

# CAPE COD COMMISSION

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

Date: March 5, 1992  
To: Pirate's Cove East, Inc.  
Robert Love, President  
From: Cape Cod Commission  
RE: Development of Regional Impact  
Cape Cod Commission Act, Section 12(c)  
Applicant: Mr. Robert Love  
Project #: TR90019  
Project: Pirate's Cove Adventure Miniature Golf Course Expansion  
Route 28  
South Yarmouth, MA 02664  
Book/Page: Book 226/Page 71  
Map/Parcel: Map #21, Parcels W1 & W7

## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the Development of Regional Impact application of Mr. Robert Love under Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for a proposed miniature golf course expansion in Yarmouth, MA. The decision is rendered pursuant to a vote of the Commission on February 6, 1992 and March 5, 1992.

### PROJECT DESCRIPTION

The proposal consists of the expansion of an existing eighteen-hole miniature golf course on Route 28 in South Yarmouth, MA. The expansion includes an additional eighteen-hole golf course, maintenance building and additional parking for 114 cars. The site is bounded by Parker's River and associated coastal wetlands to the northwest. An existing restaurant directly to the east separates the proposed mini-golf expansion from the proposed additional parking. The site and surrounding area is zoned for General Business use. A proposed park to be developed by the town of Yarmouth is directly west of the project site.

Pirate's Cove Miniature Golf Decision-Yarmouth, MA  
March 5, 1992

## PROCEDURAL HISTORY

The proposed expansion was denied a special permit by the Yarmouth Zoning Board of Appeals in a decision dated March 23, 1990. The special permit denial is currently being appealed by the applicant in Barnstable Superior Court. The project was then referred to the Commission by the Yarmouth Conservation Commission on April 13, 1990. The applicant requested a Hardship Exemption pursuant to Section 23, a DRI Exemption pursuant to Section 12(k), and a DRI approval. A duly noticed public hearing was conducted by an authorized subcommittee of the Commission on August 29, 1990. The public hearing was closed on August 29, 1990, with subcommittee meetings held on September 13, September 24, and October 2, 1990. In separate decisions dated October 25, 1990, all three applications were denied by the Commission.

The applicant filed an appeal of the Commission's decisions in Barnstable Superior Court on November 23, 1990. In November 1991, the applicant's attorney and Commission staff first met regarding a settlement of the appeal. On December 18, 1991, a Barnstable Superior Court judge remanded this case to the Commission for additional DRI review. The Commission voted on November 21, 1991 to create a subcommittee to reconsider the proposed expansion in light of newly proposed mitigation.

On January 22, 1992, a public hearing to reconsider the above project was held in the Yarmouth Town Hall. This public hearing was continued to January 28, 1992. The public hearing and record were closed on this date and a subcommittee meeting was held on February 3, 1992. At this meeting, the subcommittee voted unanimously to recommend to the full Commission that the project be approved as a Development of Regional Impact (DRI), subject to conditions.

A subcommittee report was presented to the full Commission on February 6, 1992. At this meeting, the Commission voted thirteen in favor and two against to approve the project as a DRI, subject to conditions.

### Materials submitted for the record include:

- Site plan of land, dated December 21, 1989, and revised through February 11, 1992, Downcape Engineering, Inc., Yarmouthport, MA
- Open space calculations, on Site plan of land, revised through January 14, 1992
- Pre-Trial Order, Pirate's Cove East, Inc. vs. Cape Cod Commission, December 18, 1991
- Cape Cod Commission Staff memo, dated October 1, 1990
- Cape Cod Commission decision, Lansing Realty Trust, #TR91016
- Cape Cod Commission letter to Executive Office of Environmental Affairs, dated September 6, 1991 on proposed Super Stop & Shop project
- Water resources memo, unsigned, December 6, 1991
- letter from Downcape Engineering to Edward Sweeney, dated January 17, 1992
- Memorandum from Edward J. Sweeney, Jr. to Cape Cod Commission, dated January 17, 1992
- letter from Edward Sweeney to Patricia Daley, Cape Cod Commission, dated January 9, 1991, November 8, 1991, November 5, 1991, October 31, 1991, October 25, 1991

### Additional materials:

- Cape Cod Commission staff report, dated January 17, 1992
- Subcommittee report, dated February 3, 1992

Pirate's Cove Miniature Golf Decision-Yarmouth, MA  
March 5, 1992

- letter from Patricia Daley to Edward Sweeney, dated January 16, 1992, November 27, 1991, November 7, 1991, October 24, 1991
- Nitrogen loading calculations, Cape Cod Commission staff, undated
- Traffic mitigation calculations, dated November 7, 1991
- letter from Commission staff to Downcape Engineering, Inc., dated December 31, 1991
- Yarmouth Zoning Board of Appeals decision, dated March 23, 1990
- letter from Route 28 Task Force, dated January 27, 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

The applicant stated that sufficient mitigation was now being offered, including curb cut limitations, site drive improvements, \$31,121.00 in an escrow fund for traffic mitigation, and traffic counts to be taken over a five year period. He believed that the contribution of this project to nutrient loading to Parker's River had also been addressed, through a redesign of septic and drainage systems. The applicant also agreed to promote bicycle accessibility and storage, offered to provide public parking for a proposed park adjacent to the site, agreed to plant the edge of the wetland buffer area to protect wetlands contiguous to the site, and provided an aluminum can recycling receptacle. The applicant submitted open space calculations after removing the wetland areas from the plan and determined that the plan meets the Regional Policy Plan requirements for open space. The applicant requested making the escrow payments for traffic mitigation in three phases. Staff recommended that this money be provided prior to issuance of a Certificate of Compliance.

The Commission's staff report reviewed the project for compliance with the Regional Policy Plan. The staff reviewed nitrogen loading calculations and found that the concentration was 2.7 ppm based on seasonal adjustments and 4.8 ppm year-round. Staff requested that the applicant provide additional documentation on the adequacy of the leaching field separation to groundwater. Staff recommended that the Commission find that the wetland buffer was already developed, and therefore allow the required 100-foot buffer to be reduced, provided that the applicant mitigate the impacts of construction by providing additional buffer plantings. Staff also recommended the Commission not require a plant and wildlife habitat assessment since the buffer area was already developed.

Subcommittee members expressed concern for traffic impacts at the entrance to the site drive resulting from the proposed expansion. There was also concern expressed about the accuracy of trip generation estimates provided by the applicant. Comments from local officials included concerns about accidents in front of the site and trip generation estimates, pedestrian safety, and possible impacts to wetlands related to the project.

The January 22, 1992 hearing was continued until January 28, 1992. At the continued hearing, Commission staff reviewed accident data submitted by the town, verified that an additional one foot of separation of the septic system to groundwater was appropriate, and submitted additional proposed landscape conditions. Commission members expressed concern for the height and appearance of existing golf course lighting. The applicant's fair-share contribution to site drive improvements was discussed. Attorney Sweeney stated that the applicant agreed with the sum of

the proposed contribution to mitigate traffic impacts, but his client did not have the funds to contribute to this improvement at the present time. He requested that the payments for this additional mitigation be phased over time. Subcommittee members directed staff to explore options regarding transportation mitigation.

At a subcommittee meeting held on February 3, 1992, the subcommittee met to discuss proposed traffic mitigation. The subcommittee and applicant agreed that the payment for site drive improvements would be provided prior to the issuance of the Certificate of Compliance. At this meeting, the subcommittee voted unanimously to recommend to the full Commission that the proposed expansion be approved as a DRI, subject to conditions as agreed upon at this meeting. A subcommittee report was presented to the full Commission on February 6, 1992. At this meeting, the full Commission voted thirteen in favor and two against to grant a DRI approval with conditions.

### JURISDICTION

The proposed Pirate's Cove miniature golf course expansion qualifies as a Development of Regional Impact (DRI) under Section 12(c)(6) of the Act, which requires review of "any proposed retail or wholesale business, office or industrial development which has a floor area as follows: ...outdoor commercial space greater than 40,000 square feet."

