

CAPE COD COMMISSION

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Date: January 20, 1995

Applicant: The Sandwich Planning Board
16 Jan Sebastian Drive
Sandwich MA 02563

Project #: JD 94018
Atkins Heights
1 through 15 Atkins Road
Sandwich MA 02563

RE: Jurisdictional Determination Request
Cape Cod Commission Act, Cape Cod Commission
Regulations of General Application

Lot/Plan: Deed Book 2165 Pages 25 & 26

Owners: Edward McCarthy, Joseph Nisby, and Nancy A.
DeDecko as Trustee of M.M.M. Realty Trust

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby finds pursuant to Section 22 of the Cape Cod Commission Act and under the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(c), Barnstable County Ordinance 94-10, that the proposed subdivision called Atkins Heights in Sandwich, Massachusetts qualifies as a Development of Regional Impact (DRI). The decision is rendered pursuant to the vote of the Subcommittee on January 20, 1995.

PROJECT DESCRIPTION

The proposed subdivision called Atkins Heights consists of 22 residential lots on 34.73 acres.

JURISDICTION

The purpose of the Jurisdictional Determination request is to determine whether the proposed subdivision requires an exemption under Section 22(e) of the Act, and whether the development proposes to divide, combine or develop any parcel(s) of land totaling 30 acres or more under Cape Cod Commission Regulations of General Application, Chapter A, Section 3(c), Barnstable County Ordinance 94-10.

PROCEDURAL HISTORY

Project Chronology:

- A 10 lot ANR plan dated February 5, 1975 was submitted to the Sandwich Planning Board. It was approved and recorded at the Registry of Deeds on March 26, 1975 in Book 292, page 89.
- A 20-lot Definitive Subdivision Plan dated March 24, 1975 was submitted to the Sandwich Planning Board and approved.
- In 1984 the Town of Sandwich voted to change zoning in this area from 40,000 s.f. to 60,000 s.f.
- In May 1985 the Town of Sandwich voted to abandon all rights of the Town in the portion of Atkins Road from Route 6 to Crestview Drive.
- A 22 lot Subdivision Plan dated March 24, 1994 was submitted to the Sandwich Planning Board and referred to the Cape Cod Commission. It is this plan that is under review.

Commission Review Chronology

The Commission received a request for a Jurisdictional Determination from the Sandwich Planning Board on December 29, 1994. The application was deemed complete on January 9, 1995. A duly noticed public hearing pursuant to Section 5 of the Act was held by an authorized Subcommittee of the Commission on the Jurisdictional Determination request on January 20, 1995 at the Sandwich Public Library, Sandwich MA. At the close of the public hearing the Subcommittee voted unanimously that the proposed project qualifies as a mandatory referral under the DRI threshold contained in Section 3(c) of the Cape Cod Commission DRI enabling regulations.

Materials Submitted for the Record:

- Jurisdictional Determination application.
- Copy of letter from Attorney Wainwright to the Sandwich Planning Board requesting an extension of the Planning Board decision to January 25, 1995.
- Copy of Form C submitted to the Sandwich Planning Board.

- Chronology of Events submitted by the Sandwich Town Planner Marie Blaney.
- Copy of Town of Sandwich vote to abandon all rights of the Town in Atkins Road from Rte. 6 to Crestview Drive.
- ANR Plan dated February 5, 1975.
- Definitive Subdivision Plan dated March 24, 1975.
- ANR Plan dated May 28, 1993.
- Atkins Heights subdivision plan dated March 24, 1994, and supporting plans.
- Site Plan of the relocation of Atkins Road dated January 7, 1966.
- Fax from Attorney Wainwright dated 1/10/95 containing legal citations.
- Fax from Attorney Wainwright dated 1/12/95 containing legal citations.
- Letter from Tana Watt, Planner, to Joanne Miller-Buntich, Chairman, Sandwich Planning Board dated January 9, 1995.
- Letter from Tana Watt to Attorney Richard L. Wainwright dated January 9, 1995.

Additional Materials:

- Letter from abutter Albert J. Skirius dated January 19, 1995

The application and notice of the public hearing relative thereto, the Commission's staff report, and exhibits, minutes of all hearings and all written submissions received in the course of the proceedings, including materials submitted on file #JD94018 are incorporated into the record by reference.

TESTIMONY

Attorney Richard L. Wainwright presented the project to the Subcommittee and reviewed the project chronology. It is Mr. Wainwright's position that the project, although technically qualifying as a DRI under the Act, is a unique situation and should not be considered a DRI due to the fact that his client is attempting to provide a superior road layout and subdivision plan than will be constructed using the currently approved ANR and Subdivision Plans dated February 5, 1975 and March 24, 1975.

Joanne Miller-Buntich, Chairman of the Sandwich Planning Board, reviewed the Planning Board timeline, and stated that the 1994 subdivision plan under review treats the entire 34 acre parcel as a whole and that the 1975 ANR plan as approved is not the same as those lots shown on the subdivision plan as submitted.

There was no testimony from the public.

FINDINGS

The Subcommittee has considered the applicant's request for a Jurisdictional Determination regarding the proposed Atkins Heights subdivision. Based upon consideration of such request, upon information presented at the public hearing and submitted for the record, the Subcommittee makes the following findings:

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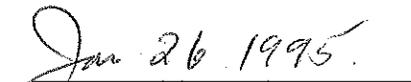
1) Atkins Heights, as proposed, is a residential subdivision of 34.73 acres that exceeds the 30 acre threshold under the Cape Cod Commission Regulations of General Application. The current proposal must be treated as an entire parcel because it reconfigures and incorporates the approved 1975 ANR lots into the current plan.

2) The Subcommittee has not received or heard any evidence that the Atkins Heights subdivision as proposed is exempt under Section 22 of the Act. The current plan dated March 24, 1994 that is under review by the Sandwich Planning Board and the Cape Cod Commission is a different plan from the previously approved subdivision plan dated March 24, 1975, and can not claim an exemption based on approval prior to July 1, 1989.

CONCLUSION

Based on the findings above, the Commission concludes that the proposed project know as Atkins Heights is not exempt from review under Section 22 of the Act and requires a mandatory referral for DRI review as a project that proposes to divide, combine, or develop any parcel(s) of land totaling 30 acres or more under Cape Cod Commission Regulations of General Application, Chapter A, Section 3(c), Barnstable County Ordinance 94-10. This decision is specific to the facts submitted for the record and presented at the public hearing.

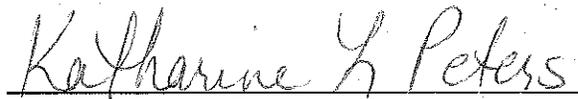

George Benway, Jr., Chair


Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 26th day of January 1995.


Name, Notary Public

My commission expires: