



CAPE COD COMMISSION

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Date: April 14, 1997

Applicant: Town of Yarmouth
1146 Route 28
South Yarmouth, MA 02664

Project #: JD97003

Project: Yarmouth Landfill Re-Use
600 Forest Road
South Yarmouth, MA 02664

RE: Development of Regional Impact
Jurisdictional Determination
Cape Cod Commission Act, Section 12(j)

Book/Page: Book 421, Pages 68 & 69
Book 502, Pages 94 & 95

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby finds that the proposed re-use of the Yarmouth landfill in South Yarmouth, MA is not subject to mandatory review under Section 12(i) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, or under Section 3 of the Development of Regional Impact (DRI) Enabling Regulations, Barnstable County Ordinance 90-12, as amended. The project is not exempt under Section 22 of the Act. The decision is rendered pursuant to the vote of an authorized subcommittee of the Commission on April 10, 1997.

PROJECT DESCRIPTION

The project consists of re-use of the approximately 57-acre Yarmouth capped landfill site and adjacent town-owned land for a nine-hole addition to the Bayberry Hills municipal golf course. The project also includes an approximately 14-acre multi-purpose outdoor recreational facility east of the landfill site. The project site is bordered by Route 6 to the north, West Yarmouth Road to the west and Old Townhouse Road to the south. Existing service and light industrial uses are located to the east of the project site.

PROCEDURAL HISTORY

The Commission received a request for a Jurisdictional Determination from the town of Yarmouth, on behalf of the Department of Public Works, on March 20, 1997. The Commission determined that the application was complete on March 28, 1997. A duly noticed public hearing pursuant to Section 5 of the Act to consider the request was held by an authorized subcommittee of the Commission on April 10, 1997 in the Yarmouth Town Hall, South Yarmouth, MA. The public hearing and record were closed on April 10, 1997. At the close of the public hearing the subcommittee held a public meeting where the subcommittee voted four in favor and one opposed that the project was not subject to mandatory review as a Development of Regional Impact.

MATERIALS SUBMITTED FOR THE RECORD

From the Applicant

- Jurisdictional Determination application dated March 20, 1997
- town of Yarmouth Bayberry Hills/Old Townhouse Road Park Site Improvement plans, prepared by Camp, Dresser & McKee Inc., dated February 1997, sheets #2, 5, 7 & 9
- Applications for Special Permit from the Town of Yarmouth Board of Appeals received February 21, 1997
- Site Plan Review Request dated March 17, 1997
- Certificate of the Secretary of Environmental Affairs on the Environmental Notification form dated November 20, 1996
- letter from the Cape Cod Commission to Trudy Coxe, Secretary of the Massachusetts Executive Office of Environmental Affairs, dated September 13, 1996
- memorandum from Mark Dakers, Department of Solid Waste Management - Southeast Regional Office, to Doug Vigneau, MEPA Unit, dated September 30, 1996
- memorandum from Sharon Stone, Southeast Regional Office MEPA Coordinator to Doug Vigneau, MEPA Unit dated September 12, 1996
- letter from Andrea Papadopoulos, Ph.D., Deputy Regional Director of the Department of Environmental Protection to Secretary Trudy Coxe dated September 16, 1996

Cape Cod Commission

- Cape Cod Commission staff report dated April 3, 1997
- memorandum from Patty Daley, Commission counsel, to Sharon Rooney, dated March 26, 1997
- memorandum with attachments from Patty Daley, Commission counsel, to Alix Ritchie, subcommittee Chair dated April 10, 1997
- memorandum from Sharon Rooney, Commission staff to subcommittee members dated March 28, 1997
- letter from Sharon Rooney, Commission staff to Mr. George Allaire, Director of Yarmouth Department of Public Works dated March 28, 1997

Additional Materials

- Landfill Reuse Project Site Plans prepared by town of Yarmouth, Engineering Division, dated February 17, 1997, 2 sheets
- Restroom Concession Building Architectural Plans dated January 13, 1997 prepared by Fenuccio

& Peel AIA Architects, sheet A2

• Golf Course Building Improvements Plans dated February 19, 1997 prepared by Brown & Lindquist Architects, sheets A-5, A-6, A-16, A-23

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

TESTIMONY

The Commission received testimony at the April 10, 1997 public hearing from George Allaire, Director of the Yarmouth Department of Public Works, who discussed the history of the re-use project and its relationship to the town landfill capping. Mr. Allaire noted that the cost of the project is \$12M with the golf course meant to offset losses from capping the landfill. John Kissida of Camp, Dresser & McKee Inc. described the project and the existing site which is adjacent to the town's existing solid waste transfer facility. He noted that the expansion to the municipal Bayberry Hills golf course will re-use treated effluent to offset fertilizer requirements.

Sharon Rooney stated that Commission staff recommended the project was not required to be reviewed under Section 12(i) of the Act or Section 3(e) of the DRI Enabling Regulations. She noted that the project was not exempt under Section 22(b) of the Act. Patty Daley, Commission Counsel, discussed whether the project qualified as a DRI under Section 3(c) of the DRI Enabling Regulations as a development of greater than 30 acres. She noted that this threshold was revised in 1994 to address the subdivision of land and the development of pre-existing subdivisions.

Comments from the subcommittee included Peter Hickey, who disagreed with the staff recommendation that the project did not qualify under Section 3 of the Enabling Regulations. He believed the project qualified as a DRI under both Section 3(c) of the Enabling Regulations as a development of greater than 30 acres, and under Section 3(e) as a commercial enterprise on town-owned land. Tom Broidrick noted that revisions to Section 3(c) of the Enabling Regulations included development of greater than 30 acres in order to prevent previously approved subdivisions from clearing land. Robert O'Leary stated that the intent of the Commission Act was not to review municipal projects. Richard Prince did not believe the project was a commercial venture.

Comments from public officials included the Yarmouth golf director who noted that while the golf course operation will produce revenue it is designed to offset the costs of capping the landfill. Linda Sears, Yarmouth Recreation Director, stated that the ballfields and other recreational facilities would not create revenue but would incur costs. Paul Robinson, Yarmouth golf commissioner, questioned the Commission's jurisdiction. Ed Nash, golf superintendent for Bayberry Hills golf course, supported the proposed project. Richard DeMello, Town Engineer, noted that the town would incur significant extra cost if the golf course construction was separated from landfill capping due to additional regulatory review.

FINDINGS

The Commission has considered the town of Yarmouth's request for a Jurisdictional Determination regarding the proposed re-use of the Yarmouth landfill in South Yarmouth, MA, and based upon

consideration of such request, information presented at the public hearing and submitted for the record, makes the following findings under Sections 12 and 13 of the Act:

- 1). The project consists of re-use of the approximately 57-acre Yarmouth capped landfill site and adjacent town-owned land for a nine-hole addition to the Bayberry Hills municipal golf course. The project also includes an approximately 14-acre multi-purpose outdoor recreational facility east of the landfill site. Both proposed facilities will be owned and operated by the town of Yarmouth.
- 2). The applicant submitted an Environmental Notification Form (ENF) to the Executive Office of Environmental Affairs (EOEA), MEPA Unit on August 15, 1996. On November 20, 1996 the Secretary of EOEA issued a Certificate on the ENF which did not require the preparation of an Environmental Impact Report (EIR) for the proposed project.
- 3). Pursuant to Section 12(i) of the Act, the Commission may review projects required to file an ENF under MEPA if the Commission determines at a meeting that the proposed development presents one or more concerns listed in Section 12(b) of the Act and is not otherwise exempt under Section 22 of the Act. Section 13(b) of the Act requires that the Commission must vote to review such projects within 90 days of certification by EOEA that the preparation of an EIR is not required. The Commission's deadline for exercising its authority under Section 12(i) of the Act elapsed without the Commission taking action on February 17, 1997.
- 4). The project does not qualify as a DRI under Section 3(c) of the DRI Enabling Regulations, Barnstable County Ordinance 90-12 as amended which requires review of any development which proposes to divide, combine or develop any parcel(s) of land totaling 30 acres or more. The threshold does not apply because the proposed project does not involve the subdivision of land or the development of a pre-existing subdivision.
- 5). The project does not qualify as a DRI under Section 3(e) of the DRI Enabling Regulations, Barnstable County Ordinance 90-12 as amended which requires DRI review of "any...proposed commercial, service, retail or wholesale business, office or industrial development, as well as any private health, recreational or educational development [as follows]: ...new construction or use changes involving outdoor commercial space greater than 40,000 s.f.". The owner of land and the applicant is the town of Yarmouth. Therefore, the proposed re-use is considered a public recreation facility not subject to this threshold.
- 6). The applicant has not obtained any permits which would qualify the project for an exemption under Section 22 of the Act. The applicant applied for a special permit and variance from the Yarmouth Board of Appeals on February 21, 1997. These permits have not been issued as of the date of this decision. Therefore, the proposed project is not exempt under Section 22(b) of the Act as a development which has received a special permit or variance under Chapter 40A prior to July 1, 1989.

CONCLUSION

Based on the findings above, the Commission hereby concludes that the proposed re-use of the Yarmouth landfill in South Yarmouth, MA is not subject to mandatory review under Section 12(i) of the Act or under Section 3 of the DRI Enabling Regulations. This conclusion is based on findings #1 - 5 above. The project is not exempt under Section 22 of the Act.

This decision is rendered pursuant to a vote of an authorized subcommittee of the Commission on April 10, 1997.

Alix Ritchie
Alix Ritchie, Subcommittee Chair

4/14/97
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 14th day of April 1997

Katharine G. Peters
Name, Notary Public

My Commission expires: