

CAPE COD COMMISSION

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

Date: December 3, 1992
Applicant: Capeway Realty Trust
Project #: HDEX92058

Project: Seagate Apartments
100 Trowbridge Road
Bourne, MA

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

Book/Page: Book 7271, Page 27
Map/Parcel: Map 24, Parcel 3

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby denies the hardship exemption application of Seagate Apartments under Section 23 and approves with conditions the Development of Regional Impact (DRI) application of Seagate Apartments under Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed conversion of a hotel to an apartment building in Bourne, MA. The decision is rendered pursuant to the vote of the Commission on December 3, 1992.

PROJECT DESCRIPTION

The proposal involves the conversion of an existing 44-unit motel building, 50-seat restaurant, 74-seat function hall, and 15-seat meeting room to a 44-unit apartment building with 16 studio and 28 one-bedroom apartments. The project is located on a 5.76 acre site, the majority of which is paved or disturbed. The applicant proposes to remove approximately 0.75 acre of blacktop and replace it with landscaping and natural plantings, reducing the number of parking spaces from the existing 216 to 84.

The project is approximately 230 feet from the Bourne Bridge rotary and is visible from the Bourne Bridge. The site is zoned Business B-2, which

extends to the south and east, and is bounded to the north and west by a Residential R-40 zone. The project will need to be approved by the Zoning Board of Appeals for a variance or a special permit because the proposed density exceeds that currently allowed for residential units in the town of Bourne.

PROCEDURAL HISTORY

The project came before the Commission on September 16, 1992, as a request for a hardship exemption. On October 29, 1992, the Commission voted to simultaneously consider the project as a DRI under Section 12(h) of the Act, after learning that it had come before the Bourne Zoning Board of Appeals and had not been referred to the Commission. The Bourne Zoning Board of Appeals had denied without prejudice the project's request for a variance on March 24, 1992, on the grounds that it required review by the Cape Cod Commission.

A site visit was conducted by members of the subcommittee, the applicant, and Commission staff on November 5, 1992. A duly noticed public hearing was conducted on November 5, 1992 by an authorized subcommittee of the Commission, in the Bourne Town Hall, Bourne, MA, to consider the hardship exemption and DRI approval request. This hearing was continued to November 12, 1992 in the Commission offices. At the November 12, 1992 hearing, the subcommittee voted to close the hearing and the record on both the exemption and DRI approval requests.

Based on the testimony received at the public hearing, application materials submitted by the project proponent, information provided by town officials, and supporting technical information provided by staff, the subcommittee voted on November 12, 1992 to recommend denial of the hardship exemption, on the grounds that there was no clear evidence of hardship and that a DRI approval with conditions can be granted within the same timeframe as a hardship exemption. On November 12, 1992, the subcommittee voted to recommend to the full Commission that the project be approved as a DRI, subject to conditions which had been agreed to by the applicant.

Materials submitted for the record:

- DRI and Hardship Application, Seagate Apartments, Capeway Realty Trust, received September 11, 1992.
- Site Plan, Floor Plans, Elevations, L.F. Giampietro, AIA, dated September 11, 1992.
- Parking and Landscape Plan, L.F. Giampietro, AIA, undated.
- Traffic Impact Assessment, Atlantic Design Engineers, Inc., November 4, 1992.

- Letter regarding affordable housing policies from Henry Barry, Capeway Realty Trust, received September 29, 1992.
- Letter regarding financial constraints, affordable housing units, open space, and transportation concerns from Henry Barry, Capeway Realty Trust, dated October 19, 1992.
- Letter regarding open space calculations from Henry Barry, Capeway Realty Trust, dated October 26, 1992.
- Letter regarding transportation study from Henry Barry, Capeway Realty Trust, dated October 26, 1992.
- Letter from Cynthia Coffin, Health Agent, to Town of Bourne Appeals Board, dated March 10, 1992.

Additional Materials:

- Public Hearing Minutes, dated November 5, 1992, November 12, 1992.
- Cape Cod Commission Staff Report, dated October 30, 1992.
- Cape Cod Commission Subcommittee Report and accompanying memo, dated November 12, 1992.
- Cape Cod Commission Subcommittee Report, dated November 27, 1992.
- Statement of Proceedings of Bourne Board of Appeals on March 24, 1992, requesting a variance for Seagate project, received October 26, 1992.
- Letter from George Kaplan, abutter, dated October 23, 1992.

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

TESTIMONY

At the November 6, 1992 public hearing, Henry Barry, Capeway Realty Trust, gave oral testimony describing the project. Jim Boreback, Atlantic Design Engineers, discussed transportation issues for the applicant, and Mary Crowley, broker for FDIC, testified as to the FDIC's history with the project and the existence of financial deadlines for funding of this project. Commission staff reported concerns regarding traffic impacts and the lack of information about solid and hazardous waste management. Staff also presented information on water resource, open space, and affordable housing standards. The Chair of the Bourne Board of Selectmen gave oral testimony regarding their concerns about the project's density. Abutters testified that several past projects on the site have failed.

Questions from the subcommittee focused on traffic mitigation and the authority of the town of Bourne to regulate the project's density. The subcommittee determined that, pending information about the town's authority to regulate density and do site plan review, they were prepared to

recommend granting of a hardship exemption. The public hearing was continued to November 12, 1992.

At the November 12, 1992 public hearing, information gathered from the town of Bourne was presented, assuring that they have the authority to regulate density and to perform site plan review on this project. Commission staff reported that Bourne town officials expressed concern regarding the granting of a hardship exemption because none was clearly defined in this case. Staff agreed with the position of the town officials and explained that a DRI approval could be granted within the same timeframe as a hardship exemption, thus placing no additional time constraint on the applicant. The subcommittee voted unanimously to recommend denial of the hardship exemption on the above grounds. The subcommittee then discussed draft conditions proposed by the staff and changes to the subcommittee report. The subcommittee voted unanimously to recommend to the full Commission that the proposed project be approved as a DRI, subject to conditions agreed to by the applicant.

JURISDICTION

The proposed Seagate Apartments qualifies as a DRI under Section 12(c)(7) of the Act as "any proposed development, including the expansion of existing developments, that is planned to create or accommodate more than thirty dwelling units." The Commission voted on October 29, 1992 to consider the project as a DRI under Section 12(h) of the Act.

FINDINGS

The Commission has considered the application of Capeway Realty Trust for the proposed Seagate Apartments, and based on consideration of such application and upon the information presented at the public hearing and submitted for the record, makes the following findings pursuant to Sections 12 and 13 of the Act:

- 1.) No clear hardship, financial or other, has been presented by the applicant.
- 2.) ~~The existence of deadlines imposed by financial institutions does not constitute a hardship in this case because a DRI approval with conditions can be granted within the same timeframe as a hardship exemption.~~
- 3.) The project may comply with the Town of Bourne Zoning Bylaw, pending the issuance of the following: a special permit, variances, and site plan review. These permits give the local boards the ability to address the density and site plan issues.

4.) This project is located within an impaired area, as defined by RPP Water Resources section 2.1.1.2.D, due to the high density and commercial nature of the surrounding land uses. The site is not identified as a marine water recharge area because the Canal, the receptive water body, does not fit the RPP definition of a nitrogen sensitive embayment.

5.) Flushing rates of the Cape Cod Canal have been estimated by consultants preparing impact studies for the Otis Air Base Wastewater Treatment Facility. These studies use a dilution rate of 3,000:1, indicating a very high flushing rate which decreases the nitrate-nitrogen sensitivity of the area.

6.) Section 2.1.1.2.D.2 of the RPP states that "where existing development [within an impaired area] exceeds the 10 ppm nitrate-nitrogen loading standard, redevelopment of that property shall not increase existing levels of nitrogen loading." The previous land use of the motel/restaurant produced an effluent concentration of 14.69 ppm. Using figures provided by the project proponent, an occupancy rate of 1.4 persons per one bedroom unit resulted in a nitrogen concentration estimate of 9.92 ppm. Adjusting the occupancy rate to 1 person per bedroom lowers the rate to 9.01 ppm. Therefore, this project meets the minimum performance standards of this section of the RPP.

7.) This site has three separate septic systems that were inspected by the Bourne Health Agent in March, 1992. In a letter to the Bourne Zoning Board of Appeals, she stated that the three systems would be more than adequate for the proposed 44 bedrooms but, before going into operation, the entire system would have to be cleaned and pumped, broken septic tank covers would have to be replaced, and leaching catch basins less than 25 feet from leach pits will have to be disconnected and filled.

8.) In accordance with RPP section 2.1.1.9, stormwater generated by a project shall be discharged on-site. There are existing untreated stormwater discharges on site and the removal of paved areas combined with the introduction of landscaping will provide mitigation.

9.) The project will generate 224 trips/day generated with 30 afternoon peak hour trips. Level of Service (LOS) standards will be maintained at Trowbridge Road and Veterans Way and at Trowbridge Road and the site drive. The existing poor LOS at the Bourne Rotary will be slightly degraded by the project, which is estimated to introduce 19 vehicles during the peak time, compared with about 5000 vehicles using the rotary. The proportional contribution of the project is 0.38%.

10.) Primary access to and from this site is through an adjacent commuter lot and small shopping plaza onto Trowbridge Road near the Bourne Rotary. Additional access is via a circuitous route through another apartment complex onto Sandwich Road. Analysis of the LOS at surrounding

intersections indicates that the project will not have a significant adverse impact on traffic operations based on a review of peak season conditions.

11.) The applicant has proposed to improve signage at the primary access to the site, placing no parking signs along the eastern side of the commuter lot and clearly defining the drive to the site through the use of pavement markings. This is in accordance with RPP standard 4.1.1.2 (mitigation).

12.) In accordance with RPP minimum performance standards 4.1.2.1 (trip reduction strategies) and 4.1.2.2 (bicycle & pedestrian amenities) the proponent is providing a bicycle storage and maintenance room, and is proposing an on-site b-Bus stop. The adjacent shopping plaza that includes a convenience market, coin laundry and a Bonanza Bus Lines commuter stop may further reduce trip generation.

13.) The applicant will provide two handicapped accessible units in the complex. [Letter from the applicant dated 9/29/92]

14.) The applicant has agreed to provide 4 units at or below 60% of the median income level in Bourne, meeting the Commission requirement that 10% of residential units developed be affordable. [Letter from the applicant dated 10/19/92] The applicant has also provided a statement of non-discrimination in rental policy to comply with standard 5.2.1 of the RPP. [Letter from the applicant dated 9/29/92]

15.) The applicant proposes, in a non-binding offer, to rent the remaining units in the complex at a rate which is at or below 80% of the median income standard. According to data compiled by Commission staff, this project would meet a need for affordable, single-room-occupancy housing in Bourne. As of April 1992, over 800 people were on the waiting list for Bourne Housing Authority administered units. This included 366 families, 192 elderly, and 25 special needs persons.

16.) The applicant has agreed to place conditions on the project limiting short-term rentals to avoid use of the apartments as summer residences only.

17.) The applicant did not provide any information regarding the generation and disposal of solid and hazardous wastes. Information from the EPA and the state DEP indicates that hazardous and "special" wastes may be present in developments constructed prior to 1980, and that hazardous wastes are typically generated during redevelopment projects.

18.) The site plan for this project provides for the back area of the site to be covered with pine mulch and planted with evergreens, resulting in 62% open space, in accord with RPP policy 6.1.3. Additionally, blacktop areas closer to the building will be replaced with mulch, lawn, trees, shrubs, and flowers.

The applicant has submitted a general landscape plan and has stated that he is willing to work with his landscape architect to choose primarily native plantings for the site.

CONCLUSION

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

~~Because the applicant did not present a clearly defined hardship, financial or otherwise, and because a DRI approval with conditions can be granted within the same timeframe as a hardship exemption, the proposed project is denied a hardship exemption.~~

The benefits of the proposed project outweigh the detriments. This conclusion is supported by the facts that the project will provide the following benefits: renovation of an existing abandoned structure and site; provision of two handicapped-accessible apartment units; creation of affordable, single-room occupancy apartments in the town of Bourne with conditions restricting short-term rental. Provision of a bicycle storage and maintenance room, allocation of a b-Bus stop, and use of the neighboring commuter bus stop outweighs the detriment of a slight level of service degradation at the Bourne rotary. Improved signage to regulate parking in the neighboring commuter lot and clearer access delineation to the site addresses the safety hazard created by the increased traffic traveling to and from the site.

The project is consistent with the Minimum Performance Standards of the Regional Policy Plan, as shown in findings 6, 8, 11, 12, 14, and 18.

The proposed project is not consistent with the town of Bourne zoning bylaws. Commission approval is granted with the understanding that it is necessary for the Applicant to seek a variance and special permit from the town of Bourne in order to comply with density requirements. The granting of this variance and special permit, however, will not create a regional impact.

The Commission hereby approves with conditions the proposed Seagate Apartments project in Bourne, MA as a Development of Regional Impact, pursuant to Section 13 of the Act, provided that the following conditions are met:

PROCEDURAL

1.) The applicant shall obtain all local approvals so that the project is in accordance with local zoning bylaws.

2.) Plans and written materials submitted shall become a part of the written decision and any changes to these plans shall be approved by the Cape Cod Commission. Existing plans are dated 9/11/92.

3.) 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 permanent or temporary Certificate of Occupancy for any portion of the proposed development.

4.) The Applicant will be responsible for payment of all fees as required by the Cape Cod Commission's Administrative Regulations, including but not limited to costs of advertisement.

WATER RESOURCES

5.) The applicant must clean and pump the septic systems, replace broken septic tank covers, and disconnect and fill leaching catch basins less than 25 feet from leach pits prior to the issuance of a Certificate of Compliance.

TRANSPORTATION

6.) Traffic alterations to the site entrance, including enforcement of no parking conditions along the eastern side of the site access and improved driveway markings, will be documented and then reviewed and approved by the Cape Cod Commission staff prior to the issuance of a building permit. These improvements will be completed prior to the issuance of a Certificate of Compliance.

AFFORDABLE HOUSING

7.) The applicant will place restrictions on the 4 units offered at or below 60% of the median income to insure that they will be rented at that rate for 99 years, as required in RPP section 5.1.9. These restrictions will be reviewed and approved by Commission staff.

8.) The project will be restricted to limit short-term rentals in an effort to avoid use of the apartments as summer residences only. Cape Cod Commission staff will approve these restrictions prior to the issuance of a building permit.

9.) The applicant must provide a general management plan for the project, detailing how the site will be maintained and managed. Information on the employment and duties of a year-round, live-in manager should be included. Such plan will be reviewed and approved by Commission staff prior to issuance of a building permit.

HAZARDOUS/SOLID WASTE

10.) The project proponent must submit a waste management plan that addresses how the quantities and types of solid waste generated by the project

will be handled, per minimum performance standard 4.2.1.1. This plan must be approved by Commission staff prior to issuance of a building permit. The plan should include estimates of the annual and monthly tonnage of solid and/or hazardous waste, and the estimated composition of solid and/or hazardous waste to be generated by the project. The plan should state how the project will comply with state disposal restrictions on recyclable materials (lead batteries, leaves, organic yard wastes, brush, tires, white goods, and glass and metal containers). It should also explain the project's program of integrated solid waste management, stating where and how non-recyclable, non-compostable solid waste generated by the project will be incinerated or landfilled.

11.) The project is required to allocate storage space for interim storage of material to be recycled (standard 4.2.1.2). This information should be provided and clearly indicated on the site plan. Commission staff must approve the plan prior to issuance of a building permit.

12.) The applicant must indicate the estimated tonnage of construction and demolition materials to be generated by this project and describe how he will comply with standards 4.2.2.1 (minimize hazardous waste generation) and 4.2.2.2 (compliance with state hazardous waste management regulations). Asphalt to be removed in the process of decreasing on-site parking should be included in the waste generation estimate. Commission staff must approve this information for compliance prior to issuance of a building permit. Commission staff can provide a list of companies that recycle demolition debris.

13.) The implementation strategies of the RPP discuss efforts to educate and assist residents, businesses, and institutions on source reduction. Because multi-family buildings provide a good opportunity to disseminate information, the rental office or other public space must contain informational brochures on waste reduction and the management of household hazardous wastes.

OPEN SPACE

14.) A detailed landscape plan for the site, indicating conformance with the requirement that the majority of plantings be native species, must be reviewed and approved by the Commission staff prior to issuance of a building permit.

15) The applicant must provide information assuring that he will comply with standard 7.2.5, restricting the use of unnecessarily bright lighting. He shall also show plans for the screening of waste removal areas, as required in policy 7.2.9. This information will be reviewed and approved by Commission staff prior to issuance of a building permit.

The Commission hereby denies a hardship exemption and grants Capeway Realty Trust an approval with conditions as a Development of Regional Impact, pursuant to Section 13 of the Act, for the proposed Seagate Apartments project.

Alix Ritchie
Alix Ritchie, Chairman

12/3/92
Date

Commonwealth of Massachusetts

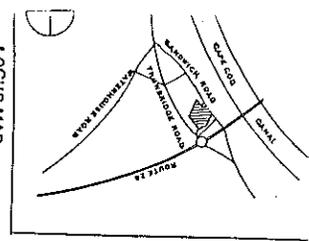
Barnstable, ss.

