



CAPE COD COMMISSION

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Date: June 17, 1999

To: Christopher Kuhn
239 Prince Avenue
Marstons Mills, MA 02648

From: Cape Cod Commission

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

Project: Kuhn Tower

Applicant: Christopher Kuhn

Map/Parcel #: 58/K-3-8

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission hereby procedurally denies without prejudice the application of Christopher Kuhn for a Development of Regional Impact (DRI) approval, pursuant to Sections 12 and 13 of the Cape Cod Commission Act, c. 716 of the acts of 1989, as amended, for the Kuhn Tower in Harwich, Massachusetts. The decision is rendered pursuant to a vote of the Commission on June 17, 1999.

PROJECT DESCRIPTION

The proposed project consists of constructing a 190 foot tower at 196 Queen Anne Road, Harwich, MA for the purposes of siting wireless communications facilities. The project is located on a 0.48 acre site in an industrial zoning district of Harwich. The project is also located

Kuhn Tower, Harwich, MA
Development of Regional Impact #TR97013
June 17, 1999



within a Personal Wireless Service Overlay District, as adopted by the Town of Harwich on May 6, 1998.

PROCEDURAL HISTORY

Pursuant to Section 3(i) of the DRI Enabling Regulations, the Town of Harwich Building Commissioner referred the Kuhn Tower to the Cape Cod Commission on August 5, 1997.

The Cape Cod Commission opened a pro-forma hearing on September 25, 1997 at the offices of the Cape Cod Commission, Barnstable, MA. No testimony was heard and no substantive action was taken at this hearing, due to the failure of the applicant to submit a completed DRI application.

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 carriers to site on the proposed tower, and thereby time to file a complete application.

The hearing was closed by a hearing officer on December 22, 1997 at the offices of the Cape Cod Commission. A second extension was granted by the Regulatory Committee in May 1998 to December 31, 1998. In November 1998 the applicant sought and received a third extension through June 30, 1999. On May 17, 1999 the Regulatory Committee denied the applicant's request for a fourth extension to the decision period.

The Cape Cod Commission opened and closed a public hearing to consider the procedural denial of the proposed tower on June 17, 1999 at the Assembly of Delegates Chambers in the First District Court House. At this meeting the Commission voted unanimously to procedurally deny the project.

MATERIALS SUBMITTED FOR THE RECORD

Materials submitted by the applicant

Plans titled "Kuhn Tower, Cover Sheet" and "Kuhn Tower, Site Plan and Elevation" and dated 8/1/97

Packet of construction plans, notes, and engineering specifications titled "109' SSMW Tower for Overland Communication" prepared by ROHN.

Geotechnical Evaluation prepared by H. Edmund Bergeron and dated 6/17/97.

Notice of proposed construction to US Department of Transportation, Federal Aviation Administration, New England Region dated 5/15/97.

Letter to C. Kuhn from Cellular One dated 10/20/98.

Fax to C. Kuhn from Omnipoint dated 6/15/98.

Letter to Cape Cod Commission from Michael Ford dated 11/10/98.

Letter to Cape Cod Commission from C. Kuhn dated 5/10/99.

Letter to C. Kuhn from Cellular One dated 10/20/98.

Letter to Cape Cod Commission from M. Ford dated 5/17/99.

Letter to Cape Cod Commission from Sprint PCS dated 5/17/99.

Materials submitted by the Cape Cod Commission

Letter to C. Kuhn from Cape Cod Commission dated 8/12/97.

Letter to C. Kuhn from Cape Cod Commission dated 10/31/97.

Letter to M. Ford from Cape Cod Commission dated 12/16/97.

Extension agreement dated 12/16/97.

Letter to C. Kuhn from Cape Cod Commission dated 1/12/98.

Letter to C. Kuhn from Cape Cod Commission dated 3/27/98.

Letter to M. Ford from Cape Cod Commission dated 5/7/98.

Extension agreement dated 5/7/98.

Letter to M. Ford from Cape Cod Commission dated 5/20/98.

Letter to C. Kuhn from Cape Cod Commission dated 6/22/98.

Letter to C. Kuhn from Cape Cod Commission dated 10/8/98.

Letter to C. Kuhn from Cape Cod Commission dated 11/17/98.

Extension agreement dated 11/17/98.

Letter to C. Kuhn from Cape Cod Commission dated 12/10/98.

Letter to C. Kuhn from Cape Cod Commission dated 1/5/99.

Letter to C. Kuhn from Cape Cod Commission dated 4/26/99.

Memo to the Kuhn Tower file from Heather McElroy dated 4/27/99.

Memo to the Regulatory Committee from Heather McElroy dated 5/12/99.

Materials submitted by Town of Harwich officials

Development of Regional Impact referral form dated 8/5/97.

Harwich Building Permit Application dated 8/4/97.

Approval of Variance Request, Harwich Zoning Board of Appeals dated 2/14/96.

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 #TR97013 are incorporated into the record by reference.

JURISDICTION

The proposed Kuhn Tower qualifies as a Development of Regional Impact under Section 3(i) of the DRI Enabling Regulations, which requires town agencies to make a mandatory referral of wireless towers in excess of 35 feet in height.

FINDINGS

1. The proposed project consists of constructing a 190 foot tower on a 0.48 acre site at 196 Queen Anne Road within an industrial district of Harwich. The project site is also located within a Personal Wireless Service Overlay District, as established in the Town of Harwich Zoning By-law on May 6, 1998.

2. On August 5, 1997 the Commission received a mandatory DRI referral for the Kuhn Tower from the Town of Harwich Building Commissioner.

Due to the incomplete nature of the DRI application, a hearing officer opened and closed pro-forma hearings at the Cape Cod Commission office, Barnstable, MA on September 25, 1997 and December 22, 1997, respectively. No testimony was heard and no substantive action was taken at these hearings.

On December 15, 1997 the Commission granted, at the request of the applicant, an extension to the decision period to July 3, 1998. On May 4, 1998 the Commission granted, at the request of the applicant, an extension to the decision period to December 31, 1998. On November 16, 1998 the Commission granted, at the request of the applicant, an extension to the decision period to June 30, 1999. On May 17, 1999 the Regulatory Committee denied the applicant's request for a fourth extension to the decision period.

3. In compliance with Cape Cod Commission Technical Bulletin 97-001 Guidelines for DRI Review of Wireless Communications Towers, the applicant sought commitment from three or more wireless carriers to locate on the Kuhn Tower. The record shows that the applicant had received letters of interest from several carriers, including Sprint PCS, Omnipoint, and Cellular One. These carriers, also in compliance with Technical Bulletin 97-001, sought and identified existing structures on which to locate their wireless equipment. Consequently, 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 the Commission guidelines.

4. 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 by the Commission.

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

CONCLUSION

The Cape Cod Commission hereby procedurally denies without prejudice the Development of Regional Impact proposal for the Kuhn 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, or filing fee.

Herbert Olsen

6/17/99

Herbert Olsen, Chair

Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

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

Katharine L. Peters

Katharine L. Peters, Notary Public

My commission expires:

