



FREEMAN LAW GROUP LLC
Attorneys at Law

Peter L. Freeman

pfreeman@freemanlawgroup.com
Tel. (508) 362-4700 Mobile (781) 854-2430

Kevin T. Smith, Of Counsel

ksmith@freemanlawgroup.com
Tel (508) 362-4700 (978) 369-0634
Mobile (978) 549-3399

Renie Hamman, Paralegal, CP, ACP

rhamman@freemanlawgroup.com
Tel (508) 362-4700

January 12, 2019 VIA EMAIL TO kseiatori@capecodcommission.org

Kristy Senatori, Executive Director
Cape Cod Commission
PO Box 226
Barnstable, MA 02630

RE: Cape Cod Regional Policy Revisions – Draft Housing Technical Bulletin

Dear Ms. Senatori:

I commend the Commission for its efforts to update the Regional Policy Plan (“RPP”) and for reaching out to the Cape Cod community in your review process. I offer a few comments from my perspective both as a land use attorney and as a housing advocate serving on several affordable housing organizations (Board Member and Vice-President of Housing Assistance Corporation, Board Member and President of Our First Home, Inc. and Board Member of Homeless Not Hopeless, Inc., although this letter is my own).

As a housing advocate, I support much of what your RPP and bulletins express. However, I wish there was a more obvious re-ordering of priorities, i.e., taking positions that will *first* ease the restrictions and roadblocks making many housing projects economically unfeasible and *second*, then applying the various environmental, growth management and community character criteria as may be necessary to protect Cape Cod’s natural beauty, environment, water supply and resources, and cultural and historic values. I recognize that the Commission cannot do this alone, and I do believe that you and the Commission’s housing specialists will assist others in advocating at the Town level for necessary reforms such as Accessory Dwelling bylaws (you have already done much in this regard) and zoning amendments that will require municipalities to have certain areas where dense multi-family development is allowed as-of-right or with a special permit where the criteria are realistic enough that the special permit is expected to be issued unless there are some bona-fide, legitimate adverse impacts that the project cannot mitigate.

It should be further clarified, at least in the implementation of your review under the RPP and the technical bulletins, that Economic Development and Housing go hand in hand. Easing obstacles to economic development is good for housing and easing obstacles to housing is good for economic development. Further, as a more holistic approach to affordable housing development has evolved recently at both the state and national level, it makes sense to encourage (as you do to some degree but perhaps could do more) greater mixed use opportunities in in areas currently not allowing such mixed use, and encourage making the provision of social service (be it counselling, clinics, day care facilities, employment centers and youth and senior centers) easier even where current zoning would not allow such uses.

Additionally, in terms of balancing the need for economic development with the need for environmental protection: The RPP promotes environmental protection over economic development and fails to balance the two, which I believe is the precise job which the Commission is charged with under the Cape Cod Commission Act. Some of the items that I believe are too restrictive and unnecessarily thwart economic development and housing:

- At least 11 of the 14 proposed goals would minimize or prevent new development.
- 350-foot buffers to vernal pools. As an across-the-board requirement without recognition of proposed use and site characteristics and possible mitigation of impacts, I believe this is too strict and also poses a Regulatory Taking concern
- 100-foot buffer (minimum) from edge of coastal and inland wetlands, including isolated wetlands. By saying “at least” you create vagueness; and again, I see a potential Regulatory Taking issue.
- Requiring “best management practices,” which are not defined, rather than specific standards. A possible vagueness issue, although to the extent it is intended to allow for flexibility as opposed to rigid standards, I support that.
- Wetlands and their buffers “must not be altered” unless there is a public benefit and there is no feasible alternative; but utility lines are allowed as are water uses and structures and pruning and pedestrian paths; why would not an affordable housing project, as one example, automatically be considered a public benefit? This is the real crisis we are facing on Cape Cod. Further, where the state Wetlands Protection Act does allow wetland alteration and construction in buffer zones, stating that wetlands and their buffers must not be altered is extremely restrictive, to the severe detriment of creating housing.
- Maximum nitrogen loading of 5 parts per million. (I know this is not new, I just believe that there should be some flexibility, regardless of the Commission’s current position on this point).
- Solar power and other alternative energy: Avoid visual impacts, minimize tree clearing; locate in areas with similar and compatible types of uses. This is actually very restrictive, as opposed to promoting these greatly needed energy sources.
- Do LEED certification. Yes, desirable, but inappropriate to require across the board, due to cost factors.

Moving on to a major change in your approach, I would like to comment on your new categorizing process using Cape Cod “Placetypes.” The intention appears to be to remove the existing standards and criteria for how to identify a DRI and substitute a “Placetypes” framework. There are 8 proposed Placetypes:

- Natural Areas –	Minimize Development
- Rural Development Areas -	Avoid Impacts on Scenic and Cultural Resources
- Suburban Development Areas -	Redevelop/Cluster/Reduce Footprint/Open Space
- Historic Areas -	Protect Historic areas/Allow Infill
- Maritime Areas -	Support Fishing and Shell-fishing/Marine Development
- Community Activity Centers -	Job Opportunities “at a scale of growth and development desired by the community”
- Industrial Activity Centers -	Land w/o significant resource restraints and w/ access to major corridors and sufficient size promoted as major employment centers.
- Military/Transportation Areas -	Airports, Transfer Stations, WWT, Joint Base Cape Cod. Encourage growth and shared infrastructure.

The “Placetypes” will be determined in two ways, according to the technical bulletins.

First, “some are depicted on maps to be adopted by the Commission as part of the Technical Guidance for review of DRIs...” (Draft RPP, p. 71.) The maps on line on the CCC’s website indicate only 8 industrial centers, none of which are below East Dennis, so there are none on the lower and outer Cape. The on-line maps show some road and some parcel specificity, but maps do not appear to be superimposed over municipal assessing map parcel boundary lines. So, a question: what is the level of detail of the maps? Is it possible to identify actual parcels? What kind of accuracy do these maps have?

Second, Placetypes can be determined “using the character descriptions set forth in Section 8 of the RPP and the Technical Guidance.” (Draft RPP, p. 71).

It should be noted that municipalities cannot adopt zoning provisions that create zones that are based upon indefinite maps and cannot zone based upon the “character descriptions” in a document. See, G.L. c.40A, §§4 and 5 which require adoption of zones based upon specific procedures. Under §4, a zoning map shall be sufficient for identification (assessing maps may be used.)

The problem that I see is that there is a lack of certainty as to whether a property is “within” a particular Placetype or not. The detail of the maps isn’t clear; and the ability of the Commission to use “character descriptions” to confer Placetype status upon a project creates great ambiguity. This means that when an applicant is reviewing the RPP and bulletins in order to determine what the guidelines, policies and criteria for a project are, there is great uncertainty. You stated at a meeting I attended with the Cape Cod Homebuilders and Remodelers Association of Cape Cod and the Cape Cod Realtors Association on December 20, 2019 that the Commission’s intention is to firmly identify which Placetype applies as part of a pre-application process, but I am concerned that this still may not be early enough.

I hope that these comments will prove useful. Thank you for the opportunity to comment.

Very truly yours,



Peter L. Freeman