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CAPE COD
COMMISSION

Minutes

Meeting of Cape Cod Commission

December 18, 2014

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	Michael Skelley	✓
Dennis	Richard Roy	✓
Eastham	Joy Brookshire	✓
Falmouth	Andrew Putnam	✓
Harwich	Jacqueline Etsten	Absent
Mashpee	Ernest Virgilio	Absent
Orleans	Len Short	✓
Provincetown	Austin Knight	✓
Sandwich	Harold Mitchell	Absent
Truro	Kevin Grunwald	✓
Wellfleet	Roger Putnam	✓
Yarmouth	John McCormack, Jr.	✓
County Commissioner	Mary Pat Flynn	Absent
Minority Representative	John Harris	Absent
Native American Rep.	Danielle Hill	Absent
Governor's Appointee	Vacant	Vacant

The meeting of the Cape Cod Commission was called to order on Thursday, December 18, 2014 at 3:00 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:

Public Hearing: Barnstable, Brewster, Chatham, Eastham and Provincetown Implementing Regulations—Fertilizer Management DCPC

Following presentations, testimony and discussion the Full Commission voted unanimously in favor to close the public hearing. Following the close of the public hearing the Full Commission voted unanimously that:

- **Barnstable's Implementing Regulations** adopted as a Nitrogen and Phosphorus Control Ordinance conform to the Guidelines for Implementing Regulations set out in the Fertilizer Management DCPC Designation, Barnstable County Ordinance 13-07;
- **Brewster's Implementing Regulations** adopted as a Fertilizer Control Bylaw conform to the Guidelines for Implementing Regulations set out in the Fertilizer Management DCPC Designation, Barnstable County Ordinance 13-07;
- **Chatham's Implementing Regulations** adopted as a regulation on the content and application of fertilizer, conform to the Guidelines for Implementing Regulations set out in the Fertilizer Management DCPC Designation, Barnstable County Ordinance 13-07;
- **Eastham's Implementing Regulations** adopted as a regulation on the content and application of fertilizer *by its Board of Health*, conform to the Guidelines for Implementing Regulations set out in the Fertilizer Management DCPC Designation, Barnstable County Ordinance 13-07;
- **Eastham's Implementing Regulations** adopted as a *Wetland Protection Nitrogen and Phosphorus Control regulation by its Conservation Commission*, conform to the Guidelines for Implementing Regulations set out in the Fertilizer Management DCPC Designation, Barnstable County Ordinance 13-07;
- **Provincetown's Implementing Regulations** adopted as a regulation on the content and application of fertilizer used, conform to the Guidelines for Implementing Regulations set out in the Fertilizer Management DCPC Designation, Barnstable County Ordinance 13-07.

■ EXECUTIVE DIRECTOR'S REPORT

Paul Niedzwiecki said Commission staff met with National Grid regarding the moratorium on gas hookups, the Commission is committed to be on the Advisory Group, and there will be a meeting with Deputy Counsel to chart out a plan on what needs to be done to lift the moratorium. Commission staff attended an open house at Hydroid in Bourne and he noted that with Hydroid's new building they have gone from 68 employees to more than 160 employees. The Commission kicked off the process for review of its Regional Policy Plan (RPP) and held RPP public hearings last week in the three sub-regions. He said staff did a great job with presentations at the public hearings and the Commission is starting to recruit stakeholders for the RPP process. He said a stakeholder volunteer form is available on the Commission's website for anyone interested in participating as a stakeholder. He said the 208 Advisory Board met to discuss waste management agencies, an All Cape Selectmen meeting is being scheduled with invitations going out soon, and the Commission continues to work with Orleans.

■ MINUTES

The minutes of the November 13, 2014 Commission Meeting were reviewed. Roger Putnam moved to approve the minutes. Jack McCormack seconded the motion. The motion passed with three abstentions.

■ BARNSTABLE, BREWSTER, CHATHAM, EASTHAM AND PROVINCETOWN IMPLEMENTING REGULATIONS—FERTILIZER MANAGEMENT DCPC

Vice-chair Andrew Putnam read the hearing notice and opened the hearing at 3:12 p.m.

Jon Idman, Chief Regulatory Officer, said the Commission will be looking at five towns with six implementing regulations today. He said each of the five towns will present their implementing regulations to the Commission.

Barnstable's Implementing Regulations, adopted as a Nitrogen and Phosphorus Control Ordinance by its Town Council on November 20, 2014 — Phil Boudreau, Chair of the Citizens Advisory Committee for Wastewater, said Barnstable's ordinance is based on the Commission's model bylaw and with the exception of a few differences it tracks the Commission's model bylaw almost identically. He said Barnstable elected to craft it as a general ordinance instead of a Board of Health ordinance. Mr. Boudreau explained how it differs from the model bylaw in regard to certification, record-keeping, and information provided and posted by retailers on the proper use of fertilizer. He said the ordinance was unanimously approved and passed by the Barnstable Town Council and he asked for a favorable vote today by the full Commission.

Brewster's Implementing Regulations, adopted as a Fertilizer Control Bylaw by its Special Town Meeting on November 17, 2014 — Mark Nelson, Principal with the Horsley Witten Group, said Brewster's regulations were passed as a general bylaw at a Special Town Meeting in November. He said Brewster elected not to include certification processes and said it could be looked at later with an amendment. He said it limits 2 lbs. per 1,000 square feet and both private and municipal golf courses are exempt. He asked for a favorable vote by the full Commission.

Chatham's Implementing Regulations, adopted as a regulation on the content and application of fertilizer used in the town by its Board of Health on November 19, 2014 — Edward Sheehan, Chatham Board of Health, said the regulations went through several reviews. He said page one meets the criteria as outlined and he noted a paragraph change on page two otherwise everything else is the same as the draft regulation. He said the town feels they are on good ground. He asked for a favorable vote by the full Commission.

Jon Idman clarified the changes that were made that were different from the model bylaw.

Eastham's Implementing Regulations, adopted as a Wetlands Protection Nitrogen and Phosphorus Control Regulation by its Conservation Commission on December 9, 2014 — Shana Brogan, Eastham Conservation Commission, said the regulation permits use for establishing new lawns and repairing lawns. She asked for a favorable vote by the full Commission.

Eastham's Implementing Regulations, adopted as a regulation on the content and application of fertilizer used in the town by its Board on Health on November 20, 2014 — Jane Crowley, Eastham Health Agent, said Eastham has followed the model bylaw with the exception of a few differences. She said it differs from the model bylaw in that they do allow for a warning and variation of a fine for the number of offenses and it allows for an opportunity for a variance and an appeal. Ms. Crowley said the regulation is a critical environmental step. She asked for a favorable vote by the full Commission.

Jon Idman said Eastham has two sets of implementing regulations—one from the Board of Health and one the Conservation Commission. He said they are not competing with one another; they are bookends of one another.

Provincetown's Implementing Regulations, adopted as a regulation on the content and application of fertilizer used in the town by its Board of Health on December 4, 2014 — Morgan Clark, Provincetown Health Department, said they used the same model bylaw and the only change was to the certification section which was taken out. She asked for a favorable vote by the full Commission.

Jon Idman said the purpose of the today's hearing is to compare the six sets of regulations against the Fertilizer Management DCPC Designation Guidelines. He explained the guidelines in Section 6.4 regarding time of fertilizer application, location of fertilizer application, manner of fertilizer application, education/outreach opportunities, certification/licensure opportunities, exemptions, and consistency with UMass Turf Best

Management Practices. He said the Commission's model bylaw established an example for a regulation consistent with DCPC designation guidelines. He said all of the implementing regulations are similar or identical to the model bylaw. With the use of a PowerPoint slide Mr. Idman referred to an Implementing Regulations Comparison Chart showing the towns that have adopted fertilizer implementing regulations and explained the criteria and information as outlined on the chart. Mr. Idman said Commission staff suggests that the implementing regulations presented today do conform to the guidelines set out in the Fertilizer Management DCPC Designation. The Implementing Regulations Comparison Chart is an attachment to the minutes.

Elizabeth Taylor said since all the towns have completed their regulations within the timeframe, can changes be made in the future. She asked if they could develop new regulations such as by the Conservation Commission.

Jon Idman said the Commission takes the position that they can be amended pursuant to DCPC regulations.

Royden Richardson said he is happy to see golf courses in Brewster exempt and asked if that would change with a new owner.

Sue Leven, Brewster Town Planner, said the Development of Regional Impact (DRI) decision would apply. She said there will be a lot of monitoring at the golf courses going forward.

Joy Brookshire asked if a violation occurs in Eastham who would handle that the Conservation Commission or the Board of Health.

Shana Brogan said if it's within a 100 foot buffer to a wetland it would be handled by the Conservation Commission otherwise it would be the Board of Health.

Joy Brookshire asked how a violation would be handled by the Board of Health. Ms. Brookshire asked if Superintendent Price from the National Seashore had any input.

Jane Crowley said the first step is education; people need to be educated. She said the Board of Health will be working with the Cooperative Extension Service to develop tools. She said the goal is to discuss safe practices and not be the fertilizer "police." She said the town wants to be proactive. Ms. Crowley said they solicited comment from the National Seashore but they did not receive any input.

Michael Blanton said the Commission has not heard from other towns in regard to education.

Ted Wicktaker said Chatham feels satisfied that the local contractors are educated. He said they are more concerned with homeowners not being well informed and said they will be working on that.

Judy Giorgio, Chatham Health Agent, said they have discussed having educational forums in town but there is nothing formal at this point. She said they would like to work with the Cooperative Extension Service.

Austin Knight said it seems like the County should play a part in education. He asked if the state requires a certificate in the future would these towns be required.

Jon Idman said, no, the regulations will stand on its own and said that's the purpose for the DCPC.

Sue Leven said since Brewster started their water management project they have provided much information on this. She said they have created fliers on septic, lawn care and laundry/kitchen products. She said they have a very active group of pond-front owners who always show up when they have pond information.

Kevin Grunwald inquired about allowing for a variance in Eastham. He asked if someone applied for a variance and it was denied could it be appealed. He asked for examples where this would occur.

Jane Crowley said she can't think of one today. She said they have discussed that in the future it should be considered. She said they would allow citizens to come forward if they had a solution that was not anticipated. Ms. Crowley said a variance that is denied could be appealed in general court.

Federal, state, county, and local officials were called to provide comment.

Anne Canedy, Barnstable Town Council, said Barnstable's ordinance was voted unanimously by Town Council because it went through an excellent process; they did their research, a draft was composed and brought to Town Council and Legal Counsel. She said their focus was on an educational piece and they also added a piece on retail as well. She said they are dedicated to making it an educational ordinance.

Public comment was called. No public comment was given.

Jack McCormack said Yarmouth did not impose any regulations regrettably. He said we've heard testimony that golf courses have been practicing Best Management Practices.

Austin Knight moved to close public hearing. Michael Skelley seconded the motion. A vote called on the motion passed with a unanimous vote.

Vice-chair Andrew Putnam moved that **Barnstable's Implementing Regulations**, adopted as a Nitrogen and Phosphorus Control Ordinance by its Town Council November 20, 2014, conform to the Guidelines for Implementing Regulations set out in the Fertilizer Management DCPC Designation, Section 6.4. Royden Richardson seconded the motion. A vote called on the motion passed with a unanimous vote.

Vice-chair Andrew Putnam moved that **Brewster's Implementing Regulations**, adopted as a Fertilizer Control Bylaw by its Special Town Meeting November 17, 2014, conform to the Guidelines for Implementing Regulations set out in the Fertilizer Management DCPC Designation, Section 6.4. Jack McCormack seconded the motion. A vote called on the motion passed with a unanimous vote.

Vice-chair Andrew Putnam moved that **Chatham's Implementing Regulations**, adopted as a regulation on the content and application of fertilizer used in the town by its Board of Health November 19, 2014, conform to the Guidelines for Implementing Regulations set out in the Fertilizer Management DCPC Designation, Section 6.4. Jack McCormack seconded the motion. A vote called on the motion passed with a unanimous vote.

Vice-chair Andrew Putnam moved that **Eastham's Implementing Regulations**, adopted as a regulation on the content and application of fertilizer used in town by its **Board of Health** November 20, 2014, conform to the Guidelines for Implementing Regulations set out in the Fertilizer Management DCPC Designation, Section 6.4. Len Short seconded the motion. A vote called on the motion passed with a unanimous vote.

Vice-chair Andrew Putnam moved that **Eastham's Implementing Regulations**, adopted as a Wetlands Protection Nitrogen and Phosphorus Control regulation by its **Conservation Commission** December 9, 2014, conform to the Guidelines for Implementing Regulations set out in the Fertilizer Management DCPC Designation, Section 6.4. Jack McCormack seconded the motion. A vote called on the motion passed with a unanimous vote.

Vice-chair Andrew Putnam moved that **Provincetown's Implementing Regulations**, adopted as a regulation on the content and application of fertilizer used in the town by its Board of Health December 4, 2014, conform to the Guidelines for Implementing Regulations set out in the Fertilizer Management DCPC Designation, Section 6.4. Austin Knight seconded the motion. A vote called on the motion passed with a unanimous vote.

■ OTHER BUSINESS

Jack McCormack thanked Paul Niedzwiecki and Commission staff for contacting National Grid regarding the moratorium.

Chair Richard Roy wished everyone a happy holiday and expressed well wishes to Commission member John Harris who had recently undergone surgery.

A motion was made to adjourn at 4:00 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Harold Mitchell, Secretary

List of Documents Used/Presented at the December 18, 2014 Commission Meeting

- Minutes of the November 13, 2014 Commission meeting.
- Handout material: December 18, 2014 Commission meeting agenda.
- Handout material: Memo to the Cape Cod Commission from Jon Idman, Chief Regulatory Officer.
- Handout materials: Fertilizer Management DCPC Implementing Regulations for the towns of Barnstable, Brewster, Chatham, Eastham (Board of Health), Eastham (Conservation Commission), and Provincetown.
- Material presented: PowerPoint Slide of Implementing Regulations Comparison Chart prepared by Commission Staff.



CAPE COD
COMMISSION

IMPLEMENTING REGULATIONS COMPARISON

	N	P	Wet. Buffer Zone	Cert.	Exempt.	TOY Rest.	BMP	Edu.	Imp. Surf./ Heavy Rain
BARNSTABLE Ord.	3.2 1.0 20%	✓	Approval Req'd. (CC)	✓	Ag./Hort.	11/12 - 3/31	✓	✓	✓
BREWSTER By-law	2.0 1.0 20%	✓	Approval Req'd. (BOS designee)	No	Ag./Hort. Golf Compost N/A	11/15 - 4/15 adjustable By BOS	✓	✓	✓
CHATHAM BOH Regs.	3.2 1.0 20%	✓	Approval Req'd. (CC/ BOH)	✓	Ag./Hort. Compost N/A	11/12 - 4/14	✓	✓	✓
EASTHAM BOH Regs.	3.2 1.0 20%	✓	See Conscom Regs.	No	Ag./Hort. mulch	11/12 - 4/14	✓	✓	✓
EASTHAM CC Regs.	3.2 1.0 20% (New turf)	✓	<ul style="list-style-type: none"> Maintenance prohibited New turf allowed, must be conservation type Repair allowed 	No	Ag./Hort. Ltd. Ex. compost	11/12 - 4/14	See East. BOH	See East. BOH	✓
PTOWN BOH Regs.	3.2 1.0 20%	✓	Prohibited	No	Ag./Hort.	11/12 - 4/14	✓	✓	✓