



CAPE COD COMMISSION

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

Date: February 18, 1993
Applicant: Rockland Trust Company
Project #: TR92066

Project: Nightingale Pond Subdivision
Deseret Drive
Bourne, MA

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

Book/Page: Book 7560, Page 157
Map/Parcel: Map 20, Parcel 32

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the Development of Regional Impact (DRI) application of Nightingale Pond Subdivision under Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed subdivision of 15 residential lots and 22 acres of protected open space from an 87-acre tract in Bourne, MA. The decision is rendered pursuant to the vote of the Commission on February 18, 1993.

PROJECT DESCRIPTION

The proposal involves subdivision of an 87-acre tract of land into 15 one-acre residential lots, 22 acres of protected open space, and a 41-acre lot reserved for future development. The residential lots will front on both sides of Deseret Drive, an existing roadway which traverses the property and leads to undeveloped properties to the north. The lot reserved for future development comprises the eastern half of the site and will be accessed via Deseret Drive. Open space is allocated between the house lots and Nightingale Pond to the west of the road, and between the house lots and the lot reserved for future development to the east of the road. The land is zoned Business B-2. The project site is bordered to the southwest by an easement for the Commonwealth of Massachusetts Electric Company. To the north, south, and the east, the site is bordered by previously approved but undeveloped

Nightingale Pond Subdivision - Bourne, MA
DRI Application #TR92066
February 18, 1993 Decision

subdivisions. Access to the site is off of Scenic Route 6, via Nightingale Pond Road. Transportation improvements, affordable housing, and natural resource protections are proposed.

PROCEDURAL HISTORY

The Cape Cod Commission voted to assert jurisdiction over this project on October 2, 1992, pursuant to section 12(h) of the Cape Cod Commission Act, which states "the commission may also review proposed developments that have not been referred by municipal agencies if, in the commission's judgement, the proposed developments meet the standards and criteria for developments of regional impact." The subdivision had been endorsed by the Bourne Planning Board, but it qualifies as a Development of Regional Impact (DRI) pursuant to sections 12(c)(3), (4), and (5) of the Act.

A site visit was conducted by members of the subcommittee, the applicant, and Commission staff on November 18, 1992. A duly noticed public hearing was held on November 18, 1992 by an authorized subcommittee of the Commission in the Bourne Town Hall, Bourne, MA, to consider the DRI application. The public hearing was continued to December 8, 1992 at the same location to receive further testimony. This hearing was then continued to January 19, 1993 at the Commission offices, at which time the subcommittee voted to close the hearing. The record was left open until 4:30 pm on January 29, 1993.

Based on the testimony received at the public hearings, application materials submitted by the project proponent, information provided by town officials, and supporting technical information provided by staff, the subcommittee voted on January 19, 1993 to recommend to the full Commission that the subdivision proposal be approved as a DRI, subject to conditions.

Materials submitted for the record:

- DRI Application, Nightingale Pond Subdivision, Rockland Trust Company, received October 16, 1992.
- Site plans, Atlantic Design Engineers, Inc., dated 10/15/92.
- Environmental Information Report, Atlantic Design Engineers, Inc., received November 4, 1992.
- Traffic Impact Assessment, Atlantic Design Engineers, Inc., received November 4, 1992.
- Wildlife and Habitat Assessment, Lelito Environmental Consultants, received November 4, 1992.
- Wetland plans, Atlantic Design Engineers, Inc., dated 11/18/92.
- Letter regarding project impact on archeological resources from Massachusetts Historical Commission, dated November 30, 1992.
- Letter and draft site plans for five alternative subdivision options from H. Jay Carney, Rockland Trust Company, dated December 2, 1992.

Nightingale Pond Subdivision - Bourne, MA
DRI Application #TR92066
February 18, 1993 Decision

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Nightingale Pond Subdivision - Bourne, MA
DRI Application #TR92066
February 18, 1993 Decision

- Letter and related documents regarding off-site affordable housing proposal from H. Jay Carney, Rockland Trust Company, dated December 16, 1992.
- Revised site plans, Atlantic Design Engineers, Inc., dated 12/17/92.
- Letter regarding acceptance of wetland delineation plans from Bourne Conservation Commission, dated January 7, 1993.
- Letter and related documents regarding off-site affordable housing proposal and other outstanding issues from Richard J. Tabaczynski, Atlantic Design Engineers, Inc., dated January 13, 1993.
- Revised site plans, Atlantic Design Engineers, Inc., dated 1/13/93.
- Letter regarding the applicant's construction of signage and donation to an escrow account from Richard J. Tabaczynski, Atlantic Design Engineers, Inc., dated February 17, 1993.

Additional Materials:

- Public Hearing Minutes, dated November 18, 1992, December 8, 1992, January 19, 1993.
- Cape Cod Commission Staff Report, dated November 12, 1992.
- Cape Cod Commission Staff Report, dated December 4, 1992.
- Cape Cod Commission Staff Report, dated January 14, 1993.
- Cape Cod Commission Subcommittee Report, dated January 29, 1993.
- Comments on Selection of Development Option for Nightingale Pond Subdivision from David Kellogg, Yarmouth member of Cape Cod Commission, dated February 4, 1993.
- ANR applications endorsed by the Bourne Planning Board on 8/13/92 and 9/24/92.
- Letter and related article regarding off-site affordable housing proposal from William E. Holden, Chairman, Bourne Planning Board, dated January 19, 1993.
- Letter regarding traffic safety concerns from Jeffrey T. Krumrine, abutter, received January 18, 1993.

The application and notices of public hearings relative thereto, the Commission's staff notes, exhibits and correspondence, the 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 18, 1992 public hearing, Ford O'Connor, attorney for Rockland Trust Company, and Richard Tabaczynski, Atlantic Design Engineers, gave oral testimony describing the project. Bill Holden, Bourne Planning Board, commented on the need for an integrated road system in the area of this development. Commission staff reported concerns regarding site design, natural resources, open space allocation, and traffic mitigation. Staff also noted the need for more information regarding affordable housing. Questions from the subcommittee focused on traffic mitigation and site

design. Staff proposed that the applicant meet with Commission staff to determine additional site plan designs to be submitted. The public hearing was continued to December 8, 1992.

At the December 8, 1992 public hearing, Ford O'Connor presented the five site plan options submitted by the applicant. Staff stated its recommendation that "option A" or "option B" be approved and reported that the affordable housing issue remained unresolved. The subcommittee voted to recommend that the applicant proceed with the intention of developing site plan "option E" and continued the public hearing to January 19, 1993.

At the January 19, 1993 public hearing, Ford O'Connor presented the applicant's off-site affordable housing proposal. Commission staff recommended that the subcommittee reject the off-site proposal in favor of on-site affordable housing lots. The subcommittee concurred and directed the applicant to meet with Commission staff to determine an acceptable on-site affordable housing proposal. The subcommittee instructed staff to write a subcommittee report recommending approval of the project, subject to the resolution of the affordable housing issue. The hearing was closed January 19, 1993, with the record left open until January 29, 1993.

JURISDICTION

The proposed Nightingale Pond Subdivision qualifies as a DRI under Sections 12(c)(3), (4), and (5) of the Act as defined below:

12(c)(3) - "Any development which proposes to divide land of fifty acres or more which was in common ownership as of January 1, 1988."

12(c)(4) - "Any development which proposes to divide land of fifteen acres or more which was in common ownership as of January 1, 1988 and which was the result of an earlier subdivision within the last seven years."

12(c)(5) - "Any development which proposes to divide land in common ownership into thirty or more residential dwelling units or ten or more business, office or industrial premises."

FINDINGS

The Commission has considered the application of Rockland Trust Company for the proposed Nightingale Pond Subdivision 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.) To comply with RPP standard 5.1.3 (provision of affordable housing) the applicant has agreed to make available two homes on lots located on Deseret Drive at a sales price which is affordable for a household at 80% of Bourne's median income. Further, the applicant agrees that the monthly mortgage

Nightingale Pond Subdivision - Bourne, MA
DRI Application #TR92066
February 18, 1993 Decision

payments (including amount of principal, interest, taxes and insurance - PITI) will not exceed 30% of the prospective home owner's gross monthly income.

- 2.) The Commission has established that 80% of the median income for a household in the town of Bourne is \$27,327. The Commission has also identified the maximum monthly PITI for the two affordable housing properties to be \$683.18.
- 3.) The proposed project site contains several distinct ecological areas, including Nightingale Pond and associated fringing wetlands, upland mixed hardwood forest, and several small wetland and cranberry bog areas. Development of the site will fragment this habitat, ultimately reducing the population size of some of the species on the site.
- 4.) In the current site plans, the applicant has not addressed or mitigated the impacts of development of the 41 acres proposed for future development. Development of these remaining 41 acres, Lot 19, shall be reviewed by the Cape Cod Commission.
- 5.) There are large specimens of pine located on the project site which should be left undisturbed during the clearing of the lots. The applicant submitted a tree location plan mapping those trees with a circumference over 42 inches on January 19, 1993.
- 6.) The project will provide 22 acres of protected open space outside of the individual residential lots, exceeding the 60% upland open space requirement described in RPP policy 6.1.3.
- 7.) The applicant has contacted the Bourne Conservation Land Trust, which has verbally agreed to accept the designated open space lots 16, 17, and 18. (Letter from applicant dated January 13, 1993)
- 8.) Access to the proposed project is via Deseret Drive, an existing 30-foot wide paved road with a sidewalk on one side, all within a 50-foot wide layout. Deseret Drive intersects with Nightingale Pond Road, which enters onto the Scenic Highway, a Major Regional Roadway under the RPP. Deseret Drive was constructed by the Massachusetts Department of Public Works (now the Massachusetts Highway Department) in conjunction with the construction of Route 25.
- 9.) The proposed 15 house lots are expected to generate approximately 180 vehicle trips per day (90 in/90 out). Level-of-service analyses were performed at the Nightingale Road/Scenic Highway intersection and on two segments of the Bourne Rotary. For the 15 lot proposal, the analysis identified poor operating conditions for vehicles turning left from Nightingale Pond Road

onto the Scenic Highway. RPP minimum performance standards were maintained at the Rotary locations.

10.) To comply with RPP standard 4.1.1.2 (mitigation of impacts), the applicant's engineer recommended restricting left turns out of Nightingale Pond Road by constructing an island and installing appropriate signage. The applicant is willing to pay for and construct this safety improvement. Construction of the channelization island requires Massachusetts Highway Department approval. The Bourne rotary provides a relatively convenient way for drivers heading north and east to reverse direction.

11.) The Massachusetts Highway Department determined that additional right-of-way acquisition is needed to construct the channelization island to their standards. Due to the right of way limitation, the Massachusetts Highway Department will only permit signage to restrict left turns from Nightingale Pond Road onto the Scenic Highway.

12.) Development of the remainder of the site will require more substantial mitigation. The applicant identified the potential need for a left turn lane and a right turn deceleration lane at the Scenic Highway/Nightingale Pond Road intersection, and a median strip on the Scenic Highway in the vicinity of Nightingale Pond Road.

13.) A letter and newspaper article expressing safety concerns over access and travel on the Scenic Highway in general were received from the Town of Bourne Planning Board. A letter discussing safety at the intersection of Nightingale Pond Road and the Scenic Highway was received from Jeffrey Krumrine, a project abutter. In addition, there was additional testimony received during the hearing and review process regarding safety concerns on the Scenic Highway.

14.) In addition to installing appropriate signage and pavement markings to prohibit left turns from Nightingale Pond Road onto the Scenic Highway, the applicant agrees to place \$7,500 in an escrow fund to be used for any purpose related to improving traffic operations and safety on the Scenic Highway. This will comply with RPP standard 4.1.1.2. (Letter from applicant dated February 17, 1993)

15.) In accordance with RPP standard 4.1.2.1 (provision of alternate transportation modes), the applicant has agreed to provide an easement for the future construction of a bus shelter on the east side of the intersection of Nightingale Pond Road and Deseret Drive.

16.) Also in accordance with RPP standard 4.1.2.1, the applicant has agreed to provide a 20-foot wide easement for the future construction of a

bicycle/pedestrian path, beginning at Nightingale Pond Road, near the intersection with Deseret Drive, and continuing adjacent to Clay Pit Road Ancient Way along the site's eastern property line to New Way Road Ancient Way. The easement is approximately 3,800 feet long.

17.) The applicant has proposed seven shared driveways for adjacent house lots to reduce the number of curbcuts on Deseret Drive. This will result in fewer conflict points on Deseret Drive than would result with individual driveways.

18.) The Bourne Conservation Commission, at their January 6, 1993 meeting, agreed with the delineation of the wetland boundaries of Nightingale Pond as shown on the applicant's revised wetland plans dated November 18, 1992.

19.) In accordance with RPP section 2.1.1.2.B.1, the applicant must adhere to a 300 foot septic setback from Nightingale Pond unless more detailed water table map information is provided to the Cape Cod Commission to document the delineated groundwater flow lines.

20.) The applicant has indicated the boundaries of the 300 foot septic setback from the edge of the pond, the 150 foot septic setback from the edge of wetlands, the 100 foot undisturbed buffer from the edge of wetlands, and the 200 foot building setback from the edge of the active cranberry bog on the site plans. Lots 9, 10, 11, 12, 14, and 15 are located partially or substantially within these buffers. Deed restrictions will be placed on these lots to insure that no building will occur in contravention with these setbacks.

21.) The proposed project complies with RPP section 2.1.1.1, which states that all development and redevelopment shall not exceed a 5 ppm nitrate-nitrogen loading standard for impact on ground water. The proposed development results in approximately 3.05 ppm loading concentration.

22.) Stormwater from Deseret Drive is currently discharged through a concrete pipe and a short vegetated swale into Nightingale Pond. Existing drainage meets RPP Policy 2.3.1.4, which prohibits the direct discharge of untreated stormwater into wetlands and waterbodies.

23.) The quantity of solid waste generated by the proposed residential properties is estimated by the project consultant to be 400 cubic yards of waste per year. This amount can be adequately handled through the town of Bourne's solid waste collection service and mandatory recycling program.

CONCLUSIONS

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

The benefits of the proposed project outweigh the detriments. This conclusion is supported by the fact that the project will provide the following benefits: two units of affordable housing located within the proposed residential development; 22 acres of permanently protected open space; and preservation of designated trees with a circumference over 42 inches. While the project is expected to generate approximately 180 vehicle trips per day, the following improvements satisfactorily mitigate the impact of these trips: donation of a land easement for the future construction of a bus shelter, donation of a land easement for the future construction of a bicycle/pedestrian path, a \$7,500 donation to be used for any purpose related to improving traffic safety or operations on the Scenic Highway, and construction of signage and pavement markings to restrict left turns from Nightingale Pond Road onto the Scenic Highway. Construction of signage restricting left turns will improve safety and service levels at this intersection.

The project is consistent with the Minimum Performance Standards of the Regional Policy Plan, as shown in findings 1, 6, 10, 14, 15, 16, 21 and 22. The project is consistent with local development bylaws and regulations.

The Commission hereby approves with conditions the proposed Nightingale Pond Subdivision in Bourne, MA as a DRI, pursuant to Section 13 of the Act, provided that the following conditions are met:

PROCEDURAL

- 1.) Plans and written materials submitted shall become part of the written decision and any changes to these plans shall be approved by the Cape Cod Commission or its designee. The plans approved with this decision are dated September 12, 1992, revised January 13, 1993.
- 2.) The applicant shall obtain a Certificate of Compliance for Phase I of the development (four residential lots, including two affordable housing lots) from the Commission prior to the conveyance of these four lots or the issuance of any building permits. All conditions listed below, with the exception of #18 (construction of signage and pavement markings to restrict left turns) shall be completed, and shall be reviewed and approved by Commission staff, prior to issuance of a Certificate of Compliance for Phase I.
- 3.) The applicant shall obtain a Certificate of Compliance for Phase II of the development (11 remaining residential lots) from the Commission prior to the conveyance of the 11 lots or the issuance of any building permits. All conditions listed below shall be completed, and shall be reviewed and

Nightingale Pond Subdivision - Bourne, MA
DRI Application #TR92066
February 18, 1993 Decision

approved by Commission staff, prior to issuance of a Certificate of Compliance for Phase II.

- 4.) A Certificate of Occupancy for Phase I buildings cannot be issued until a Certificate of Compliance for Phase II is received.
- 5.) All future subdivision or development of the 41 acre lot, Lot 19, shall be reviewed by the Cape Cod Commission, regardless of size. This information shall be shown on the recorded plans.
- 6.) No conveyance of land shall occur except as shown on the plan approved by the Commission dated January 13, 1993.
- 7.) The applicant shall be responsible for reimbursement of costs to the Cape Cod Commission subsequent to the decision, including but not limited to costs of advertisement.

AFFORDABLE HOUSING

- 8.) The applicant shall make available two homes on lots located on Deseret Drive at a maximum sales price of \$83,900. Further, the applicant shall provide 30-year fixed rate financing at an interest rate not to exceed 7.75%. The applicant shall waive all closing costs and accept a minimum downpayment of 5% (2 1/2% of which can be in the form of a gift).
- 9.) The applicant shall submit a marketing plan for the affordable housing lots to the Commission for its approval. The marketing plan shall include, but not be limited to, the selection process, outreach plan and affirmative action plan.
- 10.) Prior to the signing of a Purchase and Sales Agreement between the applicant and a prospective buyer of one of the affordable housing lots, the applicant shall provide the Commission with documentation establishing compliance with the income restrictions set forth in Findings #1 and 2.
- 11.) The applicant shall submit to the Commission for its approval deed restrictions that ensure the properties will remain affordable in compliance with the income restrictions set forth in Findings #1, 2, and RPP standard 5.1.9.
- 12.) The applicant may submit to the Commission for its approval alternative financing packages which allow for a higher sale price of the above mentioned units, but maintain compliance with Findings #1, 2, and the RPP. At a minimum, such alternative financing shall include 30-year fixed rate financing at an interest rate not to exceed 7.75%, waiver of all closing costs,

including Private Mortgage Insurance, and a minimum downpayment of 5% (2 1/2% of which can be in the form of a gift).

LAND USE/NATURAL RESOURCES/OPEN SPACE

13.) The designated open space lots 16, 17, and 18 shall remain permanently protected open space and shall be conveyed to the Bourne Conservation Land Trust, or other agency approved by the Cape Cod Commission, solely for this purpose. All land within 100 feet of wetlands and Nightingale Pond shall remain undisturbed per RPP Policy 2.3.1.2.

14.) Deeds on Lots 9, 10, 11, 14, and 15, which are located partially or substantially within the setback and buffer zones, shall state that no subsurface disposal system shall be permitted within 300 feet of mean high water or fresh water ponds in accordance with RPP section 2.1.1.2.B.1 (unless the applicant demonstrates by a groundwater study that the site is not within the fresh water recharge area). Deeds shall also indicate the 150 foot septic setback from the edge of wetlands, the 100 foot undisturbed buffer from the edge of wetlands, and the 200 foot building setback from the edge of the active cranberry bog.

15.) Deeds on Lots 1 - 8 and 10 - 15 shall state that their access off of Deseret Drive is through driveways shared with adjacent lots, as shown on the site plan.

16.) Trees with a circumference measuring over 42 inches and mapped on a plan approved by Commission staff shall not be removed or disturbed, with the exception of pruning or removal of dead and diseased trees. Fill and soil compaction shall not occur within the area beneath the crown of these trees. A plan showing these trees shall be recorded with the decision.

TRANSPORTATION

17.) The applicant shall obtain written confirmation from the Massachusetts Highway Department and the Town of Bourne that permits will be issued to allow construction of appropriate signage and pavement markings to prohibit left turns from Nightingale Pond Road onto the Scenic Highway. The signage and pavement markings shall be in accordance with the Manual on Uniform Traffic Control Devices.

18.) The applicant shall construct the signs and pavement markings to restrict left turns out of Nightingale Pond Road onto the Scenic Highway as specified in condition #17. Construction shall be complete within 6 months of the issuance of this decision.

19.) The applicant shall contribute to an escrow fund held by the Cape Cod Commission \$7,500 to be used for any purpose related to improving traffic

safety or traffic operations on the Scenic Highway. The applicant shall make such contribution to the escrow fund pursuant to an escrow agreement, which shall be of 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 the fund upon the vote of the Executive Committee and upon the recommendation of the Executive Director of the Commission. Potential uses of the escrow fund shall include, but not be limited to, efforts related to planning, studying, engineering, maintenance, design or construction, and shall be determined by the Executive Committee upon recommendation of the Executive Director of the Commission. Any funds not expended within 15 years of the date of the escrow agreement shall revert to the Cape Cod Regional Transit Authority or other public transportation agency identified by the Commission.

20.) The deed which conveys the open space lots to the Bourne Conservation Land Trust, or other agency approved by the Cape Cod Commission, shall provide a meets and bounds description of the area designated for future construction of the bus shelter. The deed shall state that upon construction of the bus shelter, the land may be acquired by the Cape Cod Regional Transit Authority or other appropriate transportation agency.

21.) The applicant shall deed to the Bourne Board of Selectman and the Bourne Conservation Commission, or other suitable organization approved by the Commission, the 20-foot wide easement stretching from Nightingale Pond Road to New Way Road Ancient Way described on the site plan dated September 12, 1992, revised January 13, 1993. Said easement shall be held for the purpose of creating a future access way for non-motorized use (including but not limited to bicycle, pedestrian, equestrian and/or other appropriate uses) and form and content shall be approved by Commission staff. The easement may be transferred by the Town of Bourne to a Cape Cod Commission-approved governmental or private entity for the purpose of creating, operating and/or maintaining a public access way. Nothing in this condition shall be construed to require the Town of Bourne to create, operate and/or maintain an access way. That portion of this easement which is within the area designated for future development may be counted toward the required set-aside of protected open space when that area comes before the Commission for review.

WATER RESOURCES

22.) In accordance with RPP Policy 2.3.1.4, future drainage construction shall not directly discharge untreated stormwater into Nightingale Pond. The runoff shall be diverted to a retention area or vegetative swale prior to pond discharge.

The Commission hereby grants Rockland Trust Company an approval with conditions as a Development of Regional Impact, pursuant to Section 13 of the Act, for the proposed Nightingale Pond Subdivision. This approval shall be valid for seven years from the date of the decision.

Alix Ritchie

Alix Ritchie, Chair

2/18/93

Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 18th day of Feb 1993.

Katharine G Peters

Name, Notary Public

My Commission expires:

My Commission Expires December 3, 1997

Nightingale Pond Subdivision - Bourne, MA
DRI Application #TR92066
February 18, 1993 Decision