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CAPE COD  
COMMISSION

## Minutes

### Meeting of Cape Cod Commission

October 2, 2014

The meeting was convened at 3:00 p.m., and the Roll Call was recorded as follows:

Town	Member	Present
Barnstable	Royden Richardson	Absent
Bourne	Michael Blanton	√ ( <i>arrived at 3:10 p.m.</i> )
Brewster	Elizabeth Taylor	√
Chatham	Michael Skelley	√
Dennis	Richard Roy	√
Eastham	Joy Brookshire	Absent
Falmouth	Andrew Putnam	√
Harwich	Jacqueline Etsten	√
Mashpee	Ernest Virgilio	√
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, October 2, 2014 at 3:04 p.m. in the Strategic Information Office, Innovation Room, Barnstable, MA. Roll was called and a quorum established.

## ■ SUMMARY OF ACTIONS TAKEN/VOTES:

### **Public Hearing on Proposed Amendments to Cape Cod Commission Regulations**

Following a presentation and discussion the Full Commission voted to approve and forward to the Assembly of Delegates for adoption by County ordinance the technical amendments to Chapter A—Enabling Regulations Governing Review of Developments of Regional Impact, Chapter D—Development Agreement Regulations, Chapter G—Growth Incentive Zone Regulations, and Local Comprehensive Plan Regulations, as presented, to codify the vote of the Cape Cod Commission on August 7, 2014 to reorganize and streamline the functions of the Standing Committees of the Commission into an Executive Committee and a Committee on Planning and Regulation.

### **Proposed Amendments to Cape Cod Commission Administrative Regulations**

Following a presentation and discussion, the Full Commission voted to approve the amendments to the Cape Cod Commission Administrative Regulations, as presented, to reorganize and streamline the functions of the Standing Committees of the Commission into an Executive Committee and a Committee on Planning and Regulation.

### **Cape-wide Fertilizer Management DCPC Implementing Regulations Time Extension**

Following a discussion regarding extending the timeline for towns to adopt implementing regulations pursuant to the Cape-wide Fertilizer Management District of Critical Planning Concern, Barnstable County Ordinance 13-07, the Full Commission voted to approve the 90-day extension until December 31, 2014.

### **Notification of Withdrawal: Elm Arch Inn Redevelopment/26 Elm Arch Way, Falmouth, MA**

Following the notification by Commission staff that the applicant for the Elm Arch Inn Redevelopment project had withdrawn the project from local review and Limited DRI review, the Commission voted to accept the withdrawal.

### **Cape Cod Commission Meeting Location**

Following a discussion regarding the location of Full Commission meetings, it was decided that the Full Commission meetings would be held in the First District Courthouse Assembly of Delegates Chambers. Following a discussion regarding holding the November Commission meeting off-campus, the Commission voted that the November meeting would not be held off-campus and would continue to be held in the Assembly of Delegates Chamber.

## ■ EXECUTIVE DIRECTOR'S REPORT

Paul Niedzwiecki gave an update on Commission personnel. He said Chase Gruber is a new GIS analyst at the Commission; Paul Ruchinskas, the Commission's affordable housing specialist will be retiring at the end of October; Planner Garry Meus has moved over to the Commission's planning department; James Sherrard from the Commission's water resources department has accepted an executive position in Vermont; and the Commission is currently interviewing for a position in the water resources department and for a regulatory officer. Mr. Niedzwiecki said the Section 208 Draft Plan was released on August 20<sup>th</sup> and the comment period is open until November 20<sup>th</sup>. They have begun holding sub-regional stakeholder meetings followed by public hearings and the next stakeholder meetings/public hearings are scheduled for October 7 in the Strategic Information Office/Innovation Room and October 21 at the Mashpee Town Hall. Mr. Niedzwiecki said he would be accepting the Paul Tsongas Award at APCCs October 7<sup>th</sup> annual meeting on behalf of the Commission and all those individuals who have worked on the 208 Plan. He said Commission staff made a presentation in Kansas City on water resources and said the Commission was highlighted as one of four communities nationally for its work on the 208 Plan. He said he has provided an update on the 208 Plan to both the NE Interstate Water Pollution Control Council and to the Assembly of Delegates. The Commission has been engaged in discussions with the Town of Orleans in regard to wastewater, the five-year update of the Regional Policy Plan (RPP) is about to begin and the members of the RPP Ad Hoc Committee selected by the Commission Chair are: Jackie Etsten, Austin Knight, Mary Pat Flynn, Andrew Putnam, Kevin Grunwald and Jack McCormack and Elizabeth Taylor as the alternates. He said they would be meeting within the next few weeks to discuss the process.

## ■ MINUTES

The minutes of the August 7, 2014 CCC Member Workshop were reviewed. Jack McCormack moved to approve the minutes. Len Short seconded the motion. The motion passed with two abstentions.

The minutes of the August 7, 2014 Commission Meeting were reviewed. Austin Knight moved to approve the minutes. Len Short seconded the motion. The motion passed with one abstention.

■ **PROPOSED AMENDMENTS TO CAPE COD COMMISSION REGULATIONS:**

**Chapter A**—*Enabling Regulations Governing Review of Developments of Regional Impact, Barnstable County Ordinance 90-12, as amended,*

**Chapter D**—*Development Agreement Regulations, Barnstable County Ordinance 92-1, as amended,*

**Chapter G**—*Growth Incentive Zone Regulations, Barnstable County Ordinance 05-13, as amended,*

**Local Comprehensive Plan Regulations, as amended.**

Andrew Putnam read the hearing notice and opened the public hearing at 3:10 p.m.

Jessica Wielgus, Commission Counsel, said at its August 7, 2014 CCC Member Workshop and Commission Meeting the Commission voted unanimously to reorganize the Commission's Standing Committees pursuant to the Executive Director's memo dated July 31, 2014. She said at that time the Commission directed staff to draft amendments to codify the new Standing Committee structure. She said the reason for the reorganization was due in part that the Committee structure had been the same since April 1990, the need for the Standing Committees to meet a quorum and for the establishment of an Ad Hoc Committee for the five-year update of the Commission's Regional Policy Plan (RPP). She said the prior structure consisted of three Standing Committees—Executive, Regulatory, and Planning—and the new committees as voted by the Commission on August 7, 2014 would be reduced to two Committees—Executive Committee and Committee for Planning and Regulation (CPR). She said at that time the Commission also voted on the establishment of an Ad Hoc Committee for the five-year update of the RPP. Ms. Wielgus said the action for today's meeting is to amend five documents to codify those changes. She said the first action item today is a motion to approve the amendments as presented and forward to the Assembly of Delegates for adoption by ordinance: Chapter A, Enabling Regulations Governing Review of Developments of Regional Impact; Chapter D, Development Agreement Regulations; Chapter G, Growth Incentive Zone Regulations; and Local Comprehensive Plan Regulations. She said the second action item today under the next agenda item is a motion to approve the amendments as presented and adopt the Commission's Administrative Regulations as amended.

Chair Richard Roy opened the hearing for federal, state, and local officials as well as members of the public. Hearing none, the Chair proceeded to see if any Commission members had questions.

Elizabeth Taylor inquired about Chapter A, Section 5 in regard to the Executive Director determining the scope for any Limited DRI review and a written decision taken to the CPR to accept the limited scope or a full DRI review if required. She asked if the scope could be changed.

Jessica Wielgus said, yes, the scope could be changed.

Elizabeth Taylor said if no DRI review is required does it just go to the full Commission and not the CPR.

Jessica Wielgus explained the process for a Limited DRI review with the new amendment. She explained that if the recommendation were no review a full vote was required by the Commission rather than the CPR. She also explained that if the CPR did not choose to adopt the decision, it could be remanded back to staff for changes to its decision based upon the vote of the CPR.

Jack McCormack moved to close the public hearing and the record. Roger Putnam seconded the motion. A vote called on the motion passed with a unanimous vote.

Andrew Putnam moved to approve the amendments as proposed to the following regulations and forward to the Assembly of Delegates for enactment as ordinances: Chapter A—Enabling Regulations Governing Review of DRIs, Barnstable County Ordinance 90-12 as amended; Chapter D—Development Agreement Regulations, Barnstable County Ordinance 92-1, as amended; Chapter G—Growth Incentive Zone Regulations, Barnstable County Ordinance 05-13, as amended; and Local Comprehensive Plan Regulations, as amended. Austin Knight seconded the motion.

Jackie Etsten referred to Chapter A, Section 5 when the Executive Director makes a determination and asked that he provide Commission members with notification of the determinations. She said perhaps the notifications could be items on Commission meeting agendas. Mr. Niedzwiecki agreed that he would do that.

A vote called on the motion to approve the amendments proposed and forward to the Assembly of Delegates for enactment as ordinances passed with a unanimous vote.

## ■ PROPOSED AMENDMENTS TO COMMISSION ADMINISTRATIVE REGULATIONS

Jessica Wielgus, Commission Counsel, said the second action item today is a motion to approve the amendments as presented and adopt the Commission's Administrative Regulations as amended. She said this does not need to be codified by ordinance because it is internal. She reminded the members that these regulations dealt with the original delegations of authority granted at the formation of the Commission.

Andrew Putnam moved to approve the amendments to the Cape Cod Commission Administrative Regulations as presented. Jack McCormack seconded the motion. A vote called on the motion passed with a unanimous vote.

## ■ CAPE-WIDE FERTILIZER MANAGEMENT DCPC IMPLEMENTING REGULATIONS TIME EXTENSION

Jon Idman, Chief Regulatory Officer at the Commission, said the Commission formally voted to propose the Cape-wide District of Critical Planning Concern (DCPC) to the Assembly of Delegates (AOD) for adoption on August 29, 2013. He said the AOD approved the DCPC on September 18, 2013 and the County Commissioners enacted the DCPC Ordinance 13-07 on October 2, 2013. He said the DCPC allows Cape towns to adopt fertilizer regulations pursuant to the guidelines in the DCPC Ordinance where the Commonwealth has preempted local regulation over nutrient and fertilizer applications. He said the Commission Act directs towns to adopt implementing regulations within one year of enactment of a DCPC Ordinance and also authorizes the Commission to grant an additional 90-day extension. He said the one-year has lapsed and several towns are in the process of going to Town Meeting with their bylaws. He said towns need more time to perfect their bylaws and he would ask that the Commission consider the 90-day extension until December 31, 2014 to allow towns the necessary time to complete the process and return locally adopted regulations to the Commission for approval.

Elizabeth Taylor said if this doesn't pass and the State steps in is this it or can towns turn in their bylaws after that.

Jon Idman said the State says it must be completed by December 31, 2014 or one year from adoption by the Massachusetts Department of Agricultural Resources whichever is later but no State regulations have been adopted as yet. He said that's why staff is coming back to the Commission with the 90-day extension request.

Elizabeth Taylor said as far as the State this is not do or die but as far as the DCPC could it die.

Jon Idman said it's not do or die.

Ernest Virgilio asked if it could be extended after the final timeline ends.

Jessica Wielgus said if the timeline ends there is still another mechanism through the DCPC within the Commission Act. She said within the Commission Act the Commission can propose implementing regulations as they did with the Centerville DCPC.

Austin Knight said it seems ambiguous on the State's part.

Jon Idman said the State has released draft regulations and they were given an extension to July 4<sup>th</sup> but they have been silent since then.

Elizabeth Taylor said if towns do not have a fertilizer bylaw in place would that create a problem for receiving grants.

Jon Idman said that may be answered through the 208 Plan.

Harold Mitchell said if the Commission doesn't want to extend now are towns still protected under the State.

Jon Idman said he would recommend that the Commission grant the extension as it's allowed through the Commission Act. He said one of the reasons for the DCPC is to honor local control.

Roger Putnam questioned what happens when the Commission approves a DCPC Cape-wide without town approval. He said it's not the best way to get the cooperation they need.

Michael Blanton asked what the communication has been across towns.

Jon Idman said Commission staff drafted a model bylaw and he has been communicating with all the towns. He said some towns are interested and some are not. He said the Commission chose the DCPC tool because that was the only tool the Commission had; there is no other tool.

Jack McCormack asked if the State only had a draft.

Jon Idman said, yes, the State just has a draft.

Len Short moved to extend the time for towns to adopt implementing regulations under the Fertilizer Management DCPC by 90 days to December 31, 2014 as provided in the Commission Act. Roger Putnam seconded the motion. A vote called on the motion passed with a unanimous vote.

■ **NOTIFICATION OF WITHDRAWAL: ELM ARCH INN REDEVELOPMENT—26 Elm Arch Way, Falmouth, MA**

Jon Idman, Chief Regulatory Officer, said this is notification that the developer for the Elm Arch Inn Redevelopment project has withdrawn all applications in Falmouth. He said the Commission accepted the discretionary referral for the Elm Arch Inn Redevelopment project as a Limited DRI. He said the applicant has withdrawn their project from municipal/local review, the applicant never submitted an application to the Cape Cod Commission and the project is effectively withdrawn from DRI review.

Jessica Wielgus, Commission Counsel, reminded the Commission that procedurally they should move to accept the withdrawal.

Austin Knight moved to accept the withdrawal. Michael Blanton seconded the motion.

Austin Knight said this worked well on the part of the Commission and the town. He said he believes the Commission did the right thing.

Michael Blanton concurred with Mr. Knight.

Michael Skelley said he thought it should have been handled by the town and not the Commission. He said Falmouth should have taken care of that.

Elizabeth Taylor said many towns may not have the ability or staff to deal with historical issues and that's why it can come to the Commission; Falmouth asked for the Commission's help.

Mary Pat Flynn said speaking on behalf of the Board of Selectmen this is not the first time Falmouth has come to the Commission for help. She said Commission staff has the expertise, Falmouth does not and the town did not have that capacity. She said permitting boards in any town can refer to the Commission. She said if Falmouth had the capacity the town would have done it but they didn't.

Michael Skelley said out of respect the Historic Commission should have gone to the Board of Selectmen and said he is talking about the process. He said the Commission has done a lot of great work and they should not deal with individual dwellings.

Mary Pat Flynn said the Historic Commission did go to the Board of Selectmen and the Board asked the Historic Commission to refer the project to the Commission.

Andrew Putnam said in regard to the process the regulations are clear regarding who can refer something to the Commission. He said he agrees bodies should go to the Board of Selectmen which the Historic Commission did do. He said authority has been delegated to other bodies in town, the process was followed and the Board of Selectmen was given the respect.

Jackie Etsten said the Commission Act authorizes town boards to refer to the Commission and the town board did the right thing.

Paul Niedzwiecki said the Commission Act was passed by the residents of Barnstable County 25 years ago. He said Commission members are appointed by their towns and many town boards can refer projects to the Commission. He said in the past the Commission has not taken on discretionary referrals; sometimes the Commission did and sometimes they did not. He said we don't get to interpret the Act where its intentions are clear.

John Harris said the Commission did due diligence with what was given to the Commission.

A vote called on the motion to accept the withdrawal passed with a unanimous vote.

## ■ CAPE COD COMMISSION MEETING LOCATION

Commission members discussed locations for Commission meetings. Many members felt that although the Innovation Room provided more capacity for technology the room was too small and not suitable for Commission meetings.

Paul Niedzwiecki said he is receptive to the Commission members' comments. He said the Board of County Commissioners, the Assembly of Delegates, and the Commission all require a public meeting space and that seems to be the County's consideration for those bodies that need a public meeting space. He said in the interim until another meeting room is being considered by the County the Commission meetings will move back to the Assembly of Delegates Chambers.

Mary Pat Flynn said the County Administrator has been trying to put together a plan for a meeting space for County departments. She said a space analysis is being worked on and perhaps within the next month or so the County will have something to show everyone.

Commission members discussed Commission meetings being held off-campus and there was a suggestion that perhaps the off-campus locations could be related to the locations of Commission projects.

Paul Niedzwiecki said perhaps the November meeting could be held off-campus.

After much discussion it was decided that consistency of one meeting location was best especially for the public.

Roger Putnam moved that the November Commission meeting not be held off-campus. Michael Blanton seconded the motion. The motion passed with a unanimous vote.

## ■ OTHER BUSINESS

Paul Niedzwiecki said tomorrow in Bourne Hydroid, Inc. is having a ribbon cutting.

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

Respectfully submitted,

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Harold Mitchell, Secretary

## List of Documents Used/Presented at the October 2, 2014 Commission Meeting

- Minutes of August 7, 2014 CCC Member Workshop and August 7, 2014 Commission meeting.
- Handout material: October 2, 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.
- Handout material: Chapter A—Enabling Regulations, Barnstable County Ordinance 90-12, as amended.
- Handout material: Chapter D—Development Agreement Regulations, Barnstable County Ordinance 92-1, as amended.
- Handout material: Chapter G—Growth Incentive Zone Regulations, Barnstable County Ordinance 05-13, as amended.
- Handout material: Local Comprehensive Plan Regulations, as amended.
- Handout material: Cape Cod Commission Administrative Regulations, as amended.
- Material presented: PowerPoint on the Codification of the Standing Committee Reorganization prepared and presented by Commission Counsel.