

The meeting of the Cape Cod Commission was called to order on Thursday, January 8, 2009 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

■ EXECUTIVE DIRECTOR'S REPORT

Executive Director Paul Niedzwiecki said a Commission training session on the open meeting law and conflict of interest law has been scheduled on Thursday, February 19, 2009. He said there will be a lunch at 11:15 am and from 12:00-12:45 pm the open meeting law training session will be held in the conference room at the Commission office. Following that from 1:00-3:00 pm the conflict of interest law training session will be held in the Assembly of Delegates Chambers and the scheduled Commission meeting at 3:00 pm will follow. Mr. Niedzwiecki introduced Marissa Mejia and said she is a new regulatory officer at the Commission. Mr. Niedzwiecki said he attended the Assembly of Delegates meeting and there are many new members on the Assembly. He said Sheila Lyons has left the Assembly and is now serving as Chair of the County Commissioners and said she is also here today as the Commission member representative.

Mr. Niedzwiecki remembered Attorney Patrick Butler who passed away suddenly on January 1st. He said Attorney Butler represented many of the applicants who have come through the Commission and his knowledge of Commission regulations and his participation and contributions during the process of updating the Regional Policy Plan has left a huge imprint on the Commission. He said the Commission's Executive Committee has had discussions about honoring Attorney Butler in some way and said he would let Commission members know what the Executive Committee decides. Mr. Niedzwiecki asked for a moment of silence in memory of Attorney Butler.

Brad Crowell said a few weeks ago he had listened to a radio show interview with Mr. Niedzwiecki and Chief Planner Sharon Rooney. He said they had a good discussion about the Regional Policy Plan, however, he was disappointed that Commission members did not get recognition. He said the opportunity should always be taken to emphasize the importance of Commission members and their role. He said it was a good opportunity to recognize members and especially because of the 21st Century Task Force process it's important to let the public know that Commission members are their connection to that process. Mr. Crowell said his comment is not meant to be criticism just disappointment.

■ PAESANO COMPANY OFFICE BUILDING—RAPONI, 123 WATERHOUSE ROAD, BOURNE

Chair John Harris noted that this is a continued hearing from December 8, 2008.

The subcommittee reviewed the minutes of the December 22, 2008 subcommittee meeting. Leo Cakounes moved to approve the minutes. Roger Putnam seconded the motion. The motion passed with a unanimous vote.

Kristy Senatori, Chief Regulatory Officer, said the Paesano Company Office Building project is located at 123 Waterhouse Road in Bourne. She said the applicant/owner, is Mr. Franco Raponi and his attorneys are Eliza Cox and Sarah Turano-Flores of Nutter, McClennen and Fish. Ms. Senatori referred to PowerPoint slides and said the aerial view photograph gives an overview of the project site. She said a one-way only roadway is situated on the northern portion of the site and connects Waterhouse Road and MacArthur Boulevard. She said the applicant constructed this interconnect/access road as part of the development of the site. She said the project site consists of approximately 2.62 acres with a two-story 18,800 square foot office building. She said there are 71 parking spaces onsite on three sides of the building and a septic system is located on the eastern portion of the property. She said there are five tenants on the first floor, one of which is occupied by the Community Health Center of Cape Cod and there is currently no use of the second floor. Ms. Senatori said the Commission has jurisdiction over the project as it qualifies as a Development of Regional Impact (DRI) as new construction of a building with a gross floor area greater than 10,000 square feet. She said the applicant has applied for a Hardship Exemption requesting relief from Commission standards. Ms. Senatori gave a brief summary on the history of the development and said in June 2007 the applicant began construction of an approximately 9,400-square foot office building on the site and in August 2008 the applicant received permission from the Bourne Planning Board to

