



CAPE COD COMMISSION

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DATE: July 31, 1997 **EX# 97011**

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

FROM: Cape Cod Commission

RE: Development of Regional Impact Exemption
Section 12 (k) of the Cape Cod Commission Act, as amended.

PROJECT: The "Round Hill Road Subdivision" in Sandwich, Massachusetts.
CCC TR #97011

BOOK/PAGE: Book 4574 Page 120 Parcel 1 Lot 2
Book 4575 Page 120 Parcel 2

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (the Commission) hereby denies the application of Verbon Trust, Daniel Striar, Trustee for a Development of Regional Impact Exemption under Section 12 (k) of the Cape Cod Commission Act, as amended, for "Round Hill Road Subdivision" in Sandwich Massachusetts, as shown on the "Deed Plan Property of Verbon Trust" in Sandwich Massachusetts, dated May 8, 1995, and the "Project Area Plan" in Sandwich Massachusetts, dated November 1, 1995, both plans prepared by Youngquist, James & Associates, Inc. The decision is rendered pursuant to the vote of the Commission on August 7, 1997.

INTRODUCTION:

The applicant has requested a Development of Regional Impact Exemption pursuant to Section 12 (k) of the Commission Act. The proposed subdivision of land qualifies as a DRI under Section 3(c) and 3(d) of the Enabling Regulations Governing Review of Developments of Regional Impact, Barnstable County Ordinance 90-12, as any development which proposes to divide land of thirty acres or more and any development which proposes to divide land into thirty or more residential lots.

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DESCRIPTION:

The Round Hill Road Subdivision is a 100+ acre parcel proposed to be divided into 41 lots for the construction of single family homes. This parcel was included in the 320+ acre Round Hill Estates project (EX #95009, TR #95009) as lot #35. As part of the review of Round Hill Estates, an open space plan was drawn up that would satisfy the needs of both the residential lots in that plan and those that were anticipated in this project. All the proposed lots front on existing roads, either Service Road or roads constructed in the 1970's for a subdivision that was never completed. The project is located on land that lies about 200 feet above sea level.

LOCATION:

The property is located to the east of Quaker Meetinghouse Road and south of the Mid-Cape Highway (Route 6) at Exit # 3 and Service Road. The project lies to the north and west of the existing Round Hill golf course and north of the previous Round Hill Estates DRI. Some of the proposed lots lie within existing fairways on that golf course, which would likely need to be moved before those lots could be built upon.

PROCEDURAL HISTORY

The above listed plans, which are the subject of this requested DRI Exemption, were submitted to the Commission with the Round Hill Estates project (EX #95009, TR #95009). The following chronology describes the history of the review of this project by the Cape Cod Commission to date:

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|---------------|--|
| July 24, 1970 | Sandwich Planning Board approves an 80+ lot subdivision located on this parcel for Sebastino Volpe. Roads and some utilities are constructed but the houses are never built. |
| April 4, 1990 | Sandwich Planning Board endorses an ANR plan reducing the project to 40 lots. |
| May 22, 1997 | Applicant's attorney files with the Cape Cod Commission a DRI Exemption Application Form and a DRI Application Form for this project. |
| June 25, 1997 | Commission staff notifies applicant's attorney of DRI Exemption hearing to be held on July 11, 1997 at 11 am. Attorney requests that hearing be moved to July 15, 1997 at 7 pm., to be held concurrently with the DRI Application hearing. Staff notifies applicant's attorney that July 11 is the last day on which a hearing might be held under Commission regulations for a DRI Exemption request. Applicant's attorney agrees to withdraw the previous DRI Exemption Application and to submit a new application so that the hearings might be held |

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concurrently.

- June 26, 1997 Commission receives fascimilie of letter withdrawing previous application and submitting new DRI Exemption Application.
- June 27, 1997 Commission receives original copy of new application by mail.
- July 5, 1997 Commission staff requests a copy of the definitive subdivision plan for this project. Applicant's attorney agrees to send the original subdivision plan.
- July 8, 1997 Commission receives original subdivision plan for this location, drawn in 1970 and approved by Sandwich Planning Board on July 24, 1970. This plan is for an 80+ lot subdivision that was never constructed.
- July 11, 1997 Commission receives letter from applicant's attorney notifying Commission that the current owners of the individual lots within the subdivision are no longer Verbon Trust, but instead Vernon Hospital Management Corporation, Vernon RHL Corporation and SRC Corporation. These corporations are located at the same street address as Verbon Trust.

MATERIALS SUBMITTED FOR THE RECORD

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|--|----------------------------|---------------|
| 1.) Round Hill Estates referral | Sandwich Planning Board | Dec. 29, 1994 |
| 2.) Written Narrative for DRI Exemption | Davis, Malm and D'Agostine | May 29, 1997 |
| 3.) Abutter List | | May 29, 1997 |
| 4.) Form A Plan | | May 29, 1997 |
| 5.) Deed Reference Addendum | | May 29, 1997 |
| 6.) Acknowledgement of filing with applicable municipal boards | | May 29, 1997 |
| 7.) Proof of Receipt from Mass. Historical Commission | | May 29, 1997 |
| 8.) Plan and Wildlife Assessment | Fugro East, Inc. | May 29, 1997 |
| 9.) Traffic Impact Assessment | Carlson Consulting | May 29, 1997 |
| 10.) Nitrogen Loading Study | CAD Engineering | May 29, 1997 |
| 11.) Open Space Plan | | May 29, 1997 |
| 12.) Withdrawal and Resubmitted of DRI Exemption | | June 25, 1997 |
| 13.) Original Subdivision Plan (1970) | Charles N. Savery Inc. | July 8, 1997 |
| 14.) Amendment of Application | Davis, Malm & D'Agostine | July 11, 1997 |
| 15.) Constitutional Challenge | Davis, Malm & D'Agostine | July 15, 1997 |

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 files TR & EX # 95009 (Round Hill

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Estates) and TR & EX #97011 (Round Hill Subidivision) are incorporated into the record by reference.

TESTIMONY

The following summarizes the testimony regarding the DRI Exemption application at the July 15, 1997 public hearing:

Paul Feldman, attorney for applicant, explained that the project has a seven year history that had been recounted during the DRI process for the Round Hill Estates project. He then described some of the history of the project. It is part of a larger 322 acre parcel for which an earlier 34-lot subdivision (known as the "Lower Subdivision") was approved by the Cape Cod Commission in the Round Hill Estates decision. In that decision, it was agreed that this current project, a 41-lot subdivision (known as the "Upper Subdivision") located on one lot of the previous project, would be reviewed separately as a DRI. However, as part of the earlier project, open space was agreed upon that would satisfy the requirements for both projects. He noted that the earlier decision was currently in litigation, with the applicant challenging the denial of a DRI Exemption and the open space and affordable housing conditions of the decision. Mr. Feldman also explained that the applicant was proposing moving some of the open space from the earlier DRI approval to a new, off-site location. He said that this move had been recommended by the Commission staff as generally acceptable.

Mr. Feldman proposed going over the DRI exemption application first and then moving on to the DRI application. Mr. Prince agreed to this format. Mr. Feldman said that the location, scope and character of the project do not have significant impacts beyond the town in which it is located, so the presumption that it is a DRI does not apply. He said the term "significant" is the key; the project is in the center of Sandwich and therefore any impacts that spill into surrounding towns are so small as to essentially not exist. He does not see the logic of the view that the Midcape Highway and the Service Road are regional roads; if such roads are regional, exemptions are essentially written out of the Act. With regard to water resources, he said that the project is located on a 100' sand column, which results in deep nitrification. Any nitrates that do make it into Scorton Creek have a *de minimus* impact once they get to the boundaries, if any at all.

Mr. Feldman went on to assert that the difference between this subdivision and some others is that this project consists of preexisting lots that have been created and that the roads have already been laid out. The only sticking point, he said, is that the security was never released. However, the rights of the lots in this subdivision are "vested"; all the impacts of these lots "already exist" in terms of the right to build upon those lots already being established.

Joseph Tamsky asked Mr. Feldman about the last point. Mr. Feldman responded that rights are vested when the discretion to create the lots ends. In this case, he said, two

precedents have been met. One is that the roads are built, and the other is that the plans have been submitted to the town. Mr. Tamsky responded that changes in the zoning of the town mean that the right to build on these lots did not exist past 8 years from the town planning board endorsements. Ms. Bebout asked about the utilities on the site. Mr. Feldman responded that they were in place and ready to be used with minor work.

Jeff Levine then presented the staff report on the DRI Exemption to the subcommittee. He explained that the staff recommended the DRI Exemption be denied. With respect to affordable housing, he explained that the staff did not agree with the applicant's assertion that "small changes in the percentage of affordable housing in the Town of Sandwich should have no regional implications" since the town already had a shortage of affordable housing, this was one of the largest subdivisions reviewed by the Commission to date, and affordable housing shortages in one town have regional implications. With respect to water resources, he said that staff review determined that this project was in an overloaded marine embayment with respect to nitrogen and was projected to increase this load. Paul Tilton of the transportation staff then spoke on transportation issues. He explained that Quaker Meetinghouse Road and the Service Road are critical parts of the transportation system of the Cape and that degradation of level of service should be mitigated. Kathy Sferra then spoke on the issue of open space and natural resources. She said that the DRI exemption should be denied for three reasons. First, part of the lot is in a Significant Natural Resource Area as identified in the RPP. Second, the approved open space provisions in the previous Round Hill decision were not yet enacted due to ongoing litigation. Third, she explained that, with respect to the issue of the subdivision being preexisting, the lots are not yet developed and their impacts on the Cape do not yet exist.

Marie Blaney, Director of Planning and Development for the Town of Sandwich, spoke next on the DRI Exemption. She said that the town counsel has said that if the surety is not released that this is not a "permit pending" and thus could not be exempted for this reason. She also said that, if the lots are separately held, the project might be seen as separate, smaller projects, but that if they are all held by the same owner this is a DRI. Joanne Buntich, chair of the Local Planning Committee and member of the Sandwich Planning Board, said she agreed with Ms. Blaney. In addition, she noted that the egress to Quaker Meetinghouse Road did not exist on the plans approved by the Planning Board. She also raised some questions about the open space located south of the project.

Susan Walker, of Responsible Environmental Protection for Sandwich, then spoke in opposition to a DRI Exemption. She said the project involved regional roads, and trips many other thresholds for a DRI. She said she welcomed the input of the Cape Cod Commission on the project.

Mr. Feldman asked to respond to these comments. He said that, with respect to the exemption request, it was not the 356 acre site that mattered; only the 41 lot subdivision. He also said that the ownership of all the lots is separate since ownership was

transferred a few years ago. He said that the situation surrounding this project truly was different from the situation surrounding the previous one.

Mr. Prince proposed continuing this hearing before the full commission. Ms. Buntich asked how the property could have been sold if there was no release of the covenant. She said the project is being used two different ways; one for the earlier project and one for this project. Mr. Feldman responded that the transfer of ownership can be accomplished once the roads and services are constructed. However, the title cannot be conveyed until the covenant is released. Ms. Buntage notes that the usual route is through inspections, and that inspections have never been done to this project. Dorr Fox, chief regulatory officer for the Commission, said that this issue is moot; the project is subject to Commission jurisdiction regardless.

Herbert Olsen moved for a denial of the request for an exemption. Joseph Tamsky seconded. The motion passed unanimously. Mr. Olsen motioned that the hearing be continued to the full Commission meeting of August 7. Madeleine Bebout seconded the motion and it passed unanimously. Mr. Prince instructed staff to write a draft decision for the DRI Exemption.

FINDINGS

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

General

- 1). The Round Hill Road Subdivision is a 100 + acre parcel proposed to be divided into 41 lots for construction of 41 single family homes. For the purposes of Commission review, this project is considered to be part of the 326+ acre parcel reviewed as the Round Hill Estates definitive subdivision. The last plan reviewed by the town shows a 40 lot subdivision.
- 2). The proposed project was originally approved in 1970 as an 80+ lot subdivision. In 1990, an ANR plan for the site reducing the project to 40 lots was approved by the Sandwich Planning Board. At that time the project should have been referred to the Cape Cod Commission for DRI review as a proposal to create 30 or more residential dwelling units.
- 3). Since that time the applicant has not submitted a subdivision plan for this project to the Commission other than the plan submitted as part of the Round Hill Estates project.
- 4). This subdivision is one of the largest (in terms of acreage and number of lots) projects to come before the Cape Cod Commission. Its effects are likely to be regional in nature due to the size, location and character of the project as specified below.

