

The meeting of the Cape Cod Commission was called to order on Thursday, September 17, 2009 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

Chair John Harris introduced Sue Pommrehn the new Sandwich Representative to the Commission and John McCormack the new Yarmouth Representative to the Commission.

■ EXECUTIVE DIRECTOR'S REPORT

Paul Niedzwiecki introduced Taree McIntyre, a new staff member, and said she will be working in the front office at the Commission. He reported on a meeting he attended in Worcester regarding regionalization efforts as well as a meeting he attended in Halifax with County Commissioners to talk about regionalization efforts. Mr. Niedzwiecki talked about the construction that is being done at the Sagamore Bridge and said it's a federal bridge project under the Army Corps of Engineers (ACOE). He said construction would continue until the winter months and then start up again in the spring. He said the Commission has been working with the Chamber of Commerce, Economic Development Council, Congressman Delahunt's office and other state agencies to try to eliminate impacts on traffic and come up with alternatives to ease the traffic flow going over the bridge during construction. He said extensive repairs are being done to the bridge and they are repairs that need to be made. Mr. Niedzwiecki said the Ocean Management Plan was discussed at a meeting held at Cape Cod Community College last night. He said he would encourage people to visit the EEA website to read the plan and asked that attention be given to the plan. Mr. Niedzwiecki said he and Andy Gottlieb were interviewed by Mindy Todd to discuss wastewater management.

Roger Putnam asked if there was a number to call regarding delays at the Sagamore Bridge during construction.

Paul Niedzwiecki said a 511 system has been set up giving daily updates and noted it basically says there are delays and doesn't really give specific information. He said a "Smart Routes" option is being looked at as a source of information. He said another alternative that is being looked at is possibly opening the Massachusetts Military Reservation (MMR) as a pass through and said signage would be improved in many areas to direct traffic. He said this is a serious issue and every attempt is being made to try to improve the situation.

Sheila Lyons said she received a call from a Dennis selectman asking about the possibility of opening the MMR to traffic. She said he was under the impression that was no longer being considered.

Paul Niedzwiecki said that is still on the table as an alternative. He said opening the MMR is still being considered.

■ MINUTES

The minutes of the August 6, 2009 Commission meeting were reviewed. Michael Blanton moved to approve the minutes. Peter Graham seconded the motion. A voted called on the motion passed with two abstentions.

The minutes of the August 20, 2009 Commission meeting were reviewed. Roy Richardson moved to approve the minutes. Elizabeth Taylor seconded the motion. A voted called on the motion passed with three abstentions.

■ MASHPEE WOODS ANR PLAN PROCEDURAL DENIAL—NOTIFICATION OF WITHDRAWAL

Kristy Senatori, chief regulatory officer at the Commission, said no action is needed as a procedural denial. She said since the hearing notice for the procedural denial was sent, the applicant has withdrawn his application from Commission review. She said at its meeting on September 2, 2009 the Mashpee Planning Board approved the withdrawal of the Mashpee Woods ANR Plan from the town of Mashpee. She said the Commission is being asked to vote to approve the withdrawal of the Mashpee Woods ANR Plan from Commission review.

Peter Graham moved to approve the withdrawal of the Mashpee Woods ANR Plan from Commission review. Roger Putnam seconded the motion. The motion passed with a unanimous vote.

■ **NOTIFICATION OF WITHDRAWAL OF MYSTIC REALTY TRUST**

Marisa Mejia, regulatory officer at the Commission, said originally the applicant was looking to divide the property but has since decided to sell the property as it currently exists without creating any new lot lines. She said on August 17, 2009 the applicant notified the Commission of this and asked that the Mystic Realty Trust project be withdrawn from Commission review. She said the Barnstable Planning Board voted on August 25, 2009 to approve the withdrawal of the project from the Town of Barnstable. She said the Commission is being asked to vote to approve the withdrawal of the Mystic Realty Trust project from Commission review.

Elizabeth Taylor moved to approve the withdrawal of the Mystic Realty Trust project from Commission review. Michael Blanton seconded the motion. The motion passed with a unanimous vote.

■ **NOTIFICATION OF WITHDRAWAL OF DANIELS C & D FACILITY EXPANSION**

Marisa Mejia, regulatory officer at the Commission, said the Commission received a letter from Green Seal Environmental Inc. on behalf of Daniels Recycling Company Inc. withdrawing their expansion proposal application from Commission review for the construction and demolition of the recycling facility located at 29 Giddiah Hill Road in Orleans. She said the Commission received an email from George Meservey, the Orleans Town Planner, stating that Daniels Recycling does not have any pending local applications for the expansion of the recycling facility in Orleans and the applicant has stated that he will not pursue the expansion at this time. Ms. Mejia said the Commission is being asked to vote to approve the withdrawal of the Daniels Recycling Facility from Commission review.

Roger Putnam moved to approve the withdrawal of the Daniels Recycling Facility from Commission review. Michael Blanton seconded the motion. The motion passed with a unanimous vote.

■ **BARNSTABLE MUNICIPAL AIRPORT TERMINAL ACCESS DESIGN CHANGE**

Chair John Harris noted that this is a continued hearing from August 6, 2009.

Page Czepiga, regulatory officer at the Commission, said no action would be taken at today's hearing and said it has been requested that today's hearing be continued to Thursday, September 24, 2009 at 2:00 p.m. in the Conference Room at the Commission Office.

Roger Putnam moved to continue today's hearing to Thursday, September 24, 2009. Elizabeth Taylor seconded the motion. The motion passed with a unanimous vote.

■ **DRAFT CHAPTER H, MUNICIPAL APPLICATION FOR REVISIONS TO DRI THRESHOLDS**

Elizabeth Taylor read the hearing notice and opened the hearing at 3:30 p.m.

Jessica Wielgus, Commission counsel, said on June 11, 2009 the Commission voted to forward to the Assembly of Delegates (AOD) Draft Chapter H, Municipal Application for Revisions to DRI Thresholds for adoption by Ordinance. She said Chapter H was reviewed by the AOD Committee and went before the full AOD at its meeting on August 5, 2009. She said at the August 5 meeting the AOD voted to remand Chapter H back to the Commission for restudy and redrafting on the following issues: 1) review and consider including as part of the process in Chapter H the requirement for a town meeting vote prior to towns lowering or raising thresholds; 2) reconsider the requirement of having three-quarters (percentage) of the AOD voting to return an appeal from a town to the Commission for restudy instead of a two-thirds vote, which is typical of the AOD when needing a super majority vote. Also, examine in Section 10 and clarify what action the Commission would take if a town's appeal is upheld and it's returned to the Commission and; 3) review the requirement for towns to demonstrate

how it would fund infrastructure improvements if thresholds under Chapter H are raised. Using PowerPoint slides Ms. Wielgus addressed the issues raised by the AOD.

Regarding concern #1 she referred to Section 12 of Commission Act where it says the Commission may propose standards and criteria specifying the types of development which are likely to present development issues for adoption by ordinance to the AOD and the Commission may propose and the AOD may adopt different standards and criteria for development of regional impact for different areas of Barnstable County. She also referred to Section 21 of the Act and said the Act was passed by a countywide election and noted where Section 12(e) addresses "interim" standards and criteria and said the legislature and voters contemplated threshold changes at the time of passage of the Act. She said there is no requirement for town meeting in Section 12 of the Act. She said references about town meeting are made in other areas of the Act and noted Section 9 of the Act, Local Comprehensive Plans states that the local planning committee may develop an LCP for submission to town meeting or a town legislative body for adoption. Ms. Wielgus said the AOD is limited by law and she explained the Home Rule Charter, Section 6 and Section 2-5; Administrative Code, Section 2.16; Home Rule Charter, Article 4-2(3); and Supreme Judicial Court ruling in regard to statutory language. She said the Act was amended to generally exclude from consideration by citizen referendum any ordinance adopted pursuant to the Commission Act except for limited circumstances. Ms. Wielgus said nothing in Chapter H would restrict each town from putting their proposed revised thresholds before town meeting if they so choose.

Regarding concern #2 to reconsider the requirement of having three-quarters percentage of the AOD voting to return an appeal for a town to the Commission for restudy and to examine Chapter H, Section 10 and clarify action the Commission would take if a town's appeal is returned to the Commission. She referred to Home Rule Charter, Section 2-8(e) which requires votes representing not less than three-quarters of the AOD to reject an ordinance after it has been introduced. She said the three-quarters requirement simply tracks the percentage that is required of the AOD with the Home Rule Charter to reject an ordinance. She said Section 10 of Chapter H provides towns the opportunity for a second look at its application. She said the role of the AOD is to look at Section 6(a)1-6, Review and Approval Criteria for Higher DRI Thresholds and Section 7, Review Criteria for Lower DRI Thresholds within Chapter H to determine whether the Commission erred in applying them.

Regarding concern #3 review the requirement to demonstrate how it would fund infrastructure improvements if thresholds were raised. Ms. Wielgus referred to Section 1(c) of the Act that talks about the provision of adequate capital facilities. She said this is defined as public facilities and services necessary to support development, including but not limited to roads, water, sewers, waste disposal, affordable housing, schools, police and fire protection facilities. She said Section 4 of the Act requires the Commission to establish a process and procedures for siting and developing capital facilities and developments of regional impact which are necessary to ensure balanced growth. She said Section 12(b)(2) of the Act states that standards and criteria for developments of regional impact shall be based upon the impact of the development on an existing capital facilities, including but not limited to, transportation and infrastructure, sewage, waste disposal, water supply, fair affordable housing, and meaningful employment.

Ms. Wielgus said on August 31, 2009 the three questions were brought before the Regulatory Committee. She said after restudy and consideration on redrafting three options were considered: 1) to not send anything forward, 2) to send forward to the AOD and amend legislation, or 3) send forward to the AOD as written. She said the Regulatory Committee voted to send Chapter H forward to the AOD as written. She said today the Commission is being asked to consider the same three options.

Joy Brookshire asked Ms. Wielgus to state the ultimate goal that would benefit towns.

Jessica Wielgus said it would allow towns to raise and lower thresholds and the goal would be to give more control to towns.

Roy Richardson said at the Regulatory Committee it was pointed out that this came about as a result of the 21st Century Task Force. He said it would be giving towns an important role to play and said the Commission paid attention to the Task Force.

Jessica Wielgus said part of the Commission's ability to release raised thresholds is that towns show that there is adequate infrastructure. She said for that reason question #3 is very important.

Sheila Lyons said there were concerns that planning boards and boards of selectmen would make the final decision instead of the public.

Jessica Wielgus said the Commission would encourage towns to seek public input if a town chooses to do that.

Sheila Lyons said perhaps it would have helped the AOD to have had that clarification at their meeting.

Jessica Wielgus said when Chapter H was taken up at the AOD, Commission staff was not allowed to comment.

Sheila Lyons said it was the type of thing where the AOD subcommittee refrained from making a decision so that the entire body could hear it. She said Commission staff was in the audience to address concerns but as the subject matter was taken up the Assembly convened which meant any comment at that time was not going to be accepted which was a flaw in the process. She said their timing to convene could have been done in a different way and agreed that it was a frustrating day.

Joy Brookshire said town planners, boards of selectmen and the town council in Barnstable are ultimately responsible for looking at this and making decisions. She said it would be remiss on their part not to hold public hearings in their towns to discuss this and get input from citizens in their towns. She said after listening to the Task Force the Commission has been laying the ground work for Chapter H and mapping in each of the towns to set up different areas in towns for industrial purposes, open space, affordable housing, etc. She said town planners, planning boards and selectmen have been laying the groundwork for Chapter H for quite a while. She said she feels confident that the public will be able to voice their opinions. She said often times it's easier to get the public involved to discuss an issue at a board of selectmen meeting as opposed to a town meeting.

Jessica Wielgus said Chapter H Section 5.C.3 requires that prior to a town submitting an application, evidence must be provided showing that prior to submitting an application at least one advertised public hearing was held by that town on the proposed change.

Sheila Lyons said there was discussion regarding the Town of Barnstable because they have a different government structure in that they don't have a board of selectmen but a town council. She said there was discussion that the authority should not just go to the council but instead to the executive town manager. She asked why it's with the town council.

Jessica Wielgus said on this particular draft the intent of the legislation was to provide that a legislative voting body would be the one who would be able to nominate and that is why the town council was chosen in this particular piece.

Sue Pommrehn said if a town decided that it wanted to go before town meeting for a vote how would the mechanism work for them to do that.

Jessica Wielgus said the town could simply put that forward as they would do with any town meeting prior to bringing it forward to their boards to submit an application. She said a town could choose to do that anytime prior to submitting an application.

Elizabeth Taylor asked when the Commission initially approached each town to do their initial map did any of the towns go through town meeting. She said she thought the original designation of areas in towns was a critical part of the process and she is not aware of any town having gone through town meeting to do that part of it.

Sharon Rooney, chief planner at the Commission, said what was required for the mapping was that it be endorsed by the planning board. She said that was the sole requirement that the Commission had. She said she is not aware of any town going through town meeting to do that.

Joy Brookshire asked Ms. Wielgus to explain why the Commission stayed with the three-quarters vote and not the two-thirds from a practicality viewpoint.

Jessica Wielgus said from a practicality viewpoint the difference in the two-thirds and three-quarters percent is 8% of the population vote. She said the feeling of the Regulatory Committee was that it was more representative to give the opportunity to smaller towns to weigh in on those questions.

Sue Pommrehn asked when the Commission brings ordinances before the AOD at other times such as the Regional Policy Plan is a two-thirds vote or a three-quarters vote used.

Jessica Wielgus said it would be a majority vote.

Roger Putnam said perhaps people are not aware of the difference in the way the Commission votes and the AOD.

Jessica Wielgus said the Commission vote is one vote per Commission member. She said the Assembly's voting system is a weighted vote based on a percentage of a town's population and that is a requirement as set forth in the Charter. She said the larger towns have more weight in each vote that is taken place.

Sheila Lyons explained a weight distribution system and used the Town of Barnstable as an example of having a higher percentage vote and the Towns of Wellfleet and Truro as having a lower percentage vote. She said the three-quarters distribution would be more beneficial to smaller towns.

John McCormack, Jr. asked if Commission counsel had a recommendation in the next steps regarding the three options.

Chair John Harris called for public comment and there was none.

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

Jessica Wielgus suggested that the Commission make three separate motions to address the three concerns.

Concern #1: Review and consider including as part of the process in Chapter H the requirement for a town meeting vote prior to towns lowering or raising thresholds. Roy Richardson moved that Chapter H be forwarded to the AOD as written. Peter Graham seconded the motion. A vote called on the motion passed with 9 votes in favor and 3 votes opposed.

Concern #2: Reconsider the requirement of three-quarters of the AOD voting to return an appeal and also examine Section 10 and clarify what action the Commission would take regarding a town's appeal. Peter Graham moved that Chapter H be remanded back to the AOD as written. Sheila Lyons seconded the motion. The motion passed with 11 votes in favor and 1 vote opposed.

Concern #3: Review the requirement for towns to demonstrate how it would fund infrastructure improvements if thresholds under Chapter H were raised. Peter Graham moved that Chapter H be remanded back to the AOD as written. Frank Hogan seconded the motion.

Michael Blanton asked what would constitute a demonstration of funding for infrastructure and what kind of burden is being placed on a municipality.

Jessica Wielgus said it could be a number of things. She said ultimately in order to raise thresholds a town must demonstrate that they have adequate infrastructure and the requirement that they demonstrate that infrastructure is just a general requirement. She said how they meet that burden could be done in a number of ways. She said it's generally left open with no minimum required threshold. She said it just has to happen.

Paul Niedzwiecki used the Hyannis Growth Incentive Zone (GIZ) as an example and said Barnstable was required to demonstrate wastewater capacity and show a plan on improvements on how they were going to increase capacity and expand that over time. He said additionally on the traffic side the west end rotary was an area the Commission felt should be upgraded so the town committed to that within a five-year time frame that they would upgrade the west end rotary. He said that was a demonstration of capital plans consistent with the development that was anticipated there. He said the Commission Act requires the Commission to ask towns these questions; it's not a choice.

Sue Pommrehn inquired about concurrency of improvements that would be necessary.

Paul Niedzwiecki said in the case of the Hyannis GIZ they planned for a five-year period. He said there are potential GIZs that are under discussion by towns and the towns are asking these questions. He said there are some scenarios with a significant emphasis on redevelopment and there may be adequate existing infrastructure available so towns would just need to identify that.

A vote called on the motion to forward Chapter H to the AOD as written regarding concern #3 passed with a unanimous vote.

Jessica Wielgus recommended to the Commission that they also move to forward to the AOD for consideration Chapter A, Enabling Regulations Governing Developments of Regional Impact, as there is also amendment language within that to enable the use of Chapter H.

Roy Richardson moved to forward Chapter A to the AOD for the purpose of incorporating Chapter H. Elizabeth Taylor seconded the motion. The motion passed with a unanimous vote.

■ DRAFT CAPE COD TRANSPORTATION IMPROVEMENT PROGRAM 2010-2013

Priscilla Leclerc, senior transportation planner at the Commission, said the Cape Cod Transportation Improvement Program (TIP) is devised from the Regional Transportation Plan (RTP) and includes short-term transportation projects proposed for implementation in the next four years. She said the TIP is required to be updated every four years and in Massachusetts the TIP is updated each year. She said the development of the TIP occurs in coordination with the statewide schedule in a statewide program of projects in place and submitted for federal approvals prior to the beginning of the Federal Fiscal Year on October 1. She said the TIP is a listing of federal aid eligible transportation projects for Cape Cod prepared by Cape Cod Commission transportation staff,

the Cape Cod Regional Transit Authority, Executive Office of Transportation and Public Works, Massachusetts Highway Department and Cape Cod Joint Transportation Committee as well as public comment. She said the TIP must be financially constrained to financial estimates developed with federal, state and regional participants. Using PowerPoint slides Ms. Leclerc provided an overview of transportation projects and estimated funds for fiscal year 2010-2013. She outlined the expected timing and next steps in the TIP process and said on September 28, 2009 the MPO would be meeting to consider changes and endorsement of the TIP for FY 2010-2013. She said TIPs from 13 regions are combined into the State Transportation Improvement Program and October 2009 begins Federal Fiscal Year 2010 federal review/approval for TIP projects to be advertised for construction or implementation, providing design and permitting is completed. She said the Draft TIP for Federal Fiscal Years 2010-2013 was voted to be released for public comment by the Cape Cod Metropolitan Planning Organization (MPO) on August 24, 2009 and is available online at www.gocapecod.org/tip. She said comments are due on or before Friday, September 25, 2009 by 11:00 a.m. and can be submitted to the Cape Cod Commission Transportation Program either through mail service, dropped off at the Commission office, by fax at (508) 362-3135 or by email to ccjtc@capecodcommission.org.

Elizabeth Taylor said she was curious why Route 124 and Route 137 are listed separately for Harwich and Brewster. She said it's one road and asked why they wouldn't do the whole road at one time.

Priscilla Leclerc said the town of Harwich designed that section of Route 137 and they are paying for the design.

Joy Brookshire referred to page 18 of the Draft TIP and said "Bridge Street" should be "Bridge Road."

■ OTHER BUSINESS

Marianna Sarkisyan, regulatory officer at the Commission, asked the subcommittee for the Brewster VFW Pavilion project to vote on the minutes from the August 6, 2009 subcommittee meeting.

Michael Blanton called for a motion from the subcommittee to approve the minutes of August 6, 2009. Elizabeth Taylor moved to approve the minutes of August 6, 2009. Robert Bradley seconded the motion. The motion passed with a unanimous vote.

Michael Blanton commented on the Chapter H regulations and said he is pleased to see it directed back to the Assembly of Delegates. He said it is especially important to the Town of Bourne.

A motion was made to adjourn at 4:20 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Elizabeth Taylor, Secretary