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June 12, 2013

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Paul Niedzwiecki
Cape Cod Commission
PO Box 226
Barnstable, MA 02630

Attention: Andrea Adams

RE: Lowe's of Dennis Development of Regional Impact

Dear Mr. Niedzwiecki:

The Association to Preserve Cape Cod (APCC), the Cape's nonprofit environmental advocacy and education organization, submits the following comments concerning the proposal to develop a Lowe's Home Improvement Store in South Dennis.

APCC has reviewed the applicant's Development of Regional Impact (DRI) application submitted to the Cape Cod Commission and has identified numerous project-related issues of concern. These issues represent significant and adverse impacts to the Cape's environment and traditional character, and should be viewed as project detriments. It is APCC's position that together, these project detriments far outweigh any potential project benefits.

Community Character

The applicant suggests that the size of the proposed Dennis Lowe's is smaller than typical Lowe's stores, yet the 127,683 square foot structure and accompanying 373 parking spaces are completely out of scale with traditional single-use retail uses in Dennis or elsewhere on Cape Cod. Attempts to break up the building façade or roofline in order to camouflage the proposed development's big box store characteristics will not disguise this reality. This type of development is inconsistent with the goals¹ of the Regional Policy Plan (RPP) and should therefore be considered a project detriment.

The Cape Cod Rail Trail is a popular recreational attraction and generates considerable use from thousands of residents and tourists each year. The length of the building side facing the Rail Trail is in close proximity to the bike path and would be significantly exposed to users of the trail. There is no break in the mass of the long

¹ Goals LU1, ED1, ED2, ED3, HPCC1, HPCC2

building wall on this side, and therefore it does not conform to the RPP requirements². Proposed landscaping with a line of evergreen trees along the Rail Trail is completely inadequate to properly screen this large retail development. As proposed, the project covers most of the 15.2 acre site, leaving insufficient room outside the identified building and parking envelope to provide an acceptable width for vegetative screening along the Rail Trail. The project would need to be reduced in size to support adequate screening from this high-visibility location.

The applicant suggests that “frontage buildings” will screen views of the Lowe’s from adjoining roads. The buildings referred to in the project application as frontage buildings are previously existing buildings, and are not owned or controlled by the applicant. There are not sufficient frontage buildings present to satisfactorily screen the full view of the Lowe’s from Theophilus F. Smith (TFS) Road, which runs along the north end of the project site.

The RPP states that parking shall be located behind or to the side of a building. The project site plan shows that portions of the parking lot are between the Lowe’s building and TFS Road, which is the project access/egress point. Parking also abuts sections of the Rail Trail. It appears that the proposed vegetative buffer along TFS Road, and certainly along the Rail Trail as mentioned above, will be insufficient to screen views of the parking lot from these two locations. In addition, there is not enough buffer between the property line and the southeast corner of the development area that is being proposed for recycling trailers. This location abuts the Rail Trail as well.

Reducing the size of the development footprint could help improve screening of the parking lot and the large box structure, but as proposed, the elements of the project design described above negatively impact community character and are a project detriment.

Water Resources

The proposed Lowe’s site is located within a Water Quality Improvement Area and a Marine Water Recharge Area for Bass River. A draft report by the Massachusetts Estuaries Project has determined a critical nitrogen load for Bass River. In addition, RPP Best Development Practice WR5.7 states that “development and redevelopment in Water Quality Improvement Areas within Marine Water Recharge Areas are encouraged to reduce nitrogen loading by providing for the removal of 2 kilograms of nitrogen for each kilogram added.”

Nitrogen treatment of wastewater is included in the Lowe's septic plan, and the applicant states that treatment will achieve a 5 ppm nitrogen load using a Fixed Activated Sludge Treatment system. However, Lowe’s proposal to treat to a 5 ppm nitrogen load will fail to meet the critical nitrogen load as established in the draft report on the Bass River estuary. The applicant also stated that it is not feasible for the project to meet the Best Development Practice WR5.7 nitrogen reduction recommendation cited above.

Instead, the applicant proposes a \$44,323.77 per year Nitrogen Offset Contribution as a means to mitigate its inability to comply with the RPP requirements. These funds will not be used to further treat wastewater or otherwise remove any additional nitrogen from the Bass River watershed.

² HPCC2.5, HPCC2.6

This proposed cash contribution in lieu of wastewater treatment is completely unacceptable to APCC. As an environmental organization that has worked for decades in partnership with state, regional and local governments, civic organizations and other environmental nonprofits to educate the public on the serious environmental and economic impacts of wastewater on our region and to advocate for solutions to this most important regional challenge, APCC finds it incomprehensible that a large retail chain store would be allowed to circumvent specific nitrogen loading standards and add pollution to a sensitive watershed by simply providing a cash contribution. The residents of Dennis, Yarmouth—and ultimately all of Cape Cod—will bear the environmental and financial burden of this continued pollution. Lowe’s wastewater impacts on nitrogen-impaired Bass River are a serious project detriment.

