

BARNSTABLE COUNTY

In the Year Nineteen Hundred and Ninety

Ordinance 90 - 12

To adopt regulations for the Cape Cod Commission for the purpose of reviewing proposed developments of regional impact.

Barnstable County hereby ordains:

SECTION 1. General Provisions

(a) Source of Authority

These regulations concerning review of developments of regional impact are adopted pursuant to Section 6 of the Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended.

(b) Effective Date

The regulations set forth herein shall remain in effect until the Assembly of Delegates adopts final regulations by ordinance, or until six months after the Assembly of Delegates adopts the final regional policy plan pursuant to Section 8 of the Act, whichever occurs first.

(c) Definitions

The definitions contained in Section 2 of the Cape Cod Commission Act shall apply to these regulations. In addition, the following terms shall have the following meanings:

Act: An Act Establishing The Cape Cod Commission, Chapter 716 of the Acts of 1989, as amended.

Clerk: Clerk of the Cape Cod Commission.

Executive Director: The Executive Director of the Cape Cod Commission or a person designated by the Executive Director in his or her stead.

SECTION 2. Methods of Referral to Commission

(a) Mandatory Referral

1. When an Applicant applies for a development permit, the Municipal Agency receiving the application shall determine if the proposed development meets or exceeds any of the interim standards and criteria for developments of regional impact set forth in Section 12(c) of the Act, and if so, shall refer the proposed development to the Commission for review as a development of regional impact. As part of its determination, the Municipal Agency shall determine whether any of the exemptions listed in Section 22 of the Act apply to the proposed development, and if so, the Municipal Agency shall not refer the proposed development for review as a development of regional impact.
2. An Applicant who is required to file an environmental impact report for a proposed development under the provisions of Mass. Gen. L. c. 30 §§ 61-62H shall refer the proposed development to the Commission for review as a development of regional impact.

(b) Discretionary Referral

1. A Municipal Agency in the municipality where the development is located, or the county commissioners or the board of selectmen in any other municipality, may refer a proposed development which does not meet or exceed any of the interim standards and criteria set forth in Section 12(c) of the Act to the Commission for review and is not otherwise exempt by the provisions of Section 22, provided that the Commission accepts the referral as a development which may have regional impacts and which presents one or more of the concerns listed in Section 12(b) of the Act.

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2. An Applicant who is required to file an environmental notification form under the provisions of Mass. Gen. L. c. 30, §§61-62H shall, at the same time, file a copy of the environmental notification form with the Clerk of the Commission. The Commission may review the proposed development as a development of regional impact if, at a meeting, the Commission determines that the proposed development presents one or more of the concerns listed in Section 12(b) of the Act and is not otherwise exempt by the provisions of Section 22.
3. The Commission may review proposed developments that have not been referred to the Commission by municipal agencies as developments of regional impact if, at a meeting, the Commission determines that the proposed development meets the standards and criteria for developments of regional impact set forth in the Act and is not otherwise exempt by the provisions of Section 22.

SECTION 3. Developments Presumed to be Developments of Regional Impact

Until the Assembly of Delegates has approved different standards and criteria proposed by the Commission under the Act, developments that meet or exceed the interim standards and criteria in Section 12(c) of the Act shall be presumed to be developments of regional impact.

SECTION 4. Procedure For Referral

(a) A Municipal Agency referring a proposed development to the Commission for review as a development of regional impact shall send a DRI Referral Form, by certified mail or hand delivery, to the Clerk, Cape Cod Commission, 3225 Main Street, Barnstable, Massachusetts 02630.

(b) The DRI Referral Form shall include:

1. The name, address, and telephone number of the Applicant;
2. The location of the proposed development;
3. A brief description of the proposed development, including, where applicable, the gross floor area, lots, units, acres and specific uses;
4. The name of the person referring the development to the Commission for review; and
5. The date and signature of an authorized representative of the referring Municipal Agency.

(c) Upon receipt by the Commission of a discretionary referral of a proposed development of regional impact, the Commission may, at a meeting, accept the referral for review as a development which may have regional impacts and which presents one or more of the concerns listed in Section 12(b) of the Act. Pursuant to Section 4(a)(12) of the Act, the Commission may delegate to the Regulatory Committee, to the Executive Director, or to the Commission Staff, the responsibility to meet and make a recommendation to the Commission as to whether the Commission should accept a discretionary referral of a proposed development.

(d) Upon receipt by the Commission of a mandatory referral of a proposed development of regional impact, or upon acceptance by the Commission of a discretionary referral, the Commission shall notify, by certified mail, the town clerk and the building inspector of the municipality(ies) in which the proposed development is located, and the municipal agency(ies) before which a development permit is pending, of the Commission's intent to review the proposed development as a development of regional impact. Such notification shall include the date on which the Commission accepted the referral and a copy of the DRI Referral Form. Within not more than seven business days, the Commission shall also send the Applicant notice of its intent to review the proposed project as a development of regional impact. Such notification shall include the date on which the Commission accepted the referral, a copy of the DRI Referral Form, and a DRI Application Form, which the Applicant shall complete and return to the Commission, by certified mail.

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SECTION 5. Procedure For Filing

(a) Within two weeks of receiving notice of the proposed development's referral and acceptance as a development of regional impact by the Commission, or within such other time as the Commission may allow, the Applicant shall file the number of copies specified by the DRI Application Form of the fully completed application for DRI review, on a DRI Application Form which shall be prepared by the Commission, as amended from time to time, and complying with the requirements of Section 6(a)-(j) below, by certified mail or hand delivery, with the Clerk, Cape Cod Commission, 3225 Main Street, Barnstable, Massachusetts 02630.

(b) Simultaneously with the filing of the number of copies specified in the DRI Application Form of the fully completed application with the Commission, the Applicant shall file copy(ies) of such application with the Municipal Agency(ies) before which the Applicant has development permit(s) for the proposed development pending.

SECTION 6. Contents of Application

A fully completed application for DRI review shall include the following:

- (a) A DRI Application Form, which shall include the Applicant's assessment of the regional benefits and detriments of the proposed development, given the values and purposes of the Act;
- (b) Copy(ies) of the application(s) for any development permit(s) for the proposed development which has(ve) been filed with the Municipal Agency(ies), together with:
 - 1. Documents supporting such application which the Applicant deems relevant to the Commission's review of the proposed project; and
 - 2. Documentary evidence that such application was in fact filed and the date such application was filed.
- (c) A copy of the Development Plans complying with the Commission's requirements specified in the DRI Application Form.
- (d) A Locus Map (one original section of the most recent U.S.G.S. 7.5 minute series scale topographic map with location and boundaries clearly shown).
- (e) The portion of the Town Zoning Map which includes the location of the site.
- (f) A Soil Conservation Service Soils Map.
- (g) A Filing Fee in the amount specified in the Schedule of Fees as provided in the administrative regulations adopted by the Commission, and in the form of a money order or certified check made payable to the Barnstable County Treasurer.
- (h) A list of abutters to the proposed development which has been prepared by the Applicant and certified by the tax assessor of the municipality or municipalities in which the development of regional impact or a portion thereof is located, including owners of land directly opposite on any public or private street or way and owners of land located within three hundred feet of any boundary of the proposed development of regional impact.
- (i) A copy of the deed if the Applicant owns the subject property, or a copy of the purchase and sale agreement if the Applicant is the prospective purchaser of the subject property.
- (j) At the option of the Applicant, a suggested form of notice of the Commission public hearing to consider the proposed development of regional impact, which fulfills the requirements of Section 5(e) of the Act regarding notice contents.

SECTION 7. Procedure for Processing

(a) Upon receipt of the Applicant's fully completed DRI Application, meeting the requirements of Section 6(a) - (j) above, the Commission shall determine whether additional data and analysis is necessary to assess the impact of the proposed development. If the Commission determines that additional data and analysis is necessary to assess the impact of the proposed development, it may

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schedule a scoping session with the Applicant, on or off-site, to discuss the additional information required to facilitate Commission review. Such scoping session(s) may be held at any time prior to the opening of the public hearing or during a continuance thereof at a time mutually agreeable to the Commission and the Applicant. The Commission may invite relevant Municipal Agency(ies) as well as MEPA officials to the scoping session. The Commission may delegate to the Executive Director the responsibility to determine whether such additional data and analysis is necessary and to hold scoping sessions with the Applicant.

(b) During the period of time in which the Commission is reviewing a development of regional impact pursuant to the Act and the regulations of the Commission, the Municipal Agency before which the Applicant has development permits pending may continue to conduct informal discussions, provided such informal discussions are in compliance with the provisions of the Massachusetts Open Meeting Law, Mass. Gen. L. c. 39, §§23A-23G. During such period of Commission review, the Municipal Agency may not compel the Applicant to provide the Municipal Agency with any information regarding the proposed development. An Applicant may, however, furnish information to the Municipal Agency during such period of Commission review.

(c) The Commission shall hold a public hearing within sixty (60) days of receipt of a mandatory referral by certified mail, or in the case of a discretionary referral, within sixty (60) days of a decision by the Commission or by the Regulatory Committee or other subcommittee to accept a development for review as a development of regional impact. At least one public hearing shall be held in one of the municipalities in which the proposed development of regional impact is located, in accordance with Section 5(g) of the Act. The public hearing regarding review of a development of regional impact shall be closed within 90 days following its opening date, pursuant to Section 13(a) of the Act.

(d) The Commission shall provide notice of the public hearing to consider a development of regional impact as follows:

1. By publication as required by Sections 5(a) and 5(d) of the Act ;
2. By posting notice in a conspicuous place in the Commission's offices not less than fourteen days before the day of the hearing;
3. By making copies of all documents subject to notice and hearing available for public inspection at the Commission's office during normal business hours;
4. By mailing notice at least fourteen days before the day of the hearing to the assembly of delegates, county commissioners, board of selectmen, town clerk, building inspector, planning board, board of appeals and conservation commission of each municipality in which the proposed development of regional impact or a portion thereof is located, to any other town agency which makes a written request for such notice and to the governor's committee;
5. By mailing notice at least fourteen days before the day of the hearing to the Applicant and to each abutter to the proposed development of regional impact, based on a list of abutters provided by the Applicant and certified by the tax assessor of the municipality or municipalities in which the development of regional impact or a portion thereof is located. Abutters shall include owners of land directly opposite on any public or private street or way and owners of land located within three hundred feet of any boundary of the proposed development of regional impact; and
6. By mailing notice at least fourteen days before the day of the hearing to any person who makes a written request for notification relating to specific geographic areas of Barnstable county, provided such written request has been received by the Commission at least twenty days but not more than two years before mailing of such notice.

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(e) The Applicant shall bear the cost of providing notice of the Commission public hearing to consider the proposed development of regional impact according to Section 7(d) above. The fee for publishing notice of a public hearing to consider a development of regional impact is specified in the Schedule of Fees as provided in the administrative regulations adopted by the Commission.

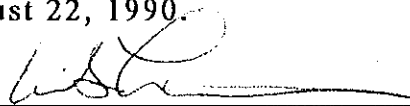
(f) The Commission shall review proposed developments of regional impact for their consistency with the Act and, when available, with the regional policy plan and local comprehensive plans. The Commission shall approve or approve with conditions a development of regional impact and shall permit a Municipal Agency to grant a development permit for a proposed development of regional impact if the Commission finds after public hearing that the proposed development meets the four criteria set forth in Section 13(d) of the Act. The Commission may also disapprove a proposed development which does not meet the four criteria set forth in Section 13(d) of the Act.

(g) Within sixty (60) days of the close of the hearing period, the Commission shall render a written decision on the proposed development. Such 60 day limit may be extended by mutual agreement of the Commission and the Applicant. Pursuant to Section 13(c) of the Act, the chairman of the Commission may delegate to the Regulatory Committee or other subcommittee the responsibility to review the proposed development of regional impact, to prepare a report and to assemble the record for the Commission.

(h) The Commission shall file its written decisions with the Clerk of the Commission, and with the town clerk, the relevant Municipal Agency and the building inspector of the municipality(ies) in which the proposed development is located. Notices of such decisions shall be published as required by Section 13(a) of the Act, including a brief summary of the contents of the decision and a statement that copies of the decision are available for public inspection at the Commission's office during normal business hours. In addition, after the Commission has established an official publication as required by Section 5(i) of the Act, the Commission shall publish notice of its written decisions in such publication.

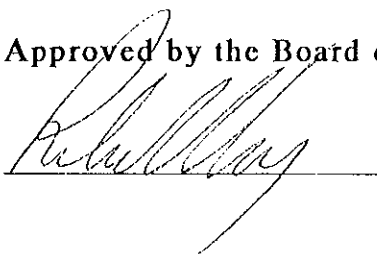
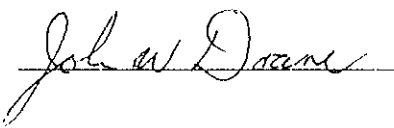
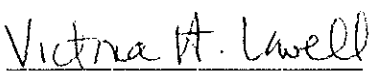
(i) The Commission shall issue a decision in a form suitable for recording in the Barnstable County Registry of Deeds. The Applicant shall record the decision in the Barnstable County Registry of Deeds and shall submit proof of such recording to the Commission within 14 days of the date of certification by the Clerk of the Commission that the thirty day appeal period has elapsed and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied. The Applicant shall bear the expense of recording.

Adopted by the Assembly of Delegates, August 22, 1990.



Speaker

Approved by the Board of County Commissioners, August 27, 1990, at 9:15 AM.
Date Time

Victoria H. Lowell