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CAPE COD
COMMISSION

Minutes

Meeting of
Cape Cod Commission

September 15, 2011

The meeting was convened at 3:00 p.m., and the Roll Call was recorded as follows:

Town	Member	Present
Barnstable	Royden Richardson	√
Bourne	Michael Blanton	√
Brewster	Elizabeth Taylor	√
Chatham	Lynne Pleffner	√
Dennis	Richard Roy	√
Eastham	Joy Brookshire	√
Falmouth	Mario DiGregorio	√
Harwich	Robert Bradley	√
Mashpee	Ernest Virgilio	Absent
Orleans	Leonard Short	√
Provincetown	Austin Knight	√
Sandwich	Joanne O'Keefe	√
Truro	Peter Graham	√
Wellfleet	Roger Putnam	√
Yarmouth	John McCormack, Jr.	√
County Commissioner	Mary Pat Flynn	√
Minority Representative	John Harris	√
Native American Rep.	Mark Harding	Absent
Governor's Appointee	Herb Olsen	√

COUNTY OF BARNSTABLE MASSACHUSETTS

The meeting of the Cape Cod Commission was called to order on Thursday, September 15, 2011 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

Paul Niedzwiecki said last week he was invited to speak at the Cape Cod Chamber of Commerce and Selectmen's Association meeting to discuss groundwater issues and two weeks ago he attended a regionalization conference at Holy Cross College in Worcester. He said just recently at Yarmouth's Town Meeting the town voted against the proposal for the Yarmouth Wastewater Treatment Plant. Mr. Niedzwiecki announced that Maggie Geist, Executive Director of the Association to Protect Cape Cod, is retiring and he thanked Ms. Geist for her mentorship over the years and wished her good luck in future endeavors.

■ MINUTES

The minutes of the July 21, 2011 Commission meeting were reviewed. Richard Roy moved to approve the minutes. Austin Knight seconded the motion. The motion passed with one abstention.

The minutes of the August 4, 2011 Commission meeting were reviewed. Michael Blanton moved to approve the minutes. Elizabeth Taylor seconded the motion. The motion passed with one abstention.

■ ORLEANS COMPREHENSIVE WASTEWATER MANAGEMENT PLAN–PROCEDURAL ONLY

Chair Peter Graham noted that this is a continued hearing from July 21, 2011.

Andrea Adams, senior regulatory planner at the Commission, said since the procedural hearing on July 21, 2011, the Town of Orleans Comprehensive Wastewater Management Plan has been granted an extension agreement to extend the decision period to December 20, 2011. She said for that reason, today's hearing is for procedural purposes only. Ms. Adams asked for a motion by the full Commission to close today's hearing and said future hearings on this project would be noticed.

Len Short moved to close the hearing. Lynne Pleffner seconded the motion. The motion passed with one abstention by Len Short.

■ BJ's WHOLESALE CLUB ADDITION

Elizabeth Taylor read the hearing notice and opened the hearing at 3:10 p.m.

The subcommittee reviewed the minutes of the September 6, 2011 subcommittee meeting. Joy Brookshire moved to approve the minutes. Roy Richardson seconded the motion. The motion passed with a unanimous vote.

Andrea Adams, senior regulatory planner at the Commission, using PowerPoint slides said the proposed project is located at 420 Attucks Lane in Hyannis on 11.66 acres and is occupied by an existing 68,831 square foot BJ's Wholesale Club store that was approved as a Development of Regional Impact (DRI) in 2003. She said an existing sand/gravel operation abuts to the rear. She said there is an undeveloped lot to the northwest of the project site, with the proposed Cape Cod Healthcare Wilkens Ambulatory Care Center to the northeast. She said the applicant, Tarkinow Group Limited, proposes to construct a new 19,438 square foot addition to the existing BJ's store. She said the new addition would be built on existing paved and unvegetated areas of the site, extending out the rear of the current building and towards the sand/gravel operation. She said it would increase building coverage and simultaneously reduce pavement coverage and adjust parking areas to accommodate the proposed addition. Ms. Adams explained Commission jurisdiction and said the applicant applied for a Limited DRI Review. She said a Limited DRI Review Scoping decision rendered by the Commission on February 8, 2011 limited DRI review to Regional Policy Plan (RPP) issue areas of economic development, affordable housing, energy and transportation. She provided a procedural history for the project and explained the subcommittee's analysis for each of the issue areas for affordable housing, economic development, energy and transportation and explained the findings and conditions in the draft written decision. She summarized the standards for DRI review and approval and said the project is consistent with municipal development bylaws, is consistent with Local Comprehensive Plan land use goals for commercial strategic planning, is not located in the town-wide residential District of Critical Planning Concern (DCPC) or in any other DCPC area. She said the subcommittee found that the project has met or will meet Best Development Practices (BDP) in the issue area for transportation and said other benefits include an increase in the local tax base, it would provide a crosswalk, a vehicle queue detection device, adequate parking and pavement markings. Ms. Adams noted revisions made to the draft decision for GC6 on page 22 and TC7 on page

25. She said the subcommittee voted unanimously on September 6, 2011 to recommend to the full Commission approval of the proposed 19,438 square foot BJs addition as a Limited DRI with conditions.

Attorney John Kenney, representing the Tarkinow Group, complimented staff on a thorough presentation. He showed a site plan of the proposed project with an illustration showing the project after construction. He described the temporary access gate on Gonsalves Road and the crosswalk across Attucks Lane and said it would tie in future projects across the way. Attorney Kenney said it's been a pleasure working with Ms. Adams and said Commission staff have been very cooperative.

Jo Anne Miller Buntich, Director of Growth Management for the Town of Barnstable, said the town has no issues with the proposed development and said she would be happy to answer questions.

Attorney Michael Ford, representing his client Atlantis Development/Stop & Shop, said the south side of Attucks Lane was previously approved as a DRI for the construction of a proposed Stop & Shop. He said at the time that DRI was permitted they worked hard on an access and said that access is not across from BJs as they have noted. He said he would advise the Commission to have BJs access realigned to connect with Atlantis Development's approved access. He said this case is still pending in Superior Court and said he is not the litigation counsel on this matter. He said Atlantis Development came back to the Commission and was granted a modification to allow Atlantis the option of relocating the entrance drive on Attucks Lane Extension. He said the relocation would result in aligning the supermarket's entrance with the entrance drive for the existing BJs Wholesale store. He said he is concerned about the projected BJs traffic and left hand turns out of the site drive. He said BJs is generating more vehicle trips than ITE. He said Stop & Shop believes there is a failure in this draft decision regarding the access drive and said improvements are not being made here. He said Level of Service (LOS) on Attucks Lane must be maintained and the BJs project appears to rely on the traffic signal to be constructed by Atlantis Development/Stop & Shop. He said if Stop & Shop does get built and a light is built then this will happen but if it doesn't go forward then the lack of mitigation for this would result in degradation and a lower level of service here. He said this was brought to the attention of the Commission's transportation staff and said that is not how it's being interpreted.

Austin Knight asked Attorney Ford for clarification and said currently there is no need for mitigation now but if Stop & Shop were to partner with BJs then a light would go in. He asked Attorney Ford if the basis of the objection is cost.

Attorney Michael Ford said he didn't say no mitigation is necessary. He said there seems to be no mitigation in the draft decision to address degradation and a lower level of service during peak hours on Saturdays and Sundays and said he doesn't agree with that. He said that issue should be addressed.

Glenn Cannon, director of technical services at the Commission, referred to Minimum Performance Standard TR3.1 Operational Requirements and said he believes it applies to a new access driveway. He said BJs doesn't require traffic control measures other than what is already there; a stop sign. He said he believes the subcommittee made the correct recommendations and have interpreted the RPP correctly.

Joanne O'Keefe referred to TC7 on page 25 of the draft decision and said it's important to look at the infrastructure and traffic. She complimented Commission staff and subcommittee members on their efforts. She asked Ms. Buntich if increasing the building size and decreasing parking spaces were consistent with the town's ordinance.

Jo Anne Miller Buntich said, yes, it meets the town's ordinance requirements.

Elizabeth Taylor asked if it were a new access driveway it could be Level C but because it's an existing driveway it's Level D.

Glenn Cannon said with an existing driveway it does not present a safety hazard and said it's appropriate.

Attorney Michael Ford said he was referring to Technical Bulletin 96-003 and said to his knowledge it does not indicate anything in the future for left hand turns during peak hours and said Mr. Cannon is basing this on the word "new."

Leonard Short referred to Plan C2.1 where it shows two driveways essentially across the street with Stop & Shop slightly offset. He asked if this was currently in court to get a new location so that it lines up with BJs.

Attorney Michael Ford said, no. He said when Stop & Shop was previously approved Stop & Shop had an agreement with the Tarkinow Group. He said at that time if BJs were to be built the roads were supposed to line up. He said the pending litigation is for BJs to relocate their access. He said the Commission granted a modification for Stop & Shop access to line up with BJs.