In determining the cash contribution for the nitrogen reduction shortfall, the applicant has offered its own calculations based on the average water flow of nine other Lowe’s stores in Massachusetts. As stated above, the applicant’s own calculation amounts to a proposal to pay \$44,323.77 per year. However, using the standard nitrogen loading calculations based on DEP Title 5 design flows, which is the accepted method adopted by the Cape Cod Commission, the annual nitrogen offset contribution jumps to \$342,483.13 per year.

Technical Bulletin 91-001 states that “nonresidential developments will continue to be reviewed based on Title 5 flows, unless substantial documentation of wastewater flows from similar land use can be presented to the staff.” Technical Bulletin 91-001 explains that while Title 5 design flows “may overestimate concentrations in certain cases, *it is also probably an underestimation in others, especially in the case of most commercial wastewater flows.*” (Emphasis added.)

APCC questions whether the historical information on the nine Lowe’s stores is sufficient to allow the use of the non-standard calculation. APCC also seeks an explanation for why there is such an enormous discrepancy between the two calculations. Given that two methods are being compared, it is reasonable to expect some difference in the outcome. But, the extent of the discrepancy is troublesome to APCC, especially given that the applicant has opted to pay the drastically lower figure.

Still, APCC reiterates that the overriding issue here is the notion that any monetary contribution to “mitigate” wastewater impacts could be acceptable for a large retail development located within a nitrogen-sensitive marine watershed. APCC believes that at a minimum, this development should be required to meet in actuality the critical nitrogen load established for the Bass River watershed. Because wastewater is the region’s most serious and most challenging environmental issue, new development must be held accountable and not be allowed to add to the existing problem. The proposed Lowe’s project should not be an exception.

Traffic

The proposed Lowe’s will create significant traffic congestion and safety impacts on critical regional roads as well as on local neighborhood roads. The project will generate 3,112 new vehicle trips on an average weekday and 5,744 new vehicle trips on an average Saturday. This dramatic increase in traffic will adversely affect several key intersections, particularly in the immediate area surrounding Route 134 and Route 6, which is already one of the more predominant traffic

chokepoints in this region of the Cape. This area is especially impacted on midday Saturdays in the summer—precisely the time when Lowe’s is expected to generate the most vehicle trips.

Some of the mitigation proposed by the applicant for its traffic impacts will not provide any real remedy or improvement. For example, the applicant proposes a theoretical “fair share” payment of \$11,000 for the installation of a traffic signal at the intersection of Bob Crowell Road and Old Bass River Road, which is frequently used as an access to Route 134. According to the applicant, the total cost for a traffic signal at this location is \$250,000. However, actual improvements at this location are not necessarily guaranteed to ever occur, meaning Lowe’s-generated impacts will continue to go unaddressed at this intersection.

In addition, Lowe’s proposes to contribute \$358,900 to satisfy its inability to completely meet the RPP’s standard trip reduction requirements for DRIs. This is unfortunate. Given the significant number of trips this project will generate and its location at a major regional traffic chokepoint, the applicant should provide tangible trip reduction measures instead of a cash payment that will do nothing to ease traffic congestion in this area.

APCC is also concerned about traffic congestion and safety issues in the historic South Dennis Village neighborhoods in close proximity to the project site. As traffic becomes more congested on Route 134 because of the Lowe’s project, there is a strong likelihood that travelers will seek alternate routes through these residential neighborhoods, adversely and permanently affecting their historic Cape Cod character. The applicant has not proposed any traffic mitigation for this area, and it is probable that any type of effective mitigation would be incompatible with the village’s historic nature.

The significant congestion and safety impacts of project-generated traffic on regional and local roadways, combined with the project applicant’s inability to provide mitigation that will produce tangible improvements, result in several serious project detriments that are difficult if not impossible to overcome.

Site Access

The Lowe’s project site plan shows three separate access/egress drives along TFS Road, one being signalized and the other two without signalization. The RPP stresses the minimization, elimination and/or consolidation of curb cuts. The three sets of curb cuts along one stretch of roadway are excessive and should be consolidated in order to be consistent with the RPP.

Rare Species Habitat

The proposed Lowe’s is located in Priority and Estimated Habitat for eastern box turtle, a state listed Species of Special Concern. According to the project application, potential box turtle nesting habitat was identified in two locations during the natural resources inventory conducted by the applicant. Part of the proposed mitigation for the project is to set aside small areas of the project site to be protected as box turtle habitat, and to recreate .3 acre of nesting habitat in a new location closer to wooded areas. Plans being made in cooperation with the state’s Massachusetts Natural Heritage and Endangered Species Program should be finalized to ensure that all identified viable habitat is protected, and that sufficient buffer and corridor area is included to protect the habitat’s

viability. In addition, Cape Cod Commission review should require that permanent barriers be set up to block the movement of any box turtles into the development's parking areas and travel lanes.

