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CAPE COD
COMMISSION

Minutes
Meeting of
Cape Cod Commission

February 13, 2014

The meeting was convened at 3:00 p.m., and the Roll Call was recorded as follows:

Town	Member	Present
Barnstable	Royden Richardson	Absent
Bourne	Michael Blanton	Absent
Brewster	Elizabeth Taylor	✓
Chatham	Vacant	Vacant
Dennis	Richard Roy	✓
Eastham	Joy Brookshire	✓
Falmouth	Andrew Putnam	✓ (<i>recused from public hearing</i>)
Harwich	Jacqueline Etsten	✓
Mashpee	Ernest Virgilio	✓
Orleans	Len Short	✓
Provincetown	Austin Knight	✓
Sandwich	Harold Mitchell	✓
Truro	Kevin Grunwald	✓
Wellfleet	Roger Putnam	✓
Yarmouth	John McCormack, Jr.	✓
County Commissioner	Mary Pat Flynn	✓
Minority Representative	John Harris	✓
Native American Rep.	Vacant	Vacant
Governor's Appointee	Vacant	Vacant

The meeting of the Cape Cod Commission was called to order on Thursday, February 13, 2014 at 3:00 p.m. in the Assembly of Delegates Chambers in Barnstable, MA. Roll was called and a quorum established.

■ **SUMMARY OF ACTIONS TAKEN/VOTES:**

Falmouth Wireless Communication Monopole TR13018

The Cape Cod Commission conducted a public hearing on the Falmouth Wireless Communication Monopole project. There were presentations by CCC staff and the applicant, public testimony and discussion on the 150 foot tall wireless communication monopole for three (3) co-locators, including associated equipment and site work located at 284 Old Meetinghouse Road, East Falmouth, MA. The public hearing was continued to Thursday, February 27, 2014 at 3:00 p.m. in the First District Courthouse, Assembly of Delegates Chambers.

Chapter H: Application for Revisions to Development of Regional Impact Thresholds

Executive Director Paul Niedzwiecki and Deputy Director Kristy Senatori discussed the recent change to Chapter H regulations that was adopted by the Assembly of Delegates. The recent change to Chapter H gives the Commission the ability to raise thresholds. No action was taken by the Commission on this matter.

■ **EXECUTIVE DIRECTOR'S REPORT**

Executive Director Paul Niedzwiecki reported on the 208 Stakeholders Summit that was held on February 6. He said the focus of the summit was to provide an update and have a discussion on the 208 water quality planning process. He said 300 people were in attendance, they had several impressive speakers, and there were State and Federal regulators in the room as well. He said they made a lot of progress and there was a lot of agreement in the room. He said it was a great meeting to be part of. He said it was repeated several times that what is being created is a model that can be replicated throughout the State. Mr. Niedzwiecki said regarding the Lowe's project an appeal was filed with Land Court yesterday. He said he would keep Commission members apprised.

■ **MINUTES**

The minutes of the January 9, 2014 Commission meeting were reviewed. Austin Knight moved to approve the minutes of January 9, 2014. Roger Putnam seconded the motion. The motion passed with three abstentions.

■ **FALMOUTH WIRELESS COMMUNICATION MONOPOLE TR13018**

Chair Jack McCormack noted that this is a continued hearing from January 29, 2014.

Andrew Putnam said he is employed by Verizon. He recused himself from the public hearing and left the meeting room.

Attorney Jeffrey Angley, representing Industrial Tower and Wireless (ITW), said the property is owned by Midway Trap and Skeet Club and the site for the 100 foot x 100 foot compound will be leased. He described the project site and said there is some information still coming in. He said Mr. Champ and Mr. Delaney would go over some of the information. Attorney Angley said the project complies with zoning bylaws, it meets design standards, it's surrounded by a year round buffer of trees, and it will provide co-location for five carriers. He said there are no alternative sites; there is nothing available that reasonably complies with the Cape Cod Commission Act. He said it meets the minimum/maximum level for radiofrequency exposure.

