

MEMORANDUM

To: John Fulone, Chair and the members of the Mashpee Planning Board
Cc: Eliza Cox, Nutter McLennan and Fish
Rodney Collins, Town Manager
Carol Sherman, Chair, Board of Selectmen.
From: Evan R. Lehrer, Town Planner
Date: August 31, 2021
Re: Build Out Analysis and Recommendations relative to the proposed Mashpee Commons
Development Agreement

Overview and Methodology

According to the most recent 2020 Census figures Mashpee's population has grown approximately 7.5% since 2010, increasing by more than 1,000 people. Almost all of this growth has been accommodated by completion of the Southport Retirement Community Development and New Seabury's largely seasonal 'The Cottages' development. There has been little to no production of any product other than detached single family homes and age-restricted retirement housing. The percentage of the population aged 65 years or older continues to grow and sits now at about 1/3 of the Town's population while people aged 18 or under is declining, and is now about 15%.ⁱ Since 1992, there have been more births than deaths in the region until at least 2017 and that trend has likely continued and is predicted to continue until at least 2025.ⁱⁱ

Under current zoning, in a best-case scenario (in terms of adding supply) Mashpee could potentially produce an additional 294 (two hundred and ninety-four) building lots town-wide for single-family home construction under the cluster subdivisions bylaw. This maximum build out makes no assumptions regarding the impact any land area needed for roadways may have on subdividable land area nor any areas under wetlands jurisdiction that may impact the denominator of land area suitable for subdivision. Further, this analysis makes no assumptions regarding pre-existing nonconforming lots where building permits could potentially be issued under section 174-21 of the Mashpee Zoning Bylaw. As a result, this figure is likely inflated and the potential for new detached single-family production is likely less substantial.

This analysis relied upon the available data from the Mashpee Assessor's Office. First, all parcels totaling less than 160,000 s.f. in the R5 and less than 80,000 s.f. in the R3 were removed from further consideration. Of the remaining parcels, those owned by the Town, Conservation Commission, the Commonwealth, the United States Government (including those lands held in trust for the Mashpee Wampanoag Tribe), any of the other Partners of the Mashpee National Wildlife Refuge, and neighborhood open space parcels controlled by homeowners associations were removed from consideration. Also, any parcels that were identified as potentially subdividable and located within the New Seabury Special Permit area were not included in this analysis as each section of New Seabury is effectively at its buildout according to the limits of the 1964 Special Permit. After filtering out all of those parcels, each remaining parcel in the R3 and R5 zoning districts was reviewed individually and assigned a maximum number of potential building lots in consideration of the minimum lot size of the

district and the total land area of the subject parcel(s). The list of those parcels is attached to this memorandum.

Residential Build Out

According to the 2020 Census, there are 2.21 persons per household in Mashpee.ⁱⁱⁱ 294 additional single family building lots would add approximately 650 people to the population if trends in age-demographics remain stagnant or continue, which could be expected given the current real estate market and its impacts on the labor market. Between 2013-2018 Cape Cod lost 3,000 year-round homes and gained 6,000 seasonal homes putting artificial pressures on the housing market and harming the competitiveness in the region.^{iv} It is assumed that the COVID-19 pandemic further compounded these issues although additional data collection and analysis is needed to show the public health emergency's impact on the Cape Cod economy and housing market in particular.

Mashpee, like most Cape Cod towns, cannot adequately provide diversity in the housing market under current zoning and is not in a position to meet the housing needs of current and potential future residents. It is crucial that Mashpee, and other Cape towns, seek to diversify housing typologies beyond the single family home and create accessibility to those dwelling units for all income levels and all age ranges and family types to course correct the 'deferred maintenance' of the areas housing stock over the past 50 years. Maintaining status quo development regulations and growth management policies are likely to have negative impacts on the long term economic sustainability of the region and harm competitiveness as firms will need to look further and further away to attract labor because the cost of the housing stock on Cape Cod is and will remain unattainable to about half of the Cape Cod population due to low wage growth and a reasonably significant number of dwellings serving seasonal homeowners. The increasing demand of seasonal homeownership is what makes housing unattainable for many residents. Any new building lot and new home construction on Cape Cod, given current market conditions, will be unattainable for most labor force participants across income levels and thus the cycle of dependence on a seasonal economy will be further reinforced.^v

There is little to no potential for affordable housing production, those earning at or below 80% of the average median income (AMI), under the current cluster subdivisions bylaw as it is an incentive based structure and only has the potential to create one (1) affordable home per 10 lots created. There are only seven (7) properties (see Attachment A for a list of those parcels) remaining that are either standalone or contiguous parcels held under common ownership that are 'subdividable' in both the R3 and R5 zoning districts that would produce at least ten (10) building lots. In total these parcels account for 184 potential dwelling units. Further, the need in Mashpee as well as the region is, and will continue to be, for affordable and market rate rental units, not homeownership development.^{vi} Mashpee is not in a position, under current zoning, to meet this need. The only opportunity for developing housing typologies that deviate from the predominant detached single family pattern is under the Open Space Incentive Development (OSID) Bylaw that was adopted by the Town in 1987.

OSID allows mixed-use, multifamily, and attached housing types by special permit on properties that are a minimum of 20 acres in size. Developers are incentivized to increase density in the OSID by restricting open space either within the OSID or offsite and transferring those bedrooms into the OSID. This is known as Transfer of Development Rights (TDR). The only applicable property that could benefit from OSID today is Mashpee Commons. Analysis of the OSID zoning by former Mashpee Town Planner Tom Fudala concludes that, if it chooses, Mashpee Commons could potentially develop around 400 units of

housing in the rotary area. OSID requires a minimum 1:1 commitment of open space for each acre of developed land area. As land has become more and more scarce over the decades, primarily as a result of growth management practices over the past three decades and substantial open space acquisitions now totaling more than 40% of the Town's overall land area, these past approaches must be re-examined as the land that remains is limited and expensive.^{vii}

Commercial Build Out

Currently, Mashpee has three (3) commercial zoning districts: C1, C2, and C3. Each district allows for a variety of commercial retail, office, food, and contractor trades, among others. Generally these development proposals are reviewed under a special permit process by the Zoning Board of Appeals. The Planning Board is the special permit granting authority for any proposal that triggers a mandatory referral to the Cape Cod Commission as a Development of Regional Impact, wireless telecommunications facilities, any project in the C-3 limited commercial district, commercial centers, and OSID.

Four (4) vacant commercial parcels remaining for development in the C-1, C2, and C-3 districts that are not controlled by Mashpee Commons or its principals. These parcels, under current zoning, would add at a maximum, 137,936 s.f. of total commercial space. This is based on the parcels' sizes and the 20% maximum lot coverage required by the current zoning bylaw. These parcels could be developed as retail strip malls, standalone retail locations, restaurants, office space and other related uses (refer to Section 174-25 of the Mashpee Zoning Bylaw for a complete list of allowable commercial uses). Each would require its own parking facilities, wastewater disposal (likely conventional septic system unless the use has flows that exceed 660 gallons per day requiring a more advanced denitrification system), and access to transportation. Most of these lots are along Routes 28 and 151 and would require additional curb cuts to these areas.

The remaining parcels are controlled by Mashpee Commons and could produce 473,804 s.f. of total commercial space as up to 7 Commercial Centers of varying sizes or as conventional subdivisions creating a total of 57 individual building lots subject to the same criteria enumerated above. South Cape Village for example is a 160,000 s.f. commercial center approved in 2001. The potential square footage of Commercial Centers is based on the lot size and a 20% lot coverage maximum, but this may not be an accurate representation as the Planning Board has the sole discretion via the Special Permit process to designate a unique set of applicable dimensional criteria. This lack of predictability is what makes current zoning less than ideal, and highlights an opportunity for predictability for both the Town and Mashpee Commons as part of the development agreement process.

Mixed Use Walkable Neighborhoods vs. Suburban Sprawl Pattern

Since at least 2002, the American Planning Association (APA) has formally recognized that suburban development patterns have negative outcomes on a variety of indicators: social equity and community building, public health, transportation systems, environment and water quality, etc.^{viii} It was in 2002 that the APA Board of Directors adopted a Smart Growth Policy Guide. The Congress for the New Urbanism has advocated and promoted mixed-use, mixed-income, walkable and livable communities for even longer, since about 1985.

In its 2018 Regional Policy Plan update the Cape Cod Commission recognized the importance of concentrating additional growth in already developed 'Community Activity Centers' that provide services and community aspects with adequate infrastructure planned or in place.^{ix}

Addressing the region's housing crisis while managing environmental outcomes like nutrient pollution will only occur when Towns, including Mashpee, deviate from the status-quo sprawling suburban development pattern. There is simply not enough developable land area. Because these issues are priorities, Mashpee must recognize the severe limitations of its current zoning. We frequently hear that residents do not wish for Mashpee's commercial center to be reflective of the aesthetic that is prevalent along Yarmouth's Route 28. The Planning Board and community must recognize that, without action and real consideration for placemaking and urban design, that typology is exactly what Mashpee's zoning bylaw allows today: isolated commercial uses, large setbacks, and parking to the front and side of buildings with no housing, affordable or market rate, no open space or parks, and with relatively unmitigated stresses on the transportation system. Current zoning prioritizes the automobile over people.

Mashpee's growth potential lies in its already developed commercial districts, with the majority of that potential located in and around the rotary area on property owned and controlled by Mashpee Commons or its principals. Walkable, mixed-use neighborhoods have the potential for connectivity, building community character, boosting economic development, reducing individuals' reliance on the automobile, and having a positive impact on individual's physical and mental health. Furthermore, walkable neighborhoods are, by design, more accessible to all individuals including those with disabilities.^x If Mashpee is to make meaningful strides towards providing diversity in its housing stock, I will continue to advocate and recommend mixed-use walkable neighborhoods as the best solution, not only in the area surrounding the Mashpee rotary but also those C-2 districts along Routes 151 and Route 28. These areas are ripe for redevelopment but are lacking the regulations to make redevelopment economically viable or beneficial in consideration of community needs.

It is important to keep in mind that implementing strategies that only address the supply side of the housing equation and ignore the demand side will likely incentivize the continued conversion of year-round units to seasonal units. This is why it is critical to plan for growth in areas that have adequate physical infrastructure: sewer, water, public transportation, advanced telecommunications, and energy infrastructure in order to attract year round employers.^{xi} Mashpee Commons, given its already walkable fabric and existing infrastructure, has these qualities, which is why it was identified by the Cape Cod Commission as a Community Activity Center suitable for a more compact expanded mixed-use development pattern.

Community Activity Center Overlay District Recommendations

There are two (2) legislative pathways in which the Town could seek approval of any necessary zoning changes identified via the Development Agreement process. Town Meeting could either vote to adopt zoning articles and amend the Zoning Bylaw itself, or Town Meeting could adopt the Development Agreement with the development regulations as an attachment to the agreement.^{xii} Either would bear the same outcome and be subject to the same Town Meeting voting threshold, in this case a simple majority vote at Town Meeting pursuant to the Housing Choice provisions included in last year's Economic Development Bill coming out of the State House.^{xiii}

Seeking to amend the zoning bylaw itself will require multiple articles be voted on and approved. If one of these articles were to fail, then the Overlay as proposed would be dysfunctional. The structure of the Mashpee Zoning bylaw itself would require amendments to the definitions section, the use table, the special provisions section, establishment of zoning map, the land space requirements table and potentially others. The result would likely be amendments that are confusing and difficult to implement and administer, adding to the existing zoning that already suffers from such issues. These issues could be mitigated by seeking a Town Meeting vote on the terms of the Development Agreement itself. I strongly recommend this pathway.

Regarding the regulations proposed in the CAC by Mashpee Commons, I have very few technical recommendations. The zoning is a regulatory tool to control a desired built form. The zoning conversation is again one about design. It’s about the built form: building height, lot coverage, setbacks, etc. The dimensional criteria proposed in the Community Activity Center Overlay District is designed to achieve exactly the smart growth pattern that the APA and others support. If the Planning Board and the Town are interested in pursuing walkable mixed-use neighborhoods as opposed to a more suburban commercial pattern then my technical comments are limited to building height as that was discussed as an area of concern by the Board.

I would recommend amending the proposed land space requirements in the Core area to place a maximum building height of 3.5 stories as discussed while creating a mechanism to enable buildings for specific uses (such as hotels, civic buildings, and 100% affordable multifamily residential) to be 4.5 stories with a special permit. Please review the table below for specific language recommendation:

2. CAC Dimensional Table

CAC Area	Min. Lot Frontage	Min Lot Area ¹	Max. Single Building Footprint	Max Building Height ²	Max. Lot Coverage ³
Core Area	16 ft.	None	45,000 s.f.	3.5 Stories	None
Transition Area	16 ft.	1,760 s.f.	25,000 s.f.	3.5 Stories	75%
Edge Area	22 ft.	1,980 s.f.	7,500 s.f.	2.5 Stories	70%

- 1.) The minimum lot area for a single-family dwelling in the Transition Area shall be 2,560 s.f.
The minimum lot area for a single-family dwelling in the Edge Area shall be 3,600 s.f.
- 2.) The maximum building height in the Core area may be increased to 4.5 stories for hotels, civic buildings, and 100% affordable multifamily residential buildings with a Special Permit from the Planning Board.**
- 3.) The maximum lot coverage for a single-family dwelling shall be 60%.

Additionally, I believe the Planning Board should seek a recommendation from the Affordable Housing Committee with regarding the inclusionary requirements proposed in the CAC. Currently 10% is proposed as being restricted as SHI eligible dwelling units. At what thresholds do these units get constructed? Is 10% adequate given the increase in dwelling units (SHI denominator) proposed in the CAC?

For example, according to the 2010 Census (most recent figures are not yet available for dwellings units) Mashpee has 6,473 total dwelling units with 343 SHI eligible units that equal about 5.3% of the housing stock as SHI eligible affordable housing units.^{xiv} If Mashpee Commons were approved to expand by 1,625 units (1,700 minus the existing 75 units of housing already approved and onsite) then Mashpee's total number of dwelling units would increase to 8,098. If 10% of those new units are SHI eligible affordable housing units, then the numerator of those units becomes 505 units (162+343):

$$505 / 8,098 = 6.2\%.$$

This calculation does not take into consideration new units constructed in the Town between 2010 and 2020. Looking at New Seabury and Southport alone, if 200 (hypothetical figure) new units were developed in that decade, the denominator becomes 8,298 and the percentage of SHI eligible units becomes 6.0%. While this indicates a potential increase in SHI eligible units, the Town must maintain a commitment towards achieving its 10% minimum affordable units and the closer this collaboration gets the Town to that figure the more advantageous it would be.

Further, we want to ensure that Mashpee Commons neighborhoods, if approved, provide housing for all income levels throughout the entirety of the development and are not only isolated to singular buildings or areas. While 100% affordable buildings via partnerships with Preservation of Affordable Housing (POAH) and others should be welcomed, they should not account for the overall commitment to affordable housing throughout the entire development plan. I have not perceived an intent to pursue affordable housing development in this manner, but it should be codified in the proposed zoning.

It is my professional opinion that the critical points of discussion and negotiation do not lie within the language of the proposed CAC zoning bylaw text but within the layout of the subzones and the regulating plan. The Board and the Town need to consider if the facts relative to existing community conditions and growth trends under status quo regulations support the community character that all residents envision.

Since June, when the Planning Board began rolling out this process, the Planning Department's primary takeaway from those who have thoughtfully engaged and participated is that the real need for diversified market rate housing and affordable housing options is recognized and understood and something that residents hope this project can positively impact. Further, there seems to be an understanding that the Development Agreement between the Town, Cape Cod Commission, and Mashpee Commons could be advantageous towards the goal of providing more diversified, accessible and affordable housing types. However, some people are generally concerned with the proposed expansion around the Trout Pond area with noted concern also with the area abutting the Quashnet River. The community desires assurances that the impacts related with the proposed growth are appropriately managed in consideration of existing on site infrastructure and that the frameworks for additional review for issue areas such as traffic impacts are substantial enough to preserve the Town's interests.

The development regulations proposed do not contemplate impact related issues, but they do define the parameters of the overall density which will have variable impacts across the three sub-zones. It is my recommendation that the Board discuss the layout of the subzones and regulating plan with Mashpee Commons to address those concerns, particularly around Trout Pond. The aforementioned concerns in these areas can be addressed through the layout of the subzones and the regulating plan. The Board, in coordination with Mashpee Commons, should produce alternative subzone layouts and recalculate the proposed densities accordingly within the zoning bylaw text. Impact related mitigation conditions should be defined in the development agreement itself only after the neighborhood layouts and regulating plan are solidified and technical analyses are provided. Any contemplation of impacts prior to would be based on assumptions and not data based conclusions.

Recommendations

- 1. Seek Town Meeting approval of the Development Agreement itself, not individual zoning articles.**
- 2. Seek input from the Affordable Housing Committee with regard to the inclusionary requirements proposed for the CAC to ensure the overlay district maximizes the potential to make diversified housing types available and attainable to all income levels, age groups, and family types throughout the entirety of the CAC in each phase of the project.**
- 3. Refocus the discussion on negotiations around the layout of the subzones and regulating plan as to mitigate or remove disturbance in the Trout Pond section of the proposed Development Area and reassess the impact new subzone layouts or modifications to the regulation plan, specifically in terms of parks/open space may have on the density maximums proposed.**

ⁱ U.S. Census Bureau (2021) Mashpee Population April 1, 2020

<https://www.census.gov/quickfacts/fact/table/mashpeetownbarnstablecountymassachusetts/HSD310219>

ⁱⁱ Crane Associates Inc., and Economic and Policy Resources. (2017) Regional Housing Market Analysis and 10-Year Forecast of Housing Supply and Demand. Barnstable County and the Cape Cod Commission.

<https://barnstablecounty.sharepoint.com/:b:/g/dept/commission/team/EaWFdavci7NGnKgtZNZPf-kBcrDJI9ccSUbnfWAg8bimQA?e=LxTy7T>

ⁱⁱⁱ U.S. Census Bureau (2021) Mashpee Population April 1, 2020

<https://www.census.gov/quickfacts/fact/table/mashpeetownbarnstablecountymassachusetts/HSD310219>

^{iv} Crane Associates Inc., and Economic and Policy Resources. (2017) Regional Housing Market Analysis and 10-Year Forecast of Housing Supply and Demand. Barnstable County and the Cape Cod Commission.

<https://barnstablecounty.sharepoint.com/:b:/g/dept/commission/team/EaWFdavci7NGnKgtZNZPf-kBcrDJI9ccSUbnfWAg8bimQA?e=LxTy7T>

^v IBID

^{vi} Stefanie Coxe and David Quinn. (2018) Housing on Cape Cod: The High Cost of Doing No thing

^{vii} Evan R. Lehrer. (2021) Analysis of FY2021 Mashpee Tax Assessor Database

^{viii} APA Smart Growth Policy Guide

^{ix} Regional Policy Plan. 2018. Cape Cod Commission (as amended)

^x David Charron. (2017) The Washington Post. Walkable Neighborhoods Provide Health, Environmental, and Financial Benefits. <https://www.washingtonpost.com/news/where-we-live/wp/2017/10/09/walkable-neighborhoods-provide-health-environmental-and-financial-benefits/>

^{xi} Crane Associates Inc., and Economic and Policy Resources. (2017) Regional Housing Market Analysis and 10-Year Forecast of Housing Supply and Demand. Barnstable County and the Cape Cod Commission.

<https://barnstablecounty.sharepoint.com/:b:/g/dept/commission/team/EaWFdavci7NGnKgtZNZPf-kBcrDJI9ccSUbfnfWAg8bimQA?e=LxTy7T>

^{xii} Chapter D Development Agreement Regulations Governing the Provisions of Development Agreements. (2021) Cape Cod Commission. Barnstable County Ordinance 92-1 as amended.

https://www.capecodcommission.org/resource-library/file/?url=/dept/commission/team/Website_Resources/regulatory/Ord14-04_Ch-D_DAReg_amend11-20-14.pdf

^{xiii} An Act Enabling Partnerships for Growth. Massachusetts State Legislature. 191st Congress. Bill H.5250

^{xiv} Massachusetts Subsidized Housing Inventory. (2021) <https://www.mass.gov/doc/subsidized-housing-inventory/download>