



**Minutes
Cape Cod Commission Meeting
January 13, 2022**

Harold Mitchell, Chair called the Cape Cod Commission (CCC) meeting to order on Thursday, January 13, 2022 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 Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain Covid-19 Measures Adopted During the State of Emergency, signed into law on June 16, 2021. 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 roll call is taken. The Clerk called the roll for attendance and a quorum of members was established as follows:

Harold Mitchell	Present
Stephen Mealy (Vice Chair)	Present
Elizabeth Taylor, (Secretary)	Present
Fred Chirigotis	Present
Tom Wilson	Present
Richard Roy	Present (technical difficulty, left at 4:00)
Joy Brookshire	Present
Robert Mascali	Present
Jacqueline Etsten	Present
Ernest Virgilio	Present
Douglas Fromm	Present
Kevin Grunwald	Present (left @ 4:00 p.m.)
Richard Elkin	Present
Dennis Prebensen	Present
Ronald Bergstrom	Present
John Harris	Present
David Weeden	Present (arrived at 3:18 p.m.)
Michael Maxim	Present

Summary of actions/votes taken

- The Cape Cod Commission voted to approve the minutes of the December 16, 2021 meeting
- The Cape Cod Commission voted to approve the Blue Sky Towers Yarmouth Development of Regional Impact (DRI) and adopt the Decision recommended by the subcommittee, as amended

Public Comment

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

Cape Cod Commission meeting minutes of the December 16, 2021 meeting

Upon a motion to approve the minutes of the December 16, 2021 CCC meeting by Cheryl Andrews, seconded by Elizabeth Taylor, 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; Robert Mascali, Abstain; Jacqueline Etsten, yes, Ernest Virgilio, Yes; Douglas Fromm, Yes, Harold Mitchell, Yes; Kevin Grunwald, Yes; Richard Elkin, Yes; Dennis Prebensen, Yes; Ronald Bergstrom, Yes; John Harris, Yes; David Weeden, Absent (arrived late)

Executive Directors Report

Kristy Senatori gave the following updates:

New Commission Members

- Two members were appointed to the CCC: Robert Mascali, an attorney, representing Falmouth; and Dennis Prebensen, a consultant, representing Yarmouth.
- Dr. Cheryl Andrews, the Provincetown Representative, resigned due to time constraints.

Climate Action Plan

- Continuing work on addressing climate change including:
 - Climate Ambassador Program accepted 22 applications; program will begin later this month

Meetings/Speaking engagements

- Participated in the Gulf of Maine Ventures/SeaAhead. They gathered the economic development districts for a virtual gathering on January 10th relating to the blue economies
- Participated in the Climate Collaborative Board of Directors and Advisory Council Meeting on January 10th
- Met with the Cape Cod and Islands Water Protection Fund Management Board on January 11th. To date the fund has received over \$39 million for wastewater solutions on Cape Cod
- Presented to the Chatham Women's Club on January 13th
- Presenting at the February 1st Greater Hyannis Chamber of Commerce annual Economic Forecast
- Presenting the FY23 budget request to the County Commissioners on February 2nd

Regulatory – continues to be very busy

- Today the Executive Committee and Committee on Planning and Regulation met in a joint meeting to discuss MEPA's revised regulations to address environmental justice, which could result in an increase in mandatory DRI reviews as a result of EIR requirements for certain projects near Environmental Justice communities; a public hearing on amendments to Chapter A and the administrative regulations to address this change will be held on January 27, 2022
- Public hearings are anticipated to begin on both the 35 Scudder Ave and the Wilkens Development Agreements early in 2022; both were deemed complete earlier this month.

COVID-19

- Continuing to monitor developments related to the pandemic and current variants and any OML updates that may arise before the current extension expires on April 1st
- Will continue to meet remotely; staff was scheduled to return to the office in a hybrid format this month but will continue to work primarily remotely.
- Closed the 4th business impact survey at the end of December and received approximately 250 responses

Staff Updates

- Phillip Mele will start work on January 18th as Administrative Assistant. He spent several years in banking and since December 2015 worked in administration for the Town of Brookline.
- Dani Donahue, Special Projects Coordinator since February 2014 was promoted to Senior Special Projects Coordinator on January 1st. Dani leads the design and development of public outreach and engagement strategies as well as data, graphics, and visualizations for agency priority projects.
- Continuing to interview for a Regulatory Planner, Special Projects Coordinator and Community Development Planner

The Chair thanked Ms. Senatori for her updates and read the following hearing notice:

Public Hearing: Blue Sky Tower Monopole

The Cape Cod Commission will hold a virtual public hearing on the following Project. At this meeting, the members will discuss the following Project and may vote on the draft decision as recommended by the subcommittee. The project is subject to review as a Development of Regional Impact (DRI) pursuant to Sections 12 & 13 of the Cape Cod Commission Act, as amended.

Project: Blue Sky Tower Monopole (Re-submittal), CCC File No. 21012
Project Applicant: Blue Sky Towers III, LLC
Project Location: 1044 Route 28, South Yarmouth, MA
Project Description: Proposed 110' wireless communications tower with ground mounted equipment

The Chair asked for the Applicants' presentation.

Using a PowerPoint, Attorney Ricardo Sousa, representing the Applicant, presented the Project. The presentation included the original proposed wireless communication facility and the revised proposed wireless communication facility, which was based on comments received since the original submittal of the Project. He reviewed the revised permitting with site maps and photos from surrounding areas which included the proposed cell tower simulated within those photos. He reviewed a letter from Sohail Usmani, RF Engineer (Contractor to AT&T) at C Squared Systems, LLC to the Cape Cod Commission in response to comments made by David Maxson of Isotope in the review of the Applicant's Supplemental Statement in Support of the Development of Regional Impact. He reviewed maps showing the existing cell coverage and how the proposed cell tower would expand the coverage in the proposed location and surrounding area. He explained with simulated photos the proposed site and tree lines and the existing nearby Concealed Antenna Monopole (CAM) and reviewed the proposed LTE (MidBand) Coverage and the Existing LTE (Mid-Band) Coverage.

The Chair thanked the Applicant for their presentation and asked Commission staff for their presentation.

Using the PowerPoint, Jeffrey Ribeiro began his presentation with the DRI Review Timeline and explained the modifications made to the proposal since the original submittal.

Using the PowerPoint, Jordan Velozo reviewed the Standards of DRI Review. These included the Municipal Development Bylaws, Probably Project Benefit vs Probable Project Detriment, Consistency with the Cape Cod Regional Policy Plan (RPP) that included Water Resources, Open Space, Capital Facilities and Infrastructure, and Community Design.

Using the PowerPoint, Sarah Korjeff reviewed consistency with the Community Design goals and objects of the RPP. She viewed the photo simulations to clarify the specifics of the area that were would be impacted. She stated that the project as proposed met all the applicable goals and objectives of the RPP.

Using the PowerPoint, David Maxson from Isotrope Wireless reviewed with guidelines for DRI review of Wireless Communications Towers with the Technical Bulletin section of the RPP. He indicated that the facility would comply with safety standards by requirements of the state building codes and the radio frequency emissions of the facility will comply with the federal safety standards of the FCC. He reviewed maps that show the existing coverage vs the proposed coverage in the project area.

Using the PowerPoint, Jessica Wielgus discussed the Telecommunications Act of 1996. She noted the law provides that any decision to deny a request to place, construct or modify personal wireless service facilities is required to be in writing and supported by substantial evidence contained in a written record. She referenced the draft decision of the subcommittee and advised them that based upon their review of the record the proposed project met the applicable review requirements as a DRI.

The Chair asked for member questions and comments beginning with the Subcommittee members.

Steph Mealy, Chair of the subcommittee discussed concerns considered by the Subcommittee regarding the height of the monopole, footprint at the base and the surrounding landscape, equipment located at the base, the visual mass at the top of the tower, alternative locations including the WXTK tower. He said that through the hearing process, they learned that the height requirements for having multiple carriers would be limited by alternative designs and locations. Also discussed was an alternative to camouflage the monopole and the ability to place smaller towers.

The Chair asked about the draft Decision noting that the one presented today has changes. He asked for clarification.

Mr. Mealy stated that the original draft didn't contain the highlighted changes. Those additions relate to the Federal Communications Act requirements and were added by counsel.

Ms. Etsten thanked the Applicant for the serious consideration of the visual impacts of this project as well as having a consultant look at the project.

Mr. Fromm asked what is the relationship with the property owner?

Ms. Velozo stated that the property owner is required to provide a letter of consent to the Applicant.

Attorney Sousa stated that the legal relationship between Blue Sky Towers and the property owner is that there is a ground lease agreement to install and operate the telecommunications tower on the property.

Mr. Prebensen asked what is the set back from the road to the base of the tower? David Maxson responded that the distance is 125 feet. Mr. Prebensen asked how that will impact the parking on the existing property? Attorney Sousa stated that there is no impact to the parking. He referred to page 5 of his presentation which shows the exact location which may impact parking to the south of the compound near Rte. 28 but will not have a significant impact to the parking at the church as shown on page A-4 of the site plan. Mr. Prebensen added that the view of the tower from Rte. 28 is substantial and asked how long it will take for the proposed trees to grow and to what height. Mr.

