of the total project MassHousing Workforce Housing funds become available. The same basic relationship exists in small projects of 10-15 units, but subsidy sources become more difficult to access, as discussed. If the required income restrictions are raised above 80 percent of AMI, revenue potential increases but there are fewer capital subsidy resources available to offset the funding gap.

65% AMI may be problematic.

Tiers of percentage and AMIs may be appropriate but economic feasibility should be completed.

Impact on feasibility for allowing off-site affordable units or a combination of on- and off- site.

The feasibility of off-site is dependent on project structure. For example, if land for development of off-site units is less expensive than the subject property in question, there will be a positive influence on feasibility, however, if the provision requires a developer to acquire and improve new land or an existing building, the costs of operating two separate projects will likely be comparable if not higher than on-site. There may be opportunities for developers to partner with non-profits or other mission-based groups to co-locate affordable units, thereby reducing overall cost and improving feasibility on a case-by-case basis.

Income limits and affordable housing costs for renters and homebuyers.

There is a feasibility gap for almost all types of for-sale units at all income levels, except for the 120 percent AMI cohort. Additionally, there are few, if any, capital subsidy offsets for residential subdivision and condominium developers to address these costs except for internal project subsidy and low-cost financing for homeowners.

Fee in lieu

Fees in lieu of developing affordable housing are a tool that can be used to direct resources to where they are most useful. Fees should be codified as a percentage of total project cost or some other metric that can be escalated at a predictable rate into the future. Fixed dollar amounts or costs per square foot that aren't easily adjusted over time should not be used. Fees should be sufficient to support the creation of affordable housing by organizations that have the requisite skills and capacity to deliver affordable housing efficiently and effectively. The amount should be equivalent to the cost associated with providing the affordable units within the project, otherwise, developers are incentivized to pay the lesser fee and not develop the necessary units.

Incentives

Barnstable should consider ways to better align regulations with existing housing patterns and market trends. For example, 65 percent of AMI is an uncommon threshold that is not well aligned with available programs and incentives.

Zoning incentives such as density bonuses, parking reductions, or fee waivers allow developers to reduce cost or increase potential revenue on a project, which increase feasibility. For example, if a site is acquired with an assumed capacity of 10 units then a density bonus allows 20 units to be built, the cost of land on a per unit basis has been halved, which can help subsidize the project. No one incentive will make an infeasible project work, however. A combination of different incentives and subsidies, and flexibility will help to reduce the cost and increase the available funding for affordable housing. Density bonuses can be a powerful tool for incentivizing small projects as part of a voluntary inclusionary program, which would help reduce overall project cost and create an incentive to build additional units. Flexible options like accessory dwelling units, local building regulation modifications, and expedited housing entitlement and construction can also reduce the time and financial burden on affordable housing developers.

Amendments to Discuss

- % of Affordable greater than 10%?
- Affordability rate adjusted from 65%AMI?
- Should each of these be different depending on the size of a project?
- Should we consider density bonuses, payment in lieu of, offsite units?
- Should this be moved from a general ordinance to a zoning ordinance?

Chair of the Committee had a couple questions:

Don't we have in some examples at least one in town, where we have a developer where the Affordable Units are being located in another location, that was one of your explanations in the beginning; does Mr. Bornstein have one being built on Barnstable Road for his project on the harbor?

Director Kupfer answered that would be an example of a request to do it, he hasn't begun this process, so he is beginning that process he had outlined for the Regulatory Agreement process. Mr. Bornstein has informally applied that application, there was a draft submitted which engages in that process. Mr. Kupfer explained that if it was a full and complete application, that application would go to the Housing Committee in January; Planning Board in February- March, then to the Town Council possible two months after that, this would be the first example since Mr. Kupfer has been here of someone trying to use that example.

Chair of the Committee said that if he understood correctly what Mr. Kupfer was explaining, then Mr. Bornstein's project was approved without (even though it's over the 10 units) the affordable units which are required. So, there was not any agreement yet, and it is still being worked on even though nothing was finalized in the beginning. Mr. Kupfer answered the requirement is for it to be onsite, if he does not get approved for the offsite, then he is required to have them onsite; and to the last point, if he does not achieve that, it is enforceable by our legal department.

Committee member Seth Etienne asked if the ordinance was changed from a General Ordinance to a Zoning Ordinance, does that then give the developer more leeway on how to proceed with the construction. Director Kupfer answered no, not in the way of construction. The ordinance in how it is written today, any developer is required to provide 10 percent affordable on site, that is the standard. Mr. Kupfer gave an example of if you are a developer and you are building 10 units, then 1 must be affordable, and said the Town typically receives pretty good compliance right away. The developer also hires local which that local person walks them through our process and gets the state application filed,

which is an indication that they are following the letter of the law, and when you get the local action unit application that goes to the state it explains what the unit is, and this is its size, and amenities; then we as a town sign off on it here locally.

Chair of the Committee wanted to share his general thoughts as we as committee members have talked, and if he is misrepresenting anything, he asked Mr. Kupfer to correct him. The Chair stated that when we started talking, this committee has focused largely on the downtown, Main Street area and as we started to look at these projects there had been a lot of talk about providing affordable housing. If we are building these large projects, then we want to do more than just talk about affordable housing and we need to think about increasing the 10 percent requirement. There was an article in the Boston Globe this weekend that Lexington increased their affordable requirement to 15 percent, so if Barnstable is just doing the 10 percent on everything new that is built, since we are already behind the curve right now, we will never get to 10 percent. He believes that people are focused on town wide, and this committee was tasked with the Main Street area and the new zoning areas, and believes that we should be looking at more than 10 percent. In our recommendation to the Council, we can recommend that the Town Council look at increasing that percentage to 15 or 20 percent (recognizing he does not know the answer to that increase) recognizing also that if the percentage is set too high it becomes unattractive to developers and they will never make any money, but if it is left at 10 percent the town will never get there; that was the thinking we have as we go forward in making recommendations to the Town Council. Whether we give them a specific number or a range, based on the conversations had with Mr. Presbrey, this committee and his committee are on the same thought process.

Chair of the Committee asked the other members of the committee if they had any thoughts to add or if Mr. Presbrey and Ms. Shufelt had any additional comments about what their committee was thinking, and what they thought of on the idea of changing the ordinance from a General Ordinance to a Zoning Ordinance.

Ken Alsman had some concerns about the monitoring of these, and the longevity of them. Mr. Alsman stated the example of the following: say someone qualifies on day one for the affordable apartment, then five years down the line they strike it rich; do they still have that apartment. Ms. Shufelt answered yes, they have all the same rights as the person who does not own an affordable but still owns. Mr. Alsman asked if the restrictions are lifted? Ms. Shufelt said no, if the individual decides to sell it, it must go to an eligible buyer at a restricted price. Mr. Alsman asked again, so if the house is sold it is still restricted, Ms. Shufelt answered yes, it is. Ms. Shufelt furthered explained from about the year 2000 going forward if someone comes in at 80 percent area median income and they go to sell it, it must go to someone who qualifies 80 percent median income at the time of the selling. There is appreciation based on the income appreciation not the home appreciation. Mr. Alsman asked who monitors these. Mr. Kupfer answered that it varies depending on how that unit came to be affordable. The Town currently is the monitoring agent for several units, but the Town does not have a monitoring agent in house, and there are some units that are privately monitored, there are companies out there that do the annual monitoring. Mr. Kupfer said when he started working for the Town, he did begin to start to look at how to best start to monitor these units, his experience was working with the Regional Housing Services Office. Mr. Kupfer stated it is an administrative burden that everyone shares, and it is repetitive and could be done more efficiently and effectively through a Regional Housing Service Office. Mr. Kupfer did recently have a meeting with them to begin to build out the database to identify those properties by going through every deed restricted property and identifying which individual is responsible for the monitoring. Mr. Alsman asked where is the Town of Barnstable now with affordable? Mr. Kupfer answered we are about 6.7 percent which equates to about 770 units, so as far as the percentage it looks like on paper we are almost there, but if you look at the number of units, we are not quite there yet.

Mr. Presbrey mentioned his committee is looking at recommending to the Town Council the Town hire a full-time housing person that monitors these units. It is a very complex job, and its not as easy as counting units, its much more than that. Chair of the Committee, Mr. Schulte mentioned to Mr.

Kupfer to make a mental note when this committee makes recommendations that it is consistent with Mr. Presbrey's committee. Mr. Schulte mentioned that in conversations he has had with Mr. Kupfer regarding regional monitoring and possible getting someone in house to do that and make it also part of our recommendations. Committee member Ken Alsmann asked if the 10 percent was a regional requirement or a local one. Mr. Kupfer answered yes, it comes from the State under Mass General Law 40B 20 through 23, when this was first adopted by cities and towns way back when they wanted every town to get towards 10 percent affordability, once you get 10 percent you are no longer susceptible to potential 40B projects in the future is how they phrase it, so the Town Council can either decide at that point to accept 40B projects or reject them. Mr. Alsmann asked if the State has ever increased the 10 percent, Mr. Kupfer answered no they have never considered raising it. Mr. Presbrey mentioned the 40B was passed in 1969, so the State in 1969 knew of the problems back then with housing and that is why 40B came about, but it took one of two attitudes; most cities and towns generally took the attitude that it gave them the ability to develop more affordable housing, which is needed and the 40B made it easier to override local zoning with the 40B and that is what happened. Most of the cities and towns achieved this except for Cape Cod who said we did not want you to tell us what to do with our zoning, we resent that and so the towns that did not develop the housing they resisted the 40B projects because there is no profit in them but they are affordable. We have only done a very few here in Barnstable, but the ones we did do are beautiful. Mr. Presbrey is frustrated, and we need to do things differently and not necessarily the way we want to do it, or the way we have done it. Committee member Cathy Ledec asked about the inclusionary ordinance and noticed there is no sort of enforcement or monitoring or verifying, so what if you have a property owner that is not in compliance, is there a penalty, what can be done to make sure there is compliance, is there an amount high enough that sends a message to comply? Mr. Kupfer answered it would depend on the compliance or the area of complaint you're looking for, if you are talking about not complying with fulfilling your inclusionary housing requirement which could mean anything from building something out that was not completed that would be through our legal department and does not think there is a fine associated with that. Mr. Kupfer mentioned that he can only think of a couple right now that he believes are not in compliance and his department is working with them. Mr. Kupfer does not have any examples of any scenario where the house has been sold a couple of times and now, they maybe they sold something that is not affordable anymore because they have listed it as market rate. Mr. Kupfer has not seen this. Ms. Shufelt said she has seen it where if someone is selling the house without honoring the deed restriction one of two things can happen, the sale can be nullified; the other example is if they do not find a buyer and it's getting a little late, they will put a deed restriction on it whenever they do sell and there are fines involved and that happens at the state level not the local level. Ms. Ledec asked if there was a project with 15 apartments and some of the apartments have a beautiful view of the ocean, but the back apartment that is affordable has a view of the parking lot, is there anything in the deed or in the compliance that anyone that qualifies for these affordable units will be treated fairly and get a fair shot at the unit that has the good view versus the unit that does not. Ms. Shufelt answered the state must look at the building and decide where those units are going to be but also can't be grouped in the back of the building. It does not mean that they will have the penthouse or the best view, but they must be spread out or the state does not qualify them. Mr. Kupfer also mentioned that if we at the local level have concerns about that we will call the state and have them send someone down to inspect it and act accordingly. Ms. Ledec asked if there are 15 units in an apartment building are the specific units that are affordable specifically identified. Ms. Shufelt answered if they are homeownership, absolutely. Ms. Ledec asked about rentals. Ms. Shufelt answered usually they are at the beginning, and with 15 units it would probably stay that way. Ms. Ledec asked about the 10 percent, and in her opinion, location is key with these affordable units, close to retail, shopping centers pharmacies etc. so apartments in other areas of town that are built if they are not near anything and you do not have a car it makes it difficult, so in her opinion building near such amenities seems more reasonable. When she lived in Fairfax County, Virginia the building was done in transit-oriented areas, which is development in the Metro Transit area with the trains, busses and such that go in and out of Washington. Those areas had higher requirements for affordable housing, and they had the

same options, if you were not going to put these in your building, you could pay into a fund which in turn would be used to build affordable housing units in a different building but in the same area. The percentage is higher if the location is better, if the apartment is way out in the woods where its difficult to access public transportation, grocery stores, hospitals, it makes sense to have them at 10 percent. Ms. Shufelt answered in general I agree with the thought process, but when you bring it to the Cape and to Barnstable, Barnstable has villages, and she believes that all the villages within the town need to have the responsibility and the locations that could and can support affordable housing. Individuals that are at 80 percent median income still must afford rent or the mortgage, and the incomes are at 80 thousand dollars, so we are not talking about people on the extremely low income that do not have car, but most of the individuals that live here all have cars because Cape Cod is not designed to not have one, you can't get to the grocery stores or retail stores without one. It is how we live on Cape Cod. Ms. Shufelt said we must remember what don't make the doable will have to make the perfect and believes spreading out the affordable housing across the villages is the goal and will make the Town a better place to be. Mr. Presbrey stated the goal of the state is to put affordable housing in areas that has public transportation, and we are more rural. Here we have a greater challenge.

Ms. Ledec mentioned that she has seen in other areas that when these apartment buildings are built in areas that do not have the stores, the stores somehow seem to follow the density. We may build these in other villages and may get the grocery stores and transportation to come there and become better overtime. It will never be urban, but it will be busier and living in more concentrated areas. It would be great if people become less dependent on cars. Mr. Presbrey asked if there was ever a way for the Town to ask a grocery store to come to a certain area, but then you have so many that they can't survive and they leave. Committee member Seth Etienne disagrees with that statement because Whole Foods moved into the new location and people come from across the Cape to do their shopping there, it is located on Rt 132 for a reason because it is easy access from the highway. Mr. Presbrey said that people may be doing that but its not within walking distance and if your grocery shopping without a car, you're not going to walk across town to get home with bags of groceries. We need a grocery store in downtown Hyannis where the housing is.

Councilor Bloom mentioned there needs to be a balance in density, there is no good answer He would like to look at reducing emissions and greenhouse gases but not at the expense of the character of the village. That is why people come here is for the look of each village. There is a project going up on Barnstable Road and he hopes that the project does not make that area look like a canyon. We need some character to the buildings and not just the basic square box.

Ms. Ledec asked what happens if an individual has 82 percent AMI, what happens there. Ms. Shufelt stated you would not qualify. Ms. Ledec asked about workforce housing, has there been any discussion about those individuals that are slightly over the AMI, but these individuals are being left out of the conversations. Ms. Shufelt said that Mr. Kupfer's presentation the other night at what is being produced and listed as affordable in the spreadsheet that was presented at 100 percent deed restricted, and are capped at 100 percent AMI, and most of the units that are coming on board, at least with the rents they are saying are at below 120 percent so somewhere around \$140, 000 a year and if you divide that by 3 and then 12 that is a pretty high rent, so if you take a \$2500 a month for a one bedroom, you would have to earn \$7,500 a month income so it fits in with those categories of firefighters, nurses, policeman etc. that can afford those rents. Mr. Presbrey mentioned that individuals here are not getting richer, they are getting poorer. Ms. Ledec stated that the rents currently are unbelievable, and she would not be able to afford them even after retiring from a successful career. She would never pay what they are asking today for a two-bedroom apartment. She also has never seen a landlord lower the rents. Building all these projects if no one can afford them then what is going to happen. We are doing ourselves a disservice if we are not talking about it or at least addressing it. Councilor Bloom mentioned Mr. Watson who has some ideas about workforce housing and building some bays for the trucks that are in the residential neighborhoods. Chair of the Committee has concerns about these units coming online,

and the rents they originally said they were going to charge change (to higher rents), and we do not have the ability to of controlling that. Ms. Shufelt mentioned that she agrees with Mr. Schulte and the rules around the housing development incentive program allows them to do what they can if they're doing a project like most of the ones being built now the developer applies to the state and tell the state they are charging market rate rents, they have to have a market rate study that back up the rent they charge, but they can also raise them as much as they want, it's in the guidelines for the program.

Chair of the Committee discussed the inclusionary ordinance and making the affordable greater than 10 percent, and the comment Mr. Kupfer made about giving some thought about a tiered approach. The larger the project, the more cost the developer must absorb. This Committee could also recommend that the 10 percent be increased to 15 or 20 percent and asked Mr. Presbrey if his committee was looking at the same recommendation to make to the Council. Ms. Shufelt said the Committee has not come up with a number yet because we are really looking at taking the inclusionary ordinance out of the General Ordinance and placing it in the Zoning, we are also looking at the market and Barnstable really needs an economic feasibility analysis and Mr. Kupfer also said was missing, this will fill up where the numbers should be once that study is done. Chair of the Committee mentioned that possibly another recommendation would be to get this feasibility study done and the thought being to increase the affordable exclusion, the inclusionary percentage, increased over time and whether it be a tiered or somehow applied, but the feasibility study will enable the town to address that. Mr. Presbrey mentioned that right away the developer divides the cost of the land, by the number of units proposed and that number should be about \$30,000 to \$35,000 to build each one, so if you have a building with 100 units the developer is probably only making profit on 50 of them. The land cost issue is what drives up the cost of the units. Our committee is also looking at tax incentives for developers to subsidize the cost or at least make it somewhat appealing to build these affordable units, but that also adds a layer of disadvantage. There are a lot of advantages for the developer that they will want to be in the areas that we as a town presumably want them to build in. Ms. Shufelt discussed the density and bonus payment in lieu of offsite units. She does not remember in the past development agreements and regulatory agreements that were drafted if there was ever an offsite unit ever came up or that we have ever done, so all the conditions that we wished were in the ordinance around the comparability to the units of being built in the units the developer wanted off site, that language was built into the regulatory agreement. The only memory that Ms. Shufelt can think of is the Trade Winds apartment on Craigville Beach Road did not want to have affordability units in there, so we took payment in lieu of and the Town received 1 million dollars for that.

Ms. Ledec made some comments about the amendments, and the basic question that keeps coming up is the thought of trying to achieve what is described here, and if we are not achieving this, then we need to consider an amendment, so it is achievable. Mr. Kupfer said the town was at 6.5 percent vs the 10 percent needed, so we know the 10 percent is not working so we need to come up with some ideas to incentivize developers to build these affordable units in a greater number to make up the loss of housing. Ms. Shufelt stated this is just one tool in the toolbox, it's not the only tool we have. The town has not had as much development of outside developers doing mostly affordable or all affordable units in almost 20 years, and the reason behind that is the permitting, its very difficult in Barnstable compared to other areas. There are other ways to get there, but unfortunately the town hasn't been proactive for 25 years. Ms. Ledec asked if the town was at 10 percent, or we satisfy the need how long is the list. Ms. Shufelt answered about 38 to 39 percent of the population in Barnstable qualify for affordable housing. There is a large population such as myself and Mr. Presbrey that have a house we purchased years ago, so some others may also have that, but the number is a lot higher than 10 percent, so the state seems to feel that if you get to the 10 percent you have done well, but the state also knows that number is much higher.

Ms. Ledec asked what happened if a developer comes in and says he wants to do the affordable housing at 15 percent, what does the town do for the developer, do we ever negotiate with the developer,

The Housing Trust would be the ones to do the negotiating not the Planning Department, but we would certainly point them in the direction they would need to go in and also to have that conversation with the Affordable Housing Trust, because there are pre-development funds available to developers for the development of affordable units. Mr. Kupfer stated Barnstable does have a lot of incentive tools for the developer since 2018.

Chair of the Committee mentioned at some of the recent Town Council meetings some of those programs are going to be looked at closer, perhaps giving away the bank to some of these developers is not the way to go or possibly looking at the percentages differently regarding the Tax Increment Financing, and it sounds like Barnstable is at the extreme of what we give developers.

