



CAPE COD COMMISSION

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June 17, 1999

Applicant: Talanian Realty Co., Inc.
176 Newbury Street
Boston, MA 02116-2885
617-536-4655
Donald Megathlin, Vice-President

Project # Cape Cod Commission #TR97007
EOEA #10966

Project: Talanian Realty
Route 28 and Donna's Lane
Mashpee, MA

RE: Development of Regional Impact
Phase 1 Approval with Conditions
Cape Cod Commission, Section 3(e) DRI Enabling Regulations

Lot/Certificate/
Book&Page:

Lot 3	32122c	33848	475431	1164450
Lot 2	32122c	33848	475432	116540
Lot 1	33792		3866	035

Owner: Lots 3 & 2, Chatal Realty Trust
Lot 1 Chatal Associates

DECISION OF THE CAPE COD COMMISSION

SUMMARY:

The Cape Cod Commission (Commission) hereby approves with conditions the request of Talanian Realty Co., Inc. to allow limited development on the site as Phase 1 of the Development of Regional Impact. This decision permits the construction of a sewer line from the LIFE at Mashpee development project across the Talanian property to the location of the proposed Talanian leaching fields, and allows for construction of leaching fields on the Talanian property prior to completion of the Development of Regional Impact (DRI) review of the Talanian Realty project proposal.



PROJECT DESCRIPTION:

The project is currently under review as a Development of Regional Impact (DRI) by the Cape Cod Commission. The applicant proposes an Outlet Center/Shopping Mall of approximately 160,000 sq. ft. located on a site of 25 acres on Route 28 in the C-1 Business Zone in the Town of Mashpee. The project is considered to be redevelopment under the Regional Policy Plan since the site is currently used for Dick & Ellie's Flea Market and a miniature golf course. More than half of the site vegetation has been disturbed with a considerable amount of the land area now used for parking. The proposed project is located within a "Growth/Activity Center" as designated in the Mashpee Local Comprehensive Plan. Part of the project is located within a Significant Natural Resource Area (SNRA), as mapped by the Commission. The project is also within the Mashpee River watershed. The Outlet Center/Shopping Mall proposes to be comprised of nine buildings ranging in size from 5,000 to 25,000 sq. ft., providing for up to 35 stores. Some restaurant uses will be included in the retail mix. The proponent proposes the use of an Amphidrome System for wastewater treatment; other nitrogen-reduction proposals include vegetated wetlands and biofiltration swales. The applicant proposes Open Space to be provided both on site and off site.

In order to reduce the proposed nitrogen loading of the Talanian project to meet the RPP water quality requirements, a key component is the proposal to connect existing developments to Talanian's proposed wastewater treatment plant, thus reducing their nitrogen impacts on the Mashpee River. These developments include a nearby liquor store and insurance office, as well as LIFE at Mashpee. The LIFE at Mashpee project is a residential development for special needs individuals which is currently under construction and is nearing completion. LIFE has agreed to connect its buildings to the proposed Talanian wastewater treatment plant. LIFE is planning to open in the early Fall; however, the proposed Talanian treatment plant will not have been approved nor constructed at that time. In order to address this scheduling conflict, Talanian Realty Co., Inc. has requested that the Cape Cod Commission issue a Phase 1 approval to allow for the construction of a sewer line from the LIFE property across the Talanian property to the location of the proposed Talanian leaching fields, and the construction of the leaching fields on the Talanian property.

JURISDICTION:

The proposed project qualifies as a Development of Regional Impact (DRI) under Section 3(e) of the DRI Enabling Regulations as commercial development which involves "new construction with a gross floor area greater than 10,000 square feet."

PROCEDURAL HISTORY:

The applicant filed an Environmental Notification Form (ENF) in November, 1996 for a 102,000 sq. ft. commercial center and miniature golf course. The original Certificate from the Secretary of Environmental Affairs was issued on December 23, 1996 and required an Environmental Impact Report (EIR). Since the project requires the preparation of an EIR, the applicant has agreed to proceed with a joint DRI/MEPA review pursuant to a Memorandum of Understanding between the Cape Cod Commission and Massachusetts Executive Office of Environmental Affairs (EOEA).

