



CAPE COD COMMISSION

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DATE: January 5, 1995 TR# 94011

TO: Mr. Michael J. Hayes
Hayes & Hayes, Attorneys-At-Law, P.C.
23 East Main Street
Hyannis, MA. 02601

FROM: Cape Cod Commission

RE: Development of Regional Impact
Cape Cod Commission Act, DRI Enabling Regulations Section 3

APPLICANT: Roland's Tire Service, Inc.

PROJECT: A 13,048 Sq. Ft. Tire sales and service facility
1574 Old Post Road and 3630 Route 28, Marstons Mills

BOOK/PAGE: Ctf. of Title #91453

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (the Commission) hereby denies the application of Roland's Tire Service, Inc., for a Development of Regional Impact under Section 3(e) of the Cape Cod Commission DRI Enabling Regulations, Barnstable County Ordinance 90-12, as amended, for the construction of a 13,048 sq.ft. tire store. The decision is rendered pursuant to the vote of the Commission on January 5, 1995.

PROCEDURAL HISTORY

The project was referred by Alfred E. Martin, Acting Building Inspector for Barnstable on June 27, 1994. The proposed tire store qualifies as a DRI under Section 3 (e) of the DRI Enabling Regulations as new commercial construction greater than ten thousand square feet. The public hearing was opened by a hearing officer on August 23, 1994. No testimony was taken at that time. The hearing was continued to September 8, 1994 where testimony was taken. The hearing was continued to September 29, 1994 in order to receive information on traffic mitigation. A hearing officer continued the September 29, 1994 meeting with no testimony being taken. The hearing was continued until October 20, 1994. Testimony was taken. The subcommittee voted to continue the hearing until November 17, 1994 in order to receive information on traffic mitigation. After receiving testimony on November 17, 1994, the subcommittee closed the public hearing. The subcommittee held meetings on

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December 1, 1994 and December 15, 1994. At the December 15th meeting the subcommittee voted to bring the DRI to the full Commission for a public hearing on January 5, 1995.

PROJECT LOCATION / DESCRIPTION:

The proposed Roland's Tires development is located in Marstons Mills, on a vacant 2.06 acre parcel bounded by Route 28 (Falmouth Road) to the south, Old Post Road to the east and Industry Road to the north. The site is adjacent to and across from existing businesses including the Cotuit Landing shopping plaza, Windmill Square shopping plaza, a boat yard and a funeral home. The proposed 13,048 sq.ft. building will contain 3,120 sq.ft. of retail area, 4,680 sq.ft. of service area containing four (4) service bays and a 6,240 sq.ft. tire storage area. The proposed building will have 49 parking spaces and have access off of both Old Post and Industry Roads. Proposed operating hours for tire service are 7:30 AM- 5:00 PM on weekdays and 7:30 AM and 12 Noon on Saturdays. The business will be closed on Sundays.

MATERIALS SUBMITTED FOR THE RECORD

A. Materials submitted by the applicant:

1. Waiver request Plant/Wildlife	Hayes & Hayes	July 14, 1994
2. DRI/Exemption App. forms	Hayes & Hayes	July 26, 1994
3. Maps/soils/lighting inform.	Baxter & Nye, Inc.	Aug. 2, 1994
4. Doc. on Mini. Performance Stand.	Hayes & Hayes	Aug. 3, 1994
5. MHC/proof of local filing	Hayes & Hayes	Aug. 3, 1994
6. Site Plan	Baxter & Nye, Inc.	Aug. 4, 1994
7. Traffic study	Baxter & Nye, Inc.	Aug. 12, 1994
8. Open Space Deed information	Hayes & Hayes	Aug. 17, 1994
9. Hazardous Waste information	Hayes & Hayes	Sept. 6, 1994
10. Additional traffic information	Fay, Spofford & Thorndike, Inc.	Sept. 15, 1994
11. Project information	Hayes & Hayes	Nov. 9, 1994
12. Open Space Restriction	Hayes & Hayes	Nov. 17, 1994
13. Zoning Issue	Hayes & Hayes	Nov. 30, 1994

B. Materials submitted by the State:

1. Mass. Historical Com.	No significant resources	August 8, 1994
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C. Materials submitted by the Town:

1. Alfred E. Martin	Comment letter	July 29, 1994
2. Alfred E. Martin	Comment letter	August 4, 1994
3. Thomas Marcello	Traffic island	August 4, 1994
4. Martin MacNeely	Fire Dept. concern	August 4, 1994
5. Ralph Crossen	Zoning issue	Nov. 17, 1994
6. Ralph Crossen	Zoning issue	Dec. 5, 1995

D. Materials submitted by the public:

1. Bill Archibald	Concerns with buffers	August 25, 1994
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2. John Lawrence Funeral Home	Concerns with noise	Sept. 7, 1994
3. Craig Rockwood, Esq.	Concerned with comm. charac.	Sept. 8, 1994
4. R & P Neville	Opposed to project	Sept. 20, 1994
5. R Parsons	Opposed to project	Sept. 22, 1994
6. Marstons Mills Village Assoc.	Concerned with the project	Sept. 27, 1994
7. Cotuit Bay Shores Assoc.	Opposed to project	Sept. 29, 1994
8. E & G Carlson	Concerned with the project	Oct. 4, 1994
9. D Goldberg	Concerned with the project	Oct. 5, 1994
10. A petition of 260 people	Opposed to project	Oct. 20, 1994
11. P Butler	Requesting Infor.	Oct. 31, 1994
12. E Molina	Opposed to project	Nov. 14, 1994
13. J McGarrahan	Concerned with traffic	Nov. 30, 1994

The application and notice of the public hearing relative thereto, the Commission's staff reports, and exhibits, minutes of the hearing and all submissions received in the course of the proceedings, including materials submitted on file TR# 94011 are incorporated into the record by reference.

TESTIMONY

The subcommittee received the following testimony from the public at the September 8, 1994 public hearing on this project in the First District Court House, Chamber of the Assembly of Delegates, Barnstable, MA:

Harry Zebergsi and Graham Harrison, expressing concern for left hand turns onto Old Post Road and the lack of truck traffic analysis. Michael Lloyd expressed similar concerns, and doubted that a no left turn sign would work as planned, as there is no easy way to reverse direction. He felt that residential streets will be affected by this project. Robert Hayden also expressed similar concerns for traffic and whether repairs will be completed outside on the parking lot. The applicant replied that all service work will be completed indoors. Questions were also asked re: truck servicing. The applicant replied that trucks can also be serviced inside.

Gary Hebert, traffic engineer for the applicant, noted that the estimated truck trips would account for 15% of the total traffic to and from the site. He also stated that based on 290 trips/day, this would result in eight left hand turns/hour.

Rick Barry from the Cotuit/Santuit Civic Association noted concerns regarding this project's location on the edge of the zone of contribution and hazardous materials use and the potential for a spill. Brian Bernier recommended holding tanks for cleaning solvents and Robert Hayden asked whether trucks would be brought in from other sites.

The subcommittee received the following testimony from the public at the October 20, 1994 public hearing on this project in the First District Court House, Chamber of the Assembly of Delegates, Barnstable, MA:

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Cindy Hayden commented about the left turn movements at Windmill Square where pavement marking is used. She felt this type of traffic mitigation was inadequate. Beth Ferranti asked what types of servicing would be performed on vehicles at the facility, what the hours of operation would be, and how peak hour traffic was calculated. Richard Chafer from Cotuit was concerned about tire retreading, servicing of large, heavy-duty vehicles, and the ability of large vehicles to exit onto Route 28.

Attorney Hayes, representing the applicant, answered that the proposed Marstons Mills facility had been designed to allow servicing tires on large vehicles, and that all such work would be done inside the building.

Herbert Anderson of Cotuit read two letters and a petition opposed to the Roland's Tire project into the record. The letters were from Mr. and Mrs. W. B. Parsons of Cotuit and the Cotuit Bay Shores Association. He also presented copies of the letters and petition to the Subcommittee for inclusion in the project file. Robert Neville commented that traffic and left turns were central concerns.

