

**CAPE COD REGIONAL GOVERNMENT
ASSEMBLY OF DELEGATES**

APPROVED Journal of Proceedings – August 20, 2014

Speaker BERGSTROM: Good afternoon. Welcome to the August 20th session of the Cape Cod Regional Government, Assembly of Delegates.

Anyone recording this meeting besides our regular videographer? No? Okay.

In that case, I will call the meeting to order. And we will 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.)

Thank you.

We will now stand for the Pledge of Allegiance.

(Pledge of Allegiance.)

Speaker BERGSTROM: Okay. I'll start off by thanking the Town of Orleans and John for graciously hosting this meeting today.

Mr. OHMAN: You know, Mr. Speaker, if I may indulge. We've been doing this since 1999 and every day that we've been here has been perfect weather. So thank you.

Speaker BERGSTROM: Okay. The Clerk will now call the roll.

**Roll Call (88.12%): Cheryl Andrews (1.36% - Provincetown), Ronald Bergstrom (2.84% - Chatham), Leo Cakounes (5.67% - Harwich), Ned Hitchcock (1.27% - Wellfleet), James Killion (9.58% - Sandwich), Marcia King (6.49% - Mashpee), Teresa Martin (2.30% - Eastham), Suzanne McAuliffe (11.02% - Yarmouth), Deborah McCutcheon (0.93% - Truro), John Ohman (6.58% - Dennis), Patrick Princi (20.92% - Barnstable), Anthony Scalse (4.55% - Brewster), Julia Taylor (14.61% - Falmouth).
Absent (11.88%): Richard Anderson (9.15% - Bourne), Christopher Kanaga (2.73% - Orleans).**

Clerk O'CONNELL: Mr. Speaker, we have a quorum with 88.12 percent of the Delegates present; 11.88 percent absent.

Committee of the Whole

Speaker BERGSTROM: Thank you.

We'll now need move a motion to approve the Calendar of Business.

Deputy Speaker MARTIN: Motion to approve.

Ms. MCAULIFFE: Second.

Speaker BERGSTROM: All those in favor, say "Aye." Opposed?

(Motion carried.)

Speaker BERGSTROM: You should have received a copy of the Journal of August 6th, 2014. Anyone have any additions or corrections to the Journal?

Hearing none.

Deputy Speaker MARTIN: Move to approve.

Ms. MCAULIFFE: Second.

Speaker BERGSTROM: Okay. Moved and seconded. All those in favor say "Aye."

Opposed?

Mr. HITCHCOCK: One abstention.

Speaker BERGSTROM: And we have one abstention from Wellfleet.

(Motion carried.)

Communications from the Board of Regional Commissioners

Speaker BERGSTROM: Okay. Now we have Communications from the Board of Regional Commissioners. We have Commissioner Lyons here together with the County Administrator. So what have you got for us today?

Commissioner LYONS: Well, not much because as you know we didn't meet today, nor did we meet last week. What did we do? We did something else last week; did we not? No, that's what we were doing here today.

So there really isn't much to report. It's been somewhat of a slow season. Commissioner Flynn is at Woods Hole because Senator Warren was there.

I did go to see Senator Warren. She was at Barnstable for a Town Meeting today and I don't know why, you know, I thought it was like office hours but it was a big Town Meeting.

So a lot of people spoke about Pilgrim and NStar and Mothers Against Guns. And I did happen to have a chance to be able to speak to her on the side about -- just that our 208 is out in draft. I think the draft report is being released to the public. It's gone through an EPA or DEP review at the state. So now it's sort of ready for public comment.

So it's going to be hitting the road and so you should be looking for when that's going to be and be involved. There was sort of an information session on Friday to discuss the process and draft as its being resented.

So a lot of work has gone into that. A lot is at stake. And I did want her to be aware of it. I think it's time that, you know, we're going to be needing the awareness and more active input from our federal legislators and delegation as well as our state. The state's pretty well engaged.

And I also did speak to her so I'll just let you know this that, you know, we are -- we do take care of SHINE now. And now that we're dealing with it, we do see that, you know, it's a federal program. It's free -- underfunded and that has a bigger impact for us here since we have a larger population of seniors, second oldest County in America, demographically speaking.

So I did explain that to her, and I would like her attention to be brought to that as well and just that I have a bunch of college students at my house this summer and they all love Elizabeth Warren. So that made her feel good after all those other questions.

So that was good, and I did attend the 208 on Friday that was very well attended. Sort of discussion of that process and what's going to be coming.

Speaker BERGSTROM: Why don't you explain to us what the 208 is for those of us that

--

Commissioner LYONS: Excuse me. The 208 is the mandatory review. It's every 10 years, regional planning agencies should do a regional water management update. So the -- so it's the regional update and it has been a year-long process where there have been stakeholders, those for and those against, brought together around different watersheds.

So there was originally 17 working groups, some had 200 people involved. Plus many other people were engaged. So it's been a very long process. And really that draft is sort of like the conclusions of those meetings. So it's not just written by people who think they're experts. It's written by the citizens and agreed-upon by what's in there.

But now it's time to talk about it and think about it. And it's always, you know, putting it

into action where the real hard work will be.

So that's going to be -- so far it's been a great process. And I think it's built a lot of understanding and trust of the process so where we want to be and that sort of thing so.

And I think that's about it. So I'm here to --

Speaker BERGSTROM: Does anybody have any questions for Commissioner Lyons?
Yes.

Ms. MCAULIFFE: Just more of a comment on the 208. Aside from the grass root supporters, which are very, very good, as you know Yarmouth put through a septic plan -- a septic system plan probably three or four years ago and it didn't pass.

I think going watershed by watershed, which is what the 208 is proposing, is going to I think engender a lot more support because you vote something -- you take something at Town Meeting and there's a few people who are organized and opposed, they can kind of take over Town Meeting. As opposed to going watershed by watershed you have -- usually most watersheds -- I think we have one in our town and two we share with neighboring towns.

Commissioner LYONS: Right.

Ms. MCAULIFFE: You can engender support from -- that are outside of just special interest groups in the town. I think that's a very positive approach to the 208 is taking, aside from the grassroots.

Commissioner LYONS: Right. And in, you know, part of that is because EPA asked each town to have their own comprehensive plan and they put the onerous on individual towns.

Ms. MCAULIFFE: Right.

Commissioner LYONS: In this particular region that doesn't make any sense. I mean it's just too close.

So I happen to be away on vacation and I met a guy who worked for the EPA and did a lot of writing of regulation so we were discussing this 208 process and he was very well aware of what it was. And he said the region that you're in is much more open to being flexible and being a little bit more innovative which is what they all should be.

So we're lucky that we have a district -- a federal district managers and state managers that will sort of say, okay, we'll let you do it by watershed and come up with a plan.

So there's the support of them as well. So I think that this is an opportunity that we have to move forward on the difficult parts. We learned a lot from Yarmouth.

So you know that it's going to be pretty tough. And but I think that -- I think people understand that doing nothing isn't going to be the option. The longer we put it off, the harder it's going to be.

Speaker BERGSTROM: Okay. Anybody else?

Ms. MCAULIFFE: I just have one more question.

Speaker BERGSTROM: Sure.

Ms. MCAULIFFE: Are you going to permit when we discuss the Resolution and the letters, are you going to permit the County Commissioner to speak during that time or should I pose a question?

Speaker BERGSTROM: Well --

Ms. MCAULIFFE: That's your discretion. I'm just asking. If you're not going to, then I'll ask the question now.

Speaker BERGSTROM: You can ask Sheila anything you want. If it's on the agenda, my feeling is that once the public is aware that something is going to be discussed, whether it's in open session -- whether it's after they convene or before they convene, you can bring it up and we can discuss it.

So if you want to bring it up now, that's fine.

Ms. MCAULIFFE: Well I just wanted to ask the question about the two letters that we got which were the results of the County Commissioners' action on the Resolution 14-01, which was the legal services.

On the 18th, we got a letter that pretty much stated all the, you know, the same thing as the letter on the 19th. The difference is the letter on the 19th stated that there was a disapproval of the Resolution.

And if you watched the meeting, there was never a disapproval vote taken. I believe it was no action was taken. So I'm curious as to how the letter got written with a disapproval?

Commissioner LYONS: Well that has to -- that's where I wish Pat was here because that was a conversation between her and Troy. But I think in him rereading how that went, technically you have to say disapproval even though you're just saying --

Ms. MCAULIFFE: But you didn't vote disapproval. You voted no action.

Commissioner LYONS: Yeah, we voted --

Ms. MCAULIFFE: Did you vote for disapproval?

Commissioner LYONS: I guess that can be interpreted as a disapproval. He would have to answer that.

Speaker BERGSTROM: No, you know what --

Speaker BERGSTROM: Let's not argue.

Commissioner LYONS: No action is no action. I mean it was not that we -- it's not that we are in disagreement of you having counsel, but the terms of -- the way it was requested and what was requested I think is pretty -- it's laid out in the response. And to have special counsel, you just have to state it.

Ms. MCAULIFFE: Yes, I know. That's not the issue. My issue is how do you go from no action to disapproval.

Commissioner LYONS: That has to be a conversation with Pat and Bob Troy. I wasn't --

Speaker BERGSTROM: We can -- Sheila, I'm sure, is going to be here for the end of this meeting.

Commissioner LYONS: And I'll be happy to answer questions if anybody wants to open it up to me and allow me. So I am happy to --

Ms. ANDREWS: I have a question that has nothing to do with that.

Speaker BERGSTROM: All right. Go ahead.

Commissioner LYONS: Okay.

Ms. ANDREWS: You mentioned a little -- you dropped a little factoid there about Barnstable County and you caught my attention. I'd be happy if you'd clarify it. You said something about Barnstable County being old. I think you said --

Commissioner LYONS: Yes. I said demographically speaking, we are the second oldest County age-wise.

Ms. ANDREWS: But what does that mean because there's got to be tons of Counties in Florida that are --

Commissioner LYONS: Yeah, but we're second to one in Florida.

Ms. ANDREWS: Are we talking numbers or percent?

Commissioner LYONS: We're talking percentage.

Ms. ANDREWS: That's the point.

Commissioner LYONS: So if you have like -- what would be a big County down in Florida? All right. They have --

Ms. ANDREWS: So percentage-wise we have the heaviest on our age group as opposed

to but not because we're a big County?

Commissioner LYONS: No, not because we're a big County, but our -- you know, according to population.

