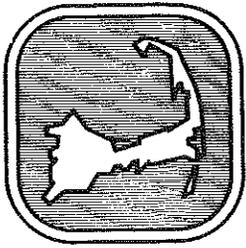


Please note that this Decision of the Cape Cod  
Commission was appealed and is superceded  
by a Court settlement.



CCPEDC  
IS NOW  
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 Request  
Cape Cod Commission Act, Section 13

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 a DRI approval under Section 13 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 27, 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. The public hearing for this DRI approval request was scheduled in conjunction with the public hearing on the DRI Exemption request and the DRI Hardship Exemption request 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 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.

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; representatives of Bruce Campbell Associates, traffic consultant; and Tom McClellan, Downcape Engineering.

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.

Regarding regional impacts, 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.

The 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 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 Sections 12 and 13 of the Act:

### Traffic Impacts:

1. The use of the existing facility and 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 summer traffic volumes of 26,000 vtpd. An increase in any amount of site traffic 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 Level of Service (LOS) F (failure) which may lead to gridlock.
2. Petitioner intends to use the existing site drive (curb cut) to service the proposed expansion. The 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 these 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.
3. 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:

4. 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 benefits of the proposed project do not outweigh the detriments resulting from the development. This conclusion is supported by the facts that the project as proposed would result in a lack of adequate capital facilities (ie. 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; the increase in traffic will result in LOS F at the site drive and area intersections, and is likely to result in a higher incidence of accidents. In addition, the impacts of wastewater generated from the expansion will have an incremental effect of water quality in the Parkers River which is already experiencing water quality degradation.

The project is not consistent with local development by-laws. This conclusion is supported by the finding that a special permit necessary for the proposed expansion was denied by the Yarmouth Zoning Board of Appeals based upon traffic considerations.

No taking, based upon the de minimus potential for the granting of a curb cut permit for the adjacent parking lot facility, results from the denial of this project. No taking results if the owner retains any valuable use of the property. Mere denial of the right to expand due to the pressing need for traffic safety does not constitute a taking.

KP for Richard Armstrong

The Commission hereby denies Mr. Robert Love's DRI application for approval under the terms and provisions of the Act, pursuant to Section 13 of the Act.

  
Richard S. Armstrong, Chairman

10/25/90  
Date

  
Notary  
My Commission Expires May 7, 1991

10/25/90  
Date