



CAPE COD COMMISSION

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Minutes

Meeting of Cape Cod Commission

January 21, 2010

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

Town	Member	Present
Barnstable	Royden Richardson	✓
Bourne	Michael Blanton	✓
Brewster	Elizabeth Taylor	✓
Chatham	Lynne Pleffner	✓
Dennis	Brad Crowell	Absent
Eastham	Joy Brookshire	Absent
Falmouth	Mario DiGregorio	✓
Harwich	Robert Bradley	✓
Mashpee	Ernest Virgilio	Absent
Orleans	Peter Monger	✓
Provincetown	Vacant	Vacant
Sandwich	Sue Pommrehn	✓
Truro	Peter Graham	✓
Wellfleet	Roger Putnam	✓
Yarmouth	John McCormack, Jr.	✓
County Commissioner	Sheila Lyons	✓
Minority Representative	John Harris	✓
Native American Rep.	Mark Harding	Absent
Governor's Appointee	Herb Olsen	✓



The meeting of the Cape Cod Commission was called to order on Thursday, January 21, 2010 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

Paul Niedzwiecki said he continues to meet with boards of selectmen and said he recently met with the Truro Board of Selectmen. He said this morning he met with a regional group from four outer Cape towns and NSTAR. He said he would provide more information on that at a later date.

Mr. Niedzwiecki said last week he was in Washington, DC to attend discussions on the Section 106 Certificate and Cape Wind. He said Secretary Salazar met with the Aquinnah and Wampanoag Tribes and Mr. Niedzwiecki said he met with Secretary Salazar on Wednesday. He said Secretary Salazar took oral and written testimony and there is an open comment period until February 12, 2010. He said Secretary Salazar will make a determination and by this summer a decision on the Cape Wind project by the federal government is expected. Mr. Niedzwiecki said on February 11, 2010 the Commission would be before the Supreme Judicial Court regarding the Cape Wind project.

■ MASHPEE COMMONS PROCEDURAL DENIAL

Elizabeth Taylor read the hearing notice and opened the hearing at 3:15 p.m.

Kristy Senatori, chief regulatory officer at the Commission, said the Mashpee Commons Master Plan is currently subject to review by the Commission as a Development of Regional Impact (DRI). She provided background information and said an Environmental Impact Report (EIR) was prepared for the Mashpee Commons Master Plan and was reviewed jointly by the Executive Office of Energy and Environmental Affairs (EOEEA) and the Commission. She said the EIR for the project was completed and the final EIR was certified by the Secretary of EOEEA. She said the Commission has previously rendered decisions on two of the neighborhoods in the Mashpee Commons Master Plan identified as North Market Street Phase I and the Jobs-Whiting Neighborhood. She said the remaining neighborhoods of the Mashpee Commons Master Plan (East Steeple Street, Trout Pond, and North Market Street Phase 2) are yet to be developed. She said Doug Storrs met with the Town of Mashpee to begin discussions about a Development Agreement for the remaining Mashpee Commons neighborhoods. She said in June, 2009 Mr. Storrs submitted a letter requesting determination from the Commission that the remaining undeveloped neighborhoods of Mashpee Commons are suitable and qualify for a Development Agreement. She said the Commission considered and approved this request at a public hearing on August 20, 2009. She referred to a letter distributed to Commission members from Mr. Storrs indicating that he was unable to attend today's hearing because of a conflict. She said Mr. Storrs is requesting, on behalf of Mashpee Commons LP, that the full Commission vote to support the procedural denial without prejudice for the pending DRIs. Ms. Senatori said the subcommittee met on December 7, 2009 to discuss the three remaining neighborhoods, North Market Street Phase 2, East Steeple Street, and Trout Pond and they unanimously approved the procedural denial without prejudice for the three remaining neighborhoods. She said on December 17, 2009 the subcommittee voted unanimously to approve the draft decision and forward it to the full Commission for consideration.

Roy Richardson moved to close the hearing and the record. Elizabeth Taylor seconded the motion. The motion passed with a unanimous vote.

Roy Richardson moved that the Commission procedurally deny without prejudice the proposal of Mashpee Commons Limited Partnership for the North Market Street Phase 2, East Steeple Street, and Trout Pond areas as a DRI. Michael Blanton seconded the motion. A vote called on the motion passed with a unanimous vote.

■ CAPE-WIDE OCEAN MANAGEMENT PLANNING DISTRICT OF CRITICAL PLANNING CONCERN NOMINATION

Elizabeth Taylor read the hearing notice and opened the hearing at 3:20 p.m.

