

CAPE COD COMMISSION

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December 16, 1999

Applicant: Leisure Time Cruise Corporation
4258 Communications Drive
Norcross, GA 30093
Bernard Johnson
770-331-5252

Project #: CCC #DR99018 and CCC #TR99018
Leisure Time Cruise Corporation, Hyannis Casino Boat
The Dockside Restaurant
110 & 123 School Street and 53 South Street
Hyannis, MA 02601

RE: Development of Regional Impact (DRI) Review
Cape Cod Commission

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby **procedurally denies without prejudice** Leisure Time Cruise Corporation as a Development of Regional Impact (DRI) pursuant to Section 12(b) of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the purpose of dockage and use of the Leisure Lady casino boat out of Hyannis Harbor for off-shore gambling cruises. This decision is rendered pursuant to a vote of the Commission on December 16, 1999.

PROJECT DESCRIPTION

The project proponent, Leisure Time Cruise Corporation, is a Colorado business corporation, which is licensed to do business in the Commonwealth of Massachusetts. The Corporation does business as Leisure Casino Cruises under a service mark that is registered in the Commonwealth of Massachusetts. The applicant owns a vessel known as the Leisure Lady, which is 168 feet in



length with a 45 foot beam. It weighs 88 tons and holds 500 passengers plus crew. The applicant proposed to limit itself to 250 passengers per cruise. The applicant leases two parcels in Hyannis at the Dockside Restaurant, including an upper parking lot which provides accessory parking to the site, plus 23 boat slips and the bulkhead docking for the Leisure Lady. The premises are in a BL-B zone that allows as a matter of right the docking of an excursion vessel.

The applicant operates a similar vessel from Gloucester Harbor and proposed to operate a gambling cruise from Hyannis Harbor twice per day, the first departing at 11:30 a.m. and returning at approximately 4:30 p.m. and the second departing at 7:00 p.m. and returning at 11:30 p.m. The 2-1/2 hour break between the two cruises were proposed to allow for exiting of the three parking areas, cleaning and grooming the vessel, cleaning the site, and other maintenance activities. The vessel was proposed to depart from Hyannis Harbor and cruise to an area outside of the three-mile jurisdictional limit of the Commonwealth of Massachusetts, Barnstable County, and the Town of Barnstable for the purpose of providing gambling opportunities. Parking proposed for the project included 168 spaces for automobiles and spaces for three 48-passenger tour busses. The applicant proposed to operate a 24-passenger trolley to the nearby hotels in Hyannis and Yarmouth.

The applicant also proposed improvements to the property, including remodeling of the restaurant, drainage, a crosswalk, a sidewalk, lighting, and landscaping. The project also proposed dredging, pilings, and fill in certain locations at the site.

JURISDICTION

The Town of Barnstable Conservation Commission made a Discretionary Referral of the project to the Cape Cod Commission as a Development of Regional Impact (DRI) on May 27, 1999. In determining whether to accept the discretionary referral as a Development of Regional Impact, the Cape Cod Commission must determine whether the project may have regional impacts and if it presents one or more of the concerns listed in Subsection 12(b) of the Cape Cod Commission Act (Act). The project came before the Cape Cod Commission on June 17, 1999 and it was found that the proposal may impact factors listed in 12(b) 1, 2, 3, 4, 6, 7, 8, 9, & 10 which include, but are not limited to, impacts on natural resources, impacts from pedestrian and vehicular traffic, impacts to the waterway and public land, waste disposal and sewage treatment, and economic development. Due to anticipated regional impacts, the Commission voted to accept the Discretionary Referral from the Town of Barnstable.

Also on June 17, 1999 the Cape Cod Commission voted to assert jurisdiction over the project as a mandatory Development of Regional Impact based upon "new construction or use changes involving as a principal use outdoor commercial space with a total project area greater than 40,000 square feet."

Due to anticipated regional impacts, the Barnstable County Commissioners also made a Discretionary Referral of the project to the Cape Cod Commission. The Commission voted on June 17, 1999 to accept the County Commissioners Discretionary Referral and again assert jurisdiction over the project as a Development of Regional Impact.

Materials Submitted for the Record

From the Applicant:

Site plan materials that were submitted to the Town of Barnstable

Site plans

Site Plan Review Report, May 18, 1999

Foreign Corporation Certificate 91-1867683

Application for Registration of a Service Mark 57126

Articles of Incorporation of Leisure Lady Cruise Corporation

Articles of Amendment to the Articles of Incorporation of Leisure Lady Cruise Corporation, CPC19971166590

Consent Resolutions of the Directors of Leisure Lady Cruise Corporation, April 22, 1998

Consent Resolution of the Shareholder of Leisure Lady Cruise Corporation, April 23, 1998

Zoning Information

Interior plans, Dockside Inn

Certificate of Inspection, December 31, 1998

Certificate of Documentation, October 30, 1998

Temporary Certificate of Inspection, September 26, 1997

A Day in the Life of the M/V Leisure Lady

Proposed signs

Advertising Information

Letter from James A. Marr, Chief of Police, City of Gloucester to John J. Finnegan, Chief of Police, Town of Barnstable, May 7, 1999

Letter from Timothy R. McHugh, Hoch & McHugh to Eldon Rance, Leisure Time Casinos and Resorts, November 11, 1998

Memorandum of Leisure Time Casino Cruises, Inc. Concerning Forfeiture of Vessel Arising from a Violation of Florida Gambling Laws

Site Plans, Elevations, Rowe's Wharf Reconstruction Project, Site Plan, Ship Plan

Site Plan, Plan Book 255, Page 92

Site Plan, Exhibit 1

Order of Conditions, MA Wetlands Protection Act, Exhibit 2
Alcoholic Beverages Control Commission Regulations, Exhibit 3
Memorandum of Leisure Express Cruise, LLC, Concerning the Operation of
Gambling Vessels on the High Seas in Nantucket Sound, Exhibit 4
Resume, Ronald R. Bourne, P.E., Bourne Consulting Engineers, Exhibit 5
Entertainment License Determination, Exhibit 6
Letter to Site Plan Review from Barry Pett, Chairman Gloucester Redevelopment
Authority, May 18, 1999, Exhibit 7
Letter to Site Plan Review Committee from Michael Costello, Cape Ann Chamber
of Commerce, May 19, 1999
Letter to Ralph Crossen, Barnstable Building Inspector from Michael J. Princi,
Wynn & Wynn, May 19, 1999
Letter to Margo Fenn from Michael J. Princi, May 24, 1999
Complaint for Declaratory and Injunctive Relief, Demand for Jury Trial from
Michael J. Princi, Esq., June 11, 1999
Letter to Cape Cod Commission, from Michael J. Princi, June 17, 1999
Letter to Patty Daley from Michael J. Princi, June 21, 1999
Motion for Preliminary Injunction, June 23, 1999
Letter to Ruth Weil, Esq. and Patricia Daley, Staff Counsel, from Michael J.
Princi, June 25, 1999
Letter to Attorney Patricia Dailey from Stuart A. Bornstein, August 17, 1999
Fax to Katherine Peters from Michael Princi, October 20, 1999
Letter to Katherine Peters from Michael J. Princi, October 20, 1999

Correspondence from the Cape Cod Commission:

Staff Report, June 11, 1999
Cape Cod Commission DRI threshold calculation
FAX from Dorr Fox and Patty Daley to Michael Princi, June 18, 1999
FAX from Dorr Fox and Patty Daley to Michael Princi, June 21, 1999
Letter from Dorr Fox and Patty Daley to Michael Princi, undated
Letter from Dorr Fox and Patty Daley to Michael Princi, June 18, 1999
FAX to County Commissioners from Robert S. Tryo, June 21, 1999
FAX to Eric Wodlinger, Esq. and Laurence Freedman, Esq. from Gay Wells,
AICP, Motion for Preliminary Injunction, June 23, 1999
Letter and FAX to Attorney Michael Princi from Patricia Daley, June 25, 1999
Letter to Michael J. Princi, Esq. from Gay Wells, AICP, June 24, 1999
Memorandum to Patricia Daley, Esq. from Paul C. Wightman, June 21, 1999
Staff note from Lev Malakhoff, June 24, 1999
FAX to Eric Wodlinger, Esq. and Laurence Freedman, Esq. from Gay Wells,
AICP, June 24, 1999
Letter to Attorney Michael J. Princi from Patricia Daley, June 30, 1999
FAX to Lorraine Patti-Anderson from Gay Wells, AICP, July 12, 1999
Photos of Leisure Lady and project site

Vote to refer the Leisure Time Cruise Corporation proposal to Cape Cod Commission as a discretionary referral, Barnstable County Clerk DRI Referral Form from Barnstable County Commissioners, July 14, 1999
Memorandum to CCC Members from Gay Wells, AICP and Patty Daley, July 22, 1999
FAX to Gay Wells, AICP from Choat, Hall & Stewart, July 30, 1999
Phone notes, July 30, 1999
Letter to Attorney Patricia Dailey from Stuart A. Bornstein, August 17, 1999
Letter to Attorney Michael Princi from Patricia Daley, June 25, 1999
Letter and FAX to Stuart Bornstein from Patricia Daley, August 18, 1999
FAX to Barnstable Building Department from Gay Wells, AICP, August 23, 1999
Letter to Stuart Bornstein from Patricia Daley, August 26, 1999
Staff note to Lev Malakhoff from Gay Wells, AICP, August 27, 1999
Billing Invoice, October 7, 1999
Letter and FAX to Michael Princi, Esq. from Patricia Daley, November 2, 1999

Correspondence from Municipal and Other Agencies:

Development of Regional Impact Referral Form from Deborah J. Shiflett-Fitton, Barnstable Conservation Commission, May 27, 1999
Letter to Cape Cod Commission from James D. Tinsley, CPA, June 17, 1999
Letter to Cape Cod Commission from Jackalyn A. Barton, June 17, 1999
Letter to Shoestring Properties Limited Partnership from Ronald Potter, EOE, May 27, 1999
Letter to Town of Barnstable from Ronald Potter, EOE, May 27, 1999
Letter(2) to Town of Barnstable from Ronald Potter, EOE, May 27, 1999
Letter to Bernard Johnson and Linda Rance from Ralph Crossen, June 8, 1999
Approved Site Plan from Ralph Crossen
Memorandum to Provincetown Board of Selectmen from Gwen Bloomingdale, July 15, 1999
Phone note, July 23, 1999
Letter to Stuart Bornstein from Ralph M. Crossen, August 23, 1999

From Others:

Letter to Town Councilman Gary Blazis from Jack S. Massarsky, DDS, June 9, 1999
Phone note, June 16, 1999
Phone note, week of June 21, 1999
Hyannis Harbor Capacity Study from Joe Pino, June 29, 1999
Letter to Gay Wells, AICP, from Robert Getty, August 7, 1999
Letter to Fellow Concerned Citizens from the Cape Cod Council of Churches, Inc., August 20, 1999

TESTIMONY

The Commission received no testimony on this project. A hearing officer of the Cape Cod Commission opened a pro forma hearing on August 11, 1999 and closed a pro forma hearing on October 28, 1999. No presentations were made, no testimony was taken, and no substantive action was taken at these pro forma hearings.

The notice of public hearings relative thereto, the Commission exhibits and correspondence, the transcript and minutes of meetings and hearings and all written submissions received in the course of our proceedings are incorporated into the record by reference.

FINDINGS

The Cape Cod Commission has considered the Development of Regional Impact review regarding the Leisure Time Cruise Lines Leisure Lady casino boat and makes the following findings pursuant to Sections 12 and 13 of the Cape Cod Commission Act:

1. The proposed project consists of a vessel known as the Leisure Lady which is 168 feet in length with a 45 foot beam to conduct cruises from Hyannis Harbor to an area outside of the three-mile jurisdictional limit of the Commonwealth of Massachusetts, Barnstable County, and the Town of Barnstable to provide gambling opportunities. The applicant leases two parcels in Hyannis at the Dockside Restaurant, including parking, plus 23 boat slips and bulkhead docking for the Leisure Lady.
2. On May 27, 1999 the Cape Cod Commission received a Discretionary Referral for the Leisure Time Cruise Corporation Leisure Lady casino boat from Deborah J. Shiflett-Fitton, Chair of the Town of Barnstable Conservation Commission. The Commission voted to accept the referral on June 17, 1999 due to anticipated regional impacts.
3. On June 17, 1999 the Cape Cod Commission voted to assert jurisdiction over the project as a mandatory Development of Regional Impact based upon "new construction or use changes involving as a principal use outdoor commercial space with a total project area greater than 40,000 square feet."
4. On June 17, 1999 the Cape Cod Commission received a Discretionary Referral from the Barnstable County Commissioners for the Leisure Time Cruise Corporation Leisure Lady casino boat. The Commission voted on that date to assert jurisdiction due to anticipated regional impacts.

5. Due to lack of a DRI application, a hearing officer opened and closed pro-forma hearings at the Cape Cod Commission offices, Barnstable, MA on August 11, 1999 and October 28, 1999, respectively. No testimony was heard and no substantive action was taken at these hearings.

6. As of the date of this Decision, the applicant has not submitted a DRI application, a filing fee, or the necessary information demonstrating compliance with Cape Cod Commission regulations.

7. The applicant failed to progress continuously and expeditiously through required regulatory processes, thereby providing no information upon which to conduct a substantive hearing or to base a decision by the Cape Cod Commission.

8. As of the date of this Decision, the applicant has not submitted a letter of withdrawal to the Town of Barnstable or to the Cape Cod Commission.

CONCLUSION

The Cape Cod Commission hereby **procedurally denies without prejudice** the proposal of Leisure Time Cruise Corporation for the Leisure Lady Casino Boat as a Development of Regional Impact (DRI) in Barnstable, MA, pursuant to Sections 12(e) and 12(h) of the Cape Cod Commission Act, c. 716 of the Acts of 1989, as amended, and the DRI Enabling Regulations. This conclusion is supported by the finding that the applicant failed to comply with procedures of the Act and Cape Cod Commission regulations requiring submission of a completed application and filing fee.

Thomas Broidrick

Thomas Broidrick, Chair

1/20/00

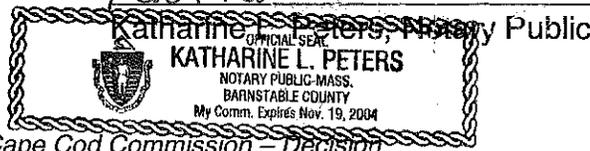
Date

Commonwealth of Massachusetts

Barnstable, ss

Subscribed and sworn to before me this *20th* day of *January* ~~1999~~ *2000*

Katharine L Peters



My commission expires:

Cape Cod Commission - Decision

Leisure Time Cruise Corporation - Hyannis, MA

Development of Regional Impact - CCC#DR99018 & #TR99018

December 16, 1999