



# CAPE COD COMMISSION

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Date: February 4, 2008

To: Mr. Patrick M. Butler, Esq.  
Nutter, McClennen & Fish, LLP  
P.O. Box 1630  
Hyannis, MA 02601

From: Cape Cod Commission

Re: Change of Use/Limited DRI  
DRI Enabling Regulations, Sections 3 and 4

Project Applicant: Berkshire-Hyannis, LLC  
41 Taylor Street, 4<sup>th</sup> floor  
Springfield, MA 01103

Property Owners: M.D.M. Realty Trust and Star Nominee Trust

Project: Circuit City Redevelopment Project  
624 and 640 Iyannough Road, Route 132  
Hyannis, Massachusetts 02601

Project #: TR06019 / CU06019

Book/Page #: 5490/97  
Map/Parcel: 311/12 and 311/13  
Lot/Plan: Lot 10, LCP 25266D

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission), through its Regulatory Committee, hereby determines that the redevelopment of the properties located at 624 and 640 Iyannough Road (Route 132), Hyannis, MA, from the existing Rogers and Grey Insurance Company and Star City Grille to a 22,475 square foot retail electronics store qualifies as a change of use pursuant to the Section 3(f)(i) thresholds under the criteria established under Section 4(b) of Chapter A, Enabling Regulations Governing Review of Developments of Regional Impact, Barnstable County Ordinance 90-12, as amended (DRI Enabling Regulations), and shall undergo limited Development of Regional Impact

Determination for a Change of Use

#TR 06019

February 4, 2008

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(DRI) review. This decision is rendered pursuant to a vote of the Regulatory Committee on March 15, 2007.

### **PROJECT DESCRIPTION**

The proposed Circuit City redevelopment project consists of the demolition of two existing buildings with a combined square footage of 10,610 square feet located at 624 and 640 Iyannough Road in Hyannis. The two buildings will be replaced with a new 22,475, one-story square foot electronics superstore. The sole tenant of the proposed building will be Circuit City and will be located on a 2.53-acre parcel. The applicant is proposing a number of improvements to the project site including elimination of a curb cut along Route 132, enhanced landscaping, enhanced storm water management and drainage, and an increased landscape buffer along Route 132.

The project is proposed to be constructed on a 2.53-acre site located within the Town of Barnstable's Highway Business (HB) and Business (B) zoning districts. The project site is located within the Route 132 Regional Commercial Center, the Town of Barnstable's Groundwater Protection Overlay District and Growth Activity Center designated by the Barnstable Local Comprehensive Plan. As such, growth management initiatives in this area include encouraging infill, reduction of curb cuts and maintaining this area as a "regional shopping and commercial center."

The existing site is currently occupied by an existing 4,000-square-foot office building most recently occupied by Rogers & Gray Insurance (2,500-square-foot footprint with a partial second floor as shown on Lot 13) and a 6,160-square-foot Star City Grill as shown on Lot 12.

The site is bounded by a McDonald's Restaurant to the west, a Best Western motel to the east, an airport access road to the north and Route 132 to the south. The majority of the development along this portion of Route 132 (between the rotary and Independence Drive) consists of "strip commercial development" with large buildings surrounded by parking lots, as typified by the Cape Cod Mall and the K-Mart plaza. However, the site in question is currently one of the few breaks in this development pattern with mature trees, landscaping and modestly scaled buildings.

### **PROCEDURAL HISTORY**

The Commission received a Limited DRI Determination for Change of Use application from Berkshire-Hyannis, LLC on July 14, 2006. A duly noticed public hearing pursuant to Section 5 of the Act to consider the application was held by the Regulatory Committee of the Commission on March 15, 2007 at the Cape Cod Commission office in Barnstable, MA. A public hearing was held on April 5, 2007 and the Regulatory Committee voted unanimously that the project be subject to a limited DRI review for the issue areas of community character, economic development, stormwater management and transportation. The public hearing was continued until April 13, 2007. At that date, the hearing was closed procedurally by hearing officer and re-opened and re-noticed for the April 30 hearing.

In addition to the list of materials submitted for the record (see Table 1 below) the application and notices of public hearings relative thereto, Commission staff's notes and correspondence, the minutes of public meetings and hearings, and all other written submissions received in the course of the proceedings are hereby incorporated into the record by reference.

