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THE CAPE COD COMMISSION

CAPE COD PLANNING AND ECONOMIC DEVELOPMENT COMMISSION
1st DISTRICT COURT HOUSE, BARNSTABLE, MASSACHUSETTS 02630
TELEPHONE: 617-362-2511

DATE: August 9, 1990 #CCC TR90037
TO: Mr. Edward Crowell
FROM: Cape Cod Commission
RE: Hardship Exemption Request
Cape Cod Commission Act, Section 23
APPLICANT: Mr. Edward Crowell
PROJECT: Crowell Golf Driving Range
Great Western Road
South Dennis, Massachusetts

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (The Commission) hereby denies the application of Mr. Edward Crowell for a hardship exemption under Section 23 of the Cape Cod Commission Act (the Act), c. 716 of the Acts of 1989, as amended for a proposed golf driving range off Great Western Road in South Dennis. The decision is rendered pursuant to the vote of the Commission on June 7, 1990.

PROJECT DESCRIPTION

This application is for a golf driving range to be constructed on nineteen acres of a thirty-seven (37) acre parcel presently used as a sand pit by the Crowell Construction Company. The project will consist of seventy (70) sheltered "tees", a clubhouse containing 720 square feet of floor area, and thirty-two parking spaces in a lot with access off of Great Western Road.

The proposed golf driving range will be a year-round facility. Hours of operation will be 8:00 a.m. to 9:00 p.m.

The petitioner obtained a use variance from the Town of Dennis Zoning Board of Appeals on February 21, 1990. Site Plan Review approval is needed from the Planning Board prior to the issuance of building permits.

PROCEDURAL HISTORY

The application for a hardship exemption under Section 23 of the Act was filed with the Commission on May 14, 1990. A duly noticed public hearing on the application was conducted by the Commission pursuant to Section 5 of the Act on June 7, 1990 at 4:40 p.m. in Rooms 11 & 12 in the Barnstable County Superior Court House, Route 6A, Barnstable, MA. The hearing notice was read by Commission Secretary Donald Near.

Materials Submitted for the Record

Materials submitted by the applicant:

-Letter from Myer R. Singer, Attorney at Law, to the Cape Cod Commission, dated May 14, 1990;

-"Projection of Use," a one-page mathematical table projecting traffic generation from the project;

-"A Ground Water Monitoring Study for Pesticides and Nitrates Associated with Golf Courses on Cape Cod by Stuart Z. Cohen, Susan Nickerson, Robert Maxey, Aubry Dupuy Jr. and Joseph A. Senita, reprinted from the Winter 1990 issue of Ground Water Monitoring Review.

-Site plan (3 sheets) by Down Cape Engineering, Inc. dated March 13, 1990, and revised on March 20, 1990 and April 17, 1990, and the Construction Detail Sheet (#4 of 4) by Down Cape Engineering, Inc. dated November 10, 1990, and revised January 19, 1990, March 13, 1990 and March 20, 1990.

Other correspondence regarding the request:

-Letter dated April 24, 1990 from Thomas A. Broadrick, Town Planner, to the Cape Cod Commisison referring the project to the Commission and stating support for a DRI exemption under Section 12(k) of the Act.

Testimony:

The Commission heard oral testimony from the applicant, Mr. Ed Crowell, and his representative, Attorney Myer Singer. No comments from the public were offered.

Attorney Singer described the project, explaining the previous use of the site as a gravel pit and the proposed use as a golf driving range. In response to questioning, he explained that the project began one year ago. Grading improvements to the site have been started. Mr. Crowell has invested \$200,000 into the project. Estimated total cost is \$700,000. In response to further questioning he reported that the project received a variance from the Zoning Board of Appeals and still needs Planning Board approval for Site Plan Review. Further delays will be very costly, with a projected loss of income of \$1,837.00 per day. Due to these factors, the petitioners claimed a hardship.

Attorney Singer also stated that the proposed project would not result in serious traffic impacts since there has traditionally been industrial traffic at the site. The traffic resulting from the golf course would not represent a substantial increase. In addition, he believes that environmental impacts would be minimal. In response to questioning he stated that sand would continue to be removed from the gravel pit and that no mortgage existed on the property. Commission member Falla pointed out that only site preparation work had been commenced and that the project was not built to substantial completion. No reason was shown why the applicant couldn't comply with the Act and build the project. Further, the Commission should not grant an exemption simply based on a delay due to review.

JURISDICTION

The proposed 19 acre golf driving range project of Mr. Crowell qualifies as a Development of Regional Impact under Section 12 (c) (6) of the Act, which required review of "Any proposed retail or wholesale business, office or industrial development, as well as any

private health, recreational or educational development which has a floor area as follows: . . . outdoor commercial space greater than forty thousand square feet."

The application and notice of public hearing relative thereto, the Commission staff's notes and exhibits and all written submissions received in the course of the proceedings are incorporated into the record by reference.

FINDINGS

The Commission has considered the hardship exemption of Mr. Crowell for the proposed golf driving range, and based on consideration of such application and the information presented at the public hearing, makes the following findings pursuant to Section 23 of the Act:

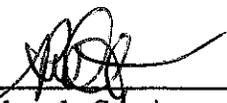
The project before the Commission has only completed site preparation and has not been built to substantial completion. Site plan review approval has not been obtained from the Planning Board. The applicant also failed to conclusively show that traffic impacts would not be substantial, especially where the use of the gravel pit will be on-going. Since development review and construction have not proceeded substantially, compliance with the full DRI review requirements is possible. Such review will not be a hardship to the petitioner and will provide the Commission with more information, which will facilitate regulation of any resulting impacts.

CONCLUSIONS

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

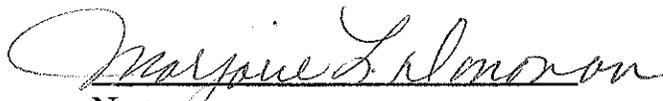
That a literal enforcement of the provisions of the act would not involve substantial hardship, financial or otherwise to the applicant. This conclusion is supported by the findings that development review and construction for the project have not been substantially completed. DRI review by the Commission is necessary to consider the merits of the project and assess impacts without resulting in substantial hardship to the petitioner.

The Commission hereby denies Mr. Ed Crowell a hardship exemption from the terms and provisions of the Act, pursuant to Section 23 of the Act.



Richard S. Armstrong, Chairman

8/29/90
Date



Notary

8-29-90
Date

MY COMMISSION EXPIRES
NOV 5, 1993