

The meeting of the Cape Cod Commission was called to order on Thursday, August 20, 2009 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

■ PUBLIC COMMENT

Steve Baty, videographer with All Media Productions, said he videotaped the meeting of the Assembly of Delegates (AOD) during which the Commission's proposed Chapter H regulations that had been forwarded to the AOD for approval as an ordinance was remanded back to the Commission. He said the video is available to Commission members if they're interested in seeing it.

■ EXECUTIVE DIRECTOR'S REPORT

Paul Niedzwiecki said he met with the speaker and clerk of the AOD to discuss the process for the Commission's Chapter H regulations. He said Chapter H will be going back to the Commission's Regulatory Committee soon, a public hearing will be held, and hopefully it will be back before the AOD sometime in September or October. Mr. Niedzwiecki said the Commission is watching the time clock for the Craigville Beach District of Critical Planning Concern (DCPC) Implementing Regulations. He said a final version was mailed to the Barnstable Town Council today and they will be voting on the implementing regulations on September 3rd.

■ MINUTES

The minutes of the July 23, 2009 Commission meeting were reviewed. Roy Richardson moved to approve the minutes. Roger Putnam seconded the motion.

Joy Brookshire referred to page 4, 2nd paragraph where it says "originally the *kitchen* was planned for two floors" and said the language should be changed to say "originally the *addition* was planned for two floors."

A voted called on the motion, with the noted correction, passed with one abstention.

■ BREWSTER VFW PAVILION

Chair John Harris noted this is a continued hearing from July 16, 2009.

Marianna Sarkisyan, regulatory officer at the Commission, said the project consists of a 4.28-acre site owned by the Brewster VFW Post 9917. She said the VFW is proposing to install an open sided, steel framed, approximately 1,298 square foot steel roof with concrete footings over the existing 1,320 square foot paved picnic area. She said the project is located in the Brewster Water Protection DCPC, an area subject to a building permit moratorium until the town passes the implementing regulations. She said the deadline to complete the implementing regulations is October 14, 2009 and for this reason the applicant is seeking a hardship exemption. She said the Commission's DCPC acceptance decision provides that an applicant may apply for a hardship exemption for any development that can demonstrate that the suspension of action on a local development permit application during the limited moratorium constitutes a substantial hardship. Ms. Sarkisyan provided a procedural history for the project and said at a subcommittee meeting held after the public hearing on July 16, 2009, the subcommittee found that the applicant has demonstrated that a hardship exists by virtue of the DCPC moratorium and voted unanimously to recommend to the Commission that the project be granted a hardship exemption. She said the subcommittee met again on August 6, 2009 to review the draft decision and voted to forward the decision to the full Commission for consideration. Ms. Sarkisyan said Commission staff reviewed issue areas of water resources, community character, transportation and natural resources/open space. She said Commission staff found that because of its nature the project would not have any impacts in any of the issue areas reviewed.

Roger Gill, chairman of the building committee for the Brewster VFW, thanked Ms. Sarkisyan for her presentation and work on the project. He said the project would have no effect on the area other than providing protection of the picnic area. He said the project does not increase capacity or transportation and said it's basically a roof to protect people in the picnic area.

Elizabeth Taylor moved to close the hearing and the record. Roy Richardson seconded the motion. The motion passed with a unanimous vote.

Lynne Pleffner moved to approve the Hardship Exemption application for the Brewster VFW Pavilion project. Joy Brookshire seconded the motion. The motion passed with a unanimous vote.

■ MASHPEE COMMONS, LP NOTICE OF INTENT TO FILE A DEVELOPMENT AGREEMENT APPLICATION

Elizabeth Taylor read the hearing notice and opened the hearing at 3:20 p.m.

Marisa Mejia, regulatory officer at the Commission, referred to PowerPoint slides and said Mashpee Commons Master Plan is currently subject to review by the Commission as a DRI. She said the Commission has rendered decisions on North Market Street and Jobs-Whitings Neighborhoods and the remaining neighborhoods to be developed are East Steeple Street, Trout Pond, and North Market Street Phase 2. She said on June 24, 2009 Mashpee Commons, LP submitted a Notice of Intent to file a Development Agreement application with the Commission. Ms. Mejia provided background information on the project and said in December 2008 Mashpee Commons, LP approached the Mashpee Board of Selectmen, Mashpee Planning Board, and the Commission to start discussions for a Development Agreement for the remaining Mashpee Commons neighborhoods. She said the approach was presented and endorsed by the subcommittee of the Commission reviewing the Mashpee Commons DRI and the Mashpee Planning board held public meetings regarding the potential Development Agreement. Ms. Mejia said the Commission's regulations governing the provisions for Development Agreements have been recently revised and adopted. She said new to the regulations is a requirement for a potential qualified applicant to file a Notice of Intent to file a Development Agreement with the Commission prior to submitting an application. She said at that point the Commission must determine whether the proposed development is suitable and qualifies for the Development Agreement process. Ms. Mejia said to determine whether a project is suitable and qualifies for the Development Agreement process the following criteria is used: that there are no development permits pending; whether the project would benefit from comprehensive review of the foreseeable and planned development to allow for planning of efficient infrastructure; whether the project exhibits two of the following characteristics involving 25 acres or more of development, includes multiple uses and/or structures, and involves multiple properties under control by the same qualified applicant; whether construction of the project is anticipated to be built in phases over a period exceeding seven years; whether a project has future expansions that are not fully or definitively defined but should be presented up front to avoid segmentation; whether a project has received a Final Environmental Impact Report certified as adequate by the Secretary of EOEEA; and whether the Commission's Regulatory Committee has received testimony from any municipal agency in which the proposed development is to be located indicating whether it recommends the proposal as appropriate. Ms. Mejia said Mashpee Commons, LP is consistent in meeting all the development agreement criteria and said the project received certification by the Secretary of EOEEA on March 2, 2001. She said on July 6, 2009 the Regulatory Committee recommended that the proposed development is suitable and qualifies for the Development Agreement process. She said a vote of approval today would allow the applicant to submit a Development Agreement application within one year of today's vote.

Douglas Storrs of Mashpee Commons, LP, said they started this conversation with the Town of Mashpee a year ago. He said it has been a long process and they were waiting for the Commission's recently revised Chapter D, Development Agreement Regulations and Chapter A, Enabling Regulations to be adopted. He said they have had several conversations with the Mashpee Planning Board and they support the Development Agreement. He said Mashpee Commons is a suitable and qualified applicant for a Development Agreement. He said he has kept the Commission's subcommittee up to speed and they support a Development Agreement for Mashpee Commons.

Tom O'Hara, Chairman of the Mashpee Planning Board, said they have had numerous meetings regarding a Development Agreement for Mashpee Commons. He read a letter from the Mashpee Planning Board that said the Board supports and endorses a Development Agreement for Mashpee Commons and voted in favor of a Development Agreement at its meeting on August 5, 2009. He said the Planning Board also met last night and they are confident in their decision and they are happy to enter into this agreement. He said this is a good deal for the town.

Elizabeth Taylor moved to close the hearing and the record. Roy Richardson seconded the motion. The motion passed with a unanimous vote.

Roy Richardson moved that the Commission vote in favor of Mashpee Commons' eligibility to proceed with the process to file a Development Agreement application. Sheila Lyons seconded the motion.

Roger Putnam asked for clarification to approve the intent to file an application.

Roy Richardson moved that the Commission approve Mashpee Commons' Notice of Intent to File a Development Agreement Application. Sheila Lyons seconded the motion.

Elizabeth Taylor said when she first started at the Commission Mashpee Commons was the first DRI subcommittee she sat on. She said Mashpee Commons has been around for a long time and she is glad to see Development Agreements coming along.

A vote called on the motion to approve Mashpee Commons' Notice of Intent to file a Development Agreement application passed with a unanimous vote.

■ RED JACKET RESORTS REDEVELOPMENT NOTICE OF INTENT TO FILE A DEVELOPMENT AGREEMENT APPLICATION

Elizabeth Taylor read the hearing notice and opened the hearing at 3:30 p.m.

Marisa Mejia, regulatory officer at the Commission, referred to PowerPoint slides showing the project site which consists of four hotel properties: the Red Jacket, Edge of the Sea, Blue Water, and Riviera Beach Resort. She highlighted the areas on South Shore Drive that would become Property A, Red Jacket Beach Resort and Property B, Blue Water Resort. She said the applicant intends to raze existing hotel buildings and redevelop the area with two new resorts featuring the same number of units but larger rooms and improved amenities and is proposing to remove existing septic systems and install a private wastewater treatment facility. She said on July 14, 2009 Red Jacket Resorts Redevelopment submitted a Notice of Intent to File a Development Agreement application for a two-party agreement between the Cape Cod Commission and Red Jacket Resorts. She said the Regulatory Committee met on August 3, 2009 to determine whether the project is suitable and qualifies for the development agreement process and she outlined the criteria used to make that determination. She said there are no permits pending before the Town of Yarmouth for the project site; a significant amount of infrastructure is needed to support the proposed development, especially wastewater infrastructure; the total development area is 15.21 acres, it would involve multiple structures, and there are multiple properties which are all owned by the applicant; one hotel would be constructed at a time and the project could take 15-20 years; project designs are conceptual and each hotel would be constructed at separate times, the development plan would set forth guidelines for the design of the structures but the exact configuration of the project would be determined closer to construction; an Environmental Impact Report was not required; and the Regulatory Committee received a letter from Robert Lawton, Yarmouth Town Administrator, stating that the Town supports the proposed project's participation in the Development Agreement process with the Commission. Ms. Mejia said based on this, Red Jacket Resorts is consistent in meeting all the development agreement criteria. She said on August 3rd the Regulatory Committee

recommended that the proposed development is suitable and qualifies for the Development Agreement process. She said a vote of approval today would allow the applicant to submit a Development Agreement application within one year of today's vote.

Paul Rumul, Davenport Companies, said Ms. Mejia did a great job in describing the project. He said they have been to many meetings and have paid attention to the Commission's Chapter A, Chapter D and Chapter H. He said they have paid attention and participated in the process of developing the Land Use Vision Map for Yarmouth. He said they completed the pre-application process with Commission staff and after closely following the Commission's Regional Policy Plan their project is a perfect fit for the Development Agreement process. He said the Development Agreement process is the best route to pursue with their project.

Joy Brookshire said two years ago when the Yarmouth Growth Incentive Zone (GIZ) was being considered was South Shore Drive not included.

Karen Greene, Director of Community Development in Yarmouth, said during the GIZ process South Shore Drive was not included in the GIZ that's why it's important to have a Development Agreement.

Elizabeth Taylor referred to a letter received from John and Richard Lyons, abutters of the Red Jacket properties located on South Shore Drive, expressing concerns about the entryway and drainage problems. She asked Mr. Rumul if they would be working with the residents in the area.

Paul Rumul said they would be working with the residents.

Suzanne McAuliffe, Chair Yarmouth Board of Selectmen, said the Board of Selectmen has not taken a specific vote on this project because it's still in the conceptual stage. She said the project would allow for newer and better properties, wastewater treatment, and just better construction in general. She said it would be a long process with the first building being built four to seven years out. She said the Board of Selectmen has been behind all the zoning changes and "green" plans for the town. She said the Board has been behind the concept of this project.

Neil Moody, 114 Wilfin Road in South Yarmouth, said he has been a resident since 1999 and the Davenports have been good neighbors since they've lived there. He said there are two deeded rights-of-way for the Blue Waters and Edge of the Sea. He said something should be done before construction begins. He said he is happy to hear that private wastewater treatment is in line with the project. He said his concern is before any demolition begins the deeded rights-of-way should be taken care of in writing.

Paul Rumul said he is well aware of the rights-of-way. He said it's included in their plan and said it would be incorporated into their site plan.

Steve Zaimes, resident in the area, expressed concerns about the rights-of-way. He inquired about the location of the treatment plant and expressed concern about a possible four-story building going up.

Paul Rumul said any deeded rights-of-way would be respected. He said they haven't determined yet the location of the treatment plant and said the project is still in the conceptual stage.

Nilda Gil, resident near the Red Jacket, said she would like the neighbors' consideration to be considered. She said consideration should be given to the neighborhoods. She expressed concerns about seven years of construction and the noise that would result from the construction. She expressed concern about the number of rooms, type of entertainment there would be and the number of floors; one floor or four floors. She also expressed concerns about septic systems, parking spaces being constructed and asked how neighborhoods would

be protected from the dust and noise during construction and asked if there would be adequate drainage on the street.

Chair John Harris asked if an effort would be made to communicate with neighbors and abutters.

Paul Rumul said there would be many opportunities to communicate. He said there are many different components to the project that will be vetted out during the process. He said everything would have to be considered during the process.

Sheila Lyons, said to allay Ms. Gil's concerns about seven years of construction, she said seven years doesn't mean seven years of constant construction; there would be breaks in construction.

Paul Rumul said that's correct. There will not be seven years of constant demolition and construction. He said it would be a long process.

Paul Niedzwiecki thanked the Davenports and the Town of Yarmouth for coming forward with the project and the opportunity to test the scenario. He said they have been a pleasure to work with. He said rights-of-way are first and foremost on their minds and there would be a lot of opportunity for public comment.

Martin Joyce, resident of South Shore Drive, asked how and when hearings would be held.

Paul Niedzwiecki said there would be public hearings held by the Town of Yarmouth and public hearings held by the Commission. He said specific timing of meetings and hearings would be dependant on when they file their application.

Steve Zaimes asked if the minutes from today's hearing would be made available to the public.

Paul Niedzwiecki said the minutes would be put on the Commission's website.

Elizabeth Taylor moved to the close the hearing and the record. Roy Richardson seconded the motion. The motion passed with a unanimous vote.

Roy Richardson moved that the Commission find that the proposed development is suitable and qualifies for the Development Agreement process. Elizabeth Taylor seconded the motion. The motion passed with a unanimous vote.

■ CRAIGVILLE BEACH AREA DISTRICT OF CRITICAL PLANNING CONCERN (DCPC) IMPLEMENTING REGULATIONS

Kristy Senatori, chief regulatory officer at the Commission, said no action would be taken today on the Craigville Beach DCPC Implementing Regulations. She said a special Commission meeting would be held on Thursday, September 10, 2009 at 3:00 pm in the Assembly of Delegates Chamber. She said the public hearing on September 10th would be re-noticed.

Roger Putnam asked why a special meeting on September 10th would be necessary.

Jessica Wielgus, Commission counsel, said the Cape Cod Commission Act has a specific time limit for a DCPC. She said the Barnstable Town Council is meeting on September 3rd and they will be considering the implementing regulations on that date. Ms. Wielgus said the town needs time to consider the implementing regulations before it comes to the Commission.

Roger Putnam suggested granting an extension if more time is needed.

Jessica Wielgus said the Commission's DCPC regulations only allow for one 90-day extension and noted that a 90-day extension had already been granted. She said no other extensions are allowed.

Roger Putnam said it would be an inconvenience to hold another Commission meeting on September 10th and suggested that it be held on the Commission meeting scheduled for September 3rd.

Jessica Wielgus said the Barnstable Town Council is meeting on the evening of September 3rd so it would not be possible to have it at the September 3rd Commission meeting at 3:00 p.m.

