

CAPE COD COMMISSION
21ST CENTURY REVIEW TASK FORCE
ATTENDANCE
August 1, 2006

TASK FORCE MEMBERS:

Keith Bergman	Absent
Elliott Carr	Present
Larry Cole	Present
Michael Cole	Present
Lindsey Counsell	Present
Thomas Evans	Present
Hank Farnham	Present
Maggie Geist	Present
Henry Kelley	Present
Tom Keyes	Absent
Vicky Lowell	Present
Ed Mangiafico	Present
Spyro Mitrokostas	Present
Tom Moccia	Present
Wendy Northcross	Present
Paula Peters	Absent
Henri Rauschenbach	Absent
Mark Robinson	Absent
Tony Shepley	Absent

OTHERS ATTENDING:

David Willard	Sue Rohrback
Dorr Fox	Ed Maroney
John Lipman	Ann Canedy
Nancy Hossfeld	

CAPE COD COMMISSION
21ST CENTURY REVIEW TASK FORCE
COMMITTEE MEETING MINUTES
August 1, 2006

The Task Force appointed by the Barnstable County Commissioners to review the Cape Cod Commission met on Tuesday morning, August 1, 2006. Chairman Elliott Carr called the meeting to order at 8:51 a.m. Those in attendance are listed separately on an accompanying tally.

1) NO GUESTS- This is the first time since the Task Force was appointed and started meeting when there are no guests on the agenda. Members of the Task Force have been eager to start talking amongst themselves, to get down to the business of sifting through the testimony and start formulating reasoned responses to the Commissioners. To support and enhance this process, Chairman Carr had collated, compiled and distributed the written suggestions from the members he had received to date. He had broken out the thirty-seven of them by categories. He had six more recommendations he had received since publishing, to add to the list. He said he was willing to redo the list and send it out to the Task Force and ask them to conduct a straw poll, as to which recommendations should stay. He didn't feel they could make final conclusions except for the obvious ones, until after August 10th and the meeting with the Town Officials. He has asked a group of four to start off that meeting making comments that hopefully will spark hot buttons and get a good discussion going.

2) HOW TO PROCEED- After circulating a list of the six recommendations and quickly reading them aloud, Chairman Carr asked the group how it wanted to proceed today, in discussing recommendations.

EQUAL WEIGHT- Tom Moccia opened by asking if when the staff evaluates applications against the standards required, are all standards given equal weight. John Lipman explained that all Minimum Performance Standards need to be met. Tom understands that, but wondered whether they are all given equal weight. Given the dimension of what the Commission does during the review, are they weighted. When Dorr Fox said no, Tom said he would like to put this topic on the recommendation agenda. Wendy Northcross asked Tom to give an example of what he was asking. Tom quickly cited economic development as a factor he feels should be given more weight than some other factors. He reiterated that he would like to see a question on weighting on the list.

COUNTY ZONING- Chairman Carr reiterated that he would send out a straw ballot for Task Force members to commence the process of choosing recommendations. Larry Cole said that if he's going to respond to a straw ballot, he needs to know what people had in mind when posing the questions. For instance, what is "County Zoning?" What does that mean? Elliott said that is his phrase. One of the biggest problems is that people come in with an application to the Commission and think that it is a negotiation process. But DRI is like zoning. You need to comply. Maybe we need to change the nomenclature from "County Zoning," but people need to know this is the law, like zoning. Ed Mangiafico reiterated that this is the regional equivalent of town zoning. Mike Cole allowed that packaging the issue to make it sound like County zoning is interesting, but it should be voted on by the citizens of Cape Cod, and that would never happen.

WHAT TO DO?- The discussion continued as to how best take advantage of this time together to discuss the recommendations. Review the thirty seven recommendations one-by-one, or cluster them in topical groups?

S. Mitrokostas- *There are a ton of recommendations on RPP, DRI and DCPC. Why not structure them in one grouping?*

W. Northcross- *She would like to talk about Tom Moccia's idea of weighting the Minimum Performance Standards.*

T. Moccia- *He is suggesting that given our environment, some standards should count more than others. His concern is that the Commission is not dramatically involved in economic development.*

H. Kelley- *He admitted that he is the least knowledgeable at the table on the topics being discussed, but he is trying to catch up. As to the straw ballot, he feels that it would be more reflective of the group and more effective if the straw ballot was conducted while we are all collectively here, rather than by e-mail. He feels the discussion would be more informative.*

M. Geist- *If we do the check list now, it means we have already made up our minds. But we need discussions for new ideas.*

L. Cole- *He would like to support and add to what Henry said. For example, recommendation 7.a. says the technical memorandum procedures should be overhauled. How? Without further explanation this is too vague. We don't know what people have in mind.*

E. Mangiafico- *Maybe we need to go through these one-by-one, as some are too vague.*

E. Carr- *Spyro suggests a general discussion group-by-group. Or should we go one-by-one?*

REGIONAL POLICY PLAN- There was quite a bit of talk about the RPP, its importance and how the Task Force might address proposed changes in it.

W. Northcross- *The RPP is a big section of our charge where changes are needed.*

E. Carr- *Pat Butler and his group are going to deal with the RPP when they come back to us.*

V. Lowell- *Last week we raised the question of having RPP specific standards. We haven't had enough discussion for her to know if she would support them. The RPP is important. She is hesitant to get involved in changing, recommending specific standards. The RPP should be used to reengage towns that aren't engaged. We could approach this in a provocative way and make stronger rules to enforce their engagement, which would be perceived as coming down from on high, or we could be a circuit rider. It would take longer but we could go to each town and try to show them why it would be beneficial to them to be engaged. The RPP doesn't work if you don't get the towns engaged.*

M. Cole- *This is a critical issue, the towns and the RPP. He acknowledges a monumental effort by the Commission to inform the public and to hold hearings. But it doesn't work. There is a reaction when the rubber meets the road, but it is peoples' own fault, because they haven't attended meetings. Vicki is getting close to it. We need to stir these towns up. One answer doesn't fit for all towns. We need more bottom-up understanding of what the Minimum Performance Standards mean to each one.*

3) FINALLY A DECISION- After all this dialogue, there was consensus to start concentrating on specific recommendations by categories and groupings, commencing with the first on the circulated list.

STAFF

Ed Mangiafico- *He feels that staff should include the Commission members. He learned last week when Commission members were guests at the Task Force meeting, that these members should be communicating with the towns more effectively and frequently.*

S. Mitrokostas- *He saw the Task Force's presentation to the Assembly last night on a Cable TV rerun, and noted that one suggestion was that the Assembly members should be communicating Commission activities to the town. He scoffed at this idea, saying that it should be the Commission members only, more frequently.*

W. Northcross- *When the Commission reports to the Assembly, is it the staff or Commission members?*

J. Lipman- *Usually the staff. Sometimes it's the Commission members.*

COMMISSION MEMBERS

E. Carr- *This is a tremendous problem. Like some town Planning Board members are better than others, so it is that some Commission members are better than others. Listening to the Commission members here last week, he was under the impression there was a wide variation amongst the members on how many Subcommittee hearings they attend. It is a function of time. Retirees have more time than those members still working. Thus the members are skewed towards a certain segment of the population.*

L. Cole- *He raised the issue before about the time Commission public hearings are held. They are held in the evening which is good, because it allows working people to attend. But the Commission votes in the afternoon when working people can't attend. The nature of the relationship between Commission members and the community, finds the interaction varying all over the place, including meetings with the Selectmen and Planning Boards.*

E. Carr- *Perhaps we could write the ideal job description for a Commission member and hand it to the selectmen?*

S. Mitrokostas- *We have got to take the appointments of Commission members out of the hands of the selectmen and give it to the voters. Right now Commission members have no accountability.*

POST MORTEM

One of the six new recommendations Elliott circulated today was from Commission Chair Brad Crowell, suggesting a "post mortem" of each decision be conducted by the Commission to see if any opportunities for improvements or changes surfaced. M. Cole wondered if this could be like a quality control process, similar to what Jay Zavala suggested last week? E. Carr likes the term quality control. Can we change the name of Brad's recommendation from "post mortem" to quality control? T. Moccia said he feels there should be something between a local appeal of a decision and the Superior Court. Dorr Fox pointed out there is allowance for mediation in the Act, and it has been used.

DIRECT APPLICANT PRESENTATION

One of the recommendations has been to allow applicants to present their case directly to the Commission members, which they are not allowed to do now.

T. Evans- *As someone who led an organization that appeared before the Commission for a review three times, he had sometimes wanted to make part of the presentation himself, as he got frustrated at some of the Commission staff's inaccuracies and misinterpretations to the*

Commission members. But it seems to him that letting applicants talk to the Commission members directly would be unwieldy and cumbersome. It feels awkward.

W. Northcross- *What happened those three times that made you think about it?*

T. Evans- *In the end, it worked out. But the Commission depends on the staff. When the staff is inaccurate, you want to jump in. But in the end it worked out. But it would be difficult to come up with a decision who will make the presentation each time, without spiraling out of control.*

E. Carr- *This is the issue. People come in and see the same five Commission members voting. It would be great to have more Commission members serving on Subcommittees and voting, but he realizes it is a big time commitment and difficult for working people to make.*

L. Cole- *He pointed out that the first time the request goes to the town, the applicant makes the presentation in front of a group of Commission people. The staff makes comments and the applicant can respond to staff comments and dispute the staff, for the benefit of the Commission Subcommittee sitting there.*

E. Carr- *Going back to the Mashpee Commons, he doesn't think they realize all the minimum standards they have to adhere to. They think you can get your buddies in there and they can get it through.*

V. Lowell- *It can be frustrating when you think the staff is misinterpreting your points and you have to wait in the interim until it can get resolved. There are chances getting it resolved for the Commission members and applicants.*

M. Geist- *She sees some of the natural junctures of the recommendations. If there are problems, the applicant meets with the staff without Commission members in the room. But the buzz is about the staff just meeting with the applicant, the Commission members can't be in the room.*

QUESTION GOAL- Henry Kelley said that he needed a clearer understanding of what the Chairman is seeking as we go through the list of recommendations. Have we had enough talk to decide on and discard some?

E. Carr- *It is not his intent to go into an in-depth discussion. But he is no more important in this discussion than anyone else. He will take anyone's suggestion. But he sees the need for better wording and definition of these recommendations. No, nothing is final today.*

H. Kelley- *In an attempt to pick up the pace he observed that there seems to already have been discussion that recommendations Numbers 1 and 2 should stay.*

E. Carr- *The only final action today would be if the group voted 19-0 to eliminate something. We can improve and batch the recommendations more efficiently and provide better wording.*

M. Geist- *We need to prepare for the Selectmen's meeting with town officials by deciding on what recommendations we should be showing them.*

E. Carr- *Then let's review these group-by-group and go faster.*

REGIONAL POLICY PLAN

Getting back to the groups of recommendations, there are lots of suggestions concerning the RPP. Elliott said that Number 6. seems too vague, all about motherhood and apple pie. He suggests taking it out and the rest of the Task Force agreed. He said there is likely to be near unanimity that anything that creates good jobs and will stimulate the economy should have preference. But moving beyond that, retail doesn't cut it. Much of the development is just shuffling the deck chairs. This Task Force would be making a major contribution if we can find a solution, a definition of good jobs that would improve the economy.

DEVELOPMENT OF REGIONAL IMPACT

One of the biggest issues under DRIs is No. 11, which mentions the oft' recommended having concurrent Commission and town reviews.

H. Kelley- *He suggested the Task Force obtain a legal answer.*

L. Counsell- *While we are getting legal opinions, he also feels we should look into the legality of "County Zoning."*

E. Carr- *On Lindsey's suggestion you can't change the law, but you could change the semantics and not call it County Zoning. You could find a better name and downplay it as just a concept.*

T. Evans- *We have the heading on County Zoning, now we just have to define the bullets.*

MAPPING

E. Carr- *Paul Neidzwiecki was really stressing mapping everything and make DRI decisions based on mapping. If we had good County maps at the County level, they would show the overlap of regional problems. This graphic depiction would put more pressure on towns to deal with regional problems. We are into DCPC problems, but the maps would show the areas where we need to act.*

M. Geist- *In the BRT's "Call to Action," it talked about mapping being the basis for zoning. If you implement this mapping concept as part of the RPP, it opens the conversation with the towns as to the validity of what's in the maps.*

E. Mangiafico- *This could help provide certain incentives, if clearly defined maps existed. If there was agreement on the requirements, we could incent with faster approval for complying. Expediting approvals brings it closer together on the concept with regional zoning.*

L. Counsell- *They have already started some of this mapping in Hyannis, as part of their homework in search of TDRs with the Growth Incentive Zone. He realizes some towns don't have the resources that Barnstable possesses to find critical areas like wild life, etc. But they have shown it can be started. They have been working on this mapping since winter. It is staff driven, as they work on overlay maps when they have the time. There is a lot of equipment and software out there that allows them to do a lot of this mapping electronically. It is definitely doable.*

M. Geist- *At the same time they were working on this mapping, Barnstable was working on their GIZ. Now we have a model for other towns. The Commission staff should undertake to help towns with GIZ areas and mapping. We could get past a lot of NIMBY by using maps for density.*

E. Carr- *He comes from Brewster. He doesn't think they care about a GIZ. He advised not to lean too heavily on Barnstable's successful route.*

M. Geist- *She thinks we could and should get the County into some really creative planning.*

DRIs REVISITED

After the informative and interesting detour on the possibilities of mapping, the discussion returned to a fuller treatise on DRIs.

E. Carr- *He thinks that more and more it gets down to here are the rules, live with them. Rather than the subjective judgement of five people passing on applications.*

H. Kelley- *You are talking about eliminating discretionary judgements.*

E. Carr- *There have been twenty years of Commission increases on case-by-case, big case judgements.*

V. Lowell- Sometimes when you write things down, you get things you don't want, and don't get the things you do want, which is why we need discretion.

E. Mangiafico- We need something for certain things that come up, and let the DRI be dependent on more specific standards.

M. Cole- Getting back to the popular recommendation of concurrent review, he hears this recommended a lot.

D. Fox- The Act states that the application comes to the local board and once it is referred to the Commission, the local review process must stop. This is by statute. We do have joint staff meetings with Barnstable. The local boards and the Commission don't want any appearance they might be tainting the process.

M. Cole- But without concurrent review, it is hard for the applicant in terms of time, money and uncertainty.

S. Mitrokostas- Could you create an MOU incorporating the joint processes you have now, that you could do if other towns wanted to? If the Brewster Planning Board wanted to meet with the Commission, can you?

D. Fox- Yes. If it was a public meeting and not for a specific project, you could move into joint meetings. But the State doesn't allow towns to make decisions first.

E. Mangiafico- We have heard in all out meetings the issue of two separate meetings. A wall exists between the regional body and the towns. Having concurrent meetings would be a great way to break the wall.

E. Carr- In 1994, the Committee got into this big. It did make some chinks, but the big issue of two separate review processes is still there.

L. Cole- The Act would have to have changes in its wording and the towns would need to want it. By their own bylaws, the towns have a different policy than the Commission.

S. Mitrokostas- His Planning Board didn't feel handicapped by the Commission's decision.

W. Northcross- Time is money. How much does an additional hearing cost? This is a great time to increase efficiency and lower costs.

T. Evans- Having triggered the threshold three times, he can say from experience that the Commission process takes up much more time and dollars, and the town is much quicker.

D. Fox- There are different ways to deal with Recommendation No. 13, which talks about modifying submission requirements based on scope and complexity of the project, without modifying the Act. He and John Lipman will give Elliott a written recommendation/explanation regarding this.

THRESHOLD MODIFICATIONS

There were some additional recommendations concerning changes for the DRI process, which is the most often used Commission product, and thus the most controversial and criticized.

GOOD JOBS

M. Geist- In referring to Recommendation 14.b. which recommended varying DRI thresholds by use, lower for the production of retail and higher for "good" jobs, she said both ways are legally doable. There is a long list of permitted uses.

M. Cole- This is a slippery slope. We have a tough time with the definition of "good" jobs.

S. Mitrokostas- Looking at the big box, most projects come to Planning Boards as mixed use, including offices.

COMMUNITY BENEFITS

T. Evans- Recommendation 18. suggests a faster DRI process for projects of “community benefit.” To date the perception is that this process has only been available to non-profits.

D. Fox- That’s not true. Everyone is eligible to be considered for community benefits.

T. Evans- It is good to have more empirical standards even in the reduction of retail. The less we leave to subjective conclusions, the better we are.

E. Carr- He wouldn’t want to be voting on what should be a community benefit or not.

T. Evans- Who is the arbiter of community benefits? The Commission makes the decision and votes.

J. Lipman- There is specific language to follow.

S. Mitrokostas- Schools get passed. Non-profits’ projects are interpreted as being a community benefit. But what happens when you take the tenant out of the building?

TOWN IMPACT FEES

M. Geist- She wondered about additional impact fees at the local level being credited to reduce or replace Commission fees? It has been suggested. How would it work?

D. Fox- If towns have an approved LCP, they can charge impact fees.

M. Geist- How many towns have imposed impact fees?

D. Fox- None.

E. Carr- Most of the United States has impact fees. Cape Cod is very behind the eight-ball. There are a lot of reasons to take this on.

D. Fox- The Commission Act says that towns can exact impact fees if they have a certified LCP.

M. Geist- Why haven’t any towns used them? The problem is that the Act says yes, on Cape Cod towns can charge impact fees, but none have. Can the Commission recommend to towns ways to use these fees?

J. Lipman- Yes. We have encouraged them in the past.

W. Northcross- She thinks the applicants are excessively mitigated already.

E. Carr- By the rest of the world’s standards, applicants are not getting excessively impacted by fees. We on Cape Cod have the lowest fees.

M. Geist- She has made the recommendation that nitrogen fees be shared with the towns.

S. Mitrokostas- We have \$2 million in mitigation funds sitting there that have not been dedicated.

H. Farnham- He asked John Lipman if he could send out more information about how towns can impose local impact fees?

T. Moccia- He said he is confused. Bourne bent over backwards to take the County Jail. But in order to collect impact fees, we need an LCP?

E. Carr- He suggested discussion stop on this subject, since everyone should wait until they get the memo from John Lipman, so we will know what we are talking about.

E. Mangiafico- Having built shopping centers in California, he can attest there were lots of local mitigation fees. He feels we should recommend such fees be collected locally, since this source is not being used by towns now.

DCPCs

Elliott predicted this would ultimately be the longest and hardest discussion. The question was asked how a DCPC could be used to establish transportation corridors, as was suggested in

Recommendation 19.b. Elliott explained that you could take Route 28 and call it a DCPC. Vicki Lowell said such a moratorium could be limited to no new curb cuts.

HOUSING

S. Mitrokostas- *Is there anything in the Act to focus on housing?*

D. Fox- *He once again referred to the Commission Act, explaining that there is specific language saying that there shall be an Affordable Housing Specialist who shall focus on affordable housing. Paul Rushinkas is that Specialist. It is in the same paragraph that created the Commission's Economic Development Officer position, who is Leslie Richardson. He pointed out that there are only four positions mandated in the Act. Besides these two there is the Assistant Director and Chief Planner, John Lipman, and Chief Regulatory Officer, which is Dorr's position.*

E. Mangiafico- *He would like to see a proactive effort by the Commission to establish with the towns specific plans to provide housing at all levels. A proactive effort by the Commission to establish a housing plan with each town.*

M. Geist- *There is a State requirement that each town have at least 10% of its housing stock affordable. Should we have a County requirement of 10% affordable?*

T. Evans- *If you look at the total Commission staff, what percentage of their time is spent on affordable housing for Cape Cod? It's a time prioritization question.*

J. Lipman- *There is one full time housing specialist who does housing planning, leads the HOME consortium, looks for grants, etc. He has an assistant three days a week so there is 1.5 staff dedicated solely to housing. In total there are twenty fulltime Commission staff people. One works on the economy, so economy and housing have about the same time and resource allotment. There are a lot of people in the Traffic Department.*

ECONOMIC DEVELOPMENT

V. Lowell- *She recalls in the earlier days the poor Economic Development person was treated like a pariah, because people didn't want it as part of the Commission. The job of the Economic Development Officer is to integrate economic aspects and opportunity into all of this.*

W. Northcross- *The Economic Development Officer at the Commission needs to be doing a cost benefit analysis of projects. What's the economic benefits of chewing up the land?*

E. Carr- *He remembers back at the outset of the Commission thirteen banks on the Cape said there should be an economic study of the peninsula. The banks offered to help with it, but instead the Commission took a different view of their economic role.*

T. Moccia- *Taking Wendy's point further, who is looking at economic development benefits down the road?*

W. Northcross- *One reason the County Economic Development Council existed is to do that work. It is why the original EDC pulled out of the County and privatized, morphing into the Chamber, so they can be more creative and proactive. The Cape Cod Chamber is really the only regional entity looking at the economy to this degree.*

T. Moccia- *The Commission needs to put more emphasis on the economic development portion of its mandate.*

W. Northcross- *To ask the Commission to map out the economic future of the Cape is grandiose. It needs help to do that. It needs to do an economic cost analysis benefit on each project.*

E. Mangiafico- *This speaks to housing. We aren't going to have an economy without housing.*

E. Carr- *There are discussions going on outside this room determining the future of the last 20,000 to 30,000 housing units on Cape Cod. They should consider the economic support.*

H. Farnham- *The key part is education, where young people are coming from to create good jobs. He's not sure we have that in our schools.*

L. Cole- *The current Commission Economic Development Officer is doing a kind of economic development analysis on impact for each DRI. The resources are not there, nor can we bring about a description on how to get there. The Commission needs more staff or a different kind of staff to get there.*

S. Mitrokostas- *It sounds like the Commission is already in the housing business. The question is do we want more of it?*

M. Cole- *He would to emphasize that unlike five or ten years ago, the regional strategy is broad based.*

E. Carr- *A lot of people think affordable is 40B. It's not a done deal in education.*

COMING ATTRACTIONS- With seven minutes left in the meeting, Chairman Carr summarized the scheduled, upcoming meetings.

- There will be three town hearings before we meet again.
- There will be a regular Task Force meeting the morning of August 10th.
- Then, a big meeting with the Selectmen/town officials the evening of August 10th.
- We will have further discussion at the August 10th Task Force meeting.
- But we will not vote definitively before we meet with the towns.

H. Farnham- *He feels we need Pat Butler's group input. It will help us. He advocates for allowing him time on August 10th.*

M. Geist- *Pat and Doug Storrs keep saying applicants need incentives. We need specificity. We need them to make recommendations.*

L. Cole- *The main focus of economic development is workforce training. He thinks it is dubious. The economy isn't generating jobs.*

W. Northcross- *We can't make it harder to price out affordable housing. We are no different that what's going on in the rest of the country.*

V. Lowell- *The Commission can't regulate single family housing. Can the towns, by imposing impact fees?*

S. Mitrokostas- *The single most important factor to the Cape's economy in ten years is retirees migrating and building large homes, which has transferred the economy.*

Meeting adjourned at 9:46 a.m.

David B. Willard

Salubrious Scrivener