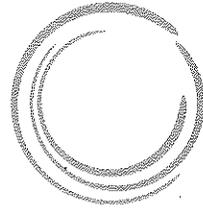


3225 MAIN STREET • P.O. BOX 226
BARNSTABLE, MASSACHUSETTS 02630



CAPE COD
COMMISSION

(508) 362-3828 • Fax (508) 362-3136 • www.capecodcommission.org

Minutes
Meeting of
Cape Cod Commission

May 12, 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	✓
Brewster	Elizabeth Taylor	✓
Chatham	Lynne Pleffner	✓
Dennis	Richard Roy	✓
Eastham	Joy Brookshire	Absent
Falmouth	Mario DiGregorio	Absent
Harwich	Robert Bradley	✓
Mashpee	Ernest Virgilio	Absent
Orleans	Leonard Short	✓
Provincetown	Austin Knight	✓
Sandwich	Joanne O'Keefe	✓
Truro	Peter Graham	✓
Wellfleet	Roger Putnam	✓
Yarmouth	John McCormack, Jr.	✓
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, May 12, 2011 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

■ PUBLIC COMMENT

Jessica Wielgus, Commission counsel, said Attorney Paul Revere would be providing public comment on a project that is currently under review by the Commission. Ms. Wielgus noted that Commission members should not deliberate on his comments but Commission members could listen to his comments.

Attorney Paul Revere said his comments are in regard to the New Generation Wind project that is under Commission DRI review and how the Commission is proceeding procedurally in regard to the project. He said he represents abutters to the Cape Cod Aggregates property which is part of the New Generation Wind project. He said the Town of Bourne would be submitting a subdivision plan on the same 270-acre property as the New Generation Wind project. He said the subdivision plan has not been submitted yet as the Bourne Planning Board would be voting on the plan tonight. Attorney Revere said the subdivision plan for the 270-acre property would be a mandatory DRI and to start a DRI on an existing DRI property is inappropriate.

Joanne O'Keefe called for a point of order and questioned whether it was appropriate for her to hear Attorney Revere's comments as she is on the subcommittee for the New Generation Wind project.

Executive Director Paul Niedzwiecki said as Ms. Wielgus prefaced, yes, it is appropriate. He said Attorney Revere's comments are timely.

Attorney Revere said he believes the new subdivision project is being submitted in an attempt to avoid a proposed zoning bylaw change which was passed at a special town meeting on May 9, 2011. He said the Bourne Planning Board office informed him that the referral paperwork has been completed and that the subdivision plan will be referred before Tuesday's public hearing for the New Generation Wind project. He said the Commission would have two DRIs before it on the same parcels of land and should not begin a piecemeal review of the wind generation proposal. He said to review the projects separately makes no sense as each DRI will be intertwined with the other. Attorney Revere said in the last few months new wind regulations were promulgated. He said Commission staff has taken the position that the standards are inapplicable to the New Generation Wind project as the standards do not come into effect until 30 days after approval by the Barnstable County Commissioners. He said since the applicable regulations are those in effect at the first substantive public hearing on a project, staff is taking the position that the standards will not be in effect on the May 17, 2011 public hearing because it is less than 30 days after the County Commissioner's approval. Attorney Revere suggested that the Commission cancel the public hearing scheduled for May 17, 2011 and require New Generation to submit a single complete DRI application for the subdivision and proposed wind generation project.

■ EXECUTIVE DIRECTOR'S REPORT

Paul Niedzwiecki said Congressman Bill Keating is having an open house on Thursday, May 19 at his Hyannis office and anyone interested in attending should stop by. Mr. Niedzwiecki reported on the Smart Summit that took place on May 9 and 10. He said it's a great example of organizations moving in the same direction. He said Congressman Keating opened the session on Monday and Governor Patrick closed the session on Tuesday afternoon. He said the Summit was about setting out an agenda to get things done. He said it's a necessary time for collaboration, it was a great conference, and they hope to do it again next year.

Mr. Niedzwiecki welcomed Leonard Short, the newly appointed Orleans representative to the Commission.

Chair Roy Richardson said the conference was well thought out and it was an outstanding experience.

Mary Pat Flynn said she observed that people attended not for what they would take back from the conference but for what they could bring to the conference. She said it was good collaboration by all.

Chair Roy Richardson acknowledged Peter Monger, the former Orleans representative to the Commission, and presented him with a certificate of service. Mr. Richardson thanked Mr. Monger for serving as the Orleans representative and for the many contributions he has made as a member of the Commission. Mr. Richardson said it has been a pleasure working with Mr. Monger and noted that Mr. Monger has become part of a large group of people from many different backgrounds who share the experience of serving on the Commission as a town representative.

Peter Monger thanked the members of the Commission and said he has enjoyed working with everyone and said it has been a great experience serving as the Orleans representative. Mr. Monger expressed his gratitude to Commission staff for their great work and for all the assistance they give to Commission members.

■ MINUTES

The minutes of the April 14, 2011 Commission meeting were reviewed. Jack McCormack moved to approve the minutes of April 14, 2011. Michael Blanton seconded the motion. The motion passed with two abstentions.

■ NOMINATING COMMITTEE PRESENTS THE SLATE OF OFFICERS

Elizabeth Taylor noted the nominating committee members as Ernest Virgilio, Peter Graham and herself. On behalf of the nominating committee Ms. Taylor presented the slate of officers as Peter Graham of Truro as Chair and Michael Blanton of Bourne as Vice-chair. She said the nominating committee did not receive any requests from Commission members interested in serving as Secretary. She asked members present if they had any interest in serving as Secretary and if there were no interest then she would offer to serve in that capacity. There were no responses from Commission members present and Ms. Taylor said she would serve as Secretary. Ms. Taylor said Commission members would be asked to vote on the slate of officers at the next meeting of the full Commission.

■ FORESTDALE VILLAGE PROCEDURAL DENIAL

Michael Blanton read the hearing notice and opened the hearing at 3:25 p.m.

Andrea Adams, senior regulatory planner at the Commission, said the applicant, Stephen Powers, was unable to attend today's meeting because of a conflict. Ms. Adams provided background information on the project and said on October 21, 2010 the Commission received a referral of the Forestdale Village project from the Sandwich Zoning Board of Appeals through Greg Smith, Director of Planning and Development, for the proposed Forestdale Village development. She said in November 2010 the applicant's representative indicated they were working on a DRI application, however, by early December 2010 the applicant had not submitted a DRI application. She said the Commission's Enabling Regulations require that a public hearing be opened within 60 days of receipt of a DRI referral, which was December 17, 2010 and said the DRI public hearing was opened by a Hearing Officer on December 17. Ms. Adams said staff notified the applicant on February 17, 2011 that the Commission's Enabling

Regulations require that a public hearing be closed within 90 days which was March 16, 2011. She said as of staff's letter the applicant's project team had not submitted any application materials and the DRI hearing period was closed by a Hearing Officer on March 16. She said Commission staff also informed the applicant in the February 17 letter that because a DRI application had not been filed with the Commission, the applicant could either withdraw the project on the local level and from Commission review or that the project would be procedurally denied without prejudice. Ms. Adams said the applicant, Stephen Powers, contacted Commission staff by email on March 9, 2011 requesting a procedural denial without prejudice. Ms. Adams noted that the project was also the subject of a procedural denial request at the March 28, 2011 Regulatory Committee meeting and said the Regulatory Committee voted unanimously to recommend that the full Commission grant the applicant a procedural denial without prejudice.

A motion was made and seconded to close the hearing and the record. The motion passed with a unanimous vote.

Michael Blanton moved that the Commission grant Stephen Powers a procedural denial without prejudice for the Forestdale Village project. Joanne O'Keefe seconded the motion. The motion passed with one abstention.

■ CAPE COD COMMISSION SUBCOMMITTEE PROCEDURES

Jessica Wielgus, Commission counsel, said the subcommittee procedures before the Commission today were taken to the Commission's Regulatory Committee and approved by the Committee. Ms. Wielgus said a major proposed change has been made to Section 6, Subcommittee Public Hearings on page 4 of the document. She said the proposed change includes swearing in of all individuals who wish to provide testimony at public hearings and noted that had been requested by Commission members at a previous training session. Ms. Wielgus explained proposed changes to Section 3, Selection of Subcommittees and Member Attendance; Section 5, Site Visit; and Section 6, Subcommittee Public Hearings. She explained changes to Section A, General Public Hearing Procedures/Guidelines for Chairing Hearings; Section B, Receiving Testimony and Section C, Continuing or Closing the Hearing and Record at public hearings. Ms. Wielgus also noted changes to subcommittee meetings and deliberations, subcommittee recommendations, presentation of subcommittee recommendations to the full Commission, Ex Parte communications, sample motions for use by subcommittee members and the DRI process.

Peter Graham inquired about information being presented at a site visit.

Jessica Wielgus said discussion of a project should be reserved for public meetings and hearings. She said a site visit is not a public meeting.

Joanne O'Keefe said for that reason a change is in order.

Roger Putnam questioned no information or discussion being provided by an applicant at a site visit. He said he believes a site visit should be conducted to gather information and not just for gazing.

Jessica Wielgus said a site visit is just for viewing and any discussion should be reserved for the public hearing. She said anything could be discussed at the public hearing following the site visit.

Lynne Pleffner referred to the last sentence under Section 5, Site Visit on page 4 where it says "a site visit is not public hearing" and said an "a" should be added to the text.

Jack McCormack asked what form would be taken for swearing in of individuals.

Jessica Wielgus said swearing in of individuals could be done as a group at the beginning of the hearing. She said individuals would be asked to raise their hand and swear that what is being said is the truth.

Joanne O'Keefe questioned whether everyone needed to be sworn in and asked if there would be a disclaimer if someone refused to be sworn in.

Jessica Wielgus said if an individual refuses to be sworn in then they would not be allowed to speak.

Chair Roy Richardson said swearing in of individuals gives more strength to testimony.

Michael Blanton said the goal is that it not be an onerous process and said everyone could be sworn in as a group.

Richard Roy questioned written testimony.

Jessica Wielgus said written testimony could be submitted. She said the Commission weighs the evidence and said this helps members to deliberate on findings.

Jack McCormack said consultants at a previous training session for Commission members made this recommendation.

Elizabeth Taylor asked if this would be added to hearing notices.

Jessica Wielgus said it is not required in a hearing notice but it could be put on the Commission's website.

Elizabeth Taylor said Ex Parte communications hasn't really been covered adequately. She said Commission members should not talk to anyone. She said the description should be changed to say no discussion with anyone.

Jessica Wielgus said it refers to the Commission's Communication Policy which is more comprehensive.

Peter Graham said information is exchanged at site visits and now they are hearing that it's inappropriate.

Jessica Wielgus said, yes, it should not happen. She said a DRI hearing is like a trial when a jury goes to a site there is no discussion. She said an applicant should not influence Commission members at a site visit.

Roger Putnam said it breaches common sense. He said what is the purpose of going to a site visit if they are not going to learn anything. He said the Commission is not a legal body; it's a Commission.

Paul Niedzwiecki said Commission members are in a quasi judicial capacity while at a site visit and the public needs to hear the same information at the same time as members hear it. He said it's not always possible for the public to be present at a site visit. He said it's the limitation of the public to be present.

Chair Roy Richardson said it's impossible to invite all town officials or the public to a site visit. He said discussion should take place at a public hearing.

Joanne O'Keefe said when questions were asked of her at a site visit she directed the individual to Commission staff. She said the new language in the subcommittee procedures is good and she agrees with the language.

Michael Blanton said this does not mean that there is no discussion at all. He said Commission members could ask questions for clarification. He said he agrees with the language.

Jessica Wielgus, agreed, and said questions could be asked for clarification as it relates to the elements of the site itself.

Peter Graham moved to approve and incorporate proposed changes into the Commission's subcommittee procedures including amendments discussed on the floor. Michael Blanton seconded the motion. The motion passed with a unanimous vote.

■ CAPE COD 2011 REGIONAL TRANSPORTATION PLAN

Glenn Cannon, technical services director at the Commission, acknowledged Lev Malakhoff for his work on the plan. Mr. Cannon said for a project to receive funding it needs to be listed in a plan. He said the 2011 Regional Transportation Plan (RTP) includes transportation projects, programs, "smart" solutions, and transportation studies. He said it's a plan for 2011-2035 with a planning area that covers all major modes of travel throughout the 15 towns of Barnstable County. He said the Commission's transportation staff on behalf of the Cape Cod Metropolitan Planning Organization (MPO) has undertaken the plan. He said RTP participants include MPO members; local, state, and federal government agencies; coordinating agencies; transportation providers as well as the general public. He said a lot of time was spent looking at existing conditions and the key issue areas include a multi-modal focus, context-sensitive design, complete streets, and climate change impacts. Using PowerPoint slides Mr. Cannon provided an overview of the plan and explained the transportation system, safety issues, security, bicycle and pedestrian routes, congestion management, and an analysis of transportation alternatives. He noted projects listed in the plan for roadway rehabilitation and reconstruction, the bridge program, the Hyannis Access Improvements project, and Cape Cod Rail Trail Extensions to Provincetown and to the Cape Cod Canal. He said 137 additional transportation projects were included in the plan including Bourne Rotary improvements and Shank Painter Road Corridor improvements. He talked about "smart solutions" such as zoning and planning support for sidewalks and CCRTA/Steamship Authority coordination. He said 19 additional "smart solutions" were added to the plan such as employer TDM plans and WiFi hotspots. Mr. Cannon identified transportation studies included in the plan such as the Cape Cod Canal bridges replacement/expansion/addition and the southside bike route. He noted the next steps in the process and said the target date is August 2011 for MPO endorsement.

Joanne O'Keefe thanked the Commission's transportation staff for their help with bike paths in the town of Sandwich. She asked Mr. Cannon to explain the different agencies involved in the plan.

Glenn Cannon said the JTC is usually comprised of DPW officials and the MPO consists of transportation professionals and elected officials. He said the MPO is more of a political body and they have the final say and ranking of projects.

Michael Blanton said it's important that multiple stakeholders be included in developing strategies and plans for towns.

A motion was made to adjourn at 4:30 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Michael Blanton, Secretary

LIST OF DOCUMENTS PRESENTED AT THE MAY 12, 2011 COMMISSION MEETING

- Handout material: May 12, 2011 meeting agenda.
- Handout material: Draft Procedural Denial Decision for Forestdale Village
- Handout material: Draft Cape Cod Commission Subcommittee Procedures
- PowerPoint slide presentation on the Cape Cod 2011 Regional Transportation Plan prepared by the Cape Cod Commission.