



**Minutes
Cape Cod Commission
February 25, 2021**

Harold Mitchell, Chair called the Cape Cod Commission meeting to order on Thursday, February 25, 2021 at 3:00 p.m. using the Zoom meeting platform and asked that all members turn the video on if available. He announced that the meeting was being held virtually as allowed by Governor Baker's Executive Order Suspending certain provisions of the open meeting law dated March 12, 2020, with all members participating remotely. The chair announced that all votes and actions at the meeting would be taken by roll call and that the members participating would be announced as the attendance roll call was taken. The Clerk called the roll and a quorum of members was established as follows:

Harold Mitchell	Present
Elizabeth Taylor, (Chair)	Present
Richard Roy (Vice Chair)	Present
Jack McCormack, Jr.	Present
Fred Chirigotis	Present
Stephen Mealy	Present
Tom Wilson	Present
Richard Roy	Present
Joy Brookshire	Present
Charles McCaffrey	Absent
Jacqueline Etsten	Present
Ernest Virgilio	Absent
Douglas Fromm	Present
Cheryl Andrews	Present
Kevin Grunwald	Present
Richard Elkin	Present
Mark Forest	Absent
John Harris	Present
David Weeden	Absent
Michael Maxim	Present

Summary of actions/votes taken

- Cape Cod Commission ("CCC" or "Commission") voted to approve the minutes of the 1/14/21 and 1/19/21 meetings
- The CCC voted that the proposed development described in the Notice of Intent submitted by applicant Lennar Multifamily Communities (LMC) for 35 Scudder Avenue, Hyannis is suitable and eligible for a development agreement with the Cape Cod Commission and to adopt the draft written Notice of Intent decision.

Public Comment

There was no public comment for items not on the agenda.

Minutes of the CCC Workshop, 1/14/21

Upon a motion to approve the minutes of 1/14/21 made by Richard Elkin, seconded by Elizabeth Taylor, the motion carried. Roll call vote was taken as follows: Fred Chirigotis, Yes; Stephen Mealy, Yes; Elizabeth Taylor, Yes; Tom Wilson, Yes; Richard Roy, Yes; Joy Brookshire, Abstain; Jacqueline Etsten, (technical issues – no audio/no voice vote recorded); Douglas Fromm, Yes; Cheryl Andrews, Yes; Harold Mitchell, Yes; Kevin Grunwald, Yes; Richard Elkin, Yes; John McCormack, Jr., Yes; John Harris, Yes

Minutes of the CCC Special Meeting, 1/19/21

Upon a motion to approve the minutes of 1/19/21 made by Elizabeth Taylor, seconded by Stephen Mealy, the motion carried. Roll call vote was taken as follows: Fred Chirigotis, Yes; Stephen Mealy, Yes; Elizabeth Taylor, Yes; Tom Wilson, Yes; Richard Roy, Yes; Joy Brookshire, Abstain; Jacqueline Etsten, (technical issues, no audio/no voice vote was recorded); Douglas Fromm, Yes; Cheryl Andrews, Yes; Harold Mitchell, Yes; Kevin Grunwald, Yes; Richard Elkin, Yes; John McCormack, Jr., Yes; John Harris, Yes

Executive Directors Report

Ms. Senatori gave the following updates:

COVID

- Continuing to participate in weekly Cape Cod COVID-19 Response Task Force and in twice weekly County Department Managers meetings
- Third Business Impact survey was completed, and 450 responses have been received. That information will be updated on the CCC website early next week.
- Working with a consultant, Revby, Boston, MA and held the first in a series of Covid-19 Recovery and Resiliency Workshops to assist business owners on 2/18; industry-specific workshops are scheduled for 3/1, 3/2, 3/3, 3/4, and 3/8
- Working to quantify potential population shifts resulting from COVID. Those include water use, energy use, and real estate data.

Climate

- Regional Policy Plan amendments were approved by the CCC in January, adopted by the Assembly of Delegates on 2/17/21 and the County Commissioners signed the ordinance on 2/24/21.
- Working to complete the Climate Action Plan and will provide updates to the CCC in the coming weeks.
- Climate Ambassador meetings were held on 1/27, 2/10, 2/24 (meets every two weeks)

Cape Cod and Island Water Protection Fund Management Board

- CCIWPF Management Board meeting was held the week of 1/27.

Established an Executive Committee; Engaging a financial advisor to provide recommendations for subsidies.

- \$11 million in the fund (July 2019 - August 2020); approximately \$8 million to be deposited for September 2020-January 2021; next distribution is mid-March.

Boards of Selectmen Tours by Kristy

- Barnstable Town Council meeting on 2/18
- Wellfleet Select Board on 2/23
- Upcoming: Harwich 3/1 and Bourne 3/2
- still needs to schedule visits in Yarmouth, Provincetown, Orleans and Chatham

General Updates

- The Old Kings Highway has been designated as a national scenic byway by USDOT
- CCC has been recognized for our work with the census Complete Count Committee
- The Commission members will be receiving the required State Ethics training (watch a video) and certification (answer questions) in their email next week for completion by March.

Notice of Intent (NOI)- Development Agreement (CCC File No. 20065)- Proposed Residential Development, 35 Scudder Avenue, Hyannis (Map 289, Parcel 110)

The Chair read the notice for the agenda item from the printed meeting agenda. He then asked the applicant to present the request.

Using a Power Point, Mr. Dan Lee, Division President of Lennar Multifamily Communities (LMC) introduced LMC and reviewed the current planning status of the project. He introduced Alison Anderson, Development Manager at LMC and the lead permitting Attorney, Brian Dugdale. He stated that they are under contract to purchase the Twin Brooks Golf Course and this is the next step of what he sees as a very long and collaborative process involving LMC, the CCC, the Town, residents of Hyannis, neighbors, abutters, local business owners, local workforce and more. He recognized that it would take the better part of two years for permitting and dozens of public meetings and hearings. Through this project review process, the CCC and the Town provide opportunities for open dialogue and for public comments to have a tangible impact on the design of the project. Lennar welcomes participation and feedback which he feels will enable LMC to deliver a better community project.

Using the PowerPoint Alice Anderson for (LMC) provided a walkthrough of the project using the Conceptual Site Plan.

Mr. Dugdale continued and stated that although this is the first public hearing on the project, there have been many meetings prior to this with the town officials, CCC Staff, community groups and others. He reminded that the purpose of the hearing was to determine the appropriate process for the Commission to review this project, not a determination on the merits of the project. A favorable vote on the NOI means that LMC can move forward with a development agreement process with the CCC and under the development agreement have meaningful discussions on the project and negotiate terms and conditions for the project. An unfavorable vote on the NOI just means that LMC would pursue project permitting with the CCC through the customary Development of Regional Impact review process, which is a less collaborative process. Using the PowerPoint reviewed the NOI criteria from the CCC's Development Agreement regulations and how LMC meets them. He

concluded by reviewing the local permits that would be required for the project. Her stated that LMC does not anticipate needing state permits or reviews, including under MEPA.

The Chair asked for staff comments.

Jon Idman, Chief Regulatory Officer, stated that the Committee on Planning and Regulation met on January 28, 2021 and made a favorable recommendation on the notice of intent to the full Commission. One of the things discussed at this meeting was the need for housing on Cape Cod. Following that meeting staff prepared a draft notice of intent decision based on the CPR recommendation which is being presented for consideration today. The draft decision concludes that the project described in the notice of intent is eligible and suitable for a Development Agreement with the CCC. In practical terms this would allow the applicant to proceed with the development agreement application and process for this project rather than the DRI process. He said that the project as proposed would have to be reviewed by the Commission in any event. The matter in the NOI is what process the Commission will use to review the project, not a review of the project on its merits. The Development Agreement (DA) process must provide a benefit not only to the applicant but to the Cape Cod Commission and the Region and is the best review process for certain types of developments. The most compelling reason here is the criteria dealing with the comprehensive nature of development agreement reviews. It will allow the CCC to negotiate and administer mitigation appropriate to the project serving the site and the public while preserving the inherent housing benefits. There are overarching purposes in the CCC Act and promoting the development of housing for low and moderate income people is one of them. Further this type of housing is specifically one of the types of public benefits and capital facilities the CCC can negotiate for in the DA. Specifics like the required percentage of restricted affordable units and terms of affordability can be negotiated as well. He stated that several public comments have been received and a general theme was discontent with the level of detail that was provided in the NOI. The applicant has provided what is needed for the purposes of the NOI which is conceptual site plan. Details on the project will follow when the project is under substantive review by the CCC. A CCC member who couldn't attend today, David Weeden, also submitted a comment related to this issue. Mr. Weeden is concerned that there be archeological review of areas that are proposed to be disturbed near the wetland. If there are areas that are proposed to be disturbed in wetland areas that are currently undeveloped or undisturbed, the CCC can pursue these issues during substantive review, but it is premature at this time to discuss this level of detail. He concluded by repeating that it is staff and the CPR's recommendation that the Commission determine the project as described in the NOI is eligible and suitable for a development agreement with the Commission and staff recommends that the Commission adopt the draft written NOI decision. That decision includes all of the necessary findings from the applicable provisions in the Development Agreement regulations to favorably act on the NOI.

The Chair clarified that only the NOI is under consideration, not review and approval of the project. The purpose of today's hearing is procedural, to determine the process the CCC will use to review the project- either through a DRI review or a Development Agreement process. At this stage the Commission is not considering the project details or merits of the project. A subsequent development agreement review will allow for substantially more detail to be provided through project traffic studies, architectural plans, etc.

The Chair then asked for initial comments and questions from members.

Mr. McCormack commented that there are limits to what the Commission can do. The action before the CCC today is to decide whether a project is suitable for a DRI or a Development Agreement. He

feels this NOI application has fulfilled the requirements for proceeding with a DA. As a member of the CPR, he says the Committee agreed that this project was suitable and eligible for a Development Agreement.

Mr. Chirigotis commented that he understands that this is a procedural vote and asked that Mr. Idman explain the difference between a DRI and a Development Agreement review process. He feels that it's important for the public to understand that as it's not a vote on the merits of the project and the CCC is not giving up on the review that will take place on the project. Mr. Idman explained that the difference between the DRI and a Development Agreement is that a Development Agreement is based entirely on negotiation, establishing the rules and requirements for the project during the review. A DRI review is traditional permitting with more definite prescribed requirements under unilateral authority by the CCC. The Development Agreement allows negotiation beyond the prescribed rules and requirement of a DRI review.

Dr. Andrews asked about the role of a member in negotiation if the CCC decide to allow the applicant to move forward with a development agreement, including how many times would the CCC meet on the project. Mr. Idman stated that a subcommittee would be empaneled to be the negotiating party. The subcommittee would likely meet many more times than during a DRI review allowing ample opportunity for negotiation and public input. Ultimately, the full CCC would have to have at least one meeting, as the full CCC has final authority on approving and voting to execute the DA.

Mr. Grunwald commented that one of the criteria of a Development Agreement is that the project is a benefit to the region, and he sees a benefit of adding 312 rental units to Cape Cod. He has concerns thinking about them becoming short term rental units. Mr. Lee stated that their communities are professional managed by LMC Living and the lease expressly prohibits short term rentals; residents are required to sign year-long leases.

Mr. Elkin has the similar concern as Mr. Grunwald. He requested that the subcommittee address this concern in negotiating the agreement. Mr. Idman stated that it has been mentioned, noted and will be a high priority by staff and the subcommittee during negotiation and review.

Ms. Etsten has a concern that the Commission be involved early in the development of the site and building plans before they are too far developed.

The Chair asked for comments from public officials.

Gordon Starr, Town Councilor, asked what the role the Technical Bulletins play in a Development Agreement. Mr. Idman stated that the RPP and Technical Bulletins provide guidance during DA review and negotiations but don't have the same binding effect as the constituent goals, objectives and methods have for a DRI review. Mr. Idman said that ultimately a project is reviewed for RPP consistency during the DA process, but the RPP consistency standard and analysis is different for DRI than a DA review.

The Chair asked for comments from the public.

Brian Hughes stated that he and others have concerns which he hopes may influence the NOI decision today. He asked that the Commission oversee a comprehensive Traffic Study of the location and the surrounding areas from the West End to Hyannisport and include pedestrian concerns. Specifically, he says there will be increased traffic at the West End Rotary and Hyannisport

roadways, nearby schools, Cape Cod Melody Tent, the Conference Center and in the surrounding neighborhood. He also says there is inadequate existing street lighting that needs to be addressed.

Megan Newman asked LMC if its developments it described in Allston and Everett are smaller than what is being proposed, and if so, she has concerns that development of such density and scale will have a profoundly negative impact on the overall area, not to just to abutters. She said it will greatly impact the entire West End of Hyannis and beyond. She said this is an environmentally sensitive area that has not been adequately studied and the wastewater issues alone raise red flags. She referred to the development as a gated community in a low to middle income neighborhood and says that raises significant questions. She also mentioned her concerns about short term rentals.

The Chair reminded speakers that that the merits of the project are not on the table for discussion today. The CCC is just deciding the process for how it will review the project.

Kate Gulliver, Greenwood Ave, Hyannis, intended on commenting on the merits, but now understands what the CCC is doing today and is in favor of the Development Agreement because it better allows for negotiating mitigation for impacts. She agreed with Ms. Etsten and would like to see the architectural design and site layout early in the process. She added that an alternative to the project is to preserve the 40 acres for the benefit of Hyannis Village and feels it would meet the approval of the citizens in the area.

Kim McGuire requested a comprehensive environmental impact study. She said that she had previously submitted her full comments in writing. She asked that the CCC consider looking at what option is the best use for the property.

Elizabeth, no last name was given, said she seconded Ms. McGuire's remarks; she feels that the area needs to be reexamined, she said state data layers for the property are years old and said that sea level rise and protection of pollinators are an issue. She said the review process should include environmental issues and sea level rise issues and she feels that this property is in jeopardy from storm events.

Anne Roland read a letter from Bob Colford that was submitted to the CCC on 2/23/21.

Kris Clark, Town Councilor, said that she is concerned that a public hearing is being held during work hours. She echoed Ms. Etsten's concerns that some of the merits of the project should be considered up front as it could affect the NOI decision. She would like to see more information on the coastal resource impacts posed by the project.

Roberta Mauch stated this development is in her back yard. She said this project is needed but this is the wrong location. This will add traffic to the area, and she has concerns about open space for children. She is passionate about saving the area as it's her neighborhood.

The Chair asked for final comments or questions from members.

Mr. Wilson stated that the Development Agreement process give us much more flexibility in negotiation and can reap broader benefits through the DA process and is strongly in favor.

Mr. Elkin is also in favor of the Development Agreement but would like to include in the process an Environmental Impact Study, Climate Change Analysis, Sea Level Rise Analysis, and a Traffic Study as a condition of favorable action on the NOI. Mr. Idman stated that by getting so specific at this time,

there is the possibility of excluding other important things. Mr. Idman said that by Mr. Elkin making these comments today, he has placed staff and the subcommittee on notice that he would like these studies and their underlying issues addressed during the review process.

Mr. Chirigotis has great confidence in the CCC to negotiate this matter, and the Town of Barnstable Planning Department and officials to review the matter locally. He believes that all issues presented will be negotiated appropriately and feels the CCC is ready to move forward with a vote on the NOI.

Upon a motion that the proposed development described in the Notice of Intent submitted by applicant LMC for 35 Scudder Avenue, Hyannis is suitable and eligible for a development agreement with the Cape Cod Commission, as recommended by the Committee on Planning and Regulation, and to adopt the draft written NOI decision, made by Fred Chirigotis, seconded by Kevin Grunwald, the motion carried. Roll call vote was as follows: Fred Chirigotis, Yes; Stephen Mealy, Yes; Elizabeth Taylor, Yes; Tom Wilson, Yes; Richard Roy, Yes; Joy Brookshire, Yes; Jacqueline Etsten, No; Douglas Fromm, Yes; Cheryl Andrews, Yes; Harold Mitchell, Yes; Kevin Grunwald, Yes; Richard Elkin, Yes; John McCormack, Jr., Yes; John Harris, Yes

New Business:

There was none.

Meeting Adjourned:

The Chair asked for a motion to adjourn.

Upon a motion to adjourn the meeting at 4:28 p.m. made by Fred Chirigotis seconded by Stephen Mealy, the motion carried. Roll Call vote was as follows: Fred Chirigotis, Yes; Stephen Mealy, Yes; Elizabeth Taylor, Yes; Tom Wilson, Yes; Richard Roy, Yes; Joy Brookshire, Yes; Jacqueline Etsten, Yes; Ernest Virgilio, Yes; Douglas Fromm, Yes; Cheryl Andrews, Yes; Harold Mitchell, Yes; Kevin Grunwald, Yes; Richard Elkin, Yes; John McCormack, Jr., Yes; John Harris, Yes

Documents used/submitted at the February 25, 2021 Cape Cod Commission Meeting

February 25, 2021 Cape Cod Commission Meeting Agenda

Draft Minutes of the 1/14/21 and 1/19/21 Cape Cod Commission Meetings

Power Point Presentation prepared by Cape Cod Commission staff inclusive of slide presentation from NOI applicant Lennar Multifamily Communities LLC

Draft Decision to the Applicant, Lennar Multifamily Communities, LLC on the 35 Scudder Residential Community Project

Letter from Bob Colford to the CCC dated 2/23/21