A subsequent Notice of Project Change was submitted for an increase in the proposed project size to 160,000 sq. ft. for a community shopping center or a factory outlet center, either to include a miniature golf course. The miniature golf course has since been removed from the project proposal. A Certificate was issued by the Secretary on January 23, 1998 which reiterated that an Environmental Impact Report is required. The applicant submitted a Draft Environmental Impact Report with the Executive Office of Environmental Affairs (EOEA), Massachusetts Environmental Policy Act (MEPA) Unit and the Cape Cod Commission on April 16, 1999. A joint CCC/MEPA public hearing was held on May 26, 1999 to receive comments on the Draft Environmental Impact Report. An extension on the comment period was granted by MEPA to June 7, 1999 with a Certificate to be issued by MEPA on June 14, 1999. A Subcommittee Meeting was held on June 1, 1999 to consider the request by the applicant to allow limited development on the site as Phase 1. The Subcommittee voted unanimously on June 1, 1999 to recommend the Phase 1 work. On June 17, 1999 the full Commission voted to allow the limited development involved in Phase 1.

Materials Submitted for the Record on this Issue

Letter from Donald E. Megathlin to Dennis Mahoney, December 4, 1998
Letter from Kevin M. Kirrane, Esq. To Anne R. Bingham, Esq., December 15, 1998
Memorandum from Donald E. Megathlin to Gay Wells, December 29, 1998
Minutes of Mashpee Board of Health, November 19, 1998
Letter from Gay Wells, AICP, to Donald E. Magathlin, February 4, 1999
Memorandum from Gay Wells, AICP to Talanian Subcommittee, May 25, 1999
Letter from Donald E. Megathlin to Herbert Olsen & CCC, June 10, 1999

The application and notice of the public hearing relative thereto, the Commission's exhibits and correspondence, the transcript and minutes of the hearing and subcommittee meeting, and all written submissions received in the course of our proceedings are incorporated into the record by reference.

TESTIMONY:

Public Hearing, May 26, 1999

During the applicant's presentation at the public hearing, the matter of Talanian Realty's request to allow for the construction of the sewer line and leaching field to provide connection of the LIFE at Mashpee project prior to completion of DRI review was brought up. No comments were made from the audience on this issue; however, MEPA representative, Doug Vigneau, told the applicant that it is important to provide MEPA with all pertinent information as soon as possible. It was decided by the Subcommittee that this request would be discussed in detail at a Subcommittee meeting to be held on June 1, 1999. (See minutes of Public Hearing on file.)

Subcommittee Meeting, June 1, 1999

The Subcommittee meeting opened at 2:10 p.m. and Herb Olsen, Subcommittee Chair, asked for a discussion by Gay Wells of the three alternatives suggested for the LIFE at Mashpee sewerage proposal. Ken Brock stated that conditions would be required for project approval and noted that it depends upon whether the applicant agrees with the conditions. Mr. Brock then made a motion to make a recommendation to approve with conditions the construction of a sewer line and leaching field on the Talanian project prior to completion of project review. This was seconded and a discussion followed.

Elizabeth Taylor stated her concerns that the Commission would then be forced to approve the project once the sewerage is allowed.

Rob O'Leary stated that he believes it is sensible to grant the request as long as the approval is conditioned to protect the Cape Cod Commission from future risk.

Patty Daley, Commission Staff Counsel, suggested that the LIFE sewer line be approved as Phase I of the Talanian project stating that the applicant should send the Commission a letter requesting a Phase 1 approval. Conditions would include: 1) how the land can be cleared, the scope of work, 2) stating that this does not mean that the CCC will necessarily approve the entire project, and 3) that any construction would be at the sole risk of Talanian Realty and LIFE at Mashpee.

Catherine Frazer stated that we need to make it clear that the risk is to Talanian and not to the Commission.

Ed Eichner was asked if the arrangement with LIFE is a benefit and he said it is a potential benefit if the treatment plant is built and all contributors are connected to the system.

The Subcommittee voted unanimously to approve the recommendation to the full Commission that would allow with conditions the easement for construction of the sewer line from the LIFE at Mashpee property across the Talanian property and the construction of the leaching field.

FINDINGS:

The Commission has considered the proponent's request to allow limited Phase 1 development on the project site prior to completion of the Development of Regional Impact Review. Based upon consideration of such request, and information presented at the public hearing and submitted for the record, the Commission makes the following Findings:

1. The proposed project is being reviewed as a Development of Regional Impact under Section 3(e) of the DRI Enabling Regulations as commercial development which involves "new construction with a gross floor area greater than 10,000 square feet."
2. The project site is partially located within a Significant Natural Resource Area, as mapped by the Cape Cod Commission.
3. The site of the proposed project is located within the watershed to the Mashpee River, which is part of the Popponesset Bay embayment system. The Mashpee River has been identified as a nitrogen-overloaded system through the Commission's Cape Cod Coastal Embayment Project (Eichner, *et al.*, 1998) and through a citizen monitoring program coordinated by the Center for Marine Science and Technology at University of Massachusetts-Dartmouth.
4. Under the minimum standards of the Regional Policy Plan (RPP), where existing development within a coastal watershed exceeds an identified loading standard or where there are documented water quality problems, development and redevelopment shall maintain or improve existing nitrogen loading (MPS 2.1.1.2.C.2)

5. The project applicant has arranged for two existing nearby businesses, a liquor store and an insurance office, and the LIFE at Mashpee residential development, which is currently under construction, to connect to the proposed wastewater treatment plant for the Talanian Realty DRI in order to partially meet nitrogen loading standards of the Regional Policy Plan.
6. In the event that the Talanian Realty project is approved, including a wastewater treatment plant, there is an environmental benefit to treating LIFE's wastewater through a treatment plant as opposed to a conventional Title 5 septic system.
7. LIFE at Mashpee plans to open in early Fall of 1999. Since this date is prior to completion of the DRI review for the Talanian Realty proposal, the applicant has requested to be allowed limited development on the site. This development would consist of an easement to construct a sewer line from the LIFE at Mashpee property across the Talanian site to the location of the proposed leaching fields, and to allow construction of the leaching fields for use by LIFE at Mashpee prior to approval of or construction of the proposed wastewater treatment plant.
8. The sewer line is anticipated to be constructed through a portion of the proposed Open Space for the Talanian Realty DRI.

CONDITIONS:

1. Talanian Realty shall obtain a Phase 1 Certificate of Compliance prior to commencement of any development activity on the site. The applicant shall comply with all Conditions prior to obtaining a Certificate of Compliance.
2. The applicant shall provide the Cape Cod Commission staff with complete plans and other pertinent construction data for written approval two weeks prior to commencement of any development work associated with the sewer line or leaching facilities.
3. The construction of the sewer line will be restricted to an easement from the LIFE development following a prescribed path to the location of the proposed leaching fields on the Talanian Realty site. The proposed roadway right-of-way shall be utilized to the maximum extent feasible.

4. Tree removal, clearing, and grading associated with construction of the sewer line shall take place only within the restricted easement upon written approval by Cape Cod Commission staff.
5. The area of all land within the easement which falls within the proposed Open Space for the Development of Regional Impact shall be removed from the Open Space calculations for the purposes of Open Space provision.
6. Talanian Realty Co., Inc. shall obtain all necessary permits and the sewer line and leaching fields shall meet all DEP and Town of Mashpee Board of Health regulations and requirements. Copies of all permits shall be provided to the Cape Cod Commission two weeks prior to any tree removal, clearing, and/or grading and prior to commencement of any development work.
7. This decision is without prejudice to the Commission in the exercise of its statutory duties and does not prejudice any action that the Commission may take after completion of this Phase 1 review process.
8. This decision does not create any vested rights. In addition, this decision does not create an expectation that the Commission will act favorably on subsequent phases of the Talanian Realty project.
9. Anyone who proceeds pursuant to this decision proceeds at his or her own risk with respect to any future development.
10. The sewer line authorized by this Decision shall carry effluent which has passed through a septic tank, at a minimum, to be discharged at a leaching field on the Talanian Realty site.

CONCLUSION:

Based upon the Findings above and subject to the Conditions herein, the Commission finds that the benefits outweigh the detriments, and approves with Conditions the request to allow limited development on the site as Phase 1 of the Development of Regional Impact. This will allow for an easement to permit the construction of a sewer line from the LIFE at Mashpee development project across the Talanian property to the location of the proposed Talanian leaching fields, and to allow for construction of the leaching fields on the Talanian property prior to completion of DRI review of the Talanian Realty project proposal.

This Decision is rendered pursuant to a vote of the Cape Cod Commission on June 17, 1999.

Herbert Olsen
Herbert Olsen, Chair, Cape Cod Commission

6/17/99
Date

Commonwealth of Massachusetts

Barnstable, ss.

Subscribed and sworn to before me this 17th day of June, 1999.

Katharine L. Peters
Name, Notary Public

My Commission expires:



*Talanian Realty - SouthCape Village, Mashpee
Cape Cod Commission Decision on Phase 1
CCC #TR97007 - EOE A MEPA #10966
June 17, 1999*