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CAPE COD
COMMISSION

Minutes

Meeting of Cape Cod Commission

August 7, 2014

The meeting was convened at 4:00 p.m., and the Roll Call was recorded as follows:

Town	Member	Present
Barnstable	Royden Richardson	✓
Bourne	Michael Blanton	✓
Brewster	Elizabeth Taylor	✓
Chatham	Michael Skelley	✓
Dennis	Richard Roy	✓
Eastham	Joy Brookshire	Absent
Falmouth	Andrew Putnam	✓
Harwich	Jacqueline Etsten	Absent
Mashpee	Ernest Virgilio	Absent
Orleans	Len Short	✓
Provincetown	Austin Knight	✓
Sandwich	Harold Mitchell	✓
Truro	Kevin Grunwald	✓
Wellfleet	Roger Putnam	✓
Yarmouth	John McCormack, Jr.	✓
County Commissioner	Mary Pat Flynn	✓
Minority Representative	John Harris	✓
Native American Rep.	Vacant	Vacant
Governor's Appointee	Vacant	Vacant

The meeting of the Cape Cod Commission was called to order on Thursday, August 7, 2014 at 4:00 p.m. in the First District Courthouse, Assembly of Delegates Chambers, Barnstable, MA. Roll was called and a quorum established.

■ **SUMMARY OF ACTIONS TAKEN/VOTES:**

Proposal to Reorganize Standing Committees

Discussion and vote by the full Commission to approve the proposal to reorganize the delegated functions and responsibilities of the Commission's Standing Committees and the establishment of an Ad Hoc Committee for the five-year Regional Policy Plan update.

Discretionary Referral—Elm Arch Inn Redevelopment/26 Elm Arch Way, Falmouth, MA

Following presentations by Commission staff and the applicant, public testimony and discussion, the full Commission voted with 11 votes in favor, 2 opposed and 1 abstention to accept the Elm Arch Inn Redevelopment Discretionary Referral as a Limited Development of Regional Impact in the Regional Policy Plan issue areas of Land Use/Growth Management and Historic Preservation/Community Character.

■ **EXECUTIVE DIRECTOR'S REPORT**

Paul Niedzwiecki said the Commission recently received an award at the International GIS Conference for work done by the Commission's GIS department. He said the Commission has been discussing the Draft §208 Area Wide Water Quality Management Plan Update with the Department of Environmental Protection and the Environmental Protection Agency. He said the Commission will be releasing the narrative to the public on Friday, August 15, 2014 and the watershed reports will be released following August 15 for four weeks.

■ **MINUTES**

The minutes of the June 19, 2014 Commission meeting were reviewed. Austin Knight moved to approve the minutes. Len Short seconded the motion. The motion passed with one abstention.

■ **PROPOSAL TO REORGANIZE STANDING COMMITTEES**

Jessica Wielgus, Commission Counsel, said Commission members just came from a posted workshop for the purpose of re-examining the structure of the Commission's Standing Committees and to consider proposed reorganization of the delegated functions and responsibilities of those committees as well as the establishment of an Ad Hoc committee to review the five-year Regional Policy Plan (RPP) Update. She said Commission members discussed this at length and voted to adopt the proposed reorganization at that workshop. She noted that the Executive Director's memo dated July 31, 2014 was available on the back table for anyone interested in it. It summarized the proposed changes that were discussed initially by the Executive Committee and then the full Commission at their workshop. She reiterated that the three Standing Committees—Executive, Regulatory and Planning—would be reduced to Executive and Regulatory and that an Ad Hoc committee would be created for the 5-year review of the RPP. She asked that the full Commission move to adopt the proposed reorganization of the Standing Committees and the establishment of the Ad Hoc committee as outlined in that memo at today's meeting.

Jack McCormack moved that the Commission adopt the changes to the Standing Committee structure outlined in the Executive Director's July 31, 2014 memo. Elizabeth Taylor seconded the motion.

Michael Blanton echoed partial support and concern with the loss of planning authority from the proposed committees that have been suggested. He said he is concerned that the planning authority might be seen as loss of planning and more regulatory.

Jessica Wielgus said the full Commission has all the authority and the RPP update is every five years for that purpose.

Paul Niedzwiecki said he is sensitive to Mr. Blanton's concerns. He said the Regulatory Committee will be a merged committee with planning. He said if a renaming of the committee would help, he would welcome that.

Jack McCormack said as a member of the Planning Committee he knows of several Planning Committee meetings that had to be cancelled because they did not have a quorum.

Austin Knight said Mr. Blanton talks about the appearance. He said as far as public perception he would move to amend the name of the committee to incorporate planning and regulatory.

