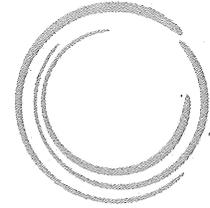


3225 MAIN STREET • P.O. BOX 226
BARNSTABLE, MASSACHUSETTS 02630



CAPE COD
COMMISSION

(508) 362-3828 • Fax (508) 362-3136 • www.capecodcommission.org

Minutes

Meeting of Cape Cod Commission

November 29, 2012

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 | Vacant | Vacant |
| Dennis | Richard Roy | ✓ |
| Eastham | Joy Brookshire | Absent |
| Falmouth | Vacant | Vacant |
| Harwich | Vacant | Vacant |
| Mashpee | Ernest Virgilio | ✓ |
| Orleans | Leonard Short | ✓ |
| Provincetown | Austin Knight | Absent |
| Sandwich | Joanne O'Keefe | ✓ |
| Truro | Peter Graham | ✓ |
| Wellfleet | Roger Putnam | Absent |
| Yarmouth | John McCormack, Jr. | ✓ |
| County Commissioner | Mary Pat Flynn | Absent |
| Minority Representative | John Harris | ✓ |
| Native American Rep. | Vacant | Vacant |
| Governor's Appointee | Herb Olsen | Absent |

The meeting of the Cape Cod Commission was called to order on Thursday, November 29, 2012 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

Deputy Director Patty Daley standing in for Executive Director Paul Niedzwiecki, introduced Jonathon Idman, the new Chief Regulatory Officer in the Commission's regulatory department. She also noted, Shawn Goulet, as a new hire in the Commission's GIS department. She said since the last Commission meeting in October, staff continues with training on E-permitting and presently they are working with four pilot towns across the Cape and it's expected to be rolled out sometime in April. She said an alternatives conference on wastewater was held with the Environmental Protection Agency and the Water Alliance and people who attended were excited about the alternatives. She said in October Commission staff attended a one-day workshop at the Harvard School of Design and said they chose Cape Cod as a demonstration project for wastewater alternatives on the Cape. She said in November there was a ground-breaking at Hydroid Inc., a previous project approved by the Commission. She said she is happy to see the facility going forward and said it will provide many jobs on the Cape. She talked about Cape Cod Mall projects and said the Commission has been working with the Town of Barnstable on redevelopment in that area. She provided an update on recent staff meetings at the Commission and said in December George Prince will be attending a staff meeting to discuss the National Seashore. Ms. Daley said on November 28 the Cape Cod Solid Waste Contract Advisory Committee met to discuss contract negotiations and said by mid-January they expect to know what options there are for towns.

Chair John Harris referred to the ground-breaking at Hydroid, Inc. and said he was very impressed. He said Mr. von Alt of Hydroid announced that 80-100 jobs would be available for engineers.

■ MINUTES

The minutes of the October 11, 2012 Commission meeting were reviewed. Len Short moved to approve the minutes of October 11, 2012. Ernest Virgilio seconded the motion.

Jack McCormack referred to the first paragraph on page 4 and said the language should be revised to say "the benefits far outweigh the detriments."

A vote called on the motion to approve the minutes with the noted revision to page 4 passed with three abstentions.

■ BARNSTABLE MUNICIPAL AIRPORT NOTICE OF INTENT TO FILE A DEVELOPMENT AGREEMENT

Richard Roy read the hearing notice and opened the hearing at 3:15 p.m.

Elizabeth Enos, regulatory officer at the Commission, referred to PowerPoint slides and said a Development Agreement is a tool for the Commission, municipalities, state agencies, and developers to define the scope and substance of proposed developments; it assures a developer that applicable review regulations will not change over the construction period; it encourages a developer to plan comprehensive projects and provide benefits earlier in a project; and development shall not be required to be subject to further Development of Regional Impact (DRI) review. She said for the Barnstable Municipal Airport Master Plan, the Barnstable Municipal Airport Commission is the qualified applicant and pursuant to the development agreement regulations, the applicant has chosen to participate with the Commission and the Town of Barnstable in its Development Agreement. She said in written correspondence from Jo Anne Miller Buntich, Director of Growth Management for the Town of Barnstable, she states that the project appears to be consistent with the Commission-certified 1997 Barnstable Comprehensive Plan. Further, the Town of Barnstable has adopted a bylaw to allow Development Agreements with the Commission as required by these regulations. Ms. Enos said the applicant submitted a notice of intent to file a development agreement application to the Commission on October 5, 2012. She said if it is deemed suitable by the Commission, the applicant will have one year from the date of the full Commission's determination to file a development agreement application with the Commission. She said the proposed project consists of construction of general aviation and corporate hangars, or modification of existing facilities, resulting in up to 175,000 s.f. of additional hangar space at the East Ramp, construction of up to 35,000 s.f. of additional hangar space at the North Ramp, expansion of the East Ramp apron to facilitate general aviation aircraft parking, expansion of the North Ramp apron, and the leasing of the former Mildred's Restaurant site. She said the purpose of these projects is to increase the safety of airfield operations, meet existing demand for aircraft parking, and provide opportunities for private commercial development of hangar facilities. She said design standards established through a Development Agreement will streamline the process for private development of hangar

facilities and ensure consistency with local planning requirements. She said reconstruction of taxiways will be prioritized due to safety concerns, and is likely to occur in 2014-2016. She said development and/or redevelopment of hangar facilities will be dependent upon private funding and is projected to occur in 2014-2022. She said the project designs are in the conceptual phase and the reconstruction of taxiways will come first and other improvements will come later. Ms. Enos said the Regulatory Committee shall determine whether the proposed development is suitable and qualifies for a development agreement and then explained the factors the Regulatory Committee considered in making its determination. She said the Airport Commission committed to work with the Cape Cod Commission towards the creation of a Development Agreement to govern future projects on the Airport property as part of the Commission's January 25, 2007 DRI decision, as modified. She said the applicant submitted a Final EIR to MEPA and a certificate was issued on October 26, 2012 stating that the Final EIR adequately and properly complies with the Massachusetts Environmental Policy Act. She said the Regulatory Committee received written testimony from Jo Anne Miller Buntich in support of the proposed project's participation in the Development Agreement process. She said based on those considerations, at the November 5, 2012 Regulatory Committee meeting, the committee voted unanimously that the proposed development is suitable and qualifies for the Development Agreement process.

Joe Longo, Principal Engineer with the Horsley Witten Group, complimented Ms. Enos on her presentation. He said the Airport has gone through MEPA, they received approval of the Final EIR, and the process began with a previous DRI project at the Airport. He said the Airport is looking at projects that are part of a master plan for future projects over the next 10-15 years. He said the Development Agreement will be a three-party agreement.

Jack McCormack moved to close the hearing and the record. Ernest Virgilio seconded the motion. The motion passed with a unanimous vote.

Royden Richardson moved that the proposed Barnstable Municipal Airport development is suitable and qualifies for consideration as a Development Agreement with the Commission. Michael Blanton seconded the motion. The motion passed with a unanimous vote.

■ CHEQUESSETT YACHT AND COUNTRY CLUB

Chair John Harris noted that this is a continued hearing from November 15, 2012.

Jon Idman, chief regulatory officer at the Commission, said he would be presenting the project today as he was the hearing officer on the project in Wellfleet and Elizabeth Enos was the lead on the project. He referred to PowerPoint slides and said the project site is a 106-acre parcel located at 680 Chequessett Neck Road in Wellfleet which is the location of the Chequessett Yacht and Country Club (CY&CC). He said the applicant and landowner, the Chequessett Yacht and Country Club Trust, proposes a land division to create an additional 1.149-acre building lot (Lot 76 presently undeveloped) which is anticipated to be offered for sale to a bona fide third party purchaser, most likely for single family dwelling use, to fund club operations. He said two additional parcels (Lots 78 and 79), totaling approximately 100,000 s.f. are proposed to be created and conveyed to the Wellfleet Conservation Trust in order to satisfy Regional Policy Plan (RPP) open space requirements. He said other than the division itself, no actual development is proposed at this time. He provided a procedural overview of the project and said the applicant applied for joint Limited Development of Regional Impact (DRI) and DRI review. He said a public hearing on the proposal was held before a hearing officer on November 15, 2012 to take testimony and review both applications. Mr. Idman said the staff report prepared for that hearing recommended that the project should be limited to the RPP issue area of open space protection and recreation and that the Limited DRI could be approved with conditions. He said the draft decision recommending that the Commission approve the limited scope of review and Limited DRI with conditions is before the Commission today. He explained the criteria for a Limited DRI review and the required findings for approval. He said the Commission finds that the DRI is limited to the issue area of open space protection and recreation and pursuant to Section 13(d) of the Cape Cod Commission Act, the Commission shall approve, or approve with conditions a DRI if the Commission finds that: the probable benefit from the proposed development is greater than the probable detriment; the proposed development is consistent with the RPP and certified LCP; is consistent with municipal development bylaws; and if the proposed development is located in whole or in part within a designated District of Critical Planning Concern (DCPC), it is consistent with the regulations approved or adopted by the Commission. He said the Wellfleet Town Planner has provided testimony that the proposed development is consistent with the Wellfleet LCP and municipal development bylaws and the development is not located in a designated DCPC. Mr. Idman said staff suggests that the proposed development, as conditioned, is consistent with the RPP and should be limited to the issue area of open space protection and recreation. He said staff recommends that the Commission adopt the draft decision

approving the proposed development as a Limited DRI with conditions. Mr. Idman said the major condition of approval involves the conveyance of open space to the Wellfleet Conservation Trust in order to satisfy the issue area of open space protection and recreation. He said today the Commission must make a finding as to the probable benefit of the project and any probable detriment if applicable. He said those are discussion points in findings that the Commission has to make at this time. He said once the Commission has that discussion, the Commission can direct staff to revise the decision as the Commission recommends and, if the Commission so chooses, make a motion to adopt the decision with the changes recommended by the Commission, especially the probable benefit or detriment as applicable.

Barbara Boone, General Manager of the Chequessett Yacht and Country Club, said she would be happy to answer any questions and said she is happy to be at this point in the process and looks forward to a favorable vote by the Commission.

Joanne O'Keefe said in Mr. Idman's summary he refers to "Limited" and asked Mr. Idman for an explanation of "Limited."

Jon Idman said "Limited" entails the fact that the sole issue area that staff would recommend that the Commission review is open space protection and recreation and said that is being satisfied with a conveyance of land to the Wellfleet Conservation Trust. He said things like affordable housing, land use, water resources and other sub-issue areas of the Regional Policy Plan (RPP) either do not apply, or even if they do apply, do not create impacts on resources protected by the Act or the RPP.

Len Short said the other evening Mr. Idman was at the Herring River Restoration meeting and said there was discussion by people who are in that area. He said he is concerned about the sale of the available lot and whether it would come back to the Commission in terms of people buying that lot and possibly building on the lot.

Jon Idman said he cannot comment on another project that is before the Commission. He said in terms of buildability, staff has received evidence from the town planner that this complies with municipal development bylaws. He said usually buildability determinations are made at the local level and he doesn't see a problem with that if that is what Mr. Short was getting at.

Len Short said basically yes.

Barbara Boone said they chose that particular parcel for sale because it is the farthest piece of land away from the Herring River Restoration project. She said the parcel is in a very high area that they own and said it won't be impacted at all. She said they chose it because it is in one of the areas of their property that is not being considered for any sort of impact by that project.

Jon Idman noted that the lot is all currently upland as well.

