



**CAPE COD PLANNING AND ECONOMIC DEVELOPMENT COMMISSION**

1ST DISTRICT COURT HOUSE, BARNSTABLE, MASSACHUSETTS 02630

TELEPHONE: 508-362-2511

DATE: November 29, 1990 #CCC TR90025

TO: Mr. Ed Lambert  
Independence Park, Inc.  
P.O. Box 1776  
Hyannis, MA 02601

FROM: Cape Cod Commission

RE: Development of Regional Impact  
Cape Cod Commission Act, Section 12(c)(6)

APPLICANT: Mr. Ed Lambert

PROJECT: Lot 8-1 Independence Park  
Mary Dunn Road  
Hyannis, Massachusetts

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**DECISION OF THE CAPE COD COMMISSION**

SUMMARY

The Cape Cod Commission (The Commission) hereby approves the application of Mr. Ed Lambert for a Development of Regional Impact (DRI) under Section 12(c)(6) of the Cape Cod Commission Act (the Act), c. 716 of the Acts of 1989, as amended, for a proposed warehouse/light manufacturing building on Mary Dunn Road/Airport Road in Hyannis. The decision is rendered pursuant to the vote of the Commission on November 29, 1990.

PROJECT DESCRIPTION

The application is for construction of a 22,000 square foot warehouse/light manufacturing building on approximately 2.46 acres. A total of 45 parking spaces will serve the site. The site is located at the northwest corner of the intersection of Mary Dunn Road and Airport Road in Hyannis. The site is zoned Industrial Limited and is within the Well Protection Overlay District of the town of Barnstable. The site is part of the 445-acre Independence Park Industrial Park.

PROCEDURAL HISTORY

The applicant filed for site plan review with the town of Barnstable Site Plan Review Committee on March 26, 1990. The project was referred to the Commission by the Site Plan Review Committee on April 23, 1990.

A hearing was opened on June 21, 1990 and continued until August 28, 1990. The August 28 hearing was also continued until September 13, 1990 at the request of the Applicant. A duly noticed public hearing on this application was conducted by the Cape Cod Commission pursuant to Section 5 of the Act on September 13, 1990 at 4:40 p.m. in Rooms 11 & 12 in the Barnstable Superior Courthouse, Route 6A, Barnstable, MA. As a result of the DRI hearing held on this date, the Commission recommended that due to the proximity of the project to a public water supply well, the staff should investigate appropriate conditions which could be imposed on the project in order to provide adequate protection of the groundwater underneath the site that flows towards this well.

Pursuant to this request, the staff met with the Applicant and Horsley Witten Hegemann, Inc., a consultant to the Barnstable Water Company (BWC), the owner of the well site, on October 11 and October 24, 1990, to investigate possible design and use restrictions for the proposed warehouse construction. The proposed conditions were presented before the full Commission on November 8, 1990. Based upon discussion by the Commission at this hearing, the proposed conditions were revised and approved by the Applicant on November 20, 1990.

The Commission voted to approve the application of Mr. Ed Lambert for a Development of Regional Impact subject to conditions on November 29, 1990.

Materials Submitted for the Record

Materials submitted by the applicant:

- DRI application form received August 7, 1990
- Site Plan (1 sheet) by Arne H. Ojala, P.E., R.L.S. dated December 21, 1989
- Site Plan Review application dated March 26, 1990
- Independence Park, Policy Challenge for the town of Barnstable, by Independence Park Task Force, dated October 1985
- Intensive Archaeological Survey, Independence Park Project Area, by the Public Archaeology Laboratory, Inc. dated May 1990

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### Additional Materials:

- Cape Cod Commission Staff Reports dated September 12 and November 2, 1990
- letter on proposed use restrictions from Horsley Witten Hegemann, Inc. dated September 27, 1990
- Town of Barnstable DPW letter dated June 20, 1990
- Town of Barnstable Office of Town Manager letters dated April 23, and August 24, 1990

### Testimony

At the September 13, 1990 hearing the Commission heard oral testimony from Mr. Michael Ford, the attorney representing the applicant. Also present were Mr. Ed Lambert, applicant; and Mr. Arne Ojala, engineer for the project. Mr. Ford described the proposal as solely warehouse use. Light manufacturing use was not contemplated. He indicated that the project's location was isolated from the rest of the 445-acre industrial park and not included in the Environmental Impact Report which is being conducted for the park. The applicant stated that this project would not produce any impacts outside of the town of Barnstable.

The applicant stated that the warehouse is permitted as-of-right by zoning and is included in a well protection overlay district which does not permit hazardous waste storage. Therefore, concerns of the Commission staff regarding hazardous waste storage and use would not be applicable to this project.

George Wadsworth, Barnstable Water Company addressed the Commission stating that he felt it was absolutely critical that this project be carefully restricted. He told Commission members that the project site was approximately 400 feet upgradient of a 1,000 gallon per minute water supply well. He said that it would be impossible to take care of a spill should it occur, and that rare and endangered species would be affected. He also noted that due to its proximity to the well, that a spill on the site would move very quickly towards the supply well. If this water supply was contaminated, neighboring towns would be required to supply water. Ms. Daley, Senior Regulatory Planner, reiterated the need to determine what was to be stored on the site to determine if there would be any solid or hazardous materials involved.

At the November 8, 1990 hearing the Commission staff first gave a report on meetings held since the September 13 hearing between the Applicant, staff, Barnstable Water Company(BWC), and Horsley Witten Hegemann, Inc.(HWH). The meetings were held to determine appropriate conditions to protect the public water supply. At the time of the November 8 hearing, agreement had been reached with the Applicant on the majority of conditions proposed by HWH and amended by staff. However, the following three conditions remained without agreement: 1). sealing of the entire floor of the proposed building; 2). payment of \$1200.00/year to provide quarterly compliance reports; 3). payment of a performance bond.

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Discussion at this hearing focused on these remaining conditions. The Commission expressed concern about the fairness of requiring a performance bond and the amount that the Applicant should be required to pay. It was stated that while protection was needed in case of a spill, the Commission needed to look at promoting balanced economic growth as well. The Applicant stated that a bond based on construction cost of the project would be excessive as estimated construction cost was \$700,000.00. This would make the project infeasible. Staff had stated in their report that a \$75,000 to \$100,000 bond would be appropriate.

The Applicant agreed to partially seal the floor of the building, and agreed to allow BWC and Barnstable Board of Health to come onto the site to conduct inspections. The Applicant also agreed to provide their own consultant to complete quarterly compliance reports rather than pay BWC to provide a consultant. The Commission felt that more frequent monitoring should be required. This hearing ended with staff directed to work with the Applicant to come to agreement on the three remaining conditions, including conducting research on the availability and amount of a performance bond that should be required, and to report back to the Commission on November 29, 1990.

### JURISDICTION

The proposed 22,000 square foot warehouse qualifies as a Development of Regional Impact under Section 12(c)(6) of the Act, which requires review of "any proposed retail or wholesale business, office or industrial development...which has a floor area...greater than 10,000 square feet."

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

### FINDINGS

The Commission has considered the Development of Regional Impact application of Lot 8-1 Independence Park, Inc. for the proposed warehouse construction. Based on consideration of such application, the information presented and Commission staff recommendations at the public hearing, the Commission makes the following findings pursuant to Section 12 and 13 of the Act:

1. Although Lot 8-1 is part of the Independence Park industrial park, it is not a component of the Environmental Impact Report currently underway for the park as a whole, due to the fact that the site will not be serviced by municipal sewer. The impact of the project on municipal services may therefore be considered separately from the remainder of the park.
2. The site is approximately 480 feet upgradient from a town of Barnstable public water supply well. Given the proposed use of the site as a warehouse, adequate protection of the groundwater supply that flows towards this well is needed.

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3. Due to the site's sensitive location relative to public water supply, careful consideration needs to be given to the proposed use of this site regarding storage and transport of toxic and hazardous materials and disposal of solid/hazardous waste.

### CONCLUSION

Based upon the findings above, the Cape Cod Commission hereby concludes that the proposed 22,000 square foot warehouse will not have a significant impact on the environment and natural resources, including groundwater supply and quality, provided that the following conditions are imposed on the project. These conditions shall apply to the Applicant, his heirs, successors or assigns, and any owner or tenant:

#### **USE RESTRICTIONS:**

1. The Owner/Operator shall be prohibited in the use, storage or transport of any toxic or hazardous material on, or to and from the site. The only exceptions shall be: the use of propane for powering a forklift or necessary equipment onsite, the use of diesel or gasoline in automobiles, trucks or equipment used to go to and from the site, and use of diesel or gasoline in lawn care equipment (but not storage). The definition of toxic and hazardous materials has been adapted from the Massachusetts Contingency Plan (310 CMR 40.00) as follows:

Toxic and hazardous materials are materials including, but not limited to, any material in whatever form which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment, when improperly stored, treated, transported, disposed of, used or otherwise managed.

Any question as to what constitutes a toxic or hazardous material shall be resolved by the Cape Cod Commission or the Barnstable Board of Health(BOH).

2. The Applicant shall notify the Cape Cod Commission, Barnstable Water Company, and Barnstable Board of Health of any proposed change of use, including change of tenant.
3. The Owner/Operator shall be prohibited from the outside storage and servicing (including the addition and storage of fuel) of any equipment used at the site. Outside storage of materials is allowed with the following constraints:
  - a. temporary storage is limited to wood, wood products and closed containers
  - b. storage occurs at a designated storage site within the parking lot
  - c. no permanent outside storage at the site shall be allowed
4. The Owner/Operator is prohibited from the onsite maintenance of forklifts or other equipment utilized on the property. Electrical recharging or the addition of water to batteries, if required, will be performed at one designated location within the building. All forklifts and equipment shall be stored indoors in one designated location. Floor

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plans indicating this designated location shall be submitted to the Cape Cod Commission for approval.

### DESIGN CRITERIA:

5. The building shall be prohibited from having floor drains or any other discharge points within the building that drain to the subsurface or into the building septic system. The only connections to the septic system shall be restroom facilities on the site.
6. The building shall be constructed with a poured concrete floor and sealed with an appropriate concrete sealer which is corrosive and solvent-resistant. This measure is to prevent the accidental leakage of any materials spilled inside the building. The material and sealer used to construct the floor shall also extend at least six (6) inches up the walls of the building to provide secondary containment of any accidental leakage.
7. Stormwater runoff from the site shall be discharged into a vegetated swale followed by leaching catch basins equipped with oil/water separators. All runoff shall be contained on-site. The site plan shall be revised to reflect these requirements.
8. The Owner/Operator shall post a sign in each restroom stating "Wastewater from these septic systems flows directly to public water supply wells operated by Barnstable Water Company (775-0063) located approximately 450 feet away. Do not dispose of any chemical wastes in this location!" A copy of the final conditions imposed by the Cape Cod Commission shall also be posted in a prominent location at the site.
9. The Owner/Operator shall retain an environmental consultant certified by BOH to conduct quarterly inspections of the facilities and a brief compliance report to the Barnstable Water Company, BOH and Cape Cod Commission. All inspections shall be done during normal business hours and will be on an unannounced schedule to be determined by BOH. BOH and BWC shall be allowed to inspect the premises unannounced at any time during regular business hours.
10. The Applicant shall implement a groundwater monitoring program utilizing two monitoring wells on the site. One well shall be located immediately downgradient (approximately 10 feet) from the proposed septic system and constructed of 4-inch flush-threaded joint PVC and stainless-steel screen. This well would also serve as an emergency recovery well in the case of detected contaminants. The second well shall be located at the downgradient property boundary and constructed of 2-inch flush threaded joint PVC and screened at 0-15 feet beneath the water table with its final location determined by the location of stormwater collection systems relative to the position of the building. Well locations shall be submitted to the Cape Cod Commission and BWC for approval prior to installation.

The wells shall be sampled monthly, during normal business hours, according to the standard Massachusetts Department of Protection Protocol. The samples shall be taken by trained consultants to be mutually agreed upon and approved by BWC and the Applicant and analyzed by an EPA certified lab using method 524 for volatile organic

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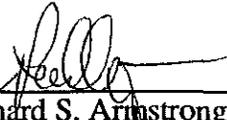
compounds. Copies of all well sampling results shall be sent to the Barnstable County Health Department, BOH, and Barnstable Water Company. After twelve months of continuous operation by one tenant, the wells may be sampled on a quarterly basis upon written approval by the Board of Health and Cape Cod Commission. Sampling will be completed monthly for each new tenant for a period of twelve months.

If sampling reveals contamination, the well shall be resampled within five (5) days for verification. If the presence of the contamination is confirmed, the Contingency Plan(see below)shall be implemented immediately such that a remediation system is constructed and on-line within 45 days to capture and treat the contaminated water.

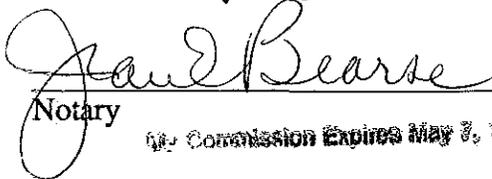
11. The Applicant shall develop and submit a Contingency Plan to the Cape Cod Commission and the Barnstable Board of Health that outlines the sequence of events that shall occur in the event of a spill on the site. The plan shall include, but not be limited to, phone numbers of emergency contacts (including owner/operator, the BOH, local fire department and BWC) as well as provisions for contacting the Department of Environmental Protection, BOH and to begin remediation should any contamination reach the groundwater.
12. The plans submitted as amended by the conditions herein shall become a part of the written decision. Any other change in the plans must be approved by the Cape Cod Commission.
13. The Applicant shall obtain a Certificate of Compliance from the Commission or its designee before the local official responsible for issuing certificates of occupancy may issue a certificate of occupancy for the development.

Lot 8-1 Independence Park Decision

The Commission hereby approves the application of Mr. Ed Lambert of Independence Park, Inc. as a Development of Regional Impact with the above conditions pursuant to Section 12(c)(6) of the Act for a proposed 22,000 square foot warehouse building.

  
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Richard S. Armstrong, Chairman

11/29/90  
Date

  
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Notary  
My Commission Expires May 3, 1993

11/29/90  
Date