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CAPE COD
COMMISSION

Minutes
Meeting of
Cape Cod Commission

November 13, 2014

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	Michael Skelley	✓
Dennis	Richard Roy	✓
Eastham	Joy Brookshire	Absent
Falmouth	Andrew Putnam	✓
Harwich	Jacqueline Etsten	✓
Mashpee	Ernest Virgilio	✓
Orleans	Len Short	✓
Provincetown	Austin Knight	Absent
Sandwich	Harold Mitchell	Absent
Truro	Kevin Grunwald	✓
Wellfleet	Roger Putnam	✓
Yarmouth	John McCormack, Jr.	✓
County Commissioner	Mary Pat Flynn	Absent
Minority Representative	John Harris	✓
Native American Rep.	Danielle Hill	✓
Governor's Appointee	Vacant	Vacant

The meeting of the Cape Cod Commission was called to order on Thursday, November 13, 2014 at 3:00 p.m. in the First District Courthouse, Assembly of Delegates Chambers, Barnstable, MA. Roll was called and a quorum established.

Chair Richard Roy introduced and welcomed Danielle Hill who was recently appointed as the Commission's Native American Representative.

■ **SUMMARY OF ACTIONS TAKEN/VOTES:**

County Commissioner William Doherty Addresses the Cape Cod Commission

Outgoing County Commissioner William Doherty addressed the Cape Cod Commission and discussed his tenure as a Barnstable County Commissioner, member of the Assembly of Delegates and County representative/member of the Cape Cod Commission. Executive Director Paul Niedzwiecki presented Commissioner Doherty with a plaque acknowledging his many years of service to Barnstable County.

Public Hearing: Mashpee Nitrogen Control Bylaw/Fertilizer Management DCPC

Following presentations, testimony, and discussion the Full Commission voted unanimously in favor to close the public hearing. Following the close of the public hearing the Full Commission voted unanimously in favor that Mashpee's Nitrogen Control Bylaw conforms to the Guidelines for Implementing Regulations set out in the Fertilizer Management DCPC Designation.

■ **EXECUTIVE DIRECTOR'S REPORT**

Paul Niedzwiecki announced that new regulatory officer, Elizabeth Perry, has started in the Commission's regulatory department; Monica Mejia would be starting on December 1 as a hydrologist in the Commission's water resources department; and longstanding affordable housing specialist Paul Ruchinskas retired from the Commission at the end of October. Mr. Niedzwiecki said he gave an update to the County Commissioners on October 22; amendments to the Commission's standing committee structure was approved by the Assembly of Delegates last week and approved by the County Commissioners today; the Comprehensive Economic Development Strategy (CEDS) was given to the EDC on November 16; the Cape Cod Canal Transportation Committee met and will begin more discussions on an additional crossing of the Canal; Regional Policy Plan public hearings will begin at 4:00 p.m. on December 9 in the Strategic Information Office, December 10 at the Chatham Community Center, December 11 at the Mashpee Public Library. He said in regard to the 208 Plan Commission staff met with the EPA this morning and met with the DEP yesterday. He said dates have been set for a second 208 Summit at the Hyannis Conference Center the evening of February 25 and all day on February 26. He said in regard to submission of the final Plan they are looking at a March timeline. Mr. Niedzwiecki welcomed Danielle Hill as the Native Representative to the Commission.

Ernest Virgilio said for the last three or four months he has been working with the Mashpee Wampanoag Tribe and Danielle Hill. He said as a senior planner for the Tribe Ms. Hill is knowledgeable and well qualified to fill the seat of the Native American Representative.

Danielle Hill thanked Commission members and staff. Ms. Hill said she is the Director of Planning and Development for the Mashpee Wampanoag Tribe and as the senior planner she looks forward to working with the Commission.

■ **MINUTES—August 4, 2014 Regulatory Committee Meeting**

Regulatory Officer Jeffrey Ribeiro said since the Commission's Standing Committee structure has changed, those members of the Commission's former Regulatory Committee are being asked to approve the minutes of the August 4, 2014 Regulatory Committee meeting.

Jack McCormack moved to approve the minutes of the August 4, 2014 Regulatory Committee meeting. Elizabeth Taylor seconded the motion. The motion passed with a unanimous vote of the Regulatory Committee.

■ COUNTY COMMISSIONER WILLIAM DOHERTY ADDRESSES THE COMMISSION

Commissioner William Doherty talked about his tenure with Barnstable County and said you have to protect what you have and make wise choices on what you need. He said during his six years as a Commission member he learned more about Cape Cod from doing the work. He said the most important change to the Commission was changing regulation supported by planning to planning supported by regulation and said keep the Commission's momentum going.

Paul Niedzwiecki thanked Commissioner Doherty for his contributions as a member of the Cape Cod Commission and for his many years of service to Barnstable County. Mr. Niedzwiecki presented Commissioner Doherty with a plaque acknowledging his service to the Commission and Barnstable County.

Commissioner Doherty thanked the Commission for allowing him to address the Commission today and for the recognition he received from the Commission.

■ MASHPEE NITROGEN CONTROL BYLAW—FERTILIZER MANAGEMENT DCPC

Vice-chair Andrew Putnam read the hearing notice and opened the hearing at 3:30 p.m.

Andrew Gottlieb, Mashpee Selectman, said Mashpee adopted this bylaw through the Commission's adoption of a DCPC. He said it has been a great benefit to the community. He provided background information on Mashpee's new strategy to deal with nitrogen and said fertilizer management is an integral part of Mashpee's nitrogen management. He said the bylaw has been well established and the town has worked closely with Commission staff.

Michael Talbot, member of Mashpee's Environmental Oversight Committee (EOC), said Mashpee's CWMP includes a multi-tiered approach to nitrogen management and the second leading cause of nitrogen is turf. He said when the opportunity came through the DCPC process Mashpee was the only town to support the DCPC. He said the town has wanted to do this; Mashpee has wanted local control. He said the Mashpee Board of Health asked EOC to draft a bylaw; they looked at the Commission's model bylaw, looked at Falmouth's bylaw, and looked at Nantucket's bylaw. He said the EOC agreed that as a starting point they would use Falmouth's Nitrogen Bylaw as no other town had done this and Falmouth had an adopted bylaw. He said they wanted to work with Falmouth on a regional approach. He said the bylaw was reviewed by a wide range of citizens and municipal boards, Falmouth was a starting point and they expanded on it for Mashpee. Mr. Talbot explained the different components of Mashpee's bylaw and said it will become Chapter 107 of Mashpee's Town Code. He said drafts were sent to Jon Idman regularly to ensure it met the guiding principles of the DCPC guidelines. Mr. Talbot respectfully asked that the Commission vote today to approve Mashpee's bylaw.

Jon Idman, Chief Regulatory Officer at the Commission, provided an overview of his memo to Commission members and said Commission staff would suggest that Mashpee's Nitrogen Control Bylaw does conform to DCPC guidelines laid out in the DCPC ordinance. He explained the guidelines for implementing regulations in Section 6.4 of the Fertilizer DCPC ordinance regarding timing of fertilizer application, location of fertilizer application, manner of fertilizer application, education, certification, exemptions, and compliance with UMass Best Management Practices. Mr. Idman said Mashpee's bylaw is a nitrogen control bylaw; it does not include phosphorus just nitrogen and it's just related to turf or lawn. He said after the DCPC ordinance was adopted the Commission drafted a model bylaw consistent with the ordinance. He explained the different components and exemptions in Mashpee's bylaw. Mr. Idman said he received a comment letter from Mary Owen at UMass stating concerns about the one pound of nitrogen and composting. He said one pound is a recommendation so it's not concerning. He said this is a nitrogen control bylaw and composting would involve phosphorus not nitrogen. He said composting would be covered in the UMass recommendations. Mr. Idman said Commission staff suggests that Mashpee's bylaw does conform to DCPC guidelines.

Elizabeth Taylor said she applauds Mashpee and noted that Brewster is coming up next week. She said she is impressed with the research that was done. She asked how many towns on the Cape are proposing fertilizer bylaws.

Jon Idman said two towns are grandfathered—Falmouth and Orleans. He said Mashpee is here today and next week Orleans is adding phosphorus to their bylaw. He said Barnstable is proposing a bylaw, Eastham is proposing a bylaw through the Board of Health and Conservation Commission, Brewster is coming forward and Chatham has had a public

hearing on this. He said not all towns are interested and noted that “pods” of towns are proposing bylaws. He said at the next two Commission meetings—December 4 and December 18—the Commission will have fertilizer agenda items.

Federal, state, county, and local officials were called to provide comment

Bill Clark, Director of Barnstable County Cooperative Extension Service, said the Extension provides the education to people in towns and if there is a certification process the Extension will be overseeing that as well. He said he sat on the stakeholders committee and Mashpee’s bylaw is not consistent with what was discussed at the committee meetings last year—they didn’t want different bylaws for each town. He said it’s not consistent with the Commission’s model bylaw; the model bylaw was created and towns were told they would be able to adopt a model bylaw created for towns across the region. He said it’s not consistent with UMass Extension’s educational materials on nitrogen. He said they were told that all towns would have the same bylaw. He said he appreciates what Mashpee has done but it’s inconsistent.

Public comment was called

Ed Nash, Golf Course Superintendents of Cape Cod, said he also sat on the same committee and they drew up guidelines in accordance with UMass regulations. He said he is asking for consistency in how these things are passed and towns should stick close to that model bylaw. He said Mashpee has not been guided consistently and there is no educational component and no certification component in the bylaw. He said is not trying to undo something just trying to make it better. He said Mashpee needs to refine it and Barnstable is doing something different. He said in the meetings he attended they agreed that Falmouth is not how they wanted to do it. He said all towns need to do the same thing and Mashpee should go back to the drawing board.

Tom Thayer said after last year’s work he thought all towns would be the same. He said it’s too confusing for different towns to have individual bylaws. He said the poundage is off; organic fertilizer is good but it also has phosphorus. He said they need to think this through further. He said the Commission needs to support the industry and the environment. He said Mashpee needs to be consistent.

Leo Cakounes said he also sat in the stakeholder meetings and the first thing they discussed was Falmouth and Orleans and the model to be used at that time was that they did not want to use Falmouth and Orleans. He said Mashpee’s bylaw is not consistent with the DCPC. He said Cape Cod will end up with a number of different regulations. He said Commission staff met with stakeholders and came up with a document that they all approved. He said the Commission’s vote today is important and Mashpee’s bylaw is not consistent. He asked that the Commission send a message back that it does not meet the standards. Mr. Cakounes asked Mr. Idman about ramifications if Mashpee’s bylaw is not approved today.

Jon Idman said given the timeframe with the state the town would lose the opportunity. He said it would have to be amended at Town Meeting and there are no other meetings by year end.

Ed DeWitt, Director of the Association to Protect Cape Cod, said the Commission’s role is rather limited to does it fit under the umbrella of DCPC regulations. He said what is being discussed today should have been taken up in Town Meeting. He said page 2 of the staff report says it does fit under the DCPC umbrella and it is consistent. He said this is about local control. He said he was also on the stakeholder committee and, yes, he is in favor of Mashpee’s bylaw and it is consistent with DCPC regulations.

Michael Talbot said Mashpee was one of a few towns that voted and supported adoption of the DCPC. He said they were not invited to be on the committee. He said Mashpee worked on this quite a bit and now we are at the end of the timeline and the DCPC was about local control. He said the model bylaw was a draft; it was meant to be used as a guide. He said it was the town’s choice, he respects the work that Mashpee has done and Mashpee has always wanted local control.

Ernest Virgilio said Mashpee is unique. He said Mashpee is working for local control by Mashpee. He said he would ask the Commission to go forward with this.

Len Short said the reason Orleans put their bylaw in was because they didn't want to be told by the state what to do. He said what he is hearing today is that Mashpee needs to go back and tighten it up. He said he realizes there is a timeline but Mashpee should have been aware of this.

Royden Richardson said he appreciates flexibility and there have been opportunities where people have been flexible and things have worked out. He said Mashpee has done a great job in this case. It's good for Mashpee to have local control and he would say yes to Mashpee's bylaw.

Andrew Putnam said Falmouth's bylaw was grandfathered but when it comes to grandfathering it sometimes doesn't fit the model and Falmouth doesn't fit the model that's in place. He said he thought there was a model bylaw because the Commission wanted consistency across the towns with some flexibility. He said every town has its own landscape and problems. He said he is concerned that Falmouth's bylaw was followed and Falmouth's bylaw is not the standard. He said little things do matter and little things become big things.

Michael Blanton concurred with Mr. Putnam's comment that the model bylaw was drafted with that flexibility in mind. He said the Commission has talked about one size does not fit all. He said the bylaw has been reviewed and people in Mashpee want to move forward. He said it's concerning that in the eleventh hour this comes up and he would hate to see Mashpee lose the opportunity.

Elizabeth Taylor said she is concerned that Commission staff says it conforms and then we hear from other County officials that it doesn't.

Paul Niedzwiecki said today the Commission is determining consistency with the DCPC guidelines not the model bylaw. He said Commission staff asks does Mashpee's bylaw conform to DCPC guidelines and, yes, it does. He said they are trying to preserve local control through the DCPC with flexible parameters; parameters were set up to preserve local control. He said this is what was passed when the DCPC was passed. He said the determination is consistency with the parameters laid out in the guidelines of the DCPC not the model bylaw.

Jack McCormack inquired about the deadline.

Jon Idman said if approved today it meets the deadline.

Jack McCormack said as a former planning board member he has seen a lot of model bylaws and model bylaws are just a basis to start deliberations.

Roger Putnam said in the passage of the original act he felt there should be flexibility to communities. He said he feels strongly to approve what Mashpee has done with their bylaw.

Danielle Hill said she would take Commission staffs' recommendation and questioned whether there were educational and certification components in the bylaw.

Jon Idman said the DCPC is meant to be enabling and the language is should not a must and said not to say every bylaw should include everything in the list. He said some towns will take different approaches.

Andrew Gottlieb said an education component can't be legislated. He said the bylaw is a cost-saving measure and the town needs to reach out to homeowners.

Kevin Grunwald said he is struggling with local control versus having regulations Cape-wide. He said guidelines are suggestions, they are not hard and fast and that seems to be the case with this bylaw. He asked what happens if the bylaw is not approved today.

Jon Idman said if the town is interested in amending the bylaw it would need to go to Town Meeting, there is no other Town Meeting before year end and Mashpee would lose its ability to act on it.

Royden Richardson said a lot of the conversation is based around a model and a model is just that it's not built in stone.

Paul Niedzwiecki said in this case a model is an example of a bylaw. There was a lot of public input in regard to a model. He said it's an important guide as towns try to deal with this issue.

Jon Idman said it's Commission staffs' opinion that Mashpee's bylaw is consistent with the model; it's not identical but it's consistent. He said it's actually less stringent. He said there is not a great difference between the model and what Mashpee is doing.

Elizabeth Taylor asked what happens if other towns don't pass; can they come back next spring.

Jon Idman said towns would be pre-empted by the state's regulations.

Andrew Putnam said in regard to education is Mashpee coming up with a future education plan for this bylaw. He said no one will follow it if it's not understood.

Andrew Gottlieb said the town is in the process of reviewing its CWMP and is engaged in the 208 Plan; the town is working on moving this forward. He said commitment to an education program and implementation is the highest priority in town. He said that is a full feature of their implementation program.

Michael Talbot said the EOC was tasked by the Mashpee Selectmen to oversee this. He said they regularly talk about the education component and writing editorials in newspapers. He said they have already begun to develop specific ideas about education and implementation. He said they are definitely developing a plan for that.

Roger Putnam moved to close the hearing. Michael Blanton seconded the motion. The motion passed with a unanimous vote.

Jackie Etsten said Mashpee would be better with this bylaw than not.

Andrew Putnam moved that Mashpee's Nitrogen Control Bylaw conforms to the guidelines for implementing regulations set out in the Fertilizer Management DCPC Designation. Ernest Virgilio seconded the motion. A vote called on the motion passed with a unanimous vote.

A motion was made to adjourn at 4:55 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Harold Mitchell, Secretary

List of Documents Used/Presented at the November 13, 2014 Commission Meeting

- Minutes of the August 4, 2014 Regulatory Committee meeting.
- Handout material: November 13, 2014 Commission meeting agenda.
- Handout material: Memo to the Cape Cod Commission from Jon Idman, Chief Regulatory Officer.
- Handout material: Chapter 107—Mashpee Nitrogen Control Bylaw.