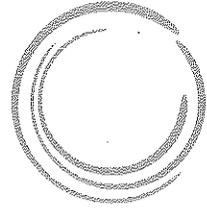


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CAPE COD  
COMMISSION

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

June 10, 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                  | Vacant              | Vacant  |
| Eastham                 | Joy Brookshire      | ✓       |
| Falmouth                | Mario DiGregorio    | ✓       |
| Harwich                 | Robert Bradley      | Absent  |
| Mashpee                 | Ernest Virgilio     | ✓       |
| Orleans                 | Peter Monger        | ✓       |
| Provincetown            | Austin Knight       | ✓       |
| Sandwich                | Joanne O'Keefe      | ✓       |
| 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          | ✓       |



*Keeping a Special Place Special*

The meeting of the Cape Cod Commission was called to order on Thursday, June 10, 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

Executive Director Paul Niedzwiecki said he attended the wastewater conference at the Mattacheese Middle School on May 15. He said the focus of the conference was on engineering and financing. He said he would keep Commission members apprised. Mr. Niedzwiecki said there has been a reorganization of the Cape Cod Water Collaborative and said they met for the first time last week.

#### ■ MINUTES

The minutes of the April 29, 2010 Commission were reviewed. Roy Richardson moved to approve the minutes. Jack McCormack seconded the motion. The motion passed with two abstentions.

The minutes of the April 29, 2010 Commission training session were reviewed. Roy Richardson moved to approve the minutes. Austin Knight seconded the motion. The motion passed with four abstentions.

#### ■ ELECTION OF NEW OFFICERS

Lynne Pleffner, member of the nominating committee, announced the slate of new officers as: Roy Richardson, Chair; Peter Graham, Vice-chair; and Michael Blanton, Secretary.

Roger Putnam moved that the nominations be closed. Ernest Virgilio seconded the motion. The motion passed with a unanimous vote.

Sheila Lyons moved to approve the slate of officers as presented. Roger Putnam seconded the motion. The motion passed with a unanimous vote.

#### ■ NOTIFICATION OF WITHDRAWAL OF SIDDHARTH SIDDHARTH LOT CLEARING

Marianna Sarkisyan, regulatory officer at the Commission, said the project came to the Commission as a mandatory referral by the Yarmouth Building Commissioner on November 23, 2009. The referral described the project as a clearing of land in excess of two acres without a clearing permit. She said a substantive review of the project by the Commission could not be conducted as a completed application was never submitted by the applicant. She said the 90-day hearing period for the project was opened by a hearing officer on January 1, 2010 and closed by a hearing officer on April 20, 2010. She said the 60-day decision period for the project would expire on June 18, 2010. Ms. Sarkisyan said on May 17<sup>th</sup> the Commission received a letter from James Brandolini, Yarmouth Building Commissioner, requesting that the mandatory referral be withdrawn. She said Mr. Brandolini explained that based on the applicant's engineer's certification, it appears that less than two acres of land were actually cleared, therefore, the project no longer falls under the Commission's Development of Regional Impact (DRI) review thresholds of greater than two acres. She said Mr. Brandolini noted that though he was rescinding the mandatory referral, he wished to reserve his right to, in the future, resubmit the project for Commission review under a discretionary referral. Ms. Sarkisyan said Commission staff recommends that the Commission accept the withdrawal of the project from its review.

Jack McCormack moved to approve the withdrawal of the Siddharth Siddharth Lot Clearing project from review. Roger Putnam seconded the motion. The motion passed with a unanimous vote.

#### ■ NOTIFICATION OF WITHDRAWAL OF ORLEANS STOP & SHOP GAS STATION

Andrea Adams, senior regulatory planner at the Commission, said the project was referred to the Commission in two Limited Discretionary Referrals (LDR) received from the Orleans Site Plan Review Committee and the Orleans Board of Selectmen. She said at its January 7, 2010 meeting the full Commission voted to accept the LDR of the proposed fuel facility/gasoline station at the Cranberry Cove Plaza. She said Commission staff has been working with the applicant on issues relevant to the scope of the LDR and said as of this date, a completed application has not been received. She said based on that for procedural purposes a hearing officer at the Commission opened and closed the public hearing period. Ms. Adams said Attorney Andrew Singer submitted a letter on May 13, 2010 to George Meservey, Orleans Planning Director, requesting withdrawal of the project from town review. She said through an email from Mr. Meservey on May 14<sup>th</sup>, the project was withdrawn from Site Plan Review at the local level upon receipt of Attorney Singer's letter. Ms. Adams said staff recommends that the Commission accept the withdrawal of the project from its review.

Austin Knight moved to accept the withdrawal of the Orleans Stop & Shop Gas Station project from review. Roy Richardson seconded the motion. The motion passed with a unanimous vote.

■ **PROCEDURAL ONLY—BARNSTABLE MUNICIPAL AIRPORT TERMINAL ACCESS & EGRESS DESIGN**

Chair John Harris noted that this is a continued hearing from May 20, 2010.

Page Czepiga, regulatory officer at the Commission, said on June 2, 2010 the Commission received a letter from Joe Longo of the Horsley Witten Group on behalf of the applicant, the Barnstable Municipal Airport Commission, requesting a continuation of today's hearing, by a hearing officer, to the June 24, 2010 Commission meeting at 3:00 p.m. in the First District Courthouse, Assembly of Delegates Chamber in Barnstable. She said today's hearing is for procedural purposes only and no testimony will be taken on the matter today. She said testimony would be taken on June 24, 2010.

■ **CRAIGVILLE BEACH DISTRICT OF CRITICAL PLANNING CONCERN IMPLEMENTING REGULATIONS**

Roy Richardson recused himself and left the Assembly of Delegates Chamber.

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

Kristy Senatori, chief regulatory officer at the Commission, said in October 2009 the Commission accepted the nomination for the Craigville Beach District of Critical Planning Concern (DCPC) proposed by the Town of Barnstable. She said subsequently the Commission recommended designation of the DCPC to the Assembly of Delegates and it was established as a DCPC district by county ordinance in November 2009. She said once designated as a DCPC district by county ordinance, the town has 12 months in which to complete implementing regulations for the district and said the 12-month period expires in November 2010. She said on April 16, 2010 the Commission received the proposed implementing regulations from the Barnstable Town Council for review and approval with documentation that the planning board, board of health and conservation commission had considered the regulations and that they had been submitted to the governor's committee thereby meeting requirements of Section 11(d) of the Cape Cod Commission Act. Ms. Senatori said Section 11 (d) also requires the Commission to determine whether the proposed implementing regulations conform to the Commission's guidelines identified in the DCPC ordinance. She said the guidelines call for regulations to: protect community character, protect natural resources and historic landscapes, support the locally owned small scale economy and preserve community character defining uses in each area. She said the guidelines also call for the town to consider if implementing regulations are necessary to: protect community character and viewsheds in the event of land division, protect natural resources and the barrier beach, and whether they are necessary for wastewater management near sensitive coastal waters. Ms. Senatori said Commission staff suggests that the proposed implementing regulations conform to the guidelines and she went on to explain the provisions of the proposed implementing regulations. She said Commission staff suggests that the Commission can find that the implementing regulations proposed for the Craigville Beach District by the Town of Barnstable conform to the Commission's guidelines and that the Town of Barnstable may adopt and incorporate these regulations. She said once the Town has done so, the building moratorium would end. Ms. Senatori referred to pages 3 and 4 of the draft decision and noted typographical errors that have been revised. She also referred to a letter the Commission received on June 8<sup>th</sup> from Christopher and Glenna Outwin of Centerville supporting the provisions of the Craigville Beach DCPC. Ms. Senatori said the revised pages of the draft decision and the letter was included in Commission member packets.

Peter Graham questioned the draft decision. He referred to page 5 of the draft decision and said there are nine suggested additional regulations and actions that should be incorporated into the implementing regulations document. He said when looking at the implementing regulations from April 16 it doesn't look like they have been incorporated. He asked if they would be incorporated into the implementing regulations as they seem to be substantial in nature. He said he looked up "scrivener error" and said in the presence of scrivener error how do we get that done.

Paul Niedzwiecki said the proposed implementing regulations text was sent to the Commission from the Barnstable Town Council and said they had a question about the implementing regulations conforming to the Commission's guidelines. He said in front of the Commission today is the zoning language that was submitted by Town Council. He said Commission staff recommends that it does conform to the Commission's guidelines. He

said the implementing regulations would be sent back to Town Council and there is still time left on the 12-month time clock. He said the Commission has explained to the Town that if Town Council approves the zoning language that the Commission has approved, then the limited moratorium ends. He said if Town Council does not approve the zoning language, then the limited moratorium continues until November 2010 at which time the implementing regulations would come back to the full Commission in November. Mr. Niedzwiecki said he believes this is a good way to approach DCPCs in the future. He said today the Commission is being asked to look at all the pieces and said he appreciates the Town coming forward and asking if the implementing regulations conform to the guidelines early on rather than waiting until the very end of the process.

Jo Anne Miller Buntich, Interim Director Barnstable Growth Management Department, said she is here today to see how the Town is doing in conforming with the provisions of the DCPC guidelines.

Attorney Michael Princi, of Wynn & Wynn representing Laura Snowden-Lebel, said he is here today to focus on a limited objection. He said this request was made in a letter to the Commission asking the Commission to consider a proposed grandfather clause and said he also forwarded proposed language to the Barnstable Town Manager to be passed on to the counselors. He said Ms. Snowden-Lebel had been given approval by the conservation commission for a conservation permit prior to the DCPC referral that was stayed during the first DCPC referral and has since lapsed. He said under the current DCPC regulations Ms. Snowden-Lebel would not be able to do anything and she would completely lose her rights. Attorney Princi said he had asked Ms. Buntich if this same situation involved other individuals and said he has not heard anything and believes the answer is no. He said, therefore, Ms. Snowden-Lebel is the only individual in this situation and a grandfather provision would not open up the "flood gates." He said if the grandfather clause is approved, the conservation commission could consider an "Order of Condition" and extend the conservation permit. Attorney Princi said the Commission has the ability to make a recommendation to the town. He said he believes Ms. Snowden-Lebel is being singled out and he urged the Commission to consider the proposed grandfather clause.

Christine DeCastro referred to Finding #22 on page 5 of the draft decision where it reads "open foundations shall be designed to accommodate only the height required to elevate the lowest structural member 2 feet above the BFE in V zones and 1 foot above BFE in A zones" and said it conflicts with Finding #11 on page 3. She said her concern is that it's bringing up a dual standard. She said Finding #21 says there are no houses in a velocity zone. She asked for clarification on that.

Steve Brown, resident of Craigville Village, said he is here today to recommend approval of the DCPC implementing regulations. He said he has concerns about water quality issues and said the implementing regulations address those issues. He asked that the implementing regulations be approved.

Meg Loughran, member of the Centerville Civic Association, said this all started in February 2008 and it has been a long and arduous process. She said it's really more than just about Long Beach Road. She said it's about preserving Centerville and the water. She said people have felt strongly about preserving historic character and she is looking to the Commission to do what she believes the Commission's job is. She said she is counting on the Commission to preserve this area.

Jim Lange, resident of Craigville Village, said he became involved when the Trade Winds Condominiums went up and said the Town approved the building at that time. He said he doesn't want to see this happen anywhere else in the area and said he would urge the Commission to approve the implementing regulations. He said if Town Council does not approve the implementing regulations once it goes back to the Town, then he would ask the Commission to take it back and approve the implementing regulations with or without Town approval.

George Gingold, resident of Elliot Road in Centerville, said he would urge that the DCPC process move forward to give the area the protection it needs. He said we need these guidelines in place so that the moratorium can be lifted and there is protection of the barrier beach. He said he is speaking on behalf of the environment that has no voice.

Dom Gautrau said he is a 33-year resident of Long Beach Road. He said the residents are very good stewards of Long Beach and everything that has been done has been to enhance the Road. He said all construction has been done beautifully and property owners, with their own money, have re-nourished the beach twice. He said in addition he has been before the Commission previously to get the Centerville River dredged to keep it flowing and in good condition. He said the Long Beach area has been preserved by its residents for many years.

Tom Kirk said his family has owned the second oldest cottage in the area. He said he refutes Mr. Gautrau's comment and said this is not only about Long Beach Road. He said the Zoning Board of Appeals has put a rubber stamp on this with over-development. He said he supports the DCPC implementing regulations.

Sue Rohrbach, resident of Centerville, said the Town has dredged the Centerville River which has helped the residents. She said she lives in an historic area and believes people who live there have a responsibility to preserve the area. She said she supports the DCPC implementing regulations.

Janet Joakim, Barnstable Town Councilor, said the residents have faith in the Commission. She said this is an opportunity to preserve what is being left for the future. She said she supports the DCPC implementing regulations.

Kristy Senatori referred to Attorney Princi's comments and said the Commission's role today is to determine whether the DCPC implementing regulations conform to the Commission's guidelines. She said perhaps Attorney Princi should take up the Grandfather Clause provision with the Town Council and possibly come to the Commission with a Hardship Exemption. She referred to Ms. DeCastro's comment about a conflict with Finding #22 and Finding #11 of the draft decision and provided an amendment to the language in Finding #11.

Jo Anne Miller Buntich said this was a long negotiated process. She said some things were left in and some things were left out of the document and perhaps the document is slightly confusing. She explained building in V Zones and A Zones and foundations that are in question. She explained coastal construction standards and said she has noticed that people are afraid to do certain types of rebuild.

Kristy Senatori withdrew her last suggestion to amend language in Finding #11 and said she would suggest amending Finding #22. She suggested eliminating the language that reads "1 foot above the BFE in A Zones" and replacing it with "2 feet above the BFE" in both V Zones and A Zones.

Chair John Harris asked Ms. DeCastro if Ms. Senatori's amendment provided clarification and Ms. DeCastro said it did.

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

Jack McCormack moved that the Commission finds that the proposed implementing regulations for the Craigville Beach DCPC as presented and amended, conform with DCPC guidelines and the Town may adopt and incorporate the regulations. Michael Blanton seconded the motion. A vote called on the motion (with 14 members voting) passed with 13 votes in favor and one abstention.

**■ PROPOSED TECHNICAL BULLETIN 10-001 GUIDELINES FOR CALCULATION OF MITIGATION FOR DRIs IN "OTHER" CATEGORY FOR MINIMUM PERFORMANCE STANDARD AH 3.1**

Elizabeth Taylor read the hearing notice and opened the hearing at 4:10 p.m.

Roy Richardson entered the Assembly of Delegates Chamber and rejoined the meeting.

Paul Ruchinkas, affordable housing specialist at the Commission, said the 2009 Regional Policy Plan (RPP) includes a requirement in Minimum Performance Standard (MPS) AH 3.1 that various types of non-residential, commercial development mitigate the impacts of the development on the need for affordable housing. He said the per square foot mitigation amounts are specified for DRIs that fall within the office, health and medical, retail, restaurant/food service, and warehouse/distribution categories. He said for non-residential DRIs that fall outside those categories, there is an "Other" category that encompasses such uses as hotels/motels, health/fitness centers, scientific instrument manufacturers, etc. He said the per square foot mitigation amount is based upon a formula that includes the determination of the number of jobs that will pay less than the regional average wage for the uses in that particular development. Mr. Ruchinkas said the technical bulletin summarizes the methodology the Commission will use to calculate the number of jobs that will pay less than the regional average wage in the formula for "Other" in MPS AH 3.1. He said the methodology involves two pieces of data: 1) employment density and number of employees and 2) the percentage of employees who earn less than the average wage. He said as the mitigation in AH 3.1 is assessed on the basis of the square footage of the building under DRI review and on the

number of additional employees who will earn less than the regional average wage, the technical bulletin also includes language to cover those buildings and/or facilities in which a calculation of building square footage is not feasible or appropriate and/or those that will result in the judgment of the Commission in fewer than three onsite or contracted employees. He said in these circumstances, an applicant would not be required to provide mitigation in the "Other" category under AH 3.1

Elizabeth Taylor inquired about employment status and asked if it made a difference if an individual were a full-time, part-time or seasonal employee.

Paul Ruchinskaskas said the status does not matter and said it's based on number of employees and is calculated as an annual wage.

Roger Putnam moved to close the record. Michael Blanton seconded the motion. The motion passed with a unanimous vote. Roy Richardson moved to close the hearing. Lynne Pleffner seconded the motion. The motion passed with a unanimous vote.

Jack McCormack moved to approve Technical Bulletin 10-001 as presented. Ernest Virgilio seconded the motion. The motion passed with a unanimous vote.

#### ■ OTHER BUSINESS

Paul Niedzwiecki acknowledged Chair John Harris and said it's been an honor serving with Mr. Harris as Chair for two terms. He thanked Mr. Harris for his encouragement, advice and all his support.

Chair John Harris said he is humbled and appreciates Mr. Niedzwiecki's comments. He thanked the Commission for allowing him to serve and said he has enjoyed the experience. He said he has enjoyed working with Commission members and staff and said it's been one of the most interesting things he has done since retiring from the corporate world.

Roger Putnam thanked Mr. Harris as well as Roy Richardson for serving as vice-chair and Elizabeth Taylor for serving as secretary. He moved and gave a vote of thanks to all officers involved. Michael Blanton seconded the motion. The motion passed with a unanimous vote.

Joanne O'Keefe said she is here today serving as the Sandwich Representative to the Commission because of Mr. Harris and his leadership. She said his leadership has made a difference and she is here for that reason.

A motion was made to adjourn at 4:25 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

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Elizabeth Taylor, Secretary

#### **LIST OF DOCUMENTS PRESENTED AT THE JUNE 10, 2010 CAPE COD COMMISSION MEETING**

- PowerPoint slide presentation on the Craigville Beach DCPC prepared by the Cape Cod Commission
- Revised page 3 and page 4 of the Craigville Beach DCPC Decision prepared by the Cape Cod Commission
- Letter from Christopher and Glenna Outwin in support of the provisions of the Craigville Beach DCPC
- Handout material: Agenda—June 10, 2010 Cape Cod Commission Meeting
- Handout material: Craigville Beach DCPC Draft Decision and Map of the DCPC Area prepared by the Cape Cod Commission
- Handout material: Draft Technical Bulletin #10-001: Guidelines for Calculation of Mitigation for Developments of Regional Impact in "Other" Category for Minimum Performance Standard AH 3.1 prepared by the Cape Cod Commission