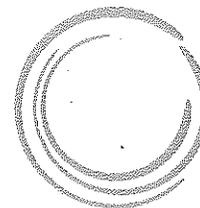


3225 MAIN STREET • P.O. BOX 226
BARNSTABLE, MASSACHUSETTS 02630



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

CAPE COD
COMMISSION

Minutes
Meeting of
Cape Cod Commission

December 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 | Absent |
| Brewster | Elizabeth Taylor | ✓ |
| Chatham | Lynne Pleffner | ✓ |
| Dennis | Richard Roy | ✓ |
| Eastham | Joy Brookshire | ✓ |
| Falmouth | Mario DiGregorio | Absent |
| Harwich | Robert Bradley | Absent |
| Mashpee | Ernest Virgilio | ✓ |
| 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 | Absent |
| Native American Rep. | Mark Harding | Absent |
| Governor's Appointee | Herb Olsen | ✓ |

The meeting of the Cape Cod Commission was called to order on Thursday, December 15, 2011 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

Chair Peter Graham said the order in which the agenda items appear would be re-arranged and the Emergency Work Determination for the Barnstable Municipal Airport would be taken up first.

■ **EMERGENCY WORK DETERMINATION FOR BARNSTABLE MUNICIPAL AIRPORT**

Jessica Wielgus, Commission Counsel, said the reason we are here today on this item is because last Friday, December 9, 2011 the Commission received a letter from Thomas Lynch, the Town Manager for the Town of Barnstable, making an Emergency Work Determination that an immediate emergency exists at the Barnstable Municipal Airport which threatened public safety and national security. She said to abate that emergency they issued two permits—a temporary occupancy permit for the new terminal and a demolition permit for the old terminal building. She said in that letter, which Commission members received in their packets, they identified the specific nature of that emergency to be that the Barnstable Municipal Airport received a letter of investigation from the Federal Department of Homeland Security Transportation Security Administration (TSA) as well as a letter from Daniel Santos, Chair of the Airport Commission which outlined an unacceptable level of access points/control points in violation of TSA Security Directive SD 1542-04-09. She said the letter goes on to state that there was an inspection conducted at the Airport by the Airport Manager Bud Breault, the assistant manager Frank Sanchez, the supervisory TSA inspector, Kallol Talukdar, of the Federal TSA as well as three additional employees of the TSA. She said an additional inspection was also conducted by the Barnstable Town Manager and as a result of that they issued this Emergency Work Determination. She said Section 24 of the Cape Cod Commission Act addresses Emergency Work Determination and said it identifies where there is immediate action necessary to help the health and safety of the public, a municipality may issue a development permit without DRI approval. She said with that being said it also outlines that within the Commission's regulations there is a way to review that determination. She said within five business days of receipt of that letter the Commission's Executive Committee convenes to review the Emergency Work Determination. Ms. Wielgus said the Executive Committee met today to review the Emergency Work Determination and they made a vote by consensus to support the action of TSA and that of the Town. She said following that the regulations say that the full Commission shall at its next regularly scheduled meeting review the Emergency Work Determination. She said what is available to the Commission is, if the Commission so desires, issue a stop work order to the Town and to the Airport to stop this from moving forward. She said this is where the Commission is at this moment. She said there are people at today's meeting from the Town, the Airport and perhaps others who the Commission may want to hear from as well. Ms. Wielgus said she is available to answer questions.

Chair Peter Graham noted that this is not a public hearing, however, at this point he would invite any federal, state and local officials that are present to come forward to comment.

Thomas Lynch, Acting Town Manager in the Town of Barnstable, said he would hope that the Commission would support the Determination that he conveyed in a letter to Mr. Niedzwiecki and to the Commission for this declaration of emergency to issue the temporary occupancy permit and the demolition permit. He said the sequence of events as he was involved on was that on November 30, 2011 he received a letter from Daniel Santos who is the Chair of the Municipal Airport Commission and in that letter he indicated issues that they had around security and were requesting his involvement in this matter. He said part of the responsibility he would have with this would be to conduct an inspection of the Airport. Mr. Lynch said he wrote back the following day to Mr. Santos and they were able to arrange an inspection for him on that Friday, December 2nd. Mr. Lynch said when he arrived at the Airport with the building commissioner, Thomas Perry, and Attorney Ruth Weil the TSA had already conducted their own inspection and so they then met in the conference room to discuss the matter in greater detail. He said the TSA official indicated that he had not been to the Airport in a while and was very concerned that the 12 access points that he originally was aware of that we now had

