

Cape Cod Metropolitan Planning Organization (MPO)

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DRAFT Meeting Minutes of April 24, 2017

MPO Members in Attendance

Steve Woelfel
Pam Haznar
Leo Cakounes
Dan Santos
Harold Mitchell
Jill Goldsmith
Sheryl McMahon
Robert Weinstein

Representing

MassDOT, Office of Transportation Planning, representing Stephanie Pollack, MassDOT Secretary/Chief Executive Director
MassDOT Highway Division, District 5 representing Thomas Tinlin, MassDOT Highway Administrator
Barnstable County Commissioner, Alternate
Representing Barnstable Town Council
Cape Cod Commission
Cape Cod Regional Transit Authority, Alternate
Sub Region B: Dennis and Yarmouth
Sub Region D: Truro, Wellfleet, Provincetown

Others in Attendance

Gabriel Sherman
Timothy Kochan
Wayne Lamson
Emily Budzunkiewicz
Terry Whalen
Tom Andrade
Tom Temple
John Fuller
Lance Lambros
Alan Pollock
Stephen Buckley
Elaine Gibbs
Gloria Freeman
David Burns, MD
Rick Leavitt
Cory Metters
Amanda V. Love
Dean P. Nicastro
Seth Taylor
Carol Cummings
Anne B. Timpson
Lynn Pleffner
Karen Matherson
David R. Whitcomb
Jessica Wielgus
Patty Daley
Glenn Cannon
Steven Tupper
Lev Malakhoff
Lisa Dillon
Martha Hevenor

Representing

MassDOT, OTP Liaison
MassDOT Highway Division, District 5
Steamship Authority
MassDOT's Safe Routes to Schools
Chatham, Town of, DPW
Dennis, Town of, DPW
Chatham, Town of, DPW
Cape Cod Regional Transit Authority
Senator DeMacedo's office
Cape Cod Chronicle
openchatham.com
Chatham Citizen
Chatham Citizen
West Chatham Association, Inc
West Chatham Village & Business Association
Board of Selectmen, Chatham
Board of Selectmen, Chatham
Board of Selectmen, Chatham
Board of Selectmen, Chatham
West Chatham Citizen
Chatham, Citizen
West Chatham, Citizen
Chatham, Citizen
West Chatham Resident
Cape Cod Commission
Cape Cod Commission

Call to order:

The Chairman, Steve Woelfel the meeting to order at 1:00 and asked that members and the public introduce themselves.

Minutes of March 20, 2017

Upon a motion to approve the DRAFT minutes of March 20, 2017 by Sheryl McMahan, seconded by Robert Weinstein, the vote was passed unanimously.

Public Comment

Mr. Woelfel stated that the meeting is being recorded by my staff and Mr. Buckley. He stated that the preference of the meeting is that public comments are made during the public comment period of the meeting. The public will then have another opportunity to comment during the TIP discussion. Keep in mind that this is a 5-year TIP and there are numerous projects to be discussed.

Amanda Love stated that the Board of Selectmen voted on the West Chatham Project and that there was a failed vote. A letter from the town with this information is attached.

Dr. David Burns stated that Ms. Seldin stated that the MPO is not here to redesign the project but the MPO is here (he hopes) to suggest that the project be tabled. Mr. Burns asked that the MPO take another look at the project since the objection to it is so high and a strong majority against it.

Anne Timpson read a letter from Tony Zombas. Mr. Zombas owns Shop Ahoy Plaza and neighboring properties. He feels that an overwhelming majority of businesses feel that the two-way turning lane has served the businesses well. He believes that customers will have a hard time gaining access to his property with new design since his primary entrance will be removed. The property owners have written, spoken and voted to stop the project, stating that they don't need it or want it. Chatham townspeople voted against continuing this project at the Feb 2013 town meeting. The town voted to reject the West Chatham project at the last BOS meeting and the Town failed to continue to support the project and he hopes that it will be eliminated from the TIP. It has now been learned that the construction will take 5 seasons, if no problems arise, and they always do. Respectfully he asks that the MPO reconsider the effect on the businesses, customers, neighborhood center and lively hood of the business owners and abandon the project.

Rick Leavitt stated that he supports the project and has all along. My Leavitt's full comments are attached.

