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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

DATE: October 25, 1990

TO: Pirates Cove East, Inc.
Robert Love, President
Yarmouth, MA

FROM: Cape Cod Commission

RE: Development of Regional Impact
Hardship Exemption Request
Cape Cod Commission Act, Section 23

APPLICANT: Mr. Robert Love

PROJECT #: TR90019

PROJECT: Pirates Cove Adventure Golf miniature golf expansion
Route 28, Yarmouth, MA

MAP/PARCEL: Map #27, Parcels W1 and W7

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby denies the application of Pirates Cove East, Inc. c/o Mr. Robert Love for an exemption under Section 23 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Pirates Cove Adventure Golf Course expansion and parking area. The decision is rendered pursuant to the vote of the Commission on September 13, 1990.

PROJECT DESCRIPTION

The project involves the expansion of an existing 18 hole miniature golf course at 728 and 752 Route 28 in Yarmouth. The expansion consists of an additional 18 hole golf course, maintenance building and parking area. It is a recreational facility located within a General Business Zone. The proposed development is a seasonal facility which will operate not more than 180 days per year.

PROCEDURAL HISTORY

This project was referred to the Commission by the Yarmouth Conservation Commission on April 13, 1990. This application for a Hardship Exemption was filed by the applicant under Section 23 of the Act on July 12, 1990. The public hearing for this hardship exemption request was scheduled in conjunction with the public hearing on the DRI review and DRI Exemption at the request of the applicant. A duly noticed public hearing was conducted by the Commission pursuant to Section 5 of the Act by an authorized subcommittee of the Commission on Wednesday, August 29, 1990 at the Yarmouth Town Hall. The public hearing was closed at the August 29th hearing and the record was left open for submission of written materials until 2:00 p.m. September 13, 1990. The subcommittee held public meetings after the close of the public hearing to deliberate on this project on September 13, September 24, and October 2, 1990.

The project was denied a special permit by the Yarmouth Zoning Board of Appeals based upon traffic impacts by a decision dated March 23, 1990. That special permit denial is currently being appealed by the applicant in the Barnstable Superior Court.

Materials submitted for the record include:

- Correspondence from Attorney Sweeney dated May 10, 1990;
- Correspondence from Attorney Sweeney dated June 6, 1990;
- Correspondence from Attorney Sweeney dated July 3, 1990;
- Application memorandum dated June 1, 1990;
- DRI Referral form dated April 13, 1990 and supporting documents;
- Development of Regional Impact Exemption application filed July 12, 1990;
- Development of Regional Impact Application filed July 12, 1990;
- Massachusetts Historical Commission (MHC) Project Notification Form dated July 1, 1990 and MHC decision dated August 10, 1990;
- A memorandum from J. Kuchinski to Yarmouth DPW Director P. Shea

dated May 24, 1990;

- A certified list of abutters dated May 16, 1990;
- Plans drawn by Down Cape Engineering, and Merrell Consulting Inc. dated January 9, 1990 as follows;

- A. Sheet 1, site plan with additional curb cut
- B. Sheet 2, site plan with existing curb cut
- C. Sheet 3, construction details
- D. Sheet 4, golf course details
- E. Sheet 5, golf course elevations
- F. Sheet 6, site plan with existing and proposed areas;

- U.S.G.S. 7.5 minutes series scale topographic map (portion);
- Assessors map (portion);
- Yarmouth Zoning Map (portion);
- Soil Conservation Service Soils Map;
- Deed of existing course property;
- Yarmouth Board of Appeals Petition No. 2156, Decision;
- Yarmouth Board of Appeals Petition No. 2043, Decision;
- Yarmouth Board of Appeals Petition No. 2151, Decision;
- Yarmouth Site Plan Review Report dated January 23, 1990;
- Notice of Intent filed with the Yarmouth Conservation Commission;
- Yarmouth Conservation Commission Order of Conditions for the existing miniature golf facility dated April 24, 1984;
- Yarmouth Board of Appeals Petition No. 2711, Decision and related Complaint filed with the Barnstable Superior Court dated April 6, 1990;
- Traffic study by Bruce Campbell and Associates;
- Commonwealth of Massachusetts curb cut plan;
- Plan recorded in Plan Book 343, Page 31;
- Deed recorded in Book 6794, Page 018;
- Six Proposed Decisions, written by the petitioner's attorney under cover letters dated August 27, 1990 and August 30, 1990;
- Sixteen letters in support of the project;
- Three letters in opposition to the project including one letter from the Route 28 Task Force;
- A petition containing 1166 signatures in favor of the project;
- Cape Cod Commission Staff report dated August 23, 1990;
- Cape Cod Commission Staff report dated September 6, 1990;
- Letter from Down Cape Engineering dated August 24, 1990;
- Letter from Down Cape Engineering dated September 12, 1990 addressing water resources issues identified by Commission staff;
- Letter from Bruce Campbell and Associates dated September 11, 1990

addressing traffic issues identified by Commission staff.

Petitioner's testimony:

The Commission heard oral testimony at the August 29th hearing from the applicant's attorney, Mr. Edward Sweeney, Esq. Also present were: Mr. Robert Love, applicant; a representative of Bruce Campbell Associates, traffic consultant; and Tom McClellan, Downcape Engineering, water resources consultant.

Petitioner's representatives described the project as a clean, family-oriented entertainment facility providing cultural and recreational opportunities, supporting the seasonal economy of Yarmouth, and employing six to eight people without presenting detriments. Petitioner represented that no adverse visual, noise, lighting or economic impact would result from approval of the project.

Petitioner's representative stated that a hardship to the applicant existed based upon the applicant's purchase of an adjacent parking lot, six months prior to legislative approval of the Act, to service the proposed expansion. The potential for acquiring a curb cut from the town and the state for the adjacent parking lot under the current proposal is minimal, thus denial of the hardship exemption may render the parcel useless.

Regarding regional impact, traffic problems on Route 28 were acknowledged by petitioner's engineers who did not believe that the proposed project would have a substantial impact because the proposed expansion would draw customers from existing traffic.

Regarding the question of regional impacts, Cape Cod Commission staff presented a report identifying concerns about traffic impacts on Route 28, a primary state highway, and water quality impacts on nearby Parker's River. Traffic impacts involve turning movements at the site drive, traffic generation levels on a stretch of Route 28 and impacts on nearby intersections and are described in the findings below.

The Commission also received oral testimony from public officials and members of the public as described in the minutes of the Yarmouth Subcommittee public hearing dated August 29, 1990.

JURISDICTION

The proposed Pirates Cove Miniature Golf expansion qualifies as a Development of Regional Impact (DRI) under section 12(c)(6) of the Act. Section 12(c)(6) requires review of "any proposed retail or wholesale business, office or industrial development which has a floor area as follows:...outdoor commercial space greater than 40,000 square feet...". The proposed expansion including incident parking areas totals 60,950 square feet. The project was referred to the Commission by the Town of Yarmouth Conservation Commission on April 13, 1990.

This proposed expansion is not entitled to an exemption under Section 22(a) of the Act by virtue of a building permit issued for the existing miniature golf facility prior to the effective date of the Act to which the above stated expansions are proposed. Similarly, the proposed expansion is not exempt pursuant to Section 22 (b) of the Act under a special permit granted for the existing facility to which the above stated expansions are proposed.

The application and notices of public hearings relative thereto, the Commission staff's notes and exhibits, the transcripts and minutes of meetings and hearings, 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 Mr. Robert Love for the proposed Pirates Cove Miniature Golf expansion, and based on consideration of such application and upon the information presented at the public hearing, makes the following findings pursuant to Section 23 of the Act:

Hardship issue:

1. The applicant spent \$400,000 to acquire an adjacent property currently being used as a restaurant parking lot for use as a parking lot for the golf facility expansion. The purchase took place six months prior to legislative passage of the Cape Cod Commission Act.

Traffic Impacts:

2. The use of the existing facility together with use of the proposed expansion of this site is expected to result in a trip generation of 1,000

vehicle trips/day (vtpd) on a section of Route 28 with existing summer traffic volumes of 26,000 vtpd. An increase in any amount of site traffic due to the proposed expansion would only exacerbate the already unacceptable traffic congestion and contribute to the degradation of local facilities. Turning maneuvers at area intersections are currently operating at a Level of Service (LOS) F (failure) which may lead to gridlock.

3. Petitioner intends to use the existing site drive (curb cut) to service the proposed expansion. Petitioner failed to submit sufficient mitigation alternatives addressing the site drive. Left turn movements out of the site drive are now at the lower range of LOS E. Theoretical delay for left turns is estimated to increase from 4 minutes to 45 minutes due to the proposed expansion, creating a LOS F. Rather than wait to exit the drive on the expansion site, drivers are likely to accept shorter gaps (i.e. force their way into traffic), thereby increasing the frequency of traffic conflicts and the probability of accidents.

4. The petitioner failed to submit sufficient mitigation alternatives addressing impacts from the proposed expansion at critical area intersections serving the site, including West Yarmouth Rd./Route 28, South Sea Avenue/Route 28, and Winslow Grey Road/Route 28. These locations are of critical concern to the project's site drive operations since traffic queuing for these intersections has been observed to be backed up beyond the site drive.

Water Resource Impacts:

5. The septic leaching fields are located approximately 360 feet from the Parker's River which is an active area for shellfishing and which feeds into Nantucket Sound. The river will be incrementally impacted from the nutrient contribution from this project. Even though the project meets Title V requirements, such compliance does not affect the pass through of nitrates.

CONCLUSION

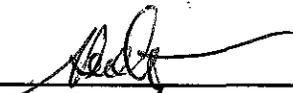
Based on the findings above, the Cape Cod Commission hereby concludes:

The applicant failed to show that a literal enforcement of the Act would involve substantial hardship, financial or otherwise. This conclusion is supported by the finding that the investment in property prior to adoption of the Act does not constitute a hardship. No other evidence was presented

to substantiate a claim of hardship. There was no demonstration that the applicant has been foreclosed from all valuable uses of the property or that it has been rendered valueless for resale by this decision. Moreover, Massachusetts General Laws c. 81 Sec. 21 pre-dated the effective date of the Act and created the key traffic mitigation requirement.

Desirable relief may not be granted without substantially nullifying or derogating from the intent and purposes of the Act because the project as proposed would result in a lack of adequate capital facilities (road capacity) necessary to support such development and may result in significant impacts on groundwater, surfacewater and ocean water quality. This conclusion is supported by the findings that an unacceptable level of traffic would be generated by the development as proposed and that such an increase in traffic is likely to result in a higher incidence of accidents. In addition, the impacts of wastewater generated from the project need to be studied in relation to the impact on Parkers River through a full DRI review.

The Commission hereby denies Mr. Robert Love a Hardship Exemption from the terms and provisions of the Act, pursuant to Section 23 of the Act.



Richard S. Armstrong, Chairman

10/25/90

Date



Notary My Commission Expires May 7, 1991

10/25/90

Date

