

# CAPE COD COMMISSION

3225 MAIN STREET  
PO Box 226  
BARNSTABLE, MA 02630  
508-362-3828  
FAX: 508-362-3136

Date: April 9, 1991  
To: Paul Anusavice, Trustee of Starrett Realty Trust  
From: Cape Cod Commission

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

Applicant: Paul Anusavice, Trustee of Starrett Realty Trust  
Project #: JD91024  
Project: Starrett Realty Trust Subdivision  
Gary's Way, off Pleasant Bay Road  
Harwich, MA 02645

Map/Parcel: Plan Book 6201, Page 306  
Book 89, Page 44  
Book 6699, Page 254

## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby finds that the Starrett Realty Trust subdivision is not required to be reviewed by the Commission pursuant to Section 12(j) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for a proposed residential subdivision in Harwich, MA. The decision is rendered pursuant to the vote of an authorized subcommittee of the Commission on April 3, 1991.

### PROJECT DESCRIPTION

The project is located on Gary's Way off Pleasant Bay Road in Harwich, MA. The Applicant has requested a jurisdictional determination for a proposed 15-lot subdivision totaling approximately 15.38 acres. The subdivision is zoned for residential use. The Applicant proposes to construct ways and municipal services in accordance with a covenant drafted by the Harwich Planning Board. Thereafter the applicant intends to sell lots and/or obtain development permits to construct residential dwellings on these lots.

### PROCEDURAL HISTORY

The 15-lot subdivision received endorsement by the town of Yarmouth Planning Board on April 3, 1990. A covenant was executed on April 24, 1990 to ensure completion of ways and municipal services. The security held by the Planning Board has not yet been released.

Pursuant to Section 12(j) of the Cape Cod Commission Act, the Commission received a request from Starrett Realty Trust for a jurisdictional determination on March 11, 1991. The jurisdictional determination application was deemed complete on March 20, 1991.

Materials Submitted for the record include:

- Jurisdictional Determination application and Memorandum dated February 1, 1991
- Declaration of Trust, Book 6669, Page 249-253
- Deed, Book 6669, Page 254; Book 7402, Page 032
- Harwich Planning Board Covenant, dated April 24, 1990
- Subdivision Plan, Downcape Engineering, dated January 3, 1990
- Certification of Concurrent Filing with municipal agencies, dated March 11, 1991
- U.S.G.S. Quadrangle Map of project area

Additional Materials:

- Staff report dated March 27, 1991

A public hearing on the jurisdictional determination was held on April 3, 1991 at the office of the Cape Cod Commission, 3225 Main Street, Barnstable, MA. The application and notices of public hearings relative thereto, the Commission's staff notes, exhibits and correspondence, the transcript and minutes of the hearing and all written submissions received in the course of our proceedings are incorporated into the record by reference.

### TESTIMONY

The Commission heard oral testimony at the April 3, 1991 hearing from the Applicant's representative, Attorney Edward Sweeney. He described the project as a 15-lot residential subdivision. He stated that he was seeking a jurisdictional determination that the project was not a presumptive Development of Regional Impact (DRI) under Section 12(c) criteria, as well as a determination that the Commission would not accept a referral of the project under Section 12(e) of the Act.

There was discussion as to whether the subcommittee could make a determination as to acceptance of a Section 12(e) referral at this hearing. Patty Daley, Senior Regulatory Planner, stated that while the staff was seeking clarification from counsel on this issue, the Commission's interpretation to date of Section 12(j) had been limited to whether the project was exempt under Section 22 and/or whether the project is required to be referred to the Commission under Section 12(c) of the Act. Parties authorized by the Act would then have 60 days from the date of the decision to refer the project under Section 12(e), if they felt there were regional impacts that needed to be addressed by the Commission. A determination as to acceptance of a Section 12(e) referral is usually made before the full Commission.

Mr. Sweeney requested that the subcommittee discuss at this hearing whether the project proposes any regional impacts under Section 12(b), and therefore whether the project would be accepted for review as a Section 12(e) "discretionary referral" by the Commission. He stated that he would prefer to have a determination from the Commission as to whether it would accept a Section 12(e) referral before the Applicant starts construction. He also felt that a project could be referred as a Section 12(e) discretionary referral after the 60-day time limit imposed in Section 12(j), unless the Commission had decided that the project was not a DRI under Section 12(e).

