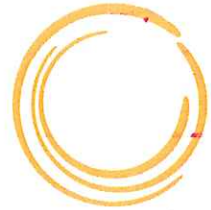


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CAPE COD
COMMISSION

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Minutes
Meeting of
Cape Cod Commission

January 31, 2013

The meeting was convened at 3:00 p.m., and the Roll Call was recorded as follows:

Town	Member	Present
Barnstable	Royden Richardson	Absent
Bourne	Michael Blanton	√ (<i>left meeting at 3:55 pm</i>)
Brewster	Elizabeth Taylor	√
Chatham	Vacant	Vacant
Dennis	Richard Roy	√
Eastham	Joy Brookshire	√
Falmouth	Andrew Putnam	√
Harwich	Vacant	Vacant
Mashpee	Ernest Virgilio	√
Orleans	Leonard Short	√
Provincetown	Austin Knight	√
Sandwich	Joanne O'Keefe	Absent
Truro	Peter Graham	√
Wellfleet	Roger Putnam	√
Yarmouth	John McCormack, Jr.	√
County Commissioner	Mary Pat Flynn	√
Minority Representative	John Harris	√
Native American Rep.	Vacant	Vacant
Governor's Appointee	Herb Olsen	Absent

The meeting of the Cape Cod Commission was called to order on Thursday, January 31, 2013 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

■ EXECUTIVE DIRECTOR'S REPORT

Executive Director Paul Niedzwiecki said on January 2nd the Commission reported back to the County Commissioners regarding the Regional Wastewater Management Plan (RWMP) and how to move forward. He said the Smarter Government Steering Committee met and discussed another SmarterCape Conference that is planned for this coming May. He said on January 15 the entire Cape Delegation looked at the Transportation Study and said the Delegation felt strongly that the report to DOT should include crossings. He said there will be more discussion on that moving forward. He said the Cape Cod Chamber of Commerce is now doing a study on the Canal area and crossing. Mr. Niedzwiecki said George Price of the Cape Cod National Seashore gave a presentation at the Commission's staff meeting in January. He said the Commission received a \$3.5 million grant for a 208 Study on wastewater. He said the grant is state sponsored and funded to help with the outreach plan for the wastewater planning effort. He said the Commission received official designation today. He said the first two groups to meet will be town managers and boards of selectmen. He said the Commission is moving quickly on this. He said this is the first time the state has used Section 208 and said it's the first time for putting together a watershed management plan. He said the Commission has a 12-month window to accomplish this. He said the RWMP is on the Commission's website and it will serve as an outline for the outreach plan.

Elizabeth Taylor said that's a substantial amount of money and asked if it would be available to towns when working on their plans. She if towns could ask for money.

Paul Niedzwiecki said, no, funds come to the regional planning agency for a regional plan.

Elizabeth Taylor asked how it would help towns with their individual plans.

Paul Niedzwiecki said tools are being developed for towns that will help in their local planning processes. He said this is what the state and federal government hope for. He said \$3.5 million seems like a lot of money but it's not.

Elizabeth Taylor asked how this would help towns that have Comprehensive Wastewater Management Plans (CWMPs).

Paul Niedzwiecki said all local planning will be adopted and coordinated into the regional plan. He said this planning process will help.

Mary Pat Flynn said most towns would be required to do an updated flyover. She asked if there could be one flyover for the whole Cape.

Paul Niedzwiecki said they have been looking at data regarding this. He said they are hoping to be able to do this as part of the process.

Michael Blanton asked how it would work from an economic standpoint.

Paul Niedzwiecki said they are trying to break down costs. He said they can't mandate towns to do anything. He said inter-municipal cooperation brings the price down. He said there can be some difficulty with inter-municipal relationships and said it isn't always meritorious. He said the Commission's task is to take complex information and make it easier and more understandable.

Elizabeth Taylor said it would be great doing a flyover. She said the Town of Brewster did one a while ago but the town didn't have the money to do anything with it.

Paul Niedzwiecki said the Strategic Information Office (SIO) will do just that. He said it will determine how the Commission can be helpful in that regard.

Elizabeth Taylor asked if Cape Cod Bay would be part of the plan. She said there are problems there.

Paul Niedzwiecki said, yes, the plan will cover all of Cape Cod. He said nothing is off the table for consideration. He said they will look at everything.

Len Short talked about governmental properties and asked if they would contribute to the solution.

Paul Niedzwiecki said they will be able to organize information and have those kinds of discussions.

Austin Knight inquired about the timing of this.

Paul Niedzwiecki said that is a conversation that is underway presently.

Jack McCormack said it's a great program. He said whether towns get money or not, towns will save money from the product from planning. He inquired about the focus groups and the process for getting them together.

Paul Niedzwiecki said the idea is to get an outside third party involved and said they have been working with a third party. He said they have been given the information and they are looking at how to establish a process. He said when it comes to compliance they are looking at spreading it over a 40-year period. He said the Commission will have long-term support from the state and federal government.

Joy Brookshire said she hopes staff works closely with town engineers to avoid duplication. She said she believes it would be beneficial.

Paul Niedzwiecki said he agrees with that.

■ MINUTES

The minutes of the November 29, 2012 Commission meeting were reviewed. Jack McCormack moved to approve the minutes. Ernest Virgilio seconded the motion. The motion passed with three abstentions.

The minutes of the December 13, 2012 Commission meeting were reviewed. Austin Knight moved to approve the minutes. Jack McCormack seconded the motion. The motion passed with one abstention.

■ HARWICH DIVISION APPROVAL NOT REQUIRED (ANR) PUBLIC HEARING

Richard Roy read the hearing notice and opened the hearing at 3:30 p.m.

Jonathan Idman, chief regulatory officer at the Commission, provided a PowerPoint slide presentation on the project and noted that Kerri Driscoll, regulatory officer at the Commission, served as the project manager. He said the Town-owned capped landfill/transfer station/recycle center covers approximately 50 acres of a total 142.82 acre +/- parcel on Queen Anne Road. He said the project proposes division of this property by way of an MGL Ch. 41, Sec. 81P Approval Not Required (ANR) Plan into three parcels: Parcel 1 (142.31 acres +/-); Parcel 2 (0.31 acres +/-); and Parcel 3 (0.22 acres +/-). He said ownership and control of Parcel 1 will be retained by the Town and used for its existing purposes. He said Parcels 2 and 3 are individually unbuildable, but will likely be sold or leased and used individually in conjunction with abutting commercial and industrial properties. He said in May 2011, Harwich Town Meeting authorized the sale or lease of Parcels 2 and 3 and noted that the Town is not seeking any approvals for development aside from the land division. Mr. Idman provided a procedural overview and said the project is subject to Commission jurisdiction as it proposes the division and recombination of parcels of land totaling 30 acres or more in common ownership or control on or after September 30, 1994 including assembly and recombination of lots. He said the Commission received a Development of Regional Impact (DRI) Exemption application on October 19, 2012 and the project was deemed complete on January 7, 2013. He said the applicant has requested a DRI Exemption from mandatory DRI review. He said the Town does not have an endorsed Land Use Vision Map. Mr. Idman provided Commission staff's analysis in issue areas regarding land use, economic development, water resources, coastal and marine resources, natural resources, open space, transportation, waste management, energy, affordable housing, heritage preservation and community character. He said staff recommends that the Commission may grant the requested DRI Exemption; find that the proposed development qualifies as a DRI but may be exempted from Commission review because it will have no significant impacts on the values and purposes, specified in Section One of the Commission Act, outside of the municipality in which it is proposed due to its particular location, character, and environmental effects; and direct staff to draft a written decision consistent with staff's analysis, recommendations and testimony.

David Spitz, Harwich Town Planner, said he has nothing to add but he would be happy to answer questions.

