

CAPE COD COMMISSION

3225 MAIN STREET
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BARNSTABLE, MA 02630
508-362-3828
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Date: September 21, 1995

Applicant: Reef Realty - Long Pond Road
Everett W. Boy, Jr.

Project #: #TR94017

Project
Proponent: Reef Realty
P.O. Box 186
West Dennis, MA 02670

RE: Development of Regional Impact
Cape Cod Commission Act, Sections 12 & 13

Lot/Parcel: Map 33, Lot 37

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby denies without prejudice the proposed project of Mr. Everett W. Boy, Jr. as a Development of Regional Impact (DRI) under Sections 12 & 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for a proposed twenty-one (21) lot residential subdivision in Brewster, MA. The proposal qualifies as a DRI under Section 3(c) of the Commission's DRI Enabling Regulations, Barnstable County Ordinance 94-10. The decision is rendered pursuant to a vote of the Commission on September 21, 1995.

PROJECT DESCRIPTION

The proposed project is to subdivide and develop a total area of 37.7 acres. Twenty-one lots are proposed to be developed with single family dwellings. The property is located on the east side of Route 137, abutting No Bottom Pond, the Commonwealth Electric Company easement and the Barrows Conservation Land in Brewster, MA.

PROCEDURAL HISTORY

The proposed project was referred to the Cape Cod Commission by the Brewster Conservation Commission on December 21, 1994. The applicant met with Commission staff regarding the requirements of open space, water, transportation, and affordable housing as a preliminary part of the review process. The applicant did not submit an abutters list or other project information for Cape Cod Commission review.

On Thursday, February 9, 1995 a Hearing Officer opened the DRI hearing. No presentations were made, no testimony was taken and no substantive action was taken regarding the project at this hearing. The record was left open and there was the opportunity for reopening the hearing within 60 days upon receipt of a completed application and abutters list. The applicant applied for an extension of DRI review time during this time. On March 8, 1995 an extension to September 21, 1995 was granted by the Commission.

During the extension period Mr. John Demarest came before the Commission with an application for a DRI Exemption for an ANR lot that was part of the Rowe property and for which there was a buyer. This lot contains the only existing buildings on the site. This project, Rowe Property ANR, was approved by the Commission on May 25, 1995.

Commission staff has been in touch with Mr. Boy regarding the Reef Realty project. In a letter dated July 26, 1995 staff requested that Mr. Boy either ask for another extension or formally withdraw the project by August 30, 1995. In a phone conversation Mr. Boy recently indicated that he does not plan to go ahead with the project, however, he does not intend to withdraw the project from Commission review. Therefore, the project is coming before the Commission for a Procedural Denial Without Prejudice.

Materials submitted for the record:

- Referral from Brewster Conservation Commission, received December 21, 1994.
- Environmental Report from Cape Environmental Associates, October 24, 1994 prepared by Lynne Whiting Hamlyn.
- Location maps
- Minutes from a meeting on July 12, 1994 between the Brewster Conservation Commission and Everett W. Boy, Jr.
- Site Plan
- Staff Memo from Kathy Sferra to Sarah Korjeff regarding Open Space for Nightengale Pond, used for clarification.
- Memo from Gay D. Wells, Planner to Commission Subcommittee, December 28, 1994.

Materials submitted for the record. continued:

- DRI Referral Notification Form to Lynne W. Hamlyn, December 28, 1994.
- Memo from Gay D. Wells to Brewster Town Clerk and other Town agencies, December 28, 1994.
- Letter from Gay D. Wells to Lynne W. Hamlyn, January 17, 1995.
- Memo from Gay D. Wells to Brewster Town Clerk and other Town agencies, January 20, 1995.
- Commission staff Transportation Report, January 31, 1995.
- Letter from Gay D. Wells to Everett W. Boy, Jr., February 9, 1995.
- Hearing Notice for Hearing Officer, February 9, 1995.
- Minutes of Hearing Officer, February 9, 1995.
- Newspaper article, Cape Codder, February 14, 1995.
- Letter from Gay D. Wells to Everett W. Boy, Jr., February 27, 1995.
- Extension Agreement, executed March 8, 1995
- Letter from Gay D. Wells to Tina Balog, Conservation Administrator, Town of Brewster, March 10, 1995.
- Letter from Gay D. Wells to Everett W. Boy, Jr., March 13, 1995.
- Letter from Gay D. Wells to Everett W. Boy, Jr., March 21, 1995.
- Notes from a phone call from May Timmons, neighbor, April 10, 1995.
- Open Space Analysis, April 13, 1995.
- Notes from meeting on April 13, 1995 with Commission staff and applicant.
- FAX to Dick Eble, June 5, 1995.
- Letter from Gay D. Wells to Everett W. Boy, Jr., July 26, 1995.
- Hearing notice for Public Hearing on September 21, 1995.

The notices of public hearings relative thereto, the Commission's staff notes, exhibits and correspondence, the transcript and minutes of the hearings and all written submissions received in the course of our proceedings are incorporated into the record by reference.

TESTIMONY

No testimony was received at the February 9, 1995 or September 21, 1995 Public Hearings on the proposed project and the applicant has decided not to go forward with the project.

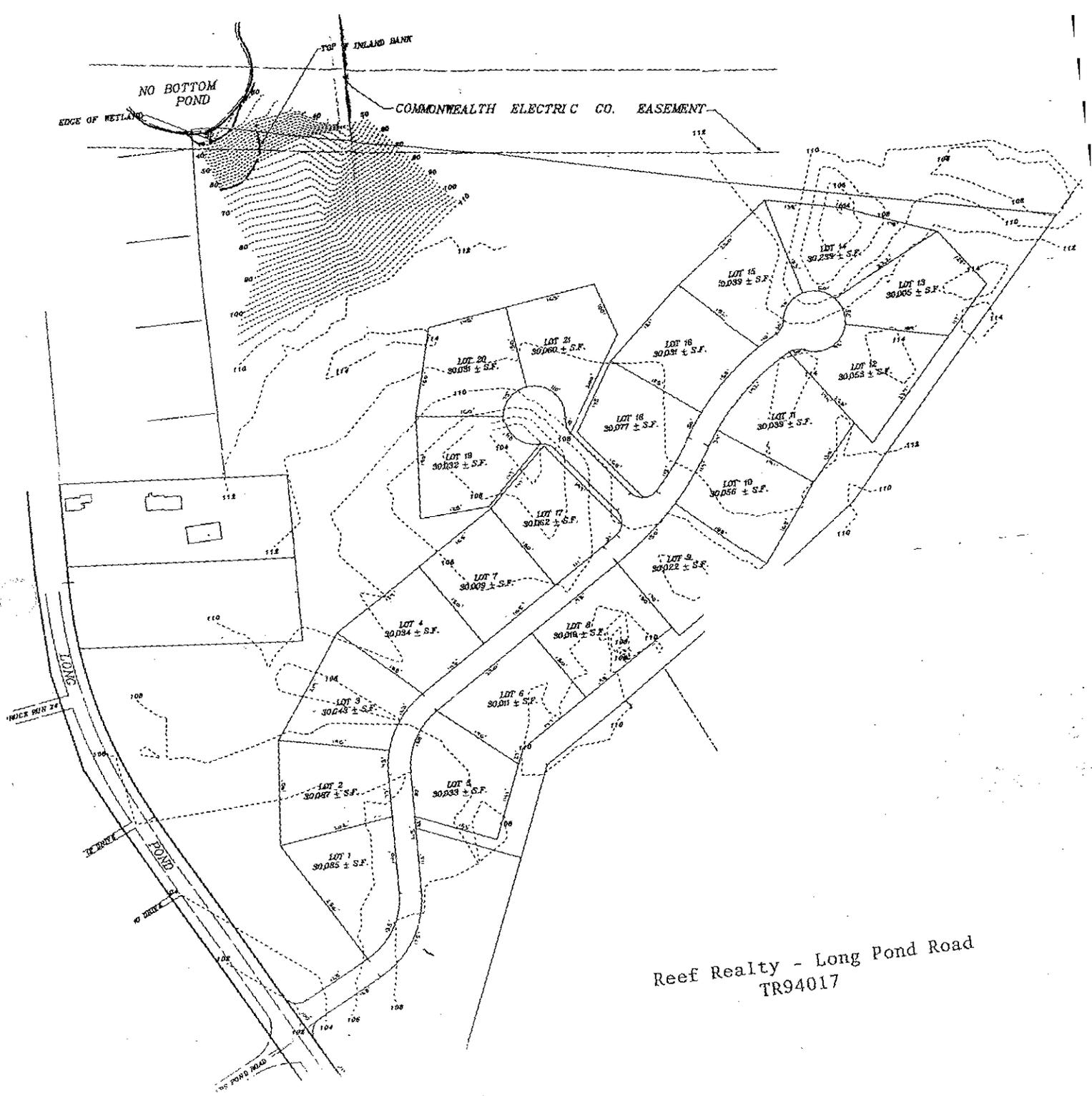
JURISDICTION

The proposed Reef Realty Long Pond Road residential subdivision was referred to the Commission on December 21, 1994 by Tina Balog, Conservation Administrator for the Town of Brewster Conservation Commission. The project qualifies as a DRI because it proposes to divide land totalling more than thirty (30) acres.

FINDINGS

The Commission makes the following finding subject to Sections 12 & 13 of the Act:

1. The project site consists of 33 acres of undeveloped woodland. It is located in Brewster on Route 137, which is classified as a "major collector" by the Massachusetts Highway Department and as a "local road of regional significance - Class C" under the Regional Policy Plan.
2. The Applicant was referred to the Commission by the Town of Brewster Conservation Commission.
3. The Applicant sought and the Commission granted an extension on the decision period in order to allow for negotiations with the property owner about the purchase price of the land.
4. The Applicant did not submit information upon which the Cape Cod Commission could make a determination about whether the proposal meets the Minimum Performance Standards of the Regional Policy Plan and failed to progress continuously and expeditiously through required regulatory processes.
5. The applicant did not submit an abutters list and, therefore, the Cape Cod Commission could not conduct a duly-noticed Public Hearing for this proposal.
6. The applicant did not provide a DRI review fee.



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