Jack McCormack asked if the two lots that are being conveyed to the Wellfleet Conservation Trust were part of a previous subdivision and asked if that was why there were two lots rather than just the one parcel.

Jon Idman said they are to be two newly created lots. He said they haven't been created yet because that municipal jurisdiction to issue permit approval has been suspended during the Commission's review. He said he doesn't understand why they were set off as two lots rather than one large 100,000 square foot parcel but for the Commission's purposes it really doesn't make a difference. He said the Wellfleet Conservation Trust has been actively working with the applicant and said that is really a decision between the Trust and the applicant.

Barbara Boone said over the years Chequessett has acquired small parcels of land which is all land courted and because of the way it was land courted it had to be two different parcels.

Jack McCormack asked if in the general findings there should be a separate motion limited to the area of open space.

Jon Idman said after the Commission has a discussion on the probable benefits and detriments and then moves to close the hearing, the Commission could move to adopt the decision with the revisions that the Commission directs staff to make. He said that finding is in the decision itself.

Jack McCormack said a definite benefit would be the 100,000 square feet that is being dedicated to the Wellfleet Conservation Trust.

Joanne O'Keefe said in looking through the draft decision by staff they have highlighted what the benefits are and said it describes everything in a DRI and said she believes the Commission should go forward in making a motion on a decision. She also noted that there was a public hearing on November 15 where the public was invited and she doesn't see any opposition from the public or the town here today which tells her that the project is for the good of the community.

Jon Idman said respectfully he would suggest that the Commission make findings of specific benefits and detriments. However, he has heard at least two suggestions as what those benefits could be; one that there has been no opposition and the other that the open space qualifies as a benefit.

Michael Blanton said he would concur with his colleague in part and disagree in part in line with what counsel has just perceived. He said he can see from the record that there has been no opposition with regard to there being any negative comments coming from the public or any commentary or testimony that speaks against the project and that it could be a potential benefit, however, he would disagree with his colleague and said they probably need more time for deliberation before the Commission moves to make a vote.

Chair John Harris asked the Commission if they could agree that they have three benefits and no detriments.

Jack McCormack moved that the probable benefit from the proposed development is greater than the probable detriment.

Jon Idman suggested that the Commission make a specific motion as to what the benefits are, and as no detriments have been heard, perhaps make a specific motion that there are no detriments. He said the Commission could also direct staff to revise the draft decision accordingly, and if the Commission sees fit, move to adopt the recommended decision as revised.

Ernest Virgilio referred to a letter dated March 1, 2012 from the Division of Marine Fisheries and Wildlife and said in the letter it states "this project, as currently proposed, will not result in a prohibited take of state-listed rare species." He said "prohibited take" means to him that there is a taking of rare species and that would be a detriment.

Jon Idman said that is a term that the NHESP uses that you will find in every letter they issue. He said "prohibitive take" means you are not allowed to take something and this will not result in a "prohibitive take." Mr. Idman said this is what is commonly referred to as a "no take" letter. He said there are priority species onsite and the applicant worked with the NHESP program and said basically this is a letter commonly used to sign off on comments from the NHESP program. He said, no, there will not be a take associated with this land division.

Heather McElroy, natural resources specialist at the Commission, said the language is confusing and said it's a double negative but she completely agrees with Mr. Idman's comments.

Chair John Harris identified the benefits to be included as the 100,000 square feet of land being conveyed, complies with the Local Comprehensive Plan (LCP), and lack of opposition.

Joanne O'Keefe said we have a document that has certainly surpassed the scrutiny that staff has done with due diligence. She said everything is in order and there is no conflict in any of the categories in the document that we have. She said it's difficult to find something specific as the whole document complies, as Mr. Harris pointed out, with the LCP and that is certainly a benefit to the community.

Leonard Short moved that the three benefits from the proposed development be included in the draft decision. Jack McCormack seconded the motion. A vote called on the motion passed with a unanimous vote.