■ PROPOSED UNIFIED PLANNING WORK PROGRAM FY2020 AND METROPOLITAN PLANNING ORGANIZATION ELECTIONS

Patty Daley, Director of Technical Services at the Commission, provided an overview of the work being done by transportation staff at the Commission. She referred to material distributed to Commission members and said it outlines the work that staff will be doing over the next fiscal year which starts October 1, 2009. She reviewed changes to the work plan and said it's a slight departure from the transportation department's usual program. She said Task 1 Management and Support of the Planning Process and Certification Activities is the general type of work that is done in regard to Federal funding and planning work by the transportation staff. She said under Task 2 Data Collection and Analysis they've added a new Task 2.3 GIS Mapping, Graphics/Economic, Land Use, Demographic Data and said it's work that the Commission has already been doing but the Commission has never been able to bill time to the MassHighway contracts. She said this is a way to bring other Commission staff on board and bill the work they are doing to help support the transportation program. She said under Task 3 Short and Long Range Transportation Planning a new Task 3.3 Canal Area Study or Upper Cape Long Range Transportation Study has been added. She said a kickoff meeting will be held on September 28 and the steering committee that they are putting together will be asked to review the scope of work and advise the Commission as to whether we've got it right. She said they would go back and look at previous studies and then begin public input to determine any perceived problem areas, take a look at how the infrastructure works or doesn't work in the Canal area and then begin to make recommendations for funding to improve those roadways. She said for Task 3.5 Hyannis Access Study Implementation, a couple years ago the State looked whether Exit 6 ½ was advisable and also looked at the Hyannis Rotary, the Route 28 corridor and how traffic flowed from Route 6 all way down to the harbor, the hospital and ferry service in Hyannis. She said they did quite a bit of planning work in that study but it had to end therefore the Commission would like to pick that up and continue on with those planning efforts. She said one of things the Commission is already looking at this year is the Willow Street/Yarmouth Road corridor and they are making good progress in identifying alternatives to better improve access to Hyannis, the hospital and to ferry service. She said Task 3.5 would expand and continue that work within Hyannis and Yarmouth. She said Task 3.6 Bicycle and Pedestrian Network Planning is a new task. She said, again, to build on the work that the whole staff is already doing, such as Cape Cod Pathways, it could be attributed to the MassHighway contract. She said as staff continues to work on the walking paths they would also look at roadways and perhaps identify where it's appropriate to direct bicyclists, identify appropriate shoulder widths or where roads need to be wider to accommodate bicycles or even create dedicated bicycle paths. She said a final new task has been added Task 3.7 Climate Change Initiatives. She said there isn't a lot of money this year for this but they will begin to look at the impacts of congestion and automobile use on air quality and also look at where roadway infrastructure lies in relation to floodplains or potential climate changes that might impact infrastructure. She said staff is excited about the final task and they plan to bring in Commission GIS and planning staff to look at some of these transportation issues in a fully coordinated manner.

Peter Graham said in terms of numbers he is trying to understand the attached spreadsheet and asked if the \$1,550,000 is the Commission's budget for transportation initiatives.

Patty Daley referred to the first two columns on the spreadsheet and said the figure of \$606,138 is primarily Federal Highway and MassHighway money. She said Federal meaning 80% of the funding and MassHighway being 20% of the match. She said that is the core of the Commission's MassHighway transportation planning effort. She referred to the column entitled Scenic Byways and said that money is also Federal and State money dedicated to the Commission's Route 6 Corridor Study. She said for Federal Transit and EOT those monies go to the Regional Transit Authority, for example, so not all of the money comes directly to the Commission but the Commission does tend to work on projects that involve those monies.

Peter Graham asked if the \$606,138 would be coming to the Commission.

Patty Daley said, yes, that is the Commission's share for the coming year for all Federal/State transportation planning money.

Peter Graham said he was curious as far as transportation issues if there were any issues regarding people hauling boats on the Cape. He said he is interested to know if there were any further developments in regard to boat transportation whether it be a slip or launching facility. He said his comment was just an editorial comment.

Roger Putnam asked if this was new funding or was it funding that the Commission received but didn't know what to do with it.

Patty Daley said this is funding the Commission receives every year for transportation planning as do other regional planning agencies across the state. She said she wanted to bring this to the Commission's attention since she is new to the position and this is a new plan. She said she wanted to inform Commission members about the changes and the differences in how the Commission is approaching the planning process this year which is different from past years.

Roger Putnam asked if the \$606,138 is in the Commission's budget this year for traffic planning.

Patty Daley said the money would be available to the Commission starting October 1, 2009 through next September 30, 2010.

Ms. Daley said the Metropolitan Planning Organization (MPO) elections will be held this year and letters will be going out to all Boards of Selectmen asking for nominations. She said the letter would be going out around September 4, they would be asking for nominations by September 24, and then elections will be held. She said they are important elections because each region of the Cape will elect one person to represent their region on the MPO. She said it's the MPO and the Joint Transportation Committee that votes on how Federal Highway improvement money will be spent so it's a fairly important organization. She urged Commission members to let their Boards of Selectmen know the letter will be going out and she said she looks forward to the nominations.

Chair John Harris asked if the nominations would be limited to staff or the public. Patty Daley said it would be limited to Boards of Selectmen.

A motion was made to adjourn at 4:20 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Elizabeth Taylor, Secretary