



**Minutes
Cape Cod Commission Meeting
March 11, 2021**

Harold Mitchell, Chair called the Cape Cod Commission meeting to order on Thursday, March 11, 2021 at 3:00 p.m. He announced that the meeting was being held virtually with all members participating remotely, using the Zoom meeting platform as allowed by Governor Baker's Executive Order Suspending certain provisions of the open meeting law dated March 12, 2020. The Chair announced that all votes and actions at the meeting would be taken by roll call and that the members would be announced as the roll call vote or action is taken. The Clerk called the roll for attendance 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 (entered the meeting after roll call was taken)
Fred Chirigotis	Present
Stephen Mealy	Present
Tom Wilson	Present
Richard Roy	Present (entered the meeting after roll call was taken)
Joy Brookshire	Present (entered the meeting after roll call was taken)
Charles McCaffrey	Present
Jacqueline Etsten	Absent
Ernest Virgilio	Present (entered the meeting after roll call was taken)
Douglas Fromm	Present
Cheryl Andrews	Present
Kevin Grunwald	Present (left meeting prior to adjournment)
Richard Elkin	Present
Mark Forest	Absent
John Harris	Present
David Weeden	Present (left meeting prior to adjournment)
Michael Maxim	Present

Summary of actions/votes taken

- Cape Cod Commission ("CCC" or "Commission") voted to approve the minutes of the 2/25/21 meeting
- The CCC granted Development of Regional Impact ("DRI") approval, with conditions, to the Victory Drive solar project in Sandwich.

Public Comment

There was no public comment for items not on the agenda

Minutes of the CCC Meeting 2/25/21

Upon a motion to approve the minutes of 2/25/21 made by Cheryl Andrews, seconded by Tom Wilson, 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, Technical Issues; Charles McCaffrey, Yes; Ernest Virgilio, Technical Issues; Douglas Fromm, Yes; Cheryl Andrews, Yes; Harold Mitchell, Yes; Kevin Grunwald, Yes; Richard Elkin, Yes; John Harris, Yes; David Weeden, Yes.

Executive Directors Report

Ms. Senatori gave the following updates:

COVID

- Continuing to participate in weekly Cape Cod COVID-19 Response Task Force
- With the Commission's consultant, Revby, held the first in a series of Covid-19 Recovery and Resiliency Workshops on 2/18 to assist business owners; these are industry-specific workshops early in March; round two will be held in late April.
- Working with Revby to develop industry specific toolkits.

Climate

- Anticipating bringing the draft Climate Action Plan to the full Commission in April, following one more subcommittee meeting

Board of Selectmen Tour

- Continuing to meet with the Boards of Selectmen. Met with representatives from Barnstable, Wellfleet, Harwich and Bourne and will continue to meet with others

The Chair apologized for the technical difficulties at the last meeting on February 25, 2021 and thanked staff for their assistance.

DRI Public Hearing (continued from Subcommittee)

Victory Drive Solar, 9 Victory Drive/0 Kiah's Way, Sandwich, MA 02563

Applicant- LSE Ophiuchus, LLC

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

Using a PowerPoint, Attorney Eliza Cox, Nutter, McClennen and Fish LLP, introduced the project, which included discussion about the applicant, property owner Housing Assistance Corporation (HAC) of Cape Cod, the project consultant team and the permitting and regulatory background for the project and site. She turned the meeting over to Alisa Magnatto, Director of Housing Assistance Corporation who described HAC, HACs housing programs and developments across the Cape including current housing units in development, reviewed photos of the project site and explained how the project would help advance and fund HACs housing mission across the Cape. Attorney Cox reviewed the project in terms of the town's Local Comprehensive Plan (LCP) and the project's relative benefits and detriments and stated that the probable benefit of the project is greater than the probable detriment. She introduced Dan Watson with the applicant.

Using the PowerPoint, Dan Watson reviewed information about his company, gave a site plan overview, and described the basic components of the project. He reviewed the site design which included the Open Space Plan, Construction Measures and Maintenance and Operations. He explained why the applicant believes the project meets the criteria for DRI approval. He reviewed some of the findings of the draft DRI decision which explain why the site is no longer available or suitable for housing: the zoning of the property, access considerations, and neighborhood context. He showed photos of the entrance to Victory Drive, and of the power transmission lines within the property. He discussed the Sandwich Local Comprehensive Plan and how the project supports housing efforts and in closing reviewed the key benefits and why the probable benefits outweigh the probable detriments for this project.

The Chair asked for staff comments.

Using the PowerPoint Mr. Ribeiro reviewed plans which displayed the applicable mapping and mapped resources for the site: Placetypes, Wellhead Protection Areas, Zoning Map, Endangered Species Habitat and Vernal Pool Buffer. He discussed the primary issues that came up during the subcommittee and staff review of the project. Mr. Ribeiro reviewed the key findings and conditions from the draft DRI decision recommended by the subcommittee, including the relative probable benefits and detriments.

The Chair stated that he Chaired the Subcommittee and thanked the fellow Members of the Subcommittee (Fred Chirigotis, Kevin Grunwald, Doug Fromm and Joy Brookshire) for their work. He stated that the Subcommittee recommendation in favor was not unanimous; two members were opposed because of concerns for losing housing opportunities on the site. He said that the majority of the Subcommittee recommended approval and recognized the difficulty of developing the site for housing in terms of environmental resource mapping, site access through an industrial district, and compatibility of housing with adjacent industrial uses and utility corridors. He added that Ralph Vitacco, Sandwich Town Planner, provided information about the site and its permitting history which is included in the DRI project materials.

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

Ms. Taylor stated that she doesn't like solar development being put into a forested area, however she appreciates the particular circumstances involved with the current matter. She asked whether the areas within the solar field will be mowed. She doesn't want to see any pesticide use on site, including for invasive species management.

Mr. Watson said there will not any mowing from March-November. He said the grass will grow between the arrays; there may be some handheld "weed whacking" of these areas during March-November but this will not be problematic for the Eastern Box Turtles and other species. He said the preference is not to use pesticides, but if there is no other feasible option for invasive species management pesticides will only be used after CCC staff review and approval.

Mr. Wilson stated that there was a letter from an abutter on Windsor Rd seeming to claim that the proposed forested buffer to south of the site will contain a swath of stumped trees rather than just full trees and thus the buffer should be larger. He asked for clarification from the applicant about the stumped trees, how high the stumps would be, and the proposed supplemental evergreen buffer plantings. He also asked about whether these buffers to abutters are proposed to be preserved in perpetuity.

Mr. Watson responded that there will be a minimum 150 ft wide vegetated buffer to the abutter on Windsor Rd which will include supplemental evergreen plantings. This 150 ft buffer will be maintained under a conservation restriction in perpetuity and is greater than the town zoning's 100 ft minimum requirement. The neighbors will have an opportunity to have further discussion on the project and the specific buffer issue once this is under Town zoning review. He added that there are proposed stumped trees in the buffer area which will prevent shading on the panels but that this area will be maintained as habitat management area.

Mr. Elkin asked if the members of the subcommittee that objected to the project could present their reasoning. He understands that not losing the housing opportunity is disappointing. He asked for a comparison of the number of houses that could be developed onsite relative to the housing that could be pursued from the solar lease income from the site.

Mr. Chirigotis stated that the project was approved years ago under MGL Ch. 40B for approximately 62 units. He said this site was zoned as residential until 2018 then HAC requested that it be zoned as "flex" and the planning board rejected the request due to the need for housing and loss of land in a critical area for housing. Providing infrastructure was cited as one of the difficulties in pursuing the housing permit but it is invariably part of any large-scale project. CCC has approved housing in other industrial parks, and he doesn't see these locations as detriments to the development of affordable housing. He is not in favor of a permanent conservation restriction of 30+ acres on the site. He said this solar use is not the highest and best use of the site for first time home buyers, young families or the workforce. He feels the number one concern for Cape Cod is the need for housing. He said the solar use is a large-scale industrial project which employs zero Cape Cod employees year-round for wages. He said the energy from this type of development just goes into the grid, and there are not significant cost savings to the individuals in the region. He feels that this project is contrary to the RPP and that our number one concern on Cape Cod is housing. He feels that the loss of this property for housing outweighs the limited benefits to a limited number of people associated with large scale solar energy development.

Mr. Watson stated that there is one portion of the site along its street frontage and access which is 'flex' zoned. He discussed the history of the proposed zoning change in 2018. He said without the Ch. 40B permit, housing on site (and access to the site for residential uses) would require a zoning variance. He said that the proposed 30.2 acres of site conservation land satisfies CCC open space requirements but also state level requirements given that site's habitat mapping, and that any development of the land would require state permitting and open space because of the state habitat mapping. He explained that the off-takers of the solar power in a community solar program as proposed are people on Cape Cod or Eastern Massachusetts that are assigned credits to on their electric bill and each participant should save about 10%.

The Chair stated that he believes that the minimum open space requirement for the CCC is 22.3 acres not 30.2 acres. Mr. Watson stated that the 30.2 acres is the requirement for the State because of the Eastern Box Turtle habitat.

Dr. Andrews asked what percentage of housing stock in Sandwich is deemed affordable housing? Mr. Vitacco responded that the town of Sandwich is at 3.8% of the State's 10% goal for each town under GL Ch 40B. She asked about battery storage commenting that in Provincetown there was discussion about fire safety relative to batteries. She said CCC needs to learn more about batteries because this is the new way in which energy will be provided on Cape Cod. She said that in the subcommittee meeting minutes Mr. Watson had stated that the applicant would be providing more specific plans on emergency operations, maintenance and decommissioning for town review. Dr.

Andrews suggested an amendment to the draft written DRI decision to include a condition requiring that those plans also be provided to the CCC prior to operation of the project. Mr. Watson stated that the applicant had no problem with that request. He has permitted these batteries across Massachusetts and it is a common request in other permitting he's done in the state regarding batteries.

The Chair asked for comments from public officials.

Ralph Vitacco, Town Planner, stated that the Town of Sandwich is in support of the development of renewable energy and in support of HAC's efforts to lease the property for this solar project and its housing mission. It has been difficult for HAC to develop this lot for affordable housing for the following reasons; the access to the property is through an industrial park; MESA constraints; power lines through the property; and the town owns an adjoining property which will be used for wastewater effluent. Over the past years the town has been working diligently to improve the affordable housing stock. He mentioned that 30 new affordable housing units will be available soon. In conjunction with Habitat for Humanity, 3 affordable houses are being built and the Wing School will become an affordable housing project with 128 units. The town has been working with HAC and the applicants. He said the town will also see tax revenue from this project because of a PILOT program.

The Chair asked for comments from the public.

Peter Muise, Chairmen of the Board for HAC urges that CCC vote in favor of the Housing Assistance solar project in Sandwich. It will provide much needed alternative energy source, generate income for HAC to develop housing in a more appropriate area as well as reduce the carbon emission footprint. There is limited open space available on the Cape therefore critical that we identify the best use of each piece of land. HAC has defined its approach across the Cape working with APCC (Association to Preserve Cape Cod) to identify sites most suitable for affordable housing. This solar design is thoughtful and provides natural buffers and corridors. He noticed that one of the detriments identified in the draft DRI decision is that the project site will no longer be available for HAC or other to develop housing. The current contract is for a 20-year lease and the site will go back to HAC at which time it could potentially be used for housing.

Shawna Moos, HAC, read a statement from Mark Mathison, Select Board Member, Orleans. The letter stated that he has been actively involved in housing issues and because of this involvement he has participated in several CCC forums dealing with the housing needs on Cape Cod. He is familiar with the solar project and the complexity of the site that HAC has attempted to overcome. It has been demonstrated that there is not a feasible way to build affordable housing on the site. The proposed solar project will maximize the opportunity to address both affordable housing and clean energy concerns. It's a win-win for the environment and housing. He urged that CCC vote in favor of the proposed solar project.

Kathy Oman, President of Friends or Relatives of Autism and Related Disabilities stated that they recently completed 2 housing units in the Dennis, on land donated by the Town of Dennis, with the assistance of HAC. HAC was instrumental in the implementation and development of these units and they plan to continue working with HAC on other projects. She supports their effort to build this proposed solar project and it speaks to their commitment to building affordable housing. She said please vote yes to this project.

Matthew Terry, attorney and a resident of Sandwich urges CCCs vote in favor of this project. He has lived in Sandwich most of his life and is familiar with the project location. There has been resistance to housing at this location from the town for many years. The solar project is a great project for the town and will provide tax revenue and lease revenue to HAC to be used for housing development on Cape Cod. He feels that this is the best use for the property.

The Chair asked for final comments or questions from members.

Mr. Mealy stated that he appreciated the comments from Mr. Chirigotis and the thorough presentation by staff. The Commission just amended the RPP with a section that includes reducing our carbon footprint. The Cape is facing several challenges, housing being significant but so is climate change. Sandwich is seeing some major several sea level rise issues, and we must recognize that to move forward, there will be tradeoffs between important issues. He hopes that other members will support this proposal. He agrees with Dr. Andrews' comment about an additional condition in the decision.

There was a then discussion on a motion to amend the decision. Dr. Andrews raised the additional condition of approval she discussed earlier in the hearing that she would like incorporated into the written decision, i.e. the applicant providing the CCC copies of the project decommissioning plans, including for the storage batteries. Mr. Idman suggested as an additional condition the following: "prior to issuance of a certificate of compliance, the applicant shall provide to the Commission copies of the Emergency Response Plan and Operation Plan referred to and required in Section 4186 of the town of Sandwich's zoning bylaws." Ms. Andrews commented that Mr. Watson stated that the batteries will have to be changed after 10 years and this language doesn't specifically discuss that. Mr. Idman stated decommissioning and the other concepts Dr. Andrews raised are addressed in the Sandwich zoning bylaws, which does not actually use the term 'decommissioning' in the title of the decommissioning-related plans required to be submitted but rather the language Mr. Idman recited. Those plans required to be submitted under zoning are not limited to batteries and other end of life disposal issues, but also operations and maintenance measures. Mr. Idman suggested that it is better to use language in the DRI decision common with the town zoning bylaw to avoid future confusion.

Upon a motion to grant DRI approval and adopt the draft written DRI decision as recommended by the Subcommittee but amended with the additional Condition, as discussed during today's hearing, made by Richard Elkin, seconded by Stephen Mealy, the motion carried. Roll call vote was as follows: Fred Chirigotis, No; Stephen Mealy, Yes; Elizabeth Taylor, Yes; Tom Wilson, Yes; Richard Roy, Yes; Joy Brookshire, Yes; Charles McCaffrey, Yes; Douglas Fromm, Yes; Cheryl Andrews, Yes; Harold Mitchell, Yes; Kevin Grunwald, Absent/ Had Exited Meeting; Richard Elkin, Yes; John McCormack, Jr., Yes; John Harris, Yes; David Weeden, Absent/ Had Exited Meeting

New Business:

There was none

Meeting Adjourned:

The Chair asked for a motion to adjourn.

Upon a motion to adjourn the meeting at 5:05 p.m. made by Ernest Virgilio seconded by Joy Brookshire, 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; Charles McCaffrey, Yes; Ernest Virgilio, Yes; Douglas Fromm, Yes; Cheryl Andrews, Yes; Harold Mitchell, Yes; Kevin Grunwald, Absent/ Had Exited Meeting; Richard Elkin, Yes; John McCormack, Jr., Technical Difficulties; John Harris, Yes; David Weeden, Absent/ Had Exited Meeting

Documents used/submitted at the March 11, 2021 Cape Cod Commission Meeting

Cape Cod Commission Meeting Agenda 3/11/21

Draft Minutes of the 2/25/21 Cape Cod Commission Meeting

Power Point Presentation prepared by Cape Cod Commission staff inclusive of slide presentation from Eliza Cox representative for Victory Drive Solar

Draft DRI Decision for Victory Drive Solar as recommended by Subcommittee

Comment Letter from Mark Mathison, Select Board, Town of Orleans