



# CAPE COD COMMISSION

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Date: July 2, 1998

To: Paul and Sandra Flynn  
747 Rancho Circle  
Las Vegas, Nevada 89107-4619  
  
99 Asnebumskit Road  
Paxton, MA 01612

From: Cape Cod Commission

Re: Development of Regional Impact  
Cape Cod Commission Act, Section 12 & 13

Project: Flynn Tower

Applicant: Paul and Sandra Flynn

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9621/32

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission hereby denies without prejudice the application of Paul Flynn for a Development of Regional Impact approval, pursuant to Sections 12 and 13 of the Cape Cod Commission Act, c. 716 of the acts of 1989, as amended, for the Flynn Tower in Barnstable, Massachusetts. The decision is rendered pursuant to a vote of the Commission on July 2, 1998.

### PROJECT DESCRIPTION

The proposed project consists of constructing a 430 foot replacement tower 40 feet from an existing damaged tower at 749 Oak Street, West Barnstable, MA. The applicant proposes removing the damaged existing tower once the replacement tower has been built and all equipment has been moved to the new tower. The project is located on a 5.32 acre site in a residential zoning district of West Barnstable.

Flynn Tower, West Barnstable, MA  
Development of Regional Impact DR97023  
July 2, 1998

## PROCEDURAL HISTORY

Pursuant to Sections 12(b) and (e) of the Cape Cod Commission Act, the Commission voted to accept the Town of Barnstable's discretionary referral of the Flynn Tower on October 23, 1997.

Due to the incomplete nature of the application, the Cape Cod Commission opened and closed a pro-forma hearing on December 11, 1997 at the offices of the Cape Cod Commission, Barnstable, MA. No testimony was heard and no substantive action was taken at this hearing.

On December 15, 1997 the Regulatory Committee of the Commission, at the request of the applicant, extended the decision period for the proposed project to July 3, 1998. The extension was granted to allow the applicant time to pursue permanently repairing the existing tower.

The Cape Cod Commission opened and closed a public hearing to consider the procedural denial of the proposed tower on July 2, 1998 at the Assembly of Delegates Chambers in the First District Court House. The Commission voted to procedurally deny the project by a unanimous vote.

### MATERIALS SUBMITTED FOR THE RECORD

#### Materials submitted by the applicant

1. Letter from Paul Flynn to the Commission dated 10/21/97.
2. Memo from Paul Flynn to the Commission dated 12/8/97.
3. Letter from Paul Flynn to the Commission dated 5/13/98.
4. Letter from Paul Flynn to the Commission dated 5/30/98.

#### Materials submitted by the Cape Cod Commission

1. Commission staff report dated 10/16/97 regarding the discretionary referral of the Flynn Tower.
2. Letter from the Commission to Debra Lavoie dated 10/28/97
3. Letter from the Commission to Paul and Sandra Flynn dated 10/29/97.
4. Commission Request for Quotations, Wireless Communications Consulting dated 11/4/97
5. Letter from the Commission to Paul and Sandra Flynn dated 11/5/97 (Las Vegas address).

6. Letter from the Commission to Paul and Sandra Flynn dated 11/5/97 (Paxton address).
7. Letter from the Commission to Paul and Sandra Flynn dated 11/13/97 (Las Vegas address).
8. Letter from the Commission to Paul and Sandra Flynn dated 11/13/97 (Paxton address).
9. Letter from the Commission to Paul and Sandra Flynn dated 11/24/97 (Las Vegas address).
10. Letter from the Commission to Paul and Sandra Flynn dated 11/24/97 (Paxton address).
11. Letter from the Commission to Paul Flynn dated 12/11/97.
12. Minutes of the pro-forma hearing dated 12/11/97.
13. Extension agreement between Paul Flynn and the Commission dated 12/15/97.
14. Letter from the Commission to Paul and Sandra Flynn dated 12/18/97.
15. Letter from the Commission to Paul Flynn dated 4/2/98.
16. Letter from the Commission to Paul Flynn dated 5/6/98.
17. Letter from the Commission to Paul Flynn dated 5/19/98.
18. Letter from the Commission to Paul Flynn dated 6/2/98.

**Materials submitted by Town of Barnstable officials**

1. Decision of the Town of Barnstable Board of Appeals dated 10/21/69.
2. What appears to be Section 4-4.4 — 4-4.5 of the Town of Barnstable Zoning Ordinances.
3. Application for a variance from the Town of Barnstable Zoning Board of Appeals dated 11/26/96.
4. Staff report for Special Permit and variance requests before the Town of Barnstable Zoning Board of Appeals, dated 9/11/97.
5. Excerpts from the Town of Barnstable Zoning Board of Appeals Minutes, dated 9/17/97.
6. Letter from Ralph Crossen, Building Commissioner to Paul Flynn dated 1/3/97.

7. Letter from LOUD & Clean to Maureen Makkay dated 8/28/97.
8. Discretionary referral from Town of Barnstable to the Commission dated 10/14/97.
9. Letter from Ralph Crossen, Building Commissioner, to the Commission dated 10/23/97.
10. Memo from Paul Flynn to the Town of Barnstable Zoning Board of Appeals, no date.
11. Memo from Paul Flynn to Art Traczyk, Principal Planner, no date.
12. Letter from Ralph Crossen, Building Commissioner, to Paul Flynn, dated 11/25/97.
13. Civil action # 97 CV 12531 GAO, Paul and Sandra Flynn vs. Members of the Zoning Board of Appeals, dated 12/1/97.
14. Portion of a deposition taken of Lester Ehresmann in the civil action Paul Flynn vs Ehresmann Engineering, Inc. and Mid Atlantic Communications, Inc. dated 12/5/97.
15. Letter from Paul Flynn to Ralph Crossen, Barnstable Building Commissioner, dated 12/8/97.
16. Letter from Paul Flynn to Ralph Crossen, Barnstable Building Commissioner, dated 5/13/98.

**Materials submitted by interested parties**

1. Letter from William Spitzer, WABU-TV to Emmett Glynn, Zoning Board of Appeals, dated 9/15/97.
2. Letter from Joan Mullen to Zoning Board of Appeals, dated 9/17/97.
3. Letter from Gregory Bonc in support of tower dated 9/17/97.
4. Letter from Gene Dennis, FedEx, to Zoning Board of Appeals dated 9/17/97.
5. Letter from Steven Seskin, Skytel, to Zoning Board of Appeals dated 9/15/97.
6. Letter from Lewis Benn, Benn Real Estate to Paul Flynn dated 9/17/97.
7. Town of Barnstable Confidential Income Statement, no date.
8. Notice of public hearing from Ehresmann Engineering, Inc. to tenants of Flynn Tower, no date.

9. Procedural timeline for Town of Barnstable review.
10. Comments on review of Flynn Radio Tower DRI #TR96026.

The application and notice of the public hearing relative thereto, the Commission's staff report, exhibits, minutes of all hearings and meetings and all submissions received in the course of the proceedings, including materials submitted on file #DR97023 are incorporated into the record by reference.

### JURISDICTION

The proposed Flynn Tower qualifies as a Development of Regional Impact under Section 12(e) of the Cape Cod Commission Act which permits town agencies to make a discretionary referral of developments which do not exceed one of the specific thresholds, provided that the Commission accepts the referral pursuant to Section 12(b).

### FINDINGS

1. On October 23, 1997 the Commission voted to accept the discretionary referral from the Town of Barnstable to review the Flynn Replacement Tower as a Development of Regional Impact.

Due to the incomplete nature of the DRI application, a hearing officer opened and closed a pro-forma hearing at the Cape Cod Commission office, Barnstable, MA on December 11, 1997. No testimony was heard and no substantive action was taken at this hearing.

On December 15, 1997 the Commission granted, at the request of the applicant, an extension to the decision period to July 3, 1998.

As of the date of this decision, the applicant has not submitted a completed application for DRI review to the Commission.

As of the date of this decision, the applicant has not submitted a letter of withdrawal to the Town of Barnstable or to the Commission.

2. The proposed project consists of constructing a 430 foot replacement tower 40 feet from an existing damaged tower at 749 Oak Street, West Barnstable, MA. The applicant proposes removing the damaged existing tower once the replacement tower has been built and all equipment has been moved to the new tower. The project is located on a 5.32 acre site in a residential district of West Barnstable.

3. The applicant failed to progress continuously and expeditiously through required regulatory processes, thereby providing no information on which to conduct a substantive hearing or to base a decision.

4. The applicant failed to submit a filing fee.

CONCLUSION

The Cape Cod Commission hereby procedurally denies without prejudice the Development of Regional Impact proposal for the Flynn Tower pursuant to Sections 12 and 13 of the Cape Cod Commission Act. This conclusion is supported by the finding that the applicant failed to comply with procedures of the Act and Commission regulations requiring submission of a completed application.

Herbert Olsen  
Herbert Olsen, Chair

7/2/98  
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss  
subscribed and sworn to before me this 2<sup>nd</sup> day of July 1998.

Katharine L. Peters  
Katharine L. Peters, Notary Public

My commission expires:

