



CAPE COD COMMISSION

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DATE: December 2, 1999

TO: Carl Lampi
319 Cedar Street
West Barnstable, MA

Attorney Kevin Kirrane
P.O. Box 560
Mashpee, MA 02649

FROM: Cape Cod Commission

RE: Development of Regional Impact
Cape Cod Commission Act, Sections 12 and 13

APPLICANT: Mary Ellen Carter Trust, UDT
Deanne N. Rockwood, Trustee

PROJECT #: TR99021

PROJECT: Mowing Fields Residential Development

BOOK/PAGE: Book 234, Page 013
Book 11493, Page 052

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby procedurally denies without prejudice the proposal of Mary Ellen Carter Trust as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Mowing Fields residential development in Barnstable, MA. The decision is rendered pursuant to a vote of the Commission on December 2, 1999.



PROJECT DESCRIPTION

The proposed project consists of a 32-lot residential subdivision of approximately 38 acres of land located north of Race Lane in Marstons Mills, MA. Access to the development is proposed from Crocker Road (county layout) near its intersection with Race Lane. The parcel lies within a Zone II to public water supply wells for the Centerville-Osterville Marstons Mills (C-OMM) Water Department and is within a Wellhead Protection District for the Town of Barnstable.

PROCEDURAL HISTORY

Mr. A. Roy Fogelgren, Chairman of the Barnstable Planning Board, referred the proposed project as a DRI on June 8, 1999. The referral was received by the Commission on this date. A public hearing was opened and continued by a hearing officer of the Commission on August 3, 1999. The public hearing was closed by a hearing officer on October 28, 1999. On November 1, 1999 the Regulatory Committee of the Commission voted to recommend a procedural denial of the project due to the failure of the applicant to complete a DRI application. A final public hearing on the written decision was held on December 2, 1999 before the full Commission. The Commission voted to procedurally deny the project without prejudice on this date.

Materials submitted for the record

From the applicant:

- Preliminary Open Space Plan, prepared by Downcape Engineering, Inc. dated April 27, 1999
- letter w/attachments from Downcape Engineering, Inc. dated February 11, 1999 including: nitrogen loading calculations; letter w/attachments from David Palmer, Town of Barnstable, dated September 5, 1996; and letter to the applicant from Craig A. Crocker, Superintendent of C-OMM Water Department

From Cape Cod Commission staff:

- Notice of DRI referral to attorney Kevin Kirrane dated June 11, 1999
- Subcommittee notice dated July 1, 1999
- letter to attorney Kevin Kirrane dated July 1, 1999
- letter to attorney Kevin Kirrane re: pending procedural denial dated October 20, 1999

From town officials:

- DRI referral letter w/attachments from A. Roy Fogelgren, Chairman of Barnstable Planning Board and James Tinsley, Barnstable Town Manager dated June 8, 1999:

attachments include Form B, preliminary subdivision plan application; Form B checklist; letter w/attachments from Downcape Engineering, Inc. dated April 5, 1999; proposed use of open space; waiver requests; option to purchase easement; and purchase and sale agreement

TESTIMONY

The Commission received no testimony on this project as public hearings were opened and closed by a hearing officer of the Cape Cod Commission.

The notice of public hearings relative thereto, the Commission staff's notes, 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.

JURISDICTION

The project qualifies as a DRI under Section 3(c) of the DRI Enabling Regulations as "any development which proposes to divide parcel(s) of land totaling 30 acres or more in common ownership on or after September 30, 1994 " and Section 3(d) as "any development which proposes to divide land into thirty or more residential lots."

FINDINGS

The Commission has considered the proposal of Mary Ellen Carter Trust concerning the proposed Mowing Fields residential subdivision and makes the following findings pursuant to Sections 12 and 13 of the Act:

1. The proposed project consists of a 32-lot residential subdivision of approximately 38 acres of land located north of Race Lane in Marstons Mills, MA. Access to the development is proposed from Crocker Road (county layout) near its intersection with Race Lane. The parcel lies within a Zone II to public water supply wells for the Centerville-Osterville Marstons Mills (C-OMM) Water Department and is within a Wellhead Protection District for the Town of Barnstable.
2. On June 8, 1999 the Commission received a mandatory referral for the Mowing Fields project from Mr. A. Roy Fogelgren, Chairman of the Barnstable Planning Board.
3. Due to the lack of a DRI application, a hearing officer opened and closed pro-forma hearings at the Cape Cod Commission office, Barnstable, MA on August 3, 1999 and October 28, 1999, respectively. No testimony was heard and no substantive action was taken at these hearings.
4. 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 regulations.

5. 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.

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

CONCLUSION

The Cape Cod Commission hereby procedurally denies without prejudice the proposal of Mary Ellen Carter Trust as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape Cod Commission Act (Act), c. 716 of the Acts of 1989, as amended, for the proposed Mowing Fields residential development in Barnstable, MA. 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.

