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CAPE COD  
COMMISSION

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## Minutes

### Meeting

### Cape Cod Commission

First District Courthouse • Assembly of Delegates Chambers  
3195 Main Street, Barnstable, MA 02630

August 3, 2017

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

Town	Member	Present
Barnstable	Royden Richardson	✓
Bourne	Richard Conron	✓
Brewster	Elizabeth Taylor	✓ ( <i>left at 5:00 p.m.</i> )
Chatham	Michael Skelley	✓ ( <i>arrived at 3:05 p.m.</i> )
Dennis	Richard Roy	✓
Eastham	Joy Brookshire	✓
Falmouth	Charles McCaffrey	✓ ( <i>arrived at 3:10 p.m.</i> )
Harwich	Jacqueline Etsten	Absent
Mashpee	Ernest Virgilio	Absent
Orleans	Len Short	✓
Provincetown	Vacant	Vacant
Sandwich	Harold Mitchell	✓
Truro	Kevin Grunwald	✓
Wellfleet	Roger Putnam	✓
Yarmouth	John McCormack, Jr.	✓
County Commissioner	Mary Pat Flynn	Absent
Minority Representative	John Harris	✓
Native American Rep.	David Weeden	Absent
Governor's Appointee	Michael Maxim	✓

The meeting of the Cape Cod Commission was called to order on Thursday, August 3, 2017 at 3:00 p.m. in the First District Courthouse, Assembly of Delegates Chambers, 3195 Main Street, Barnstable, MA. Roll was called and a quorum established.

### **SUMMARY OF ACTIONS TAKEN/VOTES:**

#### **Public Hearing: Cedar Pond Water Quality Management Plan, Orleans #EIR-DRI16003**

Following presentations, public testimony and discussion, the Commission deliberated on the Development of Regional Impact (DRI) Exemption application filed by the Town of Orleans for proposed replacement of weir boards in Cedar Pond, which were removed from an existing outlet in 2004. Following deliberation, the Commission voted unanimously to close the public hearing, adopt the draft written DRI Exemption decision for the project, and approve the DRI Exemption requested by the Town of Orleans for the project.

#### **Public Hearing: Cape Cod Training Center #TR-HDEX17015**

Following presentations, public testimony and discussion, the Commission deliberated on the mandatory Development of Regional Impact (DRI) and Hardship Exemption application submitted by Total Athletics of Cape Cod Inc./Cape Cod Training Center, LLC for the proposed construction of an approximately 91,885 square foot two-story athletic training center together with ancillary site improvements located at 90, 110 and 130 Merchants Way and 20 Business Lane in Hyannis, MA. Following deliberation, the Commission voted unanimously to close the public hearing. A motion was made and seconded by the Commission to adopt the draft written DRI Hardship Exemption decision, grant the applicant DRI Hardship Exemption and grant Hardship Exemption relief in the Regional Policy Plan issue areas of open space and recreation, transportation, affordable housing and community character. With 12 members voting a vote called on the motion passed with 11 votes in favor and one abstention (Kevin Grunwald).

**Approval of Minutes:** The minutes of the July 6, 2017 Commission meeting were approved by a unanimous vote.

### **■ EXECUTIVE DIRECTOR'S REPORT**

Executive Director Paul Niedzwiecki said he would defer giving his report at the end of today's meeting.

### **■ CEDAR POND WATER QUALITY MANAGEMENT PLAN, ORLEANS #EIR-DRI16003**

Chair Harold Mitchell read the hearing notice and opened the public hearing at 3:02 p.m. He said the public hearing is on the Development of Regional Impact (DRI) Exemption application filed by the Town of Orleans for the Cedar Pond Water Quality Management Plan. He said as a management action recommended in the Town's Cedar Pond Water Quality Management Plan, the Town proposes replacing weir boards in Cedar Pond, which were removed from an existing pond outlet in 2004. He said the purpose of the project is to improve water quality within Cedar Pond by reducing its salinity, to restore diadromous fish habitat, and to protect adjacent forested Cedar wetland habitat.

George Meservey, Town of Orleans Planning Director, said the project site is the 15-acre Cedar Pond. He said an outlet control structure was installed during the construction of Route 6. He said single-family residences abut the Pond to the east and south, a large forested wetland system is located to the west, and overhead electric lines extend over the northern portion of the Pond parallel to Route 6. He said the project site is located in the Inner Cape Cod Bay and Cedar Pond and Rock Harbor Creek have been identified by the Division of Marine Fisheries as diadromous fish habitat for alewife, white perch and American eel. He said in the Single Environmental Impact Report (SEIR) Cedar Pond was originally a fresh waterbody and was managed as part of an alewife fishery/herring run. He said weir boards had been in place within the outlet control structure since the construction of Route 6 in the late 1950s until 2004 when the boards were removed. He said tidal flow was substantively increased into the Pond following sediment removal in January 2007 and those changes have increased salinity levels within the Pond which has resulted in low dissolved oxygen and increased chlorophyll concentrations, fish-kills and threatens the wildlife habitat area. He said Orleans has completed all the studies to re-install flash boards, the Town hired the School for Marine Science and Technology (SMASST) at the University of Massachusetts to evaluate the Pond, the Orleans Board of Selectmen and Water Quality Task Force have approved the plan, and approval of the SEIR was issued on May 26, 2017 which determined that the project complies with Massachusetts Environmental Policy Act (MEPA). He said most of the issue areas in the Commission's Regional Policy Plan (RPP) are not applicable to the project and rationale for the DRI Exemption is the project's location; the character and environmental effects do not have regional impacts; impacts are local; weir boards are being replaced and the boards will be monitored so that they can adapt to any changes. He said Commission staff reviewed the project through the SEIR process and recommends approval.

Jon Idman, Chief Regulatory Officer at the Commission, said the project is an activity to replace weir boards that will provide ecological benefit to the system. He said the project is mitigation and the Town has an Adaptive Operations and Management Program for the project that they will monitor and change the course if there are any changes. He said a draft DRI Exemption decision has been prepared and the decision has all the findings necessary to approve the project as a DRI Exemption.

Roger Putnam said he read that the power lines would be removed for pollution purposes. George Meservey said the Town is in the final negotiation stage to get that done.

Chair Harold Mitchell called for public comment. Seeing none Jack McCormack moved to the close the public hearing and Elizabeth Taylor seconded the motion. A vote called on the motion passed with a unanimous vote.

Michael Skelley moved the Commission adopt the draft written DRI Exemption decision for the project and approve the DRI Exemption requested by the Town of Orleans for the project, Jack McCormack seconded the motion, and a vote called on the motion passed with a unanimous vote.

### ■ CAPE COD TRAINING CENTER #TR-HDEX17015

Chair Harold Mitchell read the hearing notice and opened the public hearing at 3:20 p.m. He said the public hearing is on the mandatory Development of Regional Impact and DRI Hardship Exemption application submitted by Total Athletics of Cape Cod Inc./CCTC, LLC for the proposed construction of an approximately 91,885 square foot two-story athletic field house together with ancillary site improvements located at 90, 110 and 130 Merchants Way and 20 Business Lane in Hyannis.

Attorney Eliza Cox, with the law firm Nutter McClennen & Fish representing the applicant, thanked Commission staff for their review and comments. She said she understands the importance of a subcommittee and appreciates Commission staff bringing the project directly to the full Commission today. She said the project complies with standards of the Cape Cod Commission Act and said the applicant is seeking a Hardship Exemption. She said the project is at a critical juncture in that construction needs to start in September and ready for opening of school is vital to the project. She said there has been a lot of positive input due to community need and demand of the project and the applicant has worked closely with the Town of Barnstable. She introduced the project principal Coach Mike Sherman and co-principal Warren Nighan, RN, MSN.

Coach Mike Sherman thanked Eliza Cox, Paul Niedzwiecki and Jon Idman for their efforts. He said he got involved in the project because he wants to provide alternatives for kids to experience a better quality of life. He said the facility is being built for kids, adults and seniors on Cape Cod and it's not just an athletic facility, it will be everything for all people. He said in September they will be sending out notices to the entire Cape to survey the types of programs people would like to have. He said they want to recognize top talent on Cape Cod and they want to create a safe-haven for kids. He thanked the Commission for the opportunity and said he is excited about the future on Cape Cod.

Warren Nighan, RN thanked the Commission staff for their efforts. He explained why they want to build the facility and why it will be successful. He said through nursing he has dealt with childhood obesity; the project will create jobs; provide training for elite athletes and other athletes; he spent the last year and a half getting contracts from the different schools; he started looking at school programs and the Cape Cod Baseball League; and it's the only dual facility on Cape Cod. He said the facility will have a turf field; they will be able to rehabilitate athletes and other people on the Cape; they will have batting cages; private coaches/trainers; it will provide more ice time for youth and adult leagues; there will be access to indoor and outdoor fields; and they hope to have the Boston Hockey League on Cape Cod. With the use of PowerPoint slides Mr. Nighan referred to an aerial view of the site showing the building plan, field house, baseball field, 50' x 58' hydrotherapy pool, locker rooms, child care facility, pro shop, restaurant, office space and a Cape Cod Rehabilitation Center on the second floor. Mr. Nighan said it's more than just a business plan and he thanked the Commission for the opportunity to speak.

Attorney Eliza Cox explained the project's consistency with the Commission's Regional Policy Plan (RPP), she said the project is within Barnstable's Industrial Zone District, the Town is amending its zoning and the project was unanimously recommended by the Barnstable Planning Board to the Town Council. She said on the Land Use Vision Map (LUV) the project is in an Industrial and Service Trade Area, there is one area mapped as Zone II, there are existing industrial uses in the area, the project is centrally located on Cape Cod, the project will have access to municipal sewer and water, the applicant filed with the Federal Aviation Administration (FAA) and received no hazard approval, the project is consistent with Barnstable's Local Comprehensive Plan, Barnstable has an Open Space and Recreation Plan that calls for active/passive recreation, and the Hyannis Youth and Community Center looks for ways to collaborate with activities. She said the rationale for hardship relief is that there is a significant public need, there is a lack of facilities for these types of clubs, the

Cape Cod Chamber of Commerce supports the project, the project is in the right location/zoning is correct, and there is a financial hardship as the applicants are contributing \$2 million of their own money. She said this is a viable project and she discussed RPP standards for land use/economic development, natural resources, open space, water resources, waste management, affordable housing, energy, transportation and heritage preservation/community character. She said the applicant is seeking hardship relief in RPP issue areas for open space, affordable housing, transportation and community character. She provided an overview of the project benefits in the draft decision under General Findings GF13. She said the project is a significant economic driver and it will bring in a significant amount of income for the region, it will serve as a hub for the whole community, and it's properly sited in design.

Jon Idman, Chief Regulatory Officer, said arguments are contained in the draft decision and Commission staff have reviewed the project. He said staff met with the applicant and explained that they did not have to go through a subcommittee review and could come directly to the full Commission. He said Commission transportation and water resources staff are here to answer questions.

Royden Richardson said this is a good project but he has one concern. He asked if children from families that have income challenges would be able to participate. Mike Sherman said, yes, there will be a scholarship fund; they will have a fund to meet the ability of children to participate financially. Mr. Richardson inquired about what programs are in place to show funds realized for poor people on the Cape. Mr. Sherman said they haven't got to that but they will continue to discuss that. He said they want to have programs but they still need to pay the bills. He said they want to create programs and giving back to the community won't be a problem. Mr. Richardson referred to the Salvation Army and said many times kids are left out. Mr. Sherman said he has been involved with organizations for the homeless and foster care.

Richard Conron asked if this would be a regional facility for all on Cape Cod and asked if public transportation would be provided. Warren Nighan said, yes, it's a regional facility for everyone on Cape Cod. Mr. Conron asked if this would be a 24/7 operation. Mr. Nighan said the hours of operation would be 6:00 a.m. to 10:00 p.m. Randy Hart, with Vanesse Hangen Brustlin (VHB), said transportation will not be provided.

Kevin Grunwald said there has been a lot of interest in the project but the Commission has not received an application and asked why the delay and coming to the Commission now. Warren Nighan said they didn't have the ability to do it, they didn't have a complete application because they didn't have a business plan in place. Mr. Grunwald inquired about the success of the business plan and construction starting in September. Mr. Nighan said the facility needs to be constructed before the school season starts. Mr. Grunwald asked if a year would change their business plan. Mr. Nighan said, yes, steel has been ordered and needs to be delivered by September. He said if there is a delay, there will be an additional cost and it would hurt the project.

Joy Brookshire asked where the funding is coming from and whether it's public or private funding. She asked about funding from high schools. Warren Nighan said the private funding is coming from him and Mr. Sherman. He said they would be using the same funds from schools that is provided to other schools. Ms. Brookshire asked if there would be an indoor track for running. Mr. Nighan said there will be an indoor turf track for running/walking.

Chair Harold Mitchell called for comment from state and municipal entities and the public.

John Flores, Barnstable Town Councilor, said he has followed the project for 18 months, there has been total transparency and the town has been kept informed. He said the Town Council supports the hardship exemption for the project. He read a letter from Town Councilor Will Crocker supporting the project. He said this is a great opportunity and hopes for a positive vote by the Commission.

Marty Riley, former Senator, said he is here today as a private citizen. He said this will be a fantastic project for Cape Cod, it will be the home of the Cape Cod Baseball League Hall of Fame, it will be Barnstable's youth and community center, it will bring in year-round tournaments and it will create jobs. He said he commends Mike Sherman and Warren Nighan and asked for a favorable vote for the project's hardship exemption.

Sia Karplus talked about energy and said the project is being done in an environmentally responsible way. She said the applicants are both business smart and environmentally smart.

Elizabeth Jenkins, Director of Growth Management for the Town of Barnstable, said the project is consistent with the town's Local Comprehensive Plan and zoning bylaws. She said the project is in the right location and the Barnstable Town Council will be addressing a zoning amendment on August 17. She said the town supports the project.

Chris Adams, Cape Cod Chamber of Commerce, said the project will provide economic development benefit to the Cape in the off season and it will bring a lot of people to Cape Cod. He said it has been a challenge to recruit people to come to Cape Cod and perhaps in the future people will come because of what the Cape has to offer in terms of its amenities. He said the project will create better jobs.

Robert Fortes said he became a coach for the Special Olympics and this will provide a place for training. He said it will be great for Cape Cod.

Attorney Charles Lebherz said he represents an abutter, Kids Hill Road LLC. He said his client supports the project but if the Commission does not approve the project, his client would like the opportunity to review the project materials.

Kevin Grunwald said he is not ready to vote on the project today and said the project was not reviewed by a Commission subcommittee. He said he would like time to think about the hardship exemption request. Michael Skelley said the Commission should vote on the project today. Royden Richardson said he would like to vote on the project today. Roger Putnam said he is ready to vote on the project today.

Michael Skelley moved to close the public hearing, Jack McCormack seconded the motion and a vote called on the motion passed with a unanimous vote.

Chair Harold Mitchell asked for a motion to adopt the draft written DRI Hardship Exemption decision, grant the applicant DRI Hardship Exemption and grant Hardship Exemption relief in the Regional Policy Plan issue areas of open space and recreation, transportation, affordable housing and community character and find as outlined in the decision a) literal enforcement of the Act would involve a substantial hardship, b) relief granted is related to the minimum relief necessary to address that hardship and c) relief does not nullify or substantially degenerate from the intent or purpose of the Cape Cod Commission Act nor result in a substantial detriment to the public good.

Roger Putnam moved the motion, Jack McCormack seconded the motion and with 12 members voting a vote called on the motion passed with 11 votes in favor and one abstention (Kevin Grunwald).

#### ■ MINUTES

The minutes of the July 6, 2017 Commission Meeting were reviewed. Roger Putnam moved to approve the minutes and Michael Skelley seconded the motion. A vote called on the motion to approve the minutes passed with a unanimous vote.

#### ■ NEW BUSINESS: *Topics not reasonably anticipated by the Chair more than 48 hours before the meeting.*

No new business was taken up.

Executive Director Paul Niedzwiecki did not provide a report.

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

Respectfully submitted,

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Elizabeth Taylor, Secretary

#### **List of Documents Used/Presented at the August 3, 2017 Commission Meeting**

- Handout material: August 3, 2017 Commission meeting agenda.
- Handout material: July 6, 2017 Draft Commission meeting minutes
- Handout material: Cedar Pond Water Quality Management Plan draft DRI Exemption decision.
- Handout material: Cape Cod Training Center draft DRI Hardship Exemption decision.
- Material Presented: Cape Cod Training Center PowerPoint presentation by Total Athletics of Cape Cod.