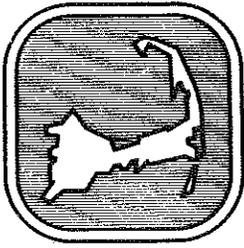


Please note that this Decision of the Cape Cod
Commission was appealed and is superceded
by a Court settlement.



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: New Seabury Company Limited Partnership
New Seabury, Box A
Mashpee, MA 02649

Elias McQuaid, Health Agent
Town of Mashpee

FROM: Cape Cod Commission

RE: Development of Regional Impact
Jurisdictional Determination Request
Cape Cod Commission Act, Section 12(j)

PROJECT #: TR90097

PROJECT: New Seabury Wastewater Treatment Plants #1 and #2

LAND COURT
PLAN #: 11408-34 Sheets 1 - 8

Decision of the Cape Cod Commission

Summary

The Cape Cod Commission (Commission) hereby finds that the two New Seabury Wastewater Treatment Plants proposed by the New Seabury Company Limited Partnership (NSCLP) are not exempt from review by the Commission pursuant to Section 22(b) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended. The decision is rendered pursuant to the vote of the Commission on October 24, 1990.

Project Description

NSCLP proposes to construct two large wastewater treatment plants to service development within the town of Mashpee. Wastewater treatment plant #1 (WWTP #1) will process 48,900 gallons of wastewater per day. Wastewater treatment plant #2 (WWTP #2) will process 80,000 gallons of wastewater per day. Taken together, these two proposed plants are among the largest wastewater treatment plants existing or proposed on the entire

Cape Cod peninsula. The plants will generate a significant amount of wastewater which will be discharged into the local environment.

NSCLP intends that the proposed wastewater treatment plants will serve portions of a cluster development located in 1240 acres in Mashpee, Massachusetts. The cluster development is allowed by a 1964 special permit granted by the Town of Mashpee under Section F(V) of the Mashpee zoning by-law. The 1964 special permit divides the subject area into 29 sections. A deed dated November 23, 1964 proscribes the density of commercial and residential development in the special permit area for each of the 29 sections. NSCLP has not submitted design or footprint plans of the proposed WWTPs, nor has NSCLP provided the Commission with plans indicating the lot lines within the 29 sections.

WWTP #1

The capacity of WWTP #1 is 48,900 gallons of wastewater per day. NSCLP proposes to locate WWTP #1 in the northwest corner of section 11, close to sections 10, 12 and 13. NSCLP's plan is for WWTP #1 to serve both existing and proposed development in sections 10 and 11. Existing uses are 249 residential units and 39,035 square feet of commercial space, consisting of (1) a pool designed to accommodate 300 swimmers at a time, including a dressing area with 136 lockers, and attendant toilets and showers; and (2) two large restaurants with a combined seating capacity of up to 405 people. NSCLP proposes to build 70 new condominium units (some in excess of one bedroom) in section 10 to be served by WWTP #1. Under the 1964 special permit and deed to the Town of Mashpee, NSCLP may propose an additional 205,965 square feet of commercial space and 419 additional residential units, over and above existing and currently proposed uses, without surpassing the maximum density for sections 10 and 11. It is unclear at this time whether the Massachusetts Department of Environmental Protection will allow the proponent to process wastewater from existing developments through WWTP #1.

WWTP #2

The capacity of WWTP #2 is 80,000 gallons of wastewater per day. NSCLP proposes to locate WWTP #2 in section 21 to serve both existing and proposed development in section 21. Existing uses in section 21 are a country club comprised of 24,692 square feet of commercial space and 56 residential units. NSCLP proposes to develop an additional 314 residential units (including some two-bedroom suites) and an additional 20,000 square feet of commercial space, consisting of (1) a 425

bedroom hotel; (2) a 600 seat conference center; (3) a 285 seat bar/lounge; (4) a 300 seat meeting room; and (5) a 400 seat restaurant. Under the 1964 permit and deed to the Town of Mashpee, NSCLP may develop an additional 19,308 square feet of commercial space, over and above existing and currently proposed uses, before reaching the maximum density for section 21. If the currently proposed development is built, NSCLP will reach the maximum density for residential units in section 21.

Procedural History

The Mashpee Board of Health referred the project to the Commission on August 27, 1990 as a Development of Regional Impact (DRI) under section 12(c) of the Act. The Mashpee Board of Health later requested a Jurisdictional Determination on October 1, 1990. The Commission determined that the Jurisdictional Determination application was complete on October 4, 1990. A duly noticed public hearing on the Jurisdictional Determination request was opened on October 18, 1990 at the Mashpee Town Hall at 3:35 p.m. and continued to October 22, 1990 at 7:00 p.m. at the Commission's offices in Barnstable, Massachusetts. The public hearing was closed on October 22, 1990. The subcommittee met to deliberate on the evidence presented on October 24, 1990 at 1:00 p.m. in the Commission's offices.

Materials submitted by the Town of Mashpee include:

- DRI Referral Form submitted by the Mashpee Board of Health, dated August 27, 1990
- Letter from the Mashpee Conservation Commission recommending review of the project as a DRI
- Jurisdictional Determination Application Form, dated October 1, 1990

Materials submitted by the project proponent include:

- Certified list of abutting property owners, dated October 9, 1990
- Letter from Attorney Myron J. Fox, dated September 4, 1990
- Letter from Attorney Myron J. Fox, dated September 13, 1990
- Land Court plan numbered 11408-34 (sheets 1 through 8)
- Land Court plan numbered 11408-34 (sheets 1, 3 and 5 indicating locations of WWTPs #1 and #2)
- Town of Mashpee, Board of Appeals cluster development special permit, dated February 21, 1964
- A deed from the Poponneset Corporation to the Town of Mashpee, dated November 13, 1964
- Agreement Modifying Restrictions, dated December 27, 1971
- Copy of Mass. Appeals Court decision No. 88-P-1178, dated March 1, 1990

- Mashpee Zoning ByLaw, Chapter III, Articles I and II in effect in 1964
- Memorandum In Support of New Seabury Company Limited Partnership's Exemption From Cape Cod Commission Act Pursuant to Section 22 of the Act, dated October 18, 1990
- Affidavit of Michael H. Grotzke, Project Engineer, dated October 18, 1990
- Second Memorandum In Support of New Seabury Company Limited Partnership's Exemption From The Cape Cod Commission Act Pursuant to Section 22 of the Act, dated October 22, 1990
- Affidavit of Michael H. Grotzke, Project Engineer, dated October 22, 1990

Materials submitted by interested parties include:

- A deed from the Poponeset Corporation to the Town of Mashpee, dated November 13, 1964
- Letter from Attorney Myer Singer, dated September 17, 1990
- Letter from Attorney Myer Singer, dated October 12, 1990
- Letter from Attorney Myer Singer, dated October 17, 1990

The Commission heard oral testimony at the October 18, 1990 hearing from Attorney Suzanne Craig, representing the project proponents; Project Engineer Michael H. Grotzke; Elias McQuaid, representing the Mashpee Board of Health; Myer Singer, representing the South Cape Civic Association; Susan Nickerson, representing the Association for the Preservation of Cape Cod; and Bob Trim, representing the Mashpee Conservation Commission.

The Commission heard oral testimony at the October 22, 1990 hearing from Suzanne Craig, representing the project proponents; Project Engineer Michael H. Grotzke; and John Malloy, a homeowner and member of the South Cape Civic Association.

The application and notices of public hearings relative thereto, the Commission's staff notes, exhibits and correspondence, the transcript and minutes of meeting 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 Mashpee Board of Health's request for a Jurisdictional Determination regarding the proposed construction of two wastewater treatment plants by the New Seabury Company Limited Partnership, and based upon consideration of such request and upon information presented at the public hearing and submitted for the record, makes the following findings:

1. The Cape Cod Commission was established to protect, preserve and enhance the unique values and resources of Cape Cod. The purposes of the Commission include the preservation of natural and coastal resources, the protection of groundwater, surface water and ocean water quality, and the provision of waste disposal facilities.