| <b>TABLE 1: Materials Submitted for the Record</b>   |                              |
|--|------------------------------|
| <b><i>Materials From the Applicant</i></b>   | <b><i>Date Submitted</i></b> |
| Site Plan review application   | May 31, 2006                 |
| Application for a Limited DRI Determination  | July 14, 2006                |
| Memorandum from Nutter, McClennan and Fish regarding MHC PNF filing                              | July 14, 2006                |
| Memorandum from Nutter, McClennan and Fish regarding building colors                             | July 21, 2006                |
| Memorandum from Nutter, McClennan and Fish regarding transportation                              | July 25, 2006                |
| Memorandum from Nutter, McClennan and Fish regarding MHC   | August 21, 2006              |
| Massachusetts Historical Commission filing letter  | August 22, 2006              |
| Vegetated bioinfiltration diagram  | September 14, 2006           |
| Memorandum from Nutter, McClennan and Fish regarding transportation                              | September 18, 2006           |
| Memo from Casco regarding energy efficiency  | October 31, 2006             |
| Memorandum from Nutter, McClennan and Fish regarding site plans                                  | October 31, 2006             |
| Memorandum from Nutter, McClennan and Fish regarding green site design                           | November 1, 2006             |
| Memorandum for Nutter, McClennan and Fish regarding community character and economic development | November 22, 2006            |
| Memorandum from Nutter, McClennan and Fish regarding change of use                               | December 5, 2006             |
| Memorandum from VHB regarding traffic issues   | December 15, 2006            |
| Memorandum from Nutter, McClennan and Fish regarding outstanding issues                          | December 18, 2006            |
| Memorandum from Nutter, McClennan and Fish regarding procedural issues                           | January 8, 2007              |
| Email from Nutter, McClennan and Fish regarding traffic issues                                   | February 2, 2007             |
| Memorandum from Nutter, McClennan and Fish regarding various issues                              | February 27, 2007            |
| Memorandum from Nutter, McClennan and Fish regarding alternative sites                           | March 1, 2007                |
| Email from Nutter, McClennan and Fish regarding traffic safety program                           | March 7, 2007                |
| Memorandum from Nutter, McClennan and Fish regarding issue areas                                 | March 15, 2007               |
| ODRP comparison chart submitted by Nutter, McClennan and Fish                                    | March 15, 2007               |
| Memorandum from Nutter, McClennan and Fish regarding site visit                                  | March 16, 2007               |
| ODRP comparison chart submitted by Nutter, McClennan and Fish                                    | March 28, 2007               |
| Memorandum from Nutter, McClennan and Fish regarding economic dev.                               | March 28, 2007               |
| Memorandum from Nutter, McClennan and Fish regarding issue areas                                 | March 29, 2007               |
| Memorandum from VHB regarding trip generation  | April 2, 2007                |
| Memorandum from Nutter, McClennan and Fish regarding 3/15/07 minutes                             | April 3, 2007                |
| Memorandum from Nutter, McClennan and Fish regarding benefits overview                           | April 5, 2007                |
| Economic development summary prepared by Nutter, McClennan                                       | April 5, 2007                |
| <b><i>Materials from Commission Staff</i></b>  | <b><i>Date Submitted</i></b> |
| Email to Greg Smith from Gab Belfit  | November 28, 2006            |
| Memorandum from Greg Smith to Nutter, McClennan and Fish   | December 4, 2006             |
| Letter to Nutter, McClennan  | December 5, 2006             |
| Meeting notes  | December 13, 2006            |
| Meeting notes  | February 9, 2007             |
| Email to Glenn Cannon from Adriel Edwards  | February 14, 2007            |
| Email from Randy Hart to Glenn Cannon  | February 14, 2007            |
| Email from Adriel Edwards to Glenn Cannon  | February 14, 2007            |

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|---|----------------------|
| Email to Bob Mumford from Glenn Cannon                | February 14, 2007    |
| Email to Bobm Mumford from Richard Schell, PE         | February 20, 2007    |
| Meeting notes   | February 20, 2007    |
| Meeting notes   | February 28, 2007    |
| Meeting notes   | March 5, 2007        |
| Email from Bob Mumford to Richard Schell, PE          | March 9, 2007        |
| Meeting notes   | March 9, 2007        |
| Email from Bob Mumford to Greg Smith                  | March 12, 2007       |
| Email from Glenn Cannon to Randy Hart, VHB            | March 13, 2007       |
| Email from Andrea Adams to Greg Smith                 | March 15, 2007       |
| Staff report  | March 15, 2007       |
| Minutes of public hearing                             | March 15, 2007       |
| Letter to Nutter, McClennan                           | March 16, 2007       |
| Email from Bob Mumford to CCC staff and applicant     | March 23, 2007       |
| Email from Wasyl Hnatiw to Phil Dascombe              | March 28, 2007       |
| Email from Wasyl Hnatiw to Phil Dascombe              | April 2, 2007        |
| Letter to Greg Smith from Paul Ruchinkas              | April 4, 2007        |
| Email from Wasyl Hnatiw to Phil Dascombe              | April 5, 2007        |
| <b>Materials from Town of Barnstable/State</b>        | <b>Date Received</b> |
| Letter from Ruth Weil                                 | July 13, 2006        |
| Referral letter from Tom Perry                        | December 26, 2006    |
| Letter from John Klimm                                | February 2, 2007     |
| Letter from John Klimm                                | March 14, 2007       |
| Letter from John Klimm                                | March 15, 2007       |
| Letter from John Traczyk                              | April 10, 2007       |
| <b>Materials from Others</b>                          | <b>Date Received</b> |
| Cape Light Compact letter regarding energy efficiency | October 24, 2006     |
| Letter from Felicia Penn                              | March 15, 2007       |

### TESTIMONY

The Public Hearing was opened on January 16, 2007, was then continued to February 8, 2007, was then continued to February 22, 2007, then continued to March 15, 2007 and continued to April 5, 2007. On April 5, 2007 the public hearing and the record were closed. Minutes of this meeting has been reviewed and approved by the Regulatory Committee and are hereby incorporated as testimony of this Decision. The following is a summary of that testimony:

#### March 15, 2007 public hearing

Attorney Butler of Nutter, McClennan and Fish, representing the applicant, stated the proposed project is redevelopment of the vacant Star City Grill and Rogers and Gray Insurance. The restaurant and insurance company are locally owned. The developer is Berkshire Development, who will lease the land from both families and sublease the building to Circuit City. The project is located in a Highway Business zone. The project is consistent with the Barnstable LCP and the project meets current zoning. The applicant agreed the issue areas of community character and traffic should be included in the scope of the Limited DRI review; however, they disagree with staff that economic development should be included in the scope of the review.

There are two adjoining properties on a combined 2.53 acres that are served by two curb cuts onto Route 132. The Star City Grill building is presently vacant and not in good physical shape. Rogers and Gray is occupied and will be relocating to another site in Barnstable. The applicant is proposing significant landscaping, stormwater and energy-related improvements, and will also be mitigating traffic impacts associated with the project. The applicant will be required to obtain a variance due to moving the proposed building into the 100-foot setback from Route 132. This configuration was recommended by the Commission, and is supported by the town. The applicant will move parking to the rear and side of the building as called for in the RPP. The landscaping plans indicate increased plantings and buffering, using mature vegetation.

The project architect summarized the elevations and building layout that shows the roof variations and choice of building materials recommended by staff. Regarding water resources, the redesign of the site results in a significant reduction in wastewater flows, a savings in terms of water consumption and incorporates improved storm water management and water quality through the use of bio-infiltration islands.

Regarding traffic issues, there would be 25 additional evening trips per hour and 52 Saturday peak hour trips. Significant traffic mitigation is proposed, including the closing of one curb cut along Route 132, building a raised median along Route 132 to prevent left turns in and out of the site, and significant safety improvements to the rotary that include signage and striping.

Green initiatives and sustainable design elements associated with the project were discussed by the applicant. It was suggested that economic development could be exempted from Commission review, as the project would result in increased taxes, is located in a growth center, that the project meets the ODRP's, which is a benefit, meets MPSs of the RPP and that the project is consistent with the town's LCP.

Commission staff described the Commission's Change of Use process and recommended the Regulatory Committee review the project as a Development of Regional Impact (DRI) under the Regional Policy Plan for the issue areas of economic development, transportation and community character.

Ms. Patty Daley of Barnstable's Growth Management Department asked whether the project should be reviewed as a limited DRI, and what the scope of the Commission's review could be. She read a letter from Town Manager John Klimm requesting the Commission deny the Change of Use application by Berkshire Development for the proposed Circuit City. Ms. Daley said the proposed change from the restaurant and insurance office to the proposed electronics super store would have more detrimental impacts than the prior use including in the area of transportation impacts, which should be addressed through the DRI process.

She recommended the Regulatory Committee include community character, water resources, and economic development in the scope of the DRI review. The town was pleased with the proposed Low Impact Development stormwater management systems, but that the Town was requesting that it be included in the DRI review so that implementation of the proposed items could be conditioned. The town also agreed with the Commission recommendation regarding economic development, and that national discount chains can have a negative impact on local-owned competitors. Ms. Daley noted the property was zoned for the proposed use, but only by Special Permit, and not by right. She said that it was located in a Town commercial center under the Local Comprehensive Plan, but that

the LCP was in the process of being updated, and that these designations may change. Ms. Daley said the Town does have a preference for locating in existing vacant commercial space. She said the Town had proposed alternate space to Berkshire Development, which had not been found to be satisfactory.

The town's primary concern was traffic, including the Airport Rotary, which is designated as the most hazardous intersection on Cape Cod. The applicant was also proposing to close the Citizen's Bank access on the Rotary, which she noted was privately owned, and permitted by MassHighway.

Mr. Marty Bloom, owner of the Star City Grill property, said the economics no longer made having a restaurant on the site feasible. Mr. Bloom said the median strip proposed on Route 132 was more important in terms of mitigating the traffic impacts than any change to the Airport Rotary.

Mr. Brad Tracy of Barnstable, representing 686 Route 132, spoke in favor of the project.

Ms. Donnie Hall of Rogers & Grey Insurance, discussed transportation-related safety issues. She said turning left into or out of the site was dangerous. She suggested the proposal would very much improve the traffic safety in the area.

Mr. Joseph Chilli of Barnstable spoke in favor of the project. He said the message being sent to developers was discouraging redevelopment of vacant property in Barnstable.

Mr. Jay Zavala said his key concern was traffic safety. He said the first item was the difference in the accident history, and the second was the significance of the state's peer review of the Airport Rotary.