Kevin Delaney, Engineering and Compliance Manager at ITW, said they are seeking approval for a 150 foot wireless monopole to be located at the Midway Trap and Skeet Club on Old Meetinghouse Road. He referred to PowerPoint slides and described the tower and related equipment. He said the proposed construction also includes a 12 foot wide gravel access drive way, 6 foot wide swale for drainage, a security gate and said the Fall Zone is 187.5 feet from property lines. He discussed propagation studies for carriers and said it's used as a projection tool and this project will fill a gap in coverage. He described and showed photographs of the balloon test that was done, examples of monopoles with external arrays and a typical shelter layout surrounded by an eight foot high chain link fence.

Jon Idman, Chief Regulatory Officer at the Commission, said he served as Hearing Officer at the first public hearing. With the use of PowerPoint slides Mr. Idman discussed the project's consistency with Development of Regional Impact (DRI) standards of approval including consistency with the Regional Policy Plan (RPP) applicable issue areas of land use; water resources; wetlands, wildlife and plant habitat; open space; and economic development. He said in regard to the Commission's Technical Bulletin 97-001, Mehran Nazari, the Commission's wireless consultant with the AdGen Telecom Group, has provided guidance on location, co-location, and facility need, among other things. He said Mr. Nazari will present to the Commission on February 27, 2014. He said pursuant to the Technical Bulletin a wireless service facility should not generate noise from equipment in excess of 50 decibels at the property line. Mr. Idman discussed the proposed project's consistency with Falmouth's municipal development bylaws and Local Comprehensive Plan and provided information on consistency with applicable Districts of Critical Planning Concern. He said Commission staff has not yet identified any Best Development Practices that the project meets and said the applicant suggests as a probable benefit that the proposed increased wireless coverage will enhance public safety and enhance communication services for the public. He said in regard to probable detriments, the applicant suggests that the proposed vegetated buffer will ensure that there is no detrimental visual impact. He said the Commission will need to discuss the probable benefits and probable detriments for the project. Mr. Idman said staff suggested that the applicant could pay a voluntary monetary contribution of \$15,000 for assessment of Flax Pond as a project benefit. Mr. Idman said the next steps are to continue the public hearing to the February 27, 2014 Commission meeting, discuss a date and time for a possible second visibility test if Commission members are interested, testimony from the Commission's wireless consultant is expected on February 27 and the Commission will consider directing staff to prepare a draft written decision.

Andrea Adams, Senior Regulatory Planner at the Commission, gave an overview of comments on the project by Mehran Nazari, the Commission's wireless consultant, relative to the Commission's Technical Bulletin. She said Mr. Nazari will provide comments to the Commission on February 27, 2014.

Elizabeth Taylor inquired about application materials containing information on the width of the buffer to adjacent properties and inquired about vegetation.

Kevin Delaney referred to the section of the application materials that contain the information.

Elizabeth Taylor inquired about a Conservation Restriction (CR) on leased land.

Kevin Delaney said it has been in agreement with the Skeet Club that that area will go into a CR in perpetuity.

Ernest Virgilio inquired about FAA information regarding height, a lightning rod and the type of lighting being used.

Andrea Adams said the information containing a report by the FAA office is provided in Tab 12 of the Application Material. She said the tower would need to be marked with a light.

Kevin Delaney said a lightning rod is not under the FAA and the applicant has never proposed a lightning rod. He said in regard to lighting it will be a medium dual lighting system—a strobe light that is white during the day and red at night. He said the system uses LEED lights and it would be directed upward; nothing would be directed downward.

Jackie Etsten inquired about the terms of the proposed lease and asked who is issuing the CR; the applicant or the owner.

Kevin Delaney said it's a 99-year lease. He said information has been submitted to the Commission with the Application Materials under Tab 4 of the application.

Attorney Jeffrey Angley said it would be the owner of the Skeet Club; he has agreed to the CR.

Harold Mitchell said concerns neighbors have are with the 12 foot wide road and asked why 12 feet and how far back would the fencing be so it's not a problem to neighbors. He asked if the project is limited to five carriers.

Attorney Jeffrey Angley said fencing is at the end of the compound 20 feet in. He said it would be surrounded by trees and vegetation and the 12 foot wide road is needed for construction.

Kevin Delaney said the tower has the capacity for five (5) carriers. He said it could be structurally upgraded in the future if need be.

Jon Idman said the Commission would be voting on the proposal for three (3) carriers. He said if the applicant wants more they would have to come back to the Commission as a modification.

John Harris inquired about the service gap profile and asked how many people were involved and how many people are being serviced. He asked who determines a gap.

Kevin Delaney said the profile takes people within the gap and people driving through the gap. He said depending on frequency level and technology used there are gaps. He said a gap is the result of a test of major carriers; they determine the gap.

Joy Brookshire inquired about abandonment and who would take it down, who maintains the site, and a bond.

Kevin Delaney said they have a bond with the Town of Falmouth. He said ITW would maintain the grounds and if they were no longer there, then the person who purchases the land would take over the maintenance. He said ITW maintains all their sites.

Peter Hargraves, 31 Southview Way, said he is concerned that the conclusion from deliberations is a wise decision. He said residents are opposed to the location because of the quality and character of the neighborhood. He said benefits have not been documented and coverage maps have not been validated. He questions the drop call statistics and said some drop calls are in areas of other carriers. He said other carriers are refusing to provide information and say it's confidential. He said the balloon test does not satisfy abutters and he doesn't agree with the noise level that has been discussed and challenges the conclusion of the noise report. He said there will be hazardous materials present such as oil and the impact of the utility is unknown. He said he would require the contribution of \$15,000 go to Flax Pond for assessment, residents request that the town reduce property taxes because of loss in property value, and there are radiofrequency issues related to disease such as leukemia. He said the project is a neighborhood concern.

Robert Beardsley, 37 Southview Way, read from a letter that he sent to Mary Pat Flynn opposing the cell tower on Old Meetinghouse Road. He said he is concerned about the loss of a natural habitat, he is concerned about noise, and concerned if the land is sold it could be used for an industrial area.

Paul Egasti, 36 Southview Way, said he has concerns about the Skeet Club. He said he was told it was just a trap and skeet club but it has become more than that. He said there is shooting every day of the week and he is concerned about stray bullets. He said it seems like the Club is putting money before safety.

Shelley Dawicki, 329 Old Meetinghouse Road said she is a direct abutter and she is opposed to the project. She said she bought her home there because it was an agriculturally zoned area. She said she is concerned about the lack of information that has been provided. She said she has no problem with cell coverage and she is mystified by those who have said there is lack of coverage in the area. She said the project will have an impact on the area and she is concerned about the noise, radiation, and what other uses may happen in the future. She asked the Commission to vote against the project.

Attorney Jeffrey Angley said the CR that is being proposed is not for public use; it's proposed for open space preservation and a dedicated conservation area. He said he understands people worry about impacts, however, there will be no traffic impacts, there will be no use of water and no impact on water quality, there will be no hazardous materials—using propane nothing liquid—it's an impervious area so no impact, generators are used when there is loss of power, and the sound study commissioned by the applicant complies with sound requirements of the Commission that includes when the

generator is running. He said there is a gap in coverage, the tower will provide coverage for a wide area not just for those right under the tower, the gap in coverage is carrier driven, and carriers have identified their needs. He said he does not follow concerns about safety at the Skeet Club and said they do not believe there is a safety risk. He said he would question what constitutes a requirement for a large contribution and said there are no significant impacts from the proposed project. He said they can't deny cell towers are visible but there is a vegetative buffer and they believe this is a well screened project.

Andrea Adams said regarding an on-site donation Commission staff did contact Brian Currie, Falmouth Town Planner, to see if there was a preference but the Commission has not heard from Mr. Currie. She said regarding noise the Commission does have a requirement. She said the Flax Pond contribution was only mentioned to weigh potential benefits and said that is optional.

Jack McCormack inquired about antenna arrays that are used inside a monopole.

Kevin Delaney said arrays are usually inside when there is a capacity issue. He said if the arrays are placed inside you would need a 200 foot monopole; the tower would have to be much higher to accommodate that.

Len Short questioned whether the generators would be used only in case of an emergency.

Attorney Jeffrey Angley said they would be used when there is loss of power and they would run once a week for testing.

Austin Knight inquired about safety of propane tanks from the firing range and asked if there would be berms on the site.

Kevin Delaney said there would be no berms on the site. He said the propane tanks would be underground and bullets would be outside of that zone.

Richard Roy moved to continue the public hearing to February 27, 2014 at 3:00 pm in the First District Courthouse, Assembly of Delegates Chambers. Ernest Virgilio seconded the motion. The motion passed with a unanimous vote.

Andrew Putnam returned to the Commission meeting.

■ CHAPTER H: APPLICATION FOR REVISIONS TO DRI THRESHOLDS

Paul Niedzwiecki said several months ago the Commission was successful in proposing a change to the Chapter H regulations through the Assembly of Delegates. He said in five years no towns have used it so the change clarified the issue. He said the Commission would now like to start to review areas to raise thresholds on the Cape.

Kristy Senatori, Deputy Director, said it was the Commission's hope that more towns would come forward to use Chapter H but they haven't. She said the recent change was made to give the Commission the ability to raise thresholds; it gives the Commission the ability to do that since the towns haven't done it. She said the Commission will be looking at some areas across the Cape and said this will help development on the Cape. She said a market study was prepared showing that the retail market has changed. She said no action needs to be taken by the Commission today. She said her discussion is a preview as this will be coming back to the full Commission in a few weeks.

Paul Niedzwiecki said the Commission's thoughts are not unrelated with the wastewater issue and said it becomes important for towns when feasible to stimulate their tax base. He said Cape towns are different but we tend to treat them the same and this gives us an opportunity to change the idea of "one size fits all." He said for those concerned about loosening thresholds, projects could still come to the Commission as discretionary referrals and be reviewed by the Commission.

Chair Jack McCormack said the Yarmouth Town Manager has said that Yarmouth has to broaden its base.

John Harris asked if Chapter H and its benefits had been explained to towns and asked if the Commission has tried to find out why towns don't use it.

Paul Niedzwiecki said there was a lot of town input and he would refrain to say why they don't use it. He said often there are circumstances in towns when boards don't agree, or perhaps some towns recognize if they come forward they would be putting more of a burden on their staff but that's just a hypothetical answer. He said the effort five years ago was to shift more authority back to towns.

Jackie Etsten referred to commercial use being beneficial and said it can sometimes be detrimental. She said developments that come to the Commission are much better designed and she would hope that the Commission can retain some control especially with architectural design.

Paul Niedzwiecki agreed with Ms. Etsten.

Chair Jack McCormack said in Yarmouth there is still site overview; they still have to abide by design standards.

Joy Brookshire said we need to come from the point of view that the Commission has the staff to do this. She said most towns don't have boards with staff to do it themselves. She said the Commission should work with towns on this.

Austin Knight said checks and balances need to be done and he does agree with the level of staff that the Commission has brought in but the Commission still needs to maintain the character. He said the Commission needs to educate more and show people what the Commission has done.

■ OTHER BUSINESS

Austin Knight and Roger Putnam inquired about the process for the hearing continued to February 27, 2014.

Jon Idman said it will be a continued public hearing with presentations by Commission staff and the applicant, public testimony, and the Commission will deliberate on probable benefits and probable detriments.

A motion was made to adjourn at 5:20 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Andrew Putnam, Secretary

List of Documents Presented at the February 13, 2014 Commission Meeting

- Handout material: February 13, 2014 Commission meeting agenda.
- Handout material: January 14, 2014 Commission Staff Report on the Wireless Communication Monopole.
- Materials presented: PowerPoint slide presentation on the Wireless Communication Monopole DRI Application prepared by Cape Cod Commission staff.
- Materials presented: PowerPoint slide presentation on the Wireless Communication Monopole DRI Application prepared by ITW.
- Materials presented: Written comments on the project by Mehran Nazari, wireless consultant for the Commission, relative to the Commission's Technical Bulletin 97-001.