2. NSCLP's proposal to construct WWTP #1 and WWTP #2 is a project of tremendous proportions. WWTP #1 will process 48,900 gallons of wastewater per day. WWTP #2 will process 80,000 gallons of wastewater per day. Taken together, the two plants are among the largest of their kind, existing or proposed, throughout Cape Cod. The capacity of the combined treatment plants is approximately two and one half times the threshold that triggers a full public review under the Massachusetts Environmental Policy Act (M.E.P.A.), M.G.L. c. 30, §§ 61 - 62H.

3. The wastewater treatment plants will have a significant environmental impact on values and resources protected by the Cape Cod Commission Act, including (but not limited to) groundwater, surface water and ocean water quality. The NSCLP's proposal to construct WWTP #1 and WWTP #2 is precisely the kind of project which the Commission was established to review. Specifically, the Commission should examine the effects of the project on local and regional water resources, such as Nantucket Sound and Waquoit Bay, which is an Area of Critical Environmental Concern designated pursuant to 301 C.M.R. 12.00 et seq. A thorough examination of the local and regional impacts of the project requires more information concerning siting, design, capacity, maintenance, monitoring, external effects such as noise and odor, and the specific development that the treatment plants will serve.

4. Full public review will provide the Commission with the opportunity to determine whether the project will have impacts beyond its local community, whether its benefits outweigh its detriments, and whether the project is consistent with regional planning goals and local development by-laws.

5. Section 22(b) of the Act provides that a development is exempt from Commission review if it received a special permit under M.G.L. c.40A prior to July 1, 1989, and if the development is constructed in substantial compliance with the special permit. Compliance with the density and time restrictions on the 1964 special permit establishes substantial compliance with the special permit only with regard to residential and commercial uses, and perhaps incidental activities such as roads and utilities. The proposed project is neither a residential nor commercial use. The proposed wastewater treatment plants

are massive, industrial-type facilities which are neither mentioned in, nor contemplated by, the original special permit. Based on the record, it does not appear that the proposed wastewater treatment plants are in substantial compliance with NSCLP's 1964 special permit.

6. A project is exempt from Commission review under Section 22(b) of the Act only to the extent that the project proponent has received a special permit prior to July 1, 1989 which describes or anticipates the proposed activity. None of the documents submitted as part of the record for this Jurisdictional Determination request, including the 1964 special permit and the 1964 deed to the Town of Mashpee, make reference to the proponent's ability to build wastewater treatment plants. The special permit does not appear to have contemplated centralized wastewater treatment facilities of the size, magnitude and potential environmental effect proposed here.

7. Based on the information available in the record, the proposed project does not meet the jurisdictional thresholds of the standards and criteria governing developments of regional impact under Section 12(c) of the Act. However, the Commission is likely to find that the project may have regional impacts and presents one or more of the concerns listed in Section 12(b) of the Act and therefore is subject to review as a development of regional impact (1) under Section 12(e) of the Act if the project is referred as a discretionary referral, or (2) under Section 12(i) of the Act if the project proponents are required to file an environmental notification form pursuant to M.E.P.A. In addition, if the project proponents are required to file an environmental impact report pursuant to M.E.P.A., the project will be deemed a development of regional impact under Section 12(i) of the Act.

Conclusion

The Commission concludes that the proposed wastewater treatment plants are not exempt from Commission review under Section 22(b) of the Act, on the ground that the proposed wastewater treatment plants are not in substantial compliance with the 1964 special permit issued by the Town of Mashpee. Therefore, the two plants are subject to review as developments of regional impact pursuant to Section 13 of the Act, provided that the plants come within the Commission's jurisdiction through either Section 12(e) or Section 12(i) of the Act.

This decision is rendered by a vote of an authorized subcommittee of the Cape Cod Commission on October 24, 1990.



Andrew P. Young
Subcommittee Chair

10/25/90
Date



Notary My Commission Expires May 7, 1993.

10/25/90
Date