

CAPE COD COMMISSION  
21<sup>st</sup> CENTURY REVIEW TASK FORCE  
COMMITTEE HEARING MINUTES  
AUGUST 10, 2006

Task Force Members Present: Elliott Carr (Chair), Keith Bergman, Larry Cole, Michael Cole, Lindsey Counsell, Tom Evans, Hank Farnum, Maggie Geist, Henry Kelley, Vicky Lowell, Ed Mangiafico, Spiro Mitrokostas, Tom Moccia, Paul Niedzwiecki, Wendy Northcross, Paula Peters, Mark Robinson and Tony Shepley

The Task Force appointed by the Barnstable County Commissioners to review the Cape Cod Commission met on Thursday evening, August 10, 2006 at the First District Courthouse, Assembly of Delegates Chamber, Barnstable, for the purpose of taking testimony from town officials. Task Force Chair Elliott Carr opened the hearing at 7:05 PM. He discussed the work of the Task Force to date. Mr. Carr noted that interfacing with Towns was a key.

Robert Smith, Barnstable Town Attorney, said he had been involved with the original panel that worked to create the Cape Cod Commission (Commission). He said as Town Attorney, he had experienced working with the Commission as a team. Mr. Smith said he never doubted the need for the Commission to have teeth. He said that by having the Commission, the Cape had achieved the elimination of idiotic zoning grandfathering. He noted that use of the District of Critical Planning Concern (DCPC) was a key Commission tool, which helped overcome grandfathering. Mr. Smith said that until recently, he had not experienced any difficulty interacting with the Commission on projects, including Jurisdictional Determinations. Mr. Smith said the most recent interaction between the Commission and the Town of Barnstable involved the review of the YMCA, where Barnstable was a co-applicant on the project. He said Barnstable zoning allows recreational uses in that area under a lease arrangement, in place since 1985. Mr. Smith said the Town felt the project should have been dealt with as a municipal use. He said the Town's experience in the YMCA was that the review was expeditious, but he had the same experience as some of the private developers who have given testimony to the Task Force. Mr. Smith said the Commission's staff's response was jarring, and he thought that the town could have been treated with more respect. He said the Commission staff should maximize the amount of discretion for Commission members. Mr. Smith said criteria should be developed for municipal projects.

Elliott Carr said the points Mr. Smith raised had come up in other Task Force hearings. He said it was not part of the Task Force's set of draft recommendations, but asked Mr. Smith if Town projects should be exempted from Commission review.

Robert Smith said that an alternate draft of the Commission Act had been developed in 1989. He said this version would have allowed Commission jurisdiction over projects only if a Board of Selectmen, or in the case of Barnstable, the Town Council, asked for it, or a Selectboard in an adjoining town, one that shared a boarder with the town in which the project was located, asked for it.

Elliott Carr noted that one of the Task Force's recommendations was that the Commission meet at least annually with each Selectboard and with Barnstable's Town Council.

Spiro Mitrokostas, Task Force member, asked Mr. Smith if he thought the Commission staff needs attitudinal adjustment.

Robert Smith said his comments about Commission staff concerned the interplay between Commission members and staff. He said Commission staff should present options to the Commission members in their reports without setting out specific "staff recommendations."

Dennis O'Connell, Chair, Wellfleet Planning Board, said the Commission provided a wonderful service. He said the Commission staff's expertise in technical and planning matters was valuable. Mr. O'Connell said the Geographic Information Service (GIS) was an example of technical expertise the Commission staff provides to small Cape towns. Mr. O'Connell commented on the difference between the "big" mid-Cape towns and the "small" lower-Cape towns. In this sense, he suggested that different review thresholds were appropriate for different areas of the Cape. He said the Commission staff had been very responsive to Wellfleet, and noted the Commission's review of the Wellfleet Harbor Actors Theater (WHAT) was very productive. On DCPCs, Mr. O'Connell said Wellfleet appreciated the Commission staff's assistance with a DCPC in town. He said the DCPC attempt in Wellfleet was not successful, and suggested that towns need a clearer understanding of what will be allowed/not allowed when a DCPC is proposed.

John Hinckley, Orleans Board of Selectmen, said he would submit a copy of his comments in writing. He said Orleans has done many of the things that the Task Force has recommended for Local Comprehensive Plan (LCP) implementation. He said Orleans was working with the current Regional Policy Plan, and are looking forward to the new one. Mr. Hinckley said the Commission needed to clearly understand a town's position on a project under review. He said site visits to a project under Commission review should be required for Commission members and staff. He said it was important to codify and document town staff and Commission staff interactions on a project under review. Mr. Hinckley said the Commission's DCPC and Growth Incentive Zone (GIZ) growth management tools had positive and negative aspects. He said it was important to provide as much feed-back to towns on how to maximize the benefits of both of these tools, and that towns have a clear understanding of how they can be used. He said the

current system of town appointment of Commission members worked well, and favored this system over elected Commission members. On the Task Force's draft 61 points, he offered the following specific comments:

- point 2 – continuing education – should be handled locally
- point 5 – grants and monies – should not be a trigger for review/policy
- point 23 – Adequate as is - basic process works
- point 36 – Makes no sense
- point 59 – Does not favor weighted voting for Commission members

Mr. Hinckley said having weighted voting was appropriate for the Assembly of Delegates. He said the current system of one town/one vote is appropriate for the Commission.

Larry Cole, Task Force member, asked Mr. Hinckley for his reaction to other Task Force points. In terms of weighted voting, he asked Mr. Hinckley whom he thought the Commission represented. He asked Mr. Hinckley to comment on the manner in which Commission subcommittees are picked to initially review a project. Mr. Cole asked should subcommittee membership be geographically based? Should Commission members from towns bordering the town in which a project is located be placed on the subcommittee?

John Hinckley responded that information from the local level is gathered by the Commission staff. He said the Commission members respond to and implement the Regional Policy Plan (RPP). As such, Commission members responsibility is to take a regional perspective. He said this means that subcommittees should have a regional perspective, and tends against geographical representation.

Robert Smith noted the way the Assembly and the Commission vote or should vote was very narrow and specific question, relative to each body's functions. He said the Assembly of Delegates, as a legislative body, has a weighted vote.

John Hodgkinson, Assembly of Delegates, Orleans, said education was the key. He said it was important for the Commission and County to clearly communicate what the Commission's mission is, and what services are available to the towns. He noted the Commission members and staff strictly follow the RPP. He noted the challenges facing Cape Cod were unique, and that this may be part of why there are misunderstandings. He said there should be a full-day visit by County officials, including the Commission and other County departments, with representatives of each town.

Ann Canedy, Barnstable Town Councilor, said she was speaking as an individual and not for the Council. She said the Commission staff had been very helpful with a recent DCPC in Barnstable. She expressed concern that, if proposed, mitigation stemming from projects that had undergone Commission review not be made generic. Ms. Canedy said it was important that project mitigation be seen as being linked to

addressing the impacts of a particular development. Ms. Canedy used the example of a general mitigation fund for open space. In this case, she said that mitigation for a project in Cotuit might not be seen as addressing impacts in Cotuit. She said there had to be a nexus between a project and the mitigation from that project. Ms. Canedy said such a nexus would create real mitigation, and increase predictability.

Elliott Carr noted that local impact fees could replace Commission mitigation, and suggested such fees would meet all the tests Ms. Canedy described.

Ann Canedy said the Commission should work closely with town staff. She thanked the Commission for their approval of the Pond Village DCPC. She said such grass-roots DCPCs would hopefully be used more in the future. Ms. Canedy said the Pond Village DCPC represented citizens being able to take back control of their neighborhood. She said Commission staff had provided valuable expertise beyond what Barnstable town staff could, particularly in the area of water resources issues.

Don Trepte, Chair, Dennis Board of Selectmen, said the town had had good experiences with Commission staff, particularly on the Crow's Pasture DCPC. He said a DCPC is a lot of work, but creates a valuable outcome. Mr. Trepte thanked the Commission for its recent work on the KeySpan gas pipeline review. He said the Commission review provides a source of strength as a regional agency, and local support to towns. He noted a Discretionary Referral of a Dunkin' Donuts on Route 134 to the Commission was important, in that it helped solve a traffic problem. Mr. Trepte said the one town/one vote Commission representation should be kept in place. He said it was important to look for people to become Commission members who would not represent just one town, but who would look at regional issues.

Larry Cole asked Mr. Trepte to respond to whether the Commission should focus more on planning issues? Should the Commission suggest where more DCPCs could be located?

Don Trepte responded that towns would be open to suggestions for DCPCs. He said the Commission's regional view provides a unique perspective on where, perhaps, other DCPCs would be helpful, particularly if one involved multiple towns. Mr. Trepte said it should be in the form of a suggestion, not mandating a DCPC.

Charlie Sumner, Brewster Town Administrator, said Brewster was very supportive of the Commission. He said the town and Commission had a good relationship. Mr. Sumner said the Commission staff is very open and approachable, particularly Margo Fenn, the Executive Director. He said the Commission has valuable technical expertise, particularly in water resources issues, transportation/traffic analysis and GIS. Mr. Sumner noted one issue, that of how municipal projects are reviewed. He suggested a limited or special type of review for municipal projects. Mr. Sumner said town projects benefit the towns in which they are located, and that this means they should be treated differently. He said projects before the Commission have regional impacts, which is the

value of a regional review. On item #31 of the Task Force recommendations, Mr. Sumner said the input of local officials should be recognized and valued. He said Commission members should be appointed versus elected. Mr. Sumner said having local impact fees would be great, but he noted that more local input in how mitigation funds are used is important. He said a concern for Brewster was that the Commission's nitrogen loading Technical Bulletin did not reflect real situations.

Elliott Carr asked Mr. Sumner to provide the Task Force with more detail on his concerns about the nitrogen loading Technical Bulletin in writing.

Vicky Lowell, Task Force member, asked Mr. Sumner to comment on whom he contacts at the Commission with questions? Does he speak to the Brewster Commission member, and work through her? Does he talk to Commission staff?

Charlie Sumner responded that he contacts the Commission in a variety of ways. He works with and through the Brewster Commission member, Elizabeth Taylor, and also speaks directly with Commission staff, including the Executive Director.

Linda Zuern, Chair, Bourne Board of Selectmen, said she was speaking for herself. She thanked the Commission for its technical expertise and planning support. She preferred more technical support and less regulation. Ms. Zuern said local zoning bylaws needed to be updated and strengthened, but with them improved, towns could handle development. She said there should be a time limit on the regulatory review process. Ms. Zuern said the Commission should aid towns with the kind of development they wanted. Ms. Zuern questioned the value of a GIZ for Buzzards Bay, given the area was in a floodplain, and did not have wastewater management infrastructure. She said special consideration should be given to Bourne and Sandwich in Commission reviews, as development can locate in adjacent towns not under the Commission instead of in Bourne and Sandwich. She said special consideration should also be given to Bourne as all traffic heading onto and off the Cape passes through Bourne. Ms. Zuern said there should be more contact with the Bourne Commission representative and local officials. She said the Board of Selectmen had received an opinion that because the Commission is a quasi-judicial body, local officials cannot have contact with the Commission representative. Ms. Zuern said it was important for subcommittee and Commission members to make site visits to proposed projects. She said the Commission member should be part of the subcommittee for a project in Bourne. She said subcommittee membership should be geographically based. On item #54 in the Task Force recommendations, she expressed concern about increased height limits. She said that needs for parking and wastewater management also needed to be looked at. Ms. Zuern commented on Bourne's experience with a major modification to the Commission's decision on the Bourne landfill. She said the process cost the town a lot of time and money.

Paula Peters, Task Force member, asked Ms. Zuern to clarify the issues she was raising relative to the landfill modification. How could the process have been shorter?

Linda Zuern said the Commission declared the project to be a major modification, which made the process longer.

Larry Cole said he was on the Commission at the time the Bourne landfill came in for a modification to the decision. He said that the modification involved changing from taking construction and demolition (C/D) waste to taking municipal solid waste (MSW). He said this change presented complex issues. He said one of the reasons why the change was deemed to warrant a major modification review was that the original Commission decision for the landfill included a finding that prohibited the facility from taking MSW. He said that state regulations also made it complicated, and the change from C/D to MSW presented different traffic and environmental impacts.

Judy Conron, Bourne Board of Selectmen, said she was speaking for herself. She said she had been involved in both the landfill and Canalside Commons reviews. She said the landfill review was a major modification because the original decision did not allow management of MSW. She said the Commission's review of the landfill gave all sides a chance to testify on the issues. Ms. Conron said the Commission's participation and review of projects has been a favorable experience. She said on the Canalside project in particular, there was high emotion and anxiety on all sides. She said the Commission treated all involved with the Canalside project with respect, and allowed a space where issues could be discussed in a calm manner. On impact fees, she said it was important for local feedback on how mitigation funds are spent. She recommended that communication between the Commission and towns be improved. Ms. Conron expressed concern about 9,999 square foot buildings being constructed, thereby avoiding Commission review, and the fact that the impacts from such projects were going unaddressed. She suggested the Commission could address some of the impacts from such projects through a limited review process focused on community character issues. Ms. Conron recommended that the Commission's review of Chapter 40(B) projects be strengthened. She said towns needed additional help, and the Commission had expertise in areas the towns did not.

Ms. Conron recommended that Commission members continue to be appointed by towns, rather than be elected. She said that continuing education of Commission members was important. Ms. Conron said it was important that Commission members be part of a variety of projects, across Cape Cod. She said Commission members represent all Cape towns, not just one town, and as such, needed a broader perspective on issues. Ms. Conron said it was her experience that it was possible to communicate with a town's Commission member, and noted this had been the case with Bourne's previous representative. She said the Commission provided a tremendous service to Cape towns, especially when compared with how land use and development has proceeded in other parts of the United States.

Robert Dubois, Yarmouth Chamber of Commerce, complimented the Task Force on its process to date, and said the meeting minutes were good. He said the Task Force process was on the right track. Mr. Dubois said the Chamber had also heard from

Commission detractors, and said this was missing from the Task Force's process to date. Mr. Dubois said the public hearing process was intimidating, and that this made it important for the Task Force to reach out in more ways to stakeholders. He said it was important to reach out to those in the development community who had built 9,999 square foot developments, and find out why they did what they did.

Peggy Fantozzi, Cape Cod Water Protection Collaborative, asked the Task Force to recognize the changes that had occurred in County government, and how that affects the Commission's responsibilities. She said it was important to avoid duplication in County government. Ms. Fantozzi submitted a letter to the Task Force with her comments. She said the Collaborative had a defined role, and that the County needs to avoid overlap in the Collaborative and Commission roles in terms of the wastewater management plan.

Peter Smith, Yarmouth Economic Development Council, noted that Yarmouth Town Meeting had recently passed a bylaw to redevelop the motels/hotels on Route 28. He said he hoped the Commission would let the town review the redevelopment of these properties, and not require full DRI review.

Vicky Lowell asked Mr. Peter Smith if the town had considered a Development Agreement for the area, or a DCPC, or a GIZ?

Peter Smith responded that the town may consider a GIZ application.

Elliott Carr said one of the Task Force points dealt with the failure to implement the Local Comprehensive Plans (LCPs), and in particular, key zoning changes. He said this had in turn lead to the recommendation to make the Regional Policy Plan (RPP) more map and land-use based. He asked Task Force members assigned to look into these issues to comment.

Paul Niedzwiecki, Task Force member, said the RPP and LCPs have to mesh more. He said the RPP currently reads more like a development checklist. Mr. Niedzwiecki said the three key Commission roles were in planning, education/technical assistance and in regulation. He also said the towns needed to step up to improve/strengthen local zoning. He said less regulatory review would be needed with improved planning efforts.

Keith Bergman, Task Force member, said the Commission's technical assistance function was important. He said its planning function was also highly valued, particularly by the smaller Cape towns. Mr. Bergman said what was needed were usable LCPs that were map-driven. He noted the state's 40(R) process, and said that in this context, land use mapping would provide answers to such questions as where should affordable housing be located?

Elliott Carr discussed item #3 of the Task Force's draft points. He said there was a misunderstanding of the purpose of Minimum Performance Standards (MPS). He said

there did not seem to be an understanding that the MPS were regulations. Mr. Carr said it was important to make clear what the Commission's thresholds and Minimum Performance Standards were.

Margo Fenn, Cape Cod Commission Executive Director, said there seemed to be a misunderstanding of why the Commission did what it does. She said that usually, a project comes before the Commission because of a mandatory threshold, and that Commission decisions are based on compliance with the Minimum Performance Standards.

Elliott Carr asked Task Force members to comment on the GIZ concept.

Keith Bergman said that Barnstable had recently gone through a GIZ designation for part of Hyannis. He said it seemed that the GIZ was there primarily because the necessary infrastructure was in place to handle the potential development. Mr. Bergman said the GIZ concept also showed how the Commission's processes could be made more flexible.

Elliott Carr asked for comments from Task Force members on whether there should be concurrent Commission/town review of projects.

Larry Cole said his experience as a Commission member from Harwich indicated that the Commission is doing its assigned job in implementing the Commission Act, using the Regional Policy Plan, which was approved by the Assembly of Delegates. He said a key question was what constituted an LCP "with teeth"? He said that "teeth" probably meant key zoning changes, to allow things such as denser development, mixed use development, multiple-story buildings, all with real off-sets in development elsewhere. In terms of the Minimum Performance Standards, he said these were the agreed-to requirements that development being reviewed by the Commission had to meet. In terms of whether the town/Commission review could happen concurrently, he was not sure it could happen together. Mr. Cole said this should be explored.

Elliott Carr said it seemed there had been a similar recommendation from a prior Commission review. He said at that time, concurrent town/Commission review was not favored by the towns.

Robert Smith said he thought the Cape Cod Commission Act could be amended at the County level, because the Act was part of the County Charter.

Elliott Carr said he thought the Task Force had covered item #6 on its list of points. He suggested the DCPC process should be made simpler. He also suggested the Task Force had discussed item #8 on its list.

Vicky Lowell recognized Barnstable County Commissioners Doherty and Leclair in the audience.

Elliott Carr thanked all for their attendance at the hearing.

Hearing adjourned at 9:02 PM.