

**CAPE COD REGIONAL GOVERNMENT - ASSEMBLY OF DELEGATES
CHAMBER OF THE ASSEMBLY OF DELEGATES
FIRST DISTRICT COURTHOUSE
ROUTE 6A, BARNSTABLE, MA 02630**

APPROVED Journal of Proceedings - July 6, 2016

Speaker BERGSTROM: Good afternoon. It is 4 o'clock and I will call this meeting of the Cape Cod Regional Government Assembly of Delegates to order. Today's Wednesday, July 6th, 2016.

Is there anyone recording this?

MR. ALBRIGHT: Yes

Speaker BERGSTROM: We have someone else recording besides our normal recording artist. Thank you.

I call this meeting to order, and we'll begin with a moment of silence to honor our troops who have died in service to our country and all those serving our country in the Armed Forces.

(Moment of silence)

Speaker BERGSTROM: Thank you. We will now stand for the Pledge of Allegiance.

(Pledge of Allegiance)

Speaker BERGSTROM: The Clerk will call the roll.

Roll Call (81.04%): Ronald Bergstrom (2.84% - Chatham), Lilli-Ann Green - (1.27% - Wellfleet), Christopher Kanaga (2.73% - Orleans), James Killion (9.58% - Sandwich), Marcia King (6.49% - Mashpee), Edward Lewis (4.55% - Brewster), Suzanne McAuliffe (11.02% - Yarmouth), Edward McManus (5.67% - Harwich), Brian O'Malley (1.36% - Provincetown), Patrick Princi (20.92% - Barnstable), Julia Taylor (14.61% - Falmouth).

Absent (18.96%): Teresa Martin (2.30% - Eastham), Deborah McCutcheon (0.93% - Truro), John Ohman (6.58% - Dennis), Linda Zuern (9.15% - Bourne).

Clerk O'CONNELL: Mr. Speaker, we have a quorum with 81.04 percent of the Delegates present; 18.96 percent absent.

Speaker BERGSTROM: Thank you. You have before you the Calendar of Business. Any additions or corrections to the Calendar? If not, I need a motion to approve.

Mr. LEWIS: So moved.

Ms. MCAULIFFE: Second.

Speaker BERGSTROM: All in favor? Aye. Opposed?

(Motion carried.)

Speaker BERGSTROM: Okay. You should have received, also, a copy of the Journal of June 15th. Are there any additions or corrections to the Journal? Yes, Brian.

Mr. O'MALLEY: Mr. Speaker, I reviewed the Journal as distributed and move approval.

Ms. MCAULIFFE: Second.

Speaker BERGSTROM: Okay. Moved and seconded. All those in favor.
Aye. Opposed?

(Motion carried.)

Communications from the Board of Regional Commissioners

Commissioner FLYNN: And now we have Communications from the Board of Regional Commissioners. That's you guys. We have the entire board here.

Commissioner FLYNN: Good afternoon. It's the coolest place I've been in all day, so this is nice.

Speaker BERGSTROM: Besides the temperature, right.

Commissioner FLYNN: It's perfect. Well, some of the issues that we took up today at our meeting had to do with the approval of the 2017 County Tax, Environmental Protection Fund Tax Schedules that go into effect actually July 1. But you all know what they are, they're 2-1/2 percent which we usually approve each year.

We also talked about a letter of support for the legislative efforts concerning the Monomoy Refuge issues, particularly for those who live in Chatham, that's a big issue. The federal government wants to have its boundaries set in a certain way and the town doesn't particularly agree with them. So I don't know how they're going to work it out, but we're supporting the town of Chatham.

And then we also -- we have a couple of veterans who live in Truro and there's an issue with some of their veterans' benefits. And Sarah Peake asked us if we would send a letter of support. She's filing legislation to correct some mistaken determinations made by the state regarding their veterans' benefits. So were going to support -- we did vote today to send a letter of support so that she can put that before the legislature.

And that's pretty much what -- Leo, go ahead.

Commissioner CAKOUNES: Thank you. We had a presentation today by Cape Light Compact. Maggie Downey and Austin Brandt came in and did a very interesting brief and well-understandable explanation of the modernization of the electric grid. And I would highly, through the Speaker, would ask that you probably have that same presentation done here at the Assembly.

Because I know many of you back -- when you go back to your home towns, you're probably getting asked what this is all about and you hear numbers of \$500,000 and \$5 million and \$10 billion, you need to know what's going on. And the presentation was really -- I found it very educational, and I would highly recommend that you guys have it done here too.

The only other thing is it's been two other weeks that we have not been before you as a board. As you know, we've been meeting weekly and you guys meet every other week. There hasn't been too much that has gone on. We've just done -- we've decided to meet weekly because it's easier to do our signing contracts and votes especially winding up the end of the year and starting in the beginning of the new year.

On June 22nd, we did take a vote to rollover the bond anticipation note. That's the note that as you guys all know that we have taken out in anticipations of going out for long-term bond. While we've rolled that over to I believe its May of 2017. So we're going to go through this year and then decide how much we're actually going out for for bond.

And I think there was one other meeting the 29th. I'm just trying to give them the highlights off the agenda, but we did have an executive session on the 29th in regards to the situation at the Fire Academy. Obviously, we can't update you on that. No vote, no action was taken during that executive session so you need to know that.

There are two other issues that we talked about on the 29th. One is the Orleans District Court is asking us for some possible licensing agreement to use on access through our property to access theirs. No action has been taken on that. We're actually going to compile some more information on that.

And we are in the midst of putting together the 2017 Mercy Otis Warren Memorandum of Understanding. As you all know, we have been a supporter -- we, Barnstable County, has been a supporter of that award. And because of our audit and other situations, our relationship with this committee is, once again, going to be tweaked. We tweaked it last year and we're going to be tweaking it again for the 2017 award, but no votes or action had been taken. It was just a couple of options, if you will, that were put on the table, and we're waiting to hear back from that committee.

There were some other various things but those are the ones with the most importance. Again, you've missed three of our meetings. So, thank you.

Speaker BERGSTROM: Okay. Any questions for the Commissioners?
Well, thank you, very much.

Commissioner LYONS: Thank you.

Communications from County Administrator Jack Yunits

Speaker BERGSTROM: Now we have communications from the County Administrator Jack Yunits and an update on County leases.

Administrator YUNITS: Thank you, Mr. Speaker. As you recall, when the auditor came in, one of the highlights was early identification concerns with the County leases or lack thereof. We have had a little trouble getting DCAM engaged in making a visit to the campus. But on July 15th, Susan Smiley from EOEA, who's in charge of this aspect of leases, is coming down to tour the facility and to start the process of either negotiating leases or negotiating on relocation of our agencies. So we'll keep you posted on that.

The Cataldo Archives are moving out by August 1st. They're still waiting to find a place to store what's remaining, but the lease was never approved by this Assembly and, therefore, technically, it's invalid.

The other leases of concern were out in Pocasset. We looked into both the Gosnold lease and the assisted living facility lease. They were approved by both boards, so they are valid as it stands.

What we're trying to do now is to look at the rest of the premises out there and determine whether or not we can subdivide it and either sale of new ground leases on the remaining portions of that very significant piece of property. Unfortunately, 50 acres of it was ordered into conservation at the time the permit was issued for the assisted living facility from Maine. So we have to address that issue first with the locals or probably through the legislature. That's going to take some time. Obviously, we don't think the conservation restriction is immutable. I think we can change it, but I think it's going to be a process and it's going to involve the legislature to do so.

I also want to talk to you a little bit briefly about the Fire Academy and the

status. We have been very aggressive since last year when the Commissioners voted \$232,000 -- appropriated \$232,000 to start the cleanup of the site.

We now have a diversion well that's working, pumping 60 gallons a minute back to our campus at the Fire Training Academy away from the Mary Dunn wells and it's treating and cleaning with carbon filters that water and putting it back into the ground clean.

We, in addition to that, are in the process of removing 200 cubic yards of very contaminated soil called the "Hotspot." We're looking for a place, a permanent resting place for the soil at this point in time. And DEP is engaged with us in trying to find a location for that. We will continue to clean that site on an ongoing basis over the course of the next couple years.

The major potential calamity I think has been abated in part by the good work Tom Cambareri's done with his diversion wells in part because the town has put the carbon filters in all the wells. So all three Mary Dunn wells should be up and running by next week.

As it relates to one last issue I wanted to talk to you about today and then, of course, if you have any questions. We talked last spring about creating subcommittees that would involve the Assembly on a more regular basis, even if it was by telephone or phone conferencing or memos, communications. And we wanted to focus first on the real estate facilities because we are going to be creating a committee. The Commissioners will appoint somebody to represent the Commission and, hopefully, the Assembly will appoint one or two people to represent the Assembly. But we have to take the huge look at how to best use this facility going forward in partnership with the trial court. The trial court is eager to create a new complex with all courts under one roof. That's the model they're using today. We can do it here. We want to do it here. There was a subcommittee that was formed last year. I'm sure you know it. And they came up with a pretty good strategy. So we're going to reengage that committee and keep that on a fast track. So that would be a place where we hope to have the Assembly involved.

The second place is finance. Rather than have one or two meetings where finance is discussed, we thought it would be a great idea to have representatives of your Finance Committee as part of our Finance team and meeting on a more regular basis so that you can have a good working knowledge of where we're going as we try to get back to bond status and how the revenues are running on a regular basis.

And the third was information technology and communications. We still think that's a very critical part of the Cape going forward to use the dark fiber that's right next to us and light that last mile. Get it out to the communities, get businesses engaged with it, and get the private sector engaged with it in their homes. It can be done. It's going to take time, but it's got to be something that we have to get a lot more aggressive about.

We have hired a consultant right now who's working with us. He's off the state bid list. He's been doing it for 27 years; LCN is the name of the company, to see how we can best line ourselves in the IT Department to accomplish the purpose that the Open Cape was originally established for.

And that will be something that we would like you guys involved with as well. So those three subcommittees are three subcommittees that we'd like to start putting together in August and get to work in the fall.

Speaker BERGSTROM: Thank you. Any questions for Jack? Yes, Ed.

Mr. LEWIS: Happy 4th, Jack.

Administrator YUNITS: Thank you.

Mr. LEWIS: Two days after the 4th. The leases with Gosnold and the other one that you say were approved by the Commissioners and this board; can you tell us when that was done? How long ago that was?

Administrator YUNITS: At least a decade. I don't have the numbers in front of me, but I'll get you those. We do have an email form, so I can send those along to you. At least a decade ago. They both are long-term leases. Steve, do you remember the dates?

Mr. STEVE TEBO: I believe it was 2003 for the assisted living facility, and then Gosnold, I believe, was in '98 or '99.

Administrator YUNITS: Yes.

Mr. LEWIS: It would be interesting to know -- I know it wasn't any of these Commissioners but some of the people who might have been on the Assembly at that time might know. But there were people in the audience several months ago who were, you know, former members of either one of those boards who talked and, obviously, neither of these leases are good as far as the County is concerned. They don't benefit the County very much. They benefit the people who have the other ones.

But it would be interesting to know when and who was on the board and who approved them.

Administrator YUNITS: Yes, you know, it's funny because I think when you look back in history, it easy to Monday morning quarterback, and I've learned that beating up history's not going to help us. We're just trying to figure out how to go forward.

They're, obviously, not good leases now. We don't know what the temperament at the time was and why they were done the way they were done; a dollar a year for 50 years is never a good idea.

Mr. LEWIS: I don't think that's a good idea no matter when it was done.

Administrator YUNITS: Yes.

Mr. LEWIS: I don't think the temperament is anything. A dollar a year is a gift.

Administrator YUNITS: Yes, and especially when you bring in a private company from Maine to upgrade an assisted living facility on public property. But it is what it is. And now our job is to try to figure out how we can do it.

So what we have going on out there, Paul Hartel, Hartel Appraisal out of Falmouth, has been hired. He's doing the appraisal of the property. He'll make suggestions about what will be the highest and best value, what the tactics should be going forward. Should we subdivide? Should we get the conservation restriction listed? That's going to be part of his proposal.

And here on the campus, it's a different story. The trial court needs more room.

Mr. LEWIS: Right.

Administrator YUNITS: The Probate Court, they're in closets. And the best way to accommodate that and we don't lose money off those leases; the best way to accommodate the trial court is to move our people out of the basement of the extension and into the old jail for now.

And to do that, we have to either get rent from the state or send the state to

another place, and that's going to happen this summer. Steve would like to be working on that by August, starting to transition those moves by August.

Speaker BERGSTROM: Okay. Julia.

Ms. TAYLOR: I'm not going to be able to give a very accurate report on the situation of the assisted living facility, but I can't tell you that it was an extremely unusual project for the time. It may have been the first assisted living facility with affordable units in Massachusetts or possibly anywhere.

And the deal worked because, in effect, we gave the land. Yes, it was a lease, but there was a very complicated formula of the builders could do it by getting certain kinds of tax benefits and it did require that we put in something and that's what we did.

And so I can understand that, yes, it does seem odd to have a lease for a dollar but, in effect, we were offering that as a way to have something like this get done. And the person who put it together primarily was Paul LeBlanc who really did understand it beautifully and did explain it so that I could understand at the time; Paul LaBell. And it was not a sucker deal, I can tell you that.

Whether it could be renegotiated, I don't know. I'm not saying it can't. I'm just saying that the original plan was a good one and it has served a lot of poor people very, very well for many years.

Speaker BERGSTROM: Okay. Just in reference to that, it's been a while. And I imagine that when the original leases were signed, there were certain requirements by the builder or developer that they would do certain things, in other words, make certain things affordable.

Ms. TAYLOR: And it had to do with tax laws, federal tax laws because they were getting federal tax credits in some way but may not still be operative; I don't know.

Speaker BERGSTROM: -- because we've had experiences in Chatham where we built affordable housing and then just walked away and, you know, didn't pay attention and next thing you know it went out affordability and started to change hands.

So I'm just making sure that the original contracts were honored by both parties.

Ed.

Administrator YUNITS: We don't have any monitoring agreements in place on that because I don't think that was -- we weren't the money part of that. That would be federal or state that would be monitoring whether or not they are honoring the affordable part about this.

But there's a follow-up to it. A few of you suggests that I have asked them to engage their equity partners in a conversation about renegotiating the deal. If they want to buy the property, we'd be willing to sell.

And times have changed. I know that the equity group that's behind the assisted living facility has been very successful nationally and they have a lot of money and maybe they want to invest. So, that's why we're having the appraisals done.

Speaker BERGSTROM: Ed, did you --

Mr. MCMANUS: In Harwich, we've provided land for agencies to do affordable housing on, also at no charge. But the caveat was that there was a big process that went through.

And the question is was that the case for the process on the assisted living

project and on Gosnold? Was it an open -- open bid?

Administrator YUNITS: Not on Gosnold. Gosnold was pretty close. The assisted living facility was, as Julia indicated, it was a long process. There were hearings here, hearings across the parking lot, and hearings in Bourne. There was quite a bit that there were appraisals done and advertising and so on and so forth. Gosnold was just -- that was 1998 and I think things were a little different then.

The hospital might have even still been running then, and I think that's why -- the Thorne Foundation had been out there before Gosnold. And the Thorne Foundation actually built the building on the County land.

So you've got what they call promissory estoppel in that particular case because they built it without permission so it makes it very difficult to go back now and change the tune because they have invested in that. And Gosnold's been paying the Thorne Foundation rent over the years for that use -- fees of that property. Thorne Foundation pays us a dollar a year.

Speaker BERGSTROM: Yes, Ed.

Mr. LEWIS: Yes, I want to make it clear that I understand from a standpoint of assisted living, as Julia puts it poor people and things like that. My gut feeling tells me whoever's running that and paying a dollar a year or whatever they're paying is making a lot of money off this. And that's my problem is that it's a profit situation.

Most facilities like that which are different than affordable housing that a town gives land and it's built, whether it's Habitat or someone else builds it and someone occupies that mortgage or whatever.

When you have assisted living facilities, someone's managing that assisted living facility, and if they're getting a lot of stuff for very inexpensive, whether it's government or private, someone's making a lot of money and the County isn't. You know, it's their land. The Thorne Corporation built the building without permission. We're asking people to -- we've increased the deeds tax in order to bring in more money to cover County expenses. And at the same time, somebody's making money on leases that were signed, regardless of what it was for, but they're making a profit on, and that I have a problem with. That's all. Not with the idea that it's for affordable or that there are people that need this kind of stuff. It's just the County needs to be a partner when we're making money.

Speaker BERGSTROM: Pat.

Mr. PRINCI: So that rent was paid \$50 cash right up front. No, I'm just kidding. I have a question about the Fire Training Academy and this is, obviously, through the Speaker because I'm proposing a possible future meeting whereby we could possibly get some more information from you.

I know -- I understand you're in executive sessions regarding the issues with the town of Barnstable.

Administrator YUNITS: Yes.

Mr. PRINCI: So I wouldn't want you to comment on any of that. I understand how those work. However, you know there was a subcommittee that was formed that went out and analyzed it and did a report and there was some findings and, yet, there's never been any dialogue back with all of that work that was done with the Assembly. Especially for me coming from Barnstable, that's important. I'd like to hear some of that and hear some of the steps that are currently being put in place moving

forward to ensure these issues don't happen ever again.

Administrator YUNITS: I'm glad you brought that up, Pat. Because Tom Cambareri's going to do a presentation to the Commissioners on the 20th.

Mr. PRINCI: Okay.

Administrator YUNITS: All the data that Tom's going to talk about is public record. It's the study. It's the scientific data. It will show you the flow charts, the hydrogeologic information, where the contamination is, what the tactics are presently, and what Tom plans on in the future. We have to just clear that through counsel but it's all public information and Tom's going to do that for the Commissioners. We would have him come here, and I've already asked him and he said he'd be happy to come where too that day for your meeting on the 20th.

Mr. PRINCI: I've looked at that information. I'm more concerned with how -- a presentation more or less from the executive branch letting us know how things are moving forward from the point with the report that was completed, was done, and so forth, and the fact that the Fire Training Academy is remaining open and there's a lot of opposition within my town to close it, obviously.

Administrator YUNITS: Yes.

Mr. PRINCI: So I think it would be important for us to get some information back from the executive level as to some safeguards that are in place and make sure it doesn't happen again.

Administrator YUNITS: We'll bring you -- I'll send you a copy of the protocol that's in place presently. And we've also hired former State Fire Marshal, Stephen Coan, who was fire marshal for 25-plus years. He's also the fellow who created the Fire Training Academies in Massachusetts. He's come on to make sure that this Fire Training Academy in the future is done right. He was brought on by George Russell, the present director, and I think you're going to see a significant upgrade. I'd be happy to bring them in and have them present to you what's going on in the future there.

There's absolutely no foam that's been used there since 2007 and it's strictly prohibited now to be used there. And Steve Coan will tell you, the marshal, will tell you that it was a standard operating procedure right through till about 2007 to train with foam, and it was only then that they stopped PFOS. It was stopped not just in Barnstable; it was stopped Commonwealth, pretty much County -- statewide.

Substitute foams have been tried. We don't use substitute foams out there. We won't allow it. It's all water. But we do have to remove that hotspot, and we have to build a new containment system so none of the water migrates even to the pond.

And then we have to figure out long-term how to clean that pond. That's going to be a problem.

Speaker BERGSTROM: Okay. You know, you mentioned the 50 acres that are under currently a conservation restriction. That puts up red flags for me because there have been issues with large parcels already in Bourne, for instance, by the bridge. I mean they've been battling over some, you know, with opposition to development. And, you know, once you put -- once the word gets out that a parcel of land of that size is going to be put on the market, it becomes a serious political issue. Everybody jumps at it.

And some people say it's going to be an economic boom and some people don't want to touch a single blade of grass. And there's also the complication and this is coming to the top of my head right now is the fact that a development of that size probably will have to go before the Cape Cod Commission, which is a branch of County

government. And in a sense, there's a sort of inherent conflict there.

Administrator YUNITS: Any development that would occur there would have to be sensitive to the town. And it would have to be sensitive to the needs of the County.

Speaker BERGSTROM: Well I would think --

Administrator YUNITS: But what I'm saying to you is it wouldn't be commercial. It would most likely be medical or a school, something to that effect. Something that wouldn't be offensive and would preserve as much open space as possible.

Speaker BERGSTROM: It's also possible that faced with the prospect of having a development of that size pop-up that -- is Pocasset in Bourne?

Administrator YUNITS: Yes.

Speaker BERGSTROM: But the town of Bourne or there's an agency, Cape Cod Conservation Trust, someone might be interested. I know that there are a lot of parcels, but I just anticipate, you know, getting into a political imbroglio with that.

So the other thing I have to say is that I'm glad that you have hired a consultant to look into extending the grid and extending the communications because too often, for instance, in some of the towns, we would ask the Planning Board to do reviews of the zoning bylaws. Meanwhile, they're also doing their regular work and it never worked out. It was always better to get somebody else to do it. So if you're not going to do it in-house, you're going to have a consultant.

Administrator YUNITS: It's really something that required an expert because we have -- we have building concerns with Verizon, historically where the lines don't seem to be disengaged from the bill even though the persons are disengaged from the County.

Certainly, we think we have a duplication of services that relates to IT. We have 48 servers up there. We don't need 48 servers. I think the 48 servers were built in anticipation -- were purchased in anticipation of the County having 220,000 customers.

So these are things that you need experts to come in and figure out what is the best way to recover your costs and align it going forward, and these guys are pretty good at that. They've been doing it off the state bid list for 27 years so.

Speaker BERGSTROM: What do you think is the outside limit of the court's patience as to providing their needs, do you think?

Administrator YUNITS: I can just say that the judges that are working with us on the committee, Judge Nickerson and Judge Hand, couldn't be nicer people, and more committed to being sensitive to the village, and being sensitive to the County, and hope working with us to make sure that we get -- they're on the committee, and making certain that we do it right.

So we're pretty optimistic there's a good team in place and we can pull it off. There are ways to do it, you know, we can design it, let the state build it and own it, and we could operate and manage it. Or we could get a 25-year commitment from the state on a lease and go out to bond and build it based on the revenue anticipated from the Commonwealth of Massachusetts; sort of the way they built the jail in Plymouth.

Speaker BERGSTROM: Okay. So are you looking at -- I mean is a ground lease possible?

Administrator YUNITS: Yes.

Speaker BERGSTROM: I mean could we simply lease the ground and let

them do whatever they want with it?

Administrator YUNITS: Yes.

Speaker BERGSTROM: Okay.

Administrator YUNITS: It's going to be something like that, yes.

Speaker BERGSTROM: Yes, Jim and then Ed.

Mr. KILLION: Thank you, Mr. Speaker. Good afternoon, Mr. Yunits.

Switching gears a little bit, we're about six days out of our fiscal '16. Do you have any sense of how that year has turned out in terms of receipts?

Administrator YUNITS: Yes. I think it's safe to say that fiscal '16 was better than anticipated. Registry revenues were up; facilities were up. We don't have the exact numbers yet, but, you know, there's no areas of concern right now based on the revenues that we see coming in.

So we've changed a few things with the RDO. The RDO's now going to charge 10 percent on all their grants. That should increase revenue there next year in a significant way as well.

Mr. KILLION: Thank you.

Speaker BERGSTROM: Ed, do you have something?

Mr. LEWIS: Yes, just a quick -- I'm not positive where this is supposed to be located, but the newspapers talk about this new sports complex, this huge sports complex, and they talk about Independence Park or something on Independence. And I don't know if that butts up to County property at all or if it's involved because you get something the size of that, what they're putting in there, I assume they're going to go before the Cape Cod Commission as it relates to what they're going to use on that and how it's going to affect any ground waters because they're going to have some big fields which need to be fertilized and need a lot of stuff.

And I think they talked about a hockey rink in there or something like that. And to keep things frozen, it's chemicals that are used in there also. So I think that maybe the County at least should have some idea what's going to happen there and how it's going to affect any County property or any County area.

Administrator YUNITS: Great point.

Speaker BERGSTROM: Did you look -- at the property abutting 132, is that -- did you mention that?

Administrator YUNITS: No. That's I'd like to say it's a legal security blanket in case things don't go well with the trial court, we have a place to go. And I think that makes great business sense right now.

Speaker BERGSTROM: Everybody should have one of those just in case.

Administrator YUNITS: It's a tremendous location. It does have a deed restriction on it. Whether or not that deed restriction could be lifted is another story. But as long as it's used for County business, the restriction works in our favor.

Speaker BERGSTROM: All I can say is we've been on this site since 1685 so you're going to have --

Commissioner CAKOUNES: Time to move.

Speaker BERGSTROM: -- it's going to take the state militia to move us out of here.

Commissioner CAKOUNES: Time to move.

Speaker BERGSTROM: Well, thank you, very much.

Administrator YUNITS: Thank you.

Speaker BERGSTROM: Okay. Do we have any communications from Public Officials?

Do we have any communications from Members of the Public? Hearing none.

Assembly Convenes

Speaker BERGSTROM: The Assembly will now convene.

Have there been any committees that met? Jim, did your committee meet?

Mr. KILLION: We did not.

Speaker BERGSTROM: Did not. Okay.

Speaker BERGSTROM: Report from the Clerk.

Clerk O'CONNELL: Nothing to report.

Other Business: Discussion on Charter references to Delegate Excessive Absences

Speaker BERGSTROM: Okay. Wow. What's going on? Other business. We have a discussion on Charter references related to excessive absences, and this was put on the agenda by request of Dr. O'Malley. And I'm glad he did because we, and I, had a responsibility to deal with it according to the Charter. So I'll give it to Brian. Brian, do you want to engage this?

Mr. O'MALLEY: Thank you, Mr. Speaker. So I've given this a fair amount of thought and review, so I'm going to run through the background a little bit.

Essentially, this started when the *Cape Cod Times* ran a sunshine week front-page story on March 16 on delegate absence rates. And five days later, they revisited the story and having spoken with the Speaker, there was some commitments made and the Speaker committed in that story to looking for an ordinance and had asked us to come up with some proposed language.

I had the relevant language passed out, distributed to everybody. But as we all know, as the Home Rule Charter visits this issue, Section 2-11, if a Delegate fails to represent the town within which the Delegate was elected for a significant period of time to be established by ordinance and, obviously, it has never happened. And then without filing a reasonable excuse with the Clerk, then there's a process that's kind of laid out and that's extraordinarily vague.

The *Times* pointed out that from the perception of the public that this is an unenforceable standard. And, in fact, it is unenforceable when you've got vague, absolutely vague terms like that.

And I think as a result of that, we are somewhat compelled to clean up the Charter and set some sort of standards. I do not propose and have deliberately asked that this discussion today be kept to being a discussion. I do not want to see a vote because, quite frankly, what I would like to see us try to develop in this body is the ability to have a discussion around an issue, try to find some consensus on it, and then put that into law. You know, what we experienced two months ago with the proposed Charter reforms was a real case of how the model that we're following doesn't really work. Because what had to happen, but as a result of our process, is that one -- they weren't ordinances, they were motions to -- amendments -- amendments, but they had to be debated serially. It didn't give us the chance as a body to sit here and have a discussion about what should we be

doing.

There are some very significant uncertainties, however, as we approach this process. And the first one that I would raise, and it has been raised, is do we have any right to dismiss a representative who has been elected by their community? I think a case could certainly be made, you know. But the only right we have is that which is sort of defined in the Charter but, frankly, not really well defined. And that, therefore, of course, it has never been used; it's unenforceable.

And so there's a case to be made that that would be better off being removed rather than trying to enforce it. I mean I think that's a legitimate discussion -- a legitimate question and I think we should talk about it.

The second question that we would face is- is this an ordinance or a resolution? The Charter specifically says it should be by ordinance. However, under the definition of resolutions and ordinances, we see there's this following argument that would say a resolution could do it. Because under Section 2-8, Exception Resolution, the following matters may be provided for by resolution and that includes the adoption of rules governing the conduct of its own business.

Now, with respect to that, I would take from Mr. Troy's advice to us in the previous matter that where there is a more specific statute, that one being 2-11, which says it has to be by ordinance, I would say regardless of what the general terms of resolution say, if we were going to do anything, I would think it would probably have to be by ordinance, that that would take precedence.

However, if we tried, as I said a moment ago, I'm not convinced personally that we have the body to remove one of our own members having been elected by their community. If we did, that strikes me as setting in process a decision that would have to be approved by the Commissioners, approved by the Legislature, and then submit it to the voters because it concerns the composition in term of office of this body. And, clearly, I think counsel would have to come back to us with some opinion on these issues.

If we want to take the easiest trek, it seems to me that what we face is a relatively straightforward kind of numerical decision. Look, we run 24 meetings a year. A delegate who misses one meeting in 24 is not going to be brought up for action. We understand that. So 23 is an acceptable number to be here.

A delegate who comes to one meeting in a year, I think we all agree, is not representing their community very well. So in some real sense, what we're facing here is we need to pick a number between 1 and 23 for the number of total meetings missed.

Probably a second parameter that we'd want to think about if we're going to be -- put some real language together would be how many meetings in a row. I think those are two -- the two basic numbers that we should try to come to some agreement if we decide to go forward.

And, thirdly, it would have to go along with that. They would have to be articulated the hard grounds for making an exception to that rule. If we picked -- if we said, you know, you can't miss more than half the meetings in a year, 12; okay, there could be a circumstance where somebody misses more than 12, issues, a catastrophic illness, you know, whatever.

So I think -- I think if we decide to go that route then, quite frankly, we could have a process, go back and forth, talk about it without the need for a whole lot of amendments, different numbers, we can come to some agreement on a number and say, fine, we all agree that eight out of the year is too many or 12 is too many or six in a row

or four in a row, whatever number the body comes to. If we can come to an agreement, we draft it as an ordinance. And having had the discussion made, it should pass pretty easily.

So, in essence, I see these possibilities. We could agree to set agreed-upon standards for the number of total missed meetings and the consecutive missed meetings. We set some -- we set and define some parameters for reasonable excuses and who makes that determination.

Draft them as an ordinance or, number 2, we determine to begin the process of amending the Charter by taking out that authorization for sanctioning of excessive absences.

So I hope we can just have a discussion. There's nothing on the floor. There's nothing to be voted on. I could see this as an open discussion. Thank you.

Speaker BERGSTROM: Okay. Suzanne.

Ms. MCAULIFFE: Yes. I feel very strongly it's not the prerogative of this board to dismiss a member. I think we're all elected by the residents in each of our towns. And I think as representatives of each town, it should be the residents of the town that decide whether they're being represented or not because they're the ones who put the person in office.

So I would be willing to, you know, have something that says that, you know, a town makes the decision. But I've never been on an elected board where you can take a vote on who gets to stay and who goes.

The only time I've ever had that authority is when on an appointed committee is, you know, if you've appointed someone then you can remove them if they're absent excessively.

I really believe that we were all individually elected. We certainly have to comply with state law, not municipal law to get elected. We have to jump through hoops to get elected. And I think that each municipality should have the right to decide whether the representation is sufficient.

Speaker BERGSTROM: Ed McManus.

Mr. MCMANUS: Well, if you read the Charter section, it clearly doesn't give the Assembly the right to dismiss.

Speaker BERGSTROM: No, it doesn't.

Mr. MCMANUS: All we get to do is, one, define what the term of excessive absence is. Potentially define what are reasonable reasons for missing meetings, and two. And then the third thing is to notify the Board of Selectmen in the town with the delegate when those conditions are not taken advantage of or is excessively missed, or however you want to say it. So then the decision on whether or not to continue with that person in office is placed in the hands of the Board of Selectmen or municipality.

Speaker BERGSTROM: Okay. Ed Lewis.

Mr. LEWIS: I tend to agree with the Delegate from Yarmouth. I don't think we have the right to dismiss somebody that is elected by a town, that's one of the towns, so I agree with that.

But I do think the problem is not so much the excessive absences. The problem that we have is the way the Charter states votes can be taken and instead of a quorum being represented, like today we have 82 or 83 percent and, therefore, in many instances other than this Charter, if you have a majority is needed, you need 43 percent or

51 percent of the 83 percent that are here, which would be 41 or 42 percent.

The problem we have in this body is that when someone is absent and they're not here, they're really voting against anything. It's a vote against things. It automatically makes it much more difficult to pass something within this body because of the method by which the Charter states how you vote so that -- and we had this instance in March where we all of a sudden we had people who were absent, for whatever reason, and they were essentially voting against something because they couldn't vote in the affirmative, and they weren't here, and it's the percentage based on 100 percent, as it's based on how many people are there.

If you have a seven-person board and only five people are there, the normal board if you vote for something it passes. But here, you would have to get 4 out of 7, 4 out of 5 to vote, and I think that that is something that should be looked at more than whether or not we're going to dismiss someone, which I don't think we have the right to do. That, to me, is more important.

Speaker BERGSTROM: I'm going to jump in here because I agree with what Ed McManus says. He's absolutely right. I mean why we're here -- when I looked at this originally, after the *Times* story, we dug out the language from the Charter. And it says that if a member fails to represent the town within which the delegate was elected for a significant period of time to be established by ordinance -- and I asked Janice, "Well, do we have an ordinance?" She said, "No, we don't." Right away I said, "Well, we need an ordinance" because the Charter seems to say we need an ordinance.

So that's why -- the ordinance could be very general; it could be very specific, but without that, we can't do anything. Okay.

So the other thing is is that Ed is absolutely right is that we're not making the decision as to who stays and who goes. That decision is placed in the hands of the Board of Selectmen in the various towns, which is kind of odd because that's the only real authority they have over us. I mean they don't appoint us and we don't answer to them. But in this case, it says, "The Board of Selectmen upon majority rule may declare the seat vacant." So it's up to them.