### FINDINGS

The Commission has considered the application of Mr. Robert Love for the proposed miniature golf course expansion in Yarmouth, MA, and based on consideration of such application, the information presented at the public hearings and submitted for the record, the Commission makes the following findings subject to Sections 12 and 13 of the Act:

- 1). The proposed development is an expansion of an existing miniature golf course on an already developed site. It is also located in a densely developed tourist area, thereby reducing the possibility of sprawling development in undeveloped outlying areas.
- 2). Information provided by the applicant regarding trip generation and trip distribution of similar golf course expansions indicated that the assumptions used in the applicant's traffic memorandum prepared for the original DRI review in 1990 contained reasonable traffic estimates. These estimates were used in evaluating the applicant's fair-share financial contribution to traffic mitigation to offset impacts from the proposed expansion at affected locations.
- 3). Insufficient information regarding the cost of necessary improvements to adjacent Route 28 intersections was supplied for the original DRI review of this project. More detailed information regarding these costs was made available from the Commission's review and DRI approval of the Super Stop & Shop expansion, also in South Yarmouth (#TR91016). This information was then utilized to develop and evaluate the applicant's fair-share financial contribution for the proposed expansion.
- 4). The applicant offered to pay a fair-share contribution to mitigate traffic impacts related to the proposed expansion. This contribution included mitigation of impacts at off-site locations and impacts at the applicant's site drive resulting from the proposed expansion. This provision is

allowable under Section 4.1.1.2 of the Regional Policy Plan, which states that an applicant may contribute funds toward necessary improvements to mitigate transportation impacts. The amount of \$31,124.00 was determined to be the applicant's fair-share contribution to off-site impacts, with \$16,500.00 determined as sufficient mitigation of the proposed expansion at the applicant's site drive.

5). Access to the site is limited to one curb cut which has been approved by the Massachusetts Department of Public Works (MDPW).

6). A Route 28 traffic circulation study is currently underway which includes the project locus. This study is expected to be completed by September, 1992. Recommendations regarding road configuration and access to particular sites, including the Pirate's Cove site, may be made as part of this circulation study. If site-specific improvements are identified which meet the approval of the responsible agencies, such improvements would be categorically eligible for any and all of the applicant's financial contribution as voted by the Commission.

7). The applicant has met Section 4.1.2.1 of the Regional Policy Plan which requires provision for alternate transportation modes to offset at least 20% of their projected traffic volumes. This requirement was met by the following: provision of bicycle storage racks; advertisement of their availability; and, contributions to an escrow fund which may be applied towards providing regional transit.

8). Based upon calculations recently submitted by the applicant, the worst-case impact of the proposed expansion on Parker's River is estimated to be 0.34% of the critical load to Parker's River. The applicant has also calculated nitrate-nitrogen (NO<sub>3</sub>-N) loading on the site at 4.8 ppm for a full year of operation, and a concentration of 2.7 ppm when adjusted for seasonal operations of the site. This concentration of effluent conforms to the 5 ppm standard of the Regional Policy Plan.

9). The site is located within a FEMA A flood zone. Section 2.2.3.2 of the RPP requires that all new and replacement septic systems within FEMA A zones shall be designed with a minimum five foot separation from groundwater. The proposed septic system was redesigned to provide an additional foot of separation from groundwater to conform to this standard.

10). The proposed expansion includes site development within an average of fifty feet from the edge of coastal wetlands associated with Parker's River. Section 2.3.1.2 of the RPP requires that a natural, undisturbed buffer of at least 100 feet in width be maintained from the edge of coastal and inland wetlands, unless the buffer is already developed and the proposed alteration will not increase adverse impacts on that specific portion of the buffer. The portion of the buffer to be developed for the proposed expansion is currently stripped of vegetation and contains gravel drainage beds. In addition, the applicant agreed to provide landscape plantings along the limit of the proposed development area which borders Parker's River in order to mitigate any adverse impacts from the proposed expansion on the wetland buffer area. These plantings will be designed to provide food and cover for wildlife and discourage pedestrian traffic into the buffer area. Therefore, the proposed alteration will not increase adverse impacts on the buffer area to Parker's River.