Roger Putnam asked if the soil was conducive to toads and asked if language should reflect that.

Jon Idman said a Natural Resources Inventory was not done. He said the area is not mapped for rare and endangered species.

Richard Roy moved that based on the testimony provided and materials submitted for the record, the Commission find the project qualifies as a mandatory DRI, but may be exempted from Commission review because it will have no significant impacts on the values and purposes specified in Section One of the Commission Act. Jack McCormack seconded the motion. The motion passed with a unanimous vote.

Richard Roy moved to direct staff to draft a DRI Exemption decision consistent with the first finding moved above, and with the testimony provided and materials submitted for the record. Austin Knight seconded the motion. The motion passed with a unanimous vote.

Richard Roy moved to continue the public hearing and record on the project to the Commission's regularly scheduled meeting on February 14, 2013, to review the decision, deliberate and vote on the project. Jack McCormack seconded the motion. The motion passed with a unanimous vote.

■ GREENWOOD MEADOWS PHOTOVOLTAIC PROJECT FINAL HEARING/DRAFT DECISION

Chair John Harris noted that this is a continued hearing from January 8, 2013. The hearing opened at 3:50 p.m.

The subcommittee reviewed the minutes of the January 8, 2013 public hearing and January 8, 2013 subcommittee meeting. Jack McCormack moved to approve the minutes. Len Short seconded the motion. The motion passed with a unanimous vote of the subcommittee.

Michael Blanton left the meeting at 3:55 p.m.

Elizabeth Enos, regulatory officer at the Commission, referred to PowerPoint slides and described the existing setting. She said the project site is located at Snake Pond Road and the entrance gate to the Massachusetts Military Reservation (MMR) in Sandwich. She said the applicant is proposing a 4.158 MW solar array to be accessed via a gravel road extending from Farmview Drive. She said the project site contains approximately 12.23 acres of forested upland and 4.33 acres of a previously disturbed area. She said the proposed 15-foot wide gravel road will extend for approximately 560 feet through the currently forested upland causing approximately 0.24 acres of disturbance. Ms. Enos said the applications for a Limited Development of Regional Impact (DRI) and DRI were received by the Commission on October 9, 2012. She said the Commission received a mandatory DRI referral from the Town of Sandwich on November 27, 2012 and she then provided a procedural overview for the project. She said a Limited DRI Scoping Decision was issued on January 8, 2013 and limited the scope of DRI review to issue areas for land use, economic development, water resources, wildlife and plant habitat, open space and recreation, and waste management. Ms. Enos explained the Findings and Conditions for each of the issue areas scoped for review. She explained the findings for approval and consistency with the Commission Act, Local Comprehensive Plan (LCP), municipal development bylaws, with any Districts of Critical Planning Concern, the Commission's Regional Policy Plan, and the probable benefit of the proposed development is greater than the probable detriment. She said the Commission received written and oral testimony from Nathan Jones, Town Planner for the Town of Sandwich, in which he notes that the project is consistent with the LCP and municipal development bylaws. She said the project is not located in whole or in part within a designated DCPC. Ms. Enos said the subcommittee recommends that the probable benefit of the proposed development is greater than the probable detriment and recommends approval of the proposed project as a DRI with conditions.

Roger Putnam said Ms. Enos stated that the power generated by this photovoltaic array was going to be used exclusively by the town of Sandwich.

Elizabeth Enos said the town of Sandwich and the applicant have an executed purchase power agreement so the town of Sandwich will be buying power generated by this project.

Roger Putnam asked if the power generated by the project would be sold at wholesale or the net-metered rate.

Elizabeth Enos said she doesn't know the technical components of how it will be sold but she does know that it will be sold at a discounted rate.

Roger Putnam said discounted at what is the question.

Attorney Jonathan Fitch said over the last 18 months he has had the privilege of guiding some outstanding professionals in the planning and permitting process. He said the rate that is agreed to with the town of Sandwich is a discount from the net-metered rate.