Leonard Short asked for an explanation of events in chronological order.

Attorney Michael Ford said BJs was approved first, Stop & Shop was approved second. He said now BJ's has come back with an addition and Stop & Shop was granted a modification by the Commission in 2010.

Glenn Cannon referred to Technical Bulletin 96-003 that Attorney Ford mentioned and said the RPP lays out review for a DRI. He said the Technical Bulletin outlines fair share payments for a DRI. He said the BJs project has complied with fair share payments in Technical Bulletin 96-003.

Attorney John Kenney talked about Attucks Lane, Gonsalves Road, and Stub Road A & B requirements. He said the driveways are required to line up. He said if one moves they all have to move; they all need to line up. He said he is not aware of an agreement with Stop & Shop and whatever the outcome in court, the driveways have to line up. Attorney Kenney asked that the full Commission endorse the recommendation of the subcommittee and vote in favor of the project.

Lynne Pleffner moved to close the hearing and the record. Joy Brookshire seconded the motion. The motion passed with a unanimous vote.

Roy Richardson moved to approve the draft written decision, as amended, for BJs Wholesale Club Addition. Joy Brookshire seconded the motion. The motion passed with a unanimous vote.

Leonard Short moved to approve the proposed 19,438 square foot BJs Wholesale Club Addition as a Limited DRI with conditions. Joy Brookshire seconded the motion. The motion passed with a unanimous vote.

Commission members Roy Richardson and Lynne Pleffner left the meeting.

■ TOWN OF BOURNE EMERGENCY WORK DETERMINATION IN RESPONSE TO HURRICANE IRENE—Bourne Integrated Solid Waste Management Facility

Andrea Adams, senior regulatory planner at the Commission, said on August 29, 2011 the Cape Cod Commission's Executive Committee approved an Emergency Work Determination for the Bourne Integrated Solid Waste Management Facility (ISWMF) to receive up to 1,300 tons per day of storm debris related to Hurricane Irene. She said the approved increase in daily tonnage, from 825 to 1,300 tons per day, has been limited to a 30-day period to expire on September 28, 2011. Ms. Adams said Commission members are being apprised of this because the Bourne ISWMF was the subject of a February 17, 2000 Development of Regional Impact decision as amended. She said the Executive Committee's approval allows the facility to accept a limited type and amount of additional tonnage for a limited amount of time. Ms. Adams said Commission staff asks that the full Commission vote to support the Executive Committee's determination.

Austin Knight moved to approve as Emergency Work the request by the Bourne ISWMF to receive up to 1,300 tons per day of storm debris resulting from Hurricane Irene for a 30-day period to expire on September 28, 2011. Jack McCormack seconded the motion.

Michael Blanton, Bourne representative to the Commission, said he supports approval of the Bourne ISWMF request.

A vote called on the motion to approve as Emergency Work the request by the Bourne ISWMF passed with a unanimous vote.

■ COMMISSION MEMBER COMMENTS

Joy Brookshire said after having read the minutes from the Commission's Executive Committee meeting, perhaps it would be good to have the Chairman of the Executive Committee come to a Commission meeting and give the full Commission a report on Executive Committee meetings. She said she would also be interested in an update on DRI projects that have come before the Commission.

Paul Niedzwiecki said that is a good suggestion and perhaps it could be done at Commission meetings through the Executive Director's report.

Mr. Niedzwiecki said on Saturday the League of Women Voters would be hosting a Forum on County Government. He said an expert on county government who teaches at Hogan College would be speaking at the Forum. Mr. Niedzwiecki said he, Senator Wolf and Senator O'Leary would be sitting on the panel as well.

Michael Blanton said Bourne's annual Scallop Festival would be held this year on August 24 and 25 in Buzzards Bay. He invited all to attend.

Joanne O'Keefe said Clay Schofield and Glenn Cannon continue to be involved in the discussions regarding bike paths and bike ways in Sandwich.

A motion was made to adjourn at 4:30 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

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Elizabeth Taylor, Secretary

LIST OF DOCUMENTS PRESENTED AT THE SEPTEMBER 15, 2011 COMMISSION MEETING

- Handout material: September 15, 2011 meeting agenda.
- Handout material: BJs Wholesale Club Addition Draft Decision.
- PowerPoint slide presentation on the BJs Wholesale Club Addition project prepared by the Cape Cod Commission.