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December 22, 2015
0106967-00002



Steve Tupper
Cape Cod Commission
3225 Main Street
Barnstable, MA 02630

Re: Paesano Place - 123 Waterhouse Road, Bourne

Dear Steve:

The purpose of this correspondence is to provide additional documentation in support of Paesano Realty Trust's (the "Trust") request to apply the construction and maintenance costs associated with Paesano Way towards the Trust's transportation congestion mitigation costs.

As you are aware, the January 8, 2009 Cape Cod Commission hardship exemption decision (hereafter, the "Decision") provides, in pertinent part, that "...*the Commission may consider a transportation credit of \$105,000, the cost to construct the on-site access road, to offset the mitigation impacts of this project.*" By way of background, the ability to reduce the traffic mitigation by the Paesano Way costs was a concept that Commission staff suggested and offered during the initial review process. Furthermore, minutes from the December 8, 2008 CCC Subcommittee meeting, also suggest that the Subcommittee charged with the original review of the project felt that credit should be given for the cost of construction of Paesano Way. See minutes of December 8, 2008, page 5 of 7, attached as Exhibit A, highlighted in yellow, which provide: "*Mr. Cakounes further moved that at the time the applicant seeks any use of the second floor, that the applicant be required to seek a modification of this decision at which time the Commission should consider the \$105,000 payment the applicant expended for the interconnect road as a credit. Mr. Harris seconded the motion, which was unanimously approved.*" (Emphasis added.)

Since our meeting with you in September, the Trust engaged VHB to count the number of vehicles using Paesano Way and determine what percentage of those vehicles use it to access the site versus those vehicles using it as a means of accessing Waterhouse Road, thereby reducing congestion over a portion of MacArthur Boulevard. VHB conducted the counts on Friday, October 2nd and Saturday, October 3rd. The counts confirmed that the significant majority of vehicles using Paesano Way do so to access Waterhouse Road and are not site related. Indeed, on a typical weekday (Friday, Oct. 2nd), approximately 93% of the vehicles on Paesano Way represent cut-through traffic. And, on a representative weekend (Saturday, Oct. 3rd),



approximately 98% of the vehicles on Paesano Way are not site-related (see spreadsheet and graphic attached as **Exhibit B**). Further, because these vehicle counts were done in the shoulder season, the usage in the peak summer months is likely to show and even higher percentage of non-site related use of Paesano Way. That the vast majority of vehicles using the interconnect are not site-related is strong evidence that the interconnection reduces congestion on MacArthur Boulevard and is of great benefit to the traveling public.

To further document the benefit of the access road, the Trust met with the Bourne Planning Board at its regular meeting on December 10, 2015. It was explained to the Board, both at the meeting and in writing, that the CCC Decision provided an avenue for the Trust to reduce its transportation mitigation by the Paesano Way road costs. At the meeting, the Board unanimously agreed that, provided the condition of Paesano Way is well-maintained, it provides a benefit to the travelling public. Several of the Board members commented that it is adequately sized, that it also benefits emergency responders, and that it is a much safer way to access Waterhouse Road as compared to the intersection south of the subject property. The Board will be sending a letter to the Cape Cod Commission under separate cover confirming its vote of support.

The volume of vehicles using Paesano Way as an access to Waterhouse Road - 359 trips on a typical fall Friday and 215 trips on a typical fall Saturday (which are likely to be significantly higher in the peak months) - together with the support of the Bourne Planning Board, confirms that the Paesano Way is both heavily used and beneficial to the traveling public. As a result, credits should be given to reduce the Trust's congestion mitigation under the Decision.

Please let me know if you have any questions or require any additional documentation.
Thank you very much.

Very truly yours,

Eliza Cox

Enclosures

cc: Jon Idman, Esq. (w/ encls.)
Franco Raponi, Trustee (w/ encls.)



CAPE COD COMMISSION

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MINUTES

Subcommittee Meeting December 8, 2008

Jonathan Bourne Public Library, 19 Sandwich Road, Bourne, MA

Subcommittee Members present: Michael Blanton (Chair), Leo Cakounes, Roslyn Garfield, John Harris, Roger Putnam

Commission Staff present: Kristy Senatori (Chief Regulatory Officer), Jessica Wielgus (Commission Counsel), Andrea Adams (Senior Regulatory Planner), Scott Michaud (Hydrologist), Marianna Sarkisyan (Regulatory Officer)

Others present: Eliza Cox, Esq., Sarah Turano-Flores, Esq., Franco Raponi, Coreen Moore, Peter Meier

The subcommittee meeting was held immediately following the public hearing. Mr. Blanton opened the meeting at 7:34 pm.

PAESANO COMPANY OFFICE BUILDING, 123 Waterhouse Road, Bourne, MA
Mr. Cakounes expressed his concern with deferring all mitigation. He would prefer to see no use of the second floor and when the second floor is to be used in the future, he would like the Commission to review the project for specific mitigation at that time. Mr. Cakounes is not comfortable waiving the open space requirement.

Mr. Putnam stated he agreed with Mr. Cakounes' comments.

Ms. Wielgus reminded the subcommittee that the Commission asserted jurisdiction over the development at the October 2, 2008 full Commission meeting and that the subcommittee should consider the merits of the hardship request in each issue area.

Ms. Garfield questioned how the town or Commission would be notified if and/or when Mr. Raponi installs an elevator. Both Ms. Cox and Mr. Raponi responded that a building permit would be needed.

Mr. Cakounes questioned whether there is plumbing on the second floor. Mr. Raponi responded that only the sprinkler stubs and heat are on the second floor.



Mr. Blanton suggested the subcommittee go through each issue area.

Ms. Senatori provided the subcommittee with a list of the issue areas that needed their consideration including natural resources, open space, exterior lighting, parking, landscaping, transportation, and wastewater.

In the area of natural resources, Ms. Senatori noted that Commission staff recommended a waiver of the natural resources inventory since the site is completely disturbed.

Mr. Harris asked for clarification with respect to how each issue applied to the project.

Ms. Wielgus said the way each issue applies to the project may be different, in that some apply to the site as a whole, or to the building as a whole, or are connected to the building's occupancy. Ms. Wielgus noted, however, the first issue for the subcommittee to discuss was whether or not the subcommittee finds that applicant had a hardship, and had met their burden to substantiate a hardship. Ms. Wielgus suggested that the subcommittee could then take up each issue area and determine whether there should be mitigation.

Mr. Putnam moved that the subcommittee find that a literal enforcement of the Act would involve a substantial hardship, and the Applicant had met their burden of proof that there is a hardship. Mr. Harris seconded the motion that was approved unanimously.

Ms. Cox noted the site did not contain wetlands.

Mr. Cakounes moved that the subcommittee waive the requirement for a natural resources inventory under Minimum Performance Standard 2.4.1.1. because a literal enforcement of the requirements of the Commission Act would involve a substantial hardship. This relief would be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the Act. Mr. Harris seconded the motion that was approved unanimously.

In the issue area of open space, Ms. Senatori noted that the requirement is the equivalent of the disturbed area, which is probably the entire property.

The subcommittee discussed at length the impacts of any use of, occupancy of or access to the second floor. The subcommittee discussed how to deal with the potential or eventual occupancy of the second floor in terms of any requirements that might be placed on the applicant, the project or the owner. There was consensus that if there was to be any use, including storage of anything on the second floor, certain things should then be required to be done.

Ms. Garfield asked if there was a permit required for the elevator? She noted that the second floor could be used for storage, and perhaps no occupancy permit would be needed for this.

Ms. Moore said perhaps not for an elevator.

Ms. Cox suggested language could be tied to fitting out the second floor.

Mr. Cakounes said this was not good enough. He said the second floor should not be used for storage, packages, files or anything. Mr. Cakounes said no one should be up there. He said there should be nothing that provides access to or provides use of the second floor.

Mr. Harris and Ms. Garfield agreed with Mr. Cakounes' point.

Mr. Harris expressed concern about long-term monitoring of deferred requirements. What if no permit is pulled?

Through the chair, Mr. Meier said if someone at the local level came to understand that there was access to, use of or occupancy of the second floor in some manner, then there would be mechanisms in place to enforce the requirements at the local level.

Mr. Cakounes moved that the open space requirement be deferred until there is access to, occupancy, or any use of the second floor. Ms. Garfield seconded the motion, which was approved unanimously.

Mr. Cakounes moved to waive the exterior lighting foot-candle level requirements. Mr. Putnam seconded the motion, which was approved unanimously.

Mr. Cakounes discussed the parking issues, both related to use/occupancy of the first floor, and possible use/occupancy of the second floor.

Mr. Cakounes noted that Minimum Performance Standard 6.2.7 requires parking to be located to the rear or side of a building unless such location will have an adverse or detrimental impact or is infeasible. Mr. Cakounes moved that the subcommittee make a finding that relocating the parking relative to the use/occupancy of the first floor is infeasible. Ms. Garfield seconded the motion, which was approved unanimously.

Mr. Putnam moved to grant the hardship waiving the requirement of MPS 6.2.7 as it relates to the use of the first floor, because the Applicant demonstrated a substantial hardship and because relief can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act, and that prior to access to, pulling any building permits for, and prior to occupancy of the second floor, the applicant shall be required to seek a modification of the Commission's decision with respect to the parking design. Ms. Garfield seconded the motion, which was approved unanimously.

Mr. Cakounes noted that Goal 6.2 of the RPP calls for development to be consistent with the Commission's Design Guidelines, which require development to retain the maximum amount of existing vegetation on the site. He said there were some substantial trees that

were removed. He moved that the subcommittee find that landscape screening with respect to use/occupancy of the first is adequate but that landscaping should be added upon use, access to, pulling any building permits for, and prior to occupancy of the second floor. Mr. Putnam seconded the motion, which was approved unanimously.

Mr. Putnam moved to grant the hardship waiving the requirement of Goal 6.2 as it relates to landscaping and as it relates to the use of the first floor, because the Applicant demonstrated a substantial hardship and because relief can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act and that the landscape screening be deferred until there is access to, occupancy, prior to pulling any building permits for, or prior to any use of the second floor. Mr. Cakounes seconded the motion, which was approved unanimously.

Ms. Cox stated that there is scheduled to be more grass planted in the on-site drainage area.

Mr. Cakounes said this was a positive step, but it was difficult to determine what this would add without a landscape plan at this stage.

There was a discussion about the trip reduction plan and the traffic study. Mr. Cakounes noted the applicant had constructed a new access road between MacArthur Boulevard and Waterhouse Road. He noted the cost of construction of this road should be taken into account at this time. Mr. Cakounes said a traffic study was not warranted at this time based on use/occupancy of only the first floor. He said that upon use/occupancy of the second floor, it might be warranted to have a traffic study done or not. Mr. Cakounes said his intent was to not tie the hands the Commission in the future in terms of a traffic study. He also said, however, that consideration should also be given for the new access road.

Mr. Cakounes moved that a hardship be granted and that unless and until the second floor is utilized that MPS 4.1.3.4 be waived for the uses of the first floor to waive the traffic study requirements based on use/occupancy of only the first floor because the Applicant demonstrated a substantial hardship and because relief can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Mr. Putnam seconded the motion, which was approved unanimously.

Mr. Cakounes moved that prior to access to, occupancy of, prior to seeking any building permits for, and prior to any use of the second floor, the applicant shall be required to seek a modification of the Commission's decision, including a determination from the Commission as to whether or not a traffic study was warranted at the time. Mr. Harris seconded the motion, which was approved unanimously.

Mr. Meier asked about the landscaping issues.

Mr. Cakounes moved that a hardship be granted because the Applicant demonstrated a substantial hardship and because relief can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act and that unless and until the second floor is utilized that MPS 4.1.3.4 requiring the transportation fair share mitigation payment of \$153,704 be deferred and only be required at the time the applicant seeks access to or use of the second floor, including but not limited to, seeking any building permits for or utilizing for storage. Mr. Cakounes further moved that at the time the applicant seeks any use of the second floor, that the applicant be required to seek a modification of this decision at which time the Commission should consider the \$105,00 payment the applicant expended for the interconnect road through the site as a credit. Mr. Harris seconded the motion, which was approved unanimously.

Mr. Harris asked Ms. Cox if Mr. Raponi had provided a detailed accounting of the cost of construction of the new interconnect road?

Ms. Cox said he had a balance sheet.

Mr. Cakounes and Mr. Harris said the road had been built relatively inexpensively.

Ms. Garfield said signage on the access/interconnect road was important. She noted she had driven past it when traveling to the site visit.

Mr. Cakounes moved that the subcommittee find that the applicant should work with MassHighway to provide appropriate directional signage for the access/interconnect road. Mr. Harris seconded the motion, which was approved unanimously.

Mr. Cakounes moved that the transportation fair share mitigation payment be provided prior to access to, occupancy of, or any use of the second floor including but not limited to seeking any building permits for the second floor, but that consideration also be given at that time relative to the monies spent on the access/interconnect road (\$105,000). Ms. Garfield seconded the motion, which was approved unanimously.

Mr. Raponi asked if he could present additional information to the board at that time in the future?

Mr. Blanton said he believed Mr. Raponi could do so.

Mr. Cakounes moved that a hardship be granted because the Applicant demonstrated a substantial hardship and because relief can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act and that the requirements of MPS 4.1.2.1 requiring a trip reduction plan be deferred and only be required at the time the applicant seeks access to or use of the second floor, including but not limited to, seeking any building permits for or utilizing for storage of the second floor. Mr. Harris seconded the motion, which was approved unanimously.

The subcommittee discussed wastewater issues. Ms. Senatori said the issues related to a denitrifying septic system and impacts to a nitrogen sensitive embayment.

Mr. Michaud said the project as proposed did not meet the requirements in the Regional Policy Plan. He said mitigation could be required now, or based on use/occupancy of the second floor. He said this would involve installing more system components and monitoring.

Ms. Turano-Flores said the project as proposed would meet Title 5 and Commission requirements.

Mr. Michaud said no. His calculation show the project as proposed, with two doctors' offices and three general offices on the first floor only, the project exceeded the 5.0 parts per million (ppm) nitrogen-loading standards.

Ms. Wielgus said this is why the subcommittee needs to consider whether or not there was a hardship.

Mr. Cakounes noted even the use of the first floor as it may occur (two doctors offices and three general offices) will not meet 5 ppm. He did not like limiting or controlling the occupancy. He suggested the monitoring be based on the septic system, not the occupancy.

Mr. Blanton said even with the proposed occupancy of the first floor, the project would still not meet 5 ppm.

Mr. Michaud said the proposal was to have two doctors' offices and three other general use offices on the first floor alone. He said this use of the first floor would exceed 5 ppm. Mr. Michaud noted that if the first floor alone were occupied by three general offices, excluding doctors' offices, the project would still potentially exceed the 5-ppm limit.

Ms. Wielgus said a monitoring requirement might set up the applicant for failure. She said the subcommittee should consider its options.

Mr. Michaud said the subcommittee could consider and grant a hardship and a waiver related to the first floor, and/or construct a monitoring regime. He noted there were two water resources standards at issue: one related to nitrogen loading on the site, and one related to impacts to Back River, a nitrogen sensitive embayment.

Mr. Cakounes moved that a hardship be granted because the Applicant demonstrated a substantial hardship and because relief can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act and that the requirements of MPS 2.1.1.1 requiring a denitrifying septic system and MPS 2.1.1.2C requiring a nitrogen offset payment of \$64,400 be deferred and only be required at the time the applicant seeks access to or use of the second floor, including

but not limited to, seeking any building permits for or utilizing for storage of the second floor. Mr. Harris seconded the motion, which was approved unanimously.

Ms. Garfield asked if there would be room for an expanded leach field if and when the second floor was used/occupied?

Ms. Cox said yes.

Mr. Michaud said stabilization of the southern part of the site was also an issue. He said a landscaping plan should be submitted to show how this area would be stabilized.

Mr. Raponi said this area would be planted with grass.

Mr. Blanton said a landscape plan for the culvert/basin area was important.

Ms. Cox said this could be discussed with staff.

Mr. Cakounes moved that the applicant provide a landscape plan for this area of the site subject to MPS 2.1.3. Mr. Harris seconded the motion, which was approved unanimously.

Mr. Harris moved that a literal enforcement of the Act would involve substantial hardship and that the relief granted from the requirements of the Minimum Performance Standards was the minimum relief necessary to address the hardship. Mr. Cakounes seconded the motion, which was approved unanimously.

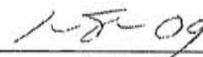
Ms. Garfield moved that the relief granted is not detrimental to the public good and does not nullify or substantially derogate from the intent or purpose of the Act. Mr. Harris seconded the motion, which was approved unanimously.

Mr. Cakounes moved to direct staff to draft a decision with conditions approving the hardship exemption application for subcommittee review, based on the findings and decisions made by the subcommittee. Mr. Harris seconded the motion, which was approved unanimously.

Mr. Blanton adjourned the meeting at 9:15pm.

Respectfully submitted,

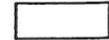

Michael Blanton, Subcommittee Chair


Date

Paesano Way east of Paesano Place Driveway					
Friday			Saturday		
Date	Time	WB	Date	Time	WB
10/2/201	12:00 AM	3	10/3/20	12:00 AM	0
	1:00 AM	0		1:00 AM	0
	2:00 AM	2		2:00 AM	2
	3:00 AM	0		3:00 AM	1
	4:00 AM	0		4:00 AM	1
	5:00 AM	4		5:00 AM	2
	6:00 AM	8		6:00 AM	2
	7:00 AM	20		7:00 AM	5
	8:00 AM	50		8:00 AM	12
	9:00 AM	42		9:00 AM	9
	10:00 AM	41		10:00 AM	26
	11:00 AM	19		11:00 AM	15
	12:00 PM	25		12:00 PM	20
	1:00 PM	20		1:00 PM	16
	2:00 PM	24		2:00 PM	7
	3:00 PM	21		3:00 PM	16
	4:00 PM	26		4:00 PM	18
	5:00 PM	26		5:00 PM	14
	6:00 PM	15		6:00 PM	16
	7:00 PM	14		7:00 PM	7
	8:00 PM	8		8:00 PM	8
	9:00 PM	9		9:00 PM	8
	10:00 PM	3		10:00 PM	8
	11:00 PM	5		11:00 PM	6
TOTAL		385			219

Paesano Place Driveway south of Paesano Way									
Friday			Saturday						
Date	Time	NB	SB	Total	Date	Time	NB	SB	Total
10/2/20	12:00 AM	0	0	0	10/3/20	12:00 AM	0	0	0
	1:00 AM	0	0	0		1:00 AM	0	0	0
	2:00 AM	0	0	0		2:00 AM	0	0	0
	3:00 AM	0	0	0		3:00 AM	0	0	0
	4:00 AM	0	0	0		4:00 AM	0	0	0
	5:00 AM	0	0	0		5:00 AM	0	0	0
	6:00 AM	0	0	0		6:00 AM	0	0	0
	7:00 AM	1	5	6		7:00 AM	0	0	0
	8:00 AM	1	4	5		8:00 AM	0	1	1
	9:00 AM	8	3	11		9:00 AM	0	0	0
	10:00 AM	8	6	14		10:00 AM	0	0	0
	11:00 AM	4	1	5		11:00 AM	1	0	1
	12:00 PM	7	2	9		12:00 PM	2	1	3
	1:00 PM	1	2	3		1:00 PM	1	1	2
	2:00 PM	5	0	5		2:00 PM	1	0	1
	3:00 PM	3	1	4		3:00 PM	0	0	0
	4:00 PM	6	1	7		4:00 PM	1	0	1
	5:00 PM	0	0	0		5:00 PM	0	0	0
	6:00 PM	0	1	1		6:00 PM	0	0	0
	7:00 PM	0	0	0		7:00 PM	0	0	0
	8:00 PM	2	0	2		8:00 PM	0	0	0
	9:00 PM	0	0	0		9:00 PM	0	0	0
	10:00 PM	0	0	0		10:00 PM	0	1	1
	11:00 PM	0	0	0		11:00 PM	0	0	0
			26					4	

Paesano Way WB Through Traffic (from Route 28 to Waterhouse Rd)					
Friday			Saturday		
Date	Time	WB	Date	Time	WB
10/2/20	12:00 AM	3	10/3/2015	12:00 AM	0
	1:00 AM	0		1:00 AM	0
	2:00 AM	2		2:00 AM	2
	3:00 AM	0		3:00 AM	1
	4:00 AM	0		4:00 AM	1
	5:00 AM	4		5:00 AM	2
	6:00 AM	8		6:00 AM	2
	7:00 AM	15		7:00 AM	5
	8:00 AM	46		8:00 AM	11
	9:00 AM	39		9:00 AM	9
	10:00 AM	35		10:00 AM	26
	11:00 AM	18		11:00 AM	15
	12:00 PM	23		12:00 PM	19
	1:00 PM	18		1:00 PM	15
	2:00 PM	24		2:00 PM	7
	3:00 PM	20		3:00 PM	16
	4:00 PM	25		4:00 PM	18
	5:00 PM	26		5:00 PM	14
	6:00 PM	14		6:00 PM	16
	7:00 PM	14		7:00 PM	7
	8:00 PM	8		8:00 PM	8
	9:00 PM	9		9:00 PM	8
	10:00 PM	3		10:00 PM	7
	11:00 PM	5		11:00 PM	6
		359			215



Pocasset (Falmouth), MA



 ATR (VCU-basic) Location