CAPE COD
COMMISSION

Evergreen Circle Pickleball (CCC File No. 24023) Development of Regional Impact Review Subcommittee Hearing

Minutes | December 2, 2024 at 5:00 p.m.

Virtual via Zoom

APPROVED 01/02/2025

Summary of Actions Taken:

- The subcommittee voted to direct staff to draft a decision for recommendation to the full Cape Cod Commission, for review at its virtual meeting.
- The subcommittee continued the hearing on the Evergreen Circle Pickleball Project to the meeting of the full Cape Cod Commission on December 19, 2024 at 3:00 p.m.

The Chair, Ernest Virgilio, opened the Subcommittee hearing by reading the hearing announcement. The subcommittee hearing is being held virtually via Zoom with all members participating remotely. He said that the subcommittee members will discuss the proposed Evergreen Circle Pickleball Project, which proposes a building with 10 indoor pickleball courts, a restaurant, 6 indoor golf simulators, and amenities.

The Chair then asked Cape Cod Commission Regulatory Planner Jeffrey Ribeiro to take attendance by roll call.

Roll Call:

- Ernest Virgilio, *Chair*, Present
- Elizabeth Taylor, Present
- Dennis Prebensen, Present
- Catherine Ledec, Present
- Peter Okun, Present

Applicant Presentation:

With all members present, the Chair recognized the Applicant, Bill Russell.

Mr. Russell reviewed his proposal for the new facility and requested a financial hardship exemption and a waiver of Cape Cod Commission fees for nitrogen mitigation. He argued that the facility, designed with nitrogen reduction in mind, would benefit the community and contribute to the Mashpee Clean Water plan.

He said there are three requirements to show financial hardship and he suggested that he meets all of the requirements. He said his financial situation makes it difficult to complete the project. He said If the project fails due to permitting, funding availability, or other factors, he will personally suffer the financial hardship.

He said the RPP also allows the subcommittee to provide waivers and flexibility. He said he is compliant with the RPP objectives. He said he consulted numerous experts in nitrogen mitigation. He said the site's location and the specific IA system selected are critical factors that may not be fully captured in the nitrogen mitigation worksheet that describes the fee. He said the site is on the boundary between Popponesset and Waquoit estuaries. Both wastewater and stormwater will flow to both estuaries. He said nitrogen from the Project will take over 10 years to reach estuary bodies. He said the facility overall creates no substantial detriment because by the time nitrogen reaches the estuary bodies, substantial improvements will be made under the town's Clean Water Plan.

He said the clean water plan is funded by state and federal grants, bonds, and other income sources. He said it doesn't come from local taxes, but local taxes contribute to the operating costs of the sewer facilities. He said that Mashpee has over $177,000 of unused nitrogen mitigation fees at the Cape Cod Commission. He said that this money has been proposed to be used for recent projects, but they're small ancillary projects that haven't been granted, approved, or prioritized under the Town's Clean Water Plan.

Mr. Russell said that the Mashpee Town Manager wrote the Commission supporting fee reductions for the Project due to the significant effort put into nitrogen reduction for the facility. He said that any fee levied for nitrogen mitigation has no defined use.

He said the benefits of the Project are greater than the potential detriments. He said the Project has a low environmental impact and high community benefit on industrial-zoned land. He said that alternative uses for the site could be more damaging while not requiring DRI review.

He said that the Commission has received many comments in favor of the Project and is supported by the abutters and town officials. He said that future sewering in Mashpee will eventually lead to improvements on Evergreen Circle.

Mr. Russell noted that he submitted into the record a document regarding waiver exemptions on November 12, 2024. He said the maximum relevant fee for nitrogen should be $30,457, which was proposed based on the worksheet. He said this fee amount is appropriate because nitrogen reduction will take less than 20 years, calculating the Project's wastewater flow at 75% of design flow overstates future conditions and that the starting point for nitrogen discharge from his facility is 10 ppm-N in effluent. He stated that the nitrogen mitigation fee is based on removal of nitrogen for 20 years, but he believes his facility will connect to sewer before 20 years. Using a 10-year removal basis, the fee would be reduced to $188,810. He compared his proposed facility to 14 other facilities and stated that he thinks actual wastewater flow will be 32% of design flow, not 75%. Using 32% design flow as the basis for calculation would bring the mitigation fee to $79,950. He requested that the fee be further reduced to $30,457. He summarized the community benefits associated with the Project, including minimizing noise complaints associated with outdoor pickleball courts. He reiterated his request for a hardship exemption related to the nitrogen mitigation fee.

Staff Presentation:

The Chair recognized Jeffrey Ribeiro, providing comments for Commission staff. Mr. Ribeiro explained the impact of nitrogen from the Project. He said the proposed Project requires a nitrogen fee based on the amount of nitrogen it will contribute to the Waquoit Bay embayment. While the Town provided a letter generally in support of the Project and a fee reduction, Mr. Ribeiro said that the subcommittee must consider whether Project's benefits, including year-round recreational opportunities and potential tax revenue, fully offset the environmental detriment of nitrogen pollution.

He said that nitrogen pollution in impaired embayments is a long-standing regional concern. He said the Project Site is part of Phase 5 of Mashpee's Sewer Project, scheduled for construction between 2035 and 2040. He said that it is staff's opinion that many of the statements by the Applicant are not factually correct. He noted that the project site is split between Waquoit and Popponesset, but the wastewater treatment system is in the Waquoit embayment. He said that the Town does not have plans to offset the project's nitrogen contributions to Waquoit Bay within 5 years of approval. He said that the Applicant had claimed that the Town's Comprehensive Wastewater Management Plan will be completed in 10 years, but there is no source for that statement in the record.

Mr. Ribeiro said that the discussion by the Applicant of the fee calculation using a reduction of nitrogen from 26.5 mg/L does not represent a proper use of that figure. He said that number exists solely to be used as the nitrogen output for a standard Title V septic system. The calculation is the kilograms of nitrogen the project will contribute to the Waquoit Bay embayment based on the increased treatment levels provided by the applicant's proposed system and reduced to 10 milligrams per liter.

Mr. Ribeiro said that without the advanced system proposed by the Applicant the fee would be higher as more nitrogen would go to the embayment. He said that nitrogen offset payment of $8,290 per kilogram of nitrogen was based on 2014 costs, and the Technical Bulletin expressly states this would not be updated for inflation to ensure it's a conservative estimate of the expected costs associated with removing nitrogen. He said the Project will contribute additional nitrogen above and beyond what has been planned for and removed. He said that the Applicant provided data based on their estimates of anticipated wastewater flow but that many facilities operate at a greater percentage of the design flow as calculated.

He noted that the Mashpee Town Manager submitted a comment letter expressing Town support for the Project. The letter didn't provide specific statements on fee reductions but suggested that the Town would support a reduction. He noted that staff have not been able to identify technical reasons why the current calculation methodology is incorrect or to identify an alternate fee.

He briefly addressed RPP transportation consistency, noting that the Applicant's traffic study identified four high crash locations in the area, but that the location is generally not a bad one in terms of transportation impacts. He said that staff suggest the transportation mitigation requirements are appropriate and not excessive to address the Project's impact. He suggested that the nitrogen mitigation offset payment could be required prior to a final certificate of compliance for

the Project, rather than a preliminary certificate, which will give the Applicant more time to obtain the funds. He then outlined some potential benefits and detriments associated with the Project for the subcommittee to consider, including year-round recreation and employment opportunities, noise complaint reductions, and nitrogen impacts.

Subcommittee Discussion:

The Chair asked for questions or comments from members of the subcommittee.

The Chair recognized Peter Okun. He said that he does not feel it is appropriate for the subcommittee to review and rewrite the RPP and technical bulletin requirements for the nitrogen mitigation payment structure. He does not support the Applicant's alternative calculation methods. He said the subcommittee should stick with the technical requirements and only reduce or waive fees if it based on a demonstrated financial hardship that justifies flexibility. He asked if there could be a finding that allows the Applicant to get a refund on the mitigation fee if the town ends up installing sewer that allows the Applicant to connect sooner than anticipated. Mr. Ribeiro replied that it would be difficult to do so because the project cannot be conditioned on a third party's outside actions and the mitigation fee will presumably have been spent by the town in order to expedite sewering. Mr. Okun said that his other comment related to the noise reduction from outdoor pickleball facilities. He said he does not think this should be considered a benefit since there may still be outdoor pickleball courts in the region and this is a private facility that may not be accessible to all potential users.

The Chair recognized Catherine Ledec. Ms. Ledec said she had some comments regarding the landscaping plan that she would like to make on the record for the Applicant and landscaping contractor to consider. She said the current landscaping plan is an improvement over the previous one but needs further revision to increase biodiversity, and the proportion of native plants. She suggested that the composition of plants meet biodiversity targets to minimize the number of plants of the same species or within the same genus. She asked that lawn areas be removed and listed a number of native plant species that might be added to the plan including ground cover, perennials, shrubs, and trees. Mr. Russell replied that the landscaping plan can be updated to incorporate those suggestions, and he will follow up with corrections.

Ms. Ledec asked Mr. Russell if he was familiar with bird friendly building design methods. She said it was important that the building be designed to minimize potential collisions between birds and any reflective glass surfaces on the building exterior. She explained that birds cannot see glass and may experience serious or fatal injuries upon collision. She suggested the Applicant incorporate features such as feather-friendly decals on any windows to prevent harm to wildlife. Mr. Russell replied that he has tried to minimize the amount of glass on the building and is willing to incorporate bird-friendly design.

Ms. Ledec ask for staff response to the Applicant's proposed nitrogen mitigation fee reduction. Mr. Ribeiro introduced Tim Pasakarnis, Water Resources Analyst, Commission staff, to respond. Mr. Pasakarnis explained that the nitrogen mitigation payment structure in the regional policy plan is a

direct response to the Massachusetts estuaries reports to the 208 area-wide water quality management plan. He noted that decades of development have contributed additional nitrogen to coastal water bodies, overloading them and causing nitrogen impairment. He said that regardless of its source or travel time, nitrogen from any watershed will ultimately contribute more to water bodies already receiving more than they can naturally assimilate.

He said the mitigation fee structure exists to avoid requiring either no net nitrogen addition or strict regulations like connecting every project to a sewer. Instead, funds are collected proportionally to the Project's impact, calculated based on the expected quantity of nitrogen generated, treatment level, and standard protocols for estimating flow rates. This nitrogen mitigation worksheet and technical bulletin have been part of the regional policy plan since 2018. He said the mitigation fee provides funds for projects that can't be funded by other sources, such as grants that may not exist. These funds can be used by the Town to take advantage of the impacts, such as those closer to water bodies or wastewater treatment facilities.

The Chair recognized Elizabeth Taylor. Ms. Taylor echoed the comments made by Peter Okun on the nitrogen mitigation calculation and thanked staff for their explanation. She said she shared Catherine Ledec's concerns about the landscaping plan and said she was surprised to see any lawn included in the landscaping.

Public Comment:

Federal, State, and Local Officials:

Through the Chair, Mr. Ribeiro asked for any comments from federal, state, or local officials. There were none.

General Public:

Through the Chair, Mr. Ribeiro asked for any comments from other members of the public. There were none.

Further Subcommittee Discussion:

The Chair recognized Peter Okun. Mr. Okun asked for clarification on the mitigation fee. He asked if it was based on cost estimates for nitrogen cleanup that are ten years old. Mr. Ribeiro replied that the fee is based on cost estimates calculated in 2014 and is not adjusted for inflation, providing a conservative estimate of actual costs. Mr. Okun asked if given economic changes in the last decade, the 2014 numbers won't cover the actual cost of mitigation new nitrogen flow

Mr. Pasakarnis said it is difficult to determine what the exact cost might be now given price volatility in recent years, but it is likely that new wastewater infrastructure costs more in 2024 than in 2014. He said the $8,290 per kilogram number in the water resources technical bulletin is derived from estimates of the cost to treat wastewater at a municipal scale. It's an example, like the one in this

Project, of how much it would cost a town to remove nitrogen by creating a wastewater system and associated collection, treatment, and disposal systems. He said that number has remained the same since the 2018 RPP was adopted.

The Chair recognized Catherine Ledec. Ms. Ledec said that at the previous meeting she asked if the Applicant was using the most sophisticated wastewater treatment system available. She asked for confirmation that this was the best system for the project site and that there are no systems available that could prevent any new nitrogen inputs. She said that if true, that should be considered in weighing whether a fee reduction is appropriate.

Mr. Pasakarnis replied that for a project of this size, he is unaware of any systems that can perform better than 10 milligrams per liter. At larger scales, some systems can do less than half of that, but they're generally much larger. However, none of these systems result in no nitrogen at all, even the most high-performing ones. He noted that there are methods to achieve no net new nitrogen, by tying in adjacent properties that discharge effluent at a higher concentration or removing other nitrogen sources from the watershed.

Ms. Ledec asked what the fee would be if adjusted for inflation and whether that amount would cover actual costs of nitrogen removal. Mr. Ribeiro estimated that the $8,290 pre kilogram would be approximately $11,187 per kilogram if adjusted based on the consumer price index.

The Chair recognized Elizabeth Taylor. She said she is also curious why the 2014 cost is still being used and concerned it might not reflect real costs anymore. She asked if there was a possibility of connecting other businesses on Evergreen Circle to the Project.

The Chair recognized Peter Okun. Mr. Okun asked if the calculation is based on 10 milligrams per liter of wastewater flow or 26.5 milligrams per liter of flow. Mr. Pasakarnis replied that it is 10. Mr. Okun said that the calculation is already accounting for the fact that the Applicant is proposing a high performing wastewater system and represents a discounted mitigation fee as compared to a less effective system.

Applicant Response:

The Chair recognized Bill Russell. Mr. Russell thanked the Subcommittee for their comments and discussion. He said he has concerns about discussing the specific costs related to nitrogen treatment because costs have changed over the past ten years, but technology has also advanced. He said he has reached out to the Mashpee wastewater superintendent to get updated estimates of nitrogen removal costs. He said he thinks the fees should be reviewed regularly to ensure they reflect current costs. He said the next phase of the Mashpee sewer construction is expected in 10 years, which is farther than the 5-year timeframe in the RPP but less than the 20 year timeframe that the mitigation fee is calculated based on. He said this is a basis for reducing the applicable mitigation fee. He said that he has done his best to design the wastewater treatment system on site to minimize nitrogen impacts.

Mr. Russell said that he agrees his indoor facility won't eliminate all outdoor play and noise complaints but believes it will still reduce the noise burdens from outdoor courts. He said he can provide an updated landscape plan to address Ms. Ledec's comments and suggestions or agree to a condition to provide such a plan in the decision. He reiterated the Project's proposed benefits and his request for a reduced nitrogen mitigation fee.

Staff Response:

The Chair recognized Jeffrey Ribeiro. Mr. Riberio said that the hearing period will be ending soon and suggested that staff prepare a draft decision for review at a future subcommittee meeting and present that at the meeting of the full Commission on December 19th. He said it would make sense to draft the decision with the nitrogen mitigation amount as calculated by the RPP and Technical Bulletin standards and then the subcommittee can further discuss if there is any desire to reduce the fee. He stated that with respect to the Project benefits and detriments, the noise mitigation was one suggested benefit, and the draft decision does not need to include that one based on Mr. Okun's comments.

The Chair recognized Peter Okun. Mr. Okun reiterated that he does not consider noise mitigation for the indoor pickleball facility to be a project benefit and does not support a reduction in the nitrogen mitigation fee as calculated under the RPP.

The Chair recognized Elizabeth Taylor. Ms. Taylor noted that she expects to see a revised landscape plan and commitment to use bird friendly designs. She asked for a response to her earlier question about connecting neighboring properties to the wastewater treatment system. Mr. Russell replied that there are no immediate abutters as those lots are vacant, and it would not be practical to connect the other properties on Evergreen Circle to the Project's treatment system.

Mr. Ribeiro suggested that the Chair call for a motion to instruct staff to draft a decision consistent with subcommittee discussion for review by the Subcommittee for potential recommendation to the full Cape Cod Commission. The Chair asked for a motion. Ms. Taylor made the motion. Ms. Ledec seconded the motion. The Chair asked Mr. Riberio to take a vote by roll call.

Roll Call:

- Ernest Virgilio, yes
- Elizabeth Taylor, yes
- Dennis Prebensen, yes
- Catherine Ledec, yes
- Peter Okun, yes

The motion carried.

Mr. Ribeiro said he will follow up with subcommittee members to confirm a date for a public meeting to discuss the draft decision. He suggested the Chair call for a motion to continue the public hearing on the project to the regularly scheduled meeting of the full Cape Cod Commission on December 19, 2024, at 3 PM to be held virtually via Zoom. The Chair called for a motion. Ms. Taylor made the motion. Mr. Prebensen seconded the motion. The Chair asked Mr. Ribeiro to take a vote by roll call.

Roll Call:

- Ernest Virgilio, yes
- Elizabeth Taylor, yes
- Dennis Prebensen, yes
- Catherine Ledec, yes
- Peter Okun, yes

The motion carried and the hearing was continued.

Materials Used:

- Staff Presentation dated December 2, 2024
- Applicant Presentation dated December 2, 2024