Roger Putnam asked if it would be put into the grid at a number and then used by the town as a way of reducing their power bill. He said in other words is the power going to the grid.

Attorney Fitch said, yes, it's going to the grid.

Roger Putnam said if it's going to the grid, then in what way is the grid paying for it.

Attorney Fitch said he can't answer that specifically. He said he can say that the town is gaining a significant reduction in its cost of energy and that reduction will continue to grow as time goes on.

Gary Hogg, consultant on the project, said the town has entered a purchase power agreement with the owners and it will be discounted off of the net-metered rate for a 10-year period with the option for another 10 years so that there will always be a 20% discount.

Roger Putnam said if you pay into the grid at a net-metered rate who pays the difference between the net-metered rate and the wholesale rate that the grid would otherwise be paying for power. He questioned whether everyone else would be paying for a subsidy for the town of Sandwich to reduce its power bill.

Gary Hogg said no.

Roger Putnam asked who pays for the difference between the net-metered rate and the wholesale rate of power.

Gary Hogg said that's the savings off the production of the product.

Roger Putnam said that doesn't answer his question and asked who pays the difference. He said power is being generated and it's going to be sold at net-metered rate less something. He said it's not going to be sold directly to the town because the town is not going to rewire itself to do this therefore it's being sold to the grid. He said all the rest of the people take their power off the grid and it's being sold at a net-metered rate which means everyone else is paying for the difference between wholesale rate and net-metered power.

Gary Hogg said NSTAR, the utility.

Roger Putnam said people pay for their power bills themselves. He said the power company can buy either net-metered rate or it can buy wholesale power for roughly a third of the net-metered rate. He said if Sandwich buys power from NSTAR at anything other than wholesale rate for power then everyone else is subsidizing the process.

Gary Hogg said a purchase power agreement has been negotiated.

Roger Putnam said he realizes the purchase power agreement has been negotiated. He said his point is power purchasers away from Sandwich are going to have to pay the difference between what the power company would pay for wholesale rate of power and net-metered rate. He said the difference is going to have to be paid by somebody and said the person who pays the difference is the rest of us and he doesn't believe that is right.

Jeffrey Macel, General Counsel to ALTRU Energy, said the power will be sold and fed into the grid and the applicant will be reimbursed directly from the town of Sandwich. He said NSTAR doesn't pick up any costs and citizens do not pick up any costs. He said they sell it at 81.5% of net-metered credit rate. He said effectively there is an 18.5% discount that is picked up by the town of Sandwich. He said no one pays full freight to them as the project owners. He said they are essentially selling power to Sandwich. He said they finance the project and they understand that they are going to sell power to Sandwich at a discount to market rate. He said this is the price established by NSTAR which is about 12.5 cents and they are going to sell it at 81.5% of the 12.5 cents. He said they have agreed to the discount for the entire term of the agreement.

Roger Putnam said in other words you're giving the power to NSTAR.

Jeffrey Macel said the regulatory framework in Massachusetts says that when they put it on the grid they can use their lines and because it's a municipality they do not charge transmission, transition or distribution. He said others do not pick up the difference; he said no one else is paying for this. He said power is generated by the system and NSTAR as the utility and how they want to distribute the power within their own network is up to them but they give credit to the town of Sandwich. He said no one is paying for the power at 12 cents and then giving it to someone else at 10 cents. He said it's the discount that Sandwich gets based on the agreement they signed with them.

Roger Putnam asked then what do they get from NSTAR.

Jeffrey Macel said they are only getting the 81.5%. He said they are not getting the full freight of 12.5 cents.

Roger Putnam said once power is put into the grid at anything more than wholesale rate somebody else has to pay for it. He said that's the answer.

Elizabeth Taylor asked that a map be shown of the whole property and asked where the Conservation Restriction was going.

The map was displayed and the location of the Conservation Restriction was identified.

Joy Brookshire said Mr. Putnam makes a good argument for regional power plans on Cape Cod so that we can keep all of the energy that we are generating. She said it should also encourage towns to have their own farm. She asked who was going to monitor the Invasive Species Management plan.

Attorney Fitch said there is a program for monitoring the site after the construction is complete to examine the invasive species. He said there is also going to be a plan in the event that anything like that is uncovered or determined to be taken hold they will be taken out. He said that is part of what they are working on with staff.

Joy Brookshire said she is confused by the gentleman's statement. She asked what is taken out if something is found and is the time period soon after the completion or is it a continuing management.

Elizabeth Enos said the subcommittee has recommended that a condition be placed in the decision that they submit to the Commission the Invasive Species Management Plan and it will be reviewed and approved by Heather McElroy, natural resources specialist at the Commission. She said Ms. McElroy will make sure it complies with the Commission's standards.

Attorney Jonathan Fitch, representing the applicant, said solar energy represents the spirit of private enterprise. He said the applicant is seeking approval for over 4 MW of power. He said municipalities are exempt from paying for distribution cost. He said they have agreed on a discounted rate and it will be a savings over time. He said it's a formula that can work and one that has been endorsed by the town for three reasons—it's in the financial interest of the community over a 10-year period with no demand on municipal services; approval and implementation advances qualification for a green certificate; and it's consistent with zoning and the town's master plan. He said the area is surrounded by the MMR and Windstar Farm and it's an undeveloped site that has been previously disturbed for runways at MMR. He said pollution issues have been taken care of, there is no wastewater generation by the facility, it produces no visual or audible impacts and they came to the conclusion that there are no detriments. He said they still have a rigorous municipal process to go through. He said the area will be surrounded by vegetation—30 acres will be enhanced and will be under a Conservation Restriction.

Len Short said his understanding was that it was privately-owned and said now it's municipal.

Attorney Fitch said it's a privately-owned 63-acre site.

Len Short inquired about the peninsula part.

Attorney Fitch said it was just his attempt to try to describe it.

Austin Knight inquired about the tax assessment of \$90,000 and asked what the savings would to the town on an annual basis.

Attorney Fitch said it's estimated to be \$125,000 for the first year and it should increase over the years.

Jack McCormack, subcommittee chair, said the subcommittee could not find any detriments and said they found several benefits. He said the benefits far outweigh the detriments.

Ernest Virgilio, member of the subcommittee, said this is the way of the future and we will pay for green energy. He said the town will save in the long run. He said people don't want the other type of energy that costs less.

Jack McCormack moved to close the hearing and the record. Len Short seconded the motion. The motion passed with a unanimous vote.

Jack McCormack moved to approve the DRI application of Howland Development Corp and Snake Pond Realty Trust with conditions and approve the draft written decision, as amended. Ernest Virgilio seconded the motion. The motion passed with 11 votes in favor and one vote opposed.

■ SUBCOMMITTEE PROCEDURES: TECHNICAL AMENDMENT TO OATH ADMINISTRATION

Jessica Wielgus, Commission Counsel, said she is here to discuss two minor technical amendments to the subcommittee procedures. She said the first is a technical amendment to the oath administration that the Commission has with all of its DRI projects. She said as it is stated currently it does apply to all DRI projects and the technical amendment would restrict that oath administration solely to a project for which the Energy Facilities Siting Board (EFSB) has jurisdiction. She said the genesis of adding the oath administration to DRIs was simply to assure that the administrative record that we have for DRIs are sufficiently adjudicatory in nature for the purposes of carrying it up to the EFSB. She said that was generated by the KeySpan case and said given the fact that that is the only purpose for it and the administration of it has been sometimes cumbersome and perhaps intimidating to some of the members of the public, staff is presenting that we limit its administration just to those EFSB proceedings. She said that is what the amendment provides. She said the second piece of it is the clarification in the case of subcommittees themselves that we maintain a quorum by virtue of a majority of the voting members. She said that streamlines with what is set out in Section 3 of the Cape Cod Commission Act. She said this is the way the Commission conducts its business already, and it simply clarifies that for purposes of utilizing the Commission's subcommittees to the very end and being able to maintain that quorum, she is clarifying that the Commission is able to do so. Ms. Wielgus said if the Commission is so inclined staff respectfully requests that the Commission move to approve the two technical amendments as written in the materials distributed to Commission members and that the motion carry and take effect immediately upon passage.

Len Short moved to approve the two technical amendments as stated. Ernest Virgilio seconded the motion.

Joy Brookshire referred to the Craigville Beach DCPC and the hardship exemption project that the Commission voted on. She said at the time it was a very difficult and emotional decision based on the letters that were given to the Commission that they believed were not quite credible. She said because of that instance the subcommittee decided that their witnesses should take an oath to tell the truth. She asked if by voting this amendment they would not be having those witnesses swear an oath.

Jessica Wielgus she said they would not be asked to be sworn in by the technical requirement of raising their hand to be sworn in for a DRI. She said as Commission members they would still be determining their credibility and making findings to that credibility just as they would in any other instance. She said for purposes of that she recalls that instance and if the subcommittee didn't believe there was credibility they could make those findings in the decision and not credit their testimony just as Commission members are today.

Joy Brookshire said she thought at the time that they had sworn people in that they would have been more mindful of the truth and the subcommittee would not have been put in a position to doubt what they were saying. She said if a subcommittee is put in that position again can the subcommittee ask that people be sworn to tell the truth.

Jessica Wielgus said if it is not in the subcommittee procedures she doesn't think it would be done as a matter of course. She said she would leave that to Commission members if they are so inclined to vote for this. She said as we all know in seeing the administration on a DRI by DRI basis that it has become somewhat unwieldy.

Roger Putnam said he has a simple mathematical question. He said the way the second paragraph reads you have four people present at a meeting and when the vote was taken it was two to one because the chairman didn't vote. He said if the chairman votes you now have a tie vote and nothing occurs and asked if that is what Ms. Wielgus meant. He said he doesn't think that is what was meant. He said he would suggest that Ms. Wielgus reword that paragraph and make it eminently clear or else take out the words about the chairman's vote. He said either one would make it clear.

Jessica Wielgus asked Mr. Putnam if he was suggesting striking the sentence that begins with "However".

Roger Putnam said, yes.

Jessica Wielgus said she would agree that would make it eminently clear.

Roger Putnam said he would move that the second sentence in the second paragraph starting with the word "However" and ending with the words "public hearing" be stricken from the vote.

Jessica Wielgus suggested that the motion on the floor be amended to state as amended.

Austin Knight asked what problems have occurred from taking the oath by the public or others providing testimony. He said he hasn't seen it to be too much of an issue and said he feels comfortable when the oath is taken as he feels it is one more box to check off. He said he feels more comfortable when people swear to tell the truth as opposed to him being a judge on the other side of that. He said he is curious about that and asked what difficulties have we seen that is causing this to change.

Jessica Wielgus said with regard to Mr. Austin's point about being the judge, she would submit that as Commission members they are judges regardless of this situation. She said with that being said problems that they have seen include people going up to staff and suggesting that they are intimidated and are not inclined to come forward and in some cases are hesitant to come forward. She said where this is supposed to be a forum where the public is encouraged to come forward with their opinions we don't want to dissuade them from that.

Ernest Virgilio said it's a hearing not a court room. He said he wants to hear as much as he can from anyone who is there. He said if there is a problem with it, then that should be understandable.

Joy Brookshire said making them feel comfortable just doesn't cut it. She said by swearing to tell the truth shouldn't make anyone so intimidated that they won't say what they think is important. She said Commission members act like judges and they base their decisions on black and white, on the facts that are presented, on the information that is given to them by the representatives of the applicants, and by Commission staff. She said the Commission operates so legally and she just can't understand how someone who stands up and swears to tell the truth would be scared and not want to speak. She said she is going on her experience with the DRI that she mentioned previously and said it was difficult. She referred to a doctor's letter that was received for that project.

