# CAPE COD COMMISSION

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Minutes

Meeting of
Cape Cod Commission

December 17, 2009

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 | Brad Crowell | Absent |
| Eastham | Joy Brookshire | √ |
| Falmouth | Mario DiGregorio | √ |
| Harwich | Robert Bradley | √ |
| Mashpee | Ernest Virgilio | Absent |
| Orleans | Peter Monger | √ |
| Provincetown | Vacant | Vacant |
| Sandwich | Sue Pommrehn | √ |
| Truro | Peter Graham | √ |
| Wellfleet | Roger Putnam | √ |
| Yarmouth | John McCormack, Jr. | √ |
| County Commissioner | Sheila Lyons | √ |
| 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 17, 2009 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

Vice-chair Roy Richardson introduced Mario DiGregorio, newly appointed Falmouth Representative to the Cape Cod Commission.

Mario DiGregorio said it's a pleasure to sit on the board. He said he has admired the work of the Commission.

## ■ EXECUTIVE DIRECTOR'S REPORT

Paul Niedzwiecki reminded Commission members of the Holiday Party immediately following today's Commission meeting at Ardeo's Grille in Yarmouthport. He said he will speak more about the Ocean Management Plan District of Critical Planning Concern when it's taken up later on in the meeting.

## ■ THE VILLAGES AT BARNSTABLE, COMMUNICATION WAY AND 850 FALMOUTH ROAD, HYANNIS, MA NOTICE OF INTENT TO FILE A DEVELOPMENT AGREEMENT

Elizabeth Taylor read the hearing notice and opened the hearing at 3:05 p.m.

Andrea Adams, senior regulatory planner at the Commission, said today's hearing is to determine if the project qualifies to proceed with a development agreement and said merits of the project would not be discussed today. She said the Commission's regulations Chapter D, Governing the Provisions for Development Agreements requires that a qualified applicant shall file a Notice of Intent to file a Development Agreement application. She said it's a two-step process for determining if a project is suitable and qualifies for a Development Agreement and said the first step is for the Commission's Regulatory Committee to make a determination and the second step is for the full Commission to consider the request and the Regulatory Committee's recommendation. Ms. Adams said on October 30, 2009, Attorney Ron Jansson submitted a letter requesting a determination from the Cape Cod Commission that The Village at Barnstable Continuing Care Retirement Community is suitable and qualifies for a Development Agreement. She said the project as proposed would involve a two-party agreement involving the Commission and the applicant. She said the proposed project is the construction and operation of a continuing care retirment community located on a 25.88-acre site in Independence Park, Hyannis, MA. She said the proposed project would be constructed in at least three phases as funding allows and at build-out would consist of six buildings for a total of 738,970 square feet. She said the project includes 340 independent living units, a 60-bed skilled nursing facility, an underground parking garage, and on-site amenities such as a bank, dining facility, fitness center, and auditorium. She said an affordable housing component is proposed to be off-site at 850 Falmouth Road in Hyannis, a 3.3-acre site which is the site of the former Manor Nursing Home. She said the site in Independence Park is also overlaid by Barnstable's Senior Continuing Care Retirement Community Overlay District (SCCRCOD) zoning. She said the applicants have worked to date with the Town to create SCCRCOD zoning and has also met with the Town and Commission staff on technical issues regarding stormwater, wastewater, and water supply. Ms. Adams said Chapter D requires that applicants must file a Notice of Intent. She described the Notice of Intent process as outlined in Sections 5(a) and 5(b) of the regulations. Ms. Adams outlined the seven suitability criteria and said the applicant's proposal meets all required criteria: 1) no development permit pending; 2) a comprehensive review to allow for planned infrastructure; 3) exhibits two of three characteristics—a large area of development of 25 acres or more, includes multiple uses/structures, and multiple properties under control of the same qualified applicant; 4) anticipated to be built in phases over a period exceeding seven years; 5) future expansions that are not fully defined but are presented up front to avoid segmentation; 6) whether project has received Final Environmental Impact Report certified as adequate by the Secretary of Energy and Environmental Affairs; and 7) testimony from a municipal agency that proposal is appropriate for a Development Agreement. She said on November 9, 2009 the Regulatory Committee determined that the project was suitable and qualified to proceed with a Development Agreement and makes that recommendation to the full Commission. She reviewed minor changes made to the draft decision and referred to an email she received from Caroline Borelli today and said hardcopies were distributed to Commission members.

Attorney Ron Jansson said he would not be giving a presentation today.

Lynne Pleffner asked where on Communication Way it's sited—at the first entrance or the second entrance.

Attorney Jansson said it's located between both. He said it's located behind Cape Cod Healthcare.

Lynne Pleffner asked if it were near the power lines and Attorney Jansson described the location.

Jo Anne Miller Buntich, Interim Director Growth Management Department in Barnstable, said the Town believes a Development Agreement is appropriate to review this project and said the Town supports the project.

