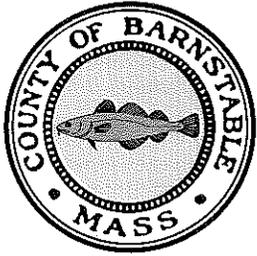

**Please note that this Decision of the Cape Cod
Commission was appealed and is superceded
by a Court settlement.**



CAPE COD COMMISSION

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

DATE: January 24, 1991
TO: Merrill S. Cohen
FROM: Cape Cod Commission

RE: Development of Regional Impact Request
Cape Cod Commission Act, Sections 12 and 13

APPLICANT: Merrill S. Cohen
PROJECT #: TR90099
PROJECT: Water Wonders Amusement Center
532 Route 28
West Yarmouth, MA 02673

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby denies the application of Merrill S. Cohen for a Development of Regional Impact permit under Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Water Wonders amusement development on Route 28 in West Yarmouth, MA. The decision is rendered pursuant to the vote of the Commission on January 10, 1991.

PROJECT DESCRIPTION

The Water Wonders development is located at the intersection of Route 28 and West Yarmouth Road, opposite the Christmas Tree Plaza in West Yarmouth, MA. The site contains existing vacant structures including the Route 28 cinema and a bridal shop, as well as a real estate office which is currently in use. The three lots for the proposed use are zoned General Business.

The proposal calls for construction of a 36-hole miniature golf course and renovation of the existing 8400 square foot cinema into a game room on a 5.47 acre site. Additional features of the development include a proposed fishing pond/skating rink and bumper boats. A total of 241 parking spaces is proposed for the site.

PROCEDURAL HISTORY

The Applicant was granted a special permit to allow for a change of use from a theater to an arcade and billiard parlor on May 25, 1990. This project was referred to the Commission by the Town of Yarmouth Site Plan Review Committee on September 4, 1990. 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 October 24, 1990 at 3:00 p.m. in the Yarmouth Town Hall, and continued until December 3, 1990. The December 3 public hearing was again noticed pursuant to Section 5 of

the Act and held in Rooms 11 & 12 in Barnstable Superior Courthouse, Barnstable, MA. The public hearing was closed on December 3, 1990. The record was kept open for the submission of written materials until January 3, 1991. The subcommittee held a public meeting after the close of the public hearing to deliberate on this project on January 10, 1991.

The subcommittee made a report to the full Commission on January 10, 1991 in Barnstable Superior Courthouse, Barnstable, MA. The Commission voted at this meeting to deny the application of Merrill S. Cohen for a Development of Regional Impact approval.

Materials Submitted for the Record

Materials submitted by the Applicant include:

- Site Plan & Construction Details (3 sheets), Down Cape Engineering, dated August 14, 1990 and revised September 18, November 28, 1990 (11/28 revision included Landscaping Plan)
- Traffic Impact & Access Study, McDonough & Scully, Inc., dated October, 1990
- Technical Memorandum, McDonough & Scully, Inc., dated November 30, 1990
- letters from Down Cape Engineering, dated November 29, and December 17, 1990
- SCS Soils Map, undated
- Massachusetts Historical Commission letter dated October 22, 1990
- petition in favor of the project, received October 24, 1990

Additional materials:

- Two (2) Cape Cod Commission staff reports dated October 18, 1990 and January 4, 1991
- Fee Calculations dated November 27, 1990
- Two (2) Site Plan Review Committee letters dated October 18, 1990 and January 2, 1991
- Town of Yarmouth Department of Public Works letter dated January 2, 1991
- Changes to the Yarmouth Zoning By-law, dated October 24, 1990
- Two (2) Yarmouth Zoning Board of Appeals Decisions, hearing dates July 13, 1989, April 26, 1990
- Seven (7) letters in opposition to the project

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.

Testimony

OCTOBER 24, 1990 SUBCOMMITTEE HEARING:

At the October 24, 1990 hearing held in the Yarmouth Town Hall, Yarmouth, MA, the Commission heard oral testimony from the Applicant's representative, attorney Michael Stusse. He described the proposed project, and explained that it would upgrade the property, which currently contained a vacant cinema and bridal shop, as well as a real estate office still in operation. The project was designed to support seasonal uses such as the hotel industry and beaches. The project would employ only 8-15 people; however, this would be an improvement over no employment currently offered at the site. At this hearing the Applicant also proposed a seasonal shuttle bus service to operate the length of Route 28 in Yarmouth if the cooperation of local hotels could be obtained.

