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CAPE COD
COMMISSION

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Minutes
Meeting of
Cape Cod Commission

April 11, 2013

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	Vacant	Vacant
Dennis	Richard Roy	✓
Eastham	Joy Brookshire	✓
Falmouth	Andrew Putnam	✓
Harwich	Vacant	Vacant
Mashpee	Ernest Virgilio	✓
Orleans	Leonard Short	Absent
Provincetown	Austin Knight	✓
Sandwich	Joanne O'Keefe	✓
Truro	Peter Graham	Absent
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, April 11, 2013 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

■ **SUMMARY OF ACTIONS TAKEN/VOTES:**

Chapter A, Development of Regional Impact (DRI) Enabling Regulations Governing Review of DRIs

The Cape Cod Commission conducted a public hearing to discuss and vote on the proposed amendment to Chapter A, Section 7(vii) to add Mullin-like certification for Commission members after one missed hearing. The Commission unanimously approved the proposed amendment to Section 7(vii) of Chapter A, DRI Enabling Regulations Governing Review of DRIs and directed staff to forward the regulations to the Assembly of Delegates for adoption as an ordinance.

Update and Presentation on the Area-wide Wastewater Planning Process

PowerPoint slide presentation by Executive Director Paul Niedzwiecki and discussion on the area-wide wastewater planning process.

Other Business

Joanne O'Keefe, Sandwich Representative to the Cape Cod Commission, notified the Commission that she would not be seeking re-appointment as the Sandwich Representative and said this would be her last Commission Meeting.

Chair John Harris said Commission members who are interested in serving as Chair, Vice-chair or Secretary for the one-year term beginning July 1 should contact the Nominating Committee Chair directly.

■ **EXECUTIVE DIRECTOR'S REPORT**

Executive Director Paul Niedzwiecki said Barnstable County will be conducting a review of its Information Technology (IT) Department. He said the County will be using the same consultant that the Commission used for its review and said it will be an opportunity to decrease duplication. He provided an update on Commission business and meetings he has attended. He introduced Lisa Dillon and said she was recently hired for the administrative assistant position at the Commission. He announced the hiring of David Still, former editor of the Barnstable Patriot, as a Special Projects Coordinator and said he will be a valuable addition to Commission staff. Mr. Niedzwiecki said he met with the Environmental Protection Agency yesterday regarding the 208 Plan and said they are in the final stages of negotiating the contract. He said he would keep Commission members updated on that.

Mary Pat Flynn said Falmouth Town Meeting voted unanimously to approve its wastewater management plan. She said they also voted on the design money for the water filtration plant.

Paul Niedzwiecki said Falmouth is an important partner as the Commission moves forward with the 208 Plan. He said Falmouth's work makes the 208 Plan stronger.

■ **MINUTES**

The minutes of the March 28, 2013 Commission meeting were reviewed. Austin Knight moved to approve the minutes. Roger Putnam seconded the motion. The motion passed with one abstention.

■ **CHAPTER A, DEVELOPMENT OF REGIONAL IMPACT (DRI) ENABLING REGULATIONS GOVERNING REVIEW OF DRIs**

Jessica Wielgus, Commission Counsel, said as requested the Cape Cod Commission formed an ad hoc committee for the purpose of examining Commission member retention. She said one of the items explored was the enactment of an ordinance enabling the use of a Mullin-like Rule for the Commission. She said the language in the proposed amendment tracks the language in the Massachusetts General Laws and said the rule is known as the Mullin Rule which stems from an Appeals Court decision. She said the rule states that when members of a board or agency are acting in a quasi-judicial manner, each member who participates in the decision must have heard all the evidence firsthand. She said in the Mullin case, the Appeals Court decided that a Planning Board was acting in a quasi-judicial manner when it considered an application for a special permit and, therefore, members

who did not attend all portions of the hearing were disqualified from voting. Ms. Wielgus said in 2006, Governor Romney signed an act modifying the so-called Mullin Rule. She said it keeps a member of a municipal board from disqualification from voting on a matter solely due to that member's absence from no more than a single session of a hearing at which testimony or other evidence is received. She said to rehabilitate him or herself, the member is required to certify in writing that he or she has examined all evidence received at the missed session, including either an audio or video recording of the missed session or a transcript of it. She said once the certification form has been completed, it becomes part of the record and the member maintains their position as a voting member on that proposed development. She said while the legislation only applies to municipal employees, it was the recommendation of the Commission's ad hoc committee that the Commission consider the enactment of a county ordinance that is equivalent for the Commission so that its members may rehabilitate themselves in a similar fashion. She said doing so enables the Commission to maintain a quorum which is important given the current limitations on its membership. Ms. Wielgus said staff recommends that the Commission approve the draft language as proposed and move to forward it to the Assembly of Delegates so that the amendment may be codified into the Commission's Enabling Regulations Governing Review of DRIs.

Austin Knight spoke in favor of the proposed amendment and said it allows the process to move forward. He said it's a good process and he knows different municipalities use this process.

Michael Blanton said it would put the Commission on level footing with other entities. He said he understands that missing more than a single session would not apply. He said he supports the measure.

Royden Richardson said this is the tool that will enable Commission members to do their job effectively.

After asking if there were any members of the public who wished to speak and having no one come forward, Jack McCormack moved to close the hearing and the record. Elizabeth Taylor seconded the motion. The motion passed with a unanimous vote.

Austin Knight moved that the Commission approve the proposed amendment to Section 7(vii) of Enabling Regulations Governing Review of DRIs, as amended, and direct staff to forward the regulations to the Assembly of Delegates for adoption as an ordinance. Elizabeth Taylor seconded the motion. The motion passed with a unanimous vote.

■ **UPDATE AND PRESENTATION ON AREA-WIDE WASTEWATER PLANNING PROCESS**

Paul Niedzwiecki, with the use of PowerPoint slides, provided an update on the 208 planning process. He said Mike Domenica has been brought on board as project manager. He said the problem with wastewater is nitrogen; nitrogen in wastewater enters groundwater and causes eutrophication in the Cape's coastal water bodies. He said Cape Cod has over 100 watersheds and the Commission will be studying 53 watersheds as part of the 208 process. He discussed Cape Cod shared watersheds and explained the status of Total Maximum Daily Loads (TMDLs) in watersheds on the Cape that have been examined—those that have been completed, are pending, and those that need to be addressed—and the nitrogen reduction required in each of those areas. Mr. Niedzwiecki said the Cape Cod 208 Plan will prioritize water resources; limit infrastructure; fully evaluate decentralized and innovative approaches; identify preferred solutions for each watershed, methods to equitably share costs, ways to address additional Cape Cod issues, funding and implementation mechanisms; and feature a robust public participation process. He described the overall approach and said the plan will be based on methodologies and principles and said it's the first time Massachusetts will use the 208 Plan in that regard and it will be the first of its kind. He said the 208 Plan will be a plan that is watershed-based with Cape-wide stakeholder engagement and a diversity of solution technologies, adaptive management, technology development, it will maximize benefits of previous planning, benefit from regional approaches and there will be coordination with the Department of Environmental Protection (DEP) and the Environmental Protection Agency (EPA). He said the scope of work will focus on pollutants of concern namely nitrogen driven impacts in coastal waters and phosphorus driven impacts in freshwater. He said the planning approach would be watershed-based and it will include 53 total watersheds, 46 of which were identified to be studied by MEP. He explained the watershed plan development in the 208 planning regions and referred to organizational charts illustrating the process for developing the 208 Plan and the project team. He provided an overview of the watershed work plans including the Watershed MVP tool, data layers and technology options. He said the solution for the Cape will be a mosaic of traditional technologies, green infrastructure and alternative approaches and he explained the Cape-wide costs for an optimized approach and a town approach. He described the fundamental policies and principles underlying an affordable funding strategy for Cape Cod as: (1) execute the desired plan(s) over two generations—50 years; (2) all those who benefit from the

implementation of the plan(s) should contribute; (3) half of the capital cost and all operating costs will be paid by Cape Cod residents and businesses; (4) approximately 25% of the capital cost should derive from new sources of revenue spread over a larger state population base, in addition to reducing interest on project debt to 0%; (5) approximately 25% should derive from construction grant funding from the federal government; and (6) financial relief for low-income households is needed, but this cost should not be shifted to other rate or taxpayers. He said Cape Cod is a "cash cow" for the Commonwealth of Massachusetts and said the Cape is only 3.3% of the state's population but contributes 4.04% of the state's annual tax revenue—\$756.3 million in FY10. He said annually the state sends just \$33.7 million to the 15 Cape Cod towns in unrestricted local aid. In closing, Mr. Niedzwiecki said doing nothing will cost us something. He said doing nothing would increase beach closings, fish kills, and pond and embayment deterioration point to future tourism challenges and a negative impact on the Cape Cod economy.

Elizabeth Taylor said fertilizer is going to be a big component and asked if the issue of fertilizers would be included in the plan.

Paul Niedzwiecki said the Town of Falmouth has a fertilizer regulation and the Commission will be looking at all of that and said the plan will address fertilizer issues. He said the Department of Agriculture oversees that.

Joy Brookshire said her town is working on a wastewater plan and if they continue with town planning at what point will the Regional Wastewater Management Plan go to the towns and say they have a better plan.

Paul Niedzwiecki said it will be addressed on a town-by-town basis. He said towns should not stop their planning work and said the wake of the 208 Plan should amplify their plans. He said if they see a red flag in towns they would address that immediately.

Royden Richardson said towns are addressing issues now and questioned whether this would be a two-generation plan. He said he believes they should promote the plan so towns can take the initiative.

Paul Niedzwiecki said that will be part of the public outreach effort.

Royden Richardson inquired about an advisory committee and said perhaps advisory committees should be formed at many different levels.

Paul Niedzwiecki said the state will help with that.

Michael Blanton said it's very encouraging that they are having this discussion. He questioned whether there would be any difficulties in financing a multi-generational plan; a 50-year plan.

Paul Niedzwiecki said there are certain types of infrastructure from which money can be borrowed. He said they will be able to explain this more as the plan develops. He said they will know more when they get to month eleven.

Roger Putnam said he would suggest that it not be sold as a multi-generational plan on the Cape. He said most people now won't see another generation. He said he has concerns about selling the age thing.

Paul Niedzwiecki said he will try to be a better salesman when it comes to that.

Joanne O'Keefe complimented staff and said a short time ago they were at a strategy meeting and to see it now as a real plan is admirable. She talked about VOCs and fundraising measures and said they will have to look at multiple years because it will take that long.

Richard Roy asked if the clock has started on the 208 Plan.

Paul Niedzwiecki said not as yet. He said they are waiting to finalize the contract negotiations.

Andrew Putnam said it's amazing what has been done so far. He said he is happy the Town of Falmouth has led the way on this. He said people on the Cape do think in terms of generations. He said he is excited that they are about to set a precedent here.

Paul Niedzwiecki said this plan is not going to produce an optimal outcome. He said it will be done on a watershed-by-watershed basis and they want to give towns choices most likely in the least costly way. He said the plan will narrow the parameters and make datasets easier for people to use.

Jack McCormack said he wants to remind people that they are trying to address the 80% and said he would like to talk about the other 20% and the federal government abrogating their duty to reduce the pollutants that come to us from out-of-state. He said there are times during the year when the pristine outer Cape towns have some of the worst air quality in the country and it seems to him that when we have the energy industry with regulations that are designed to cut down on pollutants, the federal government should be addressing that.

Joy Brookshire asked how the plan would be modified as conditions change after the plan is finalized.

Paul Niedzwiecki said there will be flexibility in the plan as other contaminants emerge. He said that will be part of the discussion to provide modifications that may be needed.

Mary Pat Flynn said whether towns go forward with their own plans depends on how many watersheds are shared. She talked about sewerage and said they should only sewer where they really have to.

Royden Richardson said the long range plan has to be implemented as it unfolds to us. He said there will be more generations and perhaps it should have a generational approach. He said he hopes it doesn't get stalled in the snow drifts.

Chair John Harris said he is happy today's presentation has been made. He said he would like to see today's presentation given to public TV.

■ OTHER BUSINESS

Joanne O'Keefe said she will not be seeking reappointment as the Sandwich Representative and said this will be her last Commission meeting. She said she has learned a great deal from former Chairs Royden Richardson and Peter Graham and Chair John Harris. She said the Commission has been the best board she has ever sat on. She expressed her gratitude to Commission members and staff.

Chair John Harris said Commission members who are interested in serving as Commission Chair, Vice-chair, or Secretary for the one-year term beginning July 1 should contact Ernest Virgilio, Nominating Committee Chair, directly.

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

Respectfully submitted,

Richard Roy, Secretary

LIST OF DOCUMENTS PRESENTED AT THE APRIL 11, 2013 COMMISSION MEETING

- Handout material: April 11, 2013 Commission meeting agenda.
- Handout material: Proposed amendment to Chapter A, DRI Enabling Regulations Governing Review of DRIs and Certification signature page.
- Materials presented: PowerPoint slide presentation on the area-wide wastewater planning process prepared by the Cape Cod Commission.