Jessica Wielgus said in that hearing you have to remember that the doctor's letter came in and there was no sworn testimony with regard to that letter. She said there is no requirement that letters be certified in any way when they come forward to the Commission. She said she would agree with Mr. Virgilio's point that this isn't a trial. She said it's trial-like in nature but the Commission doesn't utilize the rules of evidence whether or not we are going to accept testimony and said there are a lot of other things that the Commission doesn't do. She said by removing the administration of the oath from a regular DRI does not remove the power from the Commission.

Roger Putnam said it was very difficult when the subcommittee looked at that because the doctor's report and the lawyer's letter was almost the same thing. He said he voted against the project.

Peter Graham said he is inclined to agree with Mr. Knight and asked how many people have come forward to say that they have a problem with the process.

Jessica Wielgus said several.

Peter Graham asked how many is several.

Jessica Wielgus said she would say 10 or less but that doesn't mean that there aren't others who feel that way or think that way.

Peter Graham asked if this has happened after meetings.

Jessica Wielgus said, yes, after meetings. She said municipal representatives have suggested that they are uncomfortable with it.

Peter Graham said he doesn't agree with that and said if people want to speak they will speak. He said to take an oath to tell the truth, and noted that it's a simple oath, is just understood that is the way we process things. He said it just doesn't make sense. He said in his mind he agrees with Mr. Knight and said he doesn't believe it restricts people to come forward to speak.

Jessica Wielgus said with some of the DRIs that we have done we've gone through the proceeding and swear people in and then people come in later and are sworn in. She said it makes it difficult for Commission members and staff to keep track of who has been sworn in and who has not and said often times the oath is being administered several times during the course of the proceeding. She said that is what she meant by it being unwieldy.

Paul Niedzwiecki said as a point of clarification the oath originally came about because of the KeySpan case; a utility case which on appeal went to the EFSB instead of land court or superior court as most of the other appeals do where the appellant review is de novo. He said with the oath, although it may make you feel good to watch people do it, they have had reports from people. He said there could be situations where certain municipal employees who get up to speak don't want to be in the position of having misstated something and then have someone else in the community accuse them of lying and implying that they may have perjured themselves accidentally by administering an oath that has no material effect on the Commission's decisions. He said it was viewed by staff as being unnecessary and perhaps potentially threatens some of the decisions that the Commission makes. He said it has been unwieldy at times when the Commission's subcommittee hearings go on for a long period of time and people come in after the oath has been administered generally. He said they have had applicants and abutters say that if someone has not been sworn in then their testimony doesn't count. He said it's an example of something that they thought at the time might make sense but in practice he thinks complicates and maybe even endangers some of the good decisions that the Commission renders. He said the intent is to tailor the oath to what it was intended to make projects that go to the EFSB more indicative to adjudicatory proceedings as required by the appellate court in the KeySpan decision. He said it has no impact other than potentially limiting people from saying things that they are unsure of. He said it does create in the proceedings the appearance of consequences and repercussions that relate to issues like perjury and hearsay that clearly do not apply in this process. He said in this case it somewhat lacks integrity and it may lead people to believe that this proceeding is something it is not. He said none of those rights are lost. He said they are all there and are available on the appellate level although he thinks the oath makes all of us feel better when someone gets up and swears to tell the truth. He said in the instance of non EFSB cases it's more problematic than it is beneficial and it's not a material issue in what the Commission does and it becomes at times a potential distraction. He said that is why the motion is suggested for changes before the Commission.

Andrew Putnam asked for clarification before making a comment and said he feels as though he understands basically what the Commission is trying to do if they pass this is to limit the oath to when we are before the full Commission with a DRI review. He asked if this was correct or is it just being taken away from the hearings or does this restriction go even further by getting rid of it altogether.