11). The applicant agreed to provide public parking for the proposed Parker's River park adjacent to the project site.

12). A significant quantity of solid waste was not anticipated by the proposed expansion. A beverage vending machine will be located on the premises. The applicant agreed to install an aluminum recycling receptacle on the project site in order to provide customers with the opportunity to recycle aluminum cans pursuant to Section 4.2.1.1 of the RPP.

13). The applicant agreed to provide additional canopy and evergreen tree planting in the buffer areas along Route 28, in order to mitigate the visual impacts of the proposed miniature golf course expansion and parking areas visible from Route 28, a regional roadway.

### CONCLUSION

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

The benefits of the proposed project outweigh the detriments. This conclusion is supported by the findings that the proposed development is an expansion of an existing miniature golf course on an already developed site. It is also located in a densely developed tourist area, thereby reducing the possibility of sprawling development in undeveloped outlying areas; mitigation of transportation impacts to the proposed site drive and affected intersections on Route 28; improved bicycle access to the site; public parking and signage for a proposed park adjacent to the site; agreement to cooperate with the town of Yarmouth which may result in the reduction of the height and appearance of existing lighting standards; provision of a landscaped buffer to wetlands and additional landscaping on the Route 28 frontage of the existing course. These benefits outweigh the detriments of the increased traffic resulting from the project; minimal impact of nitrogen loading on Parker's River; and encroachment on the 100-foot wetland buffer to Parker's River. The applicant was able to mitigate traffic impacts by making a fair-share contribution to traffic improvements, and was able to mitigate wetland impacts by providing buffer landscape plantings. Therefore, these impacts are no longer detriments of the project.

The project is consistent with the Minimum Performance Standards of the Regional Policy Plan. The project will be consistent with the town of Yarmouth zoning bylaws if the applicant obtains all necessary local permits and approvals.

The Commission hereby approves with conditions the proposed Pirate's Cove miniature golf course expansion in Yarmouth, MA, pursuant to Section 13 of the Act, provided that the following conditions are met:

#### GENERAL CONDITIONS:

- 1). Plans submitted and listed in this decision shall become a part of the written decision and any changes to these plans shall be approved by the Cape Cod Commission.
- 2). 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.
- 3). The applicant shall obtain all necessary state and local permits for the project.

#### TRANSPORTATION:

- 4) With the intent of mitigating the impacts of this project to Route 28 in Yarmouth at off-site

intersections and providing site-specific access improvements to Route 28, the Applicant shall deposit the amount of \$47,624.00 into an escrow account to be used for the improvement of state and/or local roadways affected by the project as described in the findings above, and/or to be used to promote public transportation operations in the area.

The Applicant shall make said contribution to the escrow fund pursuant to an escrow agreement which shall be of a form and content satisfactory to Counsel to the Cape Cod Commission, and ~~which shall designate a bank or other fiduciary as the escrow agent to hold and disburse such funds~~ upon the vote of the Commission for the above described purposes. (But, if the Cape Cod Commission should cease to exist during the hereinafter mentioned fifteen (15) year period, then the Board of Selectmen of the Town of Yarmouth shall be the government entity which shall recommend and vote said disbursements.) The Applicant's contribution to the escrow fund shall be irrevocable, and shall be a precondition to the issuance of any certificate of occupancy for the Applicant's proposed development by any municipal agencies. The interest earned in said escrow account shall follow the funds to offset inflation. The escrow fund is to be held for a maximum of fifteen (15) years from the date of this decision. Funds not distributed by a vote of the Commission within the aforementioned fifteen years shall automatically revert to the Cape Cod Regional Transit Authority.

The applicant agrees to the limitation of one curb cut onto Route 28 for Lots W1 and W7 on Yarmouth Assessors Map No. 27 as depicted on the plans submitted to the Commission. This is the existing curb cut located on Lot W1.

5). The Applicant shall conduct driveway monitoring. Such monitoring shall involve counting the number (volume) of vehicles entering and exiting the site. Such monitoring shall be conducted three times per year, from 3:30 p.m. to 5:30 p.m. and 7 p.m. to 9 p.m., on the same day, in the months of July and/or August. Such monitoring shall not be conducted during rainy periods. A count taken during a sunny or overcast period will be acceptable. Monitoring data shall be provided to the Commission's transportation staff within seven (7) business days of the count. Such monitoring shall be conducted for a period of 5 years.

6). In order to reduce the number of vehicle trips generated by the project and meet the requirements of the Regional Policy Plan, the applicant shall encourage bicycle accessibility to the site by installing a bicycle storage rack on-site. The Applicant shall also include information regarding the availability of bicycle storage facilities in his advertising.

7). The Applicant shall provide free parking for visitors to the town park located immediately to the west of his site. The Applicant shall post a sign providing notification that such free parking is available on the Applicant's site. This condition shall be subject to approval by appropriate authorities of the town of Yarmouth. This condition shall be null and void if local approval is not granted.

**COMMUNITY CHARACTER:**

8). Prior to the issuance of town of Yarmouth Board of Appeals approval, a final landscape plan shall be submitted to Commission staff for approval. This plan shall be satisfactory to the Board of Appeals and prepared in accordance with the revised site plan by Downcape Engineering, Inc., dated February 11, 1992.

9). A four-foot wide gravel walkway as indicated on the site plan by Downcape Engineering, Inc., revised January 14, 1992 shall be installed subject to approval by the town of Yarmouth Zoning Board of Appeals.

10). To reduce the visual impact of lighting fixtures along Parker's River, the applicant shall pursue lowering the height of existing lighting fixtures for the miniature golf course with the Yarmouth Board of Appeals. All proposed lighting shall not produce glare onto roadways or neighboring premises.

WETLANDS/WILDLIFE:

11). The applicant shall plant wetland buffer vegetation along the edge of the proposed development area to Parker's River to help mitigate encroachment on the wetland buffer as per the site plan prepared by Downcape Engineering, Inc. revised February 11, 1992. The plant material selected for this purpose shall be subject to the recommendations of the Yarmouth Conservation Commission.

The Cape Cod Commission hereby grants Mr. Robert Love an approval with conditions as a Development of Regional Impact, pursuant to Section 13 of the Act, for a proposed miniature golf course expansion in Yarmouth, MA.

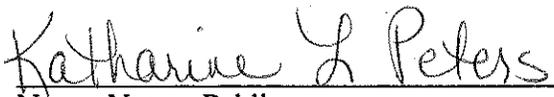
  
\_\_\_\_\_  
Richard S. Armstrong, Chairman

3/5/92  
\_\_\_\_\_  
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 5<sup>th</sup> day of March 1992

  
\_\_\_\_\_  
Name, Notary Public

My Commission expires:

