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THE CAPE COD COMMISSION



CAPE COD PLANNING AND ECONOMIC DEVELOPMENT COMMISSION

1ST DISTRICT COURT HOUSE, BARNSTABLE, MASSACHUSETTS 02630

TELEPHONE: 508-362-2511

CCC #EX90046

DATE: September 6, 1990

TO: Board of Selectmen, Town of Yarmouth

Ms. Fayett Scheuch
West Hartford Conn.

Mr. Chris Reel
IEP, Inc.

RE: Development of Regional Impact Exemption Request,
Cape Cod Commission Act, Section 12(k)

APPLICANT: Ms. Fayette Scheuch

PROJECT: Smith Point Subdivision
Great Island, Yarmouth MA.

MAP/PARCEL: Assessors Map 34, Lot A-1

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby denies the application of Ms. Fayette Scheuch for an Exemption under Section 12(k) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Smith Point Subdivision. The decision is rendered pursuant to the vote of the Commission on August 16, 1990.

PROJECT DESCRIPTION

The project site, known as Smith Point, is part of Great Island within the Town of Yarmouth. The site is bordered by Nantucket Sound, Lewis Bay and Uncle Roberts Cove. The proposed project is designed as an eight-lot single family cluster subdivision within 70 acres. The proposed subdivision includes three existing single family dwellings, four proposed single family dwellings within 30 acres, and a conservation restriction which will be placed on the remaining 40 acres. The project also involves an existing pier structure and two proposed pier structures.

Review of the proposed development by other agencies occurred as follows: [1] No filing was required under the Massachusetts Environmental Policy Act, Chapter 30, Sections 61-62H. [2] A preliminary Subdivision Plan for the project has been reviewed and accepted (conditionally) by the Town of Yarmouth Planning Board on September 9, 1987. [3] A Conceptual Development Plan and a Site Plan Approval Application have been submitted to the Town of Yarmouth Site Plan Review Board on April 27, 1990. [4] A Notice of Intent has been submitted to the Town of Yarmouth Conservation Commission on March 31, 1990, for the excavation and installation of piping for potable water transmission to single family home cluster subdivision.

PROCEDURAL HISTORY

This application for a DRI Exemption under section 12(k) of the Act was filed with the Commission on June 15, 1990. A duly noticed public hearing on the application was conducted by the Commission pursuant to Section 5 of the Act on August 16, 1990 at 3:00 p.m. in Rooms 11-12 in the Barnstable County Superior Court House, Route 6A, Barnstable, Massachusetts.

Materials submitted for the record include the following:

An application titled "Cape Cod Commission Development fo Regional Impact Exemption Application, July 1990", received July 27, 1990. This included plans and documents which show the project location, describe the character and environmental effects and document permitting efforts up to the present. Plans included "Preliminary Plan for Smith Point Subdivision", by IEP inc. dated December 13, 1989 with revisions dated 10/19/89 11/14/89, and plans titled "Preliminary Plan for Smith Point Subdivision" also by IEP inc. dated 4/19/90 with revisions dated 10/19/89 and 11/14/89. These plans document proposed property boundaries, local topography, roadway and utility information and wetland resource delineations reviewed on-site with Mr. Brad Hall, Yarmouth Conservation Commission Agent; two completed ground water studies conducted by Geologic Services Corporation, Orleans, MA.; a water resources protection study for the Town of Yarmouth prepared by IEP, Inc., August 1988; an application titled "Supplemental Information for Cape Cod Commission Development of Regional Impact Exemption Application, 9 August 1990", received August 9, 1990; a list of abutters to the proposed development submitted on June 15, 1990.

The Commission heard oral testimony from Mr. George Dallas, esq., Gaston & Snow; Ms. Judith T. Wall, IEP, Inc.; Mr. Chris Reel, IEP, Inc.; Mr. Ben Thomas, abutter. Also present we Mr. and Mrs. Scheuch.

Mr. Dallas provided the history of the Smith Point site area and described the proposed project. He stated that there would be no significant impacts from the construction of the new homes.

Ms. Wall and Mr. Reel, presented a plan of the site which highlighted resource areas, building and septic leachate envelopes, and proposed roadways. Mr. Reel spoke about septic

flow/nutrient loading and pier impacts on the areas resources. Mr. Reel stated that there would be no significant impacts on the areas resources and further stated that the development, as proposed would not have any regional impacts.

CCC staff gave a recommendation of disapproval of the Exemption request based on the projects impacts on regional resources.

Mr. Thomas stated that he fully supported the Smith Point Subdivision project.

JURISDICTION

The proposed Smith Point Subdivision qualifies as a Development of Regional Impact (DRI) under Section 12 (c) (3) of the Act. Section 12 (c) (3) requires review of "any development which proposes to divide land of fifty acres or more which was in common ownership as of January first, nineteen hundred and eighty-eight." The application was referred to the Commission by the Town of Yarmouth Planning Board. The application and notices of public hearing relative thereto, the Commission staff's notes and exhibits and all written submissions received in the course of our proceedings are incorporated into the record by reference.

FINDINGS

The Commission has considered the exemption application of Ms. Fayette Scheuch for the proposed Smith Point Subdivision, and based on consideration of such application and upon the information presented at the public hearing, makes the following findings pursuant to Section 12(k) of the Act:

1. The proposed site for development is within a peninsula which is surrounded by Commonwealth tidelands with Nantucket Sound, Lewis Bay and Uncle Roberts Cove being the adjacent waters. Nantucket Sound and Lewis Bay are used extensively by the public for commercial and recreational activities (including public transportation, commercial and recreational boating, fishing, shellfishing, swimming and other water related activities).
2. The area of water between Egg Island and Smith Point is currently being used as a shellfish propogation area by the Town of Yarmouth Natural Resource Department. Uncle Roberts Cove is presently open to both commercial and recreational shellfishing, and is used by recreational boaters. All of these waters are owned and used by the public and are of regional significance. Smith Point's proximity to these regional natural and coastal resources make its location one of regional concern.
3. The potential septic flow combined with the location of the proposed septic systems east of the groundwater divide, which runs along the spine of the penninsula, raises concerns about the cumulative impacts of nitrogen loading to Uncle Roberts Cove and adjacent areas.
4. The project includes an existing pier and float and proposes two new pier structures (one permanent and one seasonal). The inner harbor of Uncle Roberts Cove, as stated previously, is open to both commercial and recreational shellfishing. As stated within the applicants request for an Exemption, the area is also a habitat for many marine invertebrates and wildlife species. Given the small size of the inner part of Uncle Roberts Cove the proposed piers will have a cumulative impact on the areas resources.

CONCLUSION

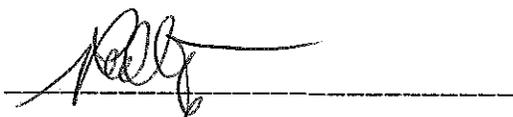
Based upon the findings above, the Cape Cod Commission hereby concludes:

The location, character and environmental effects of the proposed Smith Point Subdivision will cause it to have significant impacts on the unique natural, coastal and scientific values in which there is a regional, state and national interest in protecting and preserving. The effects of the project may threaten and possibly cause irreparable damage to these values and to the following purposes protected by the Cape Cod Commission Act:

"The conservation and preservation of natural undeveloped areas, wildlife, flora,...; the preservation of coastal resources,...; the protection of groundwater, surface water and ocean water quality, as well as the other natural resources of Cape Cod..." Section 1(c) of the Act.

This conclusion is based on the findings that the projects' septic flow/nutrient loading, pier construction and placement, will have significant impacts on the area water quality and resource areas which are used for recreational and commercial shellfishing and are otherwise of regional significance

The Commission hereby denies Ms. Fayette Scheuch a DRI Exemption from the terms and provisions of the Act, pursuant to Section 12(k) of the Act.



Richard S. Armstrong, Chairman

9/25/90

Date



Notary

My Commission Expires
SEPTEMBER 25, 1992

9/25/90

Date