Subscribed and sworn to before me this 3rd day of Dec 1992

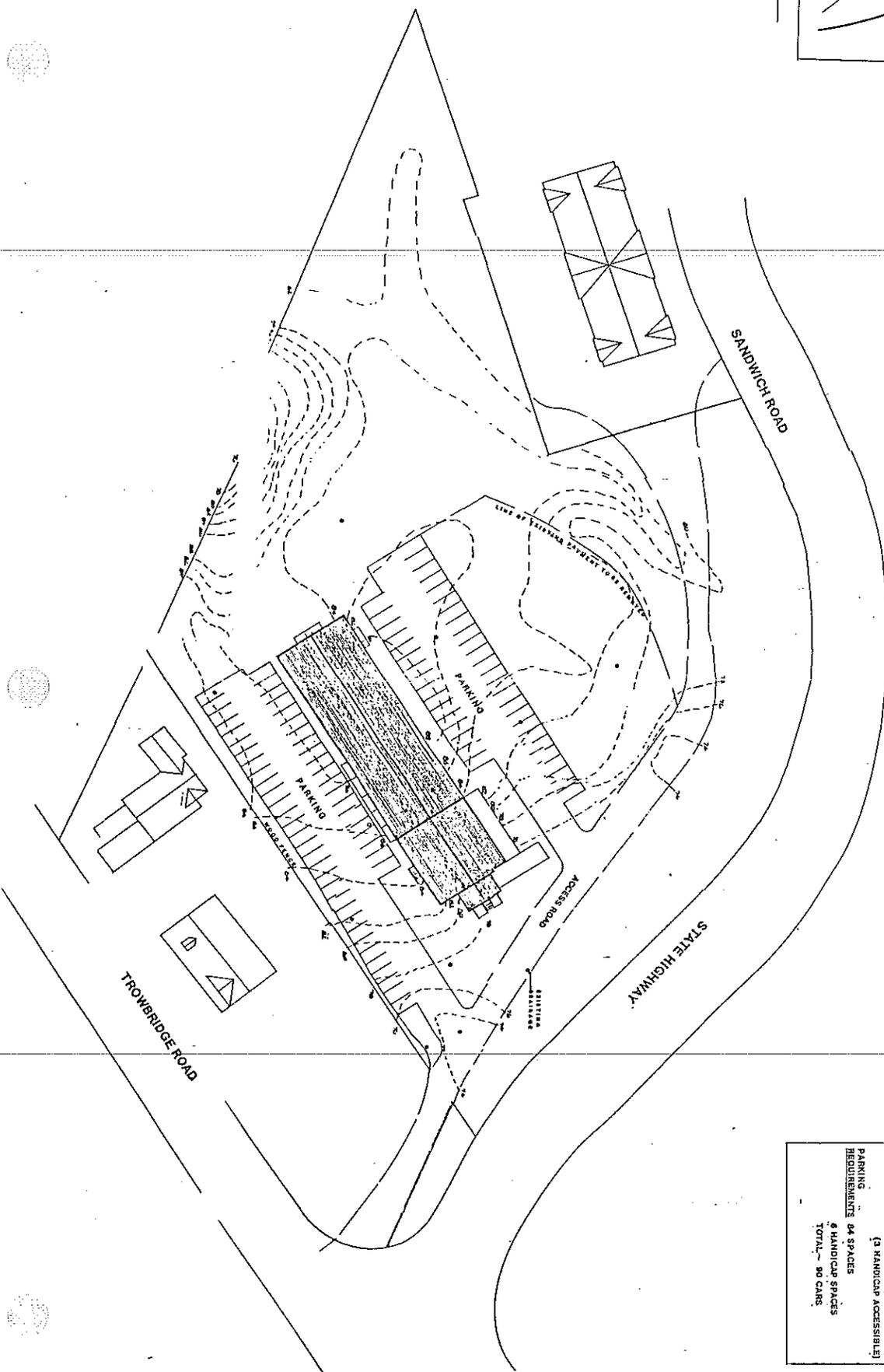
Katharine L. Peters
Name, Notary Public

My Commission expires:

My Commission Expires March 5, 1997



LOCUS MAP
SCALE 1" = 200'



TOWN OF BOURNE	
ZONING REQUIREMENTS	
ZONE AREA	B-2
OCCUPANCY	44 APARTMENTS
	29 ONE BEDROOM
	15 STUDIO
	(3 HANDICAP ACCESSIBLE)
PARKING REQUIREMENTS	84 SPACES
	9 HANDICAP SPACES
TOTAL	93 CARS

ARCHITECT • L.F. GIAMPIETRO AIA
 220 MAIN STREET, PALMOUTH, MA 02548 • (508) 840 7400

SEAGATE APARTMENT COMPLEX

CONSULTANT:
 ADDRESS:

DRAWING TITLE:
 DRAWN BY:
 CHECKED BY:
 DATE:
 REVISIONS: