

AGENDA

Wednesday

July 19, 2017

**TOWN OF EASTHAM
BOARD OF SELECTMEN AGENDA
Wednesday, July 19, 2017
2:30PM**

Location: Small Meeting Room

WORK SESSION:

- A. Land Use Development Options for Temporary Development Moratorium – Paul Lagg, Town Planner and Cape Cod Commission Representative

MINUTES

June 19, 2017 - Regular Session
June 21, 2017 – Work Session
June 21, 2017 – Executive Session

OTHER BUSINESS

Discussion of topics not reasonably anticipated by the Chair 48 hours before the meeting

EXECUTIVE SESSION

To discuss strategy with respect to the appeal filed by SCG Development Partners with Housing Appeals Committee when an open meeting may have a detrimental effect on the negotiating position of public body and the Chair so declares.

Upcoming Meetings

Monday, August 7, 2017	5:00p.m.	Earle Mountain Room	Regular Session
Wednesday, August 9, 2017	2:30p.m.	Small Meeting Room	Work Session
Monday, August 21, 2017	5:00p.m.	Earle Mountain Room	Regular Session
Wednesday, August 23, 2017	2:30p.m.	Small Meeting Room	Work Session

The listing of matters includes those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

This meeting is video recorded and broadcast over Local Access Channel 18 and on the Town website at www.eastham-ma.gov.

If you are deaf or hard of hearing or are a person with a disability who requires an accommodation, contact Laurie Gillespie-Lee, 5900 x3207



TOWN OF EASTHAM

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All Departments 508-240-5900
www.eastham-ma.gov

DATE: July 11, 2017

TO: Eastham Board of Selectmen
Jacqui Beebe, Town Administrator

FROM: Paul Lagg, Town Planner

RE: Land Use Development Options/ Temporary Development Moratorium

Pursuant to the recent increase in commercial development activity taking place within North Eastham, I wanted to provide the Board with potential options which may provide tools to help manage new development in a manner consistent with our local long range plan.

BACKGROUND

Recently completed and proposed commercial developments in North Eastham have sparked discussion on the strengths and weaknesses of our existing land use regulations. The Planning Department is coordinating two efforts to assess the Town's land use development and economic development potential:

1. Technical Assistance Panel (TAP)

The Urban Land Institute Technical Assistance Panel (TAP) will provide objective advice on the feasibility, design, or implementation of land use development initiatives. A one-day program with a panel of six to twelve ULI members will provide us with information and tools ranging from master plans, place-making, achieving a broader tax base, market feasibility, and financial structuring.

2. North Eastham Overlay District Zoning Analysis

Following the TAP analysis, the Cape Cod Commission will assist the Planning Board in reviewing existing regulations within the North Eastham Overlay District. Work will also include, public outreach and information gathering. Discussion on whether or not to develop more strident design guidelines will be included in this effort. A summary report on potential changes to the overlay district or other regulations to address the goals and vision of the Town will be provided.

The goal of this analysis is to identify elements of the current bylaw that might be amended to incentivize the type of "village center" and mixed use style growth that has been identified in the Town's long range plan as desirable in this part of Eastham. Additional analysis will be done to establish the feasibility of creating new regulations that would provide the Town with better tools to manage the site design and architectural design of new commercial developments in North Eastham.

INTERIM STEPS

Questions have been raised about whether or not a temporary development moratorium could be enacted while the Town undertakes its planning and zoning analysis. There are two options available:

1. Adopt Interim Regulations Via Bylaw Amendments

The Town may implement a temporary moratorium on new development permits for the purposes of undertaking studies and analysis to manage future land use development. The State Zoning Act (MGL c.40A) empowers a municipality to enact development moratoriums through its local zoning bylaws. The key element in enacting such a moratorium is that the moratorium language inserted into the zoning bylaw must be tied to a rational and justifiable zoning purpose identified by the Town (*in this case a temporary measure to protect the public interest to ensure that future development is carried out in a manner consistent with established goals of the community as articulated in the Town's Long Range Plan and associated documents*).

PROCESS:

A temporary moratorium would need to be enacted via an amendment to Eastham zoning bylaw per the requirements of MGL Ch.40 s. 5 including a passage of a 2/3rds vote at a Town Meeting and approval by the State AG office.

2. Nominate a District of Critical Planning Concern (DCPC)

A DCPC designation allows for the adoption of special regulations which govern land use development within a designated area. DCPC's can be used for a number of different purposes. In this case, a DCPC could be established to promote village center development. Regulations could be put in place that create incentives for more dense, mixed use style development. DCPC regulations may also contain safeguards to prevent inappropriate development. A temporary development moratorium is built into the DCPC nomination process, (*45 day full moratorium then, if DCPC is accepted by the Commission a longer limited moratorium*) in order to allow time for the County agencies and the community to hold public hearings and gather feedback from the public. If a DCPC is designated, the Town retains its local regulatory authority but does so utilizing the regulations formulated and adopted through the DCPC process.

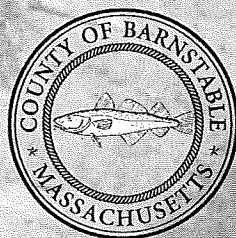
PROCESS:

A DCPC for a designated area within a town may be nominated by the Board of Selectmen or pertinent regulatory Board. The process entails a series of public hearings held by the Cape Cod Commission (in Eastham) and the Barnstable County Assembly of Delegates. After an area is designated as a DCPC land use activities may only proceed under the regulations certified by the Cape Cod Commission and adopted into the local zoning bylaw via Town meeting action. The Town would have 12 months to develop the DCPC regulations subject to County approval.

With either option described above, any building moratorium enacted would be temporary and would be in effect for only certain areas of Town (*i.e. North Eastham commercial zones*). Any such moratorium would also be tailored to prohibit only specific types of development that trigger items of concern pertinent to the reasons for establishing the moratorium (*e.g. development greater than "X" square feet or developments for certain types of uses or developments that may generate "X" amount of new vehicular trips etc.*)

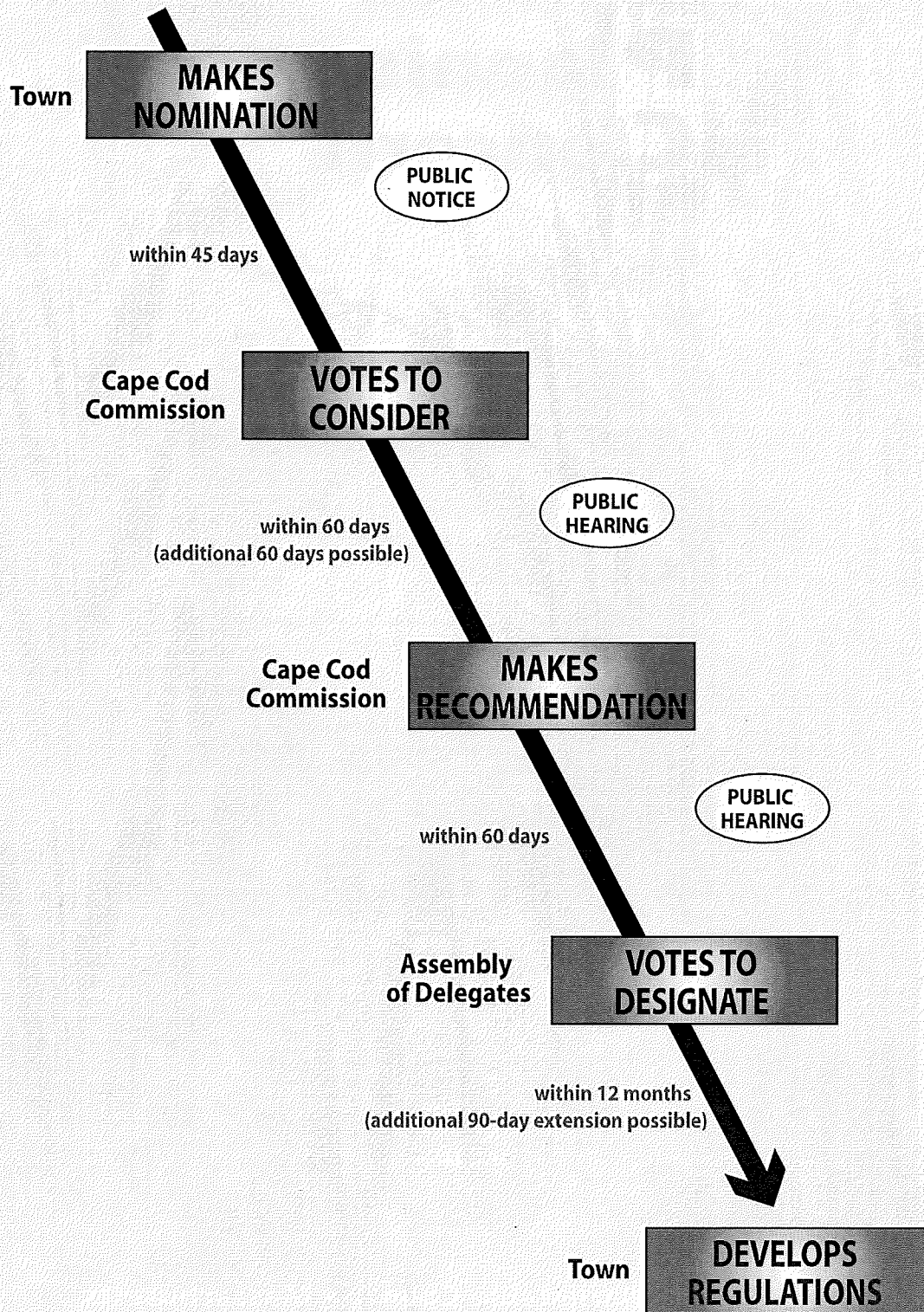
Please let me know if you would like any further information.

Districts of **C**ritical **P**lanning **C**oncern

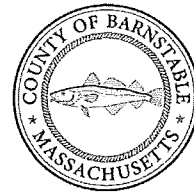


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District of Critical Planning Concern MILESTONES



Barnstable County's regional planning and land use regulatory agency, the Cape Cod Commission, is charged with recommending the designation of Districts of Critical Planning Concern, or DCPCs.



DCPCs may cover areas in one or more towns and be designated for many purposes (see sidebar). When approved by the Barnstable County Assembly of Delegates, DCPCs allow a town or group of towns to adopt special rules (called "implementing regulations") to protect natural, historic, and economic resources of regional significance. Under the authority of town agencies, the new rules then govern all future development in the designated DCPC.

Types of Districts

The types of Districts of Critical Planning Concern that may be proposed include, but are not limited to, these or a combination of these:

- Water Resource District
- Shellfish Resource District
- Agricultural Resource District
- Wildlife, Natural, Scientific, or Ecological Resource District
- Cultural, Historic, Architectural, or Archaeological Resource District
- Economic Development District
- Growth Management District
- Public Investment District
- Hazard District
- Waterfront Management District
- Downtown Revitalization District
- Transportation Management District
- Mixed-income Housing District

Why Designate a DCPC?

A DCPC allows a community to promote its values or protect its resources, to achieve goals of its Local Comprehensive Plan, and to overcome local zoning constraints. A DCPC does so in unique ways:

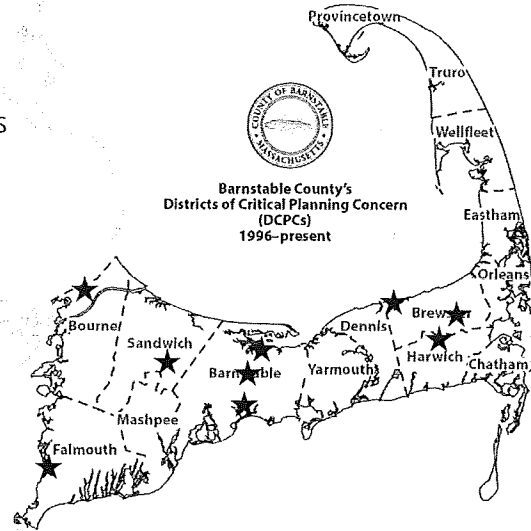
- **A DCPC initiates a time-limited moratorium on development in the district.** The moratorium provides a "time out" for the town to craft new regulations and management plans.
- **A DCPC is established and protected through a collaborative process.** The district's goals, guidelines, and implementing regulations are developed in a cooperative way with town officials, the affected land owners in the district, and the Cape Cod Commission.
- **A DCPC applies to all development within the district.** Regulations adopted under a DCPC are generally not subject to exclusions through "grandfathering" or zoning "freezes."

An area nominated as a DCPC should need a special regulatory or planning effort that otherwise cannot be adequately addressed through existing local regulations. It may therefore be controversial within a community but it can bring unique benefits as well. For example, a district may enhance economic development or promote the revitalization of village centers by providing incentives for more dense, mixed-use development.

DCPCs in Barnstable County

To date, Barnstable County has designated seven Districts of Critical Planning Concern that were nominated by their respective towns (listed in chronological order):

- Black Beach/Great Sippewissett Marsh in Falmouth
- Bournedale in Bourne
- Three Ponds in Sandwich
- Six Ponds in Harwich
- the town-wide Barnstable DCPC
- Quivet Neck/Crowe's Pasture in Dennis
- Pond Village in Barnstable



Each DCPC is described below, with a summary of the outcomes from the designation and planning process. In addition, two more DCPCs were nominated for consideration in February 2008 (one in Barnstable and one in Brewster); they are just beginning the review process.



DCPCs Make a Difference

Black Beach/Great Sippewissett Marsh DCPC

The Black Beach/Great Sippewissett Marsh DCPC was designated in January 1996 to prevent flood damage, improve the water quality, and protect the habitat of 340 acres of barrier beach and salt marsh in West Falmouth. Through the DCPC process,

the Town of Falmouth amended its wetlands bylaw and regulations, which are administered by the town's conservation commission, to limit land clearing, reconstruction of roads and driveways, shoreline structures, and docks and piers; to protect salt marsh and wetlands; to restore resource areas; and to control erosion, manage stormwater discharges, and prevent pollution. In addition to changing its regulations, the town developed a management plan for the DCPC that included public education efforts and signage about the area's ecological sensitivity and included measures to manage public access.

"The town found [the DCPC process] valuable as it explored, for the first time on Cape Cod, a different methodology. ... Perceptions about the role and involvement of the Cape Cod Commission were dispelled. The town was free to advance the nomination and designation of the DCPC as it perceived its interests to be."

—Brian A. Currie, Falmouth Town Planner

" The DCPC is a great planning tool, giving towns the ability to step back and study the best options to manage growth in an area. The DCPC process also assures public input, allowing residents to be involved in the planning and in shaping the future."

—Coreen Moore, Bourne Town Planner



Bournedale DCPC

The Bournedale DCPC was designated in December 1998 to protect drinking water, assure safe transportation, and preserve the historic and natural resources of nearly 2,000 acres north of the Cape Cod Canal in Bourne. Through the DCPC process, the Town of Bourne was able to change its zoning to reduce traffic generation and protect cultural resources and character, redefine its "scenic canal district," create a new compact village business zone and change an extensive commercial zone to two-acre residential, create the Bournedale Overlay District, and preserve over 240 acres as permanent open space. The minimum lot size was changed for some

residential zones from one acre to two acres; setbacks to natural and cultural resources were added or increased; incentives to avoid curb cuts were added; transfers of development rights were allowed; and specific types of economic development, including technology campuses, were allowed. Non-zoning changes also included refinement of regulations to protect road access and character, private wells, wetlands and vernal pools, and to strengthen earth-removal and mining controls.



Three Ponds DCPC

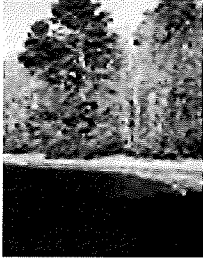
The Three Ponds DCPC was designated in February 2000 to protect water quality, preserve open space, and maintain the character of nearly 700 acres of

land and more than 300 acres of surface water in southeastern Sandwich. Through the DCPC process, the Town of Sandwich purchased 83 acres of unfragmented forest for permanent open space, adopted the Three Ponds District Zoning Bylaw and a pond use bylaw that limits the horsepower and speed of watercraft on the ponds in the DCPC, and developed a management

" The DCPC process in Sandwich was not without contention (land owners are wary of such a powerful tool), so the Cape Cod Commission suggested the formation of a working group. ...The two major land owners in the Three Ponds district, who fully participated in that group, spoke at town meeting about their initial concerns with the DCPC nomination, their pleasure at being active and contributing members of the group, and their eventual unequivocal support. These important voices were key in persuading town meeting voters to adopt the Three Ponds District Zoning Bylaw without a single word of debate."

*—Jo Anne Miller Buntich, former
Sandwich Director of Planning
and Development*

plan to educate residents and the public about the fragile coastal plain ponds, to formalize a septic betterment program, to foster the formation of pond associations, and to expand a natural resources inventory and study.



Six Ponds DCPC

The Six Ponds DCPC was designated in May 2000 to protect water quality and natural resources, to maintain the scenic character of the roads

and views, and to manage growth over more than 1,200 acres of land and 110 acres of surface water in northeastern

Harwich. Through the DCPC process, the town adopted the Six Ponds Special District Zoning Bylaw, which specified conditional uses in the district, increased minimum lot sizes and limits on lot coverage, set limits on the amount of clearing and grading allowed, enlarged buffer zones around the ponds, created regulations for existing sand and gravel mining operations, established regulations for setbacks and buffers along the scenic road corridors, and established regulations for flexible cluster developments.

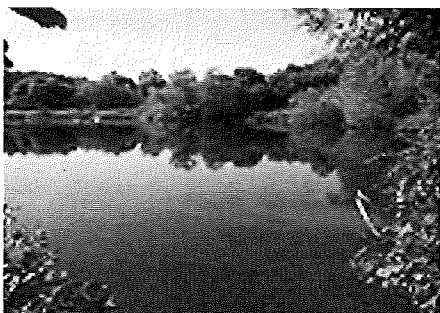
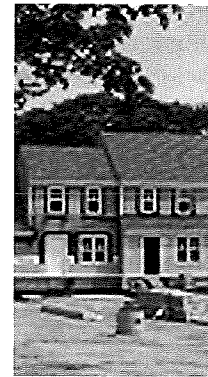
"The ability to consider possible bylaw scenarios without development pressure...meant that new zoning had a much greater impact."

*—Susan M. Leven,
Harwich Town Planner*

Barnstable DCPC

The Barnstable DCPC was designated in September 2001 to manage residential growth and encourage affordable housing over nearly 60 square miles. Similar to an overlay district, the DCPC includes all vacant, buildable parcels that are capable of being used for new residential development. Through the DCPC process, the Town of Barnstable adopted a rate-of-development ordinance, with a building rate and cap phased in over several years, to allow for adequate infrastructure (roads, wastewater, police, and more) and to support the implementation of the town's affordable housing action plan.

The ordinance sets limits on construction permits for two types of dwelling units: affordable and market-rate. Although appealed through litigation, the DCPC was ultimately upheld by the state's highest court, the Massachusetts Supreme Judicial Court. Through the DCPC, the town also adopted a health regulation that allows for the construction of shared and innovative wastewater disposal systems.



Quivet Neck/Crowe's Pasture DCPC

The Quivet Neck/Crowe's Pasture DCPC was designated in March 2002 to protect natural, historic, water, and coastal resources and to manage residential growth on nearly 250 acres in East Dennis. Through the DCPC process, the Town of Dennis adopted the Quivet Neck/Crowe's Pasture Resource Protection District Zoning Bylaw that established three water recharge and soils

"To protect the critical resources within the Quivet Neck/Crowe's Pasture area, the town nominated the DCPC to ensure appropriate development controls would apply equally to all land in the target area."

*—Daniel Fortier,
Dennis Town Planner*

limitations areas that govern two- to four-acre minimum lot sizes and limit lot coverage. The bylaw also includes pond protection, sewage disposal restrictions, and erosion control measures, storm-water management, scenic vista, and shoreline conservation provisions. It also regulates grid-style and cluster-style subdivisions. In addition, the town purchased 33.5 acres that are highly sensitive and have significant historic and archaeological resources.

Pond Village DCPC

The Pond Village DCPC was designated in late January 2006 to protect the water quality of a freshwater pond and a portion of Barnstable Harbor and the historic and scenic character of a 115-acre area north of Route 6A near Barnstable village. The Barnstable Town Council voted to approve a zoning change for the district rather than adopt special implementing regulations.



New DCPC Nominations

Craigville Beach/Centerville Village Center DCPC

In February 2008, the Cape Cod Commission received and accepted for consideration a nomination from the Barnstable Town Manager to create a DCPC for the Craigville Beach area and the Centerville Village Center area. The areas are contiguous, encompassing about 380 acres of land and 66 acres of open water, but separate issues are to be addressed.

The nominated Craigville Beach area includes a barrier beach along Nantucket Sound, an estuary system behind it, and freshwater ponds. It encompasses many summer homes and cottages and a former "Christian Camp Meeting" area, which is recognized within a National Register Historic District. The town nominated the area for five DCPC purposes: a natural and ecological resource district; a cultural, historic, and architectural resource district; a hazard district; a wastewater management district; and a waterfront management district.

The nominated Centerville Village Center area includes an existing business zoning district and residential parcels including the Main Street National Register Historic District. The town nominated the area for two DCPC purposes: an economic resource district and a cultural, historic, and architectural resource district.

Brewster Water Protection DCPC

In mid February 2008, the Commission received a nomination from the Brewster Board of Selectmen to create a DCPC to protect "zones of contribution" (or watersheds) to public drinking water wells. The proposed DCPC encompasses 6,538 acres in several areas: one in the southeastern part of Brewster, another in the southwestern part of town, and all land in Brewster that is within the Pleasant Bay Water Recharge Area. The nomination is for two DCPC purposes: a water resources district and a major public investment district. Watersheds within the proposed DCPC include wellhead-protection lands for public wells in Brewster and for wells in Orleans, Harwich, and Dennis. The four Brewster wells in the DCPC provide about 95 percent of the town's public water supply; the remaining need is met mostly from private wells. Brewster has invested millions of dollars in the development and protection of the public drinking water supply wells within the proposed DCPC.

Supporting Information

The following DCPC-related materials are available in print from the Cape Cod Commission. They are also available in digital format (text or PDF) on the Commission's Web site: **www.capecodcommission.org/DCPC/**

- DCPC Regulations
- DCPC Guidance Document
- DCPC Nomination Form
- Detailed flow chart illustrating the DCPC process

For more information, contact:

Cape Cod Commission

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