Rick Barry, President of the Cotuit Civic Association, commented on issues related to traffic, the size of the proposed building, possible impacts to a zone of contribution and the neighboring funeral home. A member of the audience commented on the possible need for improvements to Old Post Road and how customer vehicles will be serviced.

Rita Whatey of Marstons Mills commented about the noise generated by the tire service bays. Bob Hayden commented on servicing of large trucks.

The subcommittee received the following testimony from the public at the November 17, 1994 public hearing on this project in the First District Court House, Chamber of the Assembly of Delegates, Barnstable, MA:

Harry Zieberks spoke against the project stating traffic problems. Herb Anderson asked for a clarification of "fair share". Paul Tilton explained the concept and the process.

Rick Barry, Civic Association in Cotuit, spoke against the project and mentioned the level of frustration the residents have experienced with the applicant and the Commission during this process. The members of the Association feel that the zoning problem should have been discovered earlier in the process. The residents were led to believe the issues raised at this and other hearings would be resolved by the subcommittee at this hearing. George Benway, Commission member, stated that the information on the zoning issue was from the Town of Barnstable and that the Commission did not know of it and was not operating in bad faith. Curtis Woodbury was under the impression that this project would be resolved at this hearing.

Graham Harris commended the Commission for its efforts for Cape Cod and spoke against the project stating that there are other more suitable locations for this project. He expressed his concerns that if the project were approved with conditions, the conditions might be ignored. He asked who has the authority and is responsible for seeing that conditions are met.

Maureen McFee brought up other hazardous intersections in this area and expressed concern about the flow of traffic and safety.

Jean Hayden Waynoyama asked about the local process regarding the need for a variance. Attorney Hayes, representing the applicant, again stated that his clients will not request a variance. He also stated that landscaping will be nicely done.

Laura Brown asked what the building would look like. Plans were then provided to the residents in the audience. Gwen Phillips asked about ground water impacts. The map with the Zone of Contribution was discussed.

Hugh Cameron was concern with traffic cutting through his street and other streets and wondered if there had been any studies about the impact on residential areas.

Susan Burnier spoke against the project and expressed concern about the number of trucks. Attorney Hayes stated that all work would be done inside and that the number of trucks would be small. The residents object to 18-wheelers driving through their neighborhood. Ms. Waynonama suggested that there are other more suitable locations for this project. Jack Herbert spoke against the project and expressed concern for the number of customers per day due to the large waiting room shown on the building plans. Rick Barry stated that due to the zoning problem the project should be denied.

Beth Feranti asked if documentation has been provided about issues discussed at previous meetings. Ms. Feranti inquired about the conditions covered by the draft decision written by the Commission staff. Mr. Guimond read the list of conditions into the record. Pam Ellsworth made comments about boat traffic to the near-by boat yard in the spring and fall. Ms. Waynonama asked what is going to prevent traffic from using Cotuit Landing. She asked if the Commission has the right to approve the site before the results of the traffic study have been received. Ms. Waynonama asked if the Commission could deny the project if there is not a satisfactory traffic solution. Ed Molina spoke about reducing the speed limit and asked if the State DPW has to approve the traffic improvement plan.

JURISDICTION

The proposed Roland's Tire Service development qualifies as a Development of Regional Impact under Section 3(e) of the Cape Cod Commission DRI Enabling Regulations, Barnstable County Ordinance 90-12, as amended, because it is new commercial construction greater than ten thousand square feet.

