

CAPE COD COMMISSION

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Date: May 12, 1997

Applicant: Ballymeade Associates Limited Partnership 1
Fairway Pointe Limited Partnership 1
P.O. Box 1049
North Falmouth, MA 02556

Project: JD97005
Fairway Pointe
145 Falmouth Woods Road
North Falmouth, MA 02556

Re: Jurisdictional Determination Request
Cape Cod Commission Act, Cape Cod Commission
Regulations of General Application

Fairway Pointe Lot/Plan: Lot 2 and 3, Plan Book 414 Page 72

Fairway Pointe Owners: Ballymeade Associates Limited Partnership 1

Book/Page: 8944 154

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby finds that under the Cape Cod Commission Regulations of General Application, Chapter A, Sections 3(c) and 3(g), that the proposed development known as Fairway Pointe qualifies as a Development of Regional Impact (DRI), and that pursuant to Section 22(b) of the Cape Cod Commission Act the proposed subdivision called Fairway Pointe is exempt from DRI review. The decision is rendered pursuant to the vote of the Cape Cod Commission subcommittee on May 8, 1997.

PROJECT DESCRIPTION

The proposed project is located in Ballymeade Estates, Route 151, Falmouth. Ballymeade Estates is an existing residential subdivision that includes a country club and golf course. Fairway Pointe consists of 32 multifamily units located on 86.9 acres to the west of Falmouth Woods Road. The proposal consists of a transfer of development rights from approximately 18 acres located to the south of Ballymeade Estates to Fairway Pointe.

JURISDICTION

The purpose of the Jurisdictional Determination request is to determine if the proposed transfer of development rights proposes to divide, combine, or develop any parcel(s) of land totaling 30 acres or more and whether the proposed transfer of development rights proposes to create or add 30 residential dwelling units under Cape Cod Commission Regulations of General Application, Chapter A, Sections 3(c) and 3(g), Barnstable County Ordinance 94-10, and whether the proposed development is exempt from Commission review under Section 22(b) of the Act.

PROCEDURAL HISTORY

A summary of the chronology of the Fairway Pointe phase of the Ballymeade Estates project is as follows:

In June of 1987 MEPA approved the Final Environmental Impact Report (FEIR) for the Falmouth Woods project which is now known as Ballymeade Estates. In April of 1989 MEPA approved a modification to the plans for 32 residential units and 14 guest units on lot 9, which was subsequently subdivided into lots 2 and 3 in June of 1989. In October of 1994 lots 2 and 3 were combined for a total of 46 residential units (110 bedrooms) and became known as Fairway Pointe.

On February 17, 1995, the Cape Cod Commission determined that the proposal for 32 multifamily units on 86.9 acres known as Fairway Pointe was in substantial compliance with the EIR approved by the Secretary of Environmental Affairs prior to July 1, 1989, and did not result in increased impacts due to siting, traffic, or nitrogen loading. The project was determined to be exempt from DRI review under Section 22(b) of the Act.

The current proposal seeks to transfer the development rights from approximately 18 acres located to the south of Ballymeade Estates to the Fairway Pointe phase of the project. Zoning for this parcel allows 8 residential units (24 bedrooms). The 18 acre parcel, which abuts other town-owned property, will be conveyed to the Town of Falmouth for open space and recreation purposes as part of the Moraine Trail.

The application was submitted on April 14, 1997 and deemed incomplete on April 22, 1997 at which time additional information was requested. The additional

information was submitted on May 2, 1997, starting the twenty-one day decision period.

MATERIALS SUBMITTED FOR THE RECORD

- Jurisdictional Determination Application
- Memorandum to Accompany Application to the Cape Cod Commission from Diane C. Thompson, dated March 26, 1997
- Copy of letter from the Falmouth Planning Board to Carol S. Martin, Town Clerk, dated February 5, 1997
- Copy of Deed the approximately 18 acre open space parcel, submitted by Atty. Mark C. Gildea on May 2, 1997
- Preliminary subdivision plan for Fairway Pointe Limited Partnership 1 dated November 14, 1996
- Correspondence from A Concerned Citizen, dated April 24, 1997
- The application and notice of the public hearing relative thereto, the Commission's staff report, and exhibits, minutes of all hearings and all written submissions received in the course of the proceedings, including materials on file for JD97005 are incorporated into the record by reference.

TESTIMONY

Diane C. Thompson, representing Ballymeade Development Corporation, briefly reviewed the history of the project. She described the current proposal.

There was no further testimony.

FINDINGS

The subcommittee has considered the applicants request for a Jurisdictional Determination regarding the proposed Fairway Pointe transfer of development rights. Based upon consideration of such request, upon information presented at the public hearing and submitted for the record, the subcommittee makes the following findings:

- 1) Fairway Pointe (86.9 acres) is a residential multifamily subdivision. It exceeds the 30 acre threshold under the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(c), and therefore qualifies for DRI review.
- 2) Fairway Pointe (40 units proposed) is a residential multifamily development that exceeds the 30 residential dwelling unit threshold under the Cape Cod Commission Regulations of General Application, Chapter A, Section 3(g), and therefore qualifies for DRI review.
- 3) The Environmental Impact Report of 1987 and the Notice of Project Change dated April 1989 were approved by the Secretary of Environmental Affairs prior to July 1, 1989. As originally approved by MEPA, the Fairway Pointe project consisted of 32 multifamily units and a 14 unit guest lodge.

4) Fairway Pointe is seeking a total of 40 units (120 bedrooms), consisting of the approved 32 units (96 bedrooms) plus an additional 8 units (24 bedrooms). The number of units is below the MEPA approval of 46 units for this phase, and although the number of bedrooms exceeds the MEPA approval of 110 for this phase by 10 bedrooms, when added to the other phases it is still below the overall MEPA approval of 227 bedrooms for the entire project.

5) The Fairway Pointe project, as currently proposed, is in substantial compliance with the EIR and the Notice of Project Change approved by the Secretary of Environmental Affairs prior to July 1, 1989. Changes to the originally approved proposal will result in no increased impacts due to siting, traffic, or nitrogen loading. In addition, the proposal continues to reflect the nature and purpose of the project and use in the original Environmental Impact Report and 1989 Notice of Project Change, and they comply with the Cape Cod Commission Definition of Substantial Compliance dated April 1, 1992.

6) Should the proposed changes to the plans for Fairway Pointe result in the requirement for additional review by MEPA, the project shall be referred to the Cape Cod Commission as a Development of Regional Impact.

CONCLUSION

Based on the findings above, the Commission concludes that the proposed project known as Fairway Pointe meets or exceeds the threshold for DRI review as a project that proposes to divide, combine, or develop any parcel(s) of land totaling 30 acres or more, and as projects that are planned to create or add thirty or more residential dwelling units. The Commission also concludes that the proposed project is exempt from review by the Cape Cod Commission under Section 22(b) of the Act based on substantial compliance with MEPA approval of the Environmental Impact Report dated April 15, 1987 and the modifications approved by MEPA dated April 1989.

David H. Ernst
David H. Ernst, Subcommittee Chairman

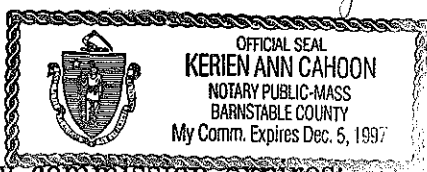
May 15 1997
Date

Commonwealth of Massachusetts

Barnstable, ss

Subscribed and sworn to before me this 15th day of

May 1997.



Kerien Ann Cahoon
Name, Notary Public

My commission expires:

Fairway Pointe - Jurisdictional Determination Decision - JD97005

May 12, 1997