pour a 9,400 square foot concrete second floor in the existing building. She said at its meeting of October 2, 2008 the Commission voted to review the development under Section 12(h) of the Cape Cod Commission Act. She said to comply with minimum performance standards for the entire 18,800 square-foot building, the applicant would need to meet community character standards including parking location requirements, landscape screening requirements, and exterior lighting requirements, provide an open space contribution, provide a traffic study, provide transportation infrastructure mitigation of \$153,704, meet the trip reduction requirement, install a DEP-approved denitrification septic system, provide \$64,400 to offset nitrogen, and enter into a nitrogen monitoring agreement with the Commission. Ms. Senatori highlighted the key findings and conditions in the draft decision and said the subcommittee made a finding that the applicant has a significant hardship as it relates to the use of the first floor. She said only one unit of the first floor is rented; development, construction, land costs were over \$2.3 million dollars and the roadway interconnect between Waterhouse Road and MacArthur Boulevard cost approximately \$105,000 to construct. She said the applicant is losing approximately \$6,500 per month as he is unable to obtain revenue for the four vacant first floor units. She said the subcommittee found that the applicant has demonstrated that fully complying with the requirements of the RPP prior to obtaining use of the first floor only would create a financial hardship. Ms. Senatori said based on the condition that the applicant return to the Commission for review of the entire structure when the second floor will be accessed, the subcommittee based its decision on the use of the 9,400 square foot first floor and deferred requirements until the applicant proposes any use of the second floor. She said the subcommittee approved with conditions the Hardship Exemption application for the Paesano Realty Trust development at 123 Waterhouse Road in Bourne and recommends approval by the full Commission. Ms. Senatori explained changes made to the draft decision.

Attorney Eliza Cox, with the firm Nutter, McClennen and Fish, expressed her gratitude to Paul Niedzwiecki, Commission members and staff for their support during the passing of Patrick Butler.

Attorney Cox said the applicant has acted in good faith and no local permits can be issued while under Commission jurisdiction. She said the applicant is experiencing financial hardship and she thanked the subcommittee and staff for moving the process along quickly. She said they believe the decision is fair and they support the decision as written. She expressed her appreciation to the staff and subcommittee for their efforts.

Leo Cakounes said as a member of the subcommittee initially they talked about mitigation and then they began talking about negotiating mitigation for a future subcommittee when the applicant comes back. He said the subcommittee felt it was not advantageous at this time to do that nor did they feel it was proper for the applicant. He said he feels that the applicant has gone forward and has met all the requirements to construct the building under its current use and size. He said the subcommittee did not negotiate any mitigation at this time and left it open to the future when the applicant comes back to the Commission. He said he believes that is an important aspect of the decision and he hopes the Commission will support that because the applicant needs to be granted relief and this property needs to move forward. He said the way in which the building is being used now it would not be front of the Commission for review.

Brad Crowell inquired as to what has been determined as far as mitigation calculations.

Kristy Senatori said mitigation has been calculated for the 18,000 square foot building and is subject to the existing Regional Policy Plan. She said when future work is proposed for the second floor the applicant would come back to the Commission as a modification.

Peter Graham referred to page 5 of the draft decision and suggested an editorial change be made to say that "he".

Kristy Senatori said that correction would be noted.

Peter Graham referred to page 9 of the draft decision regarding the Commission's standard for the parking lot.

Kristy Senatori said it's not feasible to meet the standard at this point. She said when the applicant comes back to the Commission for a modification a subcommittee would review the standards again at that time.

Michael Blanton said the applicant is seeking relief and when he comes back to the Commission a future subcommittee would review the standards.

Michael Blanton moved to close the hearing and the record for the Hardship Exemption application of Paesano Realty Trust. Leo Cakounes seconded the motion. The motion passed with a unanimous vote.

Michael Blanton moved that the Cape Cod Commission approve with conditions the Hardship Exemption application of Paesano Realty Trust for the development of 123 Waterhouse Road in Bourne pursuant to Section 23 of the Cape Cod Commission Act. Roger Putnam seconded the motion. A voted called on the motion passed with 12 votes in favor and one opposed.

■ PROPOSED TECHNICAL BULLETIN 09-001, DRI GUIDELINES FOR ALTERNATIVE MITIGATION CALCULATION FOR MINIMUM PERFORMANCE STANDARD AH 3.2

Jay Zavala read the hearing notice and opened the hearing at 3:30 p.m.

Paul Ruchinskas, affordable housing specialist at the Commission, said the Planning Committee met on November 17th to review the technical bulletin and recommended forwarding it to the full Commission for approval. He said changes made by the Planning Committee appear in the document before the Commission today. He said the purpose of the technical bulletin is to provide guidance to applicants who are interested in pursuing alternative mitigation calculation under minimum performance standard (MPS) AH3.2, it gives direction to applicants on the kinds of information they need to submit and provides a methodology that will be used to adjust the mitigation amount required in MPS AH 3.1, AH 3.3, and/or AH 3.5 as applicable. He said the information that the applicant needs to submit is basically employment and wage data. He said the Technical Bulletin incorporates circumstances in which the applicant should provide data for Cape-based businesses that would be occupying the space in the project and what to submit if any of the businesses has offices both inside and outside of the region. He said the applicant should only submit data for those locations on the Cape. He said if any of the businesses has offices only outside of the region, the Commission would determine the appropriate locations for which to submit the data. He said basically the information is workforce data along with the wages that are paid and said it's a summary of the W-2 forms that all employers give to their employees. He said once the Commission receives the information the Commission will compare information for each of the years submitted with the average wage data for the region. He said for example, in 2007 the average wage on the Cape for all employees both public and private was \$37,648 a year. He said it would be an easy calculation to go down the list and figure out how many jobs and what percentage of jobs paid more than the average wage and what percentage paid less. He said the Commission would compare the information submitted by the applicant with the Nexus study. He said the Nexus study using national, regional and state data came up with projections of the number of employees that different types of development will have within them and within each of them what percentage would be making greater than the average wage and what percentage would be making less. He said the analysis would show whether the development would provide better paying jobs and from that analysis the applicant would receive a reduction in mitigation based on what the percentage is. He said the bulletin envisions using this analysis for applicants that are just one type, for example, office, retail, health and/or medical. He said it could also be used for mixed-use type development, for example, where a two-story building has an office on the top floor and retail on the bottom floor. He said the analysis would be done separately for both the office and retail development. Mr. Ruchinskas entertained questions from Commission members.

Jay Zavala said the first thing he is taking note of is the memo submitted by Renie Hamman. He said her memo addresses the same questions that he had prepared for today's meeting and asked Mr. Ruchinskas to walk through her comments and address them.

Paul Ruchinskas said Ms. Hamman's question regarding the difference in the recommendation of mitigation amounts in the Nexus Study as opposed to what is being proposed in the 2008 RPP, is technically not a Technical Bulletin question and said it's clearly more a question about the RPP that the Commission has adopted. He said at the Planning Committee in March he went through the percentages and analysis he had done based on more recent data and that became the basis of the mitigation amounts that are in the current RPP.

Jay Zavala asked if what Mr. Ruchinskas describes as recent data is in regard to the income and real estate data. He said since a specific 2005 study is being used, he asked Mr. Ruchinskas if he could be more specific on how recent that data is and how it's being affected daily by what is going on in today's economy.

Paul Ruchinskas said the data that was incorporated into the mitigation amounts were from 2005, 2006 and 2007. He said it reflects the analysis of the affordability gap. He said 2005 was the height of the real estate market on the Cape and it decreased in 2006 and 2007. He said the second part of the question is in regard to how an adjustment is made to mitigation and said currently in the RPP it's by the Consumer Price Index (CPI). He said it has been mentioned that individual areas of the RPP will be reviewed on an annual basis and this is something that could be reviewed again to determine whether the CPI is an appropriate measure to take. He said an adjustment could be made to the Technical Bulletin at that time.

Paul Niedzwiecki agreed and said he would recommend to the Planning Committee that affordable housing be the first subject area to be taken up and noted that discussions on that would begin in May. He said meetings on the annual review would not take place during the summer months and said it would start up again in September.

Jay Zavala asked for clarity and said when the guideline speaks to alternative mitigation calculation it really means reduced cash contribution alternatives.

Paul Ruchinskas said that is correct.

Jay Zavala said somewhere in the language it speaks to that but it doesn't say that in the title and said it simply speaks to an alternative and asked if something could be done to improve the visibility of what the intent is as a reduced cash contribution alternative. He also referred to the opening background remarks when Mr. Ruchinskas said the MPS was developed as a result of the Nexus Study and said in fact it's not as a result of the study but the findings are more specifically the recommendations made by John Ryan in that process. He also referred to the fourth line in the second paragraph where it says it "receives" an adjustment and said in fact it "merits a reduction." He referred to page 2 in regard to mitigation adjustment methodology and said in one element it speaks to the Bureau of Labor Statistics (BLS) and in another element it speaks to the CPI differently and asked if it is the CPI that is being used for calculations. He referred to item 2 under mitigation adjustment methodology and asked if real estate data was being used here as well.

