

CAPE COD COMMISSION

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Date: February 6, 1992
To: James McGillen, Esq.
From: Cape Cod Commission

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

Applicant: Mr. & Mrs William J. Hayes
Project #: TR91082

Project: Hayes Subdivision
Quail Run Farm, 640 Route 6A
Barnstable, MA 02630

Book/Page: Book 7606, Page 191

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the Development of Regional Impact application of Mr. & Mrs. William Hayes under Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for a proposed residential subdivision in Barnstable, MA. The decision is rendered pursuant to a vote of the Commission on January 23, 1992.

PROJECT DESCRIPTION

The proposal consists of the subdivision of a 62.26 acre parcel of land into four single-family residential lots. The site is located approximately 1/2-mile west of the intersection of Route 6A and Route 149 in West Barnstable, MA. Approximately twenty-eight acres of the 62-acre total consists of saltwater marsh/wetlands and a three-acre freshwater pond. The marsh areas are included within the Sandy Neck Barrier Beach Area of Critical Environmental Concern (ACEC) and abut town-owned conservation land to the east and west. The upland portion of the site consists of rolling topography with scattered pure stands of Eastern red cedar and varied understory growth. Views of the pond and this picturesque landscape are visible from Route 6A. Lot #3 of the proposed subdivision contains an existing single-family home, barns and corrals which will remain. An existing twelve-foot wide driveway will service the proposed development. The property is zoned for single-family residential use, with residential use surrounding the site.

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PROCEDURAL HISTORY

On December 5, 1991, a public hearing to consider a request for a DRI Exemption pursuant to Section 12(k) of the Act and a DRI approval was opened and continued to December 19, 1991 at the request of the applicant. The hearing held on December 19, 1991 was also continued to January 6, 1992. At this hearing, the applicant withdrew his DRI Exemption request and proceeded to DRI review on this date. Also on January 6, 1992, the subcommittee voted unanimously to recommend to the full Commission that the project be approved as a DRI, subject to conditions which have been agreed to by the applicant. A subcommittee report was presented to the full Commission on January 23, 1992. At this meeting, the Commission unanimously voted to approve the project as a DRI, subject to conditions.

Materials submitted for the record include:

- Development of Regional Impact Exemption application and supporting documents, received November 13, 1991
- Development of Regional Impact application and supporting documents, received November 8, 1991
- letter from Horsley Witten Hegemann, Inc. re: observation well data, dated December 18, 1991
- application to Massachusetts Natural Heritage and Endangered Species Program, dated November 21, 1991
- supplemental DRI application information, dated November 21, 1991
- application for tentative approval of preliminary plan filed with the town of Barnstable, MA dated November 8, 1991
- Preliminary plan of land, dated July 31, 1989 and revised through October 12, 1989, Baxter & Nye, Inc., Osterville, MA
- Plot plan of land, dated July 31, 1989 and revised through March 4, 1991, Baxter & Nye, Inc., Osterville, MA
- Plan of land, dated July 29, 1991, and revised December 30, 1991, Baxter & Nye, Inc., Osterville, MA

Additional materials:

- Cape Cod Commission staff reports dated November 27, 1991 and January 2, 1992
- Cape Cod Commission subcommittee report dated January 16, 1992
- letter from Massachusetts Historical Commission, dated December 24, 1991
- letters from town of Barnstable Department of Planning and Development, received November 5, 1991, and October 16, 1991
- letter from town of Barnstable Department of Public Works, received November 5, 1991
- letter from town of Barnstable office of Town Manager, received October 16, 1991
- DRI referral form, received October 16, 1991
- letter from the Association for the Preservation of Cape Cod, Inc., dated December 11, 1991

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

Attorney James McGillen, for the applicant, stated that the applicant proposes to subdivide his

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property into four lots for future use by members of his family. There were no plans to sell the lots or propose construction at this time. He stated that by limiting the development to four lots, existing views from Route 6A will remain intact. Due to the limited nature of the development proposed, Mr. McGillen believed that the project should be granted a DRI Exemption under Section 12(k) of the Act.

Issues presented in the Commission staff report included a review of the project in terms of conformance with the Regional Policy Plan (RPP). It was noted by staff that the RPP requires a 100-foot wide wetland buffer and recommended that the applicant delineate building envelopes on the plan to provide this buffer. Several measures to mitigate encroachment on the buffer where such buffer was already developed were also noted. Donation of the wetlands to a conservation trust was considered by the applicant but was not offered as part of the application at this time.

The applicant was asked to submit an application to the Massachusetts Natural Heritage and Endangered Species Program, as the coastal wetlands located on the project site were within an estimated habitat for rare species. Mass. Natural Heritage determined that no detrimental impact to rare species habitat would result from the limited development proposed.

