

Bob Fournier

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WORLD WAR II—KOREAN WAR—PERSIAN GULF

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FAX TO: 508-8927070

November 14, 2018

@ 3:20 AM

Lynn Clark; Deborah Davis

PUBLIC RECORD REQUEST

①

This is to request a boxed copy of
How Many Members Constituted the
Conservation Commission 5:4 filled 1 VACANT

②

How many votes constituted a quorum
for the Conservation Commission

③

Kindly include reference, statute, Regu-
lations, Rules, By Law etc

SEE ATTACHED

Thank you

Bob Fournier

I need this info for a meeting this
evening.



Protecting Wetlands and Open Space: MACC's Environmental Handbook

Page: 19.6.5.1. Quorum and Majority Defined

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The whole subject of voting by municipal boards has been and remains unsettled because it is governed principally by case law, i.e., judges' decisions, rather than comprehensive *statutes*.

The term "*quorum*" has various meanings under different laws.

- The Open Meeting Law states: "Quorum is a simple majority of a governmental body unless otherwise defined by Constitution, *charter*, rule or law applicable to such governing body."
- The Wetlands Protection Act *Regulations* (310 CMR 10.05(2) [PDF]), regarding action of the commission, state: "Where MGL Ch. 131 § 40 states that a particular action (except receipt of a request or notice) is to be taken by the conservation commission, that action is to be taken by more than half the members present at a meeting of at least a quorum. A quorum is defined as a majority of the members then in office."
- The fifth clause of MGL Ch. 4 § 6 says "Words purporting to give a joint authority to, or to direct any act by, three or more public officers or other persons shall be construed as giving such authority to, or directing such act by, a majority of such officers or persons." That is, if three or more people making up a legal body are directed to do something, the direction is to the majority, or in other words, a majority of those capable of acting, that is, appointed and sworn in, i.e. a majority of those serving.

Under these definitions, for the purposes of conservation commissions, the *WPA Regulations*, as "rules" under the Open Meeting Law definition, can be said to provide the alternate definition of quorum as a majority of the seated members. This interpretation is not countered by MGL Ch. 4 § 6 or the legal definition of quorum.

Assuming the vacancy problem does not arise, a majority of the commission constitutes a quorum for all official business. However, all available seats on a commission are often not filled. If illness or unavailability of members becomes an issue, the appointing body should be asked to remove non-performers. Many communities have *charter* or *bylaw/ordinance* provisions that permit appointing authorities to request resignations or seek removals if too many absences occur.

If attendance becomes an issue, the wise commission will seek to obtain the consent of the applicant to extend the 21-day period for a decision on a Notice of Intent to a not-too-distant date when a quorum can be obtained.

Majority is addressed in the Wetlands Protection Act Regulations:

- "Majority means more than half of the members of the conservation commission then in office." (310 CMR 10.04 [PDF])
- "Where MGL Ch. 131 sec. 40 states that a particular action (except receipt of a request or notice) is to be taken by the conservation commission, that action is to be taken by more than half the members present at a meeting of at least a quorum." (310 CMR 10.05(2) [PDF])
- "Where MGL Ch. 131, § 40 states that an order or notification shall be signed by a majority of the conservation commission, that action is to be taken by a majority of the members then in office, who need not convene as a body in order to sign, provided they met pursuant to the open meeting law, MGL Ch. 39, §§ 23A through 23C, when voting on the matter." (310 CMR 10.05(2) [PDF])

Quorum for Holding a Public Meeting: If a meeting is held but the commission lacks a quorum, the members present may still take action short of deliberating or voting, for example, opening a *hearing* and continuing it to a future date or setting a site visit date. These acts are considered "ministerial" and thus exempted under the Open Meeting Law (see the Pearson case cited in HB 19.6.1).

Quorum for Holding a Public Hearing: A quorum is required to hold a public hearing under the Wetlands Protection Act. The definition of a quorum for any given hearing (and its continuations) includes a requirement that the quorum must consist of the same people at successive sessions of a public hearing on a project. Thus, if a conservation commission holds a public hearing with four members present, and continues it to a second meeting at which a quorum of five members is present, only three of whom were at the first half of the public hearing, it does not have a quorum present for the continued hearing. Conservation commissions may wish to consult with their town counsel or city solicitor if they regularly have problems obtaining a quorum for meetings.

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CHAPTER 40 POWERS AND DUTIES OF CITIES AND TOWNS

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Section 8C Conservation commission; establishment; powers and duties

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Section 8C. A city or town which accepts this section may establish a conservation commission, hereinafter called the commission, for the promotion and development of the natural resources and for the protection of watershed resources of said city or town. Such commission shall conduct researches into its local land areas and shall seek to co-ordinate the activities of unofficial bodies organized for similar purposes, and may advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which in its judgment it deems necessary for its work. Among such plans may be a conservation and passive outdoor recreation plan which shall be, as far as possible, consistent with the town master plan and with any regional plans relating to the area. The commission may, from time to time, amend such plan. Such plan shall show open areas including marsh land, swamps and other wetlands, and shall show which areas are subject to restrictions or wetland zoning provisions and any other matters which may be shown on a plat index under section thirty-three of chapter one hundred and eighty-four. Acquisitions of interests in land under this section and other municipal open lands shall be shown thereon as well as lands owned by other entities kept open through any legal requirement. Such plan shall show other areas which public necessity requires to be retained for conservation and passive recreation use. It shall keep accurate records of its meetings and actions and shall file an annual report which shall be printed in the case of towns in the annual town report. The commission may appoint a director, clerks, consultants and other employees, and may contract for materials and services within available funds insofar as the same are not supplied by other departments. The commission shall consist of not less than three nor more than seven members. In cities the members shall be appointed by the mayor, subject to the provisions of the city charter, except that in cities having or operating under a Plan D or Plan E form of city charter, said appointments shall be by the city manager, subject to the provisions of the charter; and in towns they shall be appointed by the selectmen, excepting towns having a manager form of government, in which towns appointments shall be made by the town manager, subject to the approval of the selectmen. When a commission is first established, the terms of the members

shall be for one, two or three years, and so arranged that the terms of approximately one third of the members will expire each year, and their successors shall be appointed for terms of three years each. Any member of a commission so appointed may, after a public hearing, if requested, be removed for cause by the appointing authority. A vacancy occurring otherwise than by expiration of a term shall in a city or town be filled for the unexpired term in the same manner as an original appointment. Said commission may receive gifts, bequests or devises of personal property or interests in real property of the kinds mentioned below in the name of the city or town, subject to the approval of the city council in a city or of the selectmen in a town. It may purchase interests in such land with sums available to it. If insufficient funds are available or other reasons so require, a city council or a town meeting may raise or transfer funds so that the commission may acquire in the name of the city or town by option, purchase, lease or otherwise the fee in such land or water rights, conservation restrictions, easements or other contractual rights including conveyances on conditions or with limitations or reversions, as may be necessary to acquire, maintain, improve, protect, limit the future use of or otherwise conserve and properly utilize open spaces in land and water areas within its city or town, and it shall manage and control the same. For the purposes of this section a city or town may, upon the written request of the commission, take by eminent domain under chapter seventy-nine, the fee or any lesser interest in any land or waters located in such city or town, provided such taking has first been approved by a two-thirds vote of the city council or a two-thirds vote of an annual or special town meeting, which land and waters shall thereupon be under the jurisdiction and control of the commission. Upon a like vote, a city or town may expend monies in the fund, if any, established under the provisions of this section for the purpose of paying, in whole or in part, any damages for which such city or town may be liable by reason of any such taking. The commission may adopt rules and regulations governing the use of land and waters under its control, and prescribe penalties, not exceeding a fine of one hundred dollars, for any violation thereof. No action taken under this section shall affect the powers and duties of the state reclamation board or any mosquito control or other project operating under or authorized by chapter two hundred and fifty-two, or restrict any established public access. Lands used for farming or agriculture, as defined in section one A of chapter one hundred and twenty-eight, shall not be taken by eminent domain under the authority of this section.

A city or town may appropriate money in any year to a conservation fund of which the treasurer shall be the custodian. Prior to the adoption of any rule or regulation which seeks to further regulate matters established by section forty of chapter one hundred and thirty-one or regulations authorized thereunder relative to agricultural or aquacultural practice, the commission shall, no later than seven days prior to the commission's public hearing on the adoption of said rules and regulations, give notice of the said proposed rules and regulations to the farmland advisory board established pursuant to section forty of chapter one hundred and thirty-one. He may deposit or invest the proceeds of said fund in savings banks, trust companies incorporated under the laws of the commonwealth, banking companies incorporated under the laws of the commonwealth which are members of the Federal Deposit Insurance Corporation, or national banks, or invest it in paid up shares and accounts of and in co-operative banks or in shares of savings and loan associations or in shares of federal savings and loan associations doing business in the commonwealth, and any income therefrom shall be credited to the fund. Money in said fund may be expended by said commission for any purpose authorized by this section; provided, however, that no

expenditure for a taking by eminent domain shall be made unless such expenditure has been approved in accordance with this section.

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* * * Communication Result Report (Nov. 14. 2018 10:16AM) * * *

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Original misfeed. This file has not been transmitted.
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Reason for error

E. 1) Hang up or line fail

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BATTLESHIP USS WISCONSIN BB-84 USS MISSISSIPPI EAG-128

WORLD WAR II—KOREAN WAR—PERSIAN GULF

Environmental Services

FAX TO: 508-8927070

November 14, 2018

@ 3:00 PM

Paula Pluh; Barbara Davis

PUBLIC RECORD REQUEST

1) This is to request a boxed copy of New Mary Member Constitution & Bylaws Conservation Commission 5:4 filled 1 vacant

2) New Mary water conservation a quarter for the Conservation Commission

3) Please include reference, statute, Regulation, policy, by law etc

SEE ATTACHED

Thank you

Bob Fournier

I need this info for a meeting this evening

* * * Communication Result Report (Nov. 14, 2018 10:19AM) * * *

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Date/Time: Nov. 14, 2018 10:18AM

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11/14/2018 04:23PM 11/14/2018 04:23PM
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 WORLD WAR II—KOREAN WAR—PERSIAN GULF
 Environmental Services
 FAX: 774-745-8210
 November 14, 2018
 @ 3:28 PM
 Laura Pluh; Deborah Davis
 PUBLIC RECORD REQUEST
 This is to request a boxed copy of
 New Mass. Museum Constitution & Bylaws
 Conservation Commission 5:4 P.M. 11/14/2018
 New Mass. water conservation guidelines
 for the Conservation Commission
 3
 Please include reference, statute, regulation, policy, by law etc.
 SEE ATTACHED
 Thank you
 Bob Fournier
 I need this info for a meeting this evening