Committee member Seth Etienne asked Mr. Kupfer the advantages of removing the ordinance from a General Ordinance to a Zoning Ordinance. Mr. Kupfer explained that a Zoning Ordinance under Mass General law is enforced by the Building Commissioner. The Building Commissioner has strict rules and regulations they can utilize to first enforce the zoning with fines. There were suggestions of an early fine might get people to start to form into compliance. The General Ordinance is usually a letter from our legal department. Chair of the Committee asked Assistant Attorney Kate Connolly her thoughts on this, the example that this committee has talked about was short term rentals and the issues surrounding those. Mr. Schulte is aware the state places caps on what daily fines can be, so if the short-term rental receives a fine, they may say no big deal, I will build that into the rent. Assistant Town Attorney said either way the Ordinance is decided whether it stays as a General Ordinance or moves over to Zoning, it is enforceable on both, there are caps under the state statues on how much a penalty can be and then the local penalties need to be specified in the Ordinance again, whether it is a General Ordinance or a Zoning Ordinance, so if the persons are looking to see what the fine will be if the Ordinance is violated. There is a state statue for non-criminal disposition which means your local ordinance, you can have fines that can't be more than \$300, but you have to be careful because a lot of municipalities make the mistake of saying a fine of no more than \$300, but you have to be really specific about the amount, you have to say \$100 or \$200 or \$300 or you can stagger the fines but you have to be specific in the dollar amount, so everyone knows when the violation occurs every day is a separate day of violation and every violation can be considered separately and added up but Courts don't like to see towns imposing huge amounts of, they can do what we do as a town and send letters violations all at once, and if the town decides to use non-criminal which the town has used in the past, but there are times that we would go to District Court and sometimes to Superior Court.

Chair of the Committee asked Ms. Shufelt if she had any thoughts on the Ordinance, Ms. Shufelt said as the Ordinance is today under the General Ordinance the Building Commissioner can't enforce anything if there is a violation and there are no fines. If the units are already built and certified by the state, the state would have some enforcement powers, but basically it goes to the Attorney General, and the Housing and Urban Development, they do not have enforcement power. Ms. Shufelt feels it is better as a Zoning Ordinance and honestly does not know of any other by-law for inclusionary that is a General Ordinance, it is called Inclusionary Zoning Ordinance for a reason.

Chair of the Committee thanked Mr. Kupfer for his presentation tonight and believes that both committees are going in the same direction. Mr. Schulte mentioned that once this committee gets closer to putting the memo together, we will have more conversations and share that. Committee member Ken Alzman asked Mr. Schulte about his ideas he had brought up during his interview for this committee on financing, housing, and the development of that housing, I don't know where the ideas had come from but was impressed by some of the thoughts you had. Mr. Schulte will look for the information he has on it at home and bring it to Mr. Alzman to look at.

The following is a memo of updates from Mr. Kupfer:

Town of Barnstable

Planning & Development Department

www.townofbarnstable.us/planninganddevelopment

DRAFT

October 11, 2024, updated November 19, 2024

To: Committee to Review and Assess Zoning and Regulatory Agreements

From: Jim Kupfer, Director, Planning and Development

Re: Potential Amendments to Chapter 240 Zoning Ordinance and Map

At the September 6th meeting of the Town Council Ad-Hoc Subcommittee entitled Committee to Review and Assess Zoning and Regulatory Agreements, the Planning and Development Director provided a comprehensive list of amendments to Chapter 240 Zoning Ordinance that have been approved over the last 20 years and facilitated a discussion identifying each. In that presentation, the Director provided an overview of the zoning ordinance and provided a general overview of each amendment. The discussion led to committee conversation as to which amendments they wish to further discuss. The request at the conclusion of the meeting was for the Planning and Development staff to expand on specific recently amended zoning changes including Exempt Uses and Downtown Hyannis Zoning. The Committee also identified the need to discuss short-term rentals and inclusionary housing.

Subsequently, on September 20, October 4, 2024, October 18, 2024, November 1, 2024, and November 15, 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.
Potential Chapter 240 Policy or Ordinance Amendments

Exempt Uses

The Committee requested to review §240-8 Exempt Uses in the Zoning Ordinance. Staff presented the section in whole to the Committee.

Committee members suggested that there was a lack of regulation surrounding exempt uses, specifically municipal uses. A committee member noted that better management of municipal properties is necessary to provide a model standard for those required to meet the zoning ordinance that the Town has set forth and that enhanced standards in §240-8 may be necessary.

Potential Recommendation to Town Council: The Committee recommends Exempt Uses, §240-8, establish standard policies or that §240-8 be amended by adding certain standards for municipalities to adhere to for site development when proposing new construction or substantial alterations.

Downtown Hyannis

Chapter 240 §24.1 through 13 of the Barnstable Zoning Ordinance is defined as the Downtown Hyannis Zoning Districts and includes the districts' development standards. These sections were amended February 2, 2022. The Committee requested to review the entirety of the Downtown Hyannis Zoning Districts. Staff presented the section in whole to the Committee.

Committee members highlighted several issues they would like to discuss further. Those items being parking ratios, heights of structures and the districts as defined on the zoning map. In addition, while not specified in the Chapter 240 §24.1 through 13, the Committee also raised concern over the Inclusionary Housing Ordinance,

the uniform requirement of 10 percent of the units being affordable as insufficient, as well as a potential need to prohibit short term rentals within these districts.

Staff presented each item requested more specifically at subsequent meetings. The Committee noted the following:

Parking

The Committee suggested that the parking ratios for residential dwelling units may need to be adjusted and studied further as one space per unit may not be enough for future development. The Committee reviewed recently approved site plans in the district, discussed the 2017 Hyannis Parking Study, as well as several members conducted a site walk with staff. The Committee concluded that while existing private parking is underutilized and could be managed better there is no guarantee that new development will utilize existing private parking in a shared manner and as a result may impact public facilities if additional parking is needed above one space per unit. The Committee also recognized that Downtown Hyannis is a more walkable district than most areas of Barnstable and trends such as uber, door dash, etc. may limit the necessity for multiple vehicles. Ultimately the Committee recommended increasing the parking ratio.

Potential Recommendation to Town Council: The Committee recommends Town Council consider amendments to Chapter 240 §24.1.5.C Table 2 Minimum Required Accessory Parking Spaces by increasing “Residential or artist live/work (per DU)” from one space per unit in all districts to a parking ratio greater than one space per unit but less than two spaces per unit.

Building Height

The Committee suggested building heights may also need to be adjusted. The Committee noted that the zoning may want to consider a more nuanced approach to building height considering abutting properties, roof lines, and varying heights over linear feet to reduce the likelihood of a canyon effect along Main Street. The Committee specifically identified the Downtown Main Street District and the Downtown Village District as districts to reevaluate height requirements. The Committee reviewed recently approved site plans in the district as well as several members conducted a site walk with staff.

Potential Recommendation to Town Council: The Committee recommends Town Council consider amendments to Chapter 240 §24.1.6 Downtown Main Street District Table 3 by amending Section F of the Table “Number of Stories” from “3.5 or 4 maximum” to a height less than four stories maximum as well as eliminating 240-24.1.6.C.6 “The fourth story of any building must be recessed (“stepped back”) from the facade of the stories below at least eight feet”.

The Committee also recommends Town Council consider amendments to Chapter 240 §24.1.7 Downtown Village District Table 4 by amending Section F of the Table “Number of Stories” from “3.5 or 4 maximum” to a height less than four stories maximum as well as eliminating 240-24.1.7.C.4 “The fourth story of any building must be recessed (“stepped back”) from the facade of the stories below at least eight feet”.

District Boundaries

The Committee discussed potential amendments to the Downtown Hyannis Zoning Districts. The Committee raised concerns about the outer parcels and potentially reducing heights and density as parcels get closer to the outer limit of the Downtown Hyannis Zoning Districts. The Committee reviewed recently approved site plans in the district, existing conditions of boundary neighborhoods, as well as several members conducted a site walk with staff. The Committee suggested amendments to the Downtown Village District that would allow for similar development patterns as those abutting the outer perimeter of the districts.

Potential Recommendation to Town Council: The Committee recommends Town Council consider amendments to Chapter 240 §24.1.7 Downtown Village District and the zoning map by replacing in its entirety §24.1.7 Downtown Village District with §24.1.8 Downtown Neighborhood District or the creation of a new zoning district that reduces heights and density. In turn, the zoning map would need to reflect the proposed amendment to the district as well.