Paul Niedzwiecki said he would suggest renaming it to Committee on Planning and Regulation.

Michael Blanton said he would accept that.

John Harris said nothing really changes except the name. He said all of the strengths are still there. He said he is satisfied with the name change and he seconded the motion to amend.

A vote called on the motion to adopt the changes to the Standing Committee structure as outlined and the amendment to rename the Regulatory committee to Committee on Planning and Regulation passed with a unanimous vote.

Jack McCormack moved that the Commission direct staff to draft amendments to effectuate the approved July 31, 2014 changes. Kevin Grunwald seconded the motion. The motion passed with a unanimous vote.

Roger Putnam moved that the Commission Chair solicit interested members and appoint an Ad Hoc committee for the five-year update of the RPP. Kevin Grunwald seconded the motion. The motion passed with a unanimous vote.

■ DISCRETIONARY REFERRAL—ELM ARCH INN REDEVELOPMENT

Jon Idman, Chief Regulatory Officer at the Commission, said the Commission received the Discretionary Referral from the Falmouth Historical Commission requesting the project be reviewed as a Limited Development of Regional Impact (DRI) for review under the Regional Policy Plan (RPP) issue areas of Land Use/Growth Management and Historic Preservation/Community Character. Mr. Idman said the project, as proposed, calls for the full demolition of the historic Elm Arch Inn FKA Captain Silas Jones House and the construction of six residential condominium housing units. He provided background information on the Elm Arch Inn and said the Commission's Regulatory Committee recommended acceptance at its meeting on Monday. He said it is Commission staff's opinion that the referring municipal agency has presented concerns within the scope of Section 12(b) of the Cape Cod Commission Act. He said those concerns are the impact of the development on historic and cultural resources, Section 12(b)1, and the physical size of the development and the site to be developed, Section 12(b)3. Mr. Idman said the Commission staff memo suggests that the Commission can accept the Discretionary Referral for Limited DRI review in the issue areas noted above. Mr. Idman noted that this is a public meeting and testimony is at the Chair's discretion. He said a letter from Julian Suso, Falmouth Town Manager, was included in the materials provided to Commission members and he then read Mr. Suso's letter supporting the acceptance of the Discretionary Referral from the Falmouth Historical Commission.

Michael Blanton said a number of legal professionals weighed in on whether the Commission could accept a referral from the Historical Commission.

Jon Idman said he believes the Historical Commission is an appropriate referring municipal agency.

Heidi Walz, Chair Falmouth Historical Commission, thanked Commission staff. She referred to Section 1c of the Act stating that the Commission's purpose shall include the preservation of historical, cultural, archaeological, architectural, and recreational values throughout the region. She said preservation of the Elm Arch Inn would qualify. She said the Elm Arch Inn is a Federal Colonial house and she noted that the structure had been moved from its Main Street location in 1926. She provided background information on the Elm Arch Inn and discussed the goals of the Falmouth Historical Commission. She asked that the Commission accept the Discretionary Referral from the Falmouth Historical Commission for Limited DRI review.

Stephen McKenzie, representing Wald Management, said the developer is asking that the Commission not accept the project for review. He said the Falmouth Historical Commission does not have the authority to grant a municipal permit and a demolition order has not been issued as yet. He said this project does not qualify as a project of regional impact as it's a small development in Falmouth Center that has no impact on any other town on Cape Cod. He said the owners of the Elm Arch Inn want to sell, they do not want to continue to use it as an inn, and the property has been on the market for three years. He said if the town wants to move the building elsewhere and preserve it, they would be happy to help with that.

Harold Mitchell inquired about the lot coverage.

Stephen McKenzie described the lot coverage and said they would be reducing the building height by six feet, traffic would be reduced and they would be going from 19 bedrooms down to 12 bedrooms. He said it's a pre-existing nonconforming use. He said there would be much less impact from six units than what the Inn would have. He said town boards will go through a rigorous review of this project. He showed a site plan of the existing structure and the three out buildings and then showed the site plan of the new site. He said they are trying to keep the same architecture that was used in the Elm Arch Inn in their new design. He said the development affects only the small area that it's in.

Harold Mitchell asked if there would be any affordable units. Stephen McKenzie said there would not be any affordable units.

Austin Knight asked for clarification regarding whether this development should have come to the Commission.

Jessica Wielgus said the Commission needs to consider the definition of a "municipal agency" and "development permit" and said the Falmouth Historical Commission does qualify as a municipal agency. She said the definition of "development permit" in the Cape Cod Commission Act includes "any permit, license, authority, order of approval, certificate, endorsement or permission required from a municipal agency prior to commencement or completion of any development." She reiterated the meeting and written notification that must be sought from the Historical Commission as a condition precedent to filing for a demolition permit application qualifies as such a permission, certificate or endorsement. She said the Falmouth Historical Commission does have the authority to refer the proposed project. She said in regard to a DRI this is a Discretionary Referral and it's one the Commission can choose to take as opposed to a mandatory referral that the Commission has to take. If the Commission finds it meets the concerns listed in 12(b) of the Act, they may accept the referral. She referenced the historical nature of the Nimrod shelling and concluded the referral was properly before the Commission.

Austin Knight said if the Commission accepts this, there would be more opportunity for public hearings. If it's not accepted it goes to the town for demolition. He said what worries him is that this is an opportunity to have a larger discussion on this and perhaps there should be a discussion about this building that is part of history.

Andrew Putnam said clearly there is historical significance here as this was one of three buildings shelled by the Nimrod. He said Falmouth does hold onto its history and they are proud of this history. He said he attended the meeting where the Historical Commission was given the authority to put a hold on the process if they found it to be of historical significance.

Michael Skelley said the Town of Falmouth should be able to govern themselves. He said the Commission should not tell them what to do.

Andrew Putnam said the Town of Falmouth can govern themselves but they do have the ability to ask for help in matters such as this.

Jon Idman said the Elm Arch Inn is on the town's list of historical significance. He said it is not on the State or Federal Registers. He said the Commission is the one authority that can prohibit demolition. He said the Falmouth Historical Commission cannot prohibit demolition.

Mary Pat Flynn said the Commission has a history of taking on Limited DRIs. She said in 1993 a demolition delay bylaw was voted by the Town of Falmouth and the Attorney General approved that bylaw. She said shortly after that the Highfield Hall was being considered for demolition. She said the Falmouth Historical Society suggested that the Commission consider it as a DRI and at that time the Falmouth Board of Selectmen made that referral to the Commission. She said the Commission rendered a decision and worked with the town and now they have Historic Highfield Hall.

Michael Blanton said the Town of Bourne also enacted a demolition bylaw and said towns have enacted this for the purpose of taking a look at the property and to study the property. He said the result could be that we arrive at an acceptable solution. He said we should investigate looking at this by accepting the Discretionary Referral.

Elizabeth Taylor said the Commission's regulations allow towns an additional venue when they cannot do it on their own. She said this is what the Commission can do when a town needs the Commission's help. She said it's an important part of what the Commission does and the Commission should accept the Discretionary Referral.

Stephen McKenzie said Mr. Idman accurately pointed out that the Historical Commission does not issue permits; the building commissioner does. He said Falmouth is qualified to take this on. He said this was not denied in Falmouth nor was it approved. He said the vote was 2 to 2 so nothing happened and they can go back to the town.

Michael Blanton said the Commission exists exactly for the purpose of looking at regional impacts and regional historical impacts.

Royden Richardson said the architectural elements of the building are looked at by everyone not just those in Falmouth. He said by having this Discretionary Referral it's an opportunity to look at this more. He said it's worthy of being accepted and the Commission is equipped to do this.

Roger Putnam agreed with Mr. Skelley and said Falmouth has all of their town boards in place to take care of this. He said it's a town issue and the Commission should not be telling the town what to do.

John Harris said he has looked at both sides of the argument. He said the town has asked for the Commission's help and the Commission should consider looking at this as a Limited DRI. He said as far as historical impact if the building is demolished it will have an effect on other towns. He said the Commission should accept the Discretionary Referral as it will provide expertise to both sides and address the issues on both sides.

Andrew Putnam moved to accept the Discretionary Referral that has regional impacts and presents concerns listed in Section 12(b) of the Act including historical as a Limited DRI in the Regional Policy Plan issue areas of Land Use/Growth Management and Historic Preservation/Community Character. Austin Knight seconded the motion. A vote called on the motion passed with 11 votes in favor, 2 opposed and 1 abstention.

■ OTHER BUSINESS

Austin Knight requested that the Commission discuss the location of Commission meetings at the next scheduled Commission meeting.

Chair Richard Roy said further discussion would be included as an agenda item.

A motion was made to adjourn at 5:10 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Harold Mitchell, Secretary

List of Documents Used/Presented at the August 7, 2014 Commission Meeting

- Minutes of June 19, 2014 Commission meeting.
- Handout material: August 7, 2014 Commission meeting agenda.
- Handout material: July 31, 2014 memo from Executive Director Paul Niedzwiecki outlining the Standing Committee Reorganization and establishment of an Ad Hoc committee for the Five-Year RPP review.
- Material presented: Letter supporting the Discretionary Referral from Julian Suso, Falmouth Town Manager.