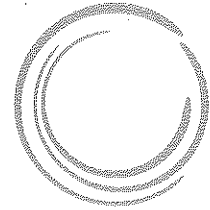


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CAPE COD
COMMISSION

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Minutes
Meeting of
Cape Cod Commission

October 28, 2010

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 | Lynne Pleffner | ✓ |
| Dennis | Richard Roy | ✓ |
| Eastham | Joy Brookshire | Absent |
| Falmouth | Mario DiGregorio | Absent |
| Harwich | Robert Bradley | ✓ |
| Mashpee | Ernest Virgilio | Absent |
| Orleans | Peter Monger | ✓ |
| Provincetown | Austin Knight | ✓ |
| Sandwich | Joanne O'Keefe | ✓ |
| Truro | Peter Graham | ✓ |
| Wellfleet | Roger Putnam | ✓ |
| Yarmouth | John McCormack, Jr. | ✓ |
| County Commissioner | Sheila Lyons | ✓ |
| Minority Representative | John Harris | ✓ |
| Native American Rep. | Mark Harding | Absent |
| Governor's Appointee | Herb Olsen | ✓ |



Keeping a Special Place Special

The meeting of the Cape Cod Commission was called to order on Thursday, October 28, 2010 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

■ PUBLIC COMMENT

Steve Baty, All Media Productions, said the videotaped Commission meetings are available on the Commission's website.

■ EXECUTIVE DIRECTOR'S REPORT

Paul Niedzwiecki said the Commission continues to conduct the watershed tours/forums and said this evening's watershed forum is on the Mashpee watershed.

■ CRAIGVILLE BEACH DISTRICT OF CRITICAL PLANNING CONCERN (DCPC) IMPLEMENTING REGULATIONS

Chair Roy Richardson recused himself and left the meeting room.

Vice-Chair Peter Graham noted that this is a continued hearing from October 14, 2010.

Paul Niedzwiecki, Executive Director of the Cape Cod Commission, said the DCPC in the Craigville Beach area has been on the table for two years. He said it has had significant discussion at the local level and has been to Town Council twice. He said this is an important area that has been designated twice and residents have made great efforts to preserve community character. He said this is an incredibly important area and it's important for consideration by the full Commission. He said all concerned are hoping for finality today.

Kristy Senatori, chief regulatory officer at the Commission, using PowerPoint slides provided a procedural history and said on February 21, 2008 the Commission accepted the nomination of the Craigville Beach/Centerville Village DCPC. She said on June 13, 2008 Barnstable County Ordinance 08-06 establishing the Craigville Beach/Centerville Village DCPC district was recorded. On August 6, 2009 the Commission approved implementing regulations for the Centerville Village portion of the DCPC and noted that the deadline for the town to propose implementing regulations for the DCPC was to expire on September 11, 2009. She said implementing regulations for the Craigville Beach portion of the DCPC were not submitted to the Commission prior to September 11 and the DCPC timeframe expired. She said on October 1, 2009 the Commission accepted the re-nomination of the Craigville Beach DCPC. On November 6, 2009 Barnstable County Ordinance 09-12 establishing the Craigville Beach DCPC district was recorded. Ms. Senatori said on August 5, 2010 the Barnstable Town Council voted on proposed implementing regulations for the district and the vote failed to carry with 8 votes in favor and 4 votes opposed. She said the town notified the Commission that it does not have any implementing regulations for the DCPC on any town agenda and on November 5, 2010 the 12-month period for the town to adopt and incorporate implementing regulations for the DCPC expires. She said the town has not adopted implementing regulations and with a deadline to adopt and incorporate implementing regulations to expire on November 5, the Cape Cod Commission Act enables the Commission to forward implementing regulations to the Assembly of Delegates for adoption. She said the Commission must decide whether to forward the regulations to the Assembly and the form and content of the implementing regulations.

Martha Hevenor, commission planner, using PowerPoint slides provided a summary of proposed implementing regulations, provided background information and explained the borders of the DCPC. She said the Commission is being asked to consider and determine if implementing regulations are necessary to protect community character and viewsheds in the event of land division; to protect natural resources and the barrier beach; and for wastewater management near sensitive coastal waters. She summarized priorities for the Craigville Beach Area as environmental protection, architectural guidelines, building height limits, addressing mansions, and over-development along the beach. Ms. Hevenor discussed flood zone and high groundwater construction requirements; landscaping, accessory structures and fencing compatible with views to the water; and vista pruning. She said the implementing regulations provide dimensional regulations intended to preserve existing neighborhood character and scale that include building coverage and lot coverage limitations, building height, and setback requirements to protect view corridors. She said performance standards include design guidelines to protect historic features, guidelines to limit scale of beach clubs, manage vista pruning; standards to limit development in the V-zone to minimize harm to lives and property; and standards to limit development on coastal banks and sensitive resource areas. Ms. Hevenor said what the Commission is presenting today is what the town has proposed and approved previously.

Patty Daley, Director of Technical Services at the Commission, said what is being recommended are environmental regulations that are non-zoning regulations. She said the regulations would protect saltwater estuaries, provide additional site development standards aimed at water quality protection, and require septage pumping and reporting. She said the Board of Health supports this. She said Commission staff recommends that the Commission find that growth and development is discouraged in barrier beach areas in order to mitigate future storm damage. Ms. Daley said the Commission is being asked to vote to forward the draft implementing regulations to the Assembly of Delegates as directed by the Cape Cod Commission Act.

Paul Niedzwiecki talked about the two petitions and said one in opposition raises issues about grandfathering rights. He said the town felt there were not a lot of grandfathering rights to be eliminated. He said others feel there are and infringes on private property rights. He said when the Commission Act was enacted it gave the Commission the authority and ability to move forward with a DCPC such as this. He said staff recommends approval of the implementing regulations before the Commission today.

Janice Barton, Town Council member, said she is here today to support Councilors from Centerville who have been advocates of the DCPC.

Janet Joakim, resident and Councilor from Centerville, thanked the Centerville Civic Association for their hard work on this. She said when the Town Council voted on the DCPC they were one vote short of a quantum vote and were not able to give a two-thirds vote. She said there is support by Town Council today and asked that the Commission support the implementing regulations.

Tom Rugo, Councilor for Precinct 2 in Centerville, said he speaks in support of the implementing regulations. He said originally the DCPC was drafted for two areas—Centerville Village Center and the Craigville Beach areas. He said the regulations for Centerville Village Center DCPC do not protect properties in the Craigville Beach area. He said Craigville Beach is a barrier beach and they want to keep the beach looking the same. He said this is why residents voted 20 years ago for the Cape Cod Commission to do this type of thing. He said he hopes the Commission will support the implementing regulations. He said most people on the Town Council and in town support this.

Rick Barry, Councilor for Precinct 7 in Cotuit, said he voted in favor of the DCPC. He said the no votes were from people who don't represent those district precincts.

Felicia, Penn, member of the Barnstable Planning Board, said she has worked hard on the town's Local Comprehensive Plan. She said the agenda before Town Council wasn't as to whether they should have implementing regulations but more what the content is and said sometimes the agenda isn't followed. She said the gorilla in the room was about grandfathering. She said the old grandfathering clause is about voting, power and who owns the land. She said the DCPC today would apply to all properties in the zone. She urged the Commission to support the implementing regulations.

Jim Crocker, Councilor for Precinct 5 and president of Town Council, said this type of DCPC came from people taking an active part in village associations. He said everyone who has a fingerprint on this needs to be looked at. He said constituents and residents have told them what they want and said a DCPC works. He said he voted for the first DCPC in the downtown area because the process was thorough. He said he voted to renew this DCPC as well. He asked the Commission to look long and hard at this.

Jo Anne Miller Buntich, Director Growth Management, said this has been a long process. She said she is available to answer questions.

Deborah Daglong, Councilor for Precinct 8, said she has a respect for grandfathering but believes this is an issue about the waterways. She said she supports the DCPC and said the waterways are for everyone.

Meg Loughran, current president of the Centerville Civic Association, said this area has twice been designated as a DCPC. She said a vote in August showed that 8 out of 12 councilors supported the DCPC. She said opponents argue that the DCPC was not requested for water quality issues. She said opponents say they believe the implementing regulations are sound but they still want grandfathering. She said the Commission is doing what they are supposed to do.

Attorney Barry Weiner, represents residents in the area, said the question is whether it should be a DCPC or an amendment to zoning under Chapter 40A. He said grandfathering is serious and it's an important property right. He said Chapter 40A is an important right for individuals. He said the DCPC means a loss of local control and people in the district want rules to be made by local town government. He said we've heard time and again that the DCPC was supported overwhelmingly by the people, however, there is a petition before the Commission today supporting local zoning and opposing the DCPC—people who are overwhelmingly against this proposition. He said the Commission has an option of approving or letting the DCPC lapse and allow local government to have control of this.

Nancy Soulette, owns property at 137 Long Beach Road, said she pays property taxes to the Town of Barnstable and cares very much for this area. She said she is a seasonal resident so she doesn't vote. She said she is very sympathetic for the intent of the document but she is opposed to it being taken away from local zoning. She said the DCPC is not the appropriate tool and it should not be a substitute for local zoning. She urged the Commission to let the DCPC lapse.

Jeff Cook, resident at 535 South Main Street in Centerville, said he has 25 years of real estate experience. He said he understands the need for architecture and historic and environmental preservation and said it can be accomplished through local zoning bylaws. He said the DCPC leaves open the ability to make changes and real estate is a personal issue. He said landowners would have financial impacts. He urged the Commission to let the DCPC lapse.

Jim Lane, year round Centerville resident, said he supports the DCPC. He said he got involved five years ago when the Trade Winds Condominiums went up. He said the Trade Winds Condominiums are an abomination and he is afraid that more of that type of building would happen. He said town wide people who use Craigville Beach agree the DCPC is the thing to do. He urged the Commission to support the implementing regulations.

Charles Orr, voting resident at 157 Long Beach Road, said he started the petition opposing the DCPC. He said people who oppose the DCPC want to use local zoning. He said none of the residents were notified and no one knew that this area was going to be a DCPC.

Chris Outwin, resident at 19 Ladd Road in Centerville, said his property abuts the town landing. He said he has problems with the language and it doesn't matter if its part of local zoning or the Commission. He said he has the smallest house in the neighborhood and he would like to move his house on his property to overlook the river and not the parking lot. He said it's unfair as the upper river and lower river areas are not included in the DCPC and it should be imposed on everyone then.

Mark Goldberg, resident at 229 Long Beach Road, said his family has lived in their house since 1964. He said it's a special place and they have tried to be good stewards. He said the residents have re-nourished the beach twice. He said he objects to the process. He said he was told that all residents could be involved and said that is not true. He said he understands process but not a process when people are not around. He said meetings were held during times when people could not participate. He said it was a flawed process and asked the Commission not to approve a flawed process.

Dom Gautrau, 103 Long Beach Road, said he is a resident and a voter. He said he has been before the Commission previously to get the Centerville River dredged. He said the residents have been good stewards of the beach. He said the DCPC has gone too far regarding the grandfathering aspect and said he believes it should be done through the town. He urged the Commission to let the DCPC lapse so that it can go back to Town Council. He said he would work hard at Town Council to get it passed. He said the DCPC is taking away property rights.

Arlene M. Wilson, owner of a small engineering firm in Marstons Mills, said there are a number of conflicts in the implementing regulations. She talked about elevations in A and V zones and said it should be 2 feet in both zones. She said the lot area definition could be clearer and exempt uses for schools and agriculture has been left out.

Arnold Mason, voting resident at 234 Long Beach Road, said residents have been sincere and great stewards to the area. He said he is against the DCPC as it's being brought forward. He said residents have re-nourished the beach and dredged the Centerville River. He said residents have saved the town a lot of money and they pay more in taxes than what they get from the town in services.

Merrilee Crain said she owns three properties in the area—two properties on the river and one on the ocean. She said she is against the DCPC mainly because of grandfathering rights. She said amending Chapter 40A with all the provisions is a better way to go.

Nelson Orr, 153 Long Beach Road, said residents have been good stewards of the beach. He said the beach wouldn't be there if it wasn't for the residents and he understands it's a barrier beach. He said residents have re-nourished and replenished the beach. He said from the beginning residents were not included in the DCPC process and that was a mistake. He said they fought the original DCPC. He said residents are willing to keep replenishing the area.

Steve Brown, 173 Lake Elizabeth Drive in Centerville, said he supports the DCPC and he encouraged the Commission to support it as well. He said he is a member of the Red Lily Pond Association and the Board of Directors voted to support the DCPC. He said protection of water is crucial and since the 1970s water quality has been threatened. He said despite local zoning large development has occurred and with local zoning he believes this type of development will continue.

Thomas Whelton, resident of Long Beach Road, said he has made hard choices over the years to keep his home and the DCPC means a loss to property owners.

Christina DeCastro, property owner on Long Beach Road, said she is against the DCPC and supports local zoning. She said the beach is in better condition than it ever has been. She said she feels that she is being penalized for not being a year round resident and made to feel that she doesn't count. She said meetings were held during winter months when seasonal residents are not around. She asked the Commission to let the DCPC lapse so that it can go back to the town for local zoning.

Charles Pisacano, owns property at 79 and 86 Shore Beach Road, said he doesn't live there but he is a resident of the Town of Barnstable. He said he is adamantly against the town giving up its control. He said control should be kept with the town and not the Commission.

Peter Fisher, past president of the Centerville Civic Association, said he is here today to support the DCPC. He said he fears over-development in the area. He said town officials held meetings and listened to what people had to say. He urged the Commission to adopt regulations to protect this sensitive area.

Shirley Fisher, Centerville resident, said she believes she accurately represents the average year round resident. She said she opposes both over development and present zoning in the area. She said she gathered signatures in support of the DCPC and both Centerville and Craigville residents signed with enthusiasm. She said DCPC regulations allow reasonable change and protection. She urged the Commission to pass the DCPC regulations as presented.

Jack Driscoll, 75 Long Beach Road, said he is a full-time, year round resident. He talked about the effect the DCPC will have on real estate values and said everyone has said it will reduce real estate values. He said if grandfathering rights are taken away, it would reduce property values. He asked who would compensate property owners if they lose property value.

Susan Rohrbach, resident of Main Street, Centerville, read a letter from Reverend Joanne Hartunian who was unable to attend today's hearing. She said Reverend Hartunian supports protection of Red Lily Pond, supports the DCPC and looks to the Commission for favorable support. Ms. Rohrbach said she was a former councilor in Barnstable and a member of the Planning Board and because she knows something about zoning she knows what is true and what is not true in a petition. She said she doesn't understand people who say they support the DCPC but they don't want it. She said she lives in an historic area and the DCPC protects it. She said people who live in an historic area have a higher standard to preserve because they live in a special place.

George Gingold, 469 Elliott Road in Centerville, said this is the third time he has come before the Commission in support of the DCPC and urged the Commission for its support. He said he is a member of the Board of Directors of the Red Lily Pond Association and he supports Steve Brown's comments regarding water quality.

Anne Gingold, 469 Elliott Road in Centerville, said residents need the Commission's help. She said houses on Long Beach Road have doubled in size and property values will be lost because of poor water quality.

Barbara Birdsey, 177 Long Beach Road, referred to her letter that was distributed to Commission members. She said she worked on re-nourishing the beach for three years and urged the Commission to consider an alternate way of preserving the beauty and integrity of Long Beach.

Norm Fester, summer resident who bought his cottage in 1939, said he is a taxpayer and is happy to be here. He said he believes local zoning is enough and asked that the DCPC be defeated. He said he was raised to never give up rights.

Attorney Michael J. Princi, representing Laurie Lebel-Snowden, said Ms. Lebel-Snowden and her husband signed the petition against the DCPC. He said he has asked for a grandfather provision for anyone who has a conservation restriction and for those people who were already permitted to build before the DCPC started.

Judy Gautrau, 103 Long Beach Road, said she and her family helped to re-nourish the beach. She said they were asked to plant beach grass and they did. She said planting of the beach grass has helped with the re-nourishment and when you plant beach grass it's protected—it can't be walked on. She said it was a sacrifice she and her family made to plant the beach grass as she lost 500 square feet of property because of the planting. She said they have been good stewards and they have given back. She said they have sacrificed and they would do it again.

Lee Williams, 26 Prospect Avenue, said he was originally in favor of the DCPC but now is against it in its present form. He said he supports local zoning.

Sara Alger, an attorney in Osterville, said under the current draft form a resident has no right of appeal in the DCPC. She said the DCPC is a nuclear option; it's a drastic measure. She said she feels it should be handled at the local level. She said Town Council failed to get the necessary vote for approval. She said there is support by town councilmen to support zoning and she urged the Commission to let the DCPC lapse.

Patty Daley, said several people today have said they want local development regulations to apply. She said the implementing regulations have been drafted and locally adopted by the town. She said definitions raised by Arlene Wilson are in the town ordinance. Ms. Daley said she is satisfied the town can enforce regulations if adopted. She referred to a statement made today that if someone were to lose their home they could not rebuild and said that is false. She said expansion potential has been addressed in the regulations. She referred to the comment regarding loss of property value and said properties in other DCPC areas have experienced good values. She also referred to the comment regarding appeals and said the town of Barnstable has a cape-wide DCPC and she is not aware that appeals would not be possible. She said the Barnstable town attorney is here today to answer questions.

Paul Niedzwiecki thanked the public and town councilors who spoke. He said these are difficult choices; we want to keep a special place special. He said if the implementing regulations were adopted, the Commission would make sure the language applies to everyone upon adoption. He said the day-to-day administration of the implementing regulations would happen at the town level not by the Commission. He said they all share the same goals and those goals can be accomplished by adopting the implementing regulations today.

Elizabeth Taylor moved to close the hearing and the record. John Harris seconded the motion. The motion passed with a unanimous vote.

Austin Knight asked for clarification about the appeal process.

Attorney Ruth Weil, Barnstable Town Attorney, said four attorneys had worked on the implementing regulations. She said regarding appeals, since the 2001 DCPC has followed the Chapter 40A process, the town would follow the same process with this DCPC.

Austin Knight said the DCPC is an important tool for protection of the environment. He said changes have to be made at times and this may be one of those changes.

Roger Putnam said people have commented about property rights being taken away and asked who is right.

Jessica Wielgus, Commission counsel, said there is always a judicial process whether it be through Chapter 40A or another process. She said there is always an appellate process and an appellate process would apply here as well.

Attorney William Ryckman said with Chapter 40A property owners would have the right to appeal but in his opinion in a DCPC property owners would not have a right for appeal. He said the DCPC is not a zoning ordinance so rights would no longer exist.

Paul Niedzwiecki said a right of appeal does exist.

Sheila Lyons said she applauds residents for their stewardship. She referred to the previous Centerville Village DCPC and noted that Attorney Weiner had come before the Commission to represent an applicant with a hardship exemption that was approved. She said Attorney Weiner did receive cooperation and assistance from the Commission. She said these extreme sentences that property rights will be taken away is stretching the truth. She said the DCPC covers a lot of area here and there is always an appeal process.

Joanne O'Keefe said she also owns property on a barrier beach in Bourne so she understands both sides. She said she applauds individuals for being good stewards and believes there was a lack in the use of zoning in the past. She said perhaps all the excellent work by the stewards is not enough and there is a need for more protection. She said sometimes we do need to make sacrifices.

Jack McCormack said once the DCPC was established as a district, the town had 12 months and a 90-day extension to complete the implementing regulations. He said Town Council did not pass the implementing regulations so the Commission is doing largely what the town wanted to do.

Motion #1. Michael Blanton moved that the Craigville Beach DCPC Implementing Regulations as presented conform to the guidelines of the Craigville Beach DCPC. Elizabeth Taylor seconded the motion. The motion passed with 13 votes in favor and one vote opposed.

Motion #2. Michael Blanton moved to find that development is discouraged in barrier beach areas to mitigate future storm damage, that a Sewer Resource Benefit Assessment for the Long Beach Area of Concern shall be submitted for Commission approval consistent with Condition WR3 of the Barnstable Wastewater Facilities Plan DRI (EIR96005), and that any sewer system constructed in the barrier beach should contain a pump station cutoff. Elizabeth Taylor seconded the motion.

Roger Putnam said the sewer problem had not been addressed today and questioned the second motion.

Patty Daley said it hadn't been part of her discussion today and said it's consistent with a previous DRI decision by the Commission. She said it's not a regulation it's a finding.

Roger Putnam said it doesn't parallel what was heard from staff today.

Patty Daley said the motion comes from the Staff Report. She said she just didn't mention it in her discussion today.

Roger Putnam said he sees it as a recommendation not a motion.

Patty Daley said this motion would be to find that those things happen.

A vote called on Motion #2 passed with 12 votes in favor and two abstentions.

Motion #3. Michael Blanton moved to approve the form and content of the Craigville Beach DCPC Implementing Regulations as presented (or as amended) for proposal to the Assembly of Delegates if the Town of Barnstable does not adopt implementing regulations for said DCPC in a timely manner. Elizabeth Taylor seconded the motion.

Austin Knight questioned in a timely manner.

Jessica Wielgus said today's meeting is prior to the Craigville Beach DCPC timeline of November 5, 2010. She said this motion discusses if the town is not able to complete the regulations in the year timeline.

A vote called on Motion #3 passed with 13 votes in favor and one abstention.

Motion #4. Michael Blanton moved that if the Town of Barnstable has not adopted and incorporated implementing regulations for the Craigville Beach DCPC into its municipal development bylaws, on or before November 5, 2010, the executive director shall so notify the Assembly of Delegates, and on behalf of the Commission shall forward to the Assembly the implementing regulations for the Craigville Beach DCPC as approved for proposal to the Assembly by the Commission at its meeting on October 28, 2010. Elizabeth Taylor seconded the motion. The motion passed with a unanimous vote.

A motion was made to adjourn at 6:15 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Michael Blanton, Secretary

LIST OF DOCUMENTS PRESENTED AT THE OCTOBER 28, 2010 CCC MEETING

- PowerPoint slide presentation on the Craigville Beach District of Critical Planning Concern prepared by the Cape Cod Commission.
- Handout material: October 28, 2010 meeting agenda.
- Handout material: Memo and Draft Proposed Craigville Beach DCPC Implementing Regulations.
- Letter submitted for the record from Barbara U. Birdsey.
- Letter submitted for the record from Rev. Joanne Hartunian.
- Letter submitted for the record from Chas Orr, President Long Beach Association and representing the majority of affected homeowners.