Now the Charter doesn't treat us very well when it says "a significant period of time" because it doesn't tell us what a significant -- it lets us decide which is very difficult.

If we take Dr. O'Malley's suggestion of how many absences within a year, well, I mean if it's the second year of a session, you do your calculations after the year's over it doesn't matter because that person's up for reelection anyway. So it would have to be a shorter period of time. They'd have to say, well, if they miss 4 out of 6 or if they miss, you know, 4 in a row, you know, I tend to think if we could come up with some language that would be a reasonable compromise, it probably is not going to be an issue probably for many of us, but that's what we have to do. To me, what we have to do is we have to pass an ordinance that defines what a significant period of time is. Good luck with that. Okay. Jim.

Mr. KILLION: Yes, thank you, Mr. Speaker. Unfortunately, I think this is a solution in search of a problem.

Speaker BERGSTROM: Yes.

Mr. KILLION: I think we're all adults here. It has been stated, other members here were elected by the people that we represent. It is really up to the voters to decide if we are representing them appropriately. It's not up to us to send notices to these

towns if we're not here for some period of time.

I happen to take my responsibility seriously. I attend as many meetings as possible, and I think everybody here does as well. But everybody has a different life and different responsibilities.

I've been here for five and a half years. I can't recall one time when we did not have a quorum and weren't able to hold a meeting. There might have been one in the summertime at some point.

So I don't think we have a situation where we are being hamstrung by a lack of a quorum, that we're not able to conduct our business because we don't have enough people here to do so.

As it is, the Delegate to my left mentioned that if they're not here they're voting no. Well, okay, well maybe they were going to vote no anyway. That really isn't an argument to make. People are here. They do their business while they're here and they should be expected to attend when they can, as much as they can.

But I don't think it's incumbent upon us to make some arbitrary decision that they have to attend a specific number of meetings every year in order to remain in good standing with this body.

And, again, I don't think it's -- we don't see these types of rules in any other governmental body. We're elected officials to be turned away.

We did have a member of the Legislature a few years ago who had a very bad reputation of not attending a lot of sessions and he was voted out of office. So that is a resort that people have if they do not feel they are being represented appropriately.

Speaker BERGSTROM: Okay. Jim, I agree with you there. But the problem I have is that we are a creature of the Charter, and the Charter says, "The Assembly of Delegates shall notify the Board of Selectmen in the town that that Delegate represents." And the trigger to our notifying that Board of Selectmen is a significant period of time -- "an absence for a significant period of time to be established by ordinance."

So if somebody were to get elected and then decide to move to Chicago and didn't show up ever again, without that ordinance we wouldn't have any premise to notify -- in other words, we need -- I'm just trying to legal -- I'm just trying to get through the legal structure of the Charter to get us where we want to go.

Mr. KILLION: And I agree with you, but I think that was left purposely ambiguous and left open. The reality is we're supposed to be responsible enough if we move to Chicago, then we resign our position.

This body has been here for how many decades, and I'd like someone to create a circumstance where it was a problem.

Speaker BERGSTROM: Well, I have a suggestion. I'm going to move to suspend the rules and ask our attorney who is gracious enough to be here to give us some advice on this.

Can I have a second on that.

Mr. O'MALLEY: I'll second that.

Speaker BERGSTROM: Seconded. All those in favor? Aye. Opposed?
(Motion carried)

COUNTY COUNSEL TROY: Well, I would -- I think that you all have an excellent understanding and have displayed that here of kind of the quandary.

The first thing I want to just add that's has not been mentioned is the

County has adopted a policy of remote participation, and you are allowed to participate even if you are not physically present, if you follow the statutory rules.

And so I think if you take that provision which was not in place at the time that the Charter was drafted, and don't forget, this provision has been in the Charter from the beginning. It's been reviewed many, many times by Charter Review Committees. It has not changed.

So I think there's a very good point that has been made is that if you take the effect of the remote participation and you add it to the fact that there really has not been a problem in terms of the Assembly being able to function, then it is kind of correct, this problem may be more academic than practical. And you may not need to do anything.

But, on the other side, you have people, including the media, who might suggest that the failure to adopt a policy or to enact an Ordinance in effect sanctions absenteeism. And so I think what you might want to do is to try to put together some type of Ordinance that has, you know, the provisions that define things.

So, for instance, if you do move to Chicago, you are disenfranchised because you are no longer a voter and you're not eligible.

So it's not a question of anyone being out of state. And, in addition to that, I think that the fundamental concept of the Charter, which I think the Legislature is not going to change, is that the towns decide who is going to represent them in the Assembly. And even if the Assembly feels that someone hasn't met that amorphous and ambiguous standard of not representing the town properly, the town may decide that that works for them and that's okay because, remember this, is that the general scheme is that the County Commissioners are elected County-wide. If there's a vacancy in the office of the County Commissioners, the Assembly fills that vacancy because it's a three-person board. There needs to be -- it needs to function and it probably cannot function with two. It's doubtful.

The Assembly is also elected -- composed of elected members from the towns, and in the event that there is a vacancy here, the other Assembly members do not fill it as we just saw recently with the town of Wellfleet. The town submits its choice and the town acting through its Selectmen because of the exigent circumstances of needing the Assembly to continue business is allowed to pick a successor. But it eventually defaults back to the people.

And so I think that if you wanted to draft an Ordinance that had -- I mean, I think if you take all of the factors together, the Charter even though it's not perfect, kind of has an answer there. The Assembly is if someone is absent because of some illness and is expected to recover and say may miss 7 or 8 meetings, and the Assembly is functioning without that person or that person is able to participate by remote participation, then you really don't have a problem. And I think what happens is that the Assembly isn't going to take any action to notify one of the town's unless there is some blatant violation of the rules.

And as we have acknowledged, it does not appear there has been any blatant violation. The Assembly has been able to conduct its business. And, if anything, it might be a good idea to encourage the dissemination of information about remote participation, so members who can't make it here, for instance today, could participate as allowed by the County policy.

Speaker BERGSTROM: Yes, Brian. We'll let Brian respond to that.

Mr. O'MALLEY: Through you, Mr. Speaker. Mr. Troy, I made reference to our two potential courses of action, one of which would be to take this Section 2-11 and eliminate it.

But am I correct in my understanding that because that would be an amendment that relates to the term of office of the legislative body in a sense, it would have to go through the state legislative process. Would you concur that's a very tough path to follow?

COUNTY COUNSEL TROY: Well, that's a tough path to follow; it's also a tough question, which I am not prepared to answer. I'm not sure -- I'm not sure it affects those components of the Charter change process that talk about composition, term of office. I'm not sure absenteeism goes directly to that. But I certainly can provide the Clerk of the Assembly with an answer after I looked at it more carefully.

Mr. O'MALLEY: In follow up, I guess what I'd be asking is what would it take for us to eliminate Section 2-11? What kind of action would that be?

COUNTY COUNSEL TROY: I believe it would have to be -- the only way you could do it is by amending the Charter.

Mr. O'MALLEY: Really?

COUNTY COUNSEL TROY: My gut take without, you know, really thinking about it is I'm not sure that would have to go to the Legislature. That might just be a Charter change.

Mr. O'MALLEY: Okay.

COUNTY COUNSEL TROY: Which as we talked about previously, would not require legislative approval but would instead just go to the voters.

Speaker BERGSTROM: Yes, let me just jump in. We could eliminate Section 2-11 by passing an ordinance that puts such a loose standard on it that anyone -- we could say, "You have to miss more than 30 meetings in a year."

Mr. O'MALLEY: Yes.

Speaker BERGSTROM: I mean all I'm looking for is an Ordinance so that we comply.

Mr. O'MALLEY: That's right.

Mr. LEWIS: Ron.

Speaker BERGSTROM: Yes. Chris.

Mr. KANAGA: Yes, thank you. Maybe I could just ask a question of Mr. Troy. A significant period of time generally means a continuous absence in legal parlance when you say "for a significant period of time" that means a continuous period. Sometimes it's for disability. You know, it might be 90 days or it might be 120 days, or it might be 60 days.

And I would like to ask does he have a suggestion because I have no objection to putting in a definition by Ordinance of what "significant period of time" means if that's what you're seeking.

So maybe Mr. Troy has what's a normal period of time, period of months, period of days of continuous absence that makes -- that would fit with what's generally acceptable in the industry.

Speaker BERGSTROM: So we're trying to get you to make the decision.

COUNTY COUNSEL TROY: Well, keep in mind a significant period of time has to be without an excuse that's reasonable to the Clerk. So, in effect, I think your comments correctly conclude that there really isn't any specific standard. It's an

emergency type thing that if it were blatant and it were something that became a subject of public outcry that you might feel compelled.

But I think that has never happened. And as all of you have been elected by the voters of your community or been appointed by the Boards of Selectmen in case you're a successor, obviously, you had the confidence of the people in the community that it's unlikely that they're going to pick somebody who's going to do that -- to act blatantly and be absent in a blatant manner.

So in some ways, the expression of doing nothing may be the best thing to do because unless you need to do something, you don't need to do anything.

Speaker BERGSTROM: Yes, Chris.

Mr. KANAGA: In that case, may I just suggest for the period of discussion 60 days as a significant period of time?

Speaker BERGSTROM: Well, I mean we would have to file an ordinance. We could -- the next step would be someone to file an ordinance which would trigger notifying the Boards of Selectmen in the town that delegate represents. So if you want to do that, that's fine.

But we could probably amend -- in other words, if you -- now we've got Troy here, if you submitted an ordinance, let's say, it said "60 days," I believe that we could amend that ordinance to any period of time you wanted, assuming 120 -- somebody says, "120; I bid 130." So that's what we can do.

Mr. KANAGA: Well, I thought what you were suggesting is that we talk here before submitting an ordinance about some consensus or that was Brian's suggestion. So all I'm saying is that can we discuss a period that --

Speaker BERGSTROM: Sixty days would be two months. It would be four meetings; right?

Mr. KANAGA: It would be a continuous absence, a significant period of time, which is what that term means and just putting a number on that.

Speaker BERGSTROM: All right. Yes, Suzanne.

Ms. MCAULIFFE: So if you call in every 60 days, you can restart the clock.

Speaker BERGSTROM: Right. Yes.

Ms. MCAULIFFE: I would agree with Dr. O'Malley. I would like to amend the Charter and just take the section out. That was what my --

Speaker BERGSTROM: Ed.

Mr. LEWIS: It all depends on the month and at the time of year as to how many meetings you miss. If its March and April, you miss all the committee meetings so it becomes more than two meetings.

I think that the Charter -- this has been in the Charter for as long as the Charter's been here, and I'm not sure -- I tend to agree that we're looking for a solution to a problem. You know, Jim has stated that.

And I think before you select a specific time, you got in here this idea without filing a reasonable excuse with the Clerk of the Assembly; I really don't like the idea of having the Clerk of the Assembly be responsible for making a decision as to whether it's a reasonable excuse. I think it puts her or him/whoever is the Clerk in a very difficult position of saying, well, that's a reasonable excuse or that's not a reasonable excuse since the Clerk essentially works for the Assembly. And if the Assembly makes that decision, that's one thing.

So, I think we -- you're not going to reach a decision here. I'm not sure that you should reach a decision here to eliminate it completely as to what, you know, Mr. Troy has stated we're sort of saying, well, you can be absent as much as you want. It really doesn't matter here, which is what they do in Congress.

If you recall many years ago there was a Congressman from New York City, a man named Adam Clayton Powell who showed up every seventh month at a meeting and then never was there. He kept getting reelected and reelected and reelected. That's the public's choice.

And make the assumption the public cares, and I would go to November and look and see how many of the 15 of us are running against somebody. So, I'm not sure that the public cares.

Speaker BERGSTROM: Anyway, Powell had a home in Bimini. He stayed there because he was under some kind of indictment. So he didn't want to come back to the country.

Mr. LEWIS: He kept getting reelected though.

Speaker BERGSTROM: Hey, under indictment, get reelected, it can happen. Anyway. Yes, Ed, did you have something to say? We really should wrap this up here.

Mr. MCMANUS: Yes, I guess just a couple. One, again, if you read the section, it doesn't require the Clerk to make a determination of whether it's a reasonable excuse. It's just that the excuse has to be filed with -- notice has to be filed with --

Mr. KILLION: It's implied.

Mr. MCMANUS: Huh?

Mr. KILLION: I'm sorry.

Mr. LEWIS: Implied.

Mr. MCMANUS: Well, it could be implied that if we -- if you adopt an ordinance that you have to provide a definition of what a reasonable excuse and only, you know, there's a lot of ways to say that that's -- what's implied by that statement.

But the other question that's been raised is the issue of remote participation. I think, personally, I'm on a Board/Organization that their meeting times are, at times, challenging for myself and many other members of the board, and a lot of us participate remotely. And, quite honestly, even with a very fairly sophisticated conference system in their meeting room, you get about half of the information is understandable. Your participation is handicapped and probably the only value is when there is a significant issue and you need to have the full board voting. And that's basically hardly to say that you're really fully participating in the process.

Speaker BERGSTROM: Jim.

Mr. KILLION: Thank you, Mr. Speaker. A question for you, Mr. Troy. Given the fact that this does exist, does the Board of Selectmen currently now have the authority to replace their delegate if they so choose based on what they perceive as some -- even if they call the Clerk and find out the delegate has missed 15 meetings in a row; do they have the authority under this Charter to replace that delegate?

COUNTY COUNSEL TROY: Well, if the delegate is elected by the people, only the people can remove the delegate. But I assume that the reason why the notification process is to allow the Selectmen, you know, to try to take some action to -- and I think without -- this is a long time ago. But at one point there was an impasse in the history of the Assembly about this very issue, not recently but where there was kind of

tug-of-war, and, ultimately, the person resigned.

Mr. KILLION: So in your opinion, this section does not currently give the Board of Selectmen the authority to replace the delegate if they, themselves, feel that there are excessive absences?

COUNTY COUNSEL TROY: No. They don't have that authority, not under the Charter.

Mr. KILLION: So they'd only have that authority if we notify them?

COUNTY COUNSEL TROY: If you notified them, the Selectmen can exercise the same authority that they have. And I think there is a separate statutory authority for removal of appointed officials. But removal of elected officials, I'm not aware of that. I'm not aware of any authority to remove an elected official.

Mr. KILLION: Well it just says "The Board of Selectmen may, upon a majority vote, declare the seat vacant."

COUNTY COUNSEL TROY: Right. They can declare the seat vacant and then they, at that point, if the seat is vacant, then they're going to have to call for some type of special election.

Mr. KILLION: Okay. But I guess my question just goes back to currently can they declare the seat vacant if they, themselves, deem there are excessive absences?

COUNTY COUNSEL TROY: Yes, the Selectmen can declare the seat vacant but they can't actually remove anybody who's been elected by the people.

Mr. KILLION: Okay.

COUNTY COUNSEL TROY: It may be a technical distinction but I think it is.

Speaker BERGSTROM: Doc, did you have something?

Mr. O'MALLEY: So, it seems to me we've got kind of a couple of choices here. On the one hand, we can do a Charter change, a Charter amendment that would remove this section. But this is cumbersome and, quite frankly, it strikes me as a big process for a very minimal problem.

Or as the Speaker's elected, we can set some parameters that are very reasonable. You know, if you miss more than half the meetings in a year; if you miss 10 in a row, I mean, if we can come up with something, it would simply make the Charter be clear. I find it appalling that this kind of language exists in the Charter. It's undoable. It's unworkable. There are no standards.

COUNTY COUNSEL TROY: And, if I might, Mr. Speaker, just to clarify that point further. The Board of Selectmen could declare the seat vacant and the people could elect the same person and restore that person to the seat. So they can declare the seat vacant but they cannot effectively remove an Assembly member even if they have determined that person has been excessively absent because that person is eligible to run and be restored by the people.

Speaker BERGSTROM: Yes, Lilli.

Ms. GREEN: Thank you, Mr. Speaker, through you. So the third option as Dr. O'Malley has outlined two options; the third option is simply to do nothing, to leave it the way it is, that there has not been an issue among the Assembly members regarding this, but the press has actually brought it to the forefront.

Perhaps clarify if that were to happen again that people have the option to call in remotely might alleviate that issue; is that the truth?

COUNTY COUNSEL TROY: Correct.

Ms. GREEN: Thank you.

Speaker BERGSTROM: Yes just a question. Maybe I'm being too, you know, picky about this, but when it says elected for -- "When somebody's absent for a significant period of time to be established by ordinance," I think that's, you know, I took that to be commanding. In other words, we're supposed to do it.

But if we don't do it, what's going to happen? In other words, if we don't pass an ordinance then later on somebody who's absent for six months, I mean the only effect would be that we wouldn't really have any -- we wouldn't have recourse to the way it's said in here, recourse to this to Section 2-11 because we don't have an ordinance. I don't have a problem with that.

COUNTY COUNSEL TROY: Right.

Speaker BERGSTROM: In other words, I just want to make sure that we're on firm ground not passing that ordinance.

COUNTY COUNSEL TROY: If you had the situation that required action and the Assembly felt that that was exigent enough to pass an ordinance, then the Assembly could pass an ordinance and define the terms of what they believed were being violated, and then, in effect, following that, they could then take action.

So, in other words, you can let the circumstances define how you're going to act rather than try to predict or to foresee what could happen.

Speaker BERGSTROM: All right. Brian.

Mr. O'MALLEY: In response to that, I would object -- that would have the feel of legislation being passed directed at an individual, and I don't like the way that ever feels.

If we were be triggered by one person who appeared to be never showing up, it would look like we were passing a piece of legislation. I'm sure you understand that concept.

COUNTY COUNSEL TROY: Right.

Mr. O'MALLEY: So I would probably favor pass some kind of loose-something if we need to do anything.

COUNTY COUNSEL TROY: The only possibility, and this is just entirely theoretical, is if you had persistent absences by the delegates who had come from the towns with the highest population in percentage of votes, you could actually have a reason to take action because the Assembly could not function.

But, once again, that has not happened. There has not been any significant problem that's prevented the Assembly from operating.

Speaker BERGSTROM: All right. Yes, we're going to lose our quorum here pretty soon, and, plus, this discussion has gotten less constructive as time has gone on.

But I'll recognize Suzanne, and then all I can say is that anyone here can file an ordinance. Anyone here can file an ordinance.

Ms. MCAULIFFE: I would like to put a motion on the floor to do nothing.

Ms. KING: Second.

Speaker BERGSTROM: Well, you can put a motion on the floor to do nothing, but you can't prevent someone from later filing --

Ms. MCAULIFFE: No. I'm just saying -- I know.

Speaker BERGSTROM: Okay. Moved and seconded. All those in favor?

Aye. Opposed?

(Motion carried)

Speaker BERGSTROM: All right. So moving right along, I have the filed Resolution that parallels the one that was approved by the Commissioners today that has to do with the order of the wildlife refuge and Chatham's authority where the wildlife refuge and Chatham's authority meet. I'll have a copy of this sent to you -- if it hasn't been already?

Clerk O'CONNELL: No.

Speaker BERGSTROM: I will have a copy sent to you, and we'll probably schedule it for a vote at the next meeting. Okay.

Ms. MCAULIFFE: Point of information; is that the motion with the Commissioners?

Speaker BERGSTROM: Yes, exactly the same one. All right. Is there any other business to be brought before the Assembly?

Ms. MCAULIFFE: Move to adjourn.

Ms. KING: So moved.

Speaker BERGSTROM: All those in favor? Aye. Opposed?

Whereupon, it was moved, seconded, and voted to adjourn the Assembly of Delegates at 5:15 p.m.

Submitted by:

**Janice O'Connell, Clerk
Assembly of Delegates**

List of materials used and submitted at the meeting:

- Business Calendar of 7/6/16
- Unapproved Journal of Proceedings of 6/15/16
- Home Rule Charter references to Sections 2-11 and 9-5
- Opinion from County Counsel Robert Troy regarding Charter references 2-11 and 9-5
- Proposed Resolution 16-05 regarding Monomoy Refuge Boundary submitted by Ronald Bergstrom, Chatham Delegate