FINDINGS

The Commission has considered the Development of Regional Impact application of Roland's Tire Service, Inc., to construct a Tire Sales, Storage and Service Center on Old Post Road and Route 28 in Marstons Mills, MA. Based on consideration of such application, the information presented, Subcommittee and staff recommendations, the Commission makes the following findings:

- 1). The project is located adjacent to Route 28, which is identified as a regional roadway in the Regional Policy Plan, Barnstable County Ordinance 91-6, as amended.
- 2). The applicant has performed a level of service (LOS) analysis at the intersection of Route 28 (Falmouth Road) at Old Post Road. This intersection operates at LOS E (reserve capacity (RC) = 23 vehicles/hour) during existing peak hour conditions.
- 3). Based on the Institute of Transportation (ITE) Trip Generation manual, the tire store is expected to generate approximately 72 vehicle trips during the peak hour. These numbers are higher than the trip generation counted at existing Roland Tire stores. The ITE numbers were used to represent a most conservative analysis.
- 4). The addition of the future tire store traffic would result in a *Regional Policy Plan* violation at the study intersection. The Route 28/Old Post Road intersection operates at LOS E (RC = 23 vph) under existing conditions and worsens to LOS F (RC = -16 vph) with the addition of project traffic. Mitigation is required to alleviate traffic impacts at this intersection.
- 5). The applicant has developed a preliminary design for improvements at the Route 28/Old Post Road intersection. The preliminary design plan was determined to be incomplete. Therefore, an appropriate fair share analysis cannot be calculated to determine the applicants fair share contribution.
- 6). The subcommittee has determined that additional traffic information is needed to determine the full impacts of this project to the regional road network and alternatives for mitigation. The applicant has failed to provide this information.
- 7). The applicant submitted the following trip reduction proposal: a one way bus pass good within a 10 mile radius of the store for customers and employees, a 10-foot easement for a future bikeway or sidewalk on Route 28. This proposal was determined to be insufficient to meet the 20% trip reduction requirement of the *Regional Policy Plan*.
- 8). The subcommittee has determined further work is needed on the proposed deed restriction in order to conform with the guidelines set forth in the Commission's recently adopted Open Space Guidelines Technical Bulletin regarding ownership and restriction of open space.

- 9). The proposed commercial development is located on the boundary of a Zone II Wellhead Protection Area for the Centerville/Osterville Wells as defined by Geraghty and Miller in 1993, and approved by the Massachusetts Department of Environmental Protection in 1994.
- 10). A small portion of the back part of the parcel crosses the Zone II boundary.
- 11). According to plot plans attached to the DRI Application, no part of the actual tire service facility, storage area, or retail floor space will be within the Zone of Contribution.
- 12). Based on information received to date and described in the 11/16/94 draft findings/conditions, prepared by the Commission staff, on the potential use of hazardous materials, the potential generation of hazardous wastes and the project's proximity to a public supply well, there is a concern with the protection of the Centerville-Osterville Wells.
- 13). Concerns about community character and noise were raised at the public hearing.
- 14). The site is within the Service & Development District and a RF Residential District.
- 15). The present site plan is not in conformance with the Barnstable Zoning Bylaws. The site plan would have to be redesigned to address the parking in the residential zone. The applicant has failed to submit the modified plan.
- 16). The proposed project has received a "no further review" determination from the Massachusetts Historical Commission.
- 17). The proposed project is not located in a District of Critical Planning Concern.

CONCLUSION

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

The project is not consistent with the Commission's Regional Policy Plan. This conclusion is supported by Findings listed above.

The applicant has failed to submit required traffic information and modifications to the site plan. This conclusion is supported by Findings # 2, 4, 5, 6, 14 and 15 listed above.

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The project is not consistent with local development by-laws. This conclusion is supported by Findings # 14 & 15 listed above.

The project is not located within a District of Critical Planning Concern. This conclusion is supported by Finding # 17 listed above.

The benefits of the proposed project do not outweigh the detriments resulting from the development. This conclusion is supported by Findings listed above.

The Commission hereby denies the Development of Regional Impact Application for Roland's Tires Service, Inc., pursuant to Section 12 and 13 of the Cape Cod Commission Act.

Kenneth Brock
Kenneth Brock, Chairman

1/5/95
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 5th day of Jan 1995

Katharine L Peters
NAME, Notary

My Commission expires: *At 12:00 PM on 12/31/95*