



Minutes
Cape Cod Commission (CCC)
Barnstable County Complex- East Wing Conference Room
3195 Main Street, Barnstable, MA 02630
September 19, 2019

ROLL CALL

The Chair Harold Mitchell called the Cape Cod Commission meeting to order on Thursday, September 19, 2019 at 3:00 p.m., in the East Wing Conference Room, 3195 Main Street, Barnstable, MA 02630. Roll Call was called, and a quorum of members was established:

Town	Member	Attendance
Barnstable	Fred Chirigotis	Present
Bourne	Stephen Mealy	Present
Brewster	Elizabeth Taylor	Present
Chatham	Tom Wilson	Present
Dennis	Richard Roy	Present
Eastham	Joy Brookshire	Absent
Falmouth	Charles McCaffrey	Present
Harwich	Jacqueline Etsten	Present
Mashpee	Ernest Virgilio	Present
Orleans	Len Short	Present
Provincetown	Cheryl Andrews	Present
Sandwich	Harold Mitchell	Present
Truro	Kevin Grunwald	Present
Wellfleet	Vacant	Vacant
Yarmouth	John McCormack, Jr.	Present
County Commissioner	Ronald Bergstrom	Present
Minority Representative	John Harris	Present
Native American Rep.	David Weeden	Absent
Governor's Appointee	Michael Maxim	Present

Summary of Actions Taken/Votes at Meeting:

- **Approval of Minutes:** The minutes of the August 22, 2019 CCC Workshop were approved.
- **Hyannisport Club Discretionary Referral:** The Commission accepted the limited discretionary referral from the Barnstable Historic Commission as a Development of Regional Impact.



Approval of minutes:

The minutes of the 8/22/19 Cape Cod Commission Workshop meeting were reviewed.

Upon a motion by Ernie Virgilio to approve the 8/22/19 minutes, seconded by John Harris, the motion was passed. Kevin Grunwald, Charles McCaffrey and Michael Maxim abstained from the vote.

Executive Directors' Report – *Kristy Senatori*

Water Quality Updates:

- The Cape Cod Commission provides administrative support to the Cape Cod and Island Water Protection Fund Management Board which will meet again on 9/26. CCC has also been supporting the Bylaws Committee and have worked with them to prepare draft bylaws for consideration by the management board at their September 26, 2019 meeting
- The Cape Cod Commission finalized 208 compliance reports for each town which have been submitted to the United State Environmental Protection Agency and the Department of Environmental Protection. CCC has been invited to participate in an Environmental Leadership Exchange event on September 25, 2019. The meeting will include information exchange between southeast New England partners and Chesapeake Bay leaders on water quality issues
- Ms. Senatori was invited to Cape Cod Community College and asked to speak to faculty and staff about Economic Resilience in the Region, this discussion was well received

Census:

- The CCC is working with Jack Yunits and Mark Ells on the Complete Count Committee. Working to convene subcommittees now

Planning:

- Patty Daley and Chloe Schaeffer presented housing data to the Chatham Finance Sub-committee Housing Working Group last week
- Sandwich Community Resiliency by Design second public workshop is on Monday night, Sept. 23, 6pm, Sandwich Town Hall
- CCC Staff will be presenting to the Mashpee Planning Board on new Local Comprehensive Planning Regulations on Wednesday, September 25th evening
- Sarah Korjeff is presenting at the State Historic Preservation Conference on Friday, September 20th



The Harwich BOS has submitted a District of Critical Planning nomination for West Harwich and it will likely be on the CCC Agenda for October 3, 2019.

Kristy attended a meeting with Secretary Pollack, MassDOT at the Cape Cod Chamber of Commerce primarily addressing the Sagamore and Bourne bridges. More information is anticipated later in the fall and CCC will continue to be involved.

A press release was distributed on upcoming community meetings and the commencement of an initiative on Climate Change planning and actions which are scheduled on October 21 and October 29.

The CCC was selected as the Municipal Vulnerability Preparedness provider for the Town of Dennis.

The CCC will be hosting addition Coastal Planner Training Workshops in the first two weeks of October.

Taree McIntyre has retired after 10 years her last day will be Tuesday, September 24. We thank her for her service and wish her well.

Siobhan Cavacco will start on Monday, September 23 as an Administrative Assistant at the front desk.

HYANNISPORT CLUB DISCRETIONARY REFERRAL (CCC File No: 19023)

The Chair, Harold Mitchell read the hearing notice regarding the Limited Discretionary Referral made by the Barnstable Historical Commission requesting Development of Regional Impact Review under the Cultural Heritage goal and objectives of the Regional Policy Plan. The Referral concerns the proposed demolition of the "Marchant House" located on the grounds of The Hyannisport Club, 2 Irving Avenue, Hyannisport.

The Chair asked that the town make its presentation.

Paul Wackrow, Town of Barnstable Planning staff on behalf of the Historic Commission, presented the town's position about why the Commission should accept DRI review of the proposed demolition, assisted by a PowerPoint slide presentation. The presentation included photographs of the Marchant House, aerial views of the Hyannisport Club and a historic map. He stated that it's one of the oldest structures and unique to the area. In July 2019 the town heard an application by the Hyannisport Club proposing the full demolition of the Marchant House. At the close of the hearing, the Historic Commission (BHC) found that the house is a historically significant building, should be preserved and that the demolition would be detrimental to historical and cultural heritage of the town. The BHC imposed an 18-month demolition delay on the building to provide time to explore alternatives to demolition, and also voted to make a limited discretionary referral of the demolition to the Cape Cod Commission seeking Development of Regional Impact (DRI) review. He continued that the town very rarely makes discretionary referrals to the Commission. The last time the town did so was 2009, for the same proposed demolition project. In 2009, the Commission accepted that discretionary referral as a DRI, determining that the building was not a single-family dwelling exempt from a discretionary referral. Mr. Wackrow asked that the CCC make the same decision today. He said that all buildings on the property of the Hyannisport Club are used for commercial use related to club use. He said that the building is not on the national register of historic places because listing would require permission from the owner. If it were on the registry, he said it would be a mandatory DRI. He said that two separate preservationist professionals have found this building individually eligible for listing on the National Register, for its association with the Marchant Family, the Saltworks operation, ship building, and the building design which is an original authentic Cape Cod style house. He said that this is the



type of historic building we should want to preserve on Cape Cod. He is hoping that the review will start the larger conversation about creating a long-term preservation plan for the building that identifies appropriate compatible uses. He stated that he appreciates the consideration of the Commission and asks that we accept the referral.

The Chair thanks Mr. Wackrow for his presentation and requested comments from Staff.

Jon Idman stated that the Commission was provided in its materials a copy of the referral and supporting information from the town, a staff report, and a letter from the Hyannisport Club. He said that one of the central issues to consider with this discretionary referral is whether the Commission considers the building proposed for demolition to be a single-family dwelling. There is a provision from the Commission's Enabling Regulations that would prevent the Commission from accepting the referral for DRI review if it were deemed a single family dwelling, where the building has not otherwise formally been deemed eligible by the Massachusetts Historical Commission for listing on the National Register. He noted that staff reviewed the facts anew but also revisited to Commission's consideration of the proposed demolition from 2009. In 2009 the Commission had accepted a discretionary referral for the demolition as a DRI and at that time the CCC determined the building was an accessory building part of the golf course operations. He added that the Club later withdrew its request to demolish and the demolition never proceeded through DRI review. In staff's opinion the facts and circumstances haven't changed since the Commission's previous consideration of the demolition in 2009, that staff suggests the building is not used as a single family dwelling, and that there is no jurisdictional impediment to the Commission accepting the referral as a DRI. He stated staff's further recommendation that the Commission accept the demolition as a DRI because it raises regional concerns under Section 12(b) of the Cape Cod Commission Act; specifically, concerns related to historic, cultural or architectural resources in the Cape Cod Region. He clarified that the discretionary referral was "limited" to Cultural Heritage issues in the Regional Policy Plan i.e. if the Commission were to accept the referral as a DRI, only the Cultural Heritage goal of the RPP (which deals with protection of cultural, historic and archaeological resources) would apply to RPP consistency review of the proposed demolition.

Sarah Korjeff, Historic Preservation Specialist, Cape Cod Commission stated that the town presented the key facts of the project. She added that it is important to recognize that there is a limited number of historic buildings remaining from the 1750's era. The update to the Regional Policy Plan acknowledges that preservation of historic and cultural resources are priorities, and that there are significant cultural and historic resources that are not protected through local historic district or National Register designations. In 2009 qualified preservation professionals issued reports determining that this building was individually eligible for the National Register, which is a high standard. For that reason, staff recommends that the CCC accept this discretionary referral as a DRI.

The Chair asked for comments from the Hyannisport Club.

Mark Boudreau Attorney stated that he has been familiar with the building for decades. He said that the building was used as a residence by the Club, most recently for tennis staff. He became head of the Tennis Committee at the Club and tried for years to get money to update and maintain the building to no avail; there have been multiple Club presidents and boards since that time and there has been no interest in preserving the building as the price tag was estimated over \$1million and no recognized utility of the building to the Club. He doesn't understand why in 2009 it was determined that it was not a single-family dwelling. The authority to make that determination is with the town Building Commissioner or the Zoning Board of Appeals, neither of which made such a determination. He said that the building has always been used as a single-family dwelling, not for any other use. He suggested that even if no determination has been made by the Building Commissioner or ZBA, the Club is



considered a legal non-conforming use under local zoning and the building would be viewed as a conforming single-family residential use. He stated that, realistically, the Club will not be putting money into the building or preservation, it would continue to deteriorate and ultimately would fall down, and no demolition permit would be needed. He suggests that the Commission is prohibited under its own regulations from accepting the referral as a DRI, and requests that the CCC not accept the demolition as a DRI. He concluded by saying that the building was located well onto the 150-acre site and could not be seen from any public viewing point.

The Chair asked for comments from Commissioners.

Elizabeth Taylor asked how a property can get listed on the National Register. Ms. Korjeff stated that the process for listing on the National Register involves preparing a detailed nomination form and submitting that to the Massachusetts Historical Commission (MHC) for review, then to the National Park Service for approval. For individual properties Massachusetts Historical Commission requires owner consent. There is a process allowed for buildings that have been evaluated by the MHC. If determined that they meet all the standards for listing but don't get listed MHC/NPS can make a determination of eligibility which often happens with government owned properties. Being part of a historic district there is a different process where they need 50% or more of the owner's consent. Ms. Taylor stated that if the owner doesn't want to apply then it can't be listed and fall under a protected category. Ms. Korjeff stated that if the owner doesn't consent then it would not be able to be listed on the National Register but could still potentially be formally deemed eligible for listing, which would provide some protection for historic resources.

Cheryl Andrews asked if the building has an occupancy permit and Mr. Boudreau stated that to his knowledge it does not, saying that the vintage of the building pre-dated occupancy permits. He added that the second floor would be condemned with several holes in the floors presumably from raccoons. The Club asked a local builder, Mr. Willard, to evaluate the building's condition a few months ago. He stated that the property was too far gone, significantly altered and in his opinion, there weren't enough remaining historical features in the home justifying restoration.

Charles McCaffrey asked about federal law application. Ms. Korjeff stated that government agencies are under a different umbrella in Section 106 of the National Historic Preservation Act which requires that any state or federal government actions, permits or grants that effect a listed property have to meet basic preservation standards.

Ron Bergstrom stated that this is similar to an ongoing issue in his town of Chatham when a historic building comes up for demolition. If the request to demolish is denied, the home will be left to deteriorate. The action that the CCC takes might determine the fate of other historic properties. As you travel along Route 6A there are historic buildings that are occupied because they have been maintained. Although they may not be up to today's building codes, they are still in use. Mr. Bergstrom is inclined to support saving any historic structure. Preservation would be up to Hyannisport Club, but they are unwilling to preserve the building and he says that we must consider what real jurisdiction the CCC has to preserve these types of properties. Ms. Korjeff stated that 10 years ago when we this was previously proposed for demolition, the Commission voted that they could review it. The applicant withdrew their application as the community gave support for preservation and the assumption was that the Club, based on that community sentiment, would move forward with preservation. If the Commission were to accept the demolition as a DRI and review the project, the CCC would have the opportunity to discuss about potential alternatives to demolition like reusing the building. Ms. Korjeff said that because the Club property is private, she has not seen or been inside the building but is relying on the Preservation Consultant reports that evaluated the property 10 years ago.



Len Short feels that the Town of Barnstable and Club should be responsible and do something about the preservation of this building.

Jack McCormack asked what the town plans to do moving forward to support preservation of the building. Mr. Wackrow stated that there are no concrete plans at the moment, and it would have to be a process of discussion with the property owner to establish what the appropriate use, etc. of the building to realistically support its preservation and maintenance in the long term.

Cheryl Andrews asked when the building was last occupied. Attorney Boudreau said about 15 years ago.

Mr. Bergstrom asked if the Commission has the means to get an estimate of cost to restore the structure. Atty. Boudreau said in n 2007 an estimate was submitted for \$1.2 million to preserve the building.

Mr. Chirigotis asked how long preservation would take if the Commission accepted jurisdiction. Mr. Idman stated that if the Commission accepts this for review, the CCC jurisdiction is immediate. CCC opens a hearing period within 60 days of acceptance, the hearing period is then 90 days with another 60-day decision period if necessary. But this is just permitting, it assumes a DRI application will be submitted and the applicant will proceed with permitting. Physical work would be done after that. They could withdraw their local application which takes away jurisdiction from the CCC. There is also an 18-month demolition delay from the Barnstable Historic Commission. Finally, what would be before the commission for consideration is a demolition, not necessarily a preservation proposal.

Mr. Boudreau stated that the building has the form of a home with kitchen, bathrooms, bedrooms, etc. He stated that Tom Columbo Superintendent of the Hyannisport Club removed a family of racoons from the property last year. Mr. Columbo stated that the property hasn't been used for several years. Squirrels and Racoons have been removed from the property. The second floor is in bad shape, and floors are sagging on the first floor. Restoration would be very costly.

Mr. McCormack stated that he would vote to accept the referral.

Dr. Andrews stated that in reading the materials, the Commission's Enable Regulations specifically exempt a single-family dwelling from a discretionary referral. She asked why the exemption exists. Mr. Idman stated that there is an outright exemption in the CCC Act from any Commission jurisdiction for alterations to a single family building existing in or before 1989 that involves no more 25% of the building area. The focus of the discussion today is on another exemption related to single family dwellings that appears in the Enabling Regulations, which is limited in application to discretionary referrals/ DRI review. The provision in the Enabling Regulations provides that the Commission cannot accept a Discretionary Referral of one single family dwelling unless the dwelling has been deemed formally eligible for listing by MHC on the National Register. The building has not been determined eligible for listing, so in this case the omission can't and shouldn't accept the demolition as a DRI if the Com mission believes that the building is a single-family dwelling.

Mr. Bergstrom asked if CCC accepts the discretionary referral as a DRI is there and if so, what would be the recourse for the applicant to appeal. Mr. Idman stated that as with any regulatory decision by the Commission, the applicant could appeal to Superior or Land Court.

Upon a motion made by Mr. Bergstrom to accept the limited discretionary referral from the Barnstable Historical Commission related to proposed building demolition at the Hyannisport Club, 2 Irving Avenue, Hyannisport, as a Development of Regional Impact for review under the Cultural Heritage goal and objectives of the Regional



Policy Plan, seconded by Elizabeth Taylor, the motion carried, 12 votes in favor, 3 opposed (Mr. Maxim did not vote because, as the Governor's Appointee, his vote was not needed to break a tie pursuant to CCC Act Section 3(b).

Public Comments

Mr. Mitchell asked for any comments from the public on matters not on the meeting agenda. There were no public comments

NEW BUSINESS: *Topics not reasonably anticipated by the Chair more than 48 hours before the meeting.* No new business was taken up.

There was no new business

Adjourn

Upon a motion to adjourn the meeting at 3:45 p.m. by Elizabeth Taylor, seconded b Ron Bergstrom the motion passed unanimously.

List of Documents Used/Presented at the September 19, 2019 Cape Cod Commission Workshop

- September 19, 2019 Cape Cod Commission Agenda.
- Draft Minutes of the August 22, 2019 Cape Cod Commission Workshop
- PowerPoint presentation on the Marchant House demolition from the Town of Barnstable

Respectfully submitted,


Elizabeth Taylor, Clerk, Cape Cod Commission

10-3-19
Date