



# CAPE COD COMMISSION

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## Minutes

### Meeting of Cape Cod Commission

December 3, 2009

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	Brad Crowell	Absent
Eastham	Joy Brookshire	✓
Falmouth	Vacant	Vacant
Harwich	Robert Bradley	✓
Mashpee	Ernest Virgilio	Absent
Orleans	Peter Monger	✓
Provincetown	Vacant	Vacant
Sandwich	Sue Pommrehn	✓
Truro	Peter Graham	Absent
Wellfleet	Roger Putnam	✓
Yarmouth	John McCormack, Jr.	✓
County Commissioner	Sheila Lyons	✓
Minority Representative	John Harris	Absent
Native American Rep.	Mark Harding	Absent
Governor's Appointee	Herb Olsen	Absent



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

Vice chair Royden Richardson welcomed Peter Monger, the newly appointed Orleans Representative to the Cape Cod Commission.

#### ■ EXECUTIVE DIRECTOR'S REPORT

Paul Niedzwiecki welcomed Peter Monger to the Commission. He also introduced and welcomed Andy Walsh who is the new marine resources specialist at the Commission. Mr. Niedzwiecki said the Commission's holiday party would be held on Thursday, December 17 at Ardeo's Grille in Yarmouthport immediately following the Commission meeting. He said the Commission has been recognized by the Massachusetts APA for outstanding planning and will be receiving an award on December 18 for its publication *Contextual Design on Cape Cod—Design Guidelines for Large-scale Development*. He said the Commission is also being recognized for its Regional Policy Plan and noted that Ryan Christenberry, Commission planner, has been invited to give a presentation on "green development" in New Orleans. Mr. Niedzwiecki said the Assembly of Delegates passed Chapter H yesterday. He said Chapter H completes the recommendations made by the 21<sup>st</sup> Century Task Force for the Cape Cod Commission. He congratulated Commission staff and the Planning Committee for their work on Chapter H.

#### ■ MINUTES

The minutes of the October 1, 2009 Commission meeting were reviewed. Roger Putnam moved to approve the minutes. Michael Blanton seconded the motion. A vote called on the motion passed with one abstention.

The minutes of the October 15, 2009 Commission meeting were reviewed. Roger Putnam moved to approve the minutes. Elizabeth Taylor seconded the motion. A vote called on the motion passed with three abstentions.

The minutes of the October 29, 2009 Commission meeting were reviewed. Elizabeth Taylor moved to approve the minutes. John McCormack seconded the motion. A vote called on the motion passed with three abstentions.

#### ■ DISCRETIONARY REFERRAL FOR HYANNISPORT CLUB—2 IRVING AVENUE, HYANNISPORT

Marianna Sarkisyan, regulatory officer at the Commission, said on November 12, 2009 the Commission received a limited discretionary referral from the Barnstable Historical Commission for the demolition of the Hezekiah Marchant House located on the grounds of the Hyannisport Club at 2 Irving Avenue in Hyannisport. She said an application was made to the Barnstable Historical Commission for the demolition of the entire building and said the permit was denied and a demolition delay is currently in effect that will expire on December 5, 2009. Ms. Sarkisyan said when the delay ends, the applicant may apply to the Town of Barnstable for a demolition permit. She said the Marchant House was built in the mid-1700's and is one of the oldest buildings in Hyannisport. She said the Barnstable Historical Commission and their consultants have determined that the building is eligible for listing on the National Register of Historic Places. She said the building is located on the grounds of the Hyannisport Club, a private 18-hole golf club, and is one of eight buildings used in conjunction with golf club operations. She said the house is used to house Hyannisport Club employees, in particular the Hyannisport Club's tennis professional who receives housing as part of his compensation for his services as an employee of the Club. Ms. Sarkisyan explained Commission jurisdiction pursuant to Section 2(b)(i) and Section 3 of the Development of Regional Impact (DRI) Enabling Regulations. She said the project is not exempt under the provisions of Section 22 of the Cape Cod Commission Act and it is not exempt under Section 2(b)(ii) of the Enabling Regulations which provides that single-family dwellings shall not be considered to have significant impacts on the values and purposes protected by the Act. She said the Town of Barnstable does not consider the Marchant House a "single-family dwelling," defined as a detached residential building designed for and occupied by a single family. She said according to the Town's Growth Management Department it is not a one single family dwelling as it is one of eight buildings located on the Hyannisport Golf Club property that are used in conjunction with golf course operations. She said Charles Marchant, the descendant of the house's original builder, first leased, and then sold

his entire property including land containing the Marchant House to the Hyannisport Club to make the 18-hole golf course possible. She said the entire property is classified as a golf course and the Barnstable Historical Commission indicates that the property has been used as lodging in the summer for employees of the Hyannisport Club. She said the building is an accessory use to the principal use of the property, which is a golf course, and is used in support of that operation. She said although Massachusetts Historical Commission (MHC) has not provided an official determination of eligibility, both the Barnstable Historical Commission and their consultants believe that the Marchant House is eligible for listing on the National Register. Ms. Sarkisyan said the Commission is being asked today to consider whether the development is exempt pursuant to the Cape Cod Commission Act or Enabling Regulations and may have regional impacts. She explained possible Section 12(b)(i) concerns and impacts the project may have in the area of historical resources, cultural resources and architectural resources. She said on November 30, 2009 the Commission's Regulatory Committee found and recommended to the Commission that the building is not one single-family dwelling and that the Section 2(b)(ii) exemption therefore does not apply. She said the Commission is being asked to make a determination on whether the house is a one single-family dwelling and therefore, it is or is it not exempt under Section 2(b)(ii) of the DRI Enabling Regulations and does the Commission accept the referral as a development that may have regional impacts and presents one or more concerns listed in Section 12(b) of the Act.

Attorney Eliza Cox, of Nutter McClennen & Fish representing the Hyannisport Club, said she would focus on the procedural issue as to why the Commission should not accept the project for review. She said the Marchant House is a single-family house and the Commission's regulations do not allow the Commission to accept this as a discretionary referral since Massachusetts Historical Commission has not commented on it as a historical structure. She said it's clearly a single-family dwelling and, if accepted by the Commission, it will muddy the waters for future discretionary referrals. She said the Club has been in existence for over 100 years and very little has changed and said the Club wants to maintain the character of the area. She said the Marchant House is in deteriorating condition. Attorney Cox referred to a handout she distributed to Commission members and talked about Section 2(b)(ii) of the Commission's Enabling Regulations and said a one single-family dwelling shall not be considered to have significant impacts on the values and resources protected by the Act and may not be referred to the Commission as a discretionary referral unless a dwelling has been determined by the MHC to be eligible for listing on the National Register for Historic Places. She explained applicable definitions of a "Dwelling" and "Single Family" as defined by the Town of Barnstable Zoning Ordinance Section 240-128 and Massachusetts State Building Code 780 CMR 52.02. She said the Marchant House has always been used as a single-family dwelling. She said it's a single, detached house that has been occupied and used for residential purposes by a single family for the past 40 years. She said Commission staff says the Town of Barnstable does not consider this as a single-family dwelling and she disagrees. She described the Club area and house and referred to the Barnstable Zoning Board of Appeals' decisions, Appeal Numbers 1997-57 and 1997-58 where the house is classified as a single-family dwelling. She said originally the Barnstable Historical Commission saw this as a single-family house. She said the Barnstable Historical Commission put a freeze on demolition and after that point they asked MHC to make a determination on its eligibility as a historic structure. She said MHC has declined to make a determination on its eligibility. She said based on that the Commission cannot accept this as a discretionary referral. She said the use of the house has nothing to do with golf course operations. She said it's used as a single-family house and an occupant of the house does not determine whether a house is a single-family dwelling. She said the employment of the person in the house also does not determine whether it's a single-family house. She said the structure is clearly a detached residential house occupied by one family. Attorney Cox said to find otherwise establishes a poor precedent for future discretionary referrals. She said she believes the Commission is precluded from accepting this because the Marchant House is a single-family dwelling.

Roy Richardson said in terms of the person occupying the building is that person renting the house or is it part of his employment.

Attorney Cox said it's done through his salary. She said his salary is adjusted.

Roy Richardson inquired about MHC not commenting and asked why hasn't the owner requested this from MHC.

Attorney Cox said the applicant is not required to do that.

Roy Richardson said the Commission's Staff Report says MHC declines to determine eligibility in Barnstable and asked if this is a town-specific rule.

Jessica Wielgus, Commission counsel, said it's a position the MHC has chosen to take in the Town of Barnstable.

Roy Richardson asked why MHC has taken this position.

Sarah Korjeff, historic preservation specialist at the Commission, said she has been told that MHC has been recommended not to make a determination unless requested by the owner.

Jo Anne Miller Buntich, Interim Director Barnstable Growth Management Department, said the Town of Barnstable does not use the tool of a discretionary referral in a light manner. She said it's only used when there is no other recourse. She said the Town had to determine if the house was being used as part of the business or was it a single-family home. She said the Town considered it very carefully and determined that it's part of the golf course business. She said the structure is very old and related to salt works in the area years ago; she said it's about the structure in the open setting. She said the Town believes it's unfortunate that MHC is not providing comment and cannot understand why they chose not to participate. She said the Town believes the Marchant House is being used as part of the golf course business and the Town is here today because the applicants plan to demolish the house.

Jackie Etsten, planner with the Town of Barnstable, said the Marchant House is one of the oldest houses in Hyannisport. She said the house grew as families and fortunes grew. She said the Marchant family were farmers and became successful merchants in Hyannisport and said the Marchant House has a special association with Hyannisport and the whole town. She said she believes the project should be before the Commission as a mandatory referral. She said the house is part of a corporation and asked for support in saving the house.

Barbara Flynn, chairwoman of the Barnstable Historical Commission, said the house was given to the Club in honor of a bride who died in the house and said it has been referred to as Julia's House after Julia Angier Ewing. She said it was remodeled in Julia's name and has been refurbished. She said the house is a real treasure and it's in fairly good condition.

Farley Lewis, resident of Hyannisport, said she objects to the demolition of this historic property.

Jay Tracey said the Club has owned the house for a long time. He said the house is a single-family home. He said the Club's tennis professional has used the house during the summer as part of his employment. He said the only Club business in regard to the house has been for use by the Club tennis professional.

Dorr Fox, Preservation Massachusetts, said Preservation Massachusetts is asking that the Cape Cod Commission preserve the Marchant House. He said the Commission is the only governmental body that has the authority. He said the house is not in an historic district so the town has no authority here. He said the Marchant House is an important structure and Preservation Massachusetts supports the Commission accepting the project for review. He said the Marchant House is not owned by a single-family. He said the house is owned by a corporation and is used as part of the business operation.

Chris Babcock, resident of Hyannisport, referred to a publication that provides a history of the Marchant family and the area. He said the Club has about 500 members and said probably only 50 of the 500 members know about the history of the area. He said he supports saving the house.

George Jessup, of George Jessup Architect, said the house is in reasonably good condition. He said the structure, foundation and grounds surrounding the house are in good condition. Re-use of the house is to be determined by the Club. Demolition of the house is to provide more parking. He said an option to demolition is a new location.

Elizabeth Taylor said she seriously thinks the Commission needs to err on the side of caution and accept the project for review. She said she doesn't understand the MHC stricture. She said she supports accepting the project for review.

Elizabeth Taylor moved to accept the discretionary referral for review. Michael Blanton seconded the motion.

Joy Brookshire said perhaps to say the house is not a single family home because it's more of a convenience for the tennis professional. She questioned whether the house had been insured as a single-family home. She said she is concerned about demolishing the house. She said she is concerned that there was no conversation to sell or perhaps consider another sensitive option rather than demolishing the house. She said Ms. Cox has said it's too costly to repair the house and if the house is in such bad condition why is the tennis professional living in a house in such bad condition and said that would be a liability. Ms. Brookshire said she supports accepting the project to allow more time to consider other options instead of demolition.

Roger Putnam asked for clarification on the motions.

Jessica Wielgus said the Commission must first decide whether the house is or is not exempt. If the Commission determines no exemption, then the Commission will vote whether to accept the project for review. If the Commission determines that it is exempt, then that determination takes it off the table.

Elizabeth rephrased her motion and moved that the Commission determines that the house is not exempt under Section 2(b)(ii) of the DRI Enabling Regulations and Section 22 of the Cape Cod Commission Act. Sheila Lyons seconded the motion.

Sheila Lyons referred to a comment made by Ms. Cox where she said a person's occupation does not determine whether a house is a single-family home. Ms. Lyons said the house has been used by a business and said the tennis professional only used it in the summer. She said it's one of the buildings on the property used as a business and it can't be considered to be a single-family home as we know it to be in a neighborhood. She said Ms. Cox commented that the Club keeps it in pristine condition and yet she says the building is beyond repair.

Sue Pommrehn expressed concern that the Commission may be setting a precedent since MHC has not determined eligibility. She questioned whether the owners are seeking that eligibility. She said she is concerned that the Commission is setting a precedent and reaching into private property rights.

Jessica Wielgus said the threshold question is whether it's a single-family dwelling. She said if the Commission determines that it's exempt then it takes it off the table.

Sue Pommrehn questioned in what way is it not a single-family home.

Sheila Lyons said the business determines who lives there and said the house is used as part of their compensation plan for their business on their business property. She said she believes that takes away from private ownership. She said the Marchant House is one of the last buildings of its time and MHC has not said no and they have not said yes. She said she believes the Commission has an obligation to look at this. She said there may be other options for the house.

Roy Richardson said the Commission was established to protect resources and said it's part of the Commission's role. He said the Commission is not stepping in and disrupting the business, we want to help the business.

Sue Pommrehn said she supports preservation.

Roy Richardson said since the owner is not requesting a determination by MHC perhaps they don't want to know.

Roger Putnam said the business can decide to use the house as they wish but that doesn't take away the fact that it's being used as a business. He said the Commission's responsibility is to preserve.

A vote called on the motion that the Commission determines that the house is not exempt passed with nine votes in favor, one vote opposed and one abstention.

Elizabeth Taylor moved to accept the referral as a development that may have regional impacts and which presents one or more concerns listed in Section 12(b) of the Act.

Roger Putnam asked that the concerns listed in Section 12(b) of the Act be read.

Jessica Wielgus read the concerns listed Section 12(b).

Roger Putnam seconded the motion. A vote called on the motion to accept the discretionary referral for Commission review passed with nine votes in favor.

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

Respectfully submitted,

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Elizabeth Taylor, Secretary