Paul Ruchinskas said the CPI is being used for the annual adjustment that is part of MPS AH3.3. He said that is a separate MPS that says an adjustment would be made annually based on the CPI. He said the BLS is being used for wage data that is being focused on therefore the BLS is the appropriate source for that. He said in regard to item 2 real estate data is being used.

Chair John Harris asked Mr. Ruchinskas where he has agreed with Mr. Zavala's comments would he be incorporating those comments into the Technical Bulletin for a vote by the full Commission today or would it be moved forward to another date.

Paul Ruchinkas said it would be the Commission's decision to vote today or continue to another Commission meeting. He said the changes are relatively minor and if the document is adopted as amended he could make those language changes to the document.

Chair John Harris said perhaps the vote could be deferred to a later date to allow Commission members more time to review changes made to the document.

Paul Ruchinkas said that could be done as well.

Jessica Wielgus suggested changes to the language in the title that would accurately reflect Mr. Zavala's comments. She said the title could be changed to reflect credit and reduction for the MPS. She said in regard to item 2 under mitigation adjustment methodology she would suggest including 2006 and 2007 along with 2005 to show that data was used from the three years.

Jay Zavala said his other comment was in regard to the results of the Nexus Study where he expressed the fact that it's based on the findings and recommendations of John Ryan and not on the study itself.

Jessica Wielgus said language could be added to reflect that.

Jay Zavala also referred to his earlier comment regarding the fourth line of the second paragraph under Background and asked that the word "receive" be changed to "merits a reduced adjustment."

Jessica Wielgus said that change would be noted.

Jay Zavala said in regard to the Technical Bulletin it concerns him that the state of today's economy is going to be with us for a while and sharing Ms. Hamman's view in regard to other industries that may be coming in our direction including those that we are hoping will be coming in our direction, he said he would like to see the Commission take a more proactive business stance that would encourage development and not stifle it. He said he would like to see something in the Technical Bulletin that says the Commission is going to stimulate the economy in some productive way. He said his fears are that the Technical Bulletin doesn't do that.

Paul Niedzwiecki said we have to keep in mind that this is one particular part of the RPP and when the RPP is read in context and we look at Chapter H and limited review that will coming down the road, the only incentives we have is relief from regional review. He said the Commission doesn't give tax breaks or anything like that so the only thing the Commission can say is that someone won't come before the Commission for review or be subject to mitigation. He said knowing that this is what the Commission is doing and when the RPP is read in context, the Commission is creating large pieces of the Cape that the Commission feels has adequate infrastructure by saying someone doesn't have to come before the Commission for review and said those are the incentives. He said this is a land-based perspective on economic development. He said the reason the housing section is here is because it has been noted that when we allow just any business to come in it does create additional strain on affordable housing as well as other factors that are mitigated such as wastewater and traffic. He said those burdens are ultimately passed on to property taxpayers. He said what the Commission is saying is that if someone is not going to take advantage of the areas that have been designated for development and where someone doesn't have to go through regional review, then impacts to sensitive areas have to be realized. He said he believes the Commission has provided a number of incentives for people to come to the Cape and do business here in the right places. He said that is what the Commission is about and that is what the plan reflects. He said the Commission can't change what it is. He said continued sprawl would choke out the Cape and increase local property taxes. He said that is why the Commission has standards in the RPP and that is why we require people whose developments are not located in the right place to mitigate the impacts of their development and the

Technical Bulletin is an example of that. He agreed that the state of the economy is terrible but the RPP has to be read in the right context. He said the Commission is providing more incentives than has been presented previously.

Jay Zavala said his observations are based on the fact that he doesn't expect to see jobs being offered at higher than the regional wages in the near and immediate future. He said he believes that if builders are willing to take on the risk of building and providing work here and if they make the standards rather than exceed them by higher wages then they are offering stability to our economy and that is very much needed. He said the Technical Bulletin speaks to incentivizing those that exceed those local wages.

Paul Niedzwiecki said regardless what wages are paid if they locate in the right place they should be able to avoid review all together and that is the biggest incentive that the Commission has. He said other than that the wages are relative in nature and would be adjusted relative to other parts of the state as it rises and falls.

Brad Crowell said he shares Mr. Zavala's concern about the sufficiency of incentives for business development embodied in what the Commission does but with that said, he is not sure that this Technical Bulletin is the "horse for that rider." He said the Technical Bulletin, as he sees it, is the way to address fairness in the way the Commission calculates mitigation for affordable housing and said it does so very effectively and very efficiently. He said he believes trying to address an economic development issue through this is probably the wrong approach. He said he believes there are valid approaches that have been agreed to and by reviewing the RPP on a more regular basis, in his opinion, economic development is one of those issues that should be looked at soon. He said he thinks the problem that is trying to be addressed here is more of a policy problem that should be developed in the RPP rather than an addendum to it and the Technical Bulletin is really just a way of doing an alternate calculation.

Elizabeth Taylor said she believes the Technical Bulletin does exactly what it's supposed to do and the incentives in the new RPP are very clear. She said there are very few things that can actually be done to incentivize building or redeveloping areas on the Cape. She said there are even more empty spaces now to be redeveloped and the Commission has to come up with some way to use what we already have. She said we don't need new buildings we need to use existing buildings and we need development to be in the areas where it should be instead of scattered all over the place as it has been. She said we have to come up with incentives and the RPP does exactly that and said she doesn't think the housing issue is part of that. She said it's something that is very much needed because the Commission has always asked that affordable housing be strictly connected to building housing and she believes it does exactly what we want. She said the Commission would be working on the RPP every year and if changes need to be made that would be the time do it and she doesn't believe the Technical Bulletin should do that.

Peter Graham said we have changes that are being made to the Technical Bulletin on the table. He said changes that have been presented are understood and have been agreed upon therefore he doesn't see any reason why the Technical Bulletin should come back to the full Commission. Mr. Graham moved to approve the Technical Bulletin pursuant to the changes that have been made. Roy Richardson seconded the motion.

Leo Cakounes said he cannot support the motion. He said it's a Technical Bulletin and it's written with some confusing language. He said there have been amendments made today and he can't understand why it can't be redrafted in written form and come back to the full Commission. He said that would allow him more time to review it thoroughly. He said it's not that he doesn't support the Technical Bulletin he just doesn't support the motion to approve it with the amendments made today.

Joy Brookshire agreed with Mr. Cakounes and said she would like to see the Technical Bulletin postponed to another Commission meeting and said she found it confusing as well. She said Ms. Hamman submitted good

questions and she would like to see her questions addressed. She said she thinks the Technical Bulletin is good but she doesn't support the motion to approve it today.

Michael Blanton said he is of the same mind and would like to move that the motion be tabled until the next Commission meeting.

Chair John Harris asked Mr. Ruchinskas if he had gone over the Technical Bulletin with individuals from industries that would be impacted by it.

Paul Ruchinskas said the Technical Bulletin is fundamentally a methodology; it's theoretical. He asked Mr. Harris what kind of information would be needed by the full Commission in order to make a determination of the adjustment. He said both Karen Greene and Andrew Singer asked for copies of the Technical Bulletin. He said copies were sent to both but he did not receive comments from them and said the only comments received were from Renie Hamman.

Chair John Harris said he asked the question because a public hearing wasn't held on the Technical Bulletin and he thought people from specific industries who would be impacted by the Technical Bulletin could provide some input.

Paul Ruchinskas said he has tried to make it simple and not a burdensome process.

Roy Richardson said having heard requests to postpone voting on the Technical Bulletin to the next Commission meeting, he said he would like to withdraw his second to Mr. Graham's motion.

Peter Graham withdrew his motion to approve the Technical Bulletin today.

Joy Brookshire thanked Mr. Graham and Mr. Richardson for withdrawing the motion.

Roger Putnam moved to continue today's public hearing to the January 22, 2009 Commission meeting. Michael Blanton seconded the motion. The motion passed with a unanimous vote.

■ OTHER BUSINESS

Sheila Lyons said she is happy to be a member of the Commission and said she did seek the position. She said she is looking forward to working with Commission members and learning from them.

A motion was made to adjourn at 4:10 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Florence Seldin, Secretary