Mr. Glenn Cannon, Commission Transportation Engineer, noted the Commission's standards dealt with three related areas: trip reduction, congestion, and safety. He said staff had been working for months with the applicant, and had reach consensus on two of the three areas – trip reduction and congestion. He said safety issues at the Airport Rotary were still outstanding, in part because of all the involved parties. He noted that roundabouts were being built in the United States, which are different than what existed on the ground now. Mr. Cannon said the peer review was to try to determine if there was anything substantive that could be done to enhance traffic flow and safety at the Rotary.

Mr. Cannon noted some of the crash data was relatively old – from 2001 – which showed 31 crashes per year at the Rotary. He noted the applicant had said they had approached the local Police Department for newer data. He said the new data showed 17 crashes per year.

Mr. Randy Hart of VHB, said the rotary design had been presented to a group for review. He said the design had also been presented to District 5 MassHighway. He said the discussion indicated the concept had merit.

Ms. Susan Kadar noted the Town had suggested that an actual traffic count be done at another Circuit City location.

Ms. Kadar questioned whether the properties on the opposite side of the proposed raised median were aware of this idea, and whether they would approve of it.

Mr. Cannon noted the staff had not heard any opposition from the Town about the raised median.

Ms. Joy Brookshire said a median will take up a good part of the existing lanes, and asked how would this be handled.

Mr. Hart said in order to install the median, the road segment would need to be widened, which would involve relocation of utilities, and installation of the median itself. This would be the only way to ensure right-in/right-out and no illegal left turns.

The applicant noted there was sufficient right of way to accommodate the median, and that the portion of Route 132 was a Town road, and that it had been done on other sections of Route 132.

Mr. John Harris questioned whether the raised median would be long enough to prevent u-turns further down Route 132.

The applicant responded that the median as proposed was sufficient.

Mr. Zavala asked about the scope of the review. He asked if the Committee had thoughts on the scope of the review, and what the proposed next step should be.

Attorney Butler said the applicant would like an opportunity to meet with Commission staff on the economic development issues, and to hold a follow up hearing in an expeditious manner.

Mr. Dorr Fox, Commission Chief Regulatory Officer, suggested April 5, 2007 at 3pm in the Assembly of Delegates Chamber for a follow up to this hearing, assuming the Commission did not meet that day.

Ms. Kadar moved to continue the hearing to Thursday, April 5, 2007 at 3:00 PM at the Assembly of Delegates Chambers, First District Courthouse, Barnstable, and to leave the record open. Mr. Harris seconded the motion. The Committee voted unanimously for the motion.

#### April 5, 2007

Mr. Jay Zavala opened the hearing at 3:30pm.

Attorney Butler began his presentation by stating that the applicant had reached a consensus with the staff that the scope of the limited DRI review, in accordance with the regulations, should include both traffic and community character.

He stated that it was his contention that the applicant and staff could work expeditiously on the traffic issues and felt confident that the estimates of trip generation and ITE numbers are appropriate. Also, at the request of the transportation staff, a peer review process was instituted for the airport rotary safety mitigation proposal. The final report was submitted by the outside organization hired to conduct the peer review on April 5, 2007.

He further stated the remaining area to be discussed as to whether it was within the scope of a limited DRI review was economic development. A memorandum was submitted to staff from Nutter, McClennan and Fish dated March 28, 2007 which was a response to the March 15, 2007 staff report and issues that had come up at the March 15, 2007 public hearing.

He stated the purple sheet is a summary of what was presented at the March 15, 2007 public hearing and what was presented to the economic development staff at a staff level meeting on March 28, 2007. Pat stated that he wished to review this memo with the committee members as it was his contention that the information in the memo would lead one to the reasonable and rational conclusion that the economic development aspects of this project were not more detrimental and are more beneficial. As such, it was his contention that economic development should not be within the scope of the limited DRI review.

He discussed issues associated with the ground lease structure. Rogers and Gray will be moving from their existing site to Attucks Lane and will be leasing space from a Cape Cod resident in another building and will be receiving their own lease payments as the result of the structure of this transaction. The Bloom family, a local family that owns the restaurant, will receive capital infusion and will re-invest those monies in the community in the terms of other economic activities.

He stated that under Section 4b of the Enabling Regulations, the Regulatory Committee is allowed to look at both the qualitative and quantitative aspects of each of the resource areas. The predominant area in economics is quantitative, and both economics and traffic are easily quantifiable. As such, he stated he was trying to summarize the quantified data. He also discussed employment data, stating Circuit City would result in an increase of four full-time employees and sixteen part-time employees. There would be an increase in total payroll of \$500,000, as well as an increase in wages.

He further stated that the building is located in conformance with the Barnstable Local Comprehensive Plan. The LCP indicates that this location is a Growth Activity Center to support regional retail use. Finally, he stated the traffic mitigation package totaling \$650,000 results in a left-over amount for future use by the town of approximately \$250,000. Also, he stated that Barnstable adopted by zoning a regional shopping center overlay district, which is the Cape Cod Mall. This was done based upon the need for economic vitality in that area.

Mr. Greg Smith, Commission planner, stated the staff report indicated that economic development should be included within the scope for limited DRI review as the project's economic development impacts are more detrimental than the immediate prior use. He also cited the March 14, 2007 letter from Barnstable Town Manager John Klimm that recommended the scope for limited DRI review include traffic, community character, economic development and water resources.

Leslie Richardson, staff economic development officer, stated the staff report looks at the current uses of the properties, one of which is an office and the other is a restaurant. She compared the uses and on the more beneficial side found a larger full-time equivalent with Circuit City than the existing uses. She stated that the quality of the jobs being proposed by Circuit City was significantly lower and that only four full-time salaried positions were being created.

Mr. Roy Richardson asked if there was a way to make a comparison between other national stores that are similar to Circuit City and those store's payment patterns. Given what Circuit City is doing regarding reducing wages, he was concerned what that impact might be to existing, similar businesses and their employees, and what those businesses might do to remain competitive.

Ms. Kadar questioned Circuit City's practice of openly encouraging those let go to re-apply for lower paying jobs. She wondered if this is the type of employer wanted on the Cape.

Mr. William Doherty, Barnstable County Commissioner stated he had concerns about the traffic mitigation and stated his concerns about congestion. He also had concerns about the wages that the proposed use would be paying to the majority of its employees.

Mr. Paul Niedzwiecki, Barnstable Assistant Town Manager wanted to make clear the town's position on its opposition to the proposed use at this proposed location. He stated his hopes that the committee would include in the limited DRI review scope traffic, community character and economic development.

Mr. Chuck Robinson, President of Rogers and Gray Insurance Company stated that he had two comments about economic development impacts. He stated if the proposed project comes to fruition, it is the intention of his company at the present location to move into a new building he is planning to purchase. The company employees ninety people, sixty of whom are on-Cape and 30 who work off-Cape. He explained that if the company cannot expand its operations as it hopes, the company may not be able to expand its employment situation and may have to look at other sites either here on the Cape or off-Cape. He cited another economic concern, stating that if the proposed project does not go through, the economic value of the Route 132 property will decrease substantially, and this remains a concern for his business.

Attorney Butler pointed out that in meetings with the Growth Management Department, it was made clear that the department staff wished the building moved from the rear, where it would not need a variance, up closer to Route 132 and within the 100-foot setback, thus requiring a variance. The reason was to buffer the impacts and move parking from the front to the sides and rear of the building. The applicant agreed to seek zoning relief from the ZBA in Barnstable, as this configuration was supported by the town.

Ms. Brookshire asked what the status of water resources was for being included in the scope for limited DRI review.

Ms. Daley from the Barnstable Growth Management Department stated that if stormwater management were put in as a condition in the DRI decision, then the committee would be able to enforce it. However, she felt that if stormwater were not put in as a DRI condition, she was not certain how the enforcement of the O and M plan will occur.

Attorney Butler stated that to the extent that this committee determined that it wanted to have it for conditions, the applicant did not have any problems. If the committee determines that it wants water resources in the scope based on the town's input, the applicant would be comfortable.

Mr. Richardson stated that he generally supports what the staff has proposed.

Ms. Brookshire asked Attorney Butler about the March 1, 2007 memorandum to Greg Smith regarding the alternative site options. She asked about the fourth option listed in that memorandum, which was the South Wind Plaza, where the Stop and Shop building is currently located. She asked how the Stop and Shop review process was going and if the South Wind Plaza location would be a possible location to use if it weren't going to be used for the Stop and Shop.

Attorney Butler stated that he would give his answer to Joy's question, and he stated that he had his co-counsel at the table who was representing Stop and Shop. His sense was in having discussions at that point, and he thought nothing had changed, that the application process had not moved forward.

From a timing perspective, he stated the applicant filed this in July of 2006, and the Stop and Shop has completed the MEPA process and nothing is moving forward that he is aware of.

Mr. Smith stated that with regard to water resources and the purpose of limited DRI review, the question to consider is whether the water resource impacts from the proposed use are more detrimental than the immediate prior use. The water resource staff had determined that the water resource impacts of the proposed use were not more detrimental than the immediate prior use, although there was concern about the operations and maintenance plan. As such, staff made the recommendation not to include water resources in the scope.

Ms. Kadar asked if she could go back to Town Manager John Klimm's letter of March 14, 2007. She read the first sentence of the letter, where Mr. Klimm requested that the Cape Cod Commission deny the Change of Use application. She stated that she did not feel the committee had addressed that issue. She said that, generally speaking, the committee respects requests from the town and takes them very seriously. She said she was finding the issue a bit awkward that the very specific and direct request had not been addressed. She turned to Dorr Fox, the Commission's Chief Regulatory Officer and asked if the Committee denied the Change of Use application, what would happen.

Mr. Fox stated that the first thing the committee was tasked with doing was determining the scope for limited DRI review. He explained that the way a Change of Use works is that the committee is not supposed to deny the Change of Use. When the committee has discussed all of the issues in the scope, the committee then has the ability to approve or deny the project.

Mr. Zavala stated that with the purpose of determining the scope of the limited DRI review, and that no less than four items were discussed, he asked if there were any other elements that the committee wished to raise or discuss before the committee entertained a motion for either individual elements or elements as a group. Hearing none, Jay entertained a motion.

Ms. Kadar moved that the limited DRI review in its scope include transportation, economic development, community character and water resources.

The motion was seconded.

Mr. Zavala asked for clarification on the motion that included traffic, community character and water resources.

Ms. Kadar stated that economic development should be included in the scope as well.

Mr. Zavala agreed that economic development be included in the motion.

Mr. Harris asked if the staff was in agreement with all of the issues that were being included in the scope for limited DRI review. He stated that there were four things listed in the motion, and he wanted to understand that those were the four things that are of concern.

Mr. Smith stated that the staff was comfortable with economic development and transportation being in the scope. Regarding water resources, he stated that Patty Daley of the Barnstable Growth Management Department has suggested stormwater resources being included in the scope so that the

O and M plan could be conditioned. He suggested that staff did not have a problem with it be included in the scope.

Mr. Zavala asked if all were in favor of the motion. All responded "aye". None opposed or abstained. The motion was moved.

### **JURISDICTION**

The proposed project qualifies as a DRI under Section 3(f)(i) of the DRI Enabling Regulations as a change of use with a gross floor area greater than 10,000 square feet. Pursuant to Section 4(a) of the DRI Enabling Regulations, the Chief Regulatory Officer determined that the project constitutes a Change of Use. Further, as provided in Section 4(a)(iii), the applicant then applied for a Limited DRI Determination in accordance with Section 4(b), which requires the Regulatory Committee to determine the scope of the DRI review required.

### **FINDINGS**

The Commission, through the Regulatory Committee, has considered the application of Berkshire-Hyannis, LLC for the proposed change of use project at 624 and 640 Iyannough Road (Route 132), Hyannis, MA, and based on consideration of such application and upon the information presented at the public hearings and submitted for the record, makes the following findings pursuant to Sections 3 and 4 of the DRI Enabling Regulations:

#### General Findings

**G1** The project that is the subject of this Decision is as follows:

The proposed Circuit City redevelopment project consists of the demolition of two existing buildings with a combined square footage of 10,610 square feet located at 624 and 640 Iyannough Road in Hyannis. The two buildings will be replaced with a new 22,475, one-story square foot electronics superstore. The sole tenant of the proposed building will be Circuit City. The proposed project will be located on a 2.53-acre parcel. The applicant is proposing a number of improvements to the project site including elimination of a curb cut along Route 132, enhanced landscaping, enhanced storm water management and drainage, and an increased landscape buffer along Route 132.

The project is proposed to be constructed on a 2.53-acre site located within the Town of Barnstable's Highway Business (HB) and Business (B) zoning districts, and within the Town of Barnstable's Groundwater Protection Overlay District. The project site is located within the Route 132 Regional Commercial Center and Growth Activity Center designated by the Barnstable Local Comprehensive Plan. As such, growth management initiatives in this area include encouraging infill, reduction of curb cuts and maintaining this area as a "regional shopping and commercial center."

The existing site is currently occupied by an existing 4,000-square-foot office building most recently occupied by Rogers & Gray Insurance (2,500-square-foot footprint with a partial second floor as shown on Lot 13) and a 6,160-square-foot Star City Grill as shown on Lot 12.

The site is bounded by a McDonald's Restaurant to the west, a Best Western motel to the east, an airport access road to the north and Route 132 to the south. The majority of the development along this portion of Route 132 (between the rotary and Independence Drive) consists of "strip development" with large buildings surrounded by parking lots, as typified by the Cape Cod Mall and the K-Mart plaza. However, the site in question is currently one of the few breaks in this development pattern with mature trees, landscaping and modestly scaled buildings.

- G2** In accordance with Section 4(b)(vi) of the DRI Enabling Regulations, the Regulatory Committee reviewed the proposed change of use to determine the scope of the project review, which may be limited to those RPP issue areas where the impacts are more detrimental (quantitatively and/or qualitatively) than the immediate prior use. The Regulatory Committee considered whether the project's impacts involve deviation from the minimum performance standards (MPS) of the RPP in determining the scope of DRI review. The Committee, in making its determination, considered the resources protected by the Act and the RPP. The Regulatory Committee finds that the project will result in impacts that are more detrimental than the immediately prior use in four RPP issue areas, including community character, economic development, stormwater management and transportation.

#### **Water Resources Findings**

- WR1** The project is located in an existing Wellhead Protection Area/Zone II. Wastewater was not included in the nitrogen calculations, as the project will be connected to the Hyannis Wastewater Treatment Facility and the proposed project will generate approximately 80 percent less wastewater compared to the existing uses.
- WR2** The project will incorporate the use of vegetated bio-retention areas to improve treatment of storm water on site. The project will also incorporate a landscape management plan that specifically addresses bio-retention.
- WR3** The Applicant is proposing to utilize a variety of storm water BMPs to handle storm water onsite to comply with the Town of Barnstable Regulations, the State of Massachusetts Stormwater Policy Guidelines and MPS 2.1.3.2. Structural BMP's include hooded catch basins, a Stormceptor sediment trap, bio-retention cells within the parking area, and vegetated swales incorporated into the foundation planting. Non-structural BMP's proposed include regular pavement sweeping, catch basin cleaning, and enclosure and maintenance of the dumpster area.

Overflow catch basins with subsurface infiltration are provided to accommodate the 25-year storm event. In order to avoid an increase in impervious surfaces from the existing to proposed conditions, permeable pavers have been proposed for the perimeter parking area. Rooftop runoff will be directly infiltrated into a subsurface infiltration basin.

- WR4** Considering the resources protected under the Act and RPP, the subcommittee has found that the proposed project is more detrimental in the area of stormwater resources than the immediate prior use. Therefore, the Regulatory Committee recommends including stormwater management in the scope of the limited DRI review for the project.

### Natural Resources Findings

**NR1** The Massachusetts Historical Commission has provided written comments dated August 10, 2006 that the project is unlikely to affect historical or archaeological resources. Consequently, the Commission finds that impacts from the proposed development are not more detrimental with regard to historical and archaeological resources than the immediate prior use.

### Transportation Findings

**T1** The proposed 23,500 square foot development is expected to generate the following trips:

|                            |             |
|----------------------------|-------------|
| Average weekday            | 1,058 trips |
| Average morning peak hour  | N/A         |
| Average evening peak hour  | 106 trips   |
| Average Saturday           | 1,482 trips |
| Average Saturday peak hour | 150 trips   |

**T2** The proposed site has been previously developed and the following traffic credit was given for the previous development:

|                            |           |
|----------------------------|-----------|
| Average weekday            | 634 trips |
| Average morning peak hour  | N/A       |
| Average evening peak hour  | 57 trips  |
| Average Saturday           | 422 trips |
| Average Saturday peak hour | 50 trips  |

**T3** The RPP allows a 10 percent traffic credit for any development proposed within a certified growth center, and standard engineering practice allows for a "pass-by" rate of 25 percent (those vehicles accessing a retail site as part of a multi-purpose trip). In addition, the RPP requires that all DRI's reduce the site-generated traffic by 25 percent by using alternative (non-automobile) modes of transportation. The expected net increase in off-site traffic from the project, after allowing for these traffic credits, is as follows:

|                            |           |
|----------------------------|-----------|
| Average weekday            | 238 trips |
| Average morning peak hour  | N/A       |
| Average evening peak hour  | 25 trips  |
| Average Saturday           | 596 trips |
| Average Saturday peak hour | 52 trips  |

**T4** Based on the increase in average daily traffic of 1,058 trips per day, and an existing traffic credit of 634, the trip reduction requirement for this project is 106  $[1,058 - 634) \times .25]$  daily vehicle trips.

**T5** The Airport Rotary is listed in the top 1,000 crash locations as reported by the Massachusetts Highway Department and is the fifth highest crash location on Cape Cod. The intersection experiences an average of approximately 31 crashes per year. The Regulatory Committee remains concerned with both the existing degradation in public safety at this location, and the impacts and possible further degradation in public safety at this location should the proposed electronics superstore be constructed.

- T6** The RPP requires DRI's to mitigate all regional impacts associated with the proposed project. The Applicant has conducted a "fair-share" analysis to mitigate all project impacts based on full traffic credit from the previous use. The amount of the "fair-share" mitigation is \$35,505 after the traffic credits from the previous use have been applied. For the proposed electronic superstore's commercial space, this would equate to a mitigation allowance in the range of \$470,000 to \$705,000 if no traffic credits were applied to this project.
- T7** The Applicant has proposed a right turn in/right turn out only driveway onto Route 132.
- T8** The Applicant has also proposed a rear access driveway with a controlled gate that would be used by emergency personnel only.
- T9** Considering the resources protected under the Act and RPP, and based on the above analysis, the Regulatory Committee believes the proposed project is more detrimental in the area of transportation than the immediately prior use. Therefore, the Regulatory Committee shall include transportation in the scope of the DRI review for the project.

#### **Community Character Findings**

- CC1** The bulk, mass and scale of the proposed building will result in a single 22,475 square-foot structure that is twice the size of the combined square footage of the existing two buildings located on the project site. A building of this size will likely significantly alter the character of this part of Route 132.
- CC2** On the proposed plan, the building is located in the front setback and places all the parking to the side and rear. This proposal requires a variance to the dimensional requirements of the local zoning by-law (100 feet along Route 132). The proposed project is consistent with MPS 6.2.7 and would result in an improvement in terms of the location of the parking areas.
- CC3** Considering the resources protected under the Act and RPP, and based on the above analysis, staff believe that the proposed project is more detrimental in the area of architecture/community character than the immediately prior use. Therefore, the Regulatory Committee includes community character in the scope of the DRI review for the project.

#### **Economic Development Findings**

- ED1** The current businesses located on the site are Rogers & Gray Insurance and the Star City Grill. Rogers & Gray is currently in business while the Star City Grill closed in October 2005 and has since remained a vacant building. These are both locally owned businesses, while the business proposed for the site is a national discount chain store.
- ED2** Economic research shows that local businesses retain wealth in the local economy, while non-locally owned businesses draw money out of the local economy. This effect will be partially mitigated by the fact that Rogers & Gray is relocating elsewhere in the county.

However, research also shows that national discount chains can have a negative impact on locally owned competitors.

**ED3** The applicant anticipates filling 24 full-time and 36 part-time positions. Four of these positions will be full-time salaried with benefits: the store manager (\$75,000/yr); the operations manager (\$50,000/yr); and two sales managers (\$47,500). The remaining employees will be paid on an hourly basis with wages ranging from \$10.02/hour to \$21.00/hour (full-time salary equivalent is \$20,842 – \$43,680 per year).

**ED4** Industry averages indicate that use of this property for retail will be substantially different from the previous restaurant use, affording less economic benefit to the town in terms of wage rates and employment diversity, than an insurance or similar profession office uses for the property.

**ED5** By estimating the full-time equivalent employment (FTE) for the current and proposed uses, it is possible Circuit City will provide 18 more FTE positions and \$163,635 more in payroll annually than the existing businesses. However, Circuit City would only generate half the payroll per square foot of developed space and offers an average (annual) wage that is \$13,038 lower than estimated for the existing uses.

**ED6** The applicant estimated the tax revenue to be generated by the new development using a variety of other existing retail sites. The table below provides a summary of this information:

|                                     | <b>Current Use</b>           | <b>Proposed Use*</b> |                   |
|-------------------------------------|------------------------------|----------------------|-------------------|
| <i>Type of Use</i>                  | <i>Restaurant, Insurance</i> | <i>Retail Chain</i>  | <b>Difference</b> |
| Square Footage                      | 10,160                       | 23,500               | 13,340            |
| Bldg Assessed Value per square foot | \$84                         | \$73                 | -\$11             |
| Total Assessed Value                | \$2,107,500                  | \$2,949,100          | \$841,600         |
| Taxes Paid                          | \$19,465                     | \$27,238             | \$7,773           |

Source for Current Use: Town of Barnstable 2006 Property Assessment Lookup

\* Applicant assumes an assessed value for the building of \$73/square foot plus the current assessed value of the land (\$1,233,600). See the project file for the applicant's methodology.

**ED7** These data and estimates show that the proposed use will generate \$7,773 more in tax revenue annually. However, the assessed value of the building will be lower by \$11 per square foot (the AV of the land remains the same). In addition, the *Fiscal Impact Analysis of Residential and Nonresidential Land Use Prototypes* completed for the Town of Barnstable by Tischler & Associates in July 2002 finds that the net fiscal impact of "big box retail" is -\$468/1,000 square feet. The proposed 23,500 square foot building would, using this research, cost the town \$10,998 annually in services over the revenue generated.

**ED8** Considering the resources protected under the Act and RPP, and based on the above analysis, the Regulatory Committee believes the proposed project is more detrimental in the area of economic development than the immediately prior use. Therefore, the Regulatory Committee includes economic development in the scope of the DRI review for the project.

**Hazardous Materials**

**HMI** Based on the RPP definition of a hazardous material, the application shows that the proposed retail building would have less hazardous material than the existing restaurant and insurance building. Therefore, the proposed project is not likely to pose impacts that are more detrimental than the immediate prior use in the area of hazardous materials.

**CONCLUSION**

Based on the findings above, the Regulatory Committee hereby determines that the proposed change of use at 624 and 640 Iyannough Road (Route 132), Hyannis, MA is subject to mandatory review as a Development of Regional Impact (DRI) for the issue areas of stormwater management, economic development, transportation and community character identified in the 2005 Regional Policy Plan in accordance with Sections 3 & 4 of the DRI Enabling Regulations because the impacts of the proposed project have been determined to be more detrimental than those of the immediate prior use. This decision is rendered pursuant to a vote of the Cape Cod Commission Regulatory Committee on February 4, 2008.

Susan Kadar Feb 4, 2008  
Susan Kadar Date  
Vice Chairperson of the Regulatory Committee  
Cape Cod Commission

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss

2-4-2008

Before me, the undersigned notary public, personally appeared Susan Kadar, in her capacity as Vice Chairman of the Regulatory Committee, whose name is signed on the preceding document, and such person acknowledged to me that he signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was  photographic identification with signature issued by a federal or state governmental agency,  oath or affirmation of a credible witness, or  personal knowledge of the undersigned.

Dorr Steven Fox  
My Commission Expires:

