



CAPE COD COMMISSION

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Date: October 21, 1993

To: Leslie Medieros
Trustee
Silver Lake Realty Trust
P.O. Box 1258
Pocasset, MA 02559

From: Cape Cod Commission

Re: Development of Regional Impact Hardship Exemption
Cape Cod Commission Act, Section 23

Applicant: Silver Lake Realty Trust

Project #: HDEX # 93010

Project: Bournedale Hills Subdivision (part)
Edgehill Road off Route 6 Scenic Highway
Bourne, MA

Map/Parcel: Book 7562, Page 252
Map 16, Lots 6, 20-27, 42, 46-60, 68-75, 78-86

DECISION OF THE CAPE COD COMMISSION

Summary

The Cape Cod Commission (Commission) hereby denies the application of Silver Lake Realty Trust, for a Development of Regional Impact Hardship Exemption under Section 23 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the development of 42 subdivision lots in Bourne, MA. The decision is rendered pursuant to the vote of the Commission on October 21, 1993.

Project Description

A 67 lot, 56-acre subdivision, known as Bournedale Hills, received definitive subdivision approval from the Bourne Planning Board on February 5, 1987. Subsequent to this approval, a portion of the roads within the subdivision were developed (Edgehill and Heather Hill Roads, and Crestwood Circle) and some of the lots were released and sold. Seven houses were built within

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the subdivision. Recently, the applicant purchased the lots still in common ownership at foreclosure auction. The Commission's review is limited to these recently purchased unreleased lots, totalling 42 parcels on approximately 33+ acres. The released and conveyed lots within the subdivision are exempt from Cape Cod Commission review under Section 22 of the Act.

The project is located in the Bournedale area of Bourne on the northwesterly side of the Cape Cod Canal along Route 6 (Scenic Highway) approximately halfway between the Bourne and Sagamore Bridges. The subdivision has its sole access through a direct curb cut onto the Scenic Highway which is posted as right turn in/right turn out only. The project site consists primarily of dense scrub pine/oak forest in a rolling topography. Numerous kettle holes dot the parcel. A one-acre working cranberry bog is located adjacent to the subdivision and some of the lots are within the 100' buffer to this cranberry bog. The subdivision is divided down its center by a zoning line with the front portion of the property in the Scenic Development district and the rear portion in the B-2 district. Approximately half of the lots are 1 acre lots, the other half are 1/2 acre lots. The parcel is bounded on three sides by undeveloped land, most of which has been previously approved for residential development.

Procedural History and Testimony

The subdivision has the potential for more than 30 residential units, tripping the DRI threshold at section 12(c)(5) of the Act. The Cape Cod Commission asserted jurisdiction over this subdivision as a Development of Regional Impact under Section 12(h) of the Act by vote on April 29, 1993. Subsequently, the applicant applied for a hardship exemption pursuant to Section 23 of the Act.

This project was heard concurrently with the proposed Cranwood subdivision. The Subcommittee held public hearings on this project on June 22, 1993 and July 14, 1993. On July 14, 1993 the subcommittee closed the public hearing on the hardship exemption. The applicant subsequently provided additional information and agreed to an extension of the Commission's decision time for the hardship exemption to October 29, 1993. The public hearing on the hardship exemption was renoticed and reopened on September 9, 1993 to accept new information. The hardship exemption hearing was closed on September 9, 1993.

At the June 23, 1993 public hearing, Haydon Coggeshall and Jim Malatos, Board of Selectmen, stated that the Board is in favor of the granting of a hardship exemption for the project because it would be in the best interest of the community. Ray Parrott Sr., Buzzard Bay Water Commission, said his commission had a concern with the water pressure for the area. Bill Norman, Planning Board, said he felt the Commission should not allow this project to go forward without making the proper improvements. John Santos, Water Commission, also had concerns with the water pressure in the area. Gus Wagner Sr., former Water Commissioner, noted this project should be required to put in a pumping station before any lots are developed.

Richard Petizilli, abutting property owner, spoke in favor of this project. Kevin McKlen, resident, also spoke in favor of the project. Sally Bedugnis, resident, said traffic is her major concern. But she felt the applicant could do a better job with the development if they were allowed to proceed. Joan Downes, resident, also spoke in favor of the project. Kenny Ward, Seaside Homes Builders, spoke in favor of the project. Mark Solobel, local developer, also spoke in favor of the project. Jermone Beard, abutting property owner, spoke in favor of the project. Joan Brady, resident, said

she would like to see the development go forward but she feels something needs to be done about the traffic safety issue because she was almost rear ended just trying to take a right hand turn. Bob Chase, resident, spoke in favor of the project.

At the July 14, 199 public hearing, Representative Thomas Cahir spoke in favor of the project; from the testimony he has heard he feels a hardship may exist for the project. He informed the subcommittee that Volmer Associates is undertaking the state traffic study of the scenic highway. He noted the study should be finished within sixty days. Bill Norman, Planning Board member, said a traffic study for this project was needed and some improvements should be made. Charles Wallman, a builder, said that people understand the traffic issues they are buying into with these projects. Richard Petizilli, property owner in the area, asked if traffic signals would be required. John A. Santos, Planning Board member, spoke about the traffic issues along the Scenic Highway.

At the September 9, 1993 Public Hearing, Hayden Coggleshall, Board of Selectmen, spoke about the traffic concerns along the scenic highway. He said again that his board is in favor of granting the hardship exemption.

Submittals for the Record

The application and notices of public hearings relative thereto, the Commission's staff reports, 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.

Town Submittals

Letter to Daniel Creedon, Atlantic Homes from Whitman & Howard, re: water system, dated September 11, 1987

Memo to Town Boards from John Sanna, Water Superintendent, re: water connections dated October 22, 1987

Supplemental Covenant Agreement, executed May 25, 1988

Letter to Board of Selectmen from Water Commissioners, re: subdivisions, dated July 11, 1988

Letter to Board of Selectmen from Water Commissioners, re: completion of conditions, dated September 2, 1988

Letter to Planning Board Chair from Water Commissioners, re: withholding building permits, dated, June 12, 1989

Letter to Paul Medieros from John Tracy, Tracy and Lucey Co. Inc., re: pump station dated March 26, 1991.

Letter to Planning Board from Water Commissioners, re: denial of lot releases, dated Feb. 24, 1993.

Letter to Planning Board from J. Ford O'Connor re: lot releases, dated February 25, 1993.

Letter to Planning Board from Fire Chief re: water pressure problems, dated March 4, 1993 with attachments

Letter to Planning Board from Highway Surveyor re: estimate of remaining work, dated April 8, 1993.

Letter from Planning Board re: outstanding subdivisions dated April 27, 1993

Memo from Michael Leitzel to Board of Selectmen re: corridor study dated March 10, 1993

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Letter from Board of Selectmen to MDPW re: corridor study w/ attachments dated August 28, 1990.

Submittals from the Applicant

Hardship Application, DRI Application and supporting materials
 Extension of Time Limit for Decision to October 29, 1993, signed August 8, 1993
 Letter transmitting supplemental traffic studies dated August 8, 1993
 -Bournedale Hills Subdivision Traffic Study and Report, October 1986
 -Cape Cod Traffic Counting Report 1992, January 1993
 -Draft Canalscape Subdivision Traffic Study, undated.

Plans

Proposed Subdivision, Bournedale Hills, Bourne, MA, December 8, 1986, approved May 7, 1987; for Bournedale Hills Development Co., by Whitman & Howard, Sheets 1 through 5.
 Preliminary Plan, Bournedale Hills, Bourne, MA, April 24, 1986, by Whitman & Howard, Sheet 1 of 6.
 Property Map, Sheet 16, Town of Bourne (assessor's map), 1991
 Proposed Road Network, Bournedale, Atlantic Design Engineers, February 24, 1989, rev. 2/24/89.

Commission Staff Reports and Correspondence

Letter to Leslie Medeiros dated April 30, 1993
 Letter to Leslie Medeiros dated May 9, 1993
 Letter to Leslie and Paul Medeiros dated June 8, 1993
 Staff Reports, June 17, 1993, July 9, 1993, August 31, 1993
 Letter to William Lyons, Jr. MHD, dated September 2, 1993

Public/Agency Submittals

June 17, 1993 Cape Cod Times articles on Scenic Highway, including accident data
 "Functional Design Report: Route 6 (Scenic Highway) Traffic Safety Improvement Project, Bourne, MA" prepared for Massachusetts Highway Department, August 1993.
 Letter from Massachusetts Historical Commission commenting on project dated August 16, 1993

Jurisdiction

This subdivision meets the threshold identified in Section 12(c)(5) of the Act. This decision applies only to those 42 lots referenced above within the Bournedale Hills subdivision that were not released by the Bourne Planning Board prior to March 27, 1990. The rest of the lots are exempt from Cape Cod Commission review pursuant to Section 22 of the Act.

Findings

The Commission has considered the application of Silver Lake Realty Trust for a hardship exemption. Based on consideration of such application and supporting materials and upon the testimony and information presented at the public hearings, the Commission makes the following findings pursuant to Section 23 of the Act:

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1). The applicant has failed to provide sufficient information to demonstrate compliance with the Regional Policy Plan or to allow the Cape Cod Commission to determine whether the projects derogate from the intent and purpose of the Cape Cod Commission Act or pose a substantial detriment to the public good:

- a). The applicant failed to provide a Traffic Impact and Access study in accordance with Cape Cod Commission guidelines that evaluates the subdivisions' impacts on the Scenic Highway or demonstrates compliance with the Regional Policy Plan.
- b). The applicant has not completed the required Plant and Wildlife Habitat Assessment for the parcels.
- c). The applicant did not submit any information regarding nitrate/nitrogen loading for the proposed subdivisions.

2). The applicant has failed to demonstrate compliance with the Regional Policy Plan:

- a). The applicant failed to demonstrate compliance with section 2.1.1.1 of the RPP which requires that all development meet a 5 ppm nitrate-nitrogen loading standard for impact on groundwater. Although no information was submitted by the applicant, the water resources staff have estimated nitrate-nitrogen loading at 5.4 ppm for the subdivision.
- b). The applicant failed to demonstrate compliance with standards in the Regional Policy Plan relating to provision for alternate modes of transportation (4.1.2.1 and 4.1.2.2) and traffic mitigation (4.1.1.1 and 4.1.1.2).
- c). The applicant failed to demonstrate how the subdivision would comply with section 2.3.1.2 of the RPP which requires an undisturbed 100' buffer to the cranberry bog on an adjacent parcel.
- d). The Cape-wide Open Space Greenbelt extends across the front portion of the Bournedale Hills subdivision. The projects does not comply with section 6.1.1. of the RPP which requires development to cluster away from and maintain this Greenbelt.
- e). The proposed project does not comply with Sections 1.1.2. and 6.1.2. of the RPP which require that applicants for subdivisions of 5 or more lots submit a preliminary cluster development plan.

3). The subdivision is expected to generate 410 trips per day, based on ITE Trip Generation, 5th edition. The sole access for these parcels is provided onto Route 6 (Scenic Highway), a major regional roadway (Class A) under the Regional Policy Plan. Summer traffic volumes on the Scenic Highway exceed 25,000 vehicles per day and there are serious conflicts between through traffic traveling between the Sagamore and Bourne Bridges and local traffic that is turning in and out of site drives and intersections along the road. These conditions have resulted in an average of 28 accidents per year on the Scenic Highway, including fatalities.

4). The curb cut that will serve the subdivision is posted as right turn in/right turn out only, however, it is clear that motorists are turning left at this intersection to avoid lengthy turn-arounds at the rotaries. A short deceleration lane is provided at the curb cut, however, there is no acceleration lane for traffic pulling onto the Scenic Highway.

5). The applicant has offered to provide either 6% open space within the Bournedale Hills subdivision or 10% affordable housing (7 lots) for both the Bournedale Hills and the simultaneously proposed Cranwood subdivisions (TR93011/HDEX93011). The applicant has not documented any efforts

to identify off-site open space or provide funds for such acquisition. Therefore, the project fails to comply with section 6.1.3 (60% open space) and/or 5.1.3 (10% affordable housing) of the Regional Policy Plan.

6). The review period for the project was continued to allow the applicant the opportunity to present the additional information needed in order to demonstrate that the project would not derogate from the intent and purposes of the Act or pose substantial detriment to the public good. No such information was provided.

Conclusion

Based on the findings above, the Cape Cod Commission hereby denies the application for a hardship exemption because granting said hardship may result in substantial detriment to the public good and may nullify or substantially derogate from the intent or purposes of the Act. This conclusion is based on the applicant's failure to provide information regarding the project's regional impacts as outlined in the findings above.

David Ernst
David Ernst, Chairman

10/21/93
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 21st day of Oct 1993

Katharine Y. Peters
NAME, Notary
My Commission expires: _____

Notary Public, State of Massachusetts, Commission Expires October 1, 1997

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