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5) As stated in the decision on Round Hill Estates (TR & EX #95009), this subdivision is subject to DRI review under Section 3(c) and 3(d) of the Enabling Regulations Governing Review of Developments of Regional Impact, Barnstable County Ordinance 94-10, as any development which proposes to divide land of thirty acres or more and any development which proposes to divide land into thirty or more residential lots.

6). The Sandwich Planning Board has informed the Commission staff that the covenant on the Subdivision has not been released. Therefore, the project is not exempt from Cape Cod Commission review under Section 22(e) of the Commission Act.

7). According to the Sandwich zoning enforcement officer, the proposed subdivision meets the requirements of the current Sandwich Zoning Bylaw. However, there are 10 lots in the project that do not meet the lot size requirement of the zoning bylaw that are currently grandfathered by the bylaw. These lots must enter into separate ownership before January 1, 1998 to maintain this grandfathered status.

Transportation:

8). Based on the traffic impact asesement, the proposed development is expected to generate 454 daily vehicle trips and 49 PM peak hour trips. The traffic resulting from this project is expected to impact Cape Cod's regional roadway system, in particular Quaker Meetinghouse Road, Service Road and Interchange 3 on Route 6. The primary driveway accessing the site will be located on Service Road with an alternate driveway located on Quaker Meetinghouse Road. All of these roads are classified as regional roadways under the Regional Policy Plan.

9). The proposed residential subdivision will increase pedestrian and bicycle activity in the area. This is especially true since there is a designated bikeway (Boston - Cape Cod Bikeway) on Service Road and two schools (Oakridge Elementary School and Sandwich High School) on Quaker Meetinghouse Road near the site. Integrating new large subdivisions into the existing bicycle and pedestrian network is essential for improvement of safety for all modes of transportation (bicycle, pedestrian, and vehicular) on the regional roadway system.

Water Resources:

10). The proposed 41 residential lots of the project are not located within a wellhead protection area, but are located within the marine water recharge area to Scorton Harbor/Creek embayment. Scorton Harbor/Creek is a resource of regional significance. Wastewater and stormwater from this project is presumed to impact the Scorton Harbor/Creek embayment.

11). Scorton Harbor does not have an identified marine water standard because a flushing study has not been completed for this embayment. However existing nitrogen

loading to the harbor has been estimated at 7,129 g/m²/yr, which significantly exceeds all the recommended nitrogen loading limits for coastal embayments contained in the Commission's Nitrogen Loading Technical Bulletin. The highest of these recommended limits is 45 g/m²/yr.

12). Under the RPP (Section 2.1.1.2), applicants within Marine Water Recharge Areas are required to meet "identified loading standards" or "improve existing levels of nitrate-nitrogen loading." In cases where the critical load has not been identified, as is the case for Scorton Creek/Harbor, the applicant "shall be required to make a monetary contribution to determine the flushing rate of the embayment" to determine the nitrogen sensitivity of the system (Section 2.1.1.2.C.1). In addition, all DRIs within Marine Water Recharge Areas shall use "DEP approved alternative systems with enhanced nitrogen removal unless a Commission-approved cumulative nitrogen loading assessment" indicates that standard Title 5 systems can be utilized (Section 2.1.1.2.C.3.). The proposed subdivision project is estimated to add nitrogen to the Harbor/Creek system at 12 kg/acre, close to triple the annual rate from existing development within the watershed. When all the developments proposed by the applicant are considered (*i.e.*, the golf course and the two Round Hill subdivisions), the overall rate is 5.1 kg/acre. If denitrifying septic systems (with 19 ppm nitrogen discharge) were installed on every lot within the Round Hill Road Subdivision, the overall development rate in the Round Hill Estates/Round Hill Road Subdivision area is reduced to 4.5 kg/acre, or the loading rate from existing development within the watershed. In order for the Subdivision itself to meet the existing watershed loading rate of 4.5 kg/acre, all wastewater would have to be treated to 5 ppm nitrogen, which could be achieved by a well-maintained tertiary wastewater treatment plant.

13). The applicant has not proposed denitrifying systems for the subdivision. The applicant has not demonstrated that the project will not impact marine water resources without the use of a wastewater treatment plant or denitrifying systems.

Housing:

14). The Cape Cod Commission Regional Policy Plan has a goal of promoting the provision of "fair, decent, safe affordable housing... that meets the needs of present and future Cape Cod residents. At a minimum, each town shall seek to raise its affordable housing stock to 10% of all year-round units by the year 2015." This project entails the development of a 41 lot subdivision in Sandwich. No affordable housing is proposed for this development. Without an affordable housing set aside, the Town of Sandwich and Barnstable County will continue to lose ground in efforts to meet the region's and state's 10% affordable housing requirements. The Town of Sandwich currently has the lowest percentage of affordable housing of all Cape towns, far below the 10 percent target.

Natural Resources:

15). The proposed development is a portion of a 326 acre site located within a Significant

Natural Resources Area as designated by the Regional Policy Plan and accompanying map.

16). The applicant has submitted a Plant and Wildlife Habitat Assessment for the site. The Assessment notes that the "wooded section of the site supports a relatively undisturbed oak/pine secondary growth forest."

17). In its prior review, the Commission required that 60% of the entire 326+/- acres be set aside as open space in order to meet the requirements of the Regional Policy Plan. This was done in order to avoid project segmentation as well as to develop an overall plan for the protection of the most sensitive areas of the site. As a result of this prior review, the applicant proposed the permanent restriction of 198.32 acres of open space. The applicant proposed to meet this requirement by placing a conservation restriction on portions of the existing golf course, as well as adjacent undisturbed woodland areas (both on site and off site). A high priority in developing this plan was to provide natural, wooded connections between existing public lands, primarily owned by the Town, and to minimize inclusion of actively maintained golf course greens. Priority was also given to protecting the kettleholes located on the eastern side of the property by including within the open space the steep margins of these kettleholes. A "Conservation Restriction Plan" showing this area has been developed and approved by commission staff, as has the language of the Conservation Restriction.

18). The applicant states that the project will not have regional impacts, in part due to the restriction of a large portion of the overall site as open space. However, the open space restriction has not yet been filed with the town, nor is it recorded at the Registry of Deeds, and the decision that requires this open space dedication has been appealed by the applicant. Therefore there is no certainty that this open space dedication will be provided at this time.

Hazardous Waste/Solid Waste:

19). Subdivision projects typically involve the use of heavy equipment to prepare the site for building construction. Research indicates that hazardous materials and hazardous wastes are generated during such projects including:

- Ignitable paint wastes-Paint preparation and equipment cleaning;
- Other ignitable wastes-Strippers, cleaners, epoxies, degreasers;
- Spent solvents-Process wastes from cleaning and degreasing;
- Wastes containing toxic chemicals-Paints, coatings, polishes, thinners;
- Alkaline/acid wastes-Cleaners, degreasers and wastes from plumbing operations.

As proposed, the project does not limit or constrain use of such materials or wastes.

20). The Regional Policy Plan requires developments to dispose of construction &

demolition debris & other solid waste in a manner that will minimize the contribution of solid waste to the Cape's disposal facilities, and minimize the generation of hazardous waste in order to protect groundwater. As proposed, the project does not set forth how wastes will be minimized.

CONCLUSION

Based on the findings above, the Cape Cod Commission hereby concludes the location, character and environmental effects of the project are likely to result in impacts to regional resources and create impacts outside of the Town of Sandwich.

The Commission hereby denies the requested Development of Regional Impact Exemption Application of Verbon Trust, Daniel Striar, Trustee for the "Round Hill Road Subdivision" in Sandwich Massachusetts, part of the "Round Hill Estates" Definitive Subdivision dated November 1, 1994; the "Deed Plan Property of Verbon Trust" in Sandwich Massachusetts, dated May 8, 1995; and the "Project Area Plan" in Sandwich Massachusetts, dated November 1, 1995, pursuant to Section 12 (k) and 13 of the Cape Cod Commission Act , as amended.

Madeleine A. Bebout
Madeleine Bebout, Chairman

8-7-97
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

Subscribed and sworn to before me this 7th day of Aug 1997

Katharine L. Peters
NAME, Notary

My Commission expires: ~~My Commission Expires December 5, 1997~~

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