Jack McCormack moved that there were no detriments identified. Richard Roy seconded the motion.

Joanne O'Keefe said Mr. Idman mentioned that staff be directed to revise the draft decision accordingly.

Michael Blanton said he wanted to clarify a question he has. He referred to archaeological and historic assets and resources and said in a letter from Massachusetts Historical Commission (MHC) it states that there are undisturbed portions of the parcel that are considered by MHC to be potentially archaeologically sensitive but at the time that any construction were to commence or be considered MHC would be further contacted. He asked if that was correct.

Jon Idman said the applicant did choose to have an intensive archaeological survey of the property. He said he believes that there is another letter in the file which is a sign off indicating that a survey had been undertaken and no significant archaeological resources were discovered during that survey. He said, that again, is a typical standard letter we would allow as a sign off of the area. He said certainly if there were any archaeological resources found, that issue area would have been part of the Commission's review in the same sense that if a "take" had occurred, that issue or sub-issue area would have been part of the Commission's analysis. He said that would not have been excluded from what staff suggested that the Commission look at in its review.

Michael Blanton thanked Mr. Idman for his clarification and said so it looks like there is no concern in that area.

Elizabeth Enos, regulatory officer at the Commission, said it is also recorded in the draft decision that is before the Commission today.

A vote called the motion that no detriments have been identified with this project passed with a unanimous vote.

Jack McCormack moved that the probable benefit from the proposed development is greater than the probable detriment. Richard Roy seconded the motion. The motion passed with a unanimous vote.

Jack McCormack moved to close the hearing and the record. Richard Roy seconded the motion. The motion passed with a unanimous vote.

Chair John Harris moved to approve the Limited DRI/DRI application of Chequessett Yacht and Country Club, with conditions, and to approve the draft written decision, as amended. Jack McCormack seconded the motion. The motion passed with a unanimous vote.

■ OTHER BUSINESS

NOTIFICATION OF WITHDRAWAL OF CROWELL GOLF DRIVING RANGE/LONGEST DRIVE

Andrea Adams, senior regulatory planner at the Commission, said on October 9, 2012 the Commission received a referral from Daniel Fortier, Dennis Town Planner, of an Approval Not Required (ANR) plan that proposed to modify a parcel of land subject to a 1990 DRI review, the Crowell Golf Driving Range/Longest Drive in Dennis. On November 19, 2012 Commission staff received an email from Daniel Fortier notifying the Commission that the proposed project has been withdrawn from consideration by the Dennis Planning Board. She said the Commission also received a copy of the letter submitted by the applicant, Ray Caterino, to the Dennis Town Clerk on November 16, 2012 withdrawing the project from local review. Ms. Adams said based on this Commission staff suggests the Commission vote to accept the withdrawal of the proposed ANR plan from DRI review.

Jack McCormack moved to accept the withdrawal of the Crowell Golf Driving Range/Longest Drive from DRI review. Len Short seconded the motion. The motion passed with a unanimous vote.

■ CCC MEMBER COMMENTS

Joanne O'Keefe asked what type of outreach is being done to fill Commission member vacancies.

Patty Daley said a meeting is being scheduled with Commission staff and committee members Peter Graham, Jack McCormack and Royden Richardson to discuss options.

A motion was made to adjourn at 4:05 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Richard Roy, Secretary

LIST OF DOCUMENTS PRESENTED AT THE NOVEMBER 29, 2012 COMMISSION MEETING

- Handout material: November 29, 2012 meeting agenda.
- Handout material: Draft written decision for the Barnstable Municipal Airport Notice of Intent to File a Development Agreement.
- Handout material: Draft written decision for the Chequessett Yacht and Country Club.
- Materials presented: PowerPoint slide presentation on the Barnstable Municipal Airport Notice of Intent to File a Development Agreement prepared by the Cape Cod Commission.
- Materials presented: PowerPoint slide presentation on the Chequessett Yacht and Country Club project prepared by the Cape Cod Commission.