Inclusionary Housing

The Committee has noted that with the updating zoning, the Town is creating a large number of new housing units. The Committee raised concern over the number of these units that would not be deed restricted affordable. The Committee suggests that the Town Council may wish to consider requiring additional affordability requirements either in the Downtown Hyannis Zoning Districts or in Chapter 9 of the General Ordinance, townwide.

Potential Recommendation to Town Council: The Committee recommends Town Council consider amendments to Chapter 240 §24.1 through 13 and the zoning map. The Committee shall continue to work through specific issue areas to provide a comprehensive list of suggested amendments.

Short Term Rentals

Similar to above, the Committee has noted that with the updating zoning, the Town is creating a large number of new housing units. The Committee raised concern over the number of these units that may result in short-term rentals. The Committee suggests that the Town Council may wish to consider requiring a prohibition of short-term rentals either in the Downtown Hyannis Zoning Districts or added as a General Ordinance, townwide.

Potential Recommendation to Town Council: The Committee recommends Town Council consider amendments to Chapter 240 §24.1 through 13 and the zoning map. The Committee shall continue to work through specific issue areas to provide a comprehensive list of suggested amendments

Mr. Kupfer said those are the changes to date that have been discussed by the committee members. Mr. Kupfer mentioned that there have been some informal discussions on establishing a group to handle parking. The town has received a grant to begin to study the creation of a parking benefit District to understand what we could potentially achieve and to discuss whether that is a benefit for the downtown area, and that grant will give us the technical assistance on that. Improving the signage was also mentioned, and the Planning Department has done this after this study was done; it was a priority to try and identify locations of which can be improved, and to identify where our parking is in the town. Mr. Kupfer said the town has a lot of parking, but it is not clearly identified. Our parking department is looking at different ways to become more efficient by utilizing different software programs, plate recognition, on-line permitting and registration. Mr. Kupfer said there are active users using these programs. Mr. Schulte said that when this committee puts the report together, we should think about recommending some of these, although it sounds like some are already being worked on which is great.

Chair of the Committee moved onto Item F. which is the 3-D modeling so that the town could get a better feel of what the project is going to look like. Mr. Schulte mentioned that Councilor Terkelsen had asked some questions about elevation, and he has heard from people that nothing will be built higher than Town Hall. Understanding that a three-story building is a three-story building, but it also has to do with the elevation; 307 Main is at a higher elevation, so Mr. Schulte mentioned it was very helpful when we did a walk through with Mr. Kupfer to look at the plans for some of these projects. Mr. Schulte asked if this is something that is being worked on or discussed. Mr. Kupfer answered that this stemmed originally from Town Council philosophies, it was identified as one of the things we should be looking at, so the town began working with a couple of different architects to understand what could be provided to us, and how useful it could be. This is very costly endeavor, so the town wanted to make sure its productive and valuable for our community. The town wanted to set a realistic expectation so the town initially looked at several different software programs that could

provide a digital model of the project. Mr. Kupfer said some of the programs looked cartoonish and did not really give a clear picture of the finished project, but the town went ahead and did some Google Street views, and to model Main Street using this program would be about \$70,000 dollars. Mr. Kupfer wants a program that is going to give the town a realistic view of what we can do to capture the detail of the project because most of these give a satellite view with no detail, so the discussions are still on going with what it is what we need and what is available to give us that need.

Chair of the Committee asked the committee members to try and choose the next date for the meeting. Chair of the Committee would like to meet January 17, 2025, and then again on January 24, 2025. The Chair recognizes these are back-to-back, he is ok with it but asked the committee members on their thoughts. Chair of Committee asked Administrator to put out an email asking about those dates and if they are good with the other members that are not present tonight.

Chair of the Committee asked for a motion to approve the November 1, 2024, meeting minutes and the November 15, 2024, meeting minutes as written, the motion was made by Committee member Catherine Ledec, the motion was seconded by Committee member Seth Etienne, all members present voted in favor of accepting both sets of meeting minutes as written

Chair of the Committee asked for a motion to adjourn, Catherine Ledec made the motion, this was seconded by Councilor Bloom, all members voted in favor of adjournment at 5:37pm

Next Meeting to be confirmed after email sent to all committee members about meeting on January 17, and January 24, 2025

ADJOURN: 5:37 pm