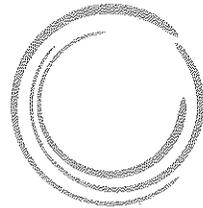


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## Minutes

### Meeting of Cape Cod Commission

February 17, 2011

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	✓ (left at 4:00 p.m.)
Brewster	Elizabeth Taylor	✓
Chatham	Lynne Pleffner	Absent
Dennis	Richard Roy	Absent
Eastham	Joy Brookshire	✓
Falmouth	Mario DiGregorio	Absent
Harwich	Robert Bradley	✓
Mashpee	Ernest Virgilio	Absent
Orleans	Peter Monger	✓
Provincetown	Austin Knight	✓
Sandwich	Joanne O'Keefe	Absent
Truro	Peter Graham	✓
Wellfleet	Roger Putnam	✓
Yarmouth	John McCormack, Jr.	Absent
County Commissioner	Mary Pat Flynn	✓
Minority Representative	John Harris	Absent
Native American Rep.	Mark Harding	Absent
Governor's Appointee	Herb Olsen	✓



The meeting of the Cape Cod Commission was called to order on Thursday, February 17, 2011 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 last year the Commission had an engagement with NSTAR regarding spraying of pesticides and agreed for a one-year moratorium so Commission staff could map areas. Mr. Niedzwiecki said the Commission has now completed that work and they have had discussions with NSTAR about a monitoring program. He said the Commission has no authority to ban pesticides and said that moratorium has been agreed upon by the Commission and NSTAR.

#### ■ MINUTES

The minutes of the December 16, 2010 Commission meeting were reviewed. Peter Monger moved to approve the minutes. Austin Knight seconded the motion. The motion passed with two abstentions.

The minutes of the January 6, 2011 Commission meeting were reviewed. Peter Monger moved to approve the minutes. Michael Blanton seconded the motion. The motion passed with one abstention.

The minutes of the January 20, 2011 Commission meeting were reviewed. Michael Blanton moved to approve the minutes. Elizabeth Taylor seconded the motion. The motion passed with three abstentions.

#### ■ 2009 REGIONAL POLICY PLAN PROPOSED AMENDMENT TO ENERGY SECTION AND ■ CHAPTER A DRI ENABLING REGULATIONS PROPOSED AMENDMENT FOR WIND ENERGY CONVERSION FACILITY THRESHOLDS

Chair Roy Richardson noted that this is a continued hearing from February 3, 2011.

Ryan Christenberry, planner at the Commission, said at its meeting on January 20, 2011 the Commission voted to remand the regulations back to the joint Planning and Regulatory Committees for further review. She said the draft regulations today show track changes that have been made to the regulations and then Ms. Christenberry provided an overview of the changes that have been made. She said the changes consist of removal of meteorological (MET) towers from DRI thresholds, revision to noise setback and a noise study, inclusion of MET tower removal in the decommissioning plan, change to the municipal waiver by removing 100 KW and replacing with 250 KW, removal of roads from a clear area, clarification of the definition of receptor, and changes to the language for shadow flicker regarding a mitigation plan.

Elizabeth Taylor inquired about height and asked when they would see a definition for residential turbines.

Ryan Christenberry said the Planning and Regulatory Committees didn't take that up and said it would be taken up later as it requires further thought.

Jessica Wielgus, Commission Staff Counsel, reviewed proposed language that would enable town bylaws to be certified by the Commission. She said the height would remain at 65 feet unless a town comes forward with a certified bylaw.

Elizabeth Taylor said if a town has no bylaw then nothing would come to the Commission.

Jessica Wielgus said they would have to wait for an ordinance from the Assembly of Delegates.

Elizabeth Taylor asked what happens then before the document goes to the Assembly and during the time it takes to come back from the Assembly.

Paul Niedzwiecki said the document is due to go to the Assembly in March. He said an advisory committee would be organized for further discussion. He said there's been a lot of discussion about the 65 feet.

Wayne Bergeron, Dennis Board of Selectmen, said he hopes for some regulations and said in lieu of waivers he would like to see exemptions. He said regarding noise and infrasound studies he has concerns with that and said there is no proven evidence that infrasound has impacts. He said applicants would be required to do such a study and that can't be done therefore that threshold would not be met.

Liz Argo, consultant with Cape and Vineyard Electric Cooperative (CVEC), read a five-page letter from Charles McLaughlin, President of CVEC, which expressed the CVEC Executive Committee's opposition to the proposed new mandatory DRI threshold for wind turbines. The letter indicated that as presently drafted, the threshold and associated Minimum Performance Standards (MPSs) would require that every wind turbine taller than 65 feet go through the expense, time and burden of a full Commission review. The letter noted that CVEC believes a mandatory DRI threshold for wind turbines is unnecessary and overly burdensome and the effect of the proposed new regulations will be to serve as a significant roadblock to the installation of any additional municipal land-based wind turbines on Cape Cod. Ms. Argo outlined each of the proposed DRI thresholds and MPSs addressed in Mr. McLaughlin's letter followed by comments and proposed amendments by CVEC.

