

CAPE COD COMMISSION

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Date: December 5, 1991
To: Darrell G. Fietz
From: Cape Cod Commission

RE: Development of Regional Impact Exemption
Cape Cod Commission Act, Section 12(k)

Applicant: BHPH Leasing Company, Inc./Darrell G. Fietz, Treasurer
Project #: EX91075

Project: BHPH Leasing Company, Inc.
73 Falmouth Road
Hyannis, MA 02601

Map/Parcel: Map 311/Parcel 7
Plan Book 303/Page 21

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby denies the BHPH Leasing Company, Inc. a Development of Regional Impact (DRI) Exemption pursuant to Section 12(k) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for a proposed auto leasing development in Hyannis, MA. The decision is rendered pursuant to the vote of the Commission on November 21, 1991.

PROJECT DESCRIPTION

The project consists of a proposed change of use from a farm stand, which has been vacant for approximately three years, to a used car leasing company. The leasing operation will include the servicing of vehicles, with no outside servicing proposed. The project is located on Route 28 in Hyannis, MA, approximately 800 feet west of the airport rotary, and is also located within a Zone II zone of contribution to a public water supply well in the Town of Barnstable. The site is surrounded by auto repair shops, auto dealerships and other commercial uses to the north, east and west, with residential land use to the south.

The applicant proposes interior changes to an existing 10,760 square foot structure located on a 1.29 acre site. A portion of the existing structure contains an existing 3500 s.f. freezer, which will remain unused. Paving, drainage and landscape improvements are also proposed. An existing curb cut will be modified for the proposed use, with a total of 51 parking spaces provided.

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PROCEDURAL HISTORY

The BHPH Leasing Company, Inc. qualified as a Development of Regional Impact (DRI) under Section 12(c)(6) of the Cape Cod Commission Act (Act) as a proposed change of use greater than 10,000 square feet. However, the applicant elected to file an application for a DRI Exemption under Section 12(k) of the Act prior to referral as a DRI by a local permit granting authority. A completed application was received by the Commission on October 9, 1991.

A public hearing on the project was opened on November 7, 1991 in the Chamber of the Assembly of Delegates, First District Courthouse, Barnstable, MA to consider the exemption request. As a result of this public hearing, the subcommittee voted four in favor and one against to recommend to the full Commission that the DRI Exemption be granted.

A subcommittee report as well as a minority report were presented to the full Commission on November 21, 1991. At this meeting, the full Commission voted eleven to four to deny the exemption request.

Materials submitted for the record include:

- Completed DRI Exemption application and supporting documents, received October 9, 1991
- DRI application and supporting documents, received October 9, 1991
- Site Plan of Land, Weller & Associates, revised October 1, 1991, 1 sheet
- Department of Public Works curb cut application and permit, received November 7, 1991
- Proposed Sewage Flow, Weller & Associates, undated
- Uniform Hazardous Waste Manifest, DEP Division of Hazardous Waste, July 18, 1991
- Massachusetts Historical Commission Project Notification Form, dated September 17, 1991
- Environmental Site Assessment Report, ENSOL, Inc., dated October 23, 1990
- Project site air photo, undated
- Interim Soil Survey Report, received October 4, 1991
- BHPH existing site customer log, undated
- Site photos, 5 prints, received October 4, 1991
- Zone of contribution map, SEA Consultants, Inc. undated
- Revised Groundwater protection overlay districts map, undated

Additional materials:

- Cape Cod Commission staff report, dated November 1, 1991
- Cape Cod Commission subcommittee report, dated November 15, 1991
- Cape Cod Commission minority report, dated November 15, 1991
- letter from Joseph DaLuz, Building Commissioner, on behalf of Town of Barnstable Planning Department, received November 7, 1991
- letter from Association for the Preservation of Cape Cod, Inc., received November 15, 1991

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

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TESTIMONY

Attorney Peter Freeman, for the applicant, suggested that the standard which is the basis of the exemption request is whether the project has any impact on any other towns. As this project is just over the 10,000 s.f. threshold, it technically meets the requirement for review by the Commission. However, the project is also a redevelopment project in a heavily developed area of the Cape, with many existing commercial uses, including other car dealerships, in the immediate area. The applicant's position is that the project would have an insignificant impact on any regional concern, including water quality. He also stated that the existing site was a blemish on the landscape and expected a positive visual impact through proposed landscaping improvements. He noted that the applicant presently has a leasing operation approximately 1/2 mile east on Iyanough Road in Hyannis. This existing operation would be relocated to the proposed site.

Mr. Freeman indicated that while staff had noted in their report that the previous use of the site was a farm stand, a rather innocuous use, trucks were also serviced at the site throughout the 1980's. He submitted a letter from Mr. George Marken, owner of the site, which noted that from 1983-1986 the site was used by him to service trucks for produce delivery. From 1986-1989 Tobey Trucking also used the site for truck servicing. Therefore, the site did have a previous history of vehicle service activity. He also stated that the Minimum Performance Standards in the Regional Policy Plan would not apply to a DRI Exemption application as these standards were for DRI's. If a DRI Exemption was granted, one could assume that the project was therefore not a DRI, and therefore the standards would not apply. He also noted that proposed vehicle service activity would generate up to 400 gallons/year of hazardous waste. Many new car dealerships generate a similar amount per month.

Issues presented in the Commission staff report included a review of the project in terms of conformance with the Regional Policy Plan (RPP). Hazardous waste generation on the site due to the proposed servicing of vehicles was highlighted as a primary concern. Under Sections 4.2.2.3 and 2.1.1.2.A.2 of the RPP, such activity is not allowed within a zone of contribution. Staff therefore recommended that future development which generates hazardous waste not be allowed at the proposed site. The staff report also noted that while the project is under the 5 ppm nitrate-nitrogen loading standard of Section 2.1.1.1 of the RPP(4.47 ppm), if there were more than ten employees the 5 ppm standard would be exceeded.

Generation of hazardous waste was also not allowed under the Water Resources section of the RPP. Eduard Eichner, Water Resources staff, stated that the effects on a wellfield shutting down due to a spill from a site within a zone II would certainly have regional impacts. Transportation issues included that the Level of Service (LOS) not be degraded below LOS C. As Route 28 in that location operates at LOS E, any additional traffic without mitigation to improve or maintain the existing LOS would not be allowed under the RPP. Staff believed that traffic was mitigatable, but as no mitigation had been proposed, it was difficult to evaluate the project further. Project design issues included proposed lot coverage and landscaping. Existing and proposed lot coverage was approximately 77%, which would not conform with the 40% open space requirement in the RPP. While the applicant had indicated that landscaping improvements would be completed, a landscape plan had not been submitted. Therefore, it was difficult to evaluate whether the project conformed with the RPP for project design.

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Comments from the public included those made by Peggy Sloan, APCC, who commented that the Commission is charged with looking at the location, character, as well as environmental impacts of this project to ensure that it has no significant impact on the values and purposes of the Act. The project is close to the 5 ppm nitrate-nitrogen loading standard and is a growing business, so there are potential nitrogen loading impacts. Generating hazardous materials on-site would present a likely impact on groundwater resources. Most importantly, the Commission shouldn't allow the mistakes of the past in the form of present surrounding land uses to influence their judgement as to whether this new use should be permitted.

Based upon testimony received at the November 7, 1991 hearing and application materials provided by the applicant, the subcommittee voted four to one to recommend to the Commission that the BHPH Leasing Company, Inc. be granted a DRI Exemption under Section 12(k) of the Act. This recommendation was based upon the findings that the small amount of hazardous waste generated by the proposed project would not present a significant regional impact. In addition, based on the percentage of traffic generated by the project on Route 28, the majority of the subcommittee did not find a regional transportation impact.

At the November 21, 1991 full Commission meeting, Ms. Victoria Lowell (subcommittee member) gave the subcommittee report to full Commission. Ms. Lowell noted that four of the subcommittee members had found the project did not present significant regional impacts because of the following factors: previous uses on the site, current uses surrounding the property, and the small amount of traffic volume created by the project. She also noted that due to a lack of a local comprehensive plan for the town of Barnstable no resolution existed regarding protection of the public water supply well.

Mr. Richard Prince gave a minority report to the full Commission at its November 21, 1991 meeting. The report gave the following reasons for recommending a denial of the exemption:

1. The generation of hazardous waste is not allowed under both the local zoning and the regional policy plan;
2. The town is on record against the exemption request;
3. That he felt the protection of the groundwater was the overriding responsibility of the Commission and that the Commission had set a precedent with the denial of a DRI Exemption for lot 8-1 Independence Park, which was also in a zone of contribution, due to hazardous waste concerns.
4. That he had a problem with the contention that the well was in the wrong place. He was concerned that this exemption would allow anyone in the future to seek an exemption by arguing that sites within wellhead areas were the right place for business which generate hazardous waste.

By a vote of eleven to four, the Commission voted at its November 21, 1991 meeting to override the subcommittee's recommendation and deny the exemption request.

JURISDICTION

The BHPH Leasing Company, Inc. qualifies as a Development of Regional Impact (DRI) under Section 12(c)(6) of the Cape Cod Commission Act (Act) as a proposed change of use greater than 10,000 square feet.

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FINDINGS

The Commission has considered the application of BHPH Leasing Company, Inc. for the proposed auto leasing proposal in Hyannis, MA, and based on consideration of such application, the information presented at the public hearing and submitted for the record, the Commission makes the following findings subject to Sections 12 and 13 of the Act:

- 1). The proposal is within a Zone II Wellhead Protection Area for the town of Barnstable. The application includes a provision for the repair and servicing of autos to be leased from the site. Repair and servicing of autos would involve the use, storage and generation of hazardous materials. These activities are not permitted under Sections 4.2.2.3 and 2.1.1.2.A.2 of the Regional Policy Plan. The proposal also conflicts with the Groundwater Overlay Districts adopted by the town of Barnstable in 1989 which lists "Boats, motor vehicle and aircraft service and repair" as prohibited uses within a GP district.
- 2). The project is located on Route 28 in Hyannis, MA, a Class A regional roadway. Trip generation is estimated to be between 36-216 vehicle trips/day. Additional testimony indicated that trip generation for the project would be significantly lower than 216 vehicle trips/day because of the lack of a parts department and service facility open to the general public. Therefore, traffic from the proposed development would not present a significant regional impact.
- 3). Cape Cod has a sole source aquifer. Protection of groundwater quality is a major responsibility of the Cape Cod Commission. If the water supply of Barnstable was contaminated from the proposed auto servicing on the site, water would have to be supplied by surrounding towns and is therefore of regional concern.
- 4). The applicant must pursue a special permit from the Town of Barnstable Zoning Board of Appeals in order to locate the proposed activity on this site, as the generation of hazardous waste is prohibited under the Town of Barnstable Groundwater Overlay Protection Districts adopted in 1989.

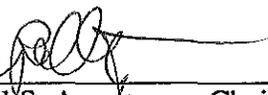
CONCLUSION

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

The location, character and environmental effects of the proposed BHPH Leasing Company, Inc. development will not prevent its having any significant impacts on the values and purposes protected by this act outside the municipality in which the development is to be located. This conclusion is supported by the finding that the project presents water supply protection concerns due to proposed auto repair and servicing activities which involve the use, storage and generation of hazardous materials in a Zone II zone of contribution to a public water supply well.

The Cape Cod Commission hereby denies BHPH Leasing Company, Inc. a Development of Regional Impact Exemption pursuant to Section 13 of the Act for a proposed auto leasing development in Hyannis, MA.

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Richard S. Armstrong, Chairman

12/5/91
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 5th day of December 1991

Katharine L Peters
Name, Notary Public

My commission expires:

~~My Commission Expires December 5, 1997~~

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