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Minutes

Atkins Road Subdivision DRI Subcommittee Hearing (14005)

August 27, 2015

Sandwich Human Services Building

270 Quaker Meetinghouse Road, Sandwich, MA

Subcommittee Members Present: Harold Mitchell (Chair), Richard Roy, John McCormack, John Harris, Richard Conron

Commission Staff Present: Jonathon Idman (Chief Regulatory Officer), Elizabeth Perry (Regulatory Officer II), Jeffrey Ribeiro (Regulatory Officer II)

Documents Used/Received

1. Plans presented by Brian Yergatian
2. PowerPoint Presentation by Jon Idman

Hearing Opened

Harold Mitchell, Subcommittee Chair, called the hearing to order at 5:33PM. The Chair opened the Hearing by reading the hearing notice.

Presentation of Project by Eliza Cox and Brian Yergatian on behalf of Monomoy Properties LLC

Attorney Eliza Cox gave a presentation that included a review of the project, background/history of the land, various layout plans and how the plans evolved while working with Commission staff throughout the preparation process.

Brian Yergatian gave a presentation with the aid of enlarged project plans from each stage of the design process. The presentation included the design history of the project, challenges of the topography of the site, the land located between roads A and B, the project's drainage system and the construction of the water line.

Attorney Cox briefly reviewed the scoping decision and the proposed benefits of the project.

Presentation of Project Staff Report by Jon Idman

Jon Idman gave a presentation with the aid of a PowerPoint presentation. The presentation included a general overview of the project, Commission jurisdiction, consistency with the Regional Policy Plan (RPP), compliance with Minimum Performance Standards, and proposed benefits and detriments of the project. A copy of the PowerPoint is attached.

Questions and Comments

The Chair asked for comments from the **Subcommittee**.

Dick Conron asked if the town will get the open space deeded to them. Jon Idman stated that it is an option, but in this case Monomoy Properties would retain fee ownership of the Open Space but a conservation restriction (CR) on the OS would be granted to a conservation related entity. Mr. Conron asked who would have to maintain the emergency access road and walking trails. Mr. Idman stated that generally speaking, whoever has the benefit of the easement would maintain that easement. Attorney Cox stated that a homeowners association would be created and maintain the walking trails.

Dick Roy asked for clarification if the walking trails would be in the conservation restricted area. Mr. Idman stated that the CR can be set up so that there are exceptions carved out of the CR and walking trails can be carved out of the restricted activities within the CR area.

Harold Mitchell asked about the width of the walking trails. Mr. Yergatian stated that they will be 6 feet wide. Mr. Mitchell stated that he would like the paths to be wider to accommodate a bike trail if the applicant was open to it. Mr. Idman clarified that the walking trails are only for the residents of the subdivision and there is no public access proposed by the Applicant at this time.

Mr. Conron asked if the development will have sidewalks on the roads. Mr. Yergatian stated that there would be sidewalks all along "Road A".

Mr. Mitchell asked for clarification on where exactly the gates would be located. Mr. Yergatian pointed out the location of the gates on the plan within the proposed emergency access easement area and the proposed access easement to the town conservation land. Mr. Mitchell asked who would hold the keys to the gates and Mr. Yergatian stated that the fire department and the department of natural resources would hold the keys.

The Chair asked for comments from **federal officials**.

No comments.

The Chair asked for comments from **state officials**.

No comments.

The Chair asked for comments from **local officials**.

No comments.

The Chair asked for comments from the **general public**.

David Bronstein stated that Marie Lane is a private road and asked if the town would just take over a private road. Attorney Cox stated that it would remain a private road and that, as she understand it, the town doesn't have any intention on making it a public road. She stated that only in the event of an emergency would it provide access for the emergency vehicles to get to the subdivision. Mr Bronstein asked if the easement would be paved. Mr. Yergatian stated that the easement would have grass pavers. Mr. Bronstein asked about plowing Marie Lane during the winter. Mr. Mitchell stated that decision would have to be dealt with by the town. Mr. Bronstein asked if there was any thought given to making another entrance to the subdivision that connects to 6A besides Atkins Road. Mr. Mitchell reiterated and explained the Commission Staff's traffic analysis and the Commission's jurisdiction over such access issues. Mr. Bronstein expressed concern that if the train was ever stuck on the tracks, emergency vehicles would not be able to access the full length of Atkins Road.

Joyce Bronstein expressed concern that Atkins Road is very narrow and construction vehicles would make it worse. Mr. Mitchell stated that, as he understand it, not all the lotss would be developed at one time.

Roseanne Carr asked the development team if they had given any thought to bringing natural gas along with the water line under Rte. 6. Mr. Mitchell stated that that is not something he believes the development team could answer at this time, and could not be required by the Commission.

Natalie Smith stated that she doesn't think there is any benefit in connecting an emergency access easement to Marie Lane.

Earl Lantery stated that he and many others have used the walking trails on site for over 40 years and he and the surrounding neighborhoods should continue to have access to the walking trails.

Deanna White expressed concern that the development site has box turtle and other wildlife living on the site. Mr. Mitchell explained that the box turtle and wildlife habitat has been taken into consideration through DRI and state level review. Attorney Cox added that the development team has submitted the plans to NHESP a few times.

Paula Schnepf from the Sandwich Housing Authority stated that she is pleased to see the affordable housing in the staff presentation and asked that it be considered to allow the developer to make a cash contribution in lieu of providing the three affordable lots on the project site, in order to provide housing at a more desirable location somewhere else in town.

Susan Scheible asked about the timeframe for the project. Mr. Mitchell stated that the developer probably would not be able to answer that question at this stage. Attorney Cox stated that they need local approvals after the Commission process and she is not able to give a definitive answer about a time frame at this point.

Dan Smith asked when the subcommittee will know exactly what the plan is so that they know what to vote on. Mr. Mitchell stated that the plan presented by the applicant is the plan that they

will vote on and that same plan will go to the full Commission. Mr. Mitchell also stated that there will be conditions set out in any decision that the applicant must comply with so that they make sure the approved work is actually done by the applicant. Mr. Smith also asked if the proposed subdivision road would be taken over by the town, and ahead of other roads in town, like Crestview Road, that need maintenance.

Paul Paddock inquired about gas installation. Mr. Mitchell stated that gas and utilities are handled by the private companies. Mr. Paddock also expressed concern about Atkins Road being the only access road for the neighborhood in the event of an emergency.

Lisa Golfonitsos stated that she owns on both sides of Marie Lane and thus owns the fee in that portion of Marie Lane terminating at the western property line of the project site. She stated that it is a private road and the town does not plow the road. She expressed concern about how Marie Lane would be an emergency exit for the development during the winter if there was a lot of snow on the ground. She also expressed concern about box turtles and other wild life and stated that builders have no concern for them. She also expressed concern about additional traffic from the cars of the subdivision. She also expressed concern about pesticides used for the subdivision lawn and landscaped areas draining into a nearby drainage area, and entering the water table. She also stated that the open space buffer to neighboring properties isn't big enough and she would have to listen to construction. Ms. Golfonitsos stated that she will not plow Marie Lane so that emergency vehicles will not be able to access the subdivision in the event of an emergency. She stated that she will not let emergency vehicle down her road and will not let them install a gate.

James Kalvert spoke and stated that he considers himself an expert in home values. He stated that Atkins Road is not wide enough and is a dangerous road. He suggested the widening of Atkins Road and the implementation of speed bumps. He expressed concern that water runoff from the subdivision would go into two abutting house lots. He stated that a portion of Atkins Road that the developer claimed is public is actually private and that he had Atkins Road improved in this area and that no one has consulted him about accessing this portion of Atkins Road leading to the project site. Mr. Kalvert stated that the restrictions on nitrogen loads have no teeth and demanded to see the Commission hydrologist's calculations and how he came up with them, suggesting that fertilizer from lawn maintenance was not factored in to the calculations.

Jon Idman stated that, pursuant to Commission Regulations, imputed loads from fertilizer, stormwater and wastewater are factored into the nitrogen loading calculation submitted by the applicant as reviewed by the Commission's staff hydrologist.

Mr. Kalvert stated that if the subcommittee was going to make a vote tonight on the project, he would have to see the nitrogen loading calculations first. He also demanded to see where the town has previously allowed 10,000-12,000 sf lots.

Susan Sonder stated that when more trees are removed to build the subdivision the ditch near the subdivision would collect more rain water which would possibly increase mosquitoes in the area. She also expressed concern about Atkins Road being too narrow.

Edy Smith expressed concern about safety due to the rain water spilling off site and causing flooding on Atkins Road.

The Chair asked for any further comments from the **Subcommittee**.

Mr. McCormack stated that at this time they should remind the public that even if this project is approved by the Commission, the developer would still have to go through all the town's local boards for permitting and address a lot of the concerns stated here tonight. He stated that the subcommittee is only concerned with the issues in the Regional Policy Plan and matters subject to Commission jurisdiction.

The subcommittee proceeded to discuss the proposed benefits and detriments of the project.

Mr. Mitchell stated that a major benefit of the project is the easement to the town resources area.

Mr. Roy agreed that the easement is a benefit.

Mr. Mitchell stated that the developer working with the water department to put the water main under Rte.6 and improve the water in the area is a major benefit.

Mr. Conron stated that he would really like to see the town own the open space. He stated that he doesn't see the benefit of the developer keeping ownership of the land. He stated that he wanted the town to own the open space as a condition of approval of the project.

Attorney Cox stated that the Commission could not unilaterally require town ownership of the open space as a condition of the decision. She stated that they have had discussions with the natural resources department and the discussion is ongoing in terms of how the open space will be held and restricted.

Mr. Idman stated that down the road if the town expresses interest in owning the open space and it's acceptable to the developers, it could be allowed as a minor modification to the decision that can be handled administratively.

Attorney Cox offered to ask if the town is interested in ownership of the open space.

Mr. Mitchell stated that he believes all the benefits presented in the staff report were well laid out and he agreed with them.

Mr. Mitchell stated that he does not agree with the suggested detriments in the staff report, including one that states the project proposes a less compact road network and more changes to natural grade than would otherwise be proposed on a site with fewer topographic challenges of this site.

Mr. Roy stated that he agrees with Mr. Mitchell in that that particular detriment should be removed. He stated that we have to deal with the site on which the applicant is proposing to develop and he feels that the development team did the best they could do with the topography of the site.

Mr. Mitchell urged the members of the community to bring their concerns about the speeding and narrowness issues on Atkins Road to the town planning board.

Mr. McCormack clarified the public/private road issue and explained that towns can have an easement over private roads.

Mr. Mitchell asked the developer's team if Sam Jenson from the town reviewed the plans and whether Mr. Jenson is aware of the issue of the public/private roads.

Mr. Yergatian stated that Sam Jenson has reviewed the plans several times and has also been to the site, but he is not sure that they discussed that specific issue of whether Atkins Road is public or private.

Mr. Mitchell asked the development team to have that clarified for the subcommittee.

Mr. Idman stated that when the Commission receives a DRI, a showing of sufficient property rights is always a requirement. In this case, Monomoy Properties LLC provided evidence that it maintains by deed a right of way over Atkins Road to the project site, and ownership of the project site. Whether the road is public or private, there may well still be the easement to the land and that allows the applicant and the Commission to proceed with review of this DRI application.

Mr. Conron asked for clarification about the emergency easement road to Marie Lane.

Mr. Idman stated that the emergency easement creates no additional property rights than exist today except that the developer is going to grant an easement to the town over its own land. He stated that the developer can grant no rights in Marie Lane if it has no rights to grant, and that the town has a legal right to go over private ways in the event of an emergency. He stated that Monomoy Properties LLC has sufficient property rights to do what they have suggested which is to create an emergency access area up to the terminus of their property and to grant an easement to the town in this area.

Attorney Cox stated that the idea of the emergency easement to the town came from discussions with the town planning board.

Motions

Mr. Roy made a motion that the flexibility clause be applied to the applicable open space, water resources and land use minimum performance standards of the RPP to allow the developer to use individual septic systems rather than shared wastewater infrastructure.

Mr. McCormack seconded.

All were in favor.

Mr. McCormack made a motion to continue the Hearing to September 10, 2015, 5 pm, at Cape Cod Commission office, 3225 Main Street, in Barnstable.

Mr. Roy seconded.

All were in favor.

Mr. Roy made a motion to direct staff to draft a limited DRI decision for the subcommittee's review.

Mr. Conron seconded.

All were in favor.

Mr. McCormack made a motion to adjourn.

Mr. Roy seconded.

All were in favor.

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Respectfully submitted,

Harold Mitchell, Chair
Atkins Road Subdivision Subcommittee

Date