The applicant was also required to submit a Project Notification Form to the Massachusetts Historical Commission (MHC). MHC determined that the project area was considered to possess a strong likelihood for containing significant archaeological deposits, and therefore recommended that an intensive archaeological survey be conducted before any site preparation or construction work was undertaken. In light of the MHC determination regarding archaeological deposits, staff recommended that the exemption request be denied and the applicant proceed directly to review as a DRI to address this issue.

The applicant withdrew the DRI Exemption request at the continued public hearing held on December 19, 1991. Mr. McGillen noted that he would prefer a DRI approval to an exemption since it would be valid for seven years rather than three years. In consideration of a DRI approval, the applicant agreed to provide a 100-foot wide undisturbed buffer from all vegetated wetlands. The applicant requested that the buffer for one lot be limited to 50 feet. This limitation was allowed by the subcommittee due to previous development within the 100-foot buffer on this lot. The applicant offered to plant vegetation along the pond to help mitigate encroachment on this buffer. The applicant also agreed to conduct an archaeological survey prior to any construction activity.

Based upon testimony received at the public hearings and application materials provided by the applicant, the subcommittee voted unanimously on December 19, 1991 to recommend to the full Commission that the Hayes Subdivision be granted approval as a DRI with conditions. At the January 23, 1992 full Commission meeting, Ms. Victoria Lowell (subcommittee chair) gave the subcommittee report to the full Commission. At this meeting, the Commission voted unanimously to accept the recommendation of the subcommittee and voted to approve the project with conditions.

JURISDICTION

The Hayes Subdivision qualifies as a DRI under Section 12(c)(3) of the Cape Cod Commission Act (Act) as "any development which proposes to divide land of fifty acres or more which was in common ownership as of January 1, 1988.

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FINDINGS

The Commission has considered the application of Mr. & Mrs. William Hayes for the proposed residential subdivision in Barnstable, 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). Approximately twenty-eight acres of the sixty-two acre site consists of saltwater marsh/wetlands which are included within the Sandy Neck Barrier Beach Area of Critical Environmental Concern and are listed with the Massachusetts Natural Heritage and Endangered Species Program as containing rare species habitat. The proposed development's proximity to these regional natural and coastal resources make its location one of regional concern.
- 2). One of the purposes of the Cape Cod Commission is to further the preservation of archaeological values. The Massachusetts Historical Commission (MHC) determined that the project area is considered to possess a strong likelihood for containing significant archaeological deposits and therefore recommended that an intensive archaeological survey be conducted before any site preparation or construction work is undertaken.
- 3). The applicant proposed to restrict development of the site to four lots in order to minimize potential adverse impacts to the natural resources of the site.
- 4). The applicant agreed to provide a 100-foot wide undisturbed buffer from all vegetated wetlands associated with the project. The Applicant also agreed to provide a 100-foot wide undisturbed buffer from the pond on Lot #1 and a 50-foot wide undisturbed buffer from the pond on Lot #4. The limitation of a 50-foot buffer on Lot #4 was allowed due to previous development, including the paved access drive, within the 100-foot buffer on this lot.
- 5). An existing twelve-foot driveway is proposed to serve the four-lot subdivision. Improvements to this driveway would be limited to minor resurfacing if required by the town of Barnstable. This proposal will provide the minimum amount of impact to the site's wetland resources. It will also require a waiver from the Barnstable Planning Board's subdivision regulations.
- 6). In order to help mitigate encroachment on the pond's buffer on Lot #4, the Applicant agreed to plant vegetation designed to reduce runoff to the pond.
- 7). The future donation of the wetlands to a private conservation trust is being considered by the applicant. Such a donation would further ensure protection of sensitive natural and coastal resources found on the project site and is strongly encouraged.
- 8). The applicant is required to obtain a Massachusetts Department of Public Works curb cut permit for the existing driveway opening.
- 9). An existing disposal area was partially located within the coastal wetlands found on the project site. The applicant agreed to remove a portion of an existing disposal area on the project site in order to help mitigate impacts to these wetlands and to limit nitrate-nitrogen loading. The

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applicant will work with the Barnstable Conservation Commission regarding the removal of this area.

10). Minimum performance standards of the Regional Policy Plan require that nitrate-nitrogen loading not exceed 5 ppm. The proposed development of four single-family homes conforms to this minimum performance standard. However, if loading from horses kept on the site is included, nitrate-nitrogen loading will exceed 5 ppm. Therefore, the applicant agreed that no more than thirteen horses shall be kept on the property at any one time in order to maintain nitrate-nitrogen loading below 5 ppm.

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 facts that the project will provide the following benefits: limited development of approximately 32 acres of upland into four single-family residential lots; protection of coastal wetlands through provision of a 100-foot wide undisturbed buffer from all vegetated wetlands; planting of vegetation to reduce runoff to the pond; removal of a portion of an existing disposal area; limited driveway width to preserve the rural character of the site. These benefits outweigh the detriment of providing only a 50-foot wide undisturbed buffer to the pond for lot #4.

The project is consistent with the Minimum Performance Standards of the Regional Policy Plan.

The proposed project is not consistent with town of Barnstable Subdivision Regulations. Commission approval is granted with the understanding that it is necessary for the Applicant to obtain a waiver from the town of Barnstable's Subdivision Rules and Regulations for the proposed driveway width. The granting of this waiver, however, will not create a regional impact.

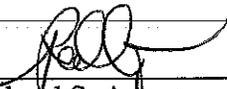
The Commission hereby approves with conditions the proposed Hayes Subdivision in Barnstable, MA as a Development of Regional Impact, pursuant to Section 13 of the Act, provided that the following conditions are met:

- 1). Plans submitted 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, including a Massachusetts Department of Public Works curb cut permit.
- 4). The Applicant shall provide a 100-foot wide undisturbed buffer from all vegetated wetlands associated with the project, as shown on the preliminary subdivision plan dated July 29, 1991 and revised December 30, 1991 by Baxter & Nye, Inc., Osterville, MA. No development activity, as defined by Section 2(e) of the Cape Cod Commission Act, shall occur within this buffer area.

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- 5). The Applicant shall provide a 100-foot wide undisturbed buffer from the pond on Lot #1 and a 50-foot wide undisturbed buffer from the pond for Lot #4, as shown on the preliminary subdivision plan dated July 29, 1991 and revised December 30, 1991 by Baxter & Nye, Inc., Osterville, MA. No development activity, as defined by Section 2(e) of the Cape Cod Commission Act, shall occur within this buffer area.
- 6). No further subdivision of the property shall be pursued by the Applicant, his heirs, successors or assigns. A restriction shall be placed on all deeds pertaining to the subject property for the purpose of restricting further subdivision of the subject property for a period of fifty (50) years. A re-statement of this restriction shall be included on the final subdivision plan submitted to Barnstable Planning Board for approval. Within thirty (30) days of endorsement of the final subdivision plan by the Barnstable Planning Board, the Applicant shall return to the Cape Cod Commission a copy of finalized plans, written documentation of this restriction and proof of recording with the Registry of Deeds.
- 7). The Applicant shall plant vegetation subject to the direction of the Barnstable Conservation Commission along the edge of the pond to help mitigate encroachment on the pond's buffer to Lot #4. This vegetation will be designed to reduce runoff to the pond. The plant material selected for this purpose will also be subject to the recommendations of the Barnstable Conservation Commission.
- 8). The Applicant shall remove that portion of the disposal area required by the Barnstable Conservation Commission.
- 9). The driveway to serve the proposed subdivision shall be limited to its present twelve-foot width with driveway improvements limited to minor resurfacing, if required by the town of Barnstable. Any proposed widening of the driveway shall require additional review by the Commission.
- 10). No more than thirteen horses shall be kept on the property at any one time.
- 11). The Massachusetts Historical Commission (MHC) finds that the Hayes Subdivision project area possesses a strong likelihood for containing significant archaeological sites and possibly unmarked human burials. The Applicant shall complete an intensive (locational) archaeological survey (950 CMR 70) in compliance with M.G.L. Chapter 9, Sections 26-27C, and Implementing Regulations (950 CMR 71). The goal of the survey shall be to locate and identify archaeological sites and unmarked burials which may be affected by the proposed development. No development activities, as defined by the Cape Cod Commission Act, c. 716 of the Acts of 1989, as amended, Section 2(e), shall take place until such survey is completed to the reasonable satisfaction of the Cape Cod Commission in consultation with MHC. If archaeological sites are identified in project impact areas, the applicant shall consult with the Cape Cod Commission and MHC regarding ways to avoid or mitigate any adverse effects to significant archaeological properties.

The Commission hereby grants Mr. & Mrs. William Hayes an approval with conditions as a Development of Regional Impact, pursuant to Section 13 of the Act, for a proposed residential subdivision in Barnstable, MA.


Richard S. Armstrong, Chairman

2/6/92
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 6th day of February 1992

Katharine L Peters
Name, Notary Public

My Commission expires: 12/5/97