Jessica Wielgus said the intent is to remove it altogether and it would only apply in the instance where a DRI qualifies to also be heard before the Energy Facilities Siting Board. She said that would be a project, for example, that is a generating facility greater than 100 megawatts or, for example, the Sagamore Line Reinforcement project where they are creating a power line or gas reinforcement line; she said that type of project. She said it would apply to that particular DRI from the beginning through to the end. She said it would apply to both the subcommittee and the full Commission but only in those DRIs themselves.

Andrew Putnam said that makes sense to him as the Commission is a quasi-judicial board and the comments that people make in public hearings they are not held accountable as they would be in a court. He said there is no judge and said that doesn't apply here. He said he understands it makes him feel better when he hears someone swear to tell the truth but the Commission is a quasi-judicial board and this understandably makes sense to him. He said if the Commission was a board of judges that would not make sense but this makes sense to him.

Jack McCormack offered a suggestion and said perhaps when any committee or subcommittee opens a hearing they say the Commission has been in the practice of administering a sworn oath but this committee will assume that everyone who is going to give testimony will be truthful and said it would part of the record.

Ernest Virgilio said he has chaired many subcommittees during his tenure at the Commission. He said at the start of the hearing as the chair of the subcommittee he would receive a list of people who wish to speak and once people are asked to be sworn in that list goes down from 10 to two people who wish to speak. He said he believes people fear that they might say something wrong. He said he agrees with Mr. Niedzwiecki's comments and said going forward without the oath will be better for the Commission and said it had been for many years before starting with the oath.

Jessica Wielgus said for clarification she asked if the motion to amend it was seconded.

Austin Knight asked if the motion could be divided between the two causes; one for the quorum issue and one for swearing in.

Jessica Wielgus said the Commission could move to approve the amendments to Section 1 Authority for the Use of Subcommittees to be amended as written with the exception of striking the sentence that states, "However in the case of a tied vote the chair must vote to break the tie. . ." which would be stricken.

Len Short moved to withdraw his original motion. Ernest Virgilio withdrew his second. A voted called on the motion passed with a unanimous vote.

Jack McCormack moved to approve the amendments to Section 1 as stated by Ms. Wielgus. Mary Pat Flynn seconded the motion. The motion passed with a unanimous vote.

Jessica Wielgus said the Commission could move to amend the Cape Cod Commission subcommittee procedures, swearing in of all individuals to make it applicable to only those DRIs over which EFSB asserts jurisdiction.

Len Short moved to amend Commission subcommittee procedures regarding swearing in of individuals as stated by Ms. Wielgus. Jack McCormack seconded the motion.

Chair John Harris asked if the regulatory staff would identify those projects over which EFSB asserts jurisdiction.

Jessica Wielgus said, yes, they would. She said she would also like to add to the motion that it would be effective upon today's vote.

A vote called on the motion to amend Commission subcommittee procedures regarding swearing in of individuals as stated by Ms. Wielgus and that they be effective immediately upon passage of today's vote passed with 11 votes in favor and one vote opposed.

■ OTHER BUSINESS

Andrew Putnam referred to the amount of paper that is being used for Commission mailings and suggested using email more to distribute mailings to Commission members.

Paul Niedzwiecki said hopefully the Commission will have a new process in place soon.

A motion was made to adjourn at 4:50 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Richard Roy, Secretary

LIST OF DOCUMENTS PRESENTED AT THE JANUARY 31, 2013 COMMISSION MEETING

- Handout material: January 31, 2013 meeting agenda.
- Handout material: Greenwood Meadows Photovoltaic project draft written decision.
- Handout material: Subcommittee procedures draft revisions.
- Materials presented: PowerPoint slide presentation on the Harwich Division ANR project prepared by the Cape Cod Commission.
- Materials presented: PowerPoint slide presentation on the Greenwood Meadows Photovoltaic project prepared by the Cape Cod Commission.