Sousa stated that the trees are to block the entrance to the compound, not to intended to block the visibility of the tower. The fencing around the base of the tower has been improved as well as the landscaping to help with that.

The Chair closed the first round of questions from the members and asked for comments from public officials.

Kathy Williams read a statement from Robert Whritenour, Yarmouth Town Administrator. It stated that an email was sent to the Cape Cod Commission with his full comments and expressed his frustration that the decision was written before the public hearing process complete despite the opposition. He feels that the Commission is abdicating its responsibility to enforce the Community Design standards set forth in the Regional Policy Plan (RPP). It said we can support the need for increased cell coverage but not at the expense of community character when they have the necessary tools to protect it. In the letter, he asked that the draft Decision not be approved and that the public hearing period be extended to allow for a thorough review of the community design standards of the Project, even if it results in a project denial, to allow a new application that may receive the appropriate review. There will be a detailed review at the local level and the ZBA is the local permitting authority. It said without Commission support, their process at the local level is much more difficult.

After reading the comments from Town Administrator Whritenour into the record, Ms. Williams agreed with the comments and concerns about community character as well as other comments submitted from town officials and the oral testimony given at the previous public hearings. She said the current design does not adhere to the Commissions Community Design goals as it doesn't protect the unique character of the regions-built environment. She said this style of tower with its height will have significant visual impacts along Rte. 28 and is inconsistent with the towns planning efforts. Ms. Williams said that the Applicant doesn't have access to the buffer properties in which they are relying on to screen out the tower and, therefore, if the trees were removed, this would significantly exacerbate the visual impact of the tower. She said they are not asking for a prohibition; they are asking for a better design that would be an asset to the community. She requested that the Commission deny this application as currently presented and encourage the Applicant to reapply with a better design solution.

Joanne Crowley, Chair of Planning Board in Yarmouth stated that the town has been working diligently to beautify and improve Rte. 28 and that they are undertaking a community vision as part of the development of the LCP (Local Comprehensive Plan). She said they have been commenting throughout the process with letters and memos expressing our concerns. She said the Planning Board finds this proposal unacceptable. She also commented on the changes to the draft Decision over the past 10 days. She said the Decision now reads that the project may not be consistent with local initiatives to improve the visual character of Rte. 28, but she would like it to be known that the project is not consistent.

Brad Goodwin member of the Yarmouth Planning Board since 1994 stated that he is in support of the Project. He said they have taffy shops, concrete elephants, new affordable housing developments, the people in the area would like adequate cell service. He said they have other structures along White's Path he doesn't recall there being a problem. He sees no problem with this going forward and congratulated the Subcommittee on seeing that and letting it go forth.

Mark Forest, Chair of the Yarmouth Board of Selectmen stated that he was going to speak to comments that have been made. He said the Board stands behind the comments from the Town Administrator and the Planning Board. He would like to urge the Commissioners to stand with

Yarmouth. He said if we can allow this to happen in Yarmouth, it opens the door to these types of development in other Cape towns. He urged the Commission to take the appropriate action.

The Chair thanked for everyone for their comments and opened the floor to commission members for final discussion.

Mr. Bergstrom asked what the options are to the Applicant if the project were denied by the commission. He asked if the Town of Yarmouth has the ability to deny the Project if it is inconsistent with their plans? He asked if the Applicant take us to court rather than take the Town of Yarmouth to court if the Commission were to deny the Project?

Ms. Wielgus stated that the Town of Yarmouth can deny the Project if it is approved by the Commission. She stated that the draft Decision makes any approvals subject to the local decision process.

Mr. Bergstrom added that there are people in Yarmouth who approve of the Project, and they would not have the ability to go to their regulatory bodies to advocate if we turned it down.

Mr. Weeden thanked everyone for their presentations and appreciated the town government of Yarmouth to come forth and lend their contributions to our draft Decision. He asked if the Applicant owns the tower across the street. In the analysis for alternatives, what prevented that tower from being re-permitted? He said replacing the tower that is there with a new tower rather than adding new development would be consistent with conserving space and wooded areas on the Cape.

Attorney Sousa started that Blue Sky Towers, T-Mobile, and AT&T don't have any ownership interest in that tower across the street as it is owned by Verizon Wireless. He said if they tried to install antennas below, they would be too short and would not fill the gap in coverage as this proposal does.

Mr. Maxson confirmed what Mr. Sousa said. Verizon used the concealed antenna monopole exception from the DRI rules to apply directly to Town for permission to put that monopole up behind the post office. He said they own the structure, which is 80 feet tall and it's been determined that 80 feet is the minimum that you need to get a reasonable footprint of coverage from that area. If T-Mobile or AT&T were to pursue a concealed antenna monopole installation in this area, it would need to be a different monopole not to be on Verizon's monopole. If both needed to do that, then you have 2 additional structures and don't know what locations they would be proposed at.

Ms. Taylor stated that she has questions about how the detriments statements have changed and agrees with the statements from the Town. She said that the Town has made it clear that this is not what they want and feels that we need to support our local communities. She does not support the project as presented.

Mr. Fromm said if the Project is approved by the Commission, it then goes to the Town for further review by the various committees. He asked if it is denied where will the Project stand? Ms. Wielgus stated that if it gets denied the applicant will not be able to pursue it on the town level. Mr. Fromm asked if we give approval, does that not make it more difficult for the town to not give approval? Attorney Sousa stated that they must satisfy the Town standards. We come to the CCC for the DRI approval and then must satisfy the requirements to get zoning relief that is required from Yarmouth. Mr. Fromm asked if this is not approved today by the CCC, is the Applicant willing to come back with alternate proposals? Attorney Sousa stated that all the improvements possible have been made and that they would review the nature of the Decision if denied then decide on appeal rights on the Telecommunications Act and determine if there was substantial evidence to deny the

application. Mr. Fromm asked for further explanation of Attorney Sousa's reply. Ms. Wielgus stated that the Commission has found in the Decision that we have compliance with the RPP and compliance with local bylaws provided the required permits are obtained from the town.

Mr. Virgilio asked if the proposal complies with the RPP? Ms. Velozo stated that based on Commission staff analysis and the subcommittee findings, it does comply with the RPP. Mr. Virgilio added that as the Public Director of Safety in Mashpee he feels that cell towers are important for safety to the public.

Ms. Brookshire commented on a cell tower that was approved years ago and said that Mr. Maxson was the consultant. She said if we don't approve the Project at the current location, does the Town have another place to consider or are they against cell towers all together? As towns populations increase and need for service grows; we need to provide cell service. The Chair started that the applicant determined that this was the best location for the project. Ms. Velozo stated that the Commission must review the Project that is in front of them for consideration.

The Chair asked if it was possible to paint the monopole tower and Attorney Sousa stated that there was no objection the painting it.

Mr. Mealy stated that he didn't recall any discussion on the actual construction of the tower or finishes.

Mr. Harris stated that as he read the comments and it was clear that the Town is against the Project. He said that their comments were that the Project was inconsistent with our policies. He read through the RPP in the area that was mentioned and doesn't find that we were inconsistent. He said if we do not approve the Project we will be in violation of the Telecommunications Act. He said the Commission is doing what it is supposed to do in the context of the RPP. He said the Town needs to come up with strategies and alternative ideas on how to do this, he hasn't seen any ideas about what the Town wants.

Hearing no further comments, the Chair closed discussion and asked for a motion.

Upon a motion to approve the Blue Sky Towers Yarmouth DRI and adopt the draft Decision recommended by the subcommittee, as amended made by John Harris, seconded by Stephen Mealy, the motion carried. Roll call vote was as follows: Fred Chirigotis, Yes; Stephen Mealy, Yes; Elizabeth Taylor, No; Tom Wilson, Yes; Richard Roy, Absent (left meeting at 4:00pm); Joy Brookshire, Yes; Robert Mascali, Abstain; Jacqueline Etsten, Yes; Ernest Virgilio, Yes; Douglas Fromm, Yes, Harold Mitchell, Yes; Kevin Grunwald, Absent (left meeting 4:00pm); Richard Elkin, Yes; Dennis Prebensen, No; Ronald Bergstrom, Yes; John Harris, Yes; David Weeden, No

New Business:

The Chair asked for comments on New Business.

Meeting Adjourned:

The Chair asked for a motion to adjourn.

Upon a motion to adjourn the meeting at 4:52 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, Absent (left meeting at 4:00pm); Joy Brookshire, Yes; Robert Mascali, Yes; Jacqueline Etsten, Yes; Ernest Virgilio, Yes; Douglas Fromm, Yes,

Harold Mitchell, Yes; Kevin Grunwald, Absent (left meeting at 4:00pm); Richard Elkin, Yes; Dennis Prebensen, Yes; Ronald Bergstrom, Yes; John Harris, Yes; David Weeden, Yes

Documents used/submitted at the January 13, 2022 Cape Cod Commission Meeting

Cape Cod Commission Meeting Agenda 1/13/22

Draft Minutes of the 12/16/21 CCC meeting

Draft Decision, Blue Sky Towers Monopole

Power Point Presentation prepared by Cape Cod Commission staff inclusive of all agenda items

Public comment letter from Robert Whritenour, Jr. Town Administrator Yarmouth

Approved by the Cape Cod Commission on: Thursday, February 24, 2022