

BARNSTABLE COUNTY
ASSEMBLY OF DELEGATES

In the Year Nineteen Hundred and Ninety One

Ordinance 92-1
(as amended January 15, 1992)

To adopt regulations for the Cape Cod Commission for the purpose of enabling Development Agreements.

Barnstable County hereby ordains:

Section 1. General Provisions

(a) Source of Authority These regulations of the Cape Cod Commission are adopted pursuant to the authority of Sections 6 and 14 of Chapter 716 of the Acts of 1989, as amended.

(b) Effective Date The regulations set forth herein shall become effective upon passage as an ordinance and upon recording with the Clerk and the Barnstable County Registry of Deeds and the County Clerk.

(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.

Commission: The Cape Cod Commission

Executive Director: The Executive Director of the Cape Cod Commission.

Lead Community: When the Commission is not a party and a proposed development agreement involves more than one municipality, the Lead Community shall be that municipality which involved municipalities agree shall be the Lead Community. Where all involved municipalities cannot agree upon a Lead Community, the Lead Community shall be the municipality having the largest land area encompassed by the proposed development.

Qualified Applicant: A person who has a majority legal or equitable interest in the real property which is the subject of the development agreement. A Qualified Applicant may be represented by an authorized agent.

Section 2. Purpose of Development Agreements

The development agreement is a voluntary, binding contract. It is a tool which may be used by the Commission, municipalities, state agencies and developers to define the scope of proposed developments. Development agreements have several purposes. For the developer, a development agreement can assure that applicable development review regulations will not change over the necessary construction period. From the public perspective, such assurances encourage the developer to plan comprehensive projects and to provide major infrastructure and public benefits earlier in the project.

Pursuant to Section 14 of the Act, the Commission, Qualified Applicants, municipality(ies), and state agency(ies) may participate in a development agreement process. A development agreement is a contract under which the Qualified Applicant agrees to provide certain benefits which contribute to **one or more of the following**: infrastructure; public capital facilities;

land dedication or preservation; fair, affordable housing either on-site or off-site; employment opportunities; community facilities; recreational uses; or other benefits to serve the proposed development and the municipality or the county, or serve the proposed development and the municipality and the county, including site design standards to insure preservation of community character. The development agreement shall establish the permitted uses, densities, and all other aspects within the development to limit off-site impacts attributable to the development, the duration of the agreement, and any other terms or conditions mutually agreed upon between the Qualified Applicant and all other parties to the agreement. A development agreement may contain a provision for Transfer of Development Rights as that term is defined in the Cape Cod Regional Policy Plan, Barnstable County Ordinance 91-6. A development agreement may provide that the entire development or any phase thereof be commenced or completed within a specific period of time.

Section 3. Vesting of Development Rights

A development agreement shall vest land use development rights as described in Section 14(a) of the Act for the duration of the agreement.

When a municipality is not a party to a development agreement, then land use development rights shall not vest with respect to local development bylaws and regulations and the property shall be subject to subsequent changes in development bylaws and regulations. When the Commission is not a party to the development agreement, then land use development rights shall not vest with respect to Commission regulations and designations and the property shall be subject to subsequent changes in the Commission's regulations and designations.

Section 4. Who may participate in a Development Agreement

- (a) The Commission, municipality(ies), state agency(ies), and Qualified Applicants may enter into a development agreement.
- (b) A Qualified Applicant may choose to participate with:
 - a) the Commission, or
 - b) the Commission and a municipality or municipalities within which the development is located, or
 - c) the Commission and a municipality or municipalities within which the development is located and with a state agency or agencies; or
 - d) a municipality or municipalities within which the development is located, or
 - e) a municipality or municipalities within which the development is located and a state agency or agencies.

