CAPE COD COMMISSION

Development of Regional Impact Subcommittee Hearing

Evergreen Circle Pickleball (CCC Project No. 24023)

Minutes | October 30, 2024 at 5:00p.m.

Held Virtually via Zoom

APPROVED 12/17/2024

Roll Call/Attendance

Present: Ernest Virgilio (Chair), Catherine Ledec, Peter Okun, Dennis Prebensen, and Elizabeth Taylor

Summary of Actions Taken/Votes at Meeting

- Motion to continue the public hearing to December 2, 2024 at 5:00pm to be held virtually

List of Materials Used/Presented

- DRI Staff Report, dated 10/25/2024
- PowerPoint Presentation

Public Comments

Ernest Virgilio, as Chair, called the meeting to order at 5:02pm. He began by reading opening announcements. He then asked Jeffrey Ribeiro, Cape Cod Commission Regulatory Planner, to call roll. Mr. Ribeiro called roll with Ernest Virgilio, Catherine Ledec, Peter Okun, Dennis Prebensen, and Elizabeth Taylor present.

The Chair then asked the Applicant for their presentation.

Bill Russell introduced himself and presented with the assistance of a PowerPoint presentation.

Mr. Russell provided an overview of his professional background, and he said that he intends to be the owner and operator of the Project. He said that he first looked for existing buildings but was unable to find a suitable property. He noted that the project site is part of the Evergreen Circle commercial subdivision, which was approved by the Commission as a Development of Regional Impact (DRI) in 2011.

He said that the Project is an ideal use of industrial land and said that the proposed use is allowed under the Town's Zoning Bylaws after an amendment allowing the use passed at the May 2024 Mashpee Town Meeting. He noted that the site abuts the conservation-restricted open space parcel created by the 2011 DRI.

He said that the proposed building is about half the size of a football field. He noted that the application for the Project included both civil and architectural plans and that the proposed building

would be constructed of sheet metal. He said the facility would provide recreational opportunities for individuals and families of all ages, including both Cape Cod residents and tourists.

He said that the golf simulators would allow children to learn to golf, and the Project would provide employment opportunities to golf professionals in the winter months. He said the restaurant component also allows individuals to relax.

Mr. Russell said that the Town of Mashpee has been seeking an indoor recreation facility and the Project will provide such an opportunity without public investment. He said the facility would also control noise from pickleball, which has been an issue for communities.

He said that he had designed the Project to minimize environmental impacts. He said that the Project is consistent with Commission objectives. He said that the traffic mitigation in the Transportation Impact Assessment would be completed, except for the fair share congestion mitigation payment that he would further discuss later.

He said that the Project should not require a nitrogen offset payment because the Project provides for indoor recreation, the property is appropriately located in an industrial zone, minimizes the need for roadway infrastructure, and that the Mashpee Planning Board and Town Meeting approved the zoning amendment allowing recreational uses in the industrial zone.

He said that the nitrogen offset payment should be fully waived because the Project is in an area where it is estimated it takes 10 years for groundwater to migrate to embayments. He said present Town projects were removing nitrogen.

He said that if a monetary offset payment was to be required it should be reduced and presented an alternate calculation. He said that he is a local business person, and he presented an overview of his finances and expenditures.

He said that he would like to make no monetary offset, and he committed to the TIA safety improvements up to a maximum of $50,000. He said he is not able to make a fair share payment toward a future traffic signal at Evergreen Circle and Route 130. He said the Project will not be a large traffic generator.

He asked for any mitigation for the Project to be phased with a small payment up front and two additional payments after the first and second years of operation. He said that the Project has significant community benefit.

The Chair then asked Mr. Ribeiro to provide the staff presentation.

Mr. Ribeiro presented with the assistance of a PowerPoint presentation. He provided an overview of the history of the Evergreen Circle subdivision DRI decision, including explaining the decision was rendered as an application type that the Commission discontinued. He also said that the subdivision

was reviewed under an old RPP, and that the current Project is being reviewed under the 2018 RPP. He said that the subdivision DRI decision was clear that any projects within the subdivision that exceeded DRI thresholds would be reviewed as individual DRIs. Thus, the majority of the provisions of that decision are not relevant to the current project. He said that the exceptions were for Open Space and Cultural Heritage, which were fully addressed under the subdivision DRI decision.

Mr. Ribeiro then provided an overview of the project site and said that staff suggests the area is most appropriately classified as a Suburban Development Area Placetype and discussed methods within that placetype. He said that the applicable, material, and regionally significant RPP issue areas are Water Resources, Transportation, Community Design, Waste Management, Energy, Climate Mitigation, and Economy. He said that consistent with Mr. Russell's presentation the two most significant issue areas for review are Water Resources and Transportation.

Beginning with Water Resources, Mr. Ribeiro explained how data from the Applicant was used to determine a plausible actual wastewater flow for the Project, at 50% of design flow. He then added that to ensure the calculations are somewhat conservative the evidenced actual flow is averaged with the Title V design flow, resulting in daily water usage of 2,600 gallons per day (gpd) for the issue area of Water Resources. He discussed the proposed septic system and said that staff felt the system was appropriate given the size of the Project. He said that the system is approved at 19 mg/L of nitrogen in effluent, but data was provided to show that with certain operating procedures the system can produce 10 mg/L nitrogen in effluent.

Mr. Ribeiro said that at the permitted 19 mg/L-N in effluent the sitewide nitrogen load would be 4.99 ppm, but given the enhanced treatment to 10 mg/L-N in effluent the sitewide nitrogen load would be 2.89ppm, well below the Commission's 5ppm requirement.

Mr. Ribeiro then showed a map of Cape Cod embayments, including the location of the Project Site within the zone of contribution to Waquoit Bay, which he noted is nitrogen impaired. He said that the area where the Project is located is not planned for sewering until between 2035 and 2040. Given that there are no plans to address nitrogen within the Waquoit Bay embayment, the board, at its discretion, could allow a nitrogen offset mitigation payment.

He explained how the offset payment is calculated per the Technical Bulletin, which uses the total kilograms of nitrogen expected from the Project to reach Waquoit Bay. He said that the dollar figure of the expected cost to towns to remove nitrogen is about $8,000, which is a number developed alongside the 208 Plan. He noted that this figure was for 2014, and that the Technical Bulletin specifically states the number has not been adjusted for inflation to ensure it is a conservative cost estimate. He said that the Applicant has used many numbers and figures in his presentation, but staff feels many of those numbers are misconstrued, improperly used, or irrelevant.

He said staff has reached out to the Town for comment, and he hoped we would have additional information prior to a second hearing on the Project.

He said that stormwater plans were being developed in consultation with staff, but the approach by the Applicant has been broadly consistent with requirements. He said he did not have concerns that stormwater plans consistent with Commission requirements could be finalized prior to a second hearing.

Mr. Ribeiro then discussed the RPP issue area of Transportation. He began by discussing the Transportation Impact and Access Study (TIAS), which identified safety issues within the traffic study area as well as mitigatory measures that could be carried out to address them. He said the TIAS also included a Transportation Demand Management Plan.

Regarding congestion, he stated that, according to the TIAS, the Project would result in a small reduction in the Level of Service at certain intersections and the went over proposed mitigation, including a $30,000 fair share payment toward a future traffic signal at Evergreen Circle and Route 130.

He said that the Applicant has proposed a $50,000 cap on the cost of all transportation mitigation. He said that the Commission does not typically compromise on safety improvements, but if the Subcommittee wished they may want to discuss congestion mitigation. He then went over the waiver and flexibility requirements of Section 9 of the RPP. He also discussed the requirements to substantiate a financial hardship.

He said that the Applicant has provided a letter from a Certified Public Accountant. He noted that the letter states that the Applicant is soliciting investors and has had issues due to uncertainty regarding Cape Cod Commission review. He said that mitigation is not required until either a local building permit or a certificate of occupancy is sought due to the enforcement authority granted in the Commission Act.

He said the building is away from regional roadways, thus the building design is not of concern under the issue area of Community Design. He said staff was working with the Applicant on a final landscape plan. He also briefly discussed the points from the Staff Report on the issue areas of Waste Management, Energy, Climate Mitigation, and Economy.

He said that the other review criteria are consistency with local zoning and the Local Comprehensive Plan. He said that there are no District of Critical Planning Concern implementing regulations applicable to the Project. He then discussed the format of the rest of the hearing and noted that Commission staff was present to answer questions.

Mr. Okun asked if the Project was for-profit and how the public would be charged.

Mr. Russell replied that the facility would be open to both members and non-members. He said the fees would vary based on a variety of factors, but the facility will be a non-member location.

Mr. Okun asked what benefits a member would receive that a non-member would not.

Mr. Russell replied that fees would be less for members, and members would be able to reserve courts up to 21 days in advance versus 1 day for non-members.

Mr. Okun asked if there would be reduced rates for seniors or those on fixed incomes.

Mr. Russell replied that he was forming a non-profit organization to provide discounted rates to disabled veterans and first responders. He said that he has contemplated different rates for groups such as those under the age of 20, but he has not established firm plans. He also said he has not eliminated the potential for senior discounts.

Mr. Okun said his questions were related to the Applicant's request for hardship and establishment of a public benefit.

Ms. Ledec said that the concept of the Project is a good idea, and she thinks the location within an industrially zoned area is appropriate. She asked if it was correct that they were waiting for input from the town regarding the Local Comprehensive Plan and the mitigation payments. She asked if that feedback would be available prior to the next public hearing.

Mr. Ribeiro replied that the mitigation payments may shift slightly as the site plan is finalized. He said that the request to the town allowed until November 15th to respond, which was about 3 weeks. He noted however that the decision would be up to the Commission board and the criteria were listed in the Staff Report.

Mr. Russell asked the Chair to comment, and he was allowed to do so. Mr. Russell said that the Project was endorsed by the Economic Development Committee and the Select Board.

Ms. Ledec asked if the proposed wastewater treatment was the most advanced technology available and if there were ways to further reduce nitrogen from the Project.