Carol Cummings, business owner in West Chatham and has been pleased with the 3rd left turn lane. She feels that the change is not for safety, but to beautify that section of town. She feels that the corridor is sufficient and believes that lights and crosswalks would be helpful adding that businesses suffered during the construction of the sewer project. She stated that the shoulder seasons are very important to the businesses as they are as busy in the fall as in the summer months. The moment she understood the project she was against it. She asked that the MPO reconsider the project as the money could be better allocated elsewhere such as Rte. 28 in Cotuit and stated that she supports Mr. Zombas' letter.

Gloria Freeman, Chatham Citizen feels that she must be here to refute the false statements being made. At the last meeting, a Chatham Selectmen announced that before Town meeting the article was voted non-binding. Look at the archived meeting on May 13, 2013 to confirm. Dishonest practices have been going on for years and they continue. At a meeting last Tuesday, the former Selectmen stated that the moderator controls town meeting. The town moderator does not decide which articles are binding and which are not. At that meeting, after the vote the town manager advised the moderator that Town Council said "he should announce that the article was non-binding. Town council cannot make that decision, it is his opinion. The same selectmen stated that if the former BOS withdrew their support from the project, money for Chatham in the future would not be forthcoming. Another former selectman reference Article 12 from the 2007 annual meeting warrant.

Elaine Gibbs a 35-year resident of Chatham stated that this is a controversial project. There have been numerous people coming forth that will be directly affected by the project. She feels that this is a Board of Selectmen developer driven project using Federal Tax money whose ultimate objection is to turn this area into a multi-family enclave. This will be an irreversible loss for most of Chatham. So much time has been spent trying to correct the record while false claims are repeated. The premise of the project is false. She summarized Town Charter. The town voted to defund and that information should have been reported. What we still don't know about the project is astounding. Traffic has not been measured for peak season or on the potential backups due to the roundabouts. No studies of future multifamily developments on local traffic or safety issues because of the development. The entire area will be changed and there will be condominiums everywhere which will have an impact on the design. Local businesses have not been contacted for input and we still don't know who will be paying for the maintenance of the roundabouts. People will take alternate routes to avoid the traffic which will have a negative impact on businesses. She stated that design flaws have been pointed out and been ignored. She feels that the MPO's job is to make these decisions, and if you look at the facts, she urges us to vote NO.

Karen McPherson, Chatham stated that a tie vote does not mean that the town is in favor, the Selectmen recused himself because his wife has a business along the corridor or it would have been a 3 to 2 vote. Ms. McPherson uses the corridor daily and is convinced it will improve the roadway and in favor of the project.

Seth Taylor stated that our democratic form of government is useless without application of the rule law. A 3 to 2 vote in the town of Chatham is false. Mr. Dykens recused himself as a matter of Massachusetts Conflict of Law. It was a failed vote. The current sitting BOS for the Town of Chatham, have taken a vote and they do not support the project.

Dean NiCastro, Chatham, BOS has two questions and a comment. He would like to know whether there will be on or two lanes open during the construction of the project according to the DPW director, it is quite possible that two lanes could be open. Second question is regarding the roundabout at George Ryder Rd and whether or not there will be vegetation in the center or flat so that an oversized vehicle could pass through it. Mr. Niastro suggested that we do not attach significance to the BOS vote as it was a gratuitous exercise. As you have heard from each of the 4 selectmen and it wasn't a surprise. The Agenda item was requested from the Selectmen whom opposed the project and who is a candidate for re-election in two weeks' time and feels that things could change after the election and there is no need to make a final decision today.

David Whitcom Chatham Board of Selectmen from 2002-2013 and during that time he supported the project as well as the 7 other BOS members. He is convinced that the Town of Chatham supports the project and hopes that the criteria that is used is the criteria that got us her today and you will continue to support the project.

Lynn Plephner a resident of West Chatham was appointed to the Planning Board of Chatham by the BOS and was Chairman for 2 terms as well as the Representative to the Cape Cod Commission. She talked about practicality, esthetics and responsibility. She stated that a simple remedy would be to add 35 MPH speed signs, flashing lights at Barnhill could be economical and made some suggestions on how to improve the roadway. Esthetics have improved over the past 5 years due to landowners. She stated that the proposed roundabouts are anything but relaxed. She feels that the BOS have abandon their responsibility with this project. She feels that MassDOT should have looked at the speed signs on this road. She encouraged the MPO to evaluate the project before any more money is spent.

Elaine Gibbs added that Mr. Dykens wife has a business along the corridor as well as residence. The state ethics law is very clear about that any public official who is an abutter has financial interest in a project they must recuse themselves from discussion and vote.

Mr. Taylor commented that Mr. Whitcomb made a statement that no one that we heard from today and opposes the project has been elected to office. That is false. Both Amanda Love and Mr. Taylor are current selectmen

Mr. Woelfel stated that the issues that the group are having are within the town and this is not the place for these discussions. We have enough information to do our jobs which is to vote on a 5-year TIP.

Critical Urban and Rural Freight Corridors: Cape Cod Commission staff will give a presentation outlining the National Highway Freight Program. National Highway Freight Program funds may be used for projects that contribute to the efficient movement of freight on the critical urban and rural freight corridors on Cape Cod. The Cape Cod Metropolitan Planning Organization will discuss the proposed critical urban and rural freight corridors on Cape Cod and may vote whether to release for public comment a list of proposed critical urban and rural freight corridors on Cape Cod. Lev Malakhoff, CCC Senior Transportation Engineer

Mr. Malakhoff presented a power point. The presentation lists the Goals and Outcomes of the Massachusetts Freight Plan, Requirements of the State Freight Plans, National Highway Freight Network, Designation of the CRFCs and CUFCs, Designation Process, Proposed Critical Rural Freight Corridor on Route 6, Proposed Critical Urban Freight Corridors; Routes 132 & 28; Yarmouth Road/Willow St and Route Descriptor.

Upon a motion to release the Critical Urban and Rural Freight Corridors on Cape Cod for a 21-day comment period by Leo Cakounes, seconded by Harold Mitchell, the vote was passed unanimously.

Mr. Cannon explained that there is a possibility to re-designate a corridor, but we need to go through the process now for eligibility.

Federal Fiscal Year 2018 Unified Planning Work Program (UPWP) Development: The UPWP is a list of transportation planning projects scheduled for funding and implementation as outlined in the Federal Fiscal Year 2018 (October 1, 2017 to September 30, 2018) UPWP document. Cape Cod Commission staff will give a presentation outlining potential planning projects to be included in the UPWP. The Cape Cod Metropolitan Planning Organization will discuss the proposed UPWP and may vote whether to release for public comment the list of transportation planning projects scheduled for funding and implementation as outlined in the Federal Fiscal Year 2018 UPWP.
- Glenn Cannon, Cape Cod Commission Director of Technical Services

Mr. Cannon presented a power point. The presentation describes Tasks 1 – 4. Task 3.1 within Task 3 proposed two Corridor studies which are outlined in the presentation and includes a DRAFTFY 2018 UPWP Funding Summary. The Cape Cod Unified Planning Work Program DRAFT April 14, 2017 document was also included.

Upon a motion to release the FFY 2018 UPWP for a public comment period of 21 days by Leo Cakounes, seconded by Sheryl McMahon, the vote was passed unanimously.

Federal Fiscal Years 2017-2021 Transportation Improvement Program (TIP) Amendment #2: The TIP is a recommended list of transportation projects to be advertised and eventually constructed using Massachusetts Department of Transportation, Federal Highway and Federal Transit Administration funding. Cape Cod Commission staff will describe a proposed Amendment to the 2017-2021 TIP in which the MassDOT Route 28 project in Dennis (#606707) will increase in cost by approximately \$1,400,000. The MPO may vote whether to release for public comment the Amended 2017-2021 TIP as described by CCC staff. - Steve Tupper, Cape Cod Commission Technical Services Planner

Upon a motion to release the amended FFY 2017-2021 TIP by Sheryl McMahon, seconded by Robert Weinstein, the vote was passed unanimously.

Ms. Haznar explained that the increased cost of the Dennis project is due to things that happened during the development of the project such as utilities, drainage and pavement treatment. These costs are being covered by the State.

Federal Fiscal Years 2018-2022 Transportation Improvement Program (TIP) Development: The TIP is a recommended list of transportation projects to be advertised and eventually constructed using Massachusetts Department of Transportation, Federal Highway Administration and Federal Transit Administration funding for Federal Fiscal Years 2018 to 2022 (October 1, 2017 to September 30, 2022). Cape Cod Commission staff will give a presentation explaining the process of developing the TIP. The Cape Cod Metropolitan Planning Organization will discuss the proposed TIP and may vote whether to release for public comment the 2018-2022 TIP list of projects to be constructed. - Steve Tupper, Cape Cod Commission Transportation Planner

Mr. Tupper presented a power point. The presentation included the Development Schedule, what it takes to get a Project on the TIP, Project Selection Factors, Transit Funding Programs Reflected in the TIP, 2018-2022 CCRTA TIP Project Summary, FFY 2018-22 Highway Project Discussion: State Prioritized Projects, Highway Funding for MPO Projects, FFY 2018-2022 Regional Targets, FFY 2018-22 Highway Project Discussion; Projects as programmed in the FFY 2017-21 TIP with updated cost estimates, and FFY 2018-22 Highway Project Discussion: Current unprogrammed projects.

Mr. Fuller reported on CCRTA projects pointing out a last-minute change. MassDOT asked that a category be added for planning which did not change the total amount but breaks up the charge. He added that all of the bus purchases listed are coming from State funding which includes the purchase of 3 new large buses each year.

Ms. Haznar updated the group on the Truro Rte. 6 Bicycle accommodations project stating that it could possibly stay in 2018 but MassDOT would feel comfortable in 2019.

Ms. Haznar reported that the Chatham, Rte. 28 George Ryder Rd to Barn Hill Rd has received a preliminary review and that it will be a 2-year construction project. This will include utility relocation and drainage. They anticipate that two lanes will be open for a majority of the project working on one side of the road then the other. The contractor has the option to consider recommendations which will be reviewed as they come up. She added that the truck apron is expanded at the Barn Hill Roundabout and that there is a small planting area in the center. Dean Nicastro asked if it could be eliminated and Ms. Haznar explained that there are dangers in removing the center. This design helps to direct vehicles around the roundabout assisted by different pavement treatments. Ms. Haznar stated that she expects that the project will be advertised in August 2018 average about 4 months before notice to proceed (Jan 2019) working until June 2019 on hold for the summer resume in the Fall 2019 work through winter and anticipated construction end date is November 2020 adding that MassDOT will work very closely with the Town during the project.

Mr. Buckley mentioned the Community Support in the Public Participation Plan section. He has a question about a timeline for the PPP and why it's not posted on the Town of Chatham's website, since it is lacking in our packet. Mr. Cakounes stated that this is the wrong forum to bring this up as we have no control over how the Town handles their public comment. Mr. Buckley wants us to answer the question to see whether they skipped a step in the process. He stated that we heard a lot about the binding decision in the Town of Chatham about what the design concepts should be. He asked for clarification on when the designs were approved. Ms. Goldsmith stated that there are two letters one from MassDOT and one from the US Department of Transportation. A letter was sent to Secretary DiPaola indicating that in the opinion of MassDOT, the process was followed by the town and consistent with the guidelines established in the project development and design guide and considering the scope and nature of the project, and the public participation taken by the town has exceeded that of similar projects in the preliminary design process. As mentioned in the previous meeting, we also have a full determination going through the full MEPA process as part of what was submitted to Federal Highway through MassDOT. Mr.

Buckley stated that what is complicated is that you have multiple alternatives that were looked at for the roundabouts and the corridor. Based on the discussion with the BOS who landed on the option of the two roundabouts and the removal of the two way left turning lane. Mr. Woelfel stated that the board has heard plenty on information about the project and the opinions of the town. It is now time for the board to act on what we want to do with the TIP. He informed Mr. Buckley that he could submit this information in a written comment.

Mr Cakounes stated that we should talk about Chatham project as members of the public stated that we should "table" the project. He doesn't see that action as an option. I see an option of moving the project out for a year or two. If the project is tabled we lose the funding and he will not support that. He asked about other projects in future years and the status of those projects and if another project is ready to be advanced. He also asked about the two-year construction estimate and MassDOT confirmed that the project is on schedule. He has heard all arguments and feels that we should talk about the project as a board so that comments haven't gone completely ignored. He asked if other is interested in moving the project before discussion. There was further discussion about readiness and status of other projects on the TIP and Ms. Haznar stated the Chatham project is the most advanced project in the design stage. Moving the project will leave a gap in the funding and there is no other project that can be moved into 2018, therefore the project will be dropped all together. Ms. McMahon stated that she would like to see the TIP released with the Chatham project included in 2018 and see the public comments. Mr. Temple added that this is also what the CCJTC has recommended. Dan Santos stated that the project is here because it had an advocate and went through a process. Under what conditions could it be pulled by the town? We don't create project that the town doesn't want. What is the official position of the Town of Chatham? Because there was a failed vote, we can't change the previous vote to bring the project forward. Mr. Woelfel stated that the governing body for spending federal highway money is the MPO. He stated that from what members have seen over several hours in the last two meetings there is a difference of option. Members have the responsibility to make the best decision as well as hear the recommendations of the CCJTC.

Mr. Santos asked about the Truro project wanting to know if it's a physically barriered path. It was indicated that this is a pavement marking and sign project with a painted median and shifting of the merge lane.

Mr. Cakounes expressed his concern about the Barnstable Rte. 28 Yarmouth Rd. project and keeping it in 2019. This is an important project to the region and a key intersection. Mr. Cannon met with Barnstable Town Council and they are adamant keeping the project in 2019. It is one of the most important project and we need to make every effort in keeping the project in that year.

Upon a motion to move the Truro, Rte. 6 Bicycle Accommodations into 2019 from 2018 as requested by the state by Leo Cakounes, seconded by Robert Weinstein, the vote was passed unanimously.

Ms. Haznar commented that we need to have projects ready. Project readiness is key as discussed in the CCJTC as well in the Project Readiness meeting. More projects need to be added to the que.

Upon a motion to approve the Highway Projects as amended and release for a 21-day public comment period by Dan Santos, seconded by Sheryl McMahon, the vote was passed unanimously

Ms. McMahon asked where the funding comes from about the call center for the DART service. Mr. Fuller explained that mobility line of funding supports that call center and Ms. McMahon asked when was the last time it was evaluated. Jill Goldsmith stated that the CCRTA is meeting next week and she will get back to us on that.

Upon a motion to approve the Transit Projects as presented and release for a 21-day public comment period by Jill Goldsmith, seconded by Leo Cakounes, the vote was passed unanimously.

Upon a motion to move forward with combining the Highway and Transit projects as discussed for the 2018-2022 TIP Projects by Leo Cakounes, seconded by Sheryl McMahon, the vote was passed unanimously

Reports: MassDOT Highway Division District 5 Staff will give a status report on existing and planned transportation projects underway across Cape Cod. Cape Cod Regional Transit Authority and Cape Cod Commission staff will report on recent and upcoming activities that staff has participated in.

Mr. Kochan stated that MassDOT is anticipated receiving 25% design plans for the Chatham, Rte. 28 Depot Rd/Queen Anne Rd project in late May 2017.

Dr. Burns stated that of all the projects that he has viewed some of which are dangerous and complicated the Chatham, Rte 28 project is nothing but a beautification project.

Mr. Woelfel added that there is 21 days to submit public comments in writing.

Ms. Gibbs asked that a construction schedule be released prior to the May 22nd meeting. Ms. Haznar stated that when it is available, she will submit to Mr. Temple who will make the announcement and release.

Adjourn

Upon a motion to adjourn at 3:30 pm by Leo Cakounes, seconded by Harold Mitchell, the vote was passed unanimously

Documents and Exhibits

Agenda, April 24, 2017
DRAFT MPO Minutes March 20, 2017
Proposed Freight Corridors, Power Point
UPWP FFY 2018, Power Point
UPWP FFY 2018, Document
Cape Cod 2017-2021 TIP Amendment Document
TIP FFY 2018-2022 TIP Development, Power Point
CCRTA Snapshot
Cape Cod 2018-2022 TIP Document
2018-2022 TIP Highway Project Summary Sheet
Public Comments as attached



Town of Chatham

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Via Email and US Mail

April 20, 2017

Ms. Lisa Dillon
Metropolitan Planning Organization
c/o Cape Cod Commission
PO Box 226
Barnstable, MA 02630

Dear Ms. Dillon:

Lisa

At its regularly scheduled meeting of April 18, 2017, the Chatham Board of Selectmen ("Board") voted 2-2-0 on a motion to continue support of the Massachusetts Department of Transportation's ("MDOT") Route 28 West Chatham Roadway Design Project. There was a recusal by one member of the Board on this agenda item for the discussion and vote(s).

The Board further voted 3-1-0 for the Town Manager to inform MDOT and the Cape Cod Metropolitan Planning Organization ("MPO") of the Board's action, and that such vote resulted in the failure of the motion.

Should you have any questions regarding the foregoing, please contact me at 508-945-5105 or at jgoldsmith@chatham-ma.gov.

Sincerely,

Jill R. Goldsmith

Jill R. Goldsmith
Town Manager

cc: Chatham Board of Selectmen
MDOT Highway Administrator

From: ELLA KENNEY <rickella@comcast.net>
Sent: Friday, April 21, 2017 1:27 PM
To: Lisa Dillon
Subject: MPO meeting
Attachments: Binding vs Non-binding and Presumptions (3).pdf

Lisa:

Please add the attached comments to my letter to MPO. Thanks.

Rick Leavitt, Chairman
West Chatham Village and Business Association

Binding vs Non-binding

At the Special Town Meeting of May 13, 2013, after the vote was announced, Moderator Bill Litchfield described the Article 3 vote as a directive and not binding after discussions with town counsel, Talerma, and Mr. Meservey, the Article 3 petitioner. See the STM video <http://ec4.cc/sc432ea9> at 03:24:00 to 03:24:20.

The CRC Minutes of July 29, 2013 describe Bill Litchfield's remarks to the Committee as follows:

"In commenting on recent special town meeting issues concerning the harbor master and Route 28 traffic revisions in West Chatham, he [Litchfield] explained why each town vote was either non-binding or advisory in nature. Most articles on a warrant are binding. Resolutions, directives and other certain wordings are not binding. Petition articles can be binding---it depends on the language.

Regarding binding, he also said you cannot bind an elected official---the only recourse is to vote them out. He added he had offered to help Mr. Meservey with language on the Route 28 petition and would offer the same to any other petitioner." Emphasis added.

But the most significant evidence in my view is the following explanation of Seth Taylor why Article 3 was not binding on the Board of Selectmen:

At the September 4, 2013 CRC meeting, Seth Taylor himself explained in detail why the non-binding language of Dan Meservey's petition Article 3 regarding terminating funding of the West Chatham design consultant was not changed to binding language prior to town meeting. See <http://ec4.cc/sc34a3f3> at 56:00 to 58:12.

Presumption

Section 2-8 of the Chatham Charter provides:

"The exercise of the legislative power by a vote of town meeting shall be presumed to be binding and shall be implemented by a designated town agency or department in conformance with the law or such vote." Emphasis added.

The Charter does not state that "a vote of town meeting shall be binding," but that it is only "presumed to be binding."

Several speakers at the April 18, 2017 BOS meeting cited the language of Section 2-8, and suggested that every vote of town meeting is binding (including the Article 3 vote), completely ignoring what effect the word "presumed" might have on the vote.

What is a "presumption" or what does the word "presumed" mean?

A presumption is a rule of law, statutory or judicial, by which finding of a basic fact gives rise to existence of presumed fact, until presumption is rebutted. A legal device which operates in the absence of other proof to require that certain inferences be drawn from the available evidence. Black's Law Dictionary, Sixth Edition, p. 1185.

A simple example is the "presumption of innocence" enjoyed by every criminal defendant, but that can be overcome or rebutted by evidence.

In the case of Charter Section 2-8, the word "presumed" in that section means that while every town meeting vote should be taken initially as binding, evidence can show that the vote is not binding. In the case of the Article 3 vote at the May 13, 2013 STM, the evidence that overcame or rebutted the binding presumption of the vote was (1) the language of the Article itself which was a directive to an elected body, (2) the legal opinions of Town Counsel and the Town Moderator and (3) the admissions of the petitioner and his decision not to amend the language of the article.

If a town meeting vote is always binding as Taylor and others claim, the word "presumed" in Section 2-8 is superfluous. Even if the Article 3 petitioner intended the language of the article to be binding, that is irrelevant.