



CAPE COD COMMISSION

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Date: December 15, 1999

Applicant: Town of Mashpee Conservation Commission
P.O. Box 208
Mashpee, MA 02649

Project #: JD99032

Project: Willowbend Nine-Hole Golf Course Expansion
Quinaquisset Avenue & Sampson's Mill Road
Mashpee, MA 02649

RE: Development of Regional Impact
Jurisdictional Determination
Cape Cod Commission Act, Section 3

Book/Page: Book 7758, Page 192

DECISION OF THE CAPE COD COMMISSION

Summary:

The Cape Cod Commission (Commission) hereby finds that the proposed nine-hole expansion of the Willowbend Golf Course in Mashpee, MA is subject to mandatory review as a Development of Regional Impact (DRI) 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 (b) of the Act. The decision is rendered pursuant to the vote of an authorized subcommittee of the Commission on December 8, 1999.

Project Description:

The project consists of plans by Willowbend Development Corporation to modify a special permit to create an additional nine-hole golf course in an area permitted for a residential housing development. The golf course expansion is partially within the Special Permit area, but also extends outside the permitted area. The 76-acre site consists

Willowbend Nine-Hole Golf Course Expansion #JD99032
Jurisdictional Determination Decision December 15, 1999



of both undisturbed forest and previously cleared areas. The nine-hole golf course expansion is proposed in the area of Shoestring Bay and Quaker Run along Quinaquisset Avenue and Sampson's Mill Road in Mashpee. The golf course expansion would replace approximately 50 of the previously permitted units as well as developing an area outside of the Special Permit area.

Procedural History:

The Commission received a request for a Jurisdictional Determination (JD) from the town of Mashpee Conservation Commission on September 17, 1999. The Commission determined that the application was complete on September 28, 1999. On October 12, 1999 Mashpee Conservation Commission requested that the JD be temporarily withdrawn to investigate the possibility of a Development Agreement rather than a potential DRI review. On October 15, 1999 the Commission deemed the JD application incomplete due to the lack of additional information which was expected to be provided by the proponent. After a site visit and discussion of the potential Development Agreement with the applicant on October 25th and 27th, respectively the Commission received a letter from the Mashpee Conservation Commission on November 17, 1999 asking that the JD be reinstated. On November 23, 1999 the Commission deemed the JD application complete. 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 December 8, 1999 in the Mashpee Town Hall, Mashpee, MA. The public hearing and record were closed on December 8, 1999. At the close of the public hearing the subcommittee held a public meeting where the subcommittee voted unanimously that the project was subject to mandatory review as a Development of Regional Impact.

Materials Submitted for the Record:

From the Applicant:

- Jurisdictional Determination application dated 9/13/99.
- Jurisdictional Determination application dated 11/15/99.
- Memorandum from Willowbend Development Corporation to Mashpee Planning Board dated 6/30/99.
- Application for a Special Permit from Mashpee Planning Board dated 8/30/99.
- Original Special Permit from Mashpee Planning Board dated 4/15/87.
- Memo from Thomas Fudala, Mashpee Town Planner, to Mashpee Planning Board dated 9/28/99.
- Letter from Kopelman and Paige (Mashpee Town Counsel) to Thomas Fudala dated 10/28/99.
- Letter from Kopelman and Paige (Mashpee Town Counsel) to Thomas Fudala dated 8/27/99.
- Letter from Goodwin, Procter & Hoar to Elizabeth Lane, Kopelman and Paige dated 9/28/99.
- Mashpee Planning Board Special Permit Modifications, Volumes 1, 2, and 4.
- Willowbend Development Corporation development plans from the BSC Group (referred to as "Fox Run") for Special Permit dated 11/25/86 and 6/3/87.

From the Cape Cod Commission:

- Staff Report from Cape Cod Commission dated December 1, 1999.
- Letters from Seth Wilkinson, Project Planner to Robert Sherman, Mashpee Conservation Commission Agent dated 9/8/99, 9/28/99, 10/15/99, and 11/23.
- Letters from Seth Wilkinson, Project Planner to Mashpee Planning Board dated 9/28/99 and 10/13/99.
- Letter from Seth Wilkinson, Project Planner to Attorney Patrick Butler (Representing Willowbend Development Corporation) dated 10/14/99.

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. No public officials testified at this hearing.

Attorney Patrick Butler, representing the proponent, noted the applicant is the Town of Mashpee, but asked to speak about recent events. He noted the Development of Regional Impact (DRI) application was submitted on December 7, 1999 and meetings had been held with Commission staff several weeks before about this project and a proposed subdivision on Meetinghouse Road. He noted there had been a site visit. He said a Development Agreement concept had been discussed and staff raised concerns. Attorney Butler noted that Willowbend acknowledges those concerns and that by adding land outside the area of the Special Permit, the project is subject to Commission jurisdiction. He specifically acknowledged that the Commission had jurisdiction as to the 9-hole golf course expansion and that Willowbend was prepared to move forward with the Commission's review and with the Town. Attorney Butler noted the DRI materials submitted so far, and noted that some additional materials would be forthcoming.

Mr. Wilkinson, the Commission's project Planner, described the project using a preliminary layout plan. He noted the Mashpee Conservation Commission had requested the Jurisdictional Determination and that it was important to follow through with the Cape Cod Commission's review and decision although a DRI had been filed acknowledging jurisdiction. He noted a Special Permit was granted in 1987 for a 287 lot residential subdivision with an 18-hole golf course. He discussed issues of substantial compliance with the Special Permit and changes to the project since the 1987 filing. He noted a 1992 Commission policy defining substantial compliance. Mr. Wilkinson said the current project had different and increased impacts. He also noted that additional permits were needed from the Conservation Commission, the MEPA Unit (relative to filing of an Environmental Notification Form) and that for these reasons, the Special Permit may be no longer valid. He said the Mashpee Town Counsel concurs with this

opinion. Mr. Wilkinson noted the different and increased impacts included in the areas of nitrogen loading, hazardous materials and wastes and archeological issues. He said this was the case for the entire golf course area, including the area not subject to the 1987 Special Permit.

Mr. Ed Baker, Mashpee resident and a member of the Mashpee Environmental Coalition, asked if his letters on the project to the Cape Cod Commission had been received and included in the record. Mr. Wilkinson responded yes, they had been received and included in the record.

Mr. George Green, Mashpee Conservation Commission, however, speaking as a member of the Tribal Council, asked about the discussions which had taken place between the applicant and the Commission concerning a Development Agreement. Mr. Wilkinson responded the parties had not ruled out using a Development Agreement, but the first step was to start with a DRI review.

Mr. Tony Analetto said that Willowbend is currently building homes in the Shoestring Bay Estates area. He requested that this area be included in the area subject to the Commission's jurisdiction.

Ms. Jill Slaymaker, Mashpee resident and an archeologist, said an archeological survey does not establish the perimeter of a sensitive archeological site. She said the entire Shoestring Bay along the Santuit coastline may be a sensitive area.

Ken Malloy, a Cotuit resident, said the project would impact Shoestring Bay and therefore the Town of Barnstable. He expressed concern about nitrogen and nutrient loading impacts to the Bay. He also expressed concern about buffering to rivers and recommended that a minimum 200-foot buffer be protected.

Michelle Nuey, a member of the Wompanoag Tribe, expressed concern about nitrogen loading issues.

Findings:

1). The project consists of an expanded nine-hole golf course addition to an existing 18-hole course on a 76-acre site currently permitted for approximately 50 housing units under a Special Permit granted by the Mashpee Planning Board in 1987. The golf course expansion is partially within a Special Permit area, but also extends outside the permitted area.

2). The Commission adopted a policy defining substantial compliance on April 1, 1992, to assist in the determination whether a project is exempt under section 22 (b) of the Act. This policy lists three criteria in making a determination whether a project is in substantial compliance. All three criteria must be met for a project to be deemed to be in

substantial compliance. Projects deemed not to be in substantial compliance are subject to DRI review provided a DRI threshold is met.

The project is in substantial compliance if:

- 1) the proposed project and use reflect the nature and purpose of the project and use in the original local approval; and**
- 2) the changes do not result in the requirement for additional local development permit review in the form of a new permit, approval or a modification to the original approval; and**
- 3) the changes do not result in different or increased impacts, as compared with the original local approval, to the interests protected by the Act and the Regional Policy Plan.**

3). The second criteria states that "the project is in substantial compliance if the changes do not result in the requirement for additional local development permit review in the form of a new permit, approval or modification to the original approval". There have been 18 modifications to the original Special Permit. The proposed golf course expansion is currently before Mashpee Planning Board for a nineteenth modification. Mashpee Town Counsel has opined that a new Special Permit is necessary for this project as well, although Willowbend Development Corporation does not agree with this opinion. An Order of Conditions from the Mashpee Conservation Commission (MCC) will also be required. Taken together, these modifications alter the special permit in such a way that the project is no longer in substantial compliance with the 1989 version of the Special Permit.

4). The third criteria states that, "the project is in substantial compliance if the changes do not result in different or increased impacts, as compared with the original local approval, to the interests protected by the CCC Act and the Regional Policy Plan". The golf course expansion project will result in different (and potentially increased) impacts such as nitrogen loading, pesticide runoff, wetland buffer alterations, open space, wildlife habitat, archaeological resources, and questions surrounding the re-use of treated effluent from the Augat plume as an irrigation source.

5). The 9-hole golf course expansion qualifies as a DRI under section 3 (e) of the DRI Enabling Regulations as an "outdoor commercial space with a total project area greater than 40,00 square feet".

6). The property outside of the Special Permit area proposed for the nine-hole golf course expansion is contiguous and in common ownership with the property within the Special Permit.

7). The proponent has indicated that they will be filing a Notice of Project Change with MEPA. In addition MEPA has been asked to review the golf course expansion under Fail-Safe review provisions of MEPA. Should an EIR be required, then the Commission's review may include all areas subject to MEPA jurisdiction.

8). There are numerous surveyed Native American archaeological sites, listed in the state historical register, which are within the area of the nine-hole expansion. Massachusetts Historical Commission holds a preservation restriction on portions of the golf course expansion. Under the permitted residential development, some of the known sites would remain intact. Conceptual golf course expansion plans suggest potential disturbance to this area. Willowbend has proposed some mitigation for this area, however, if any alteration to these archaeological sites is necessary, the action could trigger the filing of an ENF.

9). Due to the numerous modifications to the original Special Permit, some being significant, the Commission may have jurisdiction over any remaining development in the Willowbend Complex. A determination should be made regarding Cape Cod Commission jurisdiction as future development permit applications are filed.

Conclusion:

Based on the findings above, the Commission hereby finds that the proposed 9-hole expansion of the Willowbend Golf Course in Mashpee, MA is subject to mandatory review under Section 3 of the DRI Enabling Regulations. The project is not exempt under Section 22 of the Act. This conclusion is based on findings #1 - 8 above.

This decision is rendered pursuant to a vote of an authorized subcommittee of the Commission on December 8, 1999.

Herbert Olsen
Herbert Olsen, Subcommittee Chair

12-15-99
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 15th day of December 1999

Katharine L. Peters

Name, Notary Public

My Commission expires:

