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CAPE COD  
COMMISSION

## Minutes

### Meeting of Cape Cod Commission

November 14, 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	✓ ( <i>recused &amp; left mtg at 3:10 pm</i> )
Brewster	Elizabeth Taylor	✓
Chatham	Vacant	Vacant
Dennis	Richard Roy	✓
Eastham	Joy Brookshire	Absent
Falmouth	Andrew Putnam	Absent
Harwich	Jacqueline Etsten	✓
Mashpee	Ernest Virgilio	✓
Orleans	Leonard Short	✓
Provincetown	Austin Knight	Absent
Sandwich	Harold Mitchell	✓
Truro	Vacant	Vacant
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, November 14, 2013 at 3:05 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

■ **SUMMARY OF ACTIONS TAKEN/VOTES:**

**Discretionary Referral: 1/11 Trowbridge Road and 9 Sandwich Road, Bourne**

The Cape Cod Commission conducted a public meeting on the Limited Discretionary Referral for 1/11 Trowbridge Road and 9 Sandwich Road, Bourne. After presentations by Commission staff, the Bourne Board of Selectmen, Chair of the Bourne Planning Board and the property owner's representative, the Commission voted not to accept the Limited Discretionary Referral for 1/11 Trowbridge Road and 9 Sandwich Road, Bourne for Development of Regional Impact Review with 10 votes in favor and one opposed.

■ **EXECUTIVE DIRECTOR'S REPORT**

Executive Director Paul Niedzwiecki said last night the Commission held a wastewater event at the Cape Cod Museum of Art. He said they had 120 people in attendance many of which were stakeholders. He said the discussion focused on the next steps in the 208 planning process and there is a lot of momentum behind the process.

■ **DISCRETIONARY REFERRAL: 1/11 Trowbridge Road and 9 Sandwich Road, Bourne**

Michael Blanton, Bourne Representative to the Cape Cod Commission, recused himself and left the meeting at 3:10 p.m.

Jon Idman, chief regulatory officer at the Commission, said the project involves the construction of an 8,000 square foot building addition and related site improvements within a wetlands buffer zone on a property previously granted a Development of Regional Impact (DRI) Exemption and the development of accessory, off-site parking across the street on a commonly-owned lot which currently contains a building dating to circa 1690 proposed to remain on the lot. He said today the Commission is being asked to consider whether to accept the discretionary referral for Limited DRI review. He said if the discretionary referral is accepted for Limited DRI review, the Commission will need to determine what issue areas should be reviewed. Mr. Idman said there is a practical timing issue as construction has already begun and the Commission has limited authority to stay the project and the applicant has little incentive to file a DRI application for review. He said the project required a planning board special permit and Order of Conditions from the local conservation commission, both of which have been issued prior to receipt of the discretionary referral. He said a building permit has been issued and the town's building commissioner, who is also its chief zoning officer, implicitly determined that the project satisfies the town's zoning bylaw and the conditions of the planning board special permit. Mr. Idman said all appeal periods have lapsed and concerns seem to be local in nature. He said the remedy would have been to file an appeal during the appeal period but that didn't happen. He said the DRI Exemption that had been granted on this development previously creates a difficulty because review of earlier process impacts had been waived. He said if the Commission does accept the discretionary referral for review he would suggest that it be just reviewed for historic preservation only. He said a single area of review is a much more efficient review. He said if the discretionary referral is not accepted, there is still an opportunity for Commission staff to work with the town to provide planning direction.

Jon Idman asked that the same testimony be provided to the full Commission as was done at the Regulatory Committee earlier.

Linda Zuern, Vice-chair Bourne Board of Selectmen, said her concerns are not just about the house; she has concerns about the whole lot. She said the owners are proposing a 52-car parking lot that would change the look of the lot completely. She referred to a photograph she had taken of the property on her cell phone and passed it around to Commission members.

Donald Ellis, Bourne Selectmen, gave an overview of the narrative he submitted to the Commission and talked about public safety issues. He said the Bourne Board of Selectmen request that the Commission scrutinize the plan to ensure zoning bylaws are being observed. He said he would ask the Commission to honor the recommendation made by Elizabeth Taylor at the Regulatory Committee to accept the discretionary referral for historic preservation review.

Donald Pickard, Bourne Selectmen, said he was one of two people who voted against the discretionary referral. He said in his opinion it's about having control. He said the other three members want control of the Keene House. He said Coreen Moore, Bourne Town Planner, spent time with them and discussed their concerns. He said if it was meant to be a DRI, it would have been referred by the planning board as it normally would be. He said safety issues have been addressed by the local planning board. He said it should not be before the Commission; it's a local issue.

Christopher Farrell, Chair of the Bourne Planning Board, said he has listened to concerns. He said the historic commission had two meetings and approved the project. He said a previous approval was given that included a retaining wall. He said sometimes with construction projects things change because of unforeseen situations and those projects can be modified. He said the Selectmen are asking the Commission to become the referee. He said they should have filed an appeal in court but they didn't. He said if something happens to the building it would be taken care of locally. He said he would ask that the Commission not accept the discretionary referral and said it has become a personal and political issue.

Attorney Eliza Cox, with the law firm Nutter, McClennen & Fish representing the property owners, said they understand and respect the Commission's discretionary referral process. She said the Cape Cod Commission Act intended that a discretionary referral happen before action has been taken at the local level. She said the property owner followed all the correct processes; they met with the town and obtained all the necessary permits. She said they received assistance from town experts and all the right measures happened when it was reviewed by the planning board. She said an Order of Condition has been issued for the project, the appeal periods have ended, and the property owner has spent \$80,000 on the project that would result in a hardship. She said they applied three months ago through the planning board and if there were any impacts that would have been the time to refer not now when local review is complete. She said it's not fair to the owner for one local board to say they are not happy with the result of a local decision; they should have appealed to the court not to the Cape Cod Commission. She said that is not the intent of the Commission Act or the Commission's regulations. She said the Commission's ability to review the project is moot and the Commission does not have the ability to stay construction. She said no demolition permit has ever been sought for this structure and if it were to happen, that would be the opportunity to come to the Commission. She said there is no need for the Commission to review the project for historical impacts.

Linda Zuern said the Town Council's opinion did not say an individual could have 52 parking spaces. She said she did not know that the developer had all their permits until this week.

Elizabeth Taylor said she does not like to see the Commission pick and choose on limited review and would hate to not accept something. She said all the issues were taken care of and she would not question the local planning board or conservation commission but historic preservation doesn't go before a board and that's why she made her recommendation to the Regulatory Committee. She said the Commission should not get involved with other issue areas and acceptance won't stop construction.

Paul Niedzwiecki said he agrees with Ms. Taylor and the power to refer a discretionary referral is powerful from the town's perspective. He said the initial question is whether the Commission should take jurisdiction. He said all the local permits are issued and the applicant can go forward, there is no stay for construction, and the applicant is not obligated to apply to the Commission. He said it sets a bad precedent for other towns who want to use a discretionary referral. He said towns need to act sooner before permits are issued not after. He said towns need to do it in a more timely fashion and it needs to come to the Commission so it can act in an effective way

otherwise it's a liability to the Commission. He said there is relatively very little the Commission can do in a practical sense. He said there is no obligation for the applicant to file an application and nothing can stop the applicant from going forward with construction. He said the Commission would be happy to provide technical assistance.

Roger Putnam said this is not a DRI in any sense. He said local actions have recourse through the courts. He said the Commission is not a court and should not be put in a position to be used in lieu of a court. He said the Commission should not accept the discretionary referral; it should be taken care of locally.

John Harris said for clarification any issues raised could be handled locally.

John Harris moved that the 1/11 Trowbridge Road/9 Sandwich Road Limited Discretionary Referral from the Bourne Board of Selectmen not be accepted for Development of Regional Impact review. Len Short seconded the motion. The motion passed with 10 votes in favor and one opposed.

#### ■ OTHER BUSINESS

Chair Jack McCormack said the Commission's Planning Committee is beginning the process of reviewing the Commission's Regional Policy Plan (RPP) and any members interested in being a member of the Planning Committee to participate in the review of the RPP should contact Mr. McCormack or Sharon Rooney.

A motion was made to adjourn at 3:55 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

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Andrew Putnam, Secretary

#### **List of Documents Presented at the November 14, 2013 Commission Meeting**

- Handout material: November 14, 2013 Commission meeting agenda.
- Letter submitted to the Regulatory Committee from Richard and Judith Conron opposing the request for Discretionary DRI Review submitted by the Bourne Board of Selectmen.