Heather McElroy, natural resources specialist at the Commission, explained that the boundary submitted with the nomination has been revised and said the boundary is coincident with the Ocean Management Plan (OMP) boundary. She said the proposed district is comprised of all the ocean waters and land below and air above within Barnstable County, starting from a line drawn 0.3 nautical miles seaward from Mean High Water (MHW) around Barnstable County and extending to 3 nautical miles from MHW (roughly 1500 feet from MHW), or the state jurisdictional boundary, whichever is farther from the shore, not to include the waters of Plymouth County. She said the area is coincident with the planning area as defined in the OMP and excludes the Cape Cod Canal and many of the bays, harbors and embayments. Where the bounds of Falmouth, Mashpee, and Bourne's municipal corporations intersect with the bounds of Wareham, Marion, Mattapoisett, Fairhaven, Gosnold, West Tisbury, Tisbury or Oak Bluffs' municipal corporations, the district boundary ends with the municipal corporation boundary. She said there is a need for special planning and regulations in the Ocean Management Planning District that will preserve and maintain values and resources intended to be protected by the Cape Cod Commission Act. She said resources identified in the District are regional issues addressed in the Regional Policy Plan: natural resources, cultural/historic/archaeological resources, historic preservation/community character, economic resources, public infrastructure, and hazard planning. She said the OMP charges regional planning agencies with certain tasks—determine appropriate scale for renewable energy projects and regulatory review of wind turbines. She said the DCPC nomination identifies concerns with regard to potential development impacts on the natural, ecological, water, cultural, archaeological, historic and economic resources, and hazards of the Ocean Management Planning District. She said the purpose of the District is to evaluate and give towns the ability to establish criteria for determining appropriate scale and to establish procedures for review of turbines and other allowed uses within the district including renewable energy, the laying of cables, channel and shore protection projects, sand and gravel extraction or beach restoration, projects authorized under Chapter 91, and other activities not specifically prohibited by the Oceans Sanctuaries Act. She said the five DCPC types proposed for designation pertain to the charges of the Commission under the Cape Cod Commission Act—natural resources, cultural/historic, economic development, major public investment and hazards. She said the proposed boundary of the DCPC is reasonably related to the purposes of the district and follows an easily definable boundary. She said the dimensions and/or landmarks that form the boundary of the district are identifiable. Ms. McElroy said should the Commission vote today to accept the nomination for consideration, the full moratorium ends and a limited moratorium begins. She said the Commission sought input from towns regarding activities to proceed during the moratorium and said the classes of activities to proceed and are exempt from the moratorium are: repair of structures, all fishing/aquaculture, maintenance dredging, mooring permits, cleanup of marine debris, aids to navigation, sand mining for emergency beach restoration, aquatic recreation, approved DRIs, emergency work, and projects showing a hardship. Ms. McElroy said the Commission is being asked today to vote on whether to accept the nomination for consideration. She said if approved today, within the next 60 days a subcommittee will be selected, public hearings will be held across the Cape, and the Commission will be asked to consider forwarding the nomination to the Assembly of Delegates for approval and designation as a DCPC district.

Peter Graham had questions about restricted activity in the district and asked how repair of erosion of beaches would be handled.

Heather McElroy said beaches would not be included as the district extends to 1500 feet out. She said that would be an exempt activity.

Bill Doherty, Vice-chair of the Barnstable County Commissioners, said this nomination represents a duly considered process. He said the intention of the County Commissioners is that their voice is heard. He said he is here today to express Pat Flynn's sentiment as she was unable to attend today's hearing. He said Ms. Flynn wants to convey to the Commission that all three County Commissioners are in agreement, they believe this is in the best interest of Cape Cod and urge the Commission to accept the nomination for consideration.

Sheila Lyons said the state has finally realized that local input matters. She said local input is vital to the success of renewable energy projects. She said it will establish a process that gives local towns the ability to provide input and a process that will protect the towns on Cape Cod.

Wayne Bergeron, Selectman in Dennis, said he participated in the Crowe's Pasture DCPC in Dennis. He said this is a very important nomination and he would urge acceptance of the nomination for consideration. He said this is vital to the fishing industry. He said estuaries and bays are under attack right now and we need to protect Cape Cod.

David Dow, Cape and Island Sierra Club, said Cape Cod is already disrupted by climate change and that needs to be addressed possibly through mitigation. He said we need to develop strategies for restoring coastal vegetation. He said he is also a member of the Sierra Club Ocean Management of Renewable Energy Projects. He said they have developed a guidance document for identifying appropriate scale of renewable energy projects and said he would urge the Commission to use the guidance document. He talked about sustainable fisheries and aquaculture. He thanked the Commission for his comments.

George Bryant said he is the Provincetown Representative to the Assembly of Delegates but he is here today speaking as a resident. He said he asked that the boundary be revised. He said he is opposed to the DCPC because turbines are being prohibited in Cape Cod Bay. He said Ian Bowles has said he doubts there will be many wind turbine projects happening because of cost and he said that is unfortunate. He said the economy can't afford to dismiss well paying jobs wind projects will bring to the area. He said families can't compete with second-home families here. He said a statistician for Barnstable County gives a report to the county every year and has said we can't say what the Cape will look like in the future and said there will be fewer school-age children on the Cape. Mr. Bryant said in the 1960s people could make a living from fishing and could support their families and that has changed dramatically.

Heather McElroy said for clarification the state and the OMP determined that there may be 24 wind turbines within our area. She said the DCPC is a way for towns to determine appropriate scale and locations of wind turbines.

Roger Putnam asked why the Wellfleet Harbor was not treated the same as Barnstable. He asked if the DCPC boundary could be changed and whether that discussion could happen at the five public hearings on the DCPC.

Heather McElroy said the boundaries are based on the OMP. She said those boundaries were established through the Ocean Management Act. She said she cannot say why Wellfleet is being treated differently. She said the Commission is being asked to vote on whether or not to accept the nomination for consideration today.

Roger Putnam said why can't Wellfleet be separated as other towns.

Paul Niedzwiecki said the boundaries used are from state boundaries. He said he believes it's the difference between point of land to land. He said he would get that answer for Mr. Putnam. He said he believes the calculation used came from the Ocean Sanctuaries Act. He said he would find out how the state determines the boundaries.

Roger Putnam said Wellfleet Harbor is shallow. He said he's afraid Wellfleet would lose shellfish grants and said he's afraid the town would lose control over that.

Heather McElroy said the purpose of the district is not to regulate fishing, shell fishing, or dredging. She said those types of activities are exempt. She said if the boundaries are changed she fears Wellfleet would not be protected. She said the plan would provide the town protection.

Roger Putnam asked if the Commission would need to vote on a boundary change today or could the boundary be changed during the upcoming five public hearings otherwise he will make a motion to change the boundary.

Jessica Wielgus, Commission counsel, said today the Commission would be voting on whether or not to accept a certain area. She said if adjustments need to be made that could be done during the public hearings. She said today's vote does set the boundary as the area being considered.

Michael Blanton asked if this was open to change during the public hearings.

Jessica Wielgus, said yes, it could be done during the public hearings.

Elizabeth Taylor said having sat on subcommittees for DCPCs in towns, boundaries have been changed so she believes it can be done during the public hearings. Ms. Taylor asked if concerns from towns had been addressed.

Heather McElroy said concerns have been addressed and are included in the exemptions. She said the Commission has spoken to towns about that.

Elizabeth Taylor said she would urge acceptance of the DCPC for consideration. She said we've not done a lot to protect our ocean areas. She said this is the best way for all the towns to be part of the process and it's the best way to work with all the issues. She asked that the Commission please support this.

Roy Richardson said he believes changes were made to the Centerville DCPC boundary after the nomination was accepted for consideration.

Jim Gallagher asked if the moratorium affects eelgrass restoration projects.

Heather McElroy said that is an exempt activity.

Paul Niedzwiecki said the DCPC process is not an anti-wind process at all. He said he believes the DCPC is a process for towns to have discussions on what we want for our towns. He said it's a way to look at the OMP in general. He said this is an opportunity to pause—not go too fast—not go too slow. He said the DCPC would give us the opportunity to pause to get it right and discuss this appropriately. He said the quickest way to get to renewable energy is to go through a process like this.

Sheila Lyons said this will be a regional exercise by all towns. She said it's a way to find out what the benefits are and what's at stake. She said it's an opportunity for towns to work together to benefit all. She said it's an opportunity for Cape Cod to have control over its jurisdiction. She said she supports the DCPC.

Michael Blanton said overall he is in support of the exercise to look at this and to identify where our differences lie. He said one-size fits all is not always appropriate. He said the towns may all have different needs.

Roy Richardson said personally he has been involved with four DCPCs. He said it's a good process for discussion.

Lynne Pleffner moved to close the hearing and the record. Elizabeth Taylor seconded the motion. The motion passed with a unanimous vote.

Elizabeth Taylor moved that the Commission accept for consideration the Ocean Management Planning DCPC as nominated by the Barnstable County Commissioners on December 16, 2009 and approve the written decision. Roy Richardson seconded the motion. A vote called on the motion passed with a unanimous vote.

Paul Niedzwiecki said Commission staff would be contacting Commission members tomorrow for a subcommittee—five subcommittee members and four alternates. He said staff is considering having five public hearings. He said the public hearings are scheduled for Wednesday, February 10th at 6:00 pm in the First District Courthouse, Assembly of Delegates Chambers; Thursday, February 11th at 6:00 pm at the Nathaniel H. Wixon School in South Dennis; Monday, February 22nd at 4:00 pm at the Eastham Town Hall; Wednesday, February 24th at the Bourne High School Library; and Thursday, February 25th at 6:00 pm at the Provincetown High School Library. He said the subcommittee would be making a recommendation to the Assembly of Delegates and if approved as a district by the Assembly, the Commission would have 12 months to develop implementing regulations for the DCPC district.

A motion was made to adjourn at 4:05 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Elizabeth Taylor, Secretary