Staff comments at this hearing focused on four issues: traffic, water resources, economic development, and landscape design, with more information requested of the Applicant for all issues. A traffic analysis completed by the Applicant indicated failing conditions on Route 28 at

the intersection of West Yarmouth Road, where this project is located. The Applicant's traffic consultant, Bill McDonough of McDonough & Scully, Inc. described the proposed traffic mitigation for the project, which included the following: a right-turn-in/right-turn-out design for the site drive, no left turns onto Route 28 from West Yarmouth Road, retiming of signals on Route 28, and possible access from the site via a gravel drive onto West Yarmouth Road, with signage directing traffic eastbound to a signalized intersection at Winslow Gray Road. Subcommittee members requested details of the proposed traffic mitigation, including the proposed shuttle bus service and its effect on overall traffic at the site. The staff report also identified nitrogen loading for the site at a level of approximately 16 ppm, which exceeded the 10 ppm Federal standard and Commission standard of 5ppm.

The Commission also received oral testimony from public officials and members of the public as described in the minutes of this hearing. Comments focused on traffic concerns, emergency vehicle access on Route 28, noise from the proposed carousel, lighting, and high groundwater problems in the area. Those in favor of the project cited the need for recreational opportunities in Yarmouth for young people. Prior to this hearing, it came to the attention of the Commission that at least two abutters were not notified of this hearing. The hearing was therefore continued until December 3, 1990 so that all abutters could be notified of the public hearing. The public record was also kept open until December 3, 1990 to receive additional information.

DECEMBER 3, 1990 SUBCOMMITTEE HEARING:

At the December 3, 1990 public hearing held in Rooms 11 & 12, Barnstable County Superior Courthouse, Barnstable, MA, Commission staff reported on information that the Applicant had submitted on November 30, 1990. Changes to the site plan included removal of the carousel, addition of a 12-foot gravel drive to provide access to West Yarmouth Road, additional parking and reduced size of the fishing pond. The Applicant had also submitted additional traffic data, water resource information and a landscape plan. The exit-only gravel drive onto West Yarmouth Road was proposed to alleviate problems of eastbound traffic leaving the site. Bill McDonough testified, however, that the proposed route for eastbound traffic to an existing signalized intersection at Winslow Gray Road and Route 28 was circuitous, and he did not expect that people would use the route. He also stated that he didn't have a complete solution for eastbound traffic leaving the site. Potential solutions were major improvements to Route 28, and not site specific.

Commission staff indicated that this project would create traffic impacts at the West Yarmouth Road intersection. It would also be difficult to acquire land in this location to provide for adequate turning movements. In addition, the applicant's proposal to retime signals at adjacent intersections would be helpful but wouldn't go far enough to mitigate traffic impacts. The shuttle bus concept was again discussed, with Bill McDonough stating that the Applicant was concerned about the cost and liability associated with a private landowner providing a service on other people's property.

Updated water resource information included sewage flow estimates and nitrogen loading calculations, which indicated nitrogen loading could vary from 9.2 ppm to 6.9 ppm. This reduction from calculations previously submitted was made possible in part due to the elimination of lawn areas from the miniature golf course.

At this hearing, the subcommittee directed staff to seek input from local officials on the traffic mitigation proposals submitted by the Applicant. The public hearing was closed on this date with the record kept open until January 3, 1991. A meeting was held between the Town of Yarmouth Site Plan Review Committee and staff on December 18, 1990.