Fertilizer and Pesticides

The applicant proposes to use organic fertilizers and biorational pesticides as part of the Lowe's landscaping plan. It is APCC's understanding that there is no official definition of biorational pesticides, nor are there established federal standards for them. Any chemical-based pesticide has the potential to affect human health and to impact the environment, particularly when used in proximity to sensitive habitats. APCC calls on the applicant to commit to a landscaping plan that reduces and even eliminates the need for fertilizers of any sort, and that establishes strict policy controls on pesticide use. As a company that sells garden supplies, Lowe's should set an example by applying regional goals for native landscaping practices to its own site landscaping.

Dennis Local Comprehensive Plan

The proposed Lowe's is inconsistent with the Dennis Local Comprehensive Plan. The LCP contains a number of sections that reflect community concerns over the potential for future environmental and community character impacts in the town, identify the need to change local zoning in order to place greater controls on big box stores and other development that is inconsistent with town character, and point out serious current and future traffic impacts from development in the area where the proposed Lowe's would be located.

LCP Concerns about Protection of Natural Resources and Community Character:

- *"The Town seeks to encourage sustainable growth and development consistent with the preservation of natural resources, while at the same time maintaining Dennis' natural environment in order to maintain Dennis' economic health and quality of life, and to encourage the preservation and creation of village centers that provide a pleasant environment for living, working and shopping for residents and visitors."*
- *"In addition, a series of three outreach workshops were held in the spring of 1995. The overwhelming sentiment expressed in these workshops was the desire to preserve the rural and community character of the Town."*

LCP Concerns about Traffic in the Proposed Project Area:

- *"An already congested and over-capacity Route 134, in and around the Route 6 area, could become impassible in theory. The gridlock would be incredible. Trying to travel from the north side of town to the south side of town would become a nightmare, as residents and visitors alike would be seeking alternative routes. Theophilus Smith Road, South Gage's Way and Great Western Road, physically, would not be able to handle the sheer volume and weight of the vehicles for long. Major reconstruction could be necessary, never mind the negative impact to visitors, both traffic wise and visually, as they exit Route 6."*
- *"During the summer months, roadway segments estimated to have afternoon peak hour traffic volumes over their capacity are Rt. 134 south of Rt. 6 and Rt. 28 in West Dennis"*

from the Yarmouth town line to School St. Other segments are estimated to be at or approaching capacity: Rt. 134 between Bob Crowell Rd and Rt. 6 and between Theo. Smith Rd. and Upper County Rd.; Rt. 28 between School St. and Rt. 134; and, Great Western Rd west of Rt. 134.”

LCP Concerns about Large-Scale Development:

- *“In addition to types of uses that are allowable by right or by special permit, the size of the use should be examined. All types of uses are allowable; however, there is no control or restriction as to the size of a retail use for example. A big box retailer could locate within this area, by right under current zoning, and all that would be required under local zoning is Site Plan Approval.”*
- *“MPS 3.2.5 New retail and other commercial development and redevelopment shall be in scale with their sites and existing surrounding buildings.”*

Redevelopment vs. Development

APCC has reviewed the April 10, 2013 letter to the Cape Cod Commission from Nutter, McClennen & Fish on behalf of Local Business for a Strong Cape Economy. APCC notes the argument made in the letter that the proposed Lowe’s does not qualify as a redevelopment because it does not fit the definition of redevelopment in the 2009 RPP. The letter states that in the RPP, redevelopment is defined as “the reconstruction, reuse, intensification, or change in use of any developed property within the Developed Area.” In turn, the 2009 RPP defines Developed Area as “any area that currently contains buildings, paved parking, and other development-related infrastructure or that has had such infrastructure removed but was in use in the past five (5) years.”

Although the area has been largely cleared of vegetation, based on the applicant’s description of the proposed Lowe’s site in the project application, the site currently does not contain buildings, paved parking or other development-related infrastructure, nor is there evidence that such structures existed on that site within the past five years. APCC supports RPP Goal HPCC2 encouraging “redevelopment of existing structures as an alternative to new construction.” The Lowe’s proposal does not fit the 2009 RPP definition of redevelopment and must be evaluated as new development.

Conclusion

The proposed Lowe’s would create unreasonable traffic impacts in a critical regional area. It would add to the Cape’s wastewater problem—the region’s most pressing environmental and economic challenge—leaving Cape Cod residents with the environmental and financial burden. In both instances, the project applicant has proposed cash payments instead of tangible mitigation to address significant project impacts. The proposed Lowe’s is out of scale with Cape Cod development and is inconsistent with the Cape’s traditional character, which the Regional Policy Plan strives to protect.

All of the above are serious project detriments that APCC believes cannot be offset by any possible benefits this retail project may claim to offer. APCC is deeply concerned that approval of the proposed Lowe’s would set a precedent that would open the door to even more such large-scale

retail chain development, which would drastically and permanently change the Cape Cod's unique character and quality of life.

APCC thanks the Cape Cod Commission for the opportunity to comment on this important issue.

Sincerely,



Ed DeWitt
Executive Director



Don Keeran
Assistant Director

cc: Dennis Board of Selectmen
Dennis Planning Board
Dennis Town Planner
Local Business for a Strong Cape Economy