

The meeting of the Cape Cod Commission was called to order on Thursday, April 30, 2009 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 there is a Joint Transportation Committee meeting scheduled tomorrow at 8:45 a.m. in the Commission's conference room and noted that Martha Hevenor, Commission planner, would be giving a Route 6A Comprehensive Management Plan 2009 Update at the meeting. Mr. Niedzwiecki announced that Jay Zavala, Falmouth Representative to the Commission, resigned immediately last Thursday because of his acceptance as President of the Falmouth Chamber of Commerce. Mr. Niedzwiecki said he appreciated Mr. Zavala's service as the Falmouth Representative and congratulated him on his new appointment.

■ MINUTES

The minutes of the March 5, 2009 Commission meeting were reviewed. Peter Graham moved to approve the minutes. Brad Crowell seconded the motion. The motion passed with a unanimous vote.

■ CRAIGVILLE BEACH/CENTERVILLE VILLAGE DCPC IMPLEMENTING REGULATION TIME EXTENSION

Marisa Mejia, regulatory officer at the Commission, said the Town of Barnstable is requesting an extension to the timeframe for adoption and incorporation of their implementing regulations for the Craigville Beach/Centerville Village District of Critical Planning Concern (DCPC). She said based on the Commission Act, the Commission may grant an additional 90 days to a municipality to adopt and incorporate implementing regulations. Ms. Mejia said the DCPC ordinance became effective on June 13, 2008. She said the one-year deadline for the town to complete its implementing regulations is June 12, 2009. She said the 90-day extension would allow the Town of Barnstable until September 10, 2009 to adopt and incorporate implementing regulations for the Craigville Beach/Centerville Village DCPC. She said a letter from the Barnstable Town Manager requesting the 90-day extension was included in the Commission members' packets. Ms. Mejia said staff is asking that the Commission vote to accept the 90-day extension of Barnstable's implementing regulations timeline for the Craigville Beach/Centerville Village DCPC.

JoAnne Miller Buntich, Interim Director of Barnstable Growth Management Department, said the town is getting close to completing the implementing regulations. She said although they are close to completion, 12 months is not enough time to fully discuss the issues and would ask that the Commission vote in favor of the 90-day extension of the timeline.

Peter Graham moved to grant the 90-day extension of the timeframe to adopt and incorporate the Craigville Beach/Centerville Village DCPC implementing regulations to September 10, 2009. Brad Crowell seconded the motion. The motion passed with a unanimous vote.

■ PROCEDURAL ONLY—DALBY ANR

Chair John Harris noted that this is a continued hearing from March 26, 2009.

Marianna Sarkisyan, regulatory officer at the Commission, said the subcommittee voted to approve and forward the draft decision to the full Commission. She said since that time the applicant has requested a continuance therefore today's hearing is for procedural purposes only. Ms. Sarkisyan said staff is asking that the hearing be continued to the May 28, 2009 Commission meeting.

Alan Trebat moved to continue the hearing to the May 28, 2009 Commission meeting. Brad Crowell seconded the motion. The motion passed with a unanimous vote.

■ PROCEDURAL ONLY – DRAFT REVISIONS TO TECHNICAL BULLETIN 94-001, CALCULATION AND PROVISION OF OPEN SPACE IN DRIs

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

Heather McElroy, natural resources specialist at the Commission, asked that today's hearing be continued to the May 14, 2009 Commission meeting. Ms. McElroy noted that the Draft Revised Technical Bulletin is posted on the Commission's website.

Brad Crowell moved to continue the hearing to the May 14, 2009 Commission meeting. Alan Trebat seconded the motion. The motion passed with a unanimous vote.

■ PROCEDURAL ONLY – DRAFT TECHNICAL BULLETIN DRI GUIDELINES FOR ENERGY COMPLIANCE

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

Sharon Rooney, chief planner at the Commission, asked that today's hearing be continued to the May 14, 2009 Commission meeting.

Michael Blanton moved to continue the hearing to the May 14, 2009 Commission meeting. Peter Graham seconded the motion. The motion passed with a unanimous vote.

■ AMENDMENT TO REGIONAL LAND USE VISION MAP

Elizabeth Taylor read the hearing notice and opened the hearing at 3:25 p.m.

Sharon Rooney, chief planner, said the Regional Policy Plan (RPP) was adopted as an ordinance in January of this year along with the Regional Land Use Vision Map that included six towns at that time. She said the Town of Barnstable underwent an extension planning process over the past year and completed their land use vision map and endorsed it by the Planning Board in February, just after the RPP was adopted. She said JoAnne Miller Buntich is here today to describe the process that the town undertook. She said the Commission's Planning Committee reviewed the map at their March 16, 2009 meeting and recommended that it be included in the Commission's Regional Land Use Vision Map. She said if the full Commission approves the map today, the map would be submitted to the Assembly of Delegates for adoption.

JoAnne Miller Buntich, Interim Director of Barnstable Growth Management Department, distributed a map to Commission members and said the Town of Barnstable has been looking at map-based planning for the last three years. She said one of the reasons the town didn't have their land use vision map completed sooner is because the town had already adopted a set of maps that accomplished the same thing. She said the map being distributed to Commission members today is the Strategic Planning Area Map for the town's Local Comprehensive Plan (LCP) update that is under review by town council right now and will be before the Commission in a few months. She said they tied in areas shown on the map to planning policies in the land use section of their plan. She said the town's challenge was to translate areas on this map into categories that the Commission set forward in its land use vision mapping process and it took some time for the town to accomplish that. She referred to the Barnstable Land Use Vision Map that Commission members received previously and noted the similarities and said that was the result of the town's translation work. She the Strategic Planning Area Map has been under discussion in various forums for a few years now and coupled with town council meetings. She said the Barnstable Planning Board reviewed the map over the course of several meetings and noted that the meetings were all televised. She said the map was sent to various stakeholders, boards, agencies and commissions in the town and said they never heard that anyone had any objections to it. She said because the map is so closely aligned to their Strategic Planning Area Map, the town believes the public process has been quite extensive. She said the Town of Barnstable has been talking about this for quite a while.

Paul Niedzwiecki said it's great to see that it has come to this point. He thanked everyone involved in the process.

Elizabeth Taylor moved to approve the amendment to the Regional Land Use Vision Map and that it be forwarded to the Assembly of Delegates for adoption. Michael Blanton seconded the motion. The motion passed with a unanimous vote.

■ **DRAFT CHAPTER A, ENABLING REGULATIONS GOVERNING REVIEW OF DRIs**

Chair John Harris noted that this is a continued hearing from April 16, 2009.

Sharon Rooney, chief planner, noted that a complete presentation had been made on the Enabling Regulations at the April 2, 2009 hearing before the full Commission. She said at that hearing comments were heard from Eliza Cox and changes have been made to the draft regulations based on her comments. She noted changes on the draft regulations dated April 6 and said changes made appear in red and changes made based on comments by Ms. Cox appear in blue. Ms. Rooney said the Commission's Regulatory Committee reviewed changes to the regulations at their meeting on April 13 and approved the changes made by Ms. Cox and said those appear in green on the draft document. Ms. Rooney said the first change appears in Section 3 on page 15. She said this change concerns the Barnstable Growth Incentive Zone in the DRI threshold where Ms. Cox expressed concern about reference being made to the Cape Cod Hospital in the threshold. She said after the Regulatory Committee's review, it was decided to delete reference to the Cape Cod Hospital and to refer instead to the Growth Incentive Zone decision. She said the second change is in Section 4 on page 17 and said additional language has been added where a determination for a change of use requested by a town a copy of that request be provided to the applicant and to allow additional information to be submitted if requested by the chief regulatory officer. Ms. Rooney said the final change appears in Section 5 on page 21 and said it simply omits the reference to Section 7, DRI review process and noted that Ms. Cox said an applicant should be able to file for a hardship exemption or DRI exemption. Ms. Rooney said based on that the DRI reference would be omitted and reference would be made that would allow the applicant to choose from several different paths of review.

Brad Crowell questioned the rationale for including the GIZ in the Enabling Regulations.

Sharon Rooney said the ordinance from the Assembly states that so staff felt it should in the document.

Renie Hamman, Yarmouth resident, said as the previous Yarmouth Representative to the Commission she was a member of the Commission's Planning Committee. She referred to credit for past use and said she would like to see a change from three years to five years. She said at the time she was a member of the Planning Committee the Committee thought three years was a small window of time. She said she believes the short time frame of three years would result in more vacant buildings and said it's important during these economic times. She inquired about when the three years begins and ends. She said it's conflicting and questioned how it could be reconciled when the Regional Policy Plan (RPP) says five years for maps and the Enabling Regulations say three years. Ms. Hamman inquired about credit for affordable housing.

Sharon Rooney said that was discussed at the Regulatory Committee and said there was a strong feeling that credit be kept to three years with incentive for towns to complete their maps and designate growth centers. She said the Regulatory Committee felt the three-year timeframe should remain. Ms. Rooney said a technical amendment could be made to the RPP to amend the discrepancy of five years. She said regarding the start time for credit staff would review documentation by the applicant to determine the date of when use was terminated. Ms. Rooney said credit for affordable housing would be based on the three-year timeframe as well.

Paul Niedzwiecki said the Commission is getting ready to review the RPP again and the first item to be reviewed would be affordable housing.

Peter Graham questioned whether the objection to five years was because it would be giving towns leverage.

Sharon Rooney said the idea is to give incentives to towns and said more credit would be given if development were in an economic center.

Brad Crowell questioned whether the scenario for giving more than three years credit would be if it's in an economic center.

Sharon Rooney said yes.

Brad Crowell asked Ms. Hamman for examples.

Renie Hamman said Route 6A is not an economic center and said it would be designated as a village. She said the IFAW building and the Christmas Tree Shop off Route 6A has been vacant for a few years. She said we don't want buildings like that to remain vacant especially since it's on Route 6A.

Doris Schofield, Nutter McClennen & Fish on behalf of Eliza Cox, thanked the Commission for incorporating recommendations made by Ms. Cox. She said she agrees with Ms. Hamman that the regulations should be changed from three years to five years.

Brad Crowell said he shares Ms. Hamman's concerns and said the Christmas Tree Shop could become a white elephant. He said he supports the five-year concept.

Michael Blanton said he supports the five-year concept as well. He said he wouldn't want towns to rush through the mapping process.

Peter Graham said he is persuaded that five years would be better.

Sharon Rooney said it doesn't mean development can't happen or is being penalized. She said it would be considered new development.

Sheila Lyons said she would hesitate changing to five years and said each case should be looked at individually. She said she would not change to five years because of an example in one town.

Mark Lohan said he agrees it should be changed back to five years. He said he would support maintaining five years as in the RPP. He said much effort was given in reviewing the RPP and now it's being changed because of the Enabling Regulations.

Sharon Rooney said the Commission has been working on the Enabling Regulations for two years.

Renie Hamman said it has always been five years in the Enabling Regulations and we would be changing it to three years.

Alan Trebat asked if the Enabling Regulations would need to go to the Assembly of Delegates for approval.

Sharon Rooney said, yes, it would need to go to the Assembly for adoption as an ordinance.

Paul Niedzwiecki said if we look at local towns abandonment is two years.

Sheila Lyons said there are usually reasons why a building is vacant for three years and not because of a regulation. She said she does not support changing to five years.

Roger Putnam moved to close the hearing and the record. Brad Crowell seconded the motion. The motion passed with a unanimous vote.

Elizabeth Taylor moved to accept changes to Chapter A Enabling Regulations as presented today and forward to the Assembly of Delegates for adoption. Frank Hogan seconded the motion. A vote called on the motion passed with 8 votes in favor and 4 votes opposed.

■ DRAFT CHAPTER D, DEVELOPMENT AGREEMENT REGULATIONS GOVERNING THE PROVISIONS FOR DEVELOPMENT AGREEMENTS

Chair John Harris noted that this is a continued hearing from April 16, 2009.

Jessica Wielgus, Commission counsel, said comments by Eliza Cox and Peter Freeman from the April 2 hearing were discussed by the Regulatory Committee on April 13 and said the majority of the changes were made to the document. Ms. Wielgus reviewed two new changes made by the Regulatory Committee. She said the first change is regarding major modifications on page 15 of the document. She said language has been added to say the participating parties may petition to rescind the development agreement and said the Commission may petition to rescind the development agreement only in the event of failure of consideration. She said the second new change is on page 11 where a new Subsection (q) has been added regarding litigation. She said Subsection (q) has been added to say “in the event that any Development Agreement approved by the Commission is the subject matter of any appeal or any litigation, there shall be added to the duration of such agreement a period equal to that from the date of filing of said appeal or the commencement of litigation, whichever is earlier, to the date of final disposition thereof, provided final adjudication upholds the validity of such agreement.” Ms. Wielgus noted small technical changes have been made to page 5 regarding development permits, to page 7 Subsection (x) items required by the application process, and to page 9 Subsection (h) regarding termination of a Development Agreement. She said stakeholders raised concern about terminating negotiation and said the language has been changed to say if at any time the subcommittee determines that entering into a Development Agreement would no longer be in the best interest of the Commission, prior to the Commission taking a vote on termination the Commission shall give the applicant an opportunity to be heard. She said the Commission could remand the negotiation back to the subcommittee or vote on the recommended termination. Ms. Wielgus said other than the changes just mentioned the document is the same as presented at the April 2, 2009 hearing before the full Commission.

Peter Graham asked for clarification on failure of consideration.

Jessica Wielgus said it was revised because some developers were uneasy with the language.

Attorney Peter Freeman thanked Ms. Wielgus, staff and the Regulatory Committee and said most of his comments were incorporated into the document. He referred to language on page 15 regarding major modifications where it says “rescind from development” and said it should be corrected to say “rescind from development agreement.” He questioned “failure of consideration.”

Jessica Wielgus noted Attorney Freeman’s correction and said that correction would be made. She said regarding “failure of consideration” the Commission should have the ability to consider submissions and would ask that the language remain as is.

Renie Hamman referred to Section 5(a)(ii) where it says “whether the project exhibits two of the following characteristics” and said she would recommend that it be changed to say “two or more.”

Jessica Wielgus noted Ms. Hamman’s correction and said that correction would be made.

Alan Trebat moved to close the hearing and the record. Roger Putnam seconded the motion. The motion passed with a unanimous vote.

Sheila Lyons moved to accept the Chapter D Development Agreement with changes presented today and forward to the Assembly of Delegates for adoption. Michael Blanton seconded the motion. The motion passed with a unanimous vote.

■ **OTHER BUSINESS**

Paul Niedzwiecki noted that he received a response from Secretary Ian Bowles regarding the Coastal Zone Management (CZM) Certificate of Consistency for the Cape Wind Energy Project. He said they favored CZM and noted that questions have been raised as to whether the Commission's RPP was taken into consideration. Mr. Niedzwiecki said the Energy Facilities Siting Board would be making a final ruling on the permit for Cape Wind soon.

Mr. Niedzwiecki announced that Chapter H Municipal Application for Revisions of DRI Thresholds would be taken up by the Regulatory Committee soon.

A motion was made to adjourn at 4:15 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

John D. Harris, Chair