Ryan Christenberry responded to Mr. McLaughlin's letter and said a cost structure has been created for projects reviewed by the Commission.

Paul Niedzwiecki said he would respond to Mr. McLaughlin's letter after today's meeting. He said issues in the letter are incorrect and the Commission should respond.

Richard Elrick, Energy Coordinator for the Towns of Bourne and Barnstable, said the regulations are backwards and a spatial exercise should have been done first to identify areas that would be suitable. He said now we have standards with no suitable areas, for example, in Barnstable. He said the regulations have been prepared too fast under political pressure. He said the Commission is moving too fast on the regulations and the regulations go in the opposite direction of sustainable energy. He said the regulations are too rigid and a perfect medium has not been met.

Michael Blanton asked Mr. Elrick if he was speaking on behalf of the towns.

Richard Elrick said he was speaking as the Energy Coordinator and not on behalf of the towns.

Paul Niedzwiecki said to say the Commission is going against renewable sustainable energy is shocking. He said GIS information from Barnstable is misrepresentative as well.

William Griswold, resident of Centerville, talked about 10 hours per year for shadow flicker and said shutting down a turbine for 80 hours a year would result in no flicker. He talked about the wind turbine located at Country Gardens.

John Ford, 372 Blacksmith Shop Road in West Falmouth, said he can't remember the last time he had a good nights sleep. He said he lives 3,485 feet from Wind 1 and 4,065 feet from Wind 2 and has resulting health problems. He said he would like to hear more about minimal impacts. He said he believes the regulations are on the right path regarding shadow flicker and said his problem is noise and he would like to see more done about that.

Richard Koehler, resident of East Falmouth, said he is in favor of wind turbines but he is appalled by how unhappy people are who live around them. He talked about noise and shadow flicker and offered suggestions.

Linda Salamon, resident of Harwich, referred to MPS E1.7 Clear Area and asked why recreation areas were deleted from the regulations. She said she believes infrasound studies should be done using a standardized test and said she is not sure there is a standardized test. She said for that reason we shouldn't have wind turbines without standardized studies being done.

Barbara Howard, resident of Harwich, talked issues that haven't been brought up such as rare earth elements and electrical cost for providing electricity inside the turbine. She recommended and described setbacks that are being used in Europe.

James Rogers said he commends the Commission and hopes the regulations will be passed.

Patricia Holden, resident of West Dennis, said she has been on Blacksmith Shop Road where the turbines are located. She said she doesn't want millions of dollars to be spent on the installation of turbines and then find out after the fact that they present health problems. She said if wind turbines are not that efficient and cause health problems, then why would we want them on Cape Cod.

David Young, resident of Brewster, said he supports the regulations and applauds Commission staff for their work. He said he opposes exemptions.

Commission member Michael Blanton left the meeting at 4:00 p.m.

Eric Bibler, Save Our Seashore/Wellfleet, said he commends the Commission and the joint Planning and Regulatory Committees for their hard work. He said he believes an applicant has the burden to prove that there is no harm. He said the risk is on the applicant. He said in regard to shadow flicker, noise, and scenic vistas some of it belongs to the public but some of it belongs to private property. He said debates about hours of shadow flicker and industry standards are misguided. He said he doesn't believe a developer has the right to dictate how long a person should be subjected to shadow flicker on their private property. Mr. Bibler said financial accountability belongs with the developer. He said if an applicant goes bankrupt, decommissioning should belong to the developer. He said if the regulations are adopted, he hopes that the Commission will take into consideration existing property owner rights and since adverse impacts to turbines are still evolving, that relevant new information be considered by the Commission. He thanked the Commission and said the process has shown that large improvements have been made.

Kathy Sherman, resident of Brewster, talked about noise from wind turbines and compared it to air traffic noise. She said evidence has shown that there are impacts from noise. She talked about patterns, loudness and stress from noise. She said she has concerns about evacuation routes and recreation areas being removed from clear areas.

Jim Liedell, resident of Yarmouth Port, said he believes that having regulations which use best science and logic to approve land wind turbines is one of the best actions we can take to significantly reduce the greenhouse gas emissions created by burning fossil fuels to generate electricity. He referred to three photo simulations showing the current shorelines and land of Cape Cod at present sea levels, with a one-meter sea level rise, and with five meters sea level rise. He said the simulations, based on U.S. Geodetic Service land elevation lines, illustrate that Cape Cod will shrink considerably in the not-so-distant future if actions like the Commission's presently proposed unwarranted restrictions remain in the new regulations.

Sheila Bowen, resident of Harwich and President of Wind Wise Cape Cod, said she supports Mr. Bibler's statement. She thanked the Commission for the time spent preparing the regulations and asked that the regulations be approved so that they can begin working on the technical bulletin. She said her only concern is with the waiver.

Lucinda Abrecht said what she had planned on saying was addressed by Mr. Bibler. She thanked the Commission for their time.

Austin Knight asked if there was any difference between a gearbox and a direct drive.

Ryan Christenberry said it's unclear and it would have to be investigated. She said gear noise is more typical with smaller turbines.

Paul Niedzwiecki said they hope to get into that when they develop the technical bulletin.

Joy Brookshire said she appreciates all who have said "thank you" and said the Commission has done a lot of listening. She said the Commission is a regulatory agency that reviews projects and the Commission does due diligence. She said after listening to what Falmouth residents have said, if the Commission had reviewed the Falmouth turbines, they probably would not have passed. She said the Commission has listened. She said the regulations address different issues in the same way the Commission would with any other project reviewed by the Commission. She said the Commission is a responsible agency. She said she was once a selectman in her town and she understands that a town has to have a vision for their town.

Roger Putnam talked about windmills on Cape Cod in the past and said they proved not to be very efficient. He said what happened to the clipper ship; it's not here now because it was inefficient. He said power is produced in the United States by companies that sell their power to the grid, the grid in turn wholesales the power, and then it goes to the consumer. He said the balance of a consumer's bill is for transmission and the other half for power. He said regarding a shadow flicker receptor, a receptor should be a person not a building. He said flicker should not be measured by hours; it should be measured on how much a person can tolerate it in a day. He said voting for these standards would hurt people so others can make money. He asked that the regulations be remanded back to the Committees for further review.

Peter Graham said he does not agree with Mr. Putnam although he respects his opinion as a colleague. He said he believes the standards protect the people on Cape Cod. He said he believes the standards are tough but not restrictive. He asked that they not be remanded back to the Committees.

Elizabeth Taylor said 120 days for decommissioning is not much time. She questioned whether the time should be lengthened or if a waiver would work.

Paul Niedzwiecki said a waiver would work.

Elizabeth Taylor inquired about a municipal waiver and asked if that meant there would be no special treatment for towns.

Paul Niedzwiecki said the difference between a waiver and an exemption is for a waiver the Commission would have to see the plan.

Joy Brookshire asked Mr. Niedzwiecki to explain decommissioning and security.

Paul Niedzwiecki said any WECF that has not been operational for more than 120 consecutive days would be dismantled and removed from the site by the owner, operator and/or other entities as

designated by the decommissioning plan unless a written waiver obtained shows good cause. He said the applicant would provide money up front to cover the life of the WECF for the cost of removing any abandoned or damaged WECF. He said that security would be in place up front in an amount satisfactory to the Commission. He said all WECF DRI decisions would contain a written decommissioning plan.

Chair Roy Richardson said the regulations would give us control over our own destiny so that we don't get what we don't want.

Austin Knight asked if there would be a process or timeline to update the regulations.

Paul Niedzwiecki said there is no process involving a timeline but the Commission would stay on top of it.

Peter Graham moved to close the hearing and the record. Joy Brookshire seconded the motion. The motion passed with a unanimous vote.

Peter Graham moved to approve the proposed amendment to the Energy Section of the Regional Policy Plan (RPP) and forward the amendments to the Assembly of Delegates for adoption and incorporation into the RPP. Joy Brookshire seconded the motion. A vote called on the motion by members present passed with eight votes in favor and one vote opposed.

Peter Graham moved to approve the proposed threshold as an amendment to Chapter A DRI Enabling Regulations and forward the amendment to the Assembly of Delegates for adoption. Joy Brookshire seconded the motion. A vote called on the motion by members present passed with eight votes in favor and one vote opposed.

Stan Kazinsky, resident of Yarmouthport, said he would hope the Commission keeps an open mind with this proposal.

Paul Niedzwiecki thanked Commission staff and the joint Planning and Regulatory Committees for their efforts. Mr. Niedzwiecki also thanked Ryan Christenberry for her work on the regulations.

A motion was made to adjourn at 5:00 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

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Michael Blanton, Secretary

#### **LIST OF DOCUMENTS PRESENTED AT THE FEBRUARY 17, 2011 COMMISSION MEETING**

- Handout material: February 17, 2011 meeting agenda.
- Handout material: Draft 2009 Regional Policy Plan Proposed Amendment to Energy Section.
- Handout material: Draft Chapter A DRI Enabling Regulations Proposed Amendment for Wind Energy Conversion Facility Thresholds.
- Comment letter from Charles S. McLaughlin, Jr., President of Cape & Vineyard Electric Cooperative, Inc.
- Comment letter from James Liedell.