

CAPE COD COMMISSION

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

DATE: September 21, 1995 TR# 95010

TO: Verbon Trust, Mr. Daniel Striar, Trustee
P.O. Box 271
225 Plymouth Street
Middleborough, MA. 02346

Carl W. Oaks
P.O. Box 1094
East Dennis, MA. 02641

FROM: Cape Cod Commission

RE: Development of Regional Impact
Chapter A, Section 3(e), Barnstable County Ordinance 94-10 and
Section 12 and 13 of the Cape Cod Commission Act, as amended

PROJECT: A "Plan of Land" off of Quaker Meetinghouse Road, dated
October 19, 1994

BOOK/PAGE: Deed Book 5364 Page 68
Deed Book 5067 Page 281
Deed Book 5393 Page 81 and
Deed Book 5135 Page 269

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (the Commission) hereby denies without prejudice the application of Verbon Trust, Daniel Striar, Trustee and Carl W. Oaks for a Development of Regional Impact qualifying under Chapter A, Section 3(e), Barnstable County Ordinance 94-10, and Section 12 and 13 of the Cape Cod Commission Act as amended, for a "Plan of Land" off of Quaker Meetinghouse Road, dated October 19, 1994, prepared by Youngquist, James & Associates, Inc.; The decision is rendered pursuant to the vote of the Commission on September 21, 1995.

Round Hill (ANR) Verbon Trust, Sandwich

DRI Decision

9/21/95

PROCEDURAL HISTORY

The Approval Not Required (ANR) plan, which is the subject of this procedural denial, was referred to the Commission on 11/17/94. The ANR plan proposes to subdivide a portion of the proposed Round Hill Estates Definitve Subdivision. The following chronology describes the history of the review of this project by the Cape Cod Commission to date:

- May 23, 1990 The original Round Hill and Popple Bottom subdivision plans are referred to the Commission by the Sandwich Planning Board.
- Aug. 28, 1990 An incomplete DRI application was submitted by the applicant's representative. The application was missing the following information:
 1) Certified Abutter's List;
 2) Soils information;
 3) Fees;
 4) Traffic information;
 5) Wildlife/ Vegetation information;
 6) Design information;
 7) Historic Information; and
 8) Wetlands information;
- Sept. 17, 1990 A DRI public hearing was held, but no testimony was heard due to the inability of the Commission to properly notice the hearing (because no abutters' list had been submitted).
- Oct. 31, 1990 The Commission voted to deny both Popple Bottom and Round Hill proposals without prejudice.
- Dec. 14, 1990 The applicant filed an appeal of the Commission's decisions with Barnstable Superior Court.
- Nov. 15, 1993 The court remanded the appeal back to the Commission with the term that the applicant provide the Commission with a fully completed DRI application by February 28, 1994.
- Feb. 25, 1994 The applicant files with the Commission the following information:
 1) The balance of the filing fees;
 2) M.H.C. notification form;
 3) An updated Abutters List; and
 4) Deed information.

- March 23, 1994 Staff sent a letter to the applicant outlining the following information still needed to complete the DRI application:
- 1) The deed information needs to have the 49 Book and Page numbers broken down by the two (Round Hill and Popple Bottom) proposals.
 - 2) Information from Section B. 2.2.1. Natural Features (a),(d) and (e) is needed for the Round Hill proposal.
 - 3) Information from Section B. 2.2.2. Existing Developments and Infrastructure, (a),(c) and (d) is needed for the Round Hill proposal.
 - 4) Information from Section C., C.1. Wetlands Resources is needed for the Round Hill proposal.
 - 5) Information from Section C., D.1 and D.2. Wildlife and Plant Habitat is needed for the Round Hill proposal.
 - 6) Information from Section C., J.6., J.7., J.8. and J.11. Aesthetics and cultural is needed for the Round Hill proposal.
 - 7) Information from Section C., K. Local and Regional Impacts is needed for the Round Hill proposal.
- March 31, 1994 Staff issued a report on the application.
- April 5, 1994 The Commission opened a public hearing due to a timing constraint under the Cape Cod Commission Act. The application was still incomplete and the applicant's representative stated they were unable to address the issues raised in the staff report. The subcommittee took in preliminary comments on the proposed developments. The subcommittee voted to close the public hearing and grant an extension of the decision period to September 30, 1994.
- April 6, 1994 The Commission sent an extension to the applicant's representative and requested the parties meet during the week of May 16, 1994.
- Aug. 12, 1994 The Commission sent a letter to the Applicant's representative providing notice that the extension of the decision period would expire on September 30, 1994. The letter also gave notice that a complete application or an extension would be needed or the projects could be procedurally denied.
- Sept. 21, 1994 A final extension of the decision period was granted to March 31, 1995 with an agreement by both parties that no further extensions would be requested.

- Oct. 19, 1994 Applicant files and is issued by the Sandwich Planning Board an Form A (ANR) Approval Not Required endorsement for a portion of the Round Hill Subdivision property.
- Oct. 25, 1994 The applicant in a letter to Armando Carbonell questions the Commission's authority to have jurisdiction with Form A plans.
- Nov. 8, 1994 Staff sent a letter to the Sandwich Planning Board giving notice that the action taken on the Form A was not valid under the Commission Act and the Board should refer the plan to the Commission. Mr. Striar was copied.
- Nov. 16, 1994 Applicant files with the Planning Board a new Form C, Definitive Subdivision for a portion of the original Round Hill subdivision
- Nov. 17, 1994 Planning Board refers the Form C, Definitive Plan and Form A, Approval Not Required to the Commission.
- Jan. 18, 1995 In a certified letter from Commission Counsel, Patricia Daley, dated January 18, 1995, the commission staff requested the information to complete the DRI applications to be submitted by 2/15/95 and providing notice that failure to do so may result in procedural denial of the projects.
- March 9, 1995 Staff sent a reminder to the applicant that the extension of the decision period would end on March 31, 1995 and that no information had been received to date and the Commission would hold a public hearing on March 30, 1995.
- March 16, 1995 Subcommittee held a meeting on all four applications and voted to recommend a procedural denial on all plans.
- March 30, 1995 The Commission held a public hearing on all four projects on file with the Commission contained within the original Popple Bottom and Round Hill Subdivision Plans. Attorney Feldman representing the applicant submits letters of withdrawal for the original Round Hill and Popple bottom plans TR# 90039/TR# 90050 and requested an extension on the Round Hill (ANR) plan TR# 95010 and the Round Hill Estates Defintive Plan TR# 95009.
- March 30, 1995 An extension of the DRI decision period until September 28, 1995 was signed. The extension contained a condition that the applicant submit a fully completed DRI application by June 1, 1995.

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- April 11, 1995 Staff sent a memo to Attorney Feldman explaining the information needed for both the Round Hill Estates Definitive Subdivision Plan (TR# 95009) and the Round Hill ANR Plan (TR# 95010).
- April 12, 1995 Staff met with Attorney Feldman and town officials to discuss the information needed to complete both applications.
- June 1, 1995 No information on the Round Hill ANR Plan (TR# 95010) was filed by the applicant.
- June 14, 1995 Staff sent a memo to Attorney Feldman explaining the information still needed for the Round Hill Estates Definitive Subdivision Plan (TR# 95009) and requesting a letter of withdrawal for the Round Hill ANR Plan (TR# 95010).
- June 14, 1995 Attorney Feldman contacts staff and explains a letter of withdrawal may be sent but they are uncertain the course of action Mr. Striar may want them to take with respect to the ANR plan.
- August 7, 1995 Staff sent the applicant and Attorney Feldman a certified letter giving 45 day notice of a possible procedural denial of the Round Hill ANR Plan (TR# 95010) if a letter of withdrawal is not submitted. It was requested that the letter of withdrawal be submitted by August 31, 1995.
- August 31, 1995 No information on the Round Hill ANR Plan (TR# 95010) was filed by the applicant.
- September 6, 1995 Attorney Feldman during a meeting on the information requirements of the definitive plan mentions he may not attend the Commission meeting of September 21, 1995 and they will not be filing a letter of withdrawal on this proposal.

PROJECT LOCATION / DESCRIPTION:

The original Round Hill Country Club Estates Subdivision is a 307+ acre parcel proposed to be divided into 4 to 6 lots. The property is located to the east of Quaker Meeting House Road and South of the Mid-Cape Service Road. The present access though the property is off of the Service Road by way of a previously approved subdivision which has no houses yet constructed along it. The overall property which includes an existing golf course and country club, runs to the southeast and adjoins the Popple Bottom Subdivision. The subsequent "Plan of Land" (the ANR plan) and

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the "Round Hill Estates" Plans are both contained within the original 307+ acre parcel. The ANR plan runs from Quaker Meetinghouse Road eastward to and including the existing golf course's clubhouse. The 6 lot ANR plan is approximately 100+ acres in size.

MATERIALS SUBMITTED FOR THE RECORD

1.) A (Form A) "Plan of Land"	Sandwich Planning Board	Dec. 29, 1994
2.) Round Hill Estates	Sandwich Planning Board	Dec. 29, 1994
3.) Extension of the Decision Period		March 30, 1995
4.) Joel Feigeubaun	Letter of opposition	March 30, 1995
5.) Letter to applicant	information needed	April 11, 1995
6.) Letter to applicant	information needed	June 14, 1995
7.) Letter to applicant	45 day notice of action	August 7, 1995

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# 95010 are incorporated into the record by reference.

TESTIMONY

The following summarizes the testimony at the March 30, 1995 public hearing:

Don Near read a hearing notice into the record to open the hearings. Greg Guimond, Planner, explained the various proposals before the Commission and further explained that the applicant wishes to withdraw the original two plans and extend the decision time for the proposed Round Hill Definitive subdivision plan as well as the ANR plan.

Attorney Paul Feldman, attorney for the applicant, spoke to the Commission on the present status of the plans and explained that he had recently been hired to represent the applicant.

Joanne Buntich, Sandwich Planning Board, stated that they support the request for withdrawal and are concerned that the purpose of the new plans is to protect residential zoning which is inconsistent with current zoning and pointed out that the applicant would lose grandfathering protections for residential uses if the Commission procedurally denies the Round Hill Definitive subdivision plan.

Mr. Prince reported that the subcommittee had held a meeting earlier in March and they had voted unanimously to recommend a procedural denial on all four plans without prejudice.

Attorney Feldman stated that the new plans should not have been consolidated with the old ones and that they are entitled to a hearing on the new plans.

Patty Daley, Staff Counsel, summarized the project's history to date. She noted that if the Commission approves the extension on two plans and the withdrawal of two plans it will retain jurisdiction over the entire 476 acres.

Vicky Lowell suggested moving ahead with the extension agreements on the two new plans and accepting the withdrawal request of the old plans or the Commission might end up back in litigation.

It was noted that there are several conditions of the extension to which Attorney Feldman has agreed: waiving the requirement for opening a public hearing within 60 days; submittal of a complete application by 6/1/95; extension of decision date to 9/28/95; and the granting of no further extensions.

Mr. Prince questioned Mr. Striar's acceptance of the Commission's jurisdiction over this land. Attorney Feldman said he would recommend to Mr. Striar that if his activities fall under the Act, the Commission has jurisdiction. He will meet with Mr. Guimond on 4/12/95 and he committed to providing all needed information in a timely manner.

Ms. Buntich said that she did not want to see mixed commercial and residential development on the property. The town wants to encourage commercial development. Ms. Judy Koenig, Sandwich Board of Selectmen, agreed with Ms. Buntich.

Attorney Feldman said the plans remaining are mutually exclusive and both residential and commercial cannot occur.

Sumner Kaufman entered correspondence from Joel Feigenbaum into the record.

Ms. Ritchie moved to close the hearing. Herb Olsen seconded the motion. The vote was unanimous. Vicky Lowell moved to accept the withdrawal request for TR90050/TR94004, TR90039/TR94005 and grant extensions to TR95010 and TR95009. (TR94004=TR90050 and TR94005=TR90039 are the same projects - the 94 numbers were given to the 90 projects after they had been remanded by the court.) Herb Olsen seconded the motion. The motion passed with Mr. Prince, Mr. Silverman and Mr. Kaufman in opposition.

JURISDICTION

The above referenced plan qualifies as a Development of Regional Impact under Chapter A, Section 3(e), Barnstable County Ordinance 94-10, and Section 12 and 13 of the Cape Cod Commission Act as amended, as any development(s) which proposes to divide land of thirty acres or more.

FINDINGS

The Commission makes the following finding subject to Section 12 and 13 of the Cape Cod Commission Act:


The applicant failed to provide to the Commission a fully completed application for a DRI Review. The application was missing the following information:

- 1) The applicant failed to provide the required information contained in Section B, 1, (b),(c),(e) and (g) of the DRI application, including fees and documentation on proposal consistency with the RPP's Minimum Performance Standards.
- 2) The ANR plan, dated October 19, 1994, shows 6 lots on the plan, but failed to provide the legal data required in Section B, 2.1, (e), (g) and (h) of the DRI application.
- 3) The applicant failed to provide the existing conditions plans required in Section B, 2.2 of the DRI application.
- 4) The applicant failed to provide the proposed development plans required in Section B, 2.3 of the DRI application.
- 5) The applicant failed to provide the supporting studies/ reports required in Section B, 2.4 of the DRI application.
- 6) The applicant failed to provide proof of compliance with local development bylaws required in Section D(c)(3)) of the Cape Cod Commission Act.
- 7) The applicant failed to provide a cluster plan as required in MPS 1.1.2 of the Regional Policy plan.
- 8) The applicant failed to show compliance with the Wildlife and Plant Habitat standard as required in MPS 2.4.1.1 of the Regional Policy Plan.
- 9) The applicant failed to show compliance with the Transportation standard as required in MPS 4.1.1.1, 4.1.1.2, 4.1.1.3, 4.1.2.1, 4.1.2.2 and 4.1.2.3 of the Regional Policy Plan.
- 10) The applicant failed to show compliance with the Open Space requirement standard as required in MPS 6.1.2, 6.1.3. & 6.1.5 of the Regional Policy Plan.

CONCLUSION

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

The Commission hereby procedurally denies the Development of Regional Impact Application of Verbon Trust, Daniel Striar, Trustee and Carl W. Oaks for the "Plan of Land" off of Quaker Meetinghouse Road pursuant to Chapter A, Section 3(e), Barnstable County Ordinance 94-10 and Section 12 and 13 of the Cape Cod Commission Act , as amended, without prejudice.

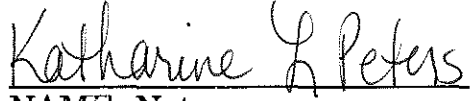

Sumner Kaufman, Chairman


9/21/95
Date

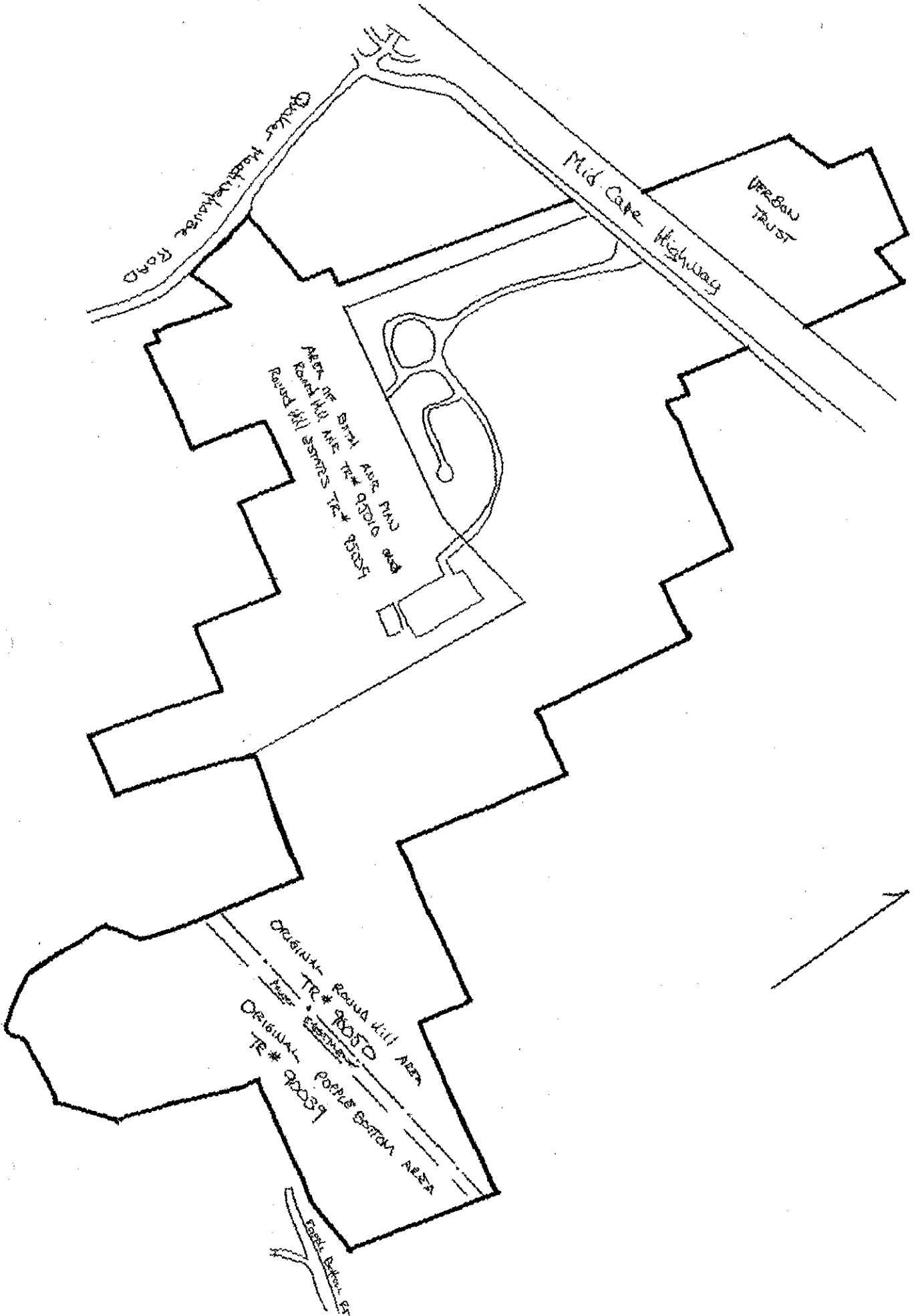
COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 21st day of Sept 1995

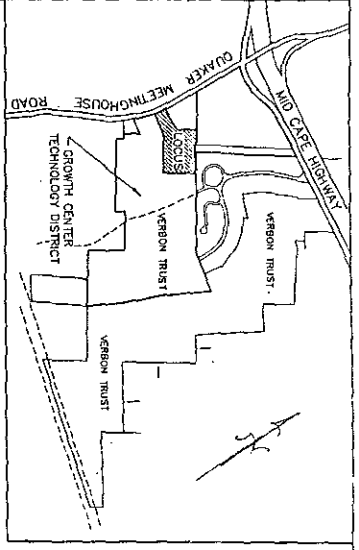

NAME, Notary

My Commission expires: 

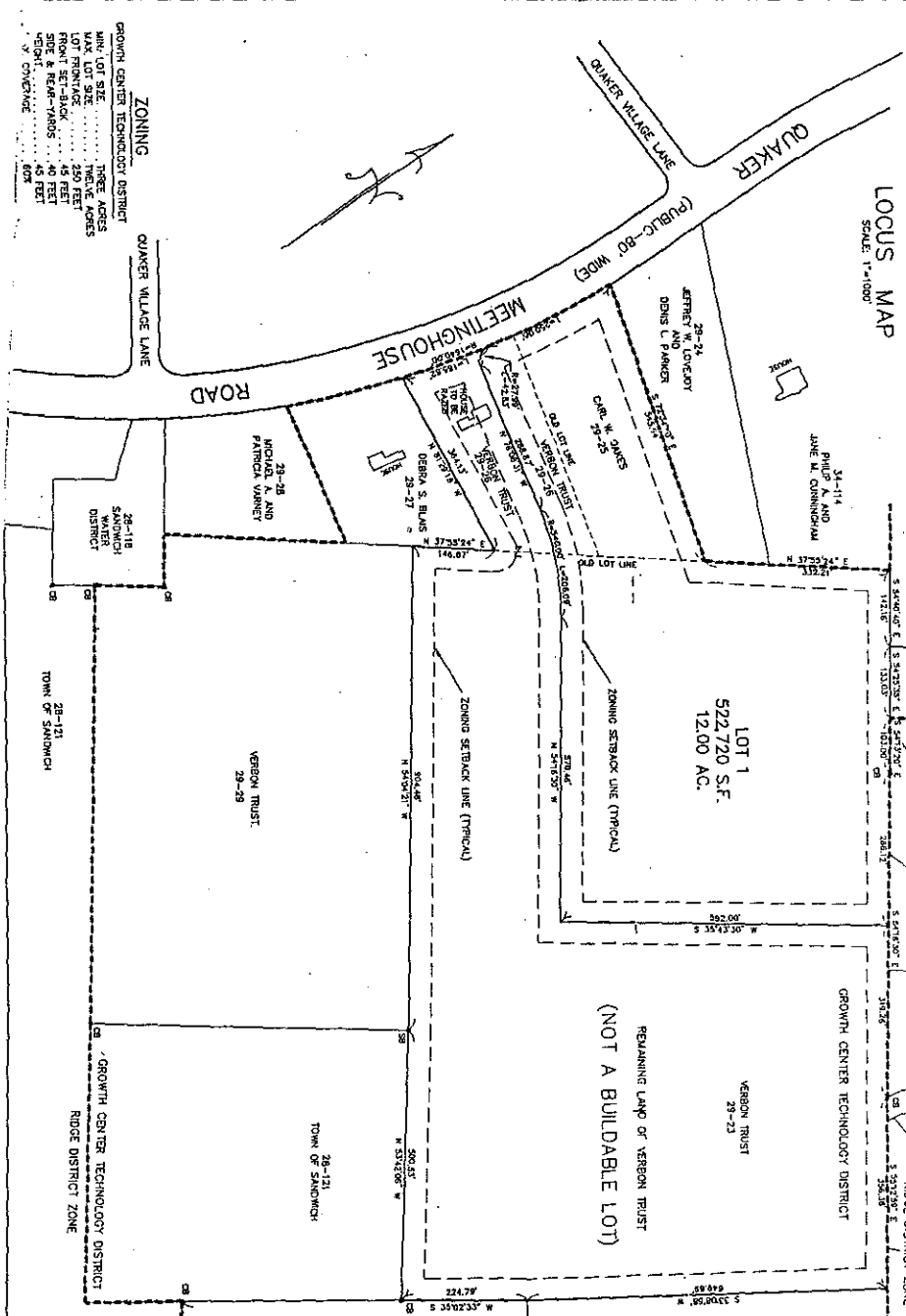


Total Properties of Verban Trust
SANDWICH, MASS.

TOTAL AREA 322.2 AC. N



LOCUS MAP
SCALE: 1"=1000'



ZONING
GROWTH CENTER TECHNOLOGY DISTRICT
MIN. LOT SIZE: THREE ACRES
LOT DEPTH: 250 FEET
FRONT SETBACK: 45 FEET
SIDE & REAR YARDS: 40 FEET
HEIGHT: 40 FEET
V. CHANGE

QUAKER VILLAGE LANE
ROAD
MEETINGHOUSE
ROAD
QUAKER VILLAGE LANE
ROAD

28-118 SANDWICH DISTRICT
28-119 TOWN OF SANDWICH
28-121 TOWN OF SANDWICH

VERBON TRUST
28-29

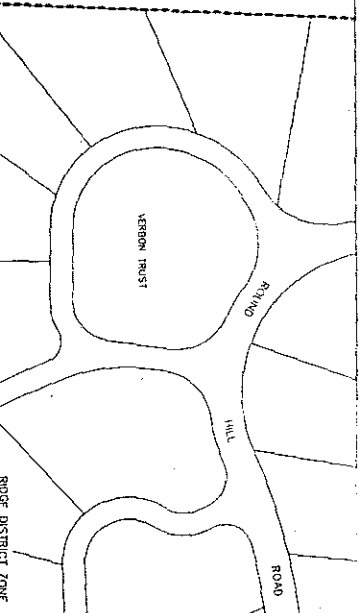
GROWTH CENTER TECHNOLOGY DISTRICT
ZONING SETBACK LINE (TYPICAL)
ZONING SETBACK LINE (TYPICAL)

VERBON TRUST
28-23
VERBON TRUST
28-22

VERBON TRUST
28-20

VERBON TRUST
28-25

14-109 ROMAN CATHOLIC BISHOPS FALL RIVER
GROWTH CENTER TECHNOLOGY DISTRICT
VERBON TRUST
34-108



VERBON TRUST
28-23
VERBON TRUST
28-22

VERBON TRUST
28-20

VERBON TRUST
28-25



I CERTIFY THAT THIS PLAN HAS BEEN PREPARED IN COMPLIANCE WITH THE RULES AND REGULATIONS OF THE BOARD OF REGISTRY OF LAND SURVEYORS OF THE STATE OF MASSACHUSETTS.
DATE: 09-19-04
DATE: PROFESSIONAL LAND SURVEYOR

FOR REGISTRY USE ONLY

OWNER & APPLICANT

VERBON TRUST
PAMEL S. PARK, TRUSTEE
255 RYLANDH STREET
MIDDLEBOROUGH, MASS. 02346
TEL: 1-(508)-947-4711
DEED BOOK 5364 PAGE 68
ASSESSORS REFERENCE
28-26

DEED BOOK 5087 PAGE 281
DEED BOOK 5393 PAGE 81
ASSESSORS REFERENCE
28-23

OWNER
CARL W. OWENS
P.O. BOX 1084
EAST DENNIS, MASS. 02841
DEED BOOK 5135 PAGE 269
ASSESSORS REFERENCE
28-25

THE PURPOSE OF THIS PLAN IS TO BREAK LOT (12) (SEE)

PLANNING BOARD APPROVAL UNDER THE SUBDIVISION CONTROL LAW NOT REQUIRED

DRAWN BY: J. A. G. JR.
DATE: 10/19/04

SANDWICH PLANNING BOARD

THE ABOVE ENDEAVOR DOES NOT CONSTITUTE COMPLIANCE WITH THE PROTECTIVE ZONING BY-LAWS OF THE TOWN OF SANDWICH.

28-121 TOWN OF SANDWICH

SCALE: 1"=100' OCTOBER 19, 1994
TOWN ENGINEER: JAMES S. ASSOCIATES, INC.
ADDRESS: 250 W. 57th STREET
TEL: 1-(609)-946-8873
FAX: 1-(609)-947-8873

PLAN OF LAND
IN
SANDWICH, MASS.

VI-015
V015BLDNG