28 that needed to be controlled by the Airport. Mr. Lynch said he was very concerned about the security and that these access control points if not secured properly would allow individuals wishing to do harm access to the Airport. Mr. Lynch said at that point in time he expressed concern and said he was going to go back and open up an investigation into this matter and would get back to the Airport and Mr. Lynch would be notified of that also. Mr. Lynch said at that point in time he was informed that doing nothing was not an option; the Airport had to take some action to make the facility secure. Mr. Lynch said he then took a tour with the TSA officials and went through the old terminal and into the new terminal. He said they talked about how they would be able to secure the 16 control access points that were in the secure area of the new Airport and how they would be able to secure the 12 that were existing in the old Airport. Mr. Lynch said in early December they received communications from TSA officials indicating the corrective actions that they felt needed to be taken and indicated that it should be done within five days. He said they may not have recommended corrective actions but he believes the Airport had to take action to satisfy TSA officials on that matter. He said based on that information Mr. Lynch said he then issued the letter that the Commission has before them today. He said he was appreciative of the attention he received at the Executive Committee level and said he hopes the full Commission would support the Town of Barnstable's actions.

Chair Peter Graham invited members of the public to come forward with comments.

Eliza Cox, attorney with the firm Nutter, McClennen & Fish, said she is here on behalf of her client Botsini-Prime, LLC which owns a property directly adjacent to the Airport. Attorney Cox distributed a memo to Commission members that she would comment on. She said her client is the plaintiff in two cases that are pending right now before the Massachusetts Land Court which are appealing the modifications that the Commission approved to the 2007 DRI decision for the Airport. She said they learned on Tuesday of this week that 1) the Commission had not issued a final Certificate of Compliance for this project and that 2) the roadway improvements that are conditioned in the decision of this project and which the Commission found necessary to mitigate the traffic impacts have not been completed and 3) that despite representation, made in open Land Court that there would be no Certificates of Occupancy issued while the case was pending, that in fact the Town has proceeded to issue a temporary Certificate of Occupancy for the new terminal building as well as a demolition permit to take down the older terminal building. She said in the letter and in the testimony that the Commission heard earlier the Town is citing the so-called Emergency Work Sections that is contained in the Commission Act and regulations. Attorney Cox said she would suggest that those sections do not apply to a project like this one. She said the Emergency Work Section in the Act and regulations are not a mechanism to abate compliance with conditions in a Commission decision. She said in this case the Commission has not issued a final Certificate of Compliance which is an absolute prerequisite to getting an occupancy permit for a project that has gone through DRI review and said that is explicit in the Commission's regulations and is in the decision for this project. She said the Town and the Airport's reliance on Section 11 of the Commission's regulations and Section 24 of the Act which are the so-called Emergency Work Sections are misplaced. She said those sections do not apply to projects which have ongoing DRI decisions. She said rather those sections allow a town to issue a permit to allow for development work instead of referring that project to the Cape Cod Commission. She referred to her memo that she distributed to Commission members and quoted sections from the Act and DRI Enabling Regulations. She said if the Airport wanted to change its decision or not comply with the conditions, the Commission has a modification process that would be available to them. She said that is the process she suggests that they should have taken in this instance. She said the Emergency Work Section of the Act and regulations is intended to apply where there is no DRI decision. She said she would suggest and ask the Commission to hold the Airport to its decision, to the Commission's regulations and the representations that they would not seek a Certificate of Occupancy or one be issued while litigation is pending. She said that case has not been decided and there has not been agreement by all the parties to allow this certificate of occupancy to be issued. She said the Airport assumed the risk when they went forward with the construction of this project. Attorney Cox said this is an extreme remedy and a more likely remedy is just put up a fence. She said in September 2010 when construction

started there were a series of fences behind where the new terminal is under construction that prohibited access into the interior of the Airport. She said the fencing is very similar to the five plus miles of fencing that surround the Airport so that people can't go into the interior of the air field. She said the Airport has now removed that fence and the easy remedy to this situation that the TSA has raised is to put the fence back to prohibit access into the air field. She said that would have been consistent with the Commission's decision, consistent with what was indicated by the Land Court, and consistent with the requirements of the Commission's regulations. She referred to a newspaper article on the front page of today's Cape Cod Times and said her client filed for an injunction with the Land Court seeking to immediately stop the Airport from doing any further work. She said that hearing is scheduled to be held before the Land Court on Thursday, December 22nd. She said they are asking the Commission today to exercise its discretion and stop any further work from happening until this matter can be reviewed by the judge a week from today at the Land Court.

Bruce Gilmore, attorney for the Barnstable Airport Commission, said he would like to respond to remarks that were just advanced to the Commission by the Botsini-Prime people. He said the first issue, and as well intentioned as it may be, they are not the Homeland Security people or TSA. He said their solution to the problem is not necessarily the solution that has been advocated by TSA to the Airport. He said the second issue that he would like to address is clearly in light of the completion of the main terminal and the existence of the old terminal and said there are now a number of access points that are a concern to TSA. He said Cape Air flies to Boston, other regional people fly to Laganardia and once someone is on an aircraft they are free of any other security. He said he would suggest to the Commission that the request to demolish the existing terminal and the old air traffic control tower are entirely appropriate and are a response to an urgency related to the public safety. He said this is December and it's the slowest time of the year for the Airport and the traffic flows are not going to be changed if the new terminal opens. He said the same numbers of people flying are going to be using the Airport. He said today Botsini hasn't said that this is an emergency they have just said it doesn't qualify under Section 24 of the Commission Act and the Airport says that it does.

Jessica Wielgus said for clarification Section 24(b) as it was cited actually contemplates this situation. She said what was said earlier about a town making a site inspection prior to issuing an Emergency Work Determination on a development that is of an emergency nature is the whole point of the Section. She said as far as a development having been reviewed by the Commission it could qualify under Section 24 and she recalled that the Commission had handled those in the past and said the Bourne Landfill came in under an Emergency Work Determination because of Hurricane Irene and said that was not something that the Commission was beginning to review it was something that had a DRI decision. She said it was an emergency in nature that required them to take immediate action. She said they went before the Executive Committee and came to the full Commission. She said today the Commission would need to determine whether this is an emergency. She said she would affirm to the Commission that this is something that qualifies under Section 24 for the Commission's consideration. She said what the Commission needs to consider today is the question of reviewing the Emergency Work Determination and whether to issue a stop work order.

Austin Knight asked if the Commission does not vote to support the emergency request, what are the consequences to the project and to the Airport at this point. He said if the Airport doesn't follow through with what needs to be done would that possibly close the services through the TSA or through someone else because the Airport did not fulfill the requirements that were sent out to them.

Jessica Wielgus said the Commission hasn't received any papers on this but they heard today from Botsini-Prime that the court will be hearing this next week so it will not sit unabated. Ms. Wielgus said to be clear the Cape Cod Commission has not issued any certificates on this nor will they unless or until the conditions of the decision are complied with.

Paul Niedzwiecki said the Commission received a letter from the Town of Barnstable declaring an emergency and the Commission has been made aware that the Town of Barnstable is having ongoing discussions with TSA over this and the Commission is here today simply to pass on that emergency. He said we are not here to issue a certificate of compliance in violation of the Commission's DRI. He said it's just to review whether there is an emergency for work at the Airport. He said his understanding from the earlier meeting is that a transition has been made and the new terminal is occupied and the old terminal is ready to be shut down. He said the nature of the security discussions between the Town of Barnstable and the federal government are confidential in nature so the Commission can't know every detail as to what is the best way to address the emergency that has been presented. He said it's for the Commission's consideration based on the letter and the information that Commission members received whether the Commission believes that an emergency exists.

Roger Putnam asked what alternative had been given by TSA if the Airport didn't do this.

Bud Breault, Airport Manager, said essentially if the Airport fails to comply they would be in violation of federal security regulations and they could, in fact, shut down the Airport.

Roy Richardson said it seems to him that Homeland Security is the expert in these kinds of emergency matters and they have conducted their site visit and evaluation and made a recommendation to the Town of Barnstable. He said it seems to him that the Town of Barnstable has listened to that recommendation and has responded to it in a very reasonable way. He said one doesn't have to know a whole lot to know the very big dangers that exist within this environment that we now live. He said he believes that the Commission should support the Town of Barnstable and its action in every way possible.

Len Short said he has only been in the Airport complex once ten years ago. He referred to the aerial photograph distributed by Attorney Cox and questioned whether the larger building was the new terminal and to the right of it the old terminal. He asked whether the TSA said if a stop work order is issued that there is no way the Airport can continue to use the old terminal.

Bud Breault said in their zeal to take TSA's corrective action within five days, the old terminal has in effect been closed. He said the old terminal has been secured and the Airport is operating fully in the new terminal and the Airport is in compliance with TSA regulations as of this morning.

Len Short said his question was if the Commission puts a stop work order on the Airport can the old terminal reopen and continue to put passengers through the old terminal.

Bud Breault said at this point, no, that cannot be done.

Joy Brookshire asked for clarification considering there is a lawsuit pending. She asked what was Botsini-Prime's original lawsuit and what did it cover. She asked if it covered the terminal and the tower or was it just the road between Wendy's and the Airport. She also asked what are they going to court for this time; specifically what are they asking for and what does it cover.

Jessica Wielgus said the Botsini-Prime appeal was to a modification of the original Airport decision. She said it was a modification of the circulation surrounding the Airport so the appeal was of that component of the lawsuit itself. She said the stipulation relates to that modification and the proceeding forward based on that appeal.

Joy Brookshire said then the terminal, the tower and the property itself except for the traffic access to the Airport were not part of the original appeal.

Jessica Wielgus said the terminal decision became a final decision that is not currently on appeal.

Joy Brookshire said we are talking about public safety and now the old terminal has been shut down and it can't be opened up again or used so it's a moot point basically. She questioned the Commission granting a stop order or not granting a stop order because the Airport has already gone ahead and closed the terminal and it can't be used and this is a temporary situation. She said if the terminal has already been closed and this is a 30-day temporary situation and the Commission allows the Airport to do this, then what happens after 30 days. She questioned if federal money had been received for the new tower.

Bud Breault said the new tower is in full operation as of November 3rd.

Joy Brookshire said she remembers previous discussions about public safety and how the federal government couldn't come up with the money for the tower to open. She said this situation is not pleasing.

Joanne O'Keefe said in order for her to make a decision she has to run through all of these agencies Homeland Security, the Airport, TSA, Land Court and she also has to look at the residents, tourists, and most importantly public safety and what's best. She said she has also heard what the Town of Barnstable is telling us and what the Commission has said. She said there are a lot of things swirling. She said in order for her to adhere to her role she needs to follow exactly what is required of her as a Commission member regardless of all of the dialogue and the pros and cons. She said she has listened to the Airport Manager who has said that the tower is functioning. She said the Executive Committee has voted on this and she believes it's important to support the Executive Committee's decision.

Elizabeth Taylor asked Ms. Wielgus what was needed by the Commission for a vote.

Jessica Wielgus she said it depends on what the Commission would like to do.

Elizabeth Taylor said if the Commission votes for this, what are they voting.

Jessica Wielgus said in reviewing the Emergency Work Determination if the Commission wants to issue a stop work order, then the Commission needs to move to issue that stop work order as well as direct that written stop work order be issued in order for it to take effect. She said if the Commission wants to effectuate that, then the Commission needs to take that action. She said other than that no action is required.

Elizabeth Taylor said if the Commission supports the work that has been done at the Airport, then the Commission takes no action.

Jessica Wielgus said, yes.

Attorney Eliza Cox said to clarify and to respond to Ms. Brookshire's question, the recent appeals that are pending now before Land Court do relate to the terminal buildings and specifically the traffic that is generated by that terminal building. She said she doesn't think you can separate the two and say that the terminal building is not subject to the appeal because the very traffic that it has generated is covered in that modification decision which is pending at the Land Court right now.

Lynne Pleffner questioned why the former terminal cannot be reopened.

Bud Breault said the reason it can't reopen is because the TSA required that the Airport make a permanent reduction in access control points and said the Airport has done that. He said when they departed from the old terminal this past week they secured all 12 of the access control points related to the old terminal. He said unfortunately this morning when they were removing one of their large

machines that they use to look at baggage they had to remove the front door from the building and it's impossible to put it back on so the building is becoming slowly untenable. He said they can stop work on it. He said they are also putting a secure fence around it as we speak. He said it's really not possible for them to move back into the old terminal.

Elizabeth Taylor said since the Commission doesn't have to do a vote if the Commission supports it, then she would suggest that by consensus they move to support the Department of Homeland Security and what the Airport is doing. Roger Putnam seconded the motion. The motion passed with 11 votes in favor and 2 opposed.

■ **HYDROID, INC.**

Chair Peter Graham noted that this is a continued hearing from November 22, 2011.

Donald Pickard, Chairman of the Bourne Board of Selectmen, said the town supports the project. He said Hydroid employs 70+ people in high tech jobs and in the future it could provide employment for up to 150 individuals. He said if Hydroid is forced to leave the area, it would impact Bourne's local economy. He said the Food Pantry in Bourne considers Hydroid to be an advocate for the Food Pantry as Hydroid donates food to the Food Pantry and also posts job listings there as well. Mr. Pickard asked the Commission for approval of the project.

The subcommittee reviewed the minutes of the December 6, 2011 subcommittee meeting. Ernest Virgilio moved to approve the minutes. Roy Richardson seconded the motion. The motion passed with a unanimous vote of the subcommittee.

Kristy Senatori, chief regulatory officer at the Commission, said Hydroid proposes to combine three existing parcels off Henry Drive and create a single 5.24-acre parcel on which they propose to construct a 40,000 square foot building. She said the proposed project includes an on-site sewage disposal system, 150 parking spaces, a loading zone, wash pad, and associated clearing, grading, drainage, utilities and landscaping. She said the site is within a Significant Natural Resource Area due to its location within a Potential Public Water Supply Area and a Wellhead Protection Area. She said Hydroid is a manufacturer of Autonomous Underwater Vehicles for deep sea survey and mapping worldwide and they intend to use the new facility as their headquarters and to accommodate their need for expansion. Ms. Senatori provided a procedural history on the project and said the subcommittee unanimously recommended approval of the Hardship Exemption application with conditions and approval of the draft written decision that is before the Commission today. She explained the findings of approval for a Hardship Exemption and Project of Community Benefit (POCB) and said the subcommittee is recommending that the proposed Hydroid development is a POCB and that hardship relief can be granted. She explained the subcommittee's analysis for economic development, water resources, hazardous materials/wastes, natural resources/open space, transportation, energy, and heritage preservation and community character. She said the subcommittee recommends, based on testimony from Coreen Moore, Bourne's Town Planner, that the proposed development is consistent with Bourne's Local Comprehensive Plan and that upon approval of a special permit by Bourne's Planning Board the project is consistent with municipal development bylaws, and the proposed development is not located within a designated District of Critical Planning Concern. She said the subcommittee further recommends that with the relief granted and upon satisfaction of the conditions outlined in the draft decision, the proposed development is consistent with the Commission's Regional Policy Plan. Ms. Senatori said the subcommittee recommends that the probable benefit from the proposed development is greater than the probable detriment. She said, specifically, the subcommittee identified as probable benefits, the economic benefit the proposed project will provide—the high salaries to employees and opportunities for residents, the nature of the work provides a benefit to the community and region, and that Hydroid manufactures a device that is needed worldwide. She said the subcommittee further identified three best development practices—quality employment opportunities, regional export growth, and multiple stories to reduce building footprint—as probable benefits of the

project. She said the subcommittee recommends that the Commission approve the proposed Hydroid development as a POCE Hardship Exemption with conditions and approve the draft written decision.

Christopher von Alt, President of Hydroid, Inc., provided a PowerPoint slide presentation and said Hydroid evolved from the Woods Hole Oceanographic Institution (WHOI). He said he worked at WHOI for 20 years and has lived on Cape Cod for 25 years. He said Hydroid has an exclusive license with WHOI for all REMUS technology. He said Hydroid was acquired by Kongsberg Gruppen in 2008 and said it's a type of company that produces interesting technology and said the missile defense system that Hydroid produces protects the U.S. capital region. Mr. von Alt said Hydroid employs 82 professionals and they have received two requests from the Navy to increase their capacity for production. He described the product line for the REMUS 600 and REMUS 6000 vehicles and said all the technology was created at WHOI and said they made a conscience decision to stay on Cape Cod. He said the Kongsberg Maritime Subsea Division provides underwater technology and said three REMUS 6000 vehicles were used in the search for wreckage of Air France Flight 447 and two REMUS 600 vehicles were used in the search for Amelia Eahart's wreckage. He asked for the Commission's support of the project.

Paul Niedzwiecki said the Commission had worked with Hydroid in the past when the Raymond Park project was before the Commission. He said it didn't work out for Hydroid to locate there but it did for Benthos which is located in Raymond Park. He said it's been a pleasure working with Hydroid staff during the Commission's review process. He said Hydroid is a good representative of the type of technology and jobs that are good for Cape Cod.

Chris Farrell, Chairman of the Bourne Planning Board, said Hydroid is a great company and they want to keep Hydroid in Bourne and on Cape Cod. He said he supports the project.

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

Elizabeth Taylor moved to approve the Hydroid, Inc. project as a POCE Hardship Exemption with conditions and approve the draft written decision. Len Short seconded the motion.

Joy Brookshire said usually a hardship exemption is for financial reasons and she asked why Hydroid asked for a hardship exemption and what will it save them.

Paul Niedzwiecki said a hardship exemption is not only for financial reasons and said there are other exceptions. He said the hardship is that the company would be unable to grow and the company would move off Cape.

Joanne O'Keefe said she believes it would be a hardship for Cape Cod if Hydroid left the Cape. She said she supports the project.

Roy Richardson said he believes Hydroid is a benefit to Cape Cod, the country and the world.

A vote called on the motion to approve the Hydroid, Inc. project and draft written decision passed with a unanimous vote.

■ EDGEHILL PARK SUBDIVISION PROCEDURAL DENIAL WITHOUT PREJUDICE

Elizabeth Taylor read the hearing notice and opened the hearing at 4:20 p.m.

Elizabeth Enos, regulatory officer at the Commission, provided a procedural history for the project and said the project was referred to the Cape Cod Commission as a Development of Regional Impact (DRI) by the Town of Bourne Planning Board through Christopher Farrell, Chairman of the Planning Board.

She said in accordance with the Cape Cod Commission Act, the Commission is required to schedule a public hearing within 60 days of the receipt of a DRI referral. She said a hearing was opened by a Hearing Officer on July 11, 2011 and closed by a Hearing Officer on October 7, 2011. She said as the Commission did not receive an application from the Applicant, a substantive public hearing could not be held within the statutory timeframe. She said Commission staff advised the Applicant that the project could either be withdrawn from local consideration and Commission review, or that the Commission may have to take steps to procedurally deny the project without prejudice. She said in a letter dated November 21, 2011, Attorney Diane Tillotson, on behalf of the Applicant, requested that the project be procedurally denied without prejudice. She said as of November 28, 2011 the Applicant had not submitted a completed application and fee. She said on November 28, 2011 the Commission's Regulatory Committee deliberated on the procedural denial request and voted unanimously to recommend that the full Commission procedurally deny the project without prejudice.

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

Chair Peter Graham moved to procedurally deny, without prejudice, the Edgehill Park Subdivision project and approve the draft written decision. Len Short seconded the motion. The motion passed with a unanimous vote.

■ **NSTAR SEMA 345Kv TRANSMISSION LINE**

Elizabeth Taylor read the hearing notice and opened the hearing at 4:25 p.m.

Kristy Senatori, chief regulatory officer at the Commission, said today's hearing is for procedural purposes only and she is here acting as a hearing officer to continue the hearing to January 19, 2012 at 3:00 p.m. in the First District Courthouse, Assembly of Delegates Chamber. She said the Commission does not need to take any action on this today.

■ **CAPE COD COOPERATIVE BANK PRELIMINARY PLAN**

Elizabeth Taylor read the hearing notice and opened the hearing at 4:30 p.m.

The subcommittee reviewed the minutes of the December 6, 2011 subcommittee meeting. Len Short moved to approve the minutes. Mary Pat Flynn seconded the motion. The motion passed with a unanimous vote by the subcommittee.

Andrea Adams, senior regulatory planner at the Commission, said the proposed project is the recombination and reorganization of an existing subdivision into a new arrangement of two commercial lots, nine industrial lots and one open space lot. She said the proposed project would also include the realignment of the existing subdivision road, Rhiannon's Way. She said the project site is 48.9 acres of land located at 588 Main Street/Route 130 in Mashpee. She said the site is currently undeveloped and no development other than the road realignment is proposed at this time. Ms. Adams explained the Commission's jurisdiction and provided a procedural history for the project and said on May 26, 2011 the Commission received a DRI application/Hardship Exemption request and application fee from the Applicant. She explained the subcommittee's analysis for economic development, water resources, open space, transportation, energy, affordable housing, and heritage preservation/community character. She said on December 6, 2011 the subcommittee voted unanimously to recommend to the Commission approval of the project as a Hardship Exemption with conditions and found that the probable benefits outweigh the probable detriments. Ms. Adams noted a proposed change to Water Resources Condition WRPC 10.

Attorney Michael Ford provided a history of the property with the Bank and said the property had been proposed for a Chapter 40B project in 2007. He said the original proposal was to divide the site into five lots including two industrial lots, two commercial lots and one lot for the 40B project. He said the

proposed 40B project would have included five buildings encompassing 120 units of housing. He said the then-owner of the site had run into financial difficulties, and in June 2009 through foreclosure the Cape Cod Cooperative Bank became the owner. Attorney Ford said the Bank reasoned maybe there was a better use for the property before it's sold—and noted that it would be because the Bank is not a development company—and said the best proposed use was determined to be what is being proposed today. He said the project would have been subject to DRI review and they looked at various options and chose to proceed as a Hardship Exemption. He said they were advised by Commission staff that if the project became a DRI it would have to be looked at as vacant land. He said Commission staff said it could be a Hardship Exemption and that is what is before the Commission today. He said the greatest benefit in Zone II is that it will become open space. Attorney Ford said he appreciates the subcommittee's recommendation and asked for the Commission's support of the project.

Austin Knight asked for clarification on Lots 5 and 6 and said the subcommittee discussed that the Wellhead Protection Area/Zone II be clearly marked and asked if that was written in the draft decision.

Andrea Adams said, yes, it is on page 48 of the written decision.

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

Chair Peter Graham moved to approve the Cape Cod Cooperative Bank Preliminary Plan as a Hardship Exemption, with conditions, and to approve the draft written decision as amended. Len Short seconded the motion. The motion passed with a unanimous vote.

Commission member, Ernest Virgilio, left the meeting at 5:00 p.m.

■ AIRPORT WAY NOMINEE TRUST

Chair Peter Graham noted that this is a continued hearing from November 28, 2011.

The subcommittee reviewed the minutes of the December 15, 2011 subcommittee meeting. Len Short moved to approve the minutes. Roy Richardson seconded the motion. The motion passed with a unanimous vote.

Elizabeth Enos, regulatory officer at the Commission, said the project is located at 180 Airport Way in Hyannis. She said the project site consists of approximately 12.5 acres of land with approximately 50% presently developed for commercial/industrial use and is located in a Significant Natural Resource Area due to the presence of mapped rare species and a public wellhead water supply protection area. She said the property is zoned Limited Industrial and is in the newly created Ground Mounted Solar Photovoltaic Overlay District. She said the site is also in the Adult Use Overlay District and a portion of the site is located in the Wellhead Protection Overlay District for the Town of Barnstable. She said the applicant is proposing a large solar energy array with approximately 2.38 MW peak output with a total development area of 4.4 acres. She said the ground mounted solar panels will stand seven feet above the ground, with each row of solar panels being approximately 12.5 feet wide and 380 feet in length. She said 20 rows of panels are proposed located to the east of the existing buildings on-site. She said additional panels are proposed on the existing building at the site. She said the facility will be located at least 64 feet from the front property line and enclosed with a six foot high chain link fence. She provided a procedural history for the project and said applications for a Limited DRI and a Project of Community Benefit (POCB) Hardship Exemption were received by the Commission on October 3, 2011. She explained the Commission's jurisdiction and provided the subcommittee's findings and conditions for issue areas relative to water resources, hazardous materials/waste, waste management, natural resources, open space, and economic development as well as Best Development Practices in the area of economic development. She said the subcommittee recommends that the project is a POCB and found that compliance with the Open Space requirements would constitute a hardship, financial or otherwise,

by diminishing the community benefits to be conferred and that full relief may be granted. She said the subcommittee found that the relief granted relates directly to the nature of the identified hardship and is the minimum relief necessary to address it. She said the subcommittee found that the project is consistent with the Local Comprehensive Plan, consistent with municipal development bylaws, consistent with any Districts of Critical Concern, consistent with the Commission's Regional Policy Plan and the probable benefits of the proposed development is greater than probable detriments. She said the subcommittee recommends approval as a POGB Hardship Exemption and approval of the draft written decision.