He then described the issues identified in the staff report. Traffic was not identified as a regional issue. He felt that the impact of this market-rate residential development on affordable housing would be minimal. He also stated that the project could come very close to meeting the 5 ppm nitrate-nitrogen loading Commission guidelines.

The subcommittee discussed whether there were any regional impacts. Vicki Lowell stated that as the project did not meet the thresholds of a DRI, it was not large enough to have an affordable housing component. She also stated that while she felt that this project did not have a regional impact on water resources, the cumulative impact of nitrogen loading on watersheds was of critical concern.

The following motions were unanimously approved at this hearing: 1). Based on the information available at the public hearing, it was the subcommittee's opinion that the proposed development did not present any regional impacts; 2). While the project was not exempt under Section 22 of the Act, it did not meet the standards and criteria of Section 12(c) and therefore was not a presumptive DRI; 3). the Commission will not accept a Section 12(e) referral beyond 60 days from the date of this decision as a result of the subcommittee's findings.

### SCOPE OF JURISDICTIONAL DETERMINATION

The applicant bases his request for a section 12(e) determination upon the following sentence in Section 12(j) of the Act:

Any applicant for a development permit,...or any municipal agency may apply to the commission for a jurisdictional determination as to whether a development is a development of regional impact under the applicable standards and criteria established in and pursuant to subsections (a) and (e) of section twelve.

It is the commission's position that the sentence above contains a typographical error. The sentence should read "...standards and criteria established in and pursuant to subsection (a) and (c) of section twelve." [Emphasis added] Reading this section in conjunction with the rest of the Act, it is clear that applicable standards and criteria are established in and pursuant to subsections (a) and (c) of section twelve. Subsection (a) provides for establishment of new standards and criteria, after the adoption of the Regional Policy Plan. Subsection (c) provides interim standards and criteria to be used until new standards are adopted pursuant to subsection (a). In addition, previous drafts of the Commission Act indicate that the sentence read "subsections (a) and (c)" in the 6/15/89, 10/3/89 and 11/1/89 (H#6417 and H#6439) drafts of the Act.

It is also the Commissions' position that authorized local and regional agencies may submit a project to the Commission for review under section 12(e) of the Act within 60 days from the date of a determination of non-applicability under section 12(j).

FINDINGS

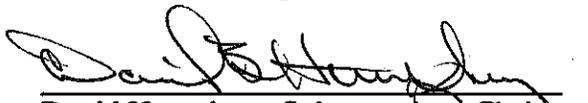
The Commission has considered the Applicant's request for a Jurisdictional Determination regarding the proposed residential subdivision for Starrett Realty Trust, and based upon consideration of such request, upon information presented at the public hearing and submitted for the record, makes the following findings:

- 1). The purpose of the jurisdictional determination is to determine whether the project is exempt under Section 22 and whether it is required to be referred to the Commission under the interim standards and criteria listed in Section 12(c) of the Act.
- 2). The proposed 15-lot residential subdivision is not exempt under Section 22(e) of the Act, as the subdivision received endorsement by the town of Harwich Planning Board on April 3, 1990, with a covenant executed on April 24, 1990 to ensure completion of ways and municipal services. The security held by the Planning Board has not yet been released.
- 3). The proposed 15-lot residential subdivision does not qualify as a Development of Regional Impact (DRI) under Section 12(c)(4) of the Act, which requires review of any development which proposes to divide land of fifteen acres or more which was in common ownership as of January 1, 1988 and which was the result of an earlier subdivision within the last seven years. Although the proposed subdivision totals approximately 15.38 acres, the property had not been subdivided in the past seven years (as of January 1, 1981).

CONCLUSION

The Commission hereby concludes that the proposed Starrett Realty Trust residential subdivision on Gary's Way in Harwich, MA is exempt from Commission review under Section 12(j) of the Act. This conclusion is based on the following findings: although the subdivision was not exempt under Section 22(e) of the Act, it did not qualify as a DRI under Section 12(c) of the Act. The Applicant's request for a determination whether this project has regional impacts as described in Section 12(b) will not be reached in this decision.

This decision is rendered by a vote of an authorized subcommittee of the Cape Cod Commission on April 3, 1991.

  
David Humphrey, Subcommittee Chair

  
Date

Commonwealth of Massachusetts

Barnstable, ss.  
Subscribed and sworn to before me this 9<sup>th</sup> day of April 19 91

  
Name, Notary Public

My Commission Expires: 12/5/97