c) A municipality may enter into a development agreement only after: (1) obtaining certification from the Commission that its Local Comprehensive Plan is consistent with the Regional Policy Plan; and (2) adopting a by-law, approved by the Commission, establishing a procedure for development agreements to be reviewed and authorizing a procedure for execution thereof by the municipality. The Commission shall provide a model development agreement by-law for use by interested municipalities. In some instances a development agreement may require a developer to acquire zoning relief which may be in the form of a zoning amendment. Such zoning relief, if approved by a municipality, shall be adopted pursuant to applicable Massachusetts general laws. Zoning amendments shall be approved by town meeting or town council and the Attorney General. If such zoning amendment or relief is not acquired prior to the execution of the development agreement, then the development agreement shall contain a contingency clause requiring the Qualified Applicant to obtain the required zoning relief or the adoption of the zoning change, prior to the development agreement becoming effective.

Section 5. Procedure for adopting a Development Agreement when the Cape Cod Commission is a party.

- (a) The Development Agreement Application Form shall include:
- (i) A fully completed Development of Regional Impact Application Form, including a certified list of abutters;
 - (ii) A legal description of the land subject to the agreement and the names of its legal and equitable owners;
 - (iii) The proposed duration of the agreement;
 - (iv) The development uses currently permitted on the land and development uses proposed on the land, including population densities, and building densities and height;
 - (v) A description of public facilities that will service the development, including who shall provide such facilities, the date any new facilities will be constructed, and a schedule to assure public facilities adequate to serve the development are available concurrent with the impacts of the development;
 - (vi) A description of any reservation or dedication of land for public purposes;
 - (vii) A description of all local development permits approved or needed to be approved for the development of the land;
 - (viii) A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the Qualified Applicant of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction;
 - (ix) A Final Environmental Impact Report, certified as adequate by the Secretary of Environmental Affairs, if required under sections 61-62h of chapter 30 of the general laws;
 - (x) Additional data and analysis necessary to assess the impact of the proposed development, as determined by the Commission.
- (b) The Commission shall hold a public hearing after receipt of a fully completed application from a Qualified Applicant for consideration of a proposed development agreement. At least one public hearing shall be held in at least one of the municipality(ies) in which the proposed development is located. The public hearing regarding review of a development agreement shall not exceed ninety (90) days, unless extended by mutual agreement of the parties. Failure to close the public hearing within ninety (90) days shall not result in a constructive grant of the proposed development. The Commission may hold joint hearings with local, state and/or federal authorities and coordinate its regulatory functions with those agency(ies) pursuant to Section 4(a)(15) of the Act.
- (c) The Commission shall provide notice of the public hearing to consider a development agreement by publication as required by Sections 5(a) and (d) of the Act.
- (d) The qualified applicant shall bear the cost of providing notice of the Commission public hearing to consider the proposed development agreement. The fee for publishing notice of a public hearing to consider a development agreement is specified in the Schedule of Fees in the administrative regulations of the Commission.
- (e) The Commission shall review proposed development agreements for their consistency with the Act and with the Regional Policy Plan and Local Comprehensive Plans, when available. The Commission may approve a development agreement which is inconsistent with the Act or the Regional Policy Plan or a Local Comprehensive Plan if the inconsistency is necessary to enable a substantial segment of the population to secure adequate opportunities for housing, conservation, environmental protection, education, recreation or balanced economic growth. Pursuant to Sections 4(a)(8) and (12) of the Act, the chairman of the Commission may delegate to a standing committee, a subcommittee or a hearing officer the responsibility to review the proposed development agreement, to prepare a report and to assemble the record for the Commission.

(f) The Commission may authorize a development agreement by a simple majority vote of the Commission members present, so long as a quorum exists. The signature of the Chairman or Vice-Chairman of the Commission, as authorized by such a vote, shall bind the Commission to the development agreement.

(g) The Commission shall file its approved development agreement with the Clerk of the Commission and with the town clerk(s) of the municipality(ies) in which the development is located. Notices of development agreements shall be published in a newspaper of general circulation in the municipality(ies) in which the development is located, including a brief summary of the contents of the development agreement and a statement that copies of the development agreement are available for public inspection at the Commission's office during normal business hours. In addition, the Commission shall publish notice of its Development agreements in its official publication required by section 5(i) of the Act.

(h) The Commission shall issue development agreements in a form suitable for recording in the Barnstable County Registry of Deeds. The Commission shall record the development agreement in the Barnstable County Registry of Deeds. The qualified applicant shall bear the expense of recording.

(i) The Commission shall, by its Administrative Regulations, establish the fees and charges imposed for the filing and processing of each application and document provided for or required under these regulations. State agencies and municipalities that are also a party to the development agreement may also, by separate resolution, establish additional fees and charges to be imposed for the filing and processing of each application and document provided for or required under these regulations.

Section 6. Procedure for adopting a Development Agreement when the Cape Cod Commission is not a party.

(a) The Development Agreement Application Form shall include:

- (i) A fully completed Development of Regional Impact Application Form, including a certified list of abutters;
- (ii) A legal description of the land subject to the agreement and the names of its legal and equitable owners;
- (iii) The proposed duration of the agreement;
- (iv) The development uses currently permitted on the land, and development uses proposed on the land including population densities, and building densities and height;
- (v) A description of public facilities that will service the development, including who shall provide such facilities, the date any new facilities will be constructed, and a schedule to assure public facilities adequate to serve the development are available concurrent with the impacts of the development;
- (vi) A description of any reservation or dedication of land for public purposes;
- (vii) A description of all local development permits approved or needed to be approved for the development of the land;
- (viii) A statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction shall not relieve the Qualified Applicant of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction;
- (ix) A Final Environmental Impact Report, certified as adequate by the Secretary of Environmental Affairs, if required under sections 61-62h of chapter 30 of the general laws;
- (x) Additional data and analysis necessary to assess the impact of the proposed development, as determined by the Municipality or Lead Community.

(b) All Qualified Applicants seeking to enter into a development agreement without the Commission as a party shall submit the proposed development to the Commission for a

Jurisdictional Determination. If the Commission determines that the proposed development is not a Development of Regional Impact, then the Qualified Applicant may pursue a development agreement without the Commission as a party. If the Commission determines that the proposed development is a Development of Regional Impact, then the Commission must be a party to the development agreement, in which case, the provisions of Section 5(a) - (i) above shall apply. If the Commission determines that the proposed development is not a Development of Regional Impact, then Sections 6 (c) - (j) below shall apply.

(c) The municipality which is a party, or when more than one municipality is a party, then the Lead Community shall assume the responsibility for overseeing the development agreement process. The municipality or Lead Community shall hold a public hearing after receipt of a fully completed application from a Qualified Applicant for consideration of a proposed development agreement. At least one public hearing shall be held in at least one of the municipality(ies) in which the proposed development is located. The public hearing regarding review of a development agreement shall not exceed ninety (90) days, unless extended by mutual agreement of the parties. Failure to close the public hearing within ninety (90) days shall not result in a constructive grant of the proposed development.

(d) When more than one municipality is a party to the agreement, then the Lead Community shall be responsible for overseeing the development agreement process as specified in these regulations. Conflicts between the Lead Community and other municipality(ies) which are a party to the agreement shall be resolved through negotiation conducted by the relevant parties. The Commission will oversee such negotiations if asked. Because a development agreement is a voluntary process, unresolved disputes may result in one or more parties making a determination not to remain a party to the proposed development agreement.

(e) The municipality or Lead Community shall provide notice of the public hearing to consider a development agreement by publication as required by Sections 5(a) and (d) of the Act and shall also provide notice to the Commission at least fourteen (14) days prior to such hearing.

(f) The qualified applicant shall bear the cost of providing notice of the public hearing to consider the proposed development agreement.

(g) The municipality or Lead Community shall review proposed development agreements for their consistency with the Act and with the Regional Policy Plan and **Local Comprehensive Plans**. The municipality or Lead Community shall obtain a determination from the Commission or its designee that a proposed development agreement is consistent with the Act, the Regional Policy Plan, and Local Comprehensive Plans prior to executing a development agreement.

(h) The municipality or Lead Community shall file its development agreement with the Clerk of the Commission and with the town clerk(s) of the municipality(ies) in which the development is located. Notices of development agreements shall be published in a newspaper of general circulation in the municipality(ies) in which the development is located, including a brief summary of the contents of the development agreement and a statement that copies of the development agreement are available for public inspection at the town clerk's office during normal business hours of any municipality which is a party to the agreement. In addition, the municipality or Lead Community shall provide the Commission with a summary of the development agreement which the Commission shall publish in its official publication pursuant to section 5(i) of the Act.

(i) Development agreements shall be issued in a form suitable for recording in the Barnstable County Registry of Deeds. The municipality or Lead Community shall record the development agreement in the Barnstable County Registry of Deeds and shall submit proof of such recording to the Clerk within 14 days of such recording. The qualified applicant shall bear the expense of recording.

(j) The municipality or Lead Community may, by separate resolution, establish the fees and charges imposed for the filing and processing of each application and document provided for or required under these regulations. Any other municipality or state agency which is also a party to the development agreement may, by separate resolution, establish additional fees and charges to be imposed for the filing and processing of each application and document provided for or required under these regulations.

Section 7. Duration of the Development Agreement

A development agreement will commence and terminate as agreed by the parties, in writing, except as otherwise provided in this section. When the Commission is not a party, a development agreement shall not exceed ten (10) years, however, provisions in the development agreement pertaining to preservation of open space and park areas, and agreements to pay for maintenance of utilities and other infrastructure may exceed such ten year limitation. When the Commission is a party, a development agreement may be adopted for longer than twelve (12) years only upon a two-thirds vote of the Commission members present, so long as a quorum exists. Provisions in the development agreement to which the Commission is a party pertaining to preservation of open space and park areas, and agreements to pay for maintenance of utilities and other infrastructure may exceed such twelve year limitation or other duration limitation approved by the Commission. The development agreement may be extended once, by consent of all of the parties to the agreement, subject to a public hearing in accordance with Sections 5 and 6 above. In no case shall such extension exceed the duration limitation contained in the original agreement.

Section 8. Amendment and Rescission

(a) A development agreement may be amended or rescinded as provided below. Requirements for hearings, notice, costs and filing and recording of amendments and rescissions of development agreements shall be followed as provided in sections 5 and 6 above. However, nonsubstantial amendments, as determined by the Commission or the Lead Community, may be made without following the notice and public hearing requirements provided in Sections 5 and 6 above.

(i) When the Commission is a party to the development agreement, any other party to the development agreement may petition the Commission to amend or rescind the development agreement. Such petition shall be made in writing, on a form provided by the Commission. The petitioning party shall provide notice to all parties to the development agreement and to the Commission of its intention to amend or rescind the agreement by providing such parties and the Commission with a copy of the petition seeking such amendment or rescission. When the Commission initiates an amendment or rescission, it shall provide notice, in writing, to all other parties to the agreement.

(ii) When the Commission is not a party to the development agreement, any party to the development agreement may petition the municipality or Lead Community to amend or rescind the development agreement. The petitioning party shall provide notice to all parties to the development agreement and to the Commission of its intention to amend or rescind the agreement by providing such parties and the Commission with a copy of the petition seeking such amendment or rescission. When the municipality or Lead Community initiates an amendment or rescission, it shall provide notice, in writing, to all other parties to the agreement and to the Commission.

(b) Amendments and rescissions must be ratified by all parties to the original development agreement. Any development agreement may contain provisions further regulating the amendment and/or rescission of a development agreement.

Section 9 Enforcement

A development agreement is a binding contract which is enforceable in the appropriate Massachusetts court(s).

Adopted on January 15, 1992 by the Assembly of Delegates.

Susan V. Walker
Susan V. Walker, Speaker

Approved by the Board of County Commissioners January 22, 1992, at, 11:03 a.m.

John D. Dore Victoria H. Lowell