Luke Hinkle, representing My Generation Energy, thanked Commission staff and the subcommittee. Using PowerPower slides, he said the project creates renewable energy and the net will be metered back to local businesses in the area. He said the project is a local development and it will be developed, financed, engineered, installed, and maintained by local Cape Cod companies. He said the array site will be revegetated with existing plantings. He said two major benefits are we won't be requiring much fuel and the byproducts from fuels can be avoided. He described the community benefits and long-term benefits. He said solar works on sunny summer days which is peak time for Cape Cod and electricity from the project will be directed back to the same substations. He said another project benefit is that it creates a workforce on the Cape and said the project fits into the mission of the Commission's Regional Policy Plan.

Roger Putnam inquired about the amount of energy feeding to the substation.

Luke Hinkle said most of it would be going to the substation.

Roger Putnam said once it's in the substation there is no control where it goes from there.

Luke Hinkle said, yes, it leaves and goes to the substation but from the substation it can go anywhere.

Elizabeth Taylor said at some point we would expect setup costs to level off and asked if the cost would come down for production.

Luke Hinkle said they hope and expect, as it has been, that it will continue to reduce.

Austin Knight asked Paul Niedzwiecki to explain the issue of open space.

Paul Niedzwiecki said the Airport is there and there has been a lot of effort made for open space by the Town. He said it's what the town wanted and it has been an area that the town has provided a strategic approach for open space for Ground Mounted Solar projects. He said a lot of the towns are doing solar projects on their landfills and said he agrees with the subcommittee to waive open space.

Jack McCormack said with the proposed revegetation the area will have almost zero impervious areas.

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

Roy Richardson moved to approve the Airport Way Nominee Trust Project of Community Benefit Hardship Exemption with conditions and to approve the draft written decision. Austin Knight seconded the motion. A vote called on motion passed with 11 votes in favor and one opposed.

Paul Niedzwiecki thanked Commission members for their patience for today's long meeting.

■ COMMISSION MEMBER COMMENTS

Chair Peter Graham said he went to the Dale Avenue project site that was previously before the Commission as a DRI. He said he has asked Sarah Korjeff to do a PowerPoint presentation on the project at a future Commission meeting. He said this is in response to Joy Brookshire's request regarding the outcome of projects that have been reviewed by the Commission.

A motion was made to adjourn at 5:40 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Elizabeth Taylor, Secretary

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

- Handout material: December 15, 2011 meeting agenda.
- Handout material: Hydroid, Inc. draft written decision.
- Handout material: Edgehill Park Subdivision draft written decision.
- Handout material: Cape Cod Cooperative Bank Preliminary Plan draft written decision.
- Handout material: Airport Way Nominee Trust draft written decision.
- PowerPoint slide presentation on the Hydroid, Inc. project prepared by the CCC.
- PowerPoint slide presentation on the Hydroid, Inc. project prepared Hydroid, Inc.
- PowerPoint slide presentation on the Cape Cod Cooperative Bank Preliminary Plan project prepared by the CCC.
- PowerPoint slide presentation on the Airport Way Nominee Trust project prepared by the CCC.
- PowerPoint slide presentation on the Airport Way Nominee Trust project prepared by Luke Hinkle.
- Letter, aerial photographs, and Barnstable Land Court Docket No: 10 MISC 432357 (GHP) consolidated with Docket No: 10 MISC 434939 (GHP) submitted to the CCC by Attorney Eliza Cox regarding the Barnstable Municipal Airport.
- Barnstable Land Court Miscellaneous Case No. 10 MISC 432357 (GHP) and Miscellaneous Case No. 10 MISC 434939 (GHP) submitted to the CCC by Attorney Bruce Gilmore regarding the Barnstable Municipal Airport.