My Commission Expires December 5, 1997



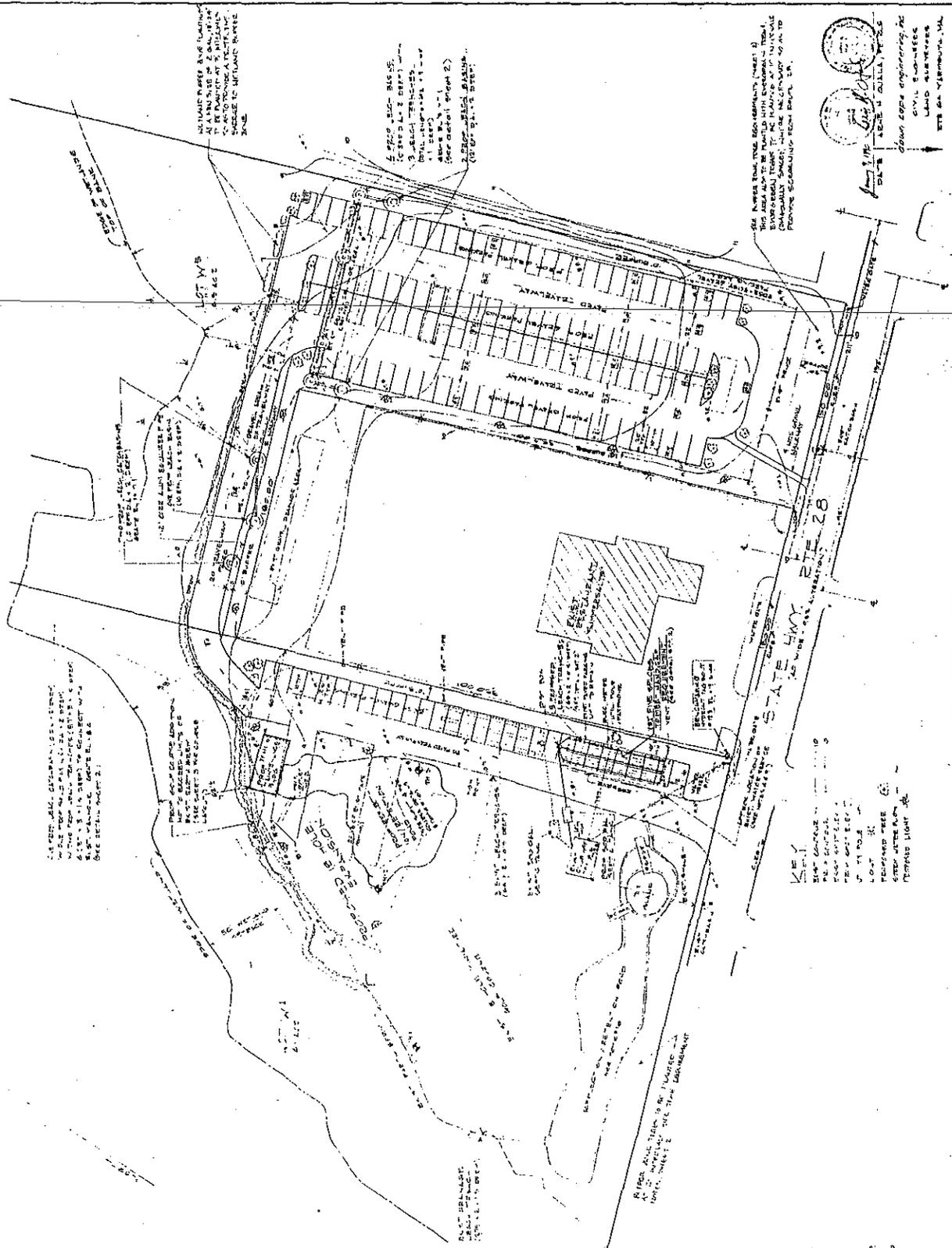
SHEET NO. 1  
 SCALE: 1" = 20'  
 DATE: 11-20-71  
 DRAWN BY: J. J. [unclear]  
 CHECKED BY: [unclear]



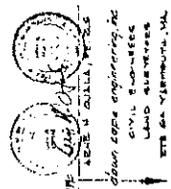
SHEET 1 OF 5  
**SITE PLAN**  
 67 LINDEN  
 SOUTH YARMOUTH, MA

PREPARED FOR:  
**PIRATES COVE**

SCALE: 1" = 20'  
 DATE: 11-20-71  
 DRAWN BY: J. J. [unclear]  
 CHECKED BY: [unclear]



SEE NOTES THAT THIS DEVELOPMENT (SHEET 1)  
 THIS AREA IS TO BE BUILT UP WITH EXCEPT AS SHOWN  
 UNLESS OTHERWISE SPECIFIED IN THIS PLAN. THE  
 PLANNING SCHEMATIC IS FOR GENERAL INFORMATION ONLY.



JOHN J. [unclear]  
 CIVIL ENGINEER  
 LICENSE NO. 10114  
 STATE OF MASSACHUSETTS

**KEY**  
 1. 1" = 20'  
 2. 1" = 20'  
 3. 1" = 20'  
 4. 1" = 20'  
 5. 1" = 20'  
 6. 1" = 20'  
 7. 1" = 20'  
 8. 1" = 20'  
 9. 1" = 20'  
 10. 1" = 20'