Ms. ANDREWS: Sure, percentage-wise. And I don't mean to put you on the spot, but it's an interesting one to know. How many counties do we have in the United States?

Commissioner LYONS: That's a good question. I guess if I --

Mr. CAKOUNES: Bill knows that answer.

Ms. ANDREWS: I mean if we're really second --

Commissioner LYONS: That goes more to the point.

Speaker BERGSTROM: You know, I think you should probably try Google before you ask Sheila.

Commissioner LYONS: Well, you know -- actually, I really don't know but I'm sure like the National Organization -- do you have any idea?

ADMINISTRATOR BRILLHART: I don't.

Ms. ANDREWS: Well we all know 365 towns and cities. I figured you might know how many counties.

Commissioner LYONS: No. No, I don't. I mean I'm lucky I know how many towns there are in Massachusetts.

Ms. ANDREWS: Well, we all know that. It's in the phonebook. Okay. All right. I may have to look it up but that's noteworthy. Thank you.

Commissioner LYONS: Okay. You're very welcome. That was easy. Thank you.

Speaker BERGSTROM: Does anybody else have anything to ask Commissioner Lyons on this?

Oh yes, I have one thing to bring up on what was said. We and Janice has been in contact with your office in pursuing the get-together I would call it between the Commissioners and the Assembly, it seems like the ball is in our court.

So what we're going to do is I'm going to contact -- have Janice contact is it the Council of Massachusetts -- Council?

Clerk O'CONNELL: Legal Association --

Speaker BERGSTROM: Legal and --

Clerk O'CONNELL: Lawyers Association.

Commissioner LYONS: Okay.

Speaker BERGSTROM: -- and see because they have people who professionally do this.

Commissioner LYONS: Okay.

Speaker BERGSTROM: And, also, we may even try the Kennedy School of Government. So just to make you aware of this because we're going to need to run this by you guys.

Commissioner LYONS: Right.

Speaker BERGSTROM: When are you meeting again?

Commissioner LYONS: Next week.

Speaker BERGSTROM: Next week. Okay.

Commissioner LYONS: Right?

Speaker BERGSTROM: So this is not going to happen until September or early October.

Commissioner LYONS: Yes, that's fine. I think most things are going to start picking up then.

Speaker BERGSTROM: And other than that, I'm sure you'll hang around.

Commissioner LYONS: I am going to be hanging around.

Speaker BERGSTROM: Okay.

Commissioner LYONS: All right. Thank you all.

Speaker BERGSTROM: Do we have any Communications from Public Officials?
Any Communications from Members of the Public?

Assembly Convenes

Speaker BERGSTROM: Okay. The Assembly will now convene, and we will have a -- we don't have any committee reports. It's been a long time since we've had -- I guess since the budget was solidified we haven't had the committee meetings.

Speaker BERGSTROM: So we'll go to a report from the Clerk.

Clerk O'CONNELL: I don't have anything to report today.

Speaker BERGSTROM: I was hoping.

Mr. CAKOUNES: Can I ask the Clerk a question?

Speaker BERGSTROM: Sure.

Mr. CAKOUNES: Two weeks ago I asked you to find out if the County had a policy in regards to mail being delivered to County employees. Have you had a chance to get anything --

Clerk O'CONNELL: I asked but I haven't gotten a response yet.

Mr. CAKOUNES: Okay. If you want to just follow-up on that I'd appreciate it because I've been asked what the answer is. And if there is a standing policy, I would like to know.

So, thanks.

Other Business:

Letter from Provincetown

Speaker BERGSTROM: So we go on to Other Business. And I'm going to turn this over to Cheryl.

You know we received a letter from Provincetown quite a long time after it was originally written and dated, and we all got a copy of it, I hope. And since Sheila sits on the Board of Selectmen in Provincetown, I thought she'd give us --

Ms. ANDREWS: Cheryl.

Speaker BERGSTROM: Cheryl. Sheila? Did I say Sheila?

Ms. MCAULIFFE: Yes.

Ms. ANDREWS: Well, I know people make that mistake.

Speaker BERGSTROM: I don't see how. Well, anyway. So what do you have to tell us?

Ms. ANDREWS: Okay. Well, basically, the letter was sent. My main issue with it was the way it was sent and the tone, not so much the message which is why I approve with the rest of the board months ago about sending it.

The fellow that is our Board of Selectmen Chair now used to be our FinCom Chair. And I guess once a FinCom Chair always one in a way. You know, they get really passionate about certain things maybe because I was once Board of Health Chair, that's why I still get riled about wastewater planning and other people run away quickly.

But he is very proud of the fact as well as the current Chairman of our Finance Committee that they have convinced our Town Meeting to start much more aggressively funding our Trust Fund, our OPEB Trust Fund.

So when he started to ask me questions about the County, I was kind of like, you know, they're two separate things but that's why I raised it back in the spring during budget time

because I knew they were talking about it an awful lot.

So when they raised it again, I said, “Fine. Send a letter.” But what the letter started to do was go on and talk more about the Cape Light Compact and that, again, was something that we hadn’t voted and I didn’t understand it.

Well, what’s interesting that I have found out since is the Chairman of my Board of Selectmen is also our rep on the Cape Light Compact. And he’s a new one. I don’t know how long he’s been the rep, maybe a year or two.

But what he said to me was, and forgive me because I guess it’s technically hearsay; he’s not here to say it. But what he said was, “Cheryl, did you know that the County is counting our OPEB, the Cape Light Compact’s OPEB contribution as the ARC for the County?” And I’m going “What? How could they do that? The Cape Light Compact’s budget is over here and ours is over here.”

He said he was told that specifically by Mark Zielinski. And I guess I will just say to you I don’t know who said what. Somebody at the County level I’m sure could explain that to the Assembly of Delegates if we were interested in asking the question.

But given the fact that a number of Delegates have really wanted to understand what it means for the County to be a fiscal agent for the Compact.

All of the sudden it seems like maybe -- I don’t know what their intent was when they sent the letter. I thought it was just too rah-rah and -- but they actually opened up, you know, about how Provincetown was doing this good thing and they thought the County should be too.

But he actually started to open up a different conversation, which is, once again, the relationship between the Compact and the County.

Speaker BERGSTROM: But was that in the letter? I don’t think it was even mentioned.

Ms. ANDREWS: No, no. No, he, like I said, he started sort of speaking to me.

Ms. MCAULIFFE: It was in the letter. Wasn’t CVEC mentioned in the letter has having funded it?

Ms. ANDREWS: Yes. And I didn’t understand why he mentioned it in the letter and so I asked him. Because I said, “Why are you even bring this in?” And that was when he said, “Because the County’s counting it towards ARC.”

So, you know, I’ll just tell you what I was told and it was just something that came at me out of left field and --

Speaker BERGSTROM: The only reason I had it on the agenda is two reasons. The first reason is that I mean if I were to let’s say complain about -- let’s say I wanted to go to the State Legislature to do something. The first person I would contact would be Sarah, you know, or if you’re in Cleon’s district, Cleon.

So we represent -- we are elected to represent -- I’m elected to represent the citizen of Chatham to the County government, as is Sheila and other Commissioners. And you’re elected to represent.

You would think that the protocol would be that they would make us aware of their problems and we would bring it up before the Assembly.

I mean, for instance, people file Home Rule petitions through the Office of the Legislature, and the Legislator will present them without having to actually support; do you know what I mean?

Ms. ANDREWS: Right.

Speaker BERGSTROM: Basically, I just feel that we should encourage the Boards of Selectmen to work through the Assembly of Delegates rather than directly, you know.

But I mean they could send us a letter. Maybe I’m being picky about this, but I just think

that the first person they should go to when they have a problem with the Assembly or with the County is to their Delegate.

Ms. ANDREWS: Well, as we all know, we don't represent the town; we represent the citizens.

Speaker BERGSTROM: Right.

Ms. ANDREWS: So you can't kind of have it both ways. And I was certainly a bit embarrassed for all its misspellings and the lack of a date and various other things. If they hadn't spoken to me first, I would have at least helped them craft and write the letter.

Mr. CAKOUNES: I didn't write it by the way.

Ms. ANDREWS: And that's how my complaint -- but that's a side issue. You know, I have a new Board of Selectmen. They're very young. They're learning things like we all do out of the gate the hard way and I'm trying to gently teach them about process.

But in the end, that's not what we're really here to talk about. What we're here to talk about is, you know, an issue that was raised about OPEB, about the County, about the Compact. And I will be honest; they're the ones pushing the issue. I had to ask you I think the last time we talked about this I asked you what ARC stood for and somebody Googled it. That's how new I am to this whole subject.

Speaker BERGSTROM: Yes, Leo.

Mr. CAKOUNES: I don't think you need a motion, but I would think it would be proper for the Speaker just to send a letter to the town or to the person who sent it, Board of Selectmen, saying acknowledge that you've got -- that we've received your letter. We are -- I don't know if you want to mention the fact that our Chief Financial Officer is on sick leave right now but let's face it, these are questions that Mark needs to help us deal with.

When he gets back and certainly we'll look into it at our earliest convenience. At least respond we are looking into this. It is an issue that we've been talking about for a while. I think it would be proper for us to respond to the Town and just say, you now, "We're looking into it. Thank you. We're looking into it and as soon as we know the answers we'll pass them on to you."

Speaker BERGSTROM: I'm going to have to talk to maybe Mr. Brillhart and the staff there to sort of get exactly what our effort's been historically to cover that. I mean every town's basically the same.

Mr. CAKOUNES: And the thing is the accusations that are coming forward even on the street now from the letter after the letter was generated don't make sense because the questions aren't real specific. That's why I think it was a vague inquiry letter. It should, in fact, be a vague response back saying thanks and, believe me, we are looking into it.

Speaker BERGSTROM: Right.

Mr. CAKOUNES: And they have to know we are because it has been an issue at this board for going on three years now.

Speaker BERGSTROM: A polite letter and a polite letter back.

Mr. CAKOUNES: Yes.

Speaker BERGSTROM: All right. So have we beaten that to death?

Mr. CAKOUNES: Absolutely.

Speaker BERGSTROM: Okay. Yes.

Ms. MCAULIFFE: We can't discuss this now, but for the future I would like to have someone explain to me exactly what the fiscal agent means. Exactly, you know, is it just you write the checks or is it that you also provide personnel and time.

So I don't know who's going to be County Administration, Mr. Troy, but I would like to

know exactly what the responsibilities are.

Mr. CAKOUNES: Yes.

Ms. MCAULIFFE: And Leo's laughing so maybe you've discussed this before?

Mr. CAKOUNES: No, I want to be invited to that meeting though.

Speaker BERGSTROM: I don't know if there's agreement on that issue but we'll certainly get the opinion of both.

Ms. MCAULIFFE: Well, there's got to be some sort of understanding and maybe it's even in the original agreement exactly what the County's supposed to be doing.

Response from DPU

Speaker BERGSTROM: Okay. We've also received -- we're getting a lot of letters lately. And one of them is a memorandum from the Department of Public Utilities basically, you know, assigning our letter to the circular file up there and you all received that.

And I don't know if you have any comment on it, but my comment is that we sent a letter in response to a letter that was already sent to the DPU. In other words, it wasn't an initiated comment. We didn't come out -- we basically said you have been sent this information and we want to reference that and suggest that it is not accurate.

So I don't know if you guys want me to respond to them or whether back and forth? Leo, what do you think?

Mr. CAKOUNES: I proposed that letter, that Resolution. Thank you for supporting sending it. As far as I'm concerned, it did not ask for any action.

The fact that we got a letter back is fine. I don't think any follow-up is necessary. As far as I'm concerned, you can't un-ring a bell.

We have stated our position and it's fine. So I don't believe it needs a follow-up and I simply won't be pursuing it.

Speaker BERGSTROM: You know, my only mistake is when I sent the letter, I should have said, "The Assembly of Delegates representing the 15 towns of Cape Cod" and then name them, you know?

Ms. MCAULIFFE: For the citizens of the 15 towns.

Speaker BERGSTROM: But, you know, I think we've done pretty much -- well, I agree with Leo. We've done everything we can on that and it doesn't make any sense to move forward.

Now we get to the County Commissioners' action on Resolution 14-01. Yes, Julia.

Commissioner's reaction on Resolution 14-01

Ms. TAYLOR: Well, I don't have an answer to Suzanne's question. I don't know enough about the issue maybe Pat and Mr. Troy do.

But I do think when Bob Troy spoke to us, I thought that he made it clear to me that this was not legal counsel for the Assembly in addition to "the" person, him. Our attorney told us that this is not a political issue. This is a Charter issue. We have certain powers particularly we have to spend the money and nobody else can spend the money. Only we can do that.

Likewise, the Commissioners have a power of hiring people and nobody else can hire or fire people.

When in the past we have wanted a special counsel for a special proposal, we have requested it and they've hired the person.

Now, you brought up the issue that we didn't quite like the contract, but they have to write

the contract. They have to spell out the terms of employment.

When we didn't like those though, we mentioned it to them and then, okay, we can go to agreement and they changed it. So we can't write a contract and hire someone. That's not within our powers.

I would support well, probably would support, a Resolution for hiring a specific lawyer for a specific purpose if someone brought that forward as a Resolution.

Here I think the case is -- but that hasn't happened. This was just the idea that we could hire someone and we should have that right. I don't think the Charter does allow that, and I think that's what our attorney told us. Although, he suggested that we could ask for permission to hire someone to also consult on that.

But that's why -- I feel that's a waste of money because I can read the Charter; you can read the Charter. We can see we spend the money; they hire the people.

If it came to a case where we voted to hire someone, and I think Patrick said, "Well, I can support this Resolution because it's really six of one, half-a-dozen of the other and it doesn't really matter." But I think the Commissioners and I would say it does matter because that Resolution is not correct. You don't -- you can't pass a Resolution to be allowed to do something that's not in the Charter.

We do, of course, have the right to request. If we did request and the Commissioners said, "No," then you've got a big, you know, then you've got a problem. But that hasn't ever happened. And we can't simply supersede the Charter and say we want to have our guy all lined up or gal in case we come up with -- we just don't have that right. That's not an Assembly power and responsibility. It's a Commissioners' power and responsibility.

I haven't spoken to them about this, but I'm assuming that that's why they didn't want to go forward and approve that Resolution because it isn't correct under the Charter and that's what Troy told us.

And Patrick was wrong to think that it really didn't matter. It's sort of a theoretical Charter issue. It does matter. We can have a big fight on this if we want to hire a lawyer and we request it and they said, "No." I don't think they're going to do that. I don't think they want that kind of fight.

Their saying no to this Resolution is on the principle that we don't have. That's not one of our powers. It's one of their powers.

Speaker BERGSTROM: Anybody want to speak to that? Yes, Deborah.

Ms. MCCUTCHEON: As much as I often disagree with Julia, I don't disagree with her on this one. I think she's right that this is a more technical Charter interpretation in that it doesn't raise the issue of the one that people will go to war over, which is when we really want a lawyer and we want to hire one and they say "No."

However, I beg to differ that there's that kind of logic always resonating from the County Commissioners and the reasons why they do things.

Ms. TAYLOR: I didn't say that. I just said I was assuming that this was their thinking because I hadn't talked to them about it.

Speaker BERGSTROM: Okay. Yes.

Ms. MCAULIFFE: And wouldn't it be -- this is just a thought. Wouldn't it be interesting to see what legal opinion we would've gotten from special counsel that we had hired to give us an opinion. They might have come up with an opinion and I probably think that if you hire a lawyer, sometimes they will give you the opinion you want. So we probably could have -- well --

Ms. MCCUTCHEON: It's been known to happen.

Ms. MCAULIFFE: Yes. Well I think we, what, we might've gotten an opinion then that

this Resolution certainly is within our power to make sure that we're functioning properly. That's just out there.

I reacted to this because I think that I'm not trying to smear Mr. Troy in any way, shape, or form but he is County Counsel so he is going to --

Ms. TAYLOR: "Our"; our counsel.

Ms. MCAULIFFE: Right. That's what I'm saying, County Counsel. So he is going to interpret and read the Charter in a way that is preserving his view of the County.

Speaker BERGSTROM: What you're saying is we're not the appointing authority. In other words, he can get us mad at him but

Ms. MCAULIFFE: It would be interesting to hear what Mike Curran had to say on this.

Speaker BERGSTROM: Yes, anybody have any say on this? Listen, I -- yes, Leo.

Mr. CAKOUNES: I think Pat -- did you have something or?

Mr. PRINCI: No.

Speaker BERGSTROM: Okay. Go ahead.

Mr. CAKOUNES: Thank you. I think you know what we're faced with is where we go from here. I think it's not being argued at all at this table that we do not have the hiring power.

I think that the way I left the last meeting was that we were going to have the Speaker find a couple of firms or three firms and bring them forward to us and then we would select the firms.

I disagree with Ms. Taylor's interpretation that the Executive body is to select our attorney for what we want, first of all.

Ms. TAYLOR: I didn't say that.

Mr. CAKOUNES: And I disagree that they're the ones that write the contracts. The County Commissioners sign contracts almost on a biweekly basis, a lot of them for Cape Light Compact. You're not telling me that they're writing those contracts.

If we find an attorney that we feel comfortable with and then we want to hire that attorney, there is a process spelled out in the municipal --

Ms. MCAULIFFE: Administrative Code.

Mr. CAKOUNES: -- I'm sorry; Administrative Code that we need to follow. It does not require a Resolution or an Ordinance. It can simply be a letter.

It is my intentions as a member of this board that once this committee has -- or this board has selected an attorney that I will be writing a letter requesting that that attorney represent us for matters and those matters will be spelled out as specifically as required by the code so that the Commissioners then can agree to hire that person. We do not have the ability to hire that person. I agree with that.

But, once again, I think what we have to decide today is where do we stand today with this Resolution because there is a question. Is the Resolution or has the Resolution been disapproved by the County Commissioners? And my interpretation of that particular answer is no, it has not.

I don't care what Ms. Mary Pat Flynn, the Chairman of the County Commissioners' letter states that was delivered -- the second letter that we received. It doesn't really -- it's her interpretation of what happened at that meeting.

I want to read to you and read into our record the motion verbatim that was said by Bill Doherty, seconded by Sheila Lyons and passed by the three Commissioners because that's important:

"I move that we authorize the Chair to compose a letter acknowledging the receipt of the Resolution and advising them it is not in compliance with the Charter or the Administrative Code. Therefore, we are returning it to them without any action."

So, quite frankly, the way I read that and, again, if we had a separate attorney other than

the County's attorney, I think we could probably find one that would say that that means it's being returned without action that in 10 days the Resolution that was passed even though was flawed still stands.

Regardless of where we go from here, I believe that it is the internal functions of this board, and we are well within our rights to if we wanted to interview or we wanted to select an attorney and then take that firm's name down the path as it is spelled out in the Administrative Code fine.

But there's no reason for us to have to ask for through the Administrative Code process and allow the Executive branch of County government to either appoint their attorney or their choice of attorneys or, in fact, write a contract which may limit that attorney's functions for what we need.

So, I would like to just have the Speaker proceed with what he was requested to do.

Ms. TAYLOR: Mr. Speaker?

Speaker BERGSTROM: Yes, Julia.

Ms. TAYLOR: Well, I agree. We never needed this Resolution. We always had the right. You can talk to lawyers as much as you please and we can tell them that we might -- but I don't like the fact that we passed a Resolution that isn't correct. And I still have yet to hear from any of the proponents what they want the lawyer for. I would like to know that.

Commissioner LYONS: Mr. Speaker.

Speaker BERGSTROM: Let me just jump in here because this is important to say. I think it's agreed that we cannot hire an attorney on a standby basis or basically, you know, throw him a few bucks and say, "Standby" on a contingency basis.

The question is if we can hire somebody for a specific purpose. But the question is now if we want to -- let's say we want to -- we want you to tell us the relationship -- what does it mean to be the fiscal agent or something. The problem is we already have an attorney to do that.

I think we would need more of a conflict of, in other words, I think we would have to disagree with something that Troy said and have a substantial basis to disagree with him in order to hire an attorney because, otherwise, we're just basically saying -- I don't know.

Commissioner LYONS: Mr. Speaker, may I just make a comment?

Speaker BERGSTROM: Well, wait until I get -- and I'll get to you.

Deputy Speaker MARTIN: I just want to clarify. So I heard Leo say something I didn't hear last time and it touches on this. I just heard my colleague from Harwich say that if this were to pass, he would follow up with a letter specifying certain things that we would want to see an attorney be working on.

So is there some underlying issue that we are not all talking openly right now that we should be talking about openly that there is a desire for some people to have a counsel working on specifically?

Mr. CAKOUNES: Can I answer that, Mr. Speaker?

Speaker BERGSTROM: Sure. Go right ahead.

Mr. CAKOUNES: I don't believe there's any underlying hidden thing. I mean we have the Legislative body that has been for the last three years been trying to work on a more open and trying to discover things such as what a fiscal agent is.

We have actually written letters to the Attorney General's office that was done -- proposed for a Resolution that the Executive board denied us to do.

So we are already at two differences of opinions of how we are operating as a fiscal agent for two agencies. And the two differences of opinions have been very clear and very open. There's nothing hidden about this. I mean we have been repeatedly have taken votes, repeatedly

have taken positions that we want to see things happen.

We actually asked that some letters be disclosed and some memorandums -- certain pieces of information be disclosed and the Executive board have said they've not.

I'm concerned as sitting here in the Legislative board or body of County government of our exposure, both liability-wise, financially and, quite frankly, if there's some kind of -- I don't want to say criminal action, but I really want to know what our exposure is.

And I'm not sure that that having one attorney representing the County when the County has two boards, an Executive board and a Legislature board which have taken very strong opposite positions on that matter is capable of advising them both of their actions, both past and in the future.

Because we have a situation going on that's been going on for a while that I'm not really comfortable with.

Ms. MCCUTCHEON: Mr. Speaker.

Speaker BERGSTROM: Yes, just -- excuse me. Go ahead, Teresa.

Deputy Speaker MARTIN: I just want to restate what I'm hearing you say because I want to make sure I'm clear too.

What I'm hearing you say is that in your mind there is a current active situation you think there should be a special counsel for at this point in time?

Mr. CAKOUNES: Yes.

Deputy Speaker MARTIN: Which is a very different question from what the Resolution was last time, so that's why I want to find out what we're really talking about.

Ms. MCCUTCHEON: I'd like to speak to this here.

Speaker BERGSTROM: Yes, go ahead.

Ms. MCCUTCHEON: You know, I'd like to be really clear here. One of the nice things of the requirements under the Charter is to who has what authority and who has what power.

The basic bottom line is that we passed a Resolution that said we were going to hire counsel and they took no action. And taking no action is not the same in anybody's book. I mean I defy you to hire a lawyer who can find a case that says a vote of no action is a denial. It's not the same.

And, therefore, whatever was the original intention of us or them we have by their action the authority now to hire.

Commissioner LYONS: May I speak, say something, Mr. Speaker?

Speaker BERGSTROM: Yes, go ahead.

Commissioner LYONS: I mean there's a lot of assumption and there's a lot of innuendo put out there that there is something going on that needs a special prosecutor, is what I would say, not a special attorney but a prosecutor.

Ms. ANDREWS: Who said prosecutor?

Ms. MCCUTCHEON: Who said prosecutor?

Commissioner LYONS: Well that's what it feels like because there's something up and there's something we don't understand and you can be criminally liable.

You know, things like the Cape Light Compact were created -- these are things that are incubated by the County. That's what the County did. That's what we do.

And we can create these great little energies and systems that benefit this region. And the Cape Light Compact has benefited this region.

And to have that exist in the beginning, it had to be tied to the County. You had County employees. It had County employees that were dedicated to that mission and it was handed to them. They were not experts on it and they've become experts for 18 years. And they've done a

good job serving the County that has asked them to do the work.

So all I hear is a lot of innuendo about something is corrupt here. And I don't think that anybody has not seen a benefit from either Cape Light Compact, CVEC -- you can put a lot of other agencies in there.

The Lighthouse, the family for abuse -- for women under abuse that was a spinoff from the County. This is what we do.

So because that there is an administrative tie because those people were originally our employees and did what we asked, I don't think puts us in any criminal liability.

Speaker BERGSTROM: Sheila.

Commissioner LYONS: And, number 2, if I may finish --

Mr. CAKOUNES: This is going down the wrong road.

Commissioner LYONS: -- since there's been a lot here. No. Let me just say for all the examples, and Julia's correct, whenever there was a request for an attorney just like there is a request for us to come together, we have given you the -- we have approved it and given you the lead. You came to us with the attorneys that you chose. You came for the Charter review and you will come to us with what you propose on a mediation and we will say, "Fine."

And it's up to you to do that. We have never interfered with what it is that you've wanted to do. So, to make that accusation like this is a denial and that we're putting -- this is a line drawn in the sand. It was technically incorrectly written and that's -- it was a technical answer in response.

Speaker BERGSTROM: Yes, but Sheila --

Commissioner LYONS: It doesn't mean that anybody can't have whatever they want.

Speaker BERGSTROM: What I'm saying -- the issue is not -- Cape Light Compact may be looming in the background, but the fact is I'm dealing with the Resolution.

Commissioner LYONS: I understand but a lot of other talk has gone on here about that Resolution.

Speaker BERGSTROM: It speaks to the ability of the Assembly to gain legal counsel. I don't think anyone disagrees right now that we don't have, and I might be wrong, we don't have the ability to hire counsel as a standby basis.

I don't think anybody disagrees with the fact that we do have the right to investigate potential legal services which we may request in the future on specific items. Now what those specific items are may not be anything we want. They may have to be limited to certain things where we, as the Assembly, have a specific standing as opposed to the Commissioners or any other branch of the County. So that's something that Troy and other counsel have to talk about.

As far as I'm concerned, and it's my decision, that Resolution passed. It was not disapproved; we know that. Now the period of time that the Commissioners have to disapprove has passed. You don't have a pocket veto like the president does, so, basically, it's standing.

However, if it's defective, it doesn't really matter. We can't do anything that -- I agree with Julia, we can't do anything that violates the Charter.

Ms. MCCUTCHEON: We're certainly entitled to have counsel for the purpose of enforcing that Ordinance, which we passed.

Speaker BERGSTROM: Well, I mean if we say that we disagree --

Ms. MCCUTCHEON: According to the Charter to their own lawyer, we certainly have the authority in this conflict as to whether or not that Resolution.

The Resolution has vitality to be acted under. If there's a conflict, we have a right to counsel on it.

Speaker BERGSTROM: If we believe sincerely that the Resolution does not violate -- it's

our opinion that, the opinion of the Assembly, the Resolution does not violate the Charter and that Troy is wrong we can.

But if we accept the fact that it's not wrong, then where do we go. I mean I'll do whatever you guys want but --

Mr. KILLION: Mr. Speaker, may I?

Speaker BERGSTROM: Yes, go ahead.

Mr. KILLION: As one of the cosponsors of it, and I disagree with Julia and I agree with your statement where this wasn't an authorization to really do it. We weren't hiring a lawyer.

And the reason we applied this Resolution and that's why I think it's correct if you look at the definition of the Resolutions, there's a whole list of them. And the last one says, "The expression of such policies, which are listed above, and/or opinions as required no formal action."

It was the opinion of the Assembly that we would like to look into having special counsel at some point but we want to pick out who it is. That's all it was.

And I can't see how it can now be interpreted that we can't do that. We can't have the opinion that we want to hire -- I'd want to pick out a lawyer to use in the future.

So, I agree with you. You probably could have done this without a Resolution.

Speaker BERGSTROM: Yes.

Mr. KILLION: But I'm glad we did it because it really brought out a lot of discussion and we're really seeing where people stand on the issue.

Speaker BERGSTROM: Well I intend to go forward through Janice to contact at least three agencies, three firms that deal with this kind of law and see if they're avail -- send them a form. I'm not going to -- Leo used the word "interview," but I'm not going to interview them.

Mr. CAKOUNES: No, I didn't mean that.

Speaker BERGSTROM: Yes, I know. We'll simply contact and see whether they're available on it. And I have got a word from one of them in person two years ago when I approached him, and I said this before, I approached him at the MMA conference. I said, "We may need an attorney because we're in a dispute." And he goes, "You don't need to hire an attorney. Just request an opinion and we'll give you the opinion and we'll charge you," you know? Here's my opinion and here's the bill.

Mr. KILLION: If I can continue, Mr. Speaker?

Speaker BERGSTROM: Yes.

Mr. KILLION: With some of the comments that Mr. Troy made, and I agree with him in a lot of respects, from the transcript he said he's a legal officer. I understand that.

He said what I suggest that this is a very good occasion in which you can request special counsel to give you an opinion on what your rights are here before you take any action, before we start another, you know, potential conflict between the Executive and Legislative branch, I respectfully suggest we ask the Commissioners to appoint special counsel to get you answers. Okay.

But what did he do? He gave us an opinion anyway because -- and he gave one because the Commissioners wanted him to give one.

Commissioner LYONS: No. What it was he was making --

Speaker BERGSTROM: Sheila, easy. Let me run this meeting.

Mr. KILLION: So the question is, and I think we should probably vote it. I'll put the Ordinance together for the next meeting to see if we want to hire a special counsel because if we're going to hire one anyway.

Speaker BERGSTROM: And he gave us a list of questions to submit too.

Mr. KILLION: Exactly. And I think that this is a very simple way to get --

Speaker BERGSTROM: Well, as far as I'm concerned, we have -- I mean the Resolution whether it passed or not, we're still going to go forward with contacting -- it did pass; all right? We're going to contact attorneys to see if they're available. But we're going to have to have a specific -- and those questions for Troy are perfectly adequate, a specific request to make.

We can then submit those questions to, like I say, to an attorney, whether it's Kopelman & Paige or some other law firm and say, "What do you think?" They'll give us an opinion. They'll send us -- well, we'll have to go to the Commissioners first and we'll say this is what we want to do. They approve it. Everything's happy. If they don't approve it, you know. God only knows what will happen then.

Mr. KILLION: Well, even as Mr. Troy directed us to do it, I can't see why they wouldn't.

Speaker BERGSTROM: All right. Does that make sense?

I knew this would be contentious but I put it on here because I didn't want us to think we were just here enjoying the weather.

Okay. So, do we understand that? All right. Is there anything else? Are we done with that? Is there anything else to be -- any other business to be -- okay.

Deputy Speaker MARTIN: Motion to Adjourn.

Speaker BERGSTROM: Okay. Second?

Ms. KING: Second.

Mr. OHMAN: I hope everyone will come over and enjoy some food at Liam's.

Whereupon, it was moved, seconded, and voted to adjourn the Assembly of Delegates at 5:10 p.m.

Respectfully submitted by:

Janice O'Connell, Clerk
Assembly of Delegates