

The meeting of the Cape Cod Commission was called to order on Thursday, May 28, 2009 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

Chair John Harris announced a change in the order of agenda items and said Other Business would be taken up first.

## ■ OTHER BUSINESS

### **F.W. Webb Emergency Work Determination Request**

Kristy Senatori, chief regulatory officer at the Commission, noted that F.W. Webb had received a Commission approval at its April 30, 2009 meeting. She said the project was now within the appeal period of the Commission's Development of Regional Impact (DRI) decision, which would end on June 18, 2009. Ms. Senatori said there is a condition in the decision, which states that no development or work can take place on the property until the appeal period has ended. She said the applicant and Town of Barnstable have contacted the Commission because the building's roof is leaking and the leak is causing damage to the building's interior. Ms. Senatori said the roof needed to be repaired immediately. She said Barnstable's Building Commissioner inspected the building last week and determined that it is an emergency repair, which is necessary for safety. Ms. Senatori said the Commission's Executive Committee approved F.W. Webb's request to repair the roof at the Committee's regular meeting earlier this week. She said Commission staff is requesting that the full Commission approve the emergency work determination for F.W. Webb.

Chair John Harris asked for any comments or questions.

Roy Richardson moved that the Commission approve the Barnstable Building Commissioner's findings and allow the work to proceed as an emergency repair. Sheila Lyons seconded the motion. The motion passed with a unanimous vote.

## ■ EXECUTIVE DIRECTOR'S REPORT

Paul Niedzwiecki said he had been in Boston this morning for the last Ocean Management Advisory Commission meeting, which is related to the recently passed Ocean Management Act. He said the Act represented the first attempt at ocean zoning in Massachusetts, if not on the entire East Coast. He said a draft of the report should be available by the end of June 2009 and there would then be a six-month comment period on the report. He said the Act relates to a number of ocean based resources including wind, and noted that the ocean off the Massachusetts coast had some of the best possibility for wind power generation in the United States. He noted the Patrick Administration had also filed a wind-siting bill in the state legislature, which would provide "super permits" for land-based wind turbines. He said the Administration had accepted comments from the Commission on the Energy Facilities Siting Board (EFSB) process. He said discussions with the Administration on this issue indicated that if the Commission adopted a map of possible turbine locations, this would have an impact in EFSB proceedings. Mr. Niedzwiecki said he had also been asked by the Governor to sit on the statewide Climate Adaptation Committee, the first meeting of which was next Thursday. He said the Commission had received the EFSB's final Cape Wind decision. He encouraged Commission members with opinions as to whether the Commission should appeal this decision to contact him directly.

Mr. Niedzwiecki, using PowerPoint slides, gave a short presentation on the section of the Enabling Regulations as it relates to credits attributable to prior development on a piece of property. He noted three parcels in Yarmouth had been highlighted, noting that these might be in jeopardy based on the Enabling Regulations. He noted staff had analyzed the Christmas Tree Shops parcel, the Optimist Café parcel and the former IFAW office building parcel, all located on Route 6A. Mr. Niedzwiecki noted the language in the Enabling Regulations as it relates to "credits" attributable to existing or prior development on a site, which would be limited to three consecutive years outside of an area mapped as an Economic Center. He said of the properties in Yarmouth, two, the Christmas Tree Shops and Optimist Café were in a residentially-zoned district. As such, these were two pre-existing, non-

conforming uses under Yarmouth's Zoning Bylaw. Mr. Niedzwiecki noted that Yarmouth's Zoning Bylaw contains an abandonment clause, which provides that a non-conforming use, which has been abandoned or discontinued for a period of two years, shall not be reestablished. He said that the Christmas Tree Shops might be approaching the two-year abandonment threshold. He also noted that if Yarmouth wanted both the Christmas Tree Shops and the Optimist Café to be commercial properties, it would rezone them appropriately. He noted the Town wants the parcels to revert back to residential use. Mr. Niedzwiecki noted the Commission's regulations are more general than Yarmouth's zoning. He said the third parcel, the former IFAW Office, was in a business district. He said it was consistent with the business zoning and noted the lot and dimensional requirements. He said local zoning allows 25% lot coverage, and the parcel was at about 13% now, which indicates that about another 7,000 square feet could be added to the lot, however, the dimensional requirements indicate that there was really no room to expand on the former IFAW lot. He said the limitations were local ones, including lot coverage, which would affect the parking, and height limits from the Old King's Highway Commission. Mr. Niedzwiecki said the conclusions are that the Christmas Tree Shops parcel and Optimist Café are businesses in a residential zone, and as such, are nonconforming uses. If abandoned for two years, they must revert to the residential use or seek a Special Permit for a Variance from zoning. He said the former IFAW Office is consistent with zoning, but the site is built out. He said that the length of time for credits in the Commission's Enabling Regulations would have no impact on these three parcels.

#### ■ MINUTES

The minutes of the April 16, 2009 Commission meeting were reviewed. Roger Putnam moved to approve the minutes. Alan Trebat seconded the motion. The motion passed with five abstentions.

The minutes of the April 30, 2009 Commission meeting were reviewed. Michael Blanton moved to approve the minutes. Roslyn Garfield seconded the motion. The motion passed with two abstentions.

#### ■ PUBLIC COMMENT

Chair John Harris, in recognition that Renie Hamman had been Yarmouth's Commission member, recognized her to address public comments.

Renie Hamman apologized for arriving late to the meeting. She noted Mr. Niedzwiecki's presentation during the Executive Director's Report had dealt with comments she had provided to the Commission concerning properties in Yarmouth that might be impacted by the changes to the Enabling Regulations. She acknowledged that the Christmas Tree Shops and Optimist Café parcels are in residential zones. She said she had made inquiries as to whether these properties had variances, but had not as yet received an answer. Ms. Hamman said Yarmouth does have the ability to give use variances, thereby maintaining one or both of these properties as commercial regardless of the underlying residential zoning. She agreed that the former IFAW Office property was zoned commercial/business. As such, it was a "by right" use. She said the IFAW building was over 8,000 gross square feet in size, and may be larger than 10,000 square feet. Ms. Hamman said the Christmas Tree Shops building was also larger than 10,000 square feet in size. She noted many towns have an abandonment clause in their zoning, to eliminate pre-existing non-conforming use. Using the IFAW Office as an example, she said that if this building was larger than 10,000 square feet in size, and did fall under the Commission's jurisdiction, it was vacant for less than a year. Ms. Hamman said if the IFAW building did not receive "credits" for prior use under the Enabling Regulations, this might render it financially infeasible to redevelop and said this is a concern. She said her intent was to highlight a possible issue for other areas of the Cape so as not to discourage redevelopment of parcels.

Chair John Harris thanked Ms. Hamman for her concerns. He noted that Mr. Niedzwiecki's presentation highlighted that the Commission's regulations really did not have an impact on redevelopment of these properties.

Paul Niedzwiecki said the intent of his PowerPoint presentation was in part because the Commission's vote on the Enabling Regulations was not unanimous. He sought to address the potential for unintended consequences. He said his presentation could be shared and said it was an attempt to get the facts out in the open.

Renie Hamman asked if Mr. Niedzwiecki believed that there would be negative impacts on the Christmas Tree Shops property from the Commission's regulations because of Yarmouth's zoning and the abandonment clause.

Paul Niedzwiecki said if a town has a residential property that the town wants to be a commercial property, the town should rezone it as commercial property.

Renie Hamman asked what would happen if a town did this.

Paul Niedzwiecki said with respect to the Christmas Tree Shops property, the site was pretty close to build out, with a difficult parking situation, which may be one of the reasons why no new business has gone into the vacant property. He said there are practical reasons why there are vacant parcels on Route 6A, because of limits inherent in the parcels. He noted the intent of the provision for credits in the Enabling Regulations was to deal with redevelopment of "gray fields," and strip malls—to redirect businesses into Economic Centers.

Renie Hamman said she would provide additional information she has requested on the properties to the Commission once she receives the information.

#### ■ VOTE ON SLATE OF NEW OFFICERS

Ernest Virgilio, as Chairman of the Nominating Committee, asked for a motion for approval of the slate of officers for Fiscal Year 2010. He noted the slate of officers to be John Harris as Commission Chair, Roy Richardson as Vice Chair, and Alan Trebat as Secretary.

Frank Hogan moved to approve the slate of officers for Fiscal Year 2010 as presented by Mr. Virgilio. Peter Graham seconded the motion. The motion passed with a unanimous vote.

Mr. Virgilio moved that the slate of officers just approved for Fiscal Year 2010 begin their terms immediately. Frank Hogan seconded the motion. The motion passed with a unanimous vote.

#### ■ DALBY ANR PROCEDURAL ONLY

Chair John Harris noted that this is a continued hearing from April 30, 2009.

Marianna Sarkisyan, regulatory officer at the Commission, said the Dalby ANR project had been scheduled for a final hearing at today's Commission meeting. She said the applicant has requested a continuance so as to revise the proposed development plans. She said Commission staff is working with the applicant on the project revisions and supports the applicant's request for a continuance. Ms. Sarkisyan asked for a motion to continue the hearing and the record to the June 11, 2009 Commission meeting.

Roy Richardson moved that the Commission continue the public hearing and record on the Dalby ANR project to the June 11, 2009 Commission meeting. Elizabeth Taylor seconded the motion. The motion passed with a unanimous vote.

#### ■ YARMOUTH ROAD/WILLOW STREET CORRIDOR STUDY

Glenn Cannon, transportation engineer at the Commission, using a PowerPoint slide presentation, described the proposed Corridor Study. He said a well-attended public hearing had been held on the Study last night at Yarmouth Town Hall. Mr. Cannon said information was presented on the Study to town officials, businesses, and residents along the corridor. He said the Study was at the beginning stage, and was a project of the Metropolitan

Planning Organization (MPO), of which the Commission is a member. Mr. Cannon said the MPO has a work program, which begins and ends each September 30<sup>th</sup>. He said the work program was amended earlier this year to include the Study. He noted the Hyannis Access Study had been completed and Barnstable was working on changes to the Airport Rotary. He said there were connections between the Hyannis Access Study and Yarmouth Road/Willow Street Corridor Study. He said the intent was to have a comprehensive look at the roadway network in this area and went on to describe the Study area. Mr. Cannon said a connection to the Hyannis Intermodal Transportation Center was also important. He said the Study is at the outreach and comment stage and said he would encourage people to comment on the Study parameters. Mr. Cannon described the various stakeholders that had been included in the process so far. He said the purpose and need for the project included potential economic opportunities by addressing roadway congestion. He noted Yarmouth Road/Willow Street was a main access to the Hyannis Growth Incentive Zone and a gateway to downtown Hyannis. Mr. Cannon said the Study scope would include rail, bus, vehicle and bicycle transportation modes. He said emergency vehicle access to Cape Cod Hospital was a concern and noted the active rail line crosses Route 28, including opportunities for increased rail freight and passenger rail service. Mr. Cannon said a main concern was low levels of service and traffic congestion in the roadway network and noted some alternatives to address traffic congestion had been developed as part of the Hyannis Access Study. Mr. Cannon noted providing bicycle access was also important. He said the next step was to come back in mid-July or August 2009 with preliminary alternatives. Mr. Cannon said it's their hope that a draft preferred alternative would be ready in late August and said a draft report was due in September 2009. He said a questionnaire was available on the Commission's website.

Roy Richardson said there should be increased outreach to residents, particularly those with long-term knowledge on transportation issues. He suggested staff contact Mr. Carole Toby in this regard, who chaired the Hyannis Access Study, or other members of that Study Committee.

Glenn Cannon noted a resident had attended the hearing last night and said Commission staff would remain in contact with her. He agreed that outreach to residents was key.

Patty Daley, director of technical services at the Commission, said Mr. and Mrs. Crowe were at the hearing last night. She said that the Hyannis Civic Association would not be meeting during the summer, but Mrs. Crowe said if copies of work products were sent to her, she would send them out by e-mail to the Association.

Peter Graham said it looked as if the two tentative alternatives would address some of the problems in the roadway network. He asked if background work had been done on these alternatives.

Glenn Cannon said the two alternatives had come out of the Hyannis Access Study. He said they were the recommended alternatives at the locations involved. Mr. Cannon said one of the goals of the Yarmouth Road/Willow Street Study is to build on and refine the findings of the Hyannis Access Study with respect to these two alternatives. He said the analysis needed to go beyond just the intersection.

Chair John Harris recommended that staff put the PowerPoint slide presentation on the Commission's "Go Cape Cod" website.

Glenn Cannon noted that the hearing held last night was televised on public access television and said the PowerPoint presentation would be put on the Commission's website.

#### ■ 2008 SURVEY OF CAPE COD SECOND HOMEOWNERS

Leslie Richardson, economic development officer at the Commission, gave a PowerPoint slide presentation on the findings of the 2008 Survey of Cape Cod Second Homeowners. Ms. Richardson described the research questions and survey methodology. The six questions dealt with how second homes are currently used, the potential rate of conversion to full-time residences, changes in use patterns, and how these changes would impact patterns for

demand for public and human services. She said the desired method was for a 95% confidence interval for the four Cape Cod sub regions (Upper, Mid, Lower and Outer Cape). The actual response rate was 30%, with 4,944 surveys returned, producing a 1.3% margin of error. Ms. Richardson summarized the findings of the four Survey components, which include the Respondent Profile, Current Use of Second Homes, Future Use of Second Homes, and the Impact of Home Conversions.

In conclusion, Ms. Richardson noted that as with all surveys, this one had the potential to raise as many questions as it answered. She said that it provided some information on a segment of Cape residents.

Roger Putnam suggested that before any conclusions could be drawn from the Survey, it was advisable to administer the same survey to Cape residents whose primary home was here.

Leslie Richardson said the Survey was targeted at second homeowners, to look at how they currently use their property and how they intend to use it in the future. She noted the Commission has conducted surveys of Cape residents and plans to do another such survey.

Paul Niedzwiecki stressed the Survey and its findings related only to second homeowners. At the same time, he noted it had a very high degree of reliability. He said it provided very good data on a large segment of the Cape's population for which there was very little data. He said the Commission does a residents survey every five years and plans to conduct another one. Mr. Niedzwiecki said the question was how did the demographic information for the second home population fit in with information about year-round residents.

Michael Blanton said the presentation of the Survey provided to the EDIC and the Chamber was well done, and would prompt more questions. He said more analysis was needed and the Survey raised concerns about things like the loss of rental homes. Mr. Blanton said this also posed a potential concern with respect to workforce housing. He urged that the Survey's findings be circulated to the towns so they could make more informed decisions about tax programs designed to glean more income from second homeowners.

Leslie Richardson noted that only 5% of this population of homes was being used as rentals in the winter. She noted the percentage with people living in these homes year-round was larger than the percentage used for rentals. Ms. Richardson said this tended to indicate that family members were using these homes in the winter and that this may be how a segment of the population on the Cape is able to afford to live here.

Paul Niedzwiecki said Commission staff is working on a way to create partnerships with other organizations to gather funding so another survey could be conducted. He suggested the Survey did provide information that the focus on mixed use was key and that there should be incentives for redevelopment of properties in the accommodations industry.

A motion was made to adjourn at 4:15 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

---

John D. Harris, Chair