

To: Cape Cod Commission
From: BarnstableWatch (Spokesperson: Heather Hunt, Resident, Barnstable)
Date: January 15, 2024
RE: Comment on the Draft Regional Housing Strategy

BarnstableWatch is an all-volunteer group of citizens from across Barnstable concerned about the proliferation of real estate investors operating commercial Airbnbs in residential neighborhoods, adversely affecting housing availability, affordability, and residential life.

BarnstableWatch formed in 2019 when traditional institutions that exist to protect the unique values and quality of life on Cape Cod, such as the Cape Cod Commission (CCC), and housing, such as the Housing Assistance Corporation, stood down in Airbnb matters, and with commercial interests that advocated for all homes to be able to be Airbnb'd 365 days a year, including by non-resident owners. This is often referred to as the Anything Goes Airbnb policy. In nearly all other areas of the country, housing advocates have worked successfully to protect locals and existing housing stock from the Airbnb effect, but not here. Indeed, in Barnstable, town housing staff said it best: "We have a large housing stock. It's just not being used to house our residents."¹ BarnstableWatch followers have since asked it to help them stay informed about other land use issues.

BarnstableWatch is pleased to offer comments on the CCC's Draft Regional Housing Strategy (Draft Strategy). BarnstableWatch appreciates the CCC work on suggesting potential means to alleviate the housing challenges here on Cape Cod that mirror those challenges nationally.

Summary

BarnstableWatch requests information in a revised Draft Strategy or an addendum on whether the recommendations reflect CCC interaction with and responsiveness to the public (i.e., residents and taxpayers). In particular, BarnstableWatch asks the CCC to make visible to the public the level of resident and taxpayer input as the CCC developed its recommendations in two areas:

1. The CCC call to change town zoning laws to enable dense development. Specifically, the Draft Strategy advocates for the following:²
 - Allowing multi-family housing "by-right"

¹ May 21, 2019 Housing Committee meeting.

² See pages 71-72 of the [Draft Strategy](#).

- Allowing Accessory Dwelling Units (with no owner occupancy requirement)
 - Allowing conversion of single-family homes to “multiple dwellings”
 - Utilizing “cottage court” zoning
 - Allowing dormitory housing
 - Reducing minimum lot size requirements for multiple units
 - Reducing parking requirements
2. The CCC call to shift a suite of housing functions, including taxpayer-funded financial support and eminent domain, away from local governments that are answerable to the public to more distant regional entities that are not. Specifically, the Draft Strategy advocates for the following:³
- Develop a Community Land Trust & *Regional* Housing Land Bank
 - Develop a *Regional* Redevelopment Authority
 - Develop a *Regional* Local Government Investment Pool
 - Establish a Permanent *Regional* Housing Services Office
 - Develop a *Regional* Homesharing Program
 - Develop a *Regional* Capital Plan

BarnstableWatch seeks that information to enable residents and taxpayers, in providing the comment, to understand whether and to what extent the Draft Strategy reflects public sentiment or, whether the CCC seeks to drive zoning changes and regionalization despite public sentiment.

As one example, Barnstable citizens said in a recent Town-administered survey that the number one kind of housing they want more of is single-family homes. Yet, the Draft Strategy leads with a suite of recommendations to change single-family zoning.

At least in Barnstable, there has not been public discussion of the CCC’s proposals to drive density. The only exception to that is the now controversial form-based zoning in the Village of Hyannis, adopted after a similar 1% participation survey. There are now calls to revisit that zoning and attendant parking problems.

That the Draft Strategy concludes with a call for “targeted campaigns,” “continuous advocacy” and to “mobilize support” suggests policy making by ignoring or changing public sentiment. It is inevitable that when public policies do not squarely account for public will up front, it invites contention and delay later in the process, which would not serve locals’ housing needs.

³ See CCC Recommendations at page 44 of the [Draft Strategy](#).

I. DOES THE DRAFT STRATEGY REFLECT PUBLIC SENTIMENT OR DOES IT SEEK TO ADVANCE POLICIES DESPITE IT?

A. Please Bring Public Visibility to The Level of Resident and Taxpayer Participation on the Draft Strategy, Its Committees and Working Groups

The CCC Draft Strategy outlines an input process through Committees and Working Groups.⁴ Please identify the number of residents and taxpayers who participated who were not paid by or affiliated with a municipality or organization for time allocated to such participation. The objective is to make visible to the public from whom the CCC sought input.

Understanding the level of public engagement, and who the CCC considers “stakeholders” is relevant to the Draft Strategy’s call for coordinated advocacy.

If the CCC Draft Strategy broadly reflects the will of the people following a public engagement process, why the need for taxpayer-funded advocacy?

B. Please Provide the Source and Nature Of Prior Municipal Input on the CCC Zoning Change Preferences For Our Towns

The Draft Strategy states that CCC staff reviewed each town’s zoning rules. It undertook such a review before forming a view about the local zoning code changes CCC staff would like towns to adopt. The Draft Strategy states that CCC staff met with representatives from each town to review the CCC recommendations. The Draft Strategy states that CCC staff refined the zoning change recommendations based on feedback from representative of each town.

For transparency into the nature of the municipal feedback that the CCC says influenced its recommendations, please provide a summary of the zoning discussion with each town, including: 1) whom in each town spoke for the town and 2) the zoning-related feedback each town provided to the CCC. The CCC Draft Strategy does not make that feedback apparent, and there is no basis to maintain it as internal confidential.

In Barnstable, for example, during the time when the CCC worked on the Draft Strategy, there was no publicly noticed discussion by the Town Council about residential zoning broadly, about the prior CCC declaration that “zoning is broken”, about the CCC call to invite dense development and increased building height in village centers, or about CCC specific zoning recommendations. Accordingly, any feedback from Barnstable to the CCC staff does not reflect the Town Council’s deliberations or views, or local public comment.⁵

⁴ <https://capecodcommission.org/our-work/regional-housing-strategy-stakeholder-engagement>

⁵ A survey BarnstableWatch issued to Town Council candidates before the November 2024 election does not suggest alignment between them and the CCC.

Further, when residents have inquired about prior CCC zoning change preferences, such as the CCC's desire for increasing building density and height in the CCC's computers' so-called "Community Activity Centers" (in Barnstable, Barnstable Village, Hyannis, Osterville), the Barnstable Town Manager has repeatedly expressed publicly that "[T]here are no plans to modify land use or zoning in the villages ...".⁶ The Town Manager frequently publicly refers to citizens' concerns about any plan to act in furtherance of the CCC's call for density in so-called "Community Activity Centers" as "misinformation." Accordingly, Barnstable taxpayers have reason to be confident that the Town Manager would not have provided supportive comments about CCC density zoning change recommendations.

Indeed, in a recent town-administered survey that asked residents what type of housing they would like to see more of, Barnstable residents first choice was more single-family residential homes.⁷ The feedback from Barnstable to the CCC staff should have captured residents' and taxpayers' primary preference.

Please make the source and nature of municipal feedback visible so that the public can assess and comment on it vis a vis established public policies, deliberations in publicly notices meetings, and public sentiment.

C. Please Provide Details About the Survey the CCC Says Expresses Citizens' Views of Dense Building Development

The Draft Strategy explains that the CCC worked with consultants to execute a survey of the public to assess their housing preferences.

Approximately one (1) percent of the population of Barnstable County participated.

From this small survey, the CCC drew some core conclusions:

- 1) Design and aesthetics of housing are more important than size and density of development.
- 2) ADUs are appropriate in nearly all areas with residential development (irrespective of lot size),
- 3) Smaller scale multi-family is preferable,
- 4) Larger multi-family development was "acceptable" in existing downtowns, village centers, or other areas with existing mixed-use development.

⁶ Town Manager Report October 5, 2023.

⁷<https://itlaserfiche.town.barnstable.ma.us/WebLink/DocView.aspx?id=920267&dbid=0&repo=TownOfBarnstable> Local Comprehensive Plan survey at page 5.

Given the conclusions the CCC draws from the survey, please provide details and context about the survey approach so that readers can understand the tool and the credibility of its results as it relates to dense development preferences.

Subject to check as we are all citizen volunteers, BarnstableWatch believes the same consultant conducted a similar public opinion survey in Barnstable ahead of the now controversial “form-based zoning” changes. Citizen engagement was similarly minimal: one (1) percent of Hyannis residents, and .003% of Barnstable residents, responded.

That survey was about “visual preferences,” and not zoning. For example, the survey instrument showed images of lovely, warmly lit multi-families with porches and sidewalks, and an image of an old, stark, grey single-family home with the blinds drawn and asked residents which home they found more visually appealing?⁸ Barnstable town staff reported it would “take those preferences, turn them into zoning that we would assume would be acceptable to the community.”⁹

It is important not to confuse asking people their impressions of house pictures (by a firm that promotes density development) with a broad-based, impartial, valid, and reliable survey of residents’ views on eliminating single-family zoning, increasing density, or building height.

The public is capable of understanding questions about zoning and giving answers in that context. Should the CCC chose to draw conclusions about public sentiment on zoning based on a survey, it should ensure the survey is: 1) straightforward in asking citizens about their zoning preferences, 2) identified as being about zoning if it will be used to draw conclusions about zoning preferences, and 3) has a meaningful level of public response.

D. Recommendations to Move Programs, Policies, and Investment Decisions to Regional Bodies That Are Not Answerable to The People

A centerpiece of the Draft Strategy is a series of recommendations to create and/or move programs and policies away from local governments that are answerable to the people to unelected entities that are distant and unaccountable to the people.

As noted above, the regionalization list, which includes the power of eminent domain, is as follows:

⁸ At that time, Barnstable staff stated in a public Housing Committee (February 2019) meeting that they would take the visual preferences and turn them into zoning changes assumed to have public support.

⁹ February 2019 Housing Committee.

- Develop a Community Land Trust & *Regional* Housing Land Bank
- Develop a *Regional* Redevelopment Authority
- Develop a *Regional* Local Government Investment Pool
- Establish a Permanent *Regional* Housing Services Office
- Develop a *Regional* Homesharing Program
- Develop a *Regional* Capital Plan

The CCC should detail all public comment (i.e., residents and taxpayers, not comment by entities with paid advocacy staff) it has received that urged the CCC to recommend moving policies, programs, and funding decisions away from responsive, local government that is accountable to the people.

The Draft Strategy skips straight to assumed public support for regionalization and transfer of duties and authorities to regional entities. Absent the CCC demonstrating a compelling level of public support for transferring local functions to unelected regional entities, and agreement to that in local forums with local government representatives, the CCC should not advance the regionalization recommendations. When such moves lack express public support from the outset, they inevitably run into public reaction and discontent. Such an outcome would ultimately frustrate and delay progress on the important underlying housing objectives.

Respectfully, in local meetings about planning and zoning in 2023, and the CCC’s computers’ designating certain locations as “Community Activity Centers” ripe for increased building height, density and reduced parking, community reaction about the CCC was consistent, pointed, and strong.¹⁰

There were basic questions about the CCC. These included, for example, how its members are appointed, to whom it is answerable, what locals get in exchange for conformance to its recommendations and its actual value, and whether the CCC reflects residents’ and taxpayers’ sentiments. Based on many community meetings where the CCC directional preferences were discussed, the Draft Strategy push for regionalization and less connection to locally elected officials answerable to the people seems contrary to public sentiment.

A run at regionalization without public support at the outset carries a high risk of later public opposition and consequent delay in progress on important housing matters.

II. THE CCC SHORT-TERM RENTAL RECOMMENDATIONS IGNORE MAINSTREAM REGULATION AND PRIORITIZATION OF LOCALS HOUSING NEEDS AND INSTEAD ASK TAXPAYERS TO PAY OUR WAY AROUND PERMISSIVE POLICIES

¹⁰ One such meeting is at this link: <https://www.youtube.com/watch?v=LQGOIMLN54M>

The CCC Draft Regional Strategy's approach to short-term rentals is stunning what it omits: recommendations to prioritize locals in decisions about the use of housing existing stock. It is also wildly out of sync with the mainstream means used by municipalities across the country, including in tourist-dependent communities, to prevent non-resident investors from monetizing homes as Airbnbs.¹¹ The CCC's omissions on short-term rental discussion casts a shadow over the entire Report.

The CCC recommends ignoring mainstream regulatory means to sensibly protect the use of homes as homes for locals and getting out taxpayer wallets to pay our way around permissive policies.

The CCC Draft Housing correctly observes the economic power of short-term rentals: it takes just two months Airbnb'ing a residential property to earn more than one can earn offering the same property as year-round housing. This dynamic is casually referred to as the "Airbnb Effect." The "Airbnb Effect" is well-studied and documented by independent entities, from the Harvard Business Review (*When Airbnb Listings Increase, So Do Housing Prices*), Forbes (*Airbnb as a Gentrification Tool*), McGill University (*The Airbnb Effect on Housing and Rent*), and the George Washington Law Review (*Airbnb and the Rent Gap*).

The CCC Draft Strategy then entirely omits any discussion of how municipalities nationally, and all over the world, have responded to protect local housing stock and to prioritize locals in housing policy. The means to prioritize locals range from restricting short-term rental rights to local residents, limiting the number of days or times per year one can short-term to eliminate the Airbnb Effect, limiting the overall number of homes that can be short-term rented in a community, and many, many more. The CCC Draft Strategy ignores such mainstream sensible regulation used from Tahoe, to Denver, to Santa Monica, to the Hamptons, to Newport to Hilton Head, and in Massachusetts from Boston to Lenox

Instead, it offers two solutions, both of which start by accepting the limitless Airbnb approach and then proposes to pay property owners with taxpayer funds not to take advantage it. The CCC does not, of course, offer funds. The CCC suggests ignoring mainstream regulatory means to sensibly protect the use of homes as homes for locals and getting out taxpayer wallets to pay our way around permissive policies.

Finally, the Draft Strategy recommends that towns like Barnstable dedicate short-term rental taxes to housing initiatives, and not to expenses like wastewater funds. BarnstableWatch urges the CCC to recommend that *if* the objective in imposing a tax on

¹¹ There is a material difference between Cape rental traditions, where local residents short-term rent their homes from time to time, and the non-resident investor model. The CCC Draft Strategy should acknowledge and deal with the [issues](#) the latter model causes for existing housing stock.

short-term rentals was for tourists to fund certain expenses, such as housing or wastewater, the straightforward way to put such costs on tourists would be the use of tolls, similar to those in place across all of New England.

Instead, the short-term rental tax, which various commercial interests have taken credit for devising, has created a tourist-based revenue stream with an inherent and perverse incentive for local governments to maximize short-term rental tax dollars at the expense of housing for use by locals as housing. For commercial interests with an exclusive focus on maximizing the number of transient visitors to Cape Cod, it was quite masterful. From a housing policy point of view, it was and is irrational and contrary to locals' housing needs.

III. ACCESSORY DWELLING UNIT MODEL BYLAW

The CCC's Model Accessory Dwelling Unit (ADU) Bylaw departs in a critical way from the vast majority of Cape Cod ADU Bylaws adopted by elected representatives or via town meetings: it does not require owner occupancy of either of the units. The CCC approach moves away from the purpose of ADUs, which is to enable a smaller, more affordable unit attached to one's home.

In that respect, the CCC's Model ADU Bylaw largely mirrored an ADU Bylaw proposed in Barnstable by a group of primarily commercial interests. The Barnstable Town Council considered and rejected it.

During a Barnstable Housing Committee discussion, a developer asked about the status of multi-family by right zoning changes. The Housing Committee staff replied by asking if the then pending ADU approach – modeled on the CCC Model Bylaw - that does not require any owner occupancy gets developers “close enough” to multi-family by-right? Respectfully, if governments seek to change single-family zoning where the vast majority of residents chose to invest in homes, it should do so following a community conversation that sets the questions out for the public in straight language.

In another public meeting conversation about duplexes-by-right, a developer was, to his credit, forthright in observing that without an ADU owner occupancy requirement, there will be a “huge push” from investors looking to buy up (already) scarce housing. This would of course drive prices of homes and rents up as investors increase bids based on the expectation of multiple revenue streams from each single-family home.

The CCC Model ADU Bylaw should be revised to reflect what the people and their elected representatives have done in the ADU context in nearly all Cape towns, which is to maintain the purpose of ADUs, to prioritize locals, and to prevent real estate developers from outbidding local families for homes in anticipation of multiple revenue streams from single-family home.

The CCC notes its concern that enforcing owner occupancy is challenging. Towns around the Cape require an annual affidavit attesting to owner residency (this can be structured to accommodate second homeowners). Some ask for an annual rental certificate.

IV. CONCLUSION

BarnstableWatch appreciates the CCC work to advance housing solutions with a focus on preserving current housing stock for locals, and other solutions that have a high likelihood of successful implementation to meet local residents' needs in the nearest term.

We look forward to the CCC's responses to the questions above, whether in the form of a revised Draft Strategy or an addendum, which we will be pleased to share with our service list.