Mr. Ribeiro noted that Commission Water Resources Analyst Tim Pasakarnis and Stacy Kanaga of VHB engineering were present.

Mr. Pasakarnis said that the proposed system is permitted at 19 mg/L-N in effluent, which is standard for similar systems. He said that the Applicant is proposing to operate the system under more stringent operating criteria and maintenance. He said that information for comparably sized systems using the same technology was provided to evidence the system could perform at 10 mg/L-N in effluent as presented in the application and the Staff Report. He said he was not personally aware of systems with design flows less than 10,000 gallons per day (gpd) that treat to substantially

below 10 mg/L-N. He said the proposed system is among the best performing systems at the flows of the proposed Project.

The Chair said that he was familiar with these types of systems, and that Mr. Pasakarnis provided a good analysis.

Ms. Ledec asked about the Applicant's statement that it will take 10 years for nitrogen from the Project to reach the impaired waterways. She asked if staff could verify that statement.

Mr. Pasakarnis said that it is true that the expected time of travel for the nitrogen from the Project is 10 years, but that means the nitrogen from the Project will cut into the Town's efforts to reduce nitrogen in embayments for 10 years from when the effluent is discharged. He said that the logic of the nitrogen offset payment was to partially fund more efficient nitrogen reduction efforts in the time that the Project's nitrogen is moving toward the embayment.

He said that the Town is ultimately responsible for required nitrogen reductions, and the nitrogen offset mitigation payment was determined to be a fair cost for the removal of the amount of nitrogen expected from the Project.

Ms. Ledec asked the Applicant if he has considered any partnerships with local schools or other youth focused grounds. She said that facility could be an opportunity for active recreation for people of all ages.

Mr. Russell said that he has discussed the Project with the Town's Recreation Department. He said that the Town courts are located outside, limiting winter opportunities to play. He said that he expects to have open play or league play targeted at the younger generation. He said the fastest growing demographic for pickleball is people under 35 and on the west coast it is teenagers. He said partnerships would be based on the leagues, open plays, and clinics.

The Chair then asked Mr. Ribeiro to begin the public comment portion of the hearing.

Mr. Ribeiro said public comment would be limited to 3 minutes. He asked first for comment from any federal, state, or local officials. Hearing none, he called on Paul Gandillot for comment.

Mr. Gandillot said that he was a pickleball player. He said that the Town's courts are highly utilized and often full during the summer months. He said that winter weather limits his ability to play. He said that he did not have comment on technical aspects of the Project, but he said there is a significant need for this facility.

Mr. Ribeiro asked for anyone else who would like to comment. Seeing none he turned the hearing back to the Chair.

The Chair noted that there will be additional hearings to discuss the Project. He then asked Ms. Ledec if she had further comments at this time.

Ms. Ledec asked if the landscape plan could be displayed. She asked if it could be clarified where any gravel or other pervious pavement would be located.

Mr. Russell asked Ms. Kanaga to reply. Ms. Kanaga clarified that the area in light gray on the east side of the site would have a plastic grid that would be covered with stone. She said that for the main drives asphalt has been used because it is more stable. She said that particular maintenance was outlined in the Stormwater Report. Mr. Russell said that design was balanced between pervious and impervious materials.

The Chair asked Mr. Russell if he had any final comments.

Mr. Russell said that he did not but was happy to answer any questions. He asked the hearing process be moved as quickly as possible.

Mr. Okun said that he had two questions he hoped could be addressed at the next hearing. He said he would like more information on wastewater flows and on the Water Resources Technical Bulletin's nitrogen offset calculation being on 10-year-old data. He said that with inflation there may already be a discount in the calculation.

Ms. Taylor asked the Applicant if he intended to connect to sewer when it is built during Phase 5 of the Mashpee CWMP. Mr. Russell replied that was his intention.

Ms. Taylor asked if solar panels would be installed on the roof at the time of construction or at a later time. Mr. Russell replied that he was trying to balance costs and could not at this time establish a budget to install solar. He said he hoped to install solar as soon as practical. He said he intends to purchase green energy, potentially from a nearby solar project.

Ms. Taylor asked if the Applicant had spoken with the Cape Cod Regional Transit Agency (CCRTA). Mr. Russell replied that he had reached out to them and stated his interest in a bus stop nearby. He said that the CCRTA's Smart DART service is currently available.

The Chair then asked Mr. Ribeiro for final comments.

Mr. Ribeiro said that additional materials would be provided prior to the next hearing. He asked the subcommittee members and the Applicant for their availability for the next hearing. After discussion, the Chair asked for a motion to continue the public hearing.

Mr. Okun made a motion to continue the public hearing on the Project to Monday, December 2, 2024 at 5:00pm to be held virtually via Zoom. Elizabeth Taylor seconded the motion.

The Chair asked Mr. Ribeiro to take the roll call vote. He did so, with Mr. Virgilio, Ms. Ledec, Mr. Okun, Mr. Prebensen, and Ms. Taylor all in favor. The meeting was adjourned at 6:45pm.