Caroline Borrelli, an abutter to 850 Falmouth Road, said there is an association in her neighborhood of 28 families in Whitehall Estates. She said the property to be developed has been abandoned and has been subject to vandalism and said the property has not been taken care of. She said this has been a concern of the entire neighborhood. She said it was mentioned that affordable housing is a component of the proposal and said that hasn't been made clear and it should be made clear by the Commission. She said another concern is that the hearing was noted under one umbrella and there are really two umbrellas. She said the hearing notice was corrected and noticed for both locations. She said she has concerns and said there are two different owners of two different parcels and she is still looking for clarity on that. She said Ms. Adams made a reference to an email she received from her today and said that is not the only email she has sent to the Commission. She said she has sent several emails to the Commission expressing her concerns and she would hope that all her emails have been distributed to Commission members.

Attorney Ron Jansson said they have been working on this for four years. He said today's hearing is to determine if the project qualifies as opposed to it being a substantive hearing. He said there is dual ownership and the affordable housing component would be owned by Independence Park. He said the second large parcel is under the control of Mark Thompson who is the chairman of the board of the Lyndon Lorusso Charitable Foundation. He said they are only in the determination stage so no deeds have been transferred because the applicants are waiting for approval to go forward. He said they would be going forward with an affordable housing component and even though there is no legal agreement at this point Mr. Thompson has an understanding and would make a provision.

Sheila Lyons said a concern was raised by a member the public regarding the affordable housing component which in her mind means low income. Ms. Lyons asked if someone could provide a description of what affordable housing means. She said sometimes there are misconceptions about affordable housing and perhaps a definition at this time would be helpful.

Attorney Jansson said he would attempt to provide a definition. He said the provisions regarding affordable housing including its definition fall under 760 Code of Massachusetts Regulations and in particular there is a set of statutes called Chapter 40B. He said with Chapter 40B there are a set of regulations regarding affordability. He said if this project were a Chapter 40B project, which it is not, affordable would be defined as the average median income of a family of four. He said 80% of the local median income of the average four-family figure is what qualifies as affordable. He said in essence it's a 20% lower figure than the average family of four would earn and said those people would meet the threshold. He said the overall affordability of this project average hasn't been determined yet. He said he realizes that there are many misconceptions about affordable housing and said families with and without children and grandparents live in these areas because they can't afford housing in other areas so affordable housing needs to be provided for them to live in. He said affordable housing areas are not the slums that people make them out to be and said they are well-maintained areas. He said there are many areas on the Cape that have established Chapter 40B housing and said they are well-maintained areas. He said he believes there is a genuine need on the Cape for true affordable housing. He said this project hopes to provide affordable housing that is more affordable than the average standard and said it would be a well-maintained area. He said part of the problem with the litter on the property now is because it's vacant and not being used.

Paul Niedzwiecki said the purpose of today's hearing is to determine whether the project qualifies and meets the criteria to file a Development Agreement. He said if approved today, a lot of the questions being asked regarding affordable housing would be addressed during the Commission's review of the project and said it's a requirement of the Cape Cod Commission Act and it has to be a component of the agreement.

Jack McCormack, Jr. assured Ms. Borrelli that CCC members have received copies of all her emails sent to the Commission regarding this project.

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

Peter Graham moved that The Village at Barnstable is suitable and meets the critieria of the notice of intent and qualifies to proceed with filing a Development Agreement. Lynne Pleffner seconded the motion.

Roger Putnam asked if the motion should be made contingent upon the agreement to have common ownership of the properties.

Jessica Wielgus, Commission counsel, said for purposes of the Commission's decision today, the Commission's regulations do not require that the properties be owned by the same entity. She said the intent and requirement of this particular provision requires that all the land is under such control that the land is available for development by the applicants. She said the fact that they have presented the ability for it to be transferred is sufficient for purposes of determining that it meets the intent of the Notice of Intent to file a Development Agreement.

Roger Putnam asked when the question of ownership by the same entity comes into effect.

Jessica Wielgus said it does not and said the requirement of the Notice of Intent is that the applicant has the ability to develop on that parcel. She said the Commission is being asked to vote on whether the applicant meets the criteria of the Notice of Intent and therefore can proceed with the process of filing a Development Agreement.

A vote called on the motion that the project is suitable and meets the criteria of the Notice of Intent passed with a unanimous vote.

Elizabeth Taylor moved that the Commission approve the decision as presented for The Village at Barnstable to proceed with the process of filing a Development Agreement. Sue Pommrehn seconded the motion. A vote called on the motion passed with a unanimous vote.

## ■ OCEAN MANAGEMENT PLAN DISTRICT OF CRITICAL PLANNING CONCERN

Heather McElroy, natural resources specialist at the Commission, said the Barnstable County Commissioners nominated the Ocean Management Plan as a District of Critical Planning Concern (DCPC) on December 16, 2009. She provided a brief overview and said the Massachusetts Ocean Act was signed by Governor Deval Patrick on May 28, 2008. She said the legislation requires the Secretary of Energy and Environmental Affairs (EEA) to develop a comprehensive ocean management plan and requires the Secretary to appoint a 17-member Ocean Advisory Commission as well as an Ocean Science Advisory Council to assist in the planning process. She said EEA formed an Ocean Advisory Commission, a Science Advisory Commission, and other workgroups and held public hearings in the fall and winter of 2008-2009. Ms. McElroy said EEA issued a Draft Plan on June 30, 2009, public hearings were held on the Draft Plan and EEA must promulgate the final plan by December 31, 2009. She said the plan must address 15 specific planning principles to set standards for ensuring effective stewardship of the commonwealth's ocean waters, preserve public trust, reflect recreational and economic benefits, and value ecosystem health. She said the ocean plan would also allow for appropriate scaled renewable energy development implemented through existing state review procedures and requires that the ocean plan be revised every five years. Ms. McElroy then described the three-phase approach to developing the plan. She said

the DCPC boundary starts at 1500 feet seaward from Mean High Water (MHW) and extends out to three nautical miles from MHW, or the state jurisdictional boundary, whichever is farther from the shore, not to include the waters of Plymouth County. Ms. McElroy said the ocean plan establishes three categories of management area and applies them to Massachusetts ocean waters. She noted the three categories as: 1) Prohibited Area—an area where most uses are prohibited by the Ocean Sanctuaries Act, amended by the Oceans Act, and therefore prohibited under the ocean plan; 2) Renewable Energy Areas—places specifically designated for commercial wind energy facilities (less than 10 turbines in a location) and other renewable projects; and 3) Multi-Use Area—where uses, activities and facilities allowed by the Ocean Sanctuaries Act are governed by siting performance standards. She also described exclusionary areas that are habitats for whales, terns, eelgrass; and where uses should be avoided in fishing areas and navigation channels. Ms. McElroy said the plan charges both the Cape Cod Commission and Martha's Vineyard Commission the authority to regulate development within their area of jurisdiction potentially including projects within the ocean planning area. She said each Commission has been given the authority to designate DCPCs through their regional plan. She said in summary, the state comment period ended November 23, 2009 and EEA must promulgate the final plan by December 31, 2009.

Paul Niedzwiecki referred to the map showing the DCPC area and explained the actual DCPC boundary. He thanked Heather McElroy, Jessica Wielgus and Patty Daley for all their work and thanked Secretary Bowles and Senator O'Leary. He said this is an example of good news that came out of the Cape Wind project. He said from Cape Wind came the Massachusetts Ocean Act, the Ocean Management Plan and the Ocean Management Plan DCPC. He said it's all good news; it goes beyond Cape Wind and that is good news. He said there is a lot of work ahead to be done by the Commission and if this is approved by the full Commission on Janauary 21, 2010, the Commission would need to determine what would be allowed in state waters and determine a process where the Commission is in agreement with towns for community wind projects. He said it will be a challenge to come up with that process and said it will allow towns to be heard. He said this is the first Cape-wide DCPC by the Commission in its 20-year history and the Commission is humbled by the process.

Peter Monger asked what affect this would have on Cape Wind.

Paul Niedzwiecki said none because Cape Wind is in federal waters.

Elizabeth Taylor said this is an incredible project and she hopes it's the first of many more to come.

Sheila Lyons said Secretary Bowles was not open to this as a tool originally. She said this brings the opportunity to protect the waters of Cape Cod. She said she believes this is a great tool and the Commission can handle the work and do a great job. She said it's been great working with the towns and she thanked the Commission for lobbying for these jurisdictions.

Paul Niedzwiecki said once the notice of receipt is published a full moratorium begins on the issuance of local permits. He said on January 21, 2010 if the full Commission votes to accept the nomination for consideration, the full moratorium ends and the limited moratorium begins. He said the Commission will be notifying all the towns and said today's meeting is for informational purposes only.

Sheila Lyons said prior to the County Commissioners vote yesterday, they took into consideration dredging projects that may have been started in Cape towns and said there are no dredging projects underway at this time therefore this does not affect town dredging projects.

Paul Niedzwiecki said this would be the last Commission meeting of the year. He said looking back over this past year, in January the Commission's Regional Policy Plan Land Use Vision Maps were adopted and revisions to Chapter A, Chapter D and Chapter H were passed. He said with the adoption of Chapter H, it's the first time in 20 years that the Commission has the ability to raise and lower thresholds. The Comprehensive Economic Development Strategy (CEDS) was completed and qualified for implementation. He said the Commission

received two planning awards and Ryan Christenberry was invited to give a presentation on energy in New Orleans. Mr. Niedzwiecki thanked Commission staff and members for all their work.

Roy Richardson expressed appreciation to the residents of Barnstable County for making it possible for the Cape Cod Commission to be here.

A motion was made to adjourn at 4:00 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

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Elizabeth Taylor, Secretary