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CAPE COD
COMMISSION

Minutes

Meeting of Cape Cod Commission First District Courthouse • Assembly of Delegates Chambers 3195 Main Street, Barnstable, MA

September 17, 2015

The meeting was convened at 3:10 p.m., and the Roll Call was recorded as follows:

Town	Member	Present
Barnstable	Royden Richardson	✓
Bourne	Richard Conron	✓
Brewster	Elizabeth Taylor	✓
Chatham	Michael Skelley	Absent
Dennis	Richard Roy	✓
Eastham	Joy Brookshire	✓
Falmouth	Charles McCaffrey	✓
Harwich	Jacqueline Etsten	✓
Mashpee	Ernest Virgilio	✓
Orleans	Len Short	✓
Provincetown	Mark Weinress	✓
Sandwich	Harold Mitchell	✓
Truro	Kevin Grunwald	Absent
Wellfleet	Roger Putnam	✓
Yarmouth	John McCormack, Jr.	✓
County Commissioner	Mary Pat Flynn	✓
Minority Representative	John Harris	✓
Native American Rep.	Danielle Hill	Absent
Governor's Appointee	Vacant	Vacant

The meeting of the Cape Cod Commission was called to order on Thursday, September 17, 2015 at 3:10 p.m. in the First District Courthouse, Assembly of Delegates Chambers, 3195 Main Street, Barnstable, MA. Roll was called and a quorum established.

■ SUMMARY OF ACTIONS TAKEN/VOTES:

Public Meeting: Springhill Suites by Marriott—556 Main Street, Falmouth, MA—TR-LR14017

Following discussion and deliberation, the full Commission voted on the Limited Development of Regional Impact (DRI) draft written decision denying the application of Falmouth Hospitality, LLC for the Springhill Suites by Marriott proposed construction of a 110-unit hotel located at 556 Main Street, Falmouth, MA. A roll call vote on the motion to adopt the draft Limited DRI decision as written and deny the project, as the probable benefit of the proposed development is not greater than the probable detriment of the proposed development passed with 11 votes in favor and 4 votes opposed.

Continued Public Hearing: Atkins Road Subdivision—TR-LR14005

Following presentations, discussion and deliberation on the Limited Development of Regional Impact (DRI) application by Monomoy Properties, LLC for the Atkins Road Subdivision of 36+ acres into 23 residential lots, road layout and open space located off Atkins Road in East Sandwich, MA, a motion was made and seconded to close the public hearing. The motion passed with a unanimous vote of the Commission. Following that a motion was made and seconded to adopt the draft written Limited DRI decision as recommended by the subcommittee and approve the project, subject to conditions set out in the decision. The motion passed with a unanimous vote of the Commission.

PowerPoint Presentation and Discussion: Executive Director Paul Niedzwiecki gave a presentation which outlined the goals, strategies and focus of the Executive Director; the agency and Commission staff for Fiscal Year 2015, including the topics of community outreach and engagement, fiscal balance, the Federal Clean Water Act Section 208 Plan update, the Regional Policy Plan update and technical support provided to towns.

■ MINUTES

The minutes of the September 3, 2015 Commission Meeting were reviewed. Len Short moved to approve the minutes. Roger Putnam seconded the motion.

Charles McCaffrey referred to the second paragraph on page two and said the word “district” at the end of the first sentence should be changed to “village.”

A vote on the motion to approve the minutes of September 3, 2015 as amended by Mr. McCaffrey passed with a unanimous vote.

■ PUBLIC MEETING: SPRINGHILL SUITES BY MARRIOTT—TR-LR14017

Chair Richard Roy said the public meeting is on the Limited Development of Regional Impact (DRI) application of Falmouth Hospitality, LLC for the Springhill Suites by Marriott project at 556 Main Street in Falmouth, MA which proposes a hotel containing 110 rooms, site parking and other site improvements and amenities.

Jon Idman, chief regulatory officer at the Commission, said at the last Commission meeting the Commission took a vote and made a finding that the project probable benefit is not greater than the probable detriment and directed Commission staff to draft a decision to that effect. He said no substantial changes were made to the decision with the exception to the conditions which were removed. He said the project benefits and detriments are the same.

Elizabeth Taylor moved to adopt the draft Limited DRI decision as written and deny the project, Springhill Suites by Marriott, as the probable benefit of the proposed development is not greater than the probable detriment of the proposed development. Joy Brookshire seconded the motion.

Royden Richardson said if the project were approved and sent back to Falmouth for their approval then Falmouth would pay for an appeal. He said this is a Falmouth project.

Roger Putnam asked that the subcommittee chair discuss the rationale for reaching their decision.

Ernest Virgilio, subcommittee chair, said the proposed plan fulfilled the requirements of the Regional Policy Plan. He said the subcommittee felt that the benefits outweigh the detriments.

Jack McCormack said he will vote against denying the project because he feels the benefits outweigh the detriments. He said the size and scale could have been taken care of by the town.

Joy Brookshire said the project should not be approved because of money. She said that would set a precedent in regard to reviewing DRIs.

Charles McCaffrey said the project is a regional concern.

Mary Pat Flynn said she does not believe it's up for debate since the Commission voted on the project at its last meeting. She said today the Commission is voting on the decision before the Commission.

Jessica Wielgus, Commission Counsel, stressed that the motion before them was whether to adopt the draft decision which includes denying the proposed development.

Chair Richard Roy called for a roll call vote on the motion to adopt the draft Limited DRI decision as written and deny the project, Springhill Suites by Marriott, as the probable benefit of the proposed development is not greater than the probable detriment of the proposed development. The votes were as follows: Royden Richardson, no; Richard Conron, yes; Elizabeth Taylor, yes; Richard Roy, yes; Joy Brookshire, yes; Charles McCaffrey, yes; Jacqueline Etsten, yes; Ernest Virgilio, no; Len Short, yes; Mark Weinress, yes; Harold Mitchell, yes; Roger Putnam, no; Jack McCormack, no; Mary Pat Flynn, yes; John Harris, yes. The motion passed with 11 votes in favor and 4 votes opposed.

■ PUBLIC HEARING: ATKINS ROAD SUBDIVISION—TR-LR14005

The public hearing opened at 3:20 p.m.

Harold Mitchell, chair of the subcommittee, summarized the hearings and meetings that were held by the subcommittee and said the first hearing was well attended by the town. He said the subcommittee received good feedback and the project benefits and detriments were discussed. He said at the second hearing on September 10 the subcommittee looked at the different aspects of the project. He said the subcommittee voted to recommend approval of the project.

The subcommittee reviewed the subcommittee minutes of August 27, 2015 and September 10, 2015. Jack McCormack moved to approve the minutes of August 27, 2015 and September 10, 2015. Richard Roy seconded the motion. The minutes were unanimously approved by the subcommittee.

Attorney Eliza Cox, of Nutter McClennen & Fish representing the applicant, provided background information on the property and gave a brief overview of the project on an approximately 37-acre parcel of land. She said there have been countless meetings with the town and all prior layouts that were under contemplation showed more development. She said the topography on the site is 70 feet and the design before the Commission has been to extend the road off Atkins Road into the site which minimizes alteration and grading that would be required. She said the project has been carefully designed and is proposing 23 cluster design lots preferred by the Town of Sandwich and 27.58 acres will remain as open space which exceeds the town's requirements. She said houses will be served by Title 5 individually and the closest house property from the abutting line is 68 feet. She said the project will provide emergency access for the town and said that would be a benefit for the neighborhood. She said this area has very low water pressure and the Superintendent of the Sandwich Water District asked that the applicant bring a water main under Route 6 from Service Road under Route 6 and into the site which will then provide increased water pressure. She said they received sign off from Massachusetts Historical Commission with a no-take determination. She said the project will meet the Commission's affordable housing requirements. She said in terms of permitting after the Commission's approval they will seek permitting from the local level. Attorney Cox said she believes this is a good project; it has good design and engineering and they received input from the town and Commission staff. She thanked the town and Commission staff for their input and said she believes it exceeds the requirements of the Commission's Regional Policy Plan.

Jon Idman said the project comes to the Commission as a mandatory Development of Regional Impact (DRI) because it proposes a subdivision of 30 acres or more in single ownership and said the site is approximately 37 acres. He said the project was subject to a DRI scoping decision and it was scoped for review of issues for land use, water resources, wildlife and plant habitat, waste management, open space/recreation, community character HPCC Goal 2 and affordable housing. He said the subcommittee recommended a draft decision approving the project with conditions on September 10. Mr. Idman provided an overview of DRI standards of approval and the draft decision findings in the issue areas scoped for review. He said the decision finds that the project is subject to Regional Policy Plan (RPP) flexibility. He noted project benefits as

limited access easement to town conservation land, emergency access easement to town, new higher pressure water main interconnection, open space in excess of the required ratio and Best Development Practices for use of water-conservation technologies in homes, use of organic fertilizers, greater protection of groundwater/surface water, and provision of recreation areas in open space for residents. He said the subcommittee found that there are no probable project detriments from the proposed development. He explained the conditions in the draft written decision and issuance of a final certificate of compliance.

John Harris referred to a letter from the Association to Protect Cape Cod (APCC) and asked if Commission staff had reached out to APCC.

Jon Idman said the letter was a suggestion to consider alternatives and said the subcommittee did address that. He said the letter indicates that the Commission could consider alternatives. He said there was no further outreach to APCC because it was addressed by the subcommittee.

Joy Brookshire referred to the three affordable houses and asked if there was any guarantee that they would be built at the same time for market value.

Jon Idman said there is no guarantee and said a donation to a qualified entity is discretionary. He said sometimes it's difficult to maintain affordable housing lots.

Joy Brookshire said if there is going to be shared wastewater infrastructure would houses have been lost for that.

Jon Idman said no lots would be lost and said it's beyond open space requirements.

Harold Mitchell said at the first subcommittee meeting cash in lieu was added so it's an option.

Chair Richard Roy said flexibility in the decision gives the applicant the best opportunity to work out solutions.

Comment by federal, state, and municipal entities was called. There was no comment.

Chair Richard Roy called for public comment.

James Kinsella, Falmouth Enterprise, asked if the first plan proposed was different from this plan.

Brian Yergatian, BSC Group, said the first plan provided less open space and more development. He said the original plan of February 5, 2014 did not meet the 2 to 1 ratio of open space.

Harold Mitchell moved to close the public hearing. Jack McCormack seconded the motion. The motion passed with a unanimous vote.

Harold Mitchell moved to adopt the draft written Limited DRI decision as recommended by the subcommittee and to approve the project subject to conditions set out in the decision. Jack McCormack seconded the motion. A vote called on the motion passed with a unanimous vote.

■ EXECUTIVE DIRECTOR'S REPORT

Executive Director Paul Niedzwiecki said this morning the Environmental Protection Agency (EPA) and the Department of Environmental Protection (DEP) met at a press conference in Mashpee to announce the certification of the 208 Wastewater Management Plan. He said this has been an unprecedented collaborative effort on a Plan unlike no other plan in the country. He said the Commission has a great staff and is of the highest standards and it's a privilege for him to work with staff every day. He said the Conservation Law Foundation (CLF) wrote a letter prior to certification of the Plan. He said the letter expressed three concerns: concern about water quality reports from towns by the deadline of July of next year; the lack of establishment of a regulatory program to oversee enforcement; and the designation of towns as Wastewater Management Agencies (WMAs) and their lack of authority to implement as they believe there is no value in that. Mr. Niedzwiecki said those are three good points for the CLF to raise and the Commission will further develop strategies to address that.

Mr. Niedzwiecki said a Commission member training has been requested and the Commission is looking at a date in October to do an off-campus training session. He said he hopes attendance will be good and an announcement will be sent to Commission members.

PowerPoint Presentation by Paul Niedzwiecki

Mr. Niedzwiecki gave a PowerPoint presentation outlining the goals, strategies and focus of the Executive Director, the agency and Commission staff for Fiscal Year 2015, including the topics of community outreach and engagement, fiscal balance, the Federal Clean Water Act Section 208 Plan update, the Regional Policy Plan update and technical support provided to towns.

Royden Richardson said it's a great presentation and he inquired about changes to Commission staff.

Paul Niedzwiecki said the number has not changed. He said part of financial management is to determine how to bring new people on.

John Harris inquired about the distribution of materials. He asked what type of feedback the Commission gets.

Paul Niedzwiecki said it's sent out by email and approximately 2000 people receive it. He said the Commission will be reaching out to the Cape Cod Chamber of Commerce and the Board of Realtors to help with this and he is open to any suggestions. He said the feedback received has been good but he would like to receive more.

John Harris asked if the CLF offered any support to help with their concerns. He said he thinks the 208 Plan is great and he is disappointed with the letter from CLF.

Paul Niedzwiecki said the CLF did not offer to help. He said he appreciates the letter and now the Commission can focus on the issues they have raised.

Roger Putnam said everyone owes Mr. Niedzwiecki and Commission staff a great debt for their efforts. He said he is very proud to be part of it. Commission members echoed Mr. Putnam's response.

Paul Niedzwiecki said he has a great staff.

Commission members discussed peak changes in the construction of summer homes, the Cape's population, sources of revenue from a lodging tax, how to continue to feed the aquifer that Cape Cod depends on, and impervious surfaces and loss of forests.

A motion was made to adjourn at 5:07 p.m. The motion was seconded and voted unanimously.

Respectfully submitted,

Jack McCormack, Secretary

List of Documents Used/Presented at the September 17, 2015 Commission Meeting

- Minutes of the September 3, 2015 Commission meeting.
- Handout material: September 17, 2015 Commission meeting agenda.
- Handout material: Draft Limited Development of Regional Impact (DRI) Denial Decision for Springhill Suites by Marriott project.
- Handout material: Draft Limited DRI Decision for Atkins Road Subdivision project.
- Material presented: PowerPoint presentation on the Limited DRI project for Atkins Road Subdivision.
- Material presented: PowerPoint presentation by the Commission Executive Director on the goals, strategies and focus of the Executive Director, the agency and Commission staff for Fiscal Year 2015.