JANUARY 10, 1991 SUBCOMMITTEE MEETING:

The subcommittee held a public meeting after the close of the public record and hearing to deliberate on this project on January 10, 1991 at the Commission office, 3225 Main Street, Barnstable, MA. At this meeting the staff reported that they had reviewed the most recent information submitted by the Applicant and met with the Yarmouth Site Plan Review Committee. Staff had also received comments from the Yarmouth Department of Public Works on traffic mitigation proposals. A review of this information by all parties concluded that the traffic mitigation proposals presented to date were inadequate. Yarmouth DPW did not support the proposals; the Site Plan Review Committee stated that the use of the 12 foot gravel drive was not allowed under the zoning bylaw. Therefore, a variance would be required. Water resource concerns and landscape design issues appeared to be mitigatable. However, due to traffic concerns for which no effective mitigation had been proposed, the staff recommended that the subcommittee deny the project.

Subcommittee members agreed with staff's recommendation, citing traffic concerns which were not adequately addressed by the Applicant. Subcommittee member Ken Brock also stated that the Applicant had misrepresented the economic benefits of the project. Overall, the benefits did not outweigh the detriments.

The subcommittee then gave a report to the full Commission on January 10, 1991 in Rooms 11 & 12, Barnstable Superior Courthouse, Barnstable, MA. At this meeting the full Commission voted unanimously to deny the project based on traffic issues which had not been resolved by the Applicant.

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.

JURISDICTION

The proposed Water Wonders amusement development qualifies as a Development of Regional Impact (DRI) under Section 12(c)(6) of the Act. Section 12(c)(6) requires review of projects which propose "outdoor commercial space greater than 40,000 square feet."

FINDINGS

The Commission has considered the application of Merrill S. Cohen for the proposed Water Wonders amusement development, and based on consideration of such application and upon the information presented at the public hearing and on the record, makes the following findings pursuant to Sections 12 and 13 of the Act:

- 1). The proposed development is expected to result in a trip generation of 780 vehicle trips/ day (VTPD) on a section of Route 28 with existing summer traffic volumes of 30,000 VTPD. Adverse traffic impacts from the proposed development will occur at the intersection of Route 28 and West Yarmouth Road. Left turns exiting West Yarmouth Road currently operate at level-of-service F (failure) and these conditions are not expected to improve with the traffic mitigation proposals submitted by the Applicant.
- 2). The Applicant failed to submit sufficient traffic mitigation alternatives addressing impacts from the proposed development at critical area intersections serving the site, including West Yarmouth Road/Route 28, Winslow Gray Road/Route 28, and South Sea Avenue/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. In addition, the existing 40-foot right-of-way does not allow for additional turning lanes without land taking.

- 3). The Applicant intended to use an existing curb cut to service the proposed expansion which would be modified with a right-turn-in/right-turn-out design. However, the Applicant failed to submit sufficient mitigation alternatives addressing left turn movements into the site from the west or out of the site to the east. A proposed one-way access out of the site onto West Yarmouth Road was unsupported by local officials due to the fact that traffic would be routed onto existing town roadways which service residential areas.
- 4). Nitrogen loading for the proposed development is expected to range from 10.8 parts per million (ppm) to 8.7 ppm. This exceeds both the 5 ppm standard set by the Cape Cod Commission as well as the Federal standard of 10 ppm. However, the project will not create an undue hazard to water quality as there are no wellfields or inland water bodies within the project area and the project is not within a zone of contribution for the Town of Yarmouth.
- 5). The proposed development was without support on the local level, including opposition by the Town of Yarmouth Site Plan Review Committee and Yarmouth Department of Public Works to traffic mitigation proposals submitted by the Applicant .
- 6). With the exception of real estate office personnel, the site currently provides no employment . Projected employment for the project is minimal, with jobs created by the project to consist of seasonal, minimum wage jobs.

CONCLUSION

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

The benefits of the proposed project do not outweigh the detriments resulting from the proposed development. This conclusion is supported by the following facts: the project as proposed will adversely impact traffic at area intersections; proposed mitigation inadequately addresses traffic impacts; and that employment generated by the project is minimal. These detriments outweigh the benefits of redevelopment of vacant property, and a reduction in the number of curb cuts on Route 28 with project construction.

The Commission hereby denies the application of Merrill S. Cohen as a Development of Regional Impact, pursuant to Section 13 of the Act.



Richard S. Armstrong, Chairman

1/24/91

Date



Notary
My commission expires 5/7/93

1/24/91

Date