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CAPE COD  
COMMISSION

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**Minutes**  
**Meeting of**  
**Cape Cod Commission**

March 28, 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	Absent
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	Absent
Wellfleet	Roger Putnam	✓
Yarmouth	John McCormack, Jr.	✓
County Commissioner	Mary Pat Flynn	✓
Minority Representative	John Harris	✓
Native American Rep.	Vacant	Vacant
Governor's Appointee	Vacant	Vacant

The meeting of the Cape Cod Commission was called to order on Thursday, March 28, 2013 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

■ **SUMMARY OF ACTIONS TAKEN/VOTES:**

**Mayflower Place Expansion and Memory Care Facility**

The Cape Cod Commission conducted a public meeting on the Mayflower Place Expansion and Memory Care Facility project. The Commission unanimously approved the Mayflower Place Expansion and Memory Care Facility project as a Development of Regional Impact and approved the written decision as amended.

**Notification of Withdrawal of the Industrial Tower & Wireless, LLC Communications Monopole project located at 284 Old Meetinghouse Road, East Falmouth, MA.** The Commission voted with 10 votes in favor and one abstention to accept the withdrawal of the Industrial Tower & Wireless, LLC Communications Monopole project from Commission review.

**Delegations of Authority**

Discussion on the Commission's Delegations of Authority as contained within its Administrative Regulations. One Commission member moved that the Delegations of Authority not be approved today. The motion failed with 5 votes in favor and 6 opposed. The Commission voted that Subsection 3 (c) of the Delegations of Authority as contained in the Commission's Administrative Regulations, as amended 9/23/04, be amended to add the following: *"the Executive Director or his/her designees are designated as permanent hearing officers to hold public hearings under the Cape Cod Commission Act and to assemble and report the record for decision by the Commission. This delegation shall take effect upon passage."* The motion passed with 10 votes in favor and one opposed.

**Mullin Rule**

There was a brief summary given to the members on drafting a Mullin-like Rule for CCC Members. No action was taken.

**Announcement of Nominating Committee**

The Chair of the Commission announced that a nominating committee had been selected and those members are Ernest Virgilio, Richard Roy, and Len Short.

■ **EXECUTIVE DIRECTOR'S REPORT**

Deputy Director Kristy Senatori updated the Commission on recent activities and upcoming workshops. She reported on new Commission personnel and said Lisa Dillon will be starting employment on Monday as an administrative assistant and noted that Maria McCauley is now a fiscal officer at the Commission. Ms. Senatori discussed the method for which CCC Members will receive information and said most of the material CCC Members receive would be given to them on a flash drive.

■ **MINUTES**

The minutes of the January 31, 2013 Commission meeting were reviewed. Austin Knight moved to approve the minutes. Len Short seconded the motion. The motion passed with a unanimous vote.

The minutes of the February 14, 2013 Commission meeting were reviewed. Austin Knight moved to approve the minutes. Len Short seconded the motion. The motion passed with two abstentions.

The minutes of the February 28, 2013 Commission meeting were reviewed. Austin Knight moved to approve the minutes. Len Short seconded the motion. The motion passed with three abstentions.

## ■ MAYFLOWER PLACE EXPANSION AND MEMORY CARE FACILITY

Chair John Harris opened the public meeting at 3:10 p.m. He said since this is a public meeting no public testimony would be taken. Chair John Harris said the record on the project was closed on February 27, 2013.

The subcommittee reviewed the minutes of March 14, 2013. Roger Putnam moved to approve the minutes. Jack McCormack seconded the motion. The motion passed with a unanimous vote of the subcommittee.

Andrea Adams, senior regulatory planner at the Commission, with the use of PowerPoint slides described the project site as the existing Mayflower Place campus and adjoining site of the former Mill Hill Club and several adjoining lots with four single-family houses, two detached garages, two sheds and old foundation. She said the structure and old foundation of the Mill Hill Club site would be removed and the site is bounded by Buck Island Road to the north, by the Mill Hill Club to the south, by Mill Pond and Town Brook Road to the east, and by wetlands to the west. She said the proposed project consists of a proposed expansion and redevelopment to Mayflower Place, an existing facility with independent living units and a skilled nursing home. She said the proposed project includes the construction of a new, free-standing, 75-unit Memory Care facility; a new wing connected to the existing facility proposed to house 50 independent living units plus one caretaker's apartment; and associated landscaping, parking, wastewater, drainage, and site upgrades. Ms. Adams explained the Commission's jurisdiction and criteria for approval of a DRI. She outlined the subcommittee's analysis of issue areas regarding affordable housing, water resources, natural resources and open space, transportation, preservation/community character, and energy. She explained the standards for DRI review and approval and said the probable benefit from the proposed development must be found to be greater than the probable detriment. She said the subcommittee found that the project meets Best Development Practices (BDPs) including AH1.16, WPH1.8, TR1.10, and TR2.26; additional independent and memory care units are a benefit; and the subcommittee adopted written testimony from Kathleen Williams, town planner, on the project's consistency with municipal development bylaws and the Local Comprehensive Plan. Ms. Adams said the subcommittee voted on March 14, 2013 to recommend approval of the proposed project to the full Commission and voted to recommend approval of the project subject to the March 14, 2013 draft written decision as amended.

Chair John Harris asked if the applicant would be giving a presentation.

Jonathon Idman, chief regulatory officer at the Commission, said in this case the hearing and record have been closed. He said the Commission is deliberating solely on the draft decision that is before the Commission today and Commission members can ask questions if so desired.

Ernest Virgilio moved that the DRI and its decision with conditions dated March 28, 2013 be approved and adopted as drafted. Jack McCormack seconded the motion. The motion passed with a unanimous vote.

Ernest Virgilio said it had been long process and well done by Commission staff and the applicant.

Jack McCormack moved to adjourn the matter on the agenda. Roger Putnam seconded the motion. The motion passed with a unanimous vote.

## ■ NOTIFICATION OF WITHDRAWAL OF THE INDUSTRIAL TOWER & WIRELESS, LLC MONPOLE PROJECT

Kerri Driscoll, regulatory officer at the Commission, said on November 7, 2012 Commission staff received a referral from Sari Budrow, Zoning Administrator for the Falmouth Board of Appeals, for the proposed development by Industrial Tower and Wireless of a 150 foot wireless communication monopole within a 10,000 square foot designated area located at 284 Old Meetinghouse Road in East

Falmouth, MA. Ms. Driscoll said on March 7, 2013 the applicant requested that the project be withdrawn, without prejudice, from review by the Falmouth Zoning Board of Appeals. She said Commission staff received a copy of a March 12, 2013 decision by the Falmouth Zoning Board of Appeals to grant the withdrawal request without prejudice. She said based on this information, Commission staff suggests the Commission vote to formally accept the withdrawal of the proposed wireless communication monopole from Commission DRI review.

Jack McCormack moved to accept the withdrawal of the Wireless Communication Monopole project from DRI review. Elizabeth Taylor seconded the motion. The motion passed with 10 votes in favor and one abstention.

#### ■ DELEGATIONS OF AUTHORITY

Jessica Wielgus, Commission Counsel, said this is essentially an administrative matter. She said the Commission formed an ad hoc committee for the purpose of examining Commission member retention and the best use of their time. She said one of the items the ad hoc committee discussed was the use of hearing officers in DRI reviews. She said this authority is specifically provided by the Cape Cod Commission Act within the powers enumerated in Section 4. She said presently the Administrative Regulations speak to the use of hearing officers for procedural purposes. She said the Commission is being asked to vote to amend Subsection 3 (c) of the Delegations of Authority as contained within the Commission's Administrative Regulations. She said this amendment would be codified in the Commission's Administrative Regulations so that it's uniform with the Commission Act.

Austin Knight moved that Subsection 3 (c) of the Delegations of Authority as contained within the Commission's Administrative Regulations as amended September 23, 2004 be amended to add the following: *"the Executive Director or his/her designees are designated as permanent hearing officers to hold public hearings under the Cape Cod Commission Act and to assemble and report the record for decision by the Commission. This delegation shall take effect upon passage."* Joy Brookshire seconded the motion.

Roger Putnam said he is opposed to this motion. He said it's important as Commission members that they hear all the details as they represent their town and the county. He said if this is voted in, Commission members fall short on that. He said Commission members are responsible for decisions and making sure that the intent of the Commission Act is carried forward personally by Commission members. He said members bring a sense of balance and experience of their communities and he would want to continue having subcommittees. He said it's important that members hear the maximum that is presented. He said it should remain as it stands today.

Austin Knight said he agrees with Mr. Putnam. He said he gets much from going to hearings and listening to all that is presented. He said it's a learning experience for him to make decisions as a Commission member.

Jessica Wielgus said this simply creates the vehicle to do what already exists in the Commission Act. She said in no way does it say that the hearing officer will take the place of subcommittees. She said we would still need to codify how a selection would be made in Chapter A, DRI Enabling Regulations. She said it already exists in the Act.

Austin Knight asked why they are codifying this without the total package.

Jessica Wielgus said presently the Administrative Regulations only speaks to hearing officers for procedural purposes.

Roger Putnam said why start something if we already have something now that works. He said why not wait until we have a whole package.

Jessica Wielgus said if it's not voted today they could do that.

Jack McCormack, member of the ad hoc committee, said the committee was formed to streamline the process. He said he has heard other members say the process is lengthy. He said hearing officers have been used in other projects and said it's a question of more efficiency.

Joy Brookshire said this had been discussed in the past at Planning Committee meetings. She said with more difficult DRIs they would still have subcommittees and go through the process. She said this would be used for minor or simple projects.

Jessica Wielgus said Section 4 of the Act says in the case of a hearing officer if someone does not want a hearing officer they can ask for a hearing. She said there would be no loss of rights and said it already exists in the Act.

Chair John Harris said there seems to be a misunderstanding.

Andrew Putnam said he just heard that the Commission does not lose the ability to form a subcommittee. He asked in terms of being involved with a project in their town, can members still work with the hearing officer.

Jessica Wielgus said hearings are required to be held in the town in which the project is located. She said they are noticed public hearings and anyone can attend.

Elizabeth Taylor asked who would decide how it would be handled in terms of having a hearing officer or a subcommittee.

Jessica Wielgus said it would not be a staff decision. She said it would be codified and most likely it would go to the Regulatory Committee.

Elizabeth Taylor inquired about the parameters.

Jessica Wielgus said the Commission would decide. She said it would go to the full Commission as a public hearing. She said the Commission would decide to approve and forward it to the Assembly of Delegates. She said the Assembly would hold a public hearing and, if approved, it would be adopted by county ordinance.

Elizabeth Taylor asked if the applicant would have a choice.

Jessica Wielgus said, yes, the applicant would always have the right to do that.

Ernest Virgilio said he understands this and he is in favor of the change.

Roger Putnam said since they don't know what the next step is they should wait until they have the whole package before the Commission votes on this.

Austin Knight withdrew his motion. Joy Brookshire withdrew her second.

Mary Pat Flynn said it might be helpful perhaps if Commission staff could provide the Commission with the benefits to the applicant and the benefits to the Commission with this process.

Jessica Wielgus used the Falmouth Airpark project as an example.

Mary Pat Flynn said she sat on the subcommittee and said it could have been expedited in a different way.

Roger Putnam said if in a situation like Falmouth Airpark Commission staff should recognize if something is *de minimus* and come to the Commission right away.

Roger Putnam moved that this be brought back to the Commission as a whole package. Elizabeth Taylor seconded the motion.

Andrew Putnam said if it's already in the Act it will not take away any rights of the Commission and the process could be expedited for those projects that warrant this. He said they should put the motion back on the floor and approve this now. He said it's a detriment not to approve this today.

Elizabeth Taylor said if it's already on the books why can't they flush this out and go directly to the Regulatory Committee first and then bring it back to the full Commission.

Jessica Wielgus said it was voted by the ad hoc committee and the Executive committee to bring this before the full Commission today.

Joy Brookshire asked why it went before the Executive Committee and the ad hoc committee if it's already on the books.

Jessica Wielgus said they wanted to make the Administrative Regulations mirror the Commission Act. She said presently it's in the Administrative Regulations as a hearing officer for procedural purposes.

Kristy Senatori said the ad hoc committee was established because the Commission recognized that the lower number of Commission members could mean problems with quorums. She said they are trying to streamline this and said they will not be using hearing officers with all projects. She said this is just a technical correction in the Administrative Regulations.

Roger Putnam restated his motion that this be brought back to the Commission as a whole package. Elizabeth Taylor restated her second. A vote called on the motion failed with 5 votes in favor and 6 opposed.

Jack McCormack moved that Subsection 3 (c) of the Delegations of Authority as contained within the Commission's Administrative Regulations as amended September 23, 2004 be amended to add the following: *"the Executive Director or his/her designees are designated as permanent hearing officers to hold public hearings under the Cape Cod Commission Act and to assemble and report the record for decision by the Commission. This delegation shall take effect upon passage."* Ernest Virgilio seconded the motion.

Austin Knight asked how soon it would take to come back to the full Commission. He asked if they already have something in writing.

Jessica Wielgus said it could go to a Regulatory Committee meeting. She said it's between concept and putting it on paper.

Jack McCormack said he had made a suggestion that with a hearing officer another Commission member be present.

Kristy Senatori said there will be several steps in the process. She said recommendations can be made to the Regulatory Committee such as Mr. McCormack's suggestion.

Elizabeth Taylor inquired about when it would be used—not until they have a process in place.

Kristy Senatori said it could go to the next Regulatory Committee meeting to start the discussion.

A vote called on the motion passed with 10 votes in favor and one opposed.

#### ■ **MULLIN RULE**

Jessica Wielgus, Commission Counsel, said one of the items recommended by the ad hoc committee was the enactment of an ordinance enabling the use of a Mullin-like rule for the Commission. She said it's a way of rehabilitating Commission members from disqualification from voting on a matter due to that member's absence from no more than a single session of a hearing at which testimony or other evidence is received. She said to rehabilitate him or herself, the member is required to certify in writing that he or she has examined all evidence received at the missed session, including either an audio or video recording of the missed session or a transcript of it. She said the certification becomes part of the record and the member maintains their position as a voting member on that proposed development. She said while the legislation only applies to municipal employees, it's the recommendation of the ad hoc committee that the Commission consider the enactment of a county ordinance that is equivalent for the Commission so that its members may rehabilitate themselves in a similar fashion. She said doing so enables the Commission to maintain a quorum which is important given the current limitations on its membership. She said no action is required by the Commission today. She said it will be before the next Commission meeting as a public hearing.

#### ■ **ANNOUNCEMENT OF THE NOMINATING COMMITTEE**

Chair John Harris said the selection of a nominating committee had been made and said those committee members are Ernest Virgilio, Leonard Short, and Richard Roy. He said anyone interested in serving as Commission Chair, Vice-chair or Secretary for the one-year term beginning July 1, 2013 should contact the nominating committee directly. He said once the nominating committee has made their selection of officers, they would present the slate of new officers to the full Commission at its first meeting in May. He said the Commission would vote on the slate of new officers at their next scheduled meeting following the first meeting in May.

A motion was made to adjourn at 4:20 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

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Richard Roy, Secretary

#### **LIST OF DOCUMENTS PRESENTED AT THE MARCH 28, 2013 COMMISSION MEETING**

- Handout material: March 28, 2013 meeting agenda.
- Handout material: Mayflower Place Expansion and Memory Care Facility draft written decision.
- Handout material: PowerPoint slide presentation on the Mayflower Place Expansion and Memory Care Facility project prepared by the Cape Cod Commission.
- Materials presented: PowerPoint slide presentation on the Mayflower Place Expansion and Memory Care Facility project prepared by the Cape Cod Commission.