



CAPE COD COMMISSION

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DATE: June 23, 1994

TO: Attorney Ford O'Connor

FROM: Cape Cod Commission

RE: Jurisdictional Determination, Section 12(j), Cape Cod Commission Act

PROJECT #: JD94009

PROJECT: HILLCREST FARMS ESTATES SUBDIVISION

APPLICANT: Mario and Margaret Tonello

LOT/PARCEL: Land Court Certif. No. 122809

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby finds, pursuant to Sections 12(j), 12(c) and 22 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, that the Hillcrest Farms Estates Subdivision (the "Project"), a proposed 39 lot subdivision in Bourne, MA, is a Development of Regional Impact and is not exempt from Commission review. The decision is rendered pursuant to a vote of the Commission on June 23, 1994.

PROJECT DESCRIPTION

The Project consists of approximately 39 acres of land subdivided into 39+ lots and a road system for residential purposes, located off Route 3A in North Sagamore. The proposal is for a grid subdivision with on-site septic disposal.

PROCEDURAL HISTORY

The definitive subdivision plan for the Project was approved by the Bourne

Hillcrest Farms Estates
Jurisdictional Determination 6/23/94.

Planning Board on 9/10/87 and later revised and approved on 1/28/88. A curb-cut permit was obtained for the Project on 1/6/89, and was extended until 12/31/90. On 5/2/88 the applicant filed a Notice of Intent with the Bourne Conservation Commission (BCC) for a 20,756 square foot portion of the Project known as Lot "A". An Order of Conditions was issued by the BCC on 6/15/88, was extended on 6/15/91, and subsequently expired on 6/15/92. Prior to expiration, a Certificate of Completeness was not issued by the BCC for the Project.

As of this writing, some work has been done at the entrance off of Route 3A, some limited storm drain installation has occurred, and the road system for the Project has been "roughed in" (clearing and grading, but no paving). Lots appear to have been numbered and, although a sign at the front of the property advertises lots for sale, none have been released by the Planning Board, which holds a "Form F" road covenant (dated 9/28/87) to ensure completion of the required infrastructure under the Town's Subdivision Control Bylaw. Consequently, no building permits have been applied for or granted by the Bourne Building Inspector.

The jurisdictional determination application was made by the Town of Bourne on May 19, 1994, was received by the Commission on May 26, 1994, and was accepted as complete on June 2, 1994.

The Project was originally brought to the Commission's attention via a letter dated 10/29/92 from the Bourne Planning Board, as a pre-existing residential subdivision which may need to be referred to the Commission as a Development of Regional Impact. Pursuant to local inquiries concerning this Project, a letter was sent on 10/25/93 to Mario and Margaret Tonello concerning the Project's status at the time. This Jurisdictional Determination seeks to clarify for the Town of Bourne the regulatory status of the Project with respect to Commission jurisdiction to review it as a DRI.

Materials submitted for the record include:

- Barnstable Conservation Commission Order of Conditions dated 3/26/88
- Certificate of Title, Land Court Certificate No. 122809
- Staff Report dated 6/21/94
- Public Hearing Minutes for 6/21/94 hearing
- Jurisdictional Determination Application dated 5/26/94
- Correspondence from Attorney R. Troy to Mrs. Tonello dated 5/8/89
- Preliminary subdivision application dated 10/2/86
- Definitive subdivision approval dated 5/1/87
- Correspondence from Bourne Planning Board to CCC dated 10/29/92
- Correspondence from CCC to the Tonello's dated 10/25/93

The application and notices of public hearings relative thereto, the Commission's staff notes, exhibits and correspondence, the transcript of

minutes of the hearing and all written submissions received in the course of our proceedings are incorporated into the record by reference.

TESTIMONY

A duly authorized subcommittee of the Commission held a public hearing on Tuesday, June 21, 1994 at the Bourne Town Hall. The Commission heard testimony from the property owners' attorney, local officials, interested citizens and Commission staff.

FINDINGS

1. The proposed Project constitutes development under Section 2(e) of the Act.
2. The Project proposes to create or add more than thirty residential dwelling units and therefore qualifies as a Development of Regional Impact under Section 12(c) of the Act and the Commission's DRI Enabling Regulations.
3. No building permits have been applied for or issued for the Project. The Project therefore does not qualify for an exemption under Section 22(a) of the Act.
4. Prior to July 1, 1989, the Project did not receive a special permit, variance or comprehensive permit; nor did it receive a statement from the secretary of environmental affairs that the environmental impact report is adequate.
5. The Bourne Conservation Commission (BCC) issued an Order of Conditions (OOC) prior to July 1, 1989 pertaining to a small portion (Lot "A" only) of the overall Project. The OOC contained a Special Condition which reads as follows: "Upon completion of your project you must apply for a Certificate of Compliance. This Order will not be considered complied with until the Certificate of Compliance has been requested, granted and RECORDED at the Registry of Deeds in Barnstable."
6. The OOC expired prior to completion of work and therefore no Certificate of Compliance was issued by the BCC. In order to qualify for an exemption under Section 22(b) of the Act, the property owner must demonstrate that an OCC was received prior to 7/1/89 and that the project was "constructed or thereafter constructed in substantial compliance therewith". Because the OOC expired and no Certificate of Compliance was issued by the BCC, the Project cannot be constructed in substantial compliance therewith and the Project is not exempt under Section 22(b) of the Act.
7. A portion of the Project was the subject of judicial review. This judicial

review was initiated by Mrs. Tonello and was instituted in Massachusetts Land Court to settle a boundary dispute. The Land Court action was decided in March of 1991 in Mrs. Tonello's favor.

8. The Project is not entitled to an exemption under Section 22(d) because all permits referenced in that section were actually received prior to the initiation of judicial review. To qualify for the Section 22(d) exemption, the property owner must demonstrate that s/he "applied for" permits which were not issued due to judicial action.

9. The Project received subdivision approval from the Bourne Planning Board prior to July 1, 1989. The security is still being held on all lots within the Project and therefore none of the lots have been released. The Project therefore does not qualify for an exemption under Section 22(e) of the Act.

CONCLUSION

Based upon the Findings above, the Commission concludes that the Project qualifies as a Development of Regional Impact under Section 12 of the Act and the Commission's DRI Enabling Regulations, and that the Project does not qualify for an exemption under Section 22 of the Act, and therefore the Project will require DRI review.

David H. Ernst
David H. Ernst, Chair

June 23 1994
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 23rd day of June, 1994

Katharine G. Peters
Notary