



CAPE COD COMMISSION

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Date: December 21, 1998

Applicant: Telecorp PCS, Inc., represented by:
Christopher McCarrier
Entel Technologies, Inc.
20 Industrial Park Drive
Nashua, NH 03062

Project #: JD98045
Project: Hayden Movers Monopole
84 Industry Road
Marstons Mills, MA

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

Lot/Parcel: Map 58, Parcels 29, 30, 31
Land Court
Certification #: C140250, C72574, C72574

Owner: Robert Hayden

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby finds pursuant to Section 12(j) of the Cape Cod Commission Act, that the proposed Hayden Movers Monopole requires review as a Development of Regional Impact (DRI). The decision is rendered pursuant to the vote of the Subcommittee on December 3, 1998.

PROJECT DESCRIPTION

The proposed project is located in Marstons Mills, northwest of the intersection of Route 149 and Route 28. The property in question includes three adjacent parcels of land which front on the north side of Industry Road, each parcel being approximately 1 acre in size and all parcels under the same ownership. The westernmost parcel contains the office of Hayden Building Movers and an existing 55.8 foot wood telephone pole with a whip antenna providing two-way radio communications for Hayden Movers. This lot is surrounded by a wood stockade fence

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and some landscaping. The middle parcel contains two existing commercial buildings. The easternmost parcel contains no structures and is previously disturbed with little vegetation.

The project proposal involves the removal of the existing 55.8 foot pole on the westernmost parcel and the construction of a 75 foot aluminum monopole on the easternmost parcel, approximately 150 feet to the north.

JURISDICTION

The purpose of the jurisdictional determination request is to determine whether the proposed Hayden Movers Monopole requires mandatory referral under the thresholds established in Section 3 of the DRI enabling regulations, specifically, whether the project constitutes construction of any wireless communication tower exceeding thirty-five feet in height from the natural grade of the site on which it is located but not including the reconstruction or replacement of an existing wireless communication tower on the same site, provided that the reconstruction or replacement does not exceed the height of the existing wireless communication tower by more than twenty feet. Said twenty feet shall be measured from the height of the existing wireless communication tower in existence on June 30, 1997. In addition, the Commission must determine if the project qualifies for an exemption under Section 22 of the Act.

PROCEDURAL HISTORY

The Commission received a jurisdictional determination request from Telecorp PCS, Inc., on October 29, 1998. The application was deemed complete on November 5, 1998. Pursuant to its Delegations of Authority, the Chair of the Commission voted to delegate to the subcommittee the authority to render a final decision on this Jurisdictional Determination. A duly noticed public hearing pursuant to Section 5 of the Act was held by an authorized Subcommittee of the Commission on the jurisdictional determination request on November 23, 1998 in the Barnstable Superior Court House, Barnstable, MA. After determining that the application was incomplete because the application fee did not clear, the Subcommittee continued the hearing to December 3, 1998 in the Assembly of Delegates Chamber, First District Court House, Barnstable, MA. At the close of the hearing, the Subcommittee unanimously voted that the project requires mandatory referral under DRI thresholds contained in Section 3 of the Cape Cod Commission DRI enabling regulations.

Materials Submitted for the Record:

- Jurisdictional Determination application and supporting materials, dated September 25, 1998, received October 29, 1998.
- Survey Plan dated October 6, 1998 and Site Details Plan dated September 16, 1998, prepared by Atlantic Wireless, Atlantic Environmental Technologies, Inc., Sandwich, MA.
- Letter from Sarah Korjeff, CCC staff, to Christopher McCarrier, Telecorp, re: application requirements, dated November 5, 1998.
- Cape Cod Commission Staff Report, dated November 19, 1998.
- NEPA Checklist for Hayden Land Development site, dated August 14, 1998, received November 27, 1998.
- Phase 1 Environmental Site Assessment for Hayden Land Development site, prepared for TeleCorp PCS, Inc., dated August 12, 1998, received November 27, 1998.
- Letter from Peter B. Morin to Sarah Korjeff re: DRI Exemption application, dated November 25, 1998.

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- Letter from Theodore Schilling to Ralph Crossen, Building Commissioner, re: Hayden Wireless Tower, dated June 17, 1998.
- Letter from Ralph Crossen, Building Commissioner, to Theodore Schilling re: use of existing structure, dated July 1, 1998.

The application and notice of the public hearing relative thereto, the Commission's staff reports, and exhibits, minutes of the hearings and all submissions received in the course of the proceedings, including materials submitted on file JD#98045 are incorporated into the record by reference.

TESTIMONY

At the November 23, 1998 public hearing, Sarah Korjeff, Commission staff, explained that the Jurisdictional Determination application was not considered complete because the application fee had not cleared. The subcommittee determined not to make a decision until the fee was received. Jim Smalanskas, Entel Technologies, explained that Entel is working for Telecorp to identify existing structures on which to locate their facilities. He described the various structures that were considered prior to proposing the current project. Mr. Smalanskas stated that the Hayden Movers site seemed ideal because of its proximity to Route 28 and because of the surrounding land uses. Peter Morin, attorney for Telecorp, described the three lots on the site plan and explained that the original proposal involved replacing the existing telephone pole with a 75 foot monopole on the same lot. He stated that relocating the tower to the easternmost lot would make it less visible. Mr. Morin noted that there is ambiguity in the definition of "site" as contained in the DRI threshold. Ms. Korjeff stated that the proposed project is not exempt under Section 22 of the Commission Act. She also explained the definition of the word "site" in the Commission's Siting Criteria for Wireless Facilities and in Black's Law Dictionary. She stated that relocating the tower to a separate parcel with different characteristics should not be considered the same "site."

At the December 3, 1998 public hearing, Sarah Korjeff, Commission staff, stated that the application fee had been received and the application was deemed complete. She expressed staff's opinion that the project proposes to replace an existing tower with a new tower on a separate site and thus should be considered a Development of Regional Impact subject to Commission review.

FINDINGS

The Subcommittee has considered Telecorp PCS Inc.'s request for a Jurisdictional Determination regarding the proposed wireless communication facility in Marstons Mills, MA. 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. The property in question includes three adjacent parcels of land which front on the north side of Industry Road, each parcel being approximately 1 acre in size and all parcels being under the same ownership.
2. The project proposal involves removal of a 55 foot wood communications tower on one parcel of land and construction of a 75 foot metal communications tower on a site two parcels to the east and approximately 150 feet away.

3. According to the Commission's Siting Criteria for Personal Wireless Service Facilities, "site" is defined as "a portion of a subject property." Relatedly, "siting" is defined as "the method and form of placement of personal wireless service facilities on a specific area of a subject property."

4. Black's Law Dictionary defines a "site" as "a plot of ground suitable or set apart for some specific use. A seat or ground plot. The term does not of itself necessarily mean a place or tract of land fixed by definite boundaries."

5. The word "site" in the Commission's Development of Regional Impact review threshold is intended to relate to the specific location of a wireless service facility on a piece of property or parcel of land.

6. The proposed project is subject to Commission jurisdiction because it proposes a new wireless communication tower exceeding thirty-five feet in height. While the proposed telecommunications tower is less than 20 feet taller than an existing telecommunications tower two parcels away, the proposed tower is not on the same site as the existing tower and thus the project trips the DRI review threshold.

7. The Commission has not received any evidence that the proposed project is exempt under Section 22 of the Act.

CONCLUSION

Based on the findings above, the Commission concludes that the project is not exempt from Commission review under Section 22 and does requires mandatory referral for DRI review as construction of a wireless communication tower exceeding thirty-five feet in height from the natural grade of the site on which it is located but not including the reconstruction or replacement of an existing wireless communication tower on the same site, under Section 3 of Barnstable County Ordinance 90-12, as amended. This decision is specific to the facts presented by Telecorp PCS, Inc.

Herbert Olsen
Herbert Olsen, Chair

12/22/98
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 22 day of Dec 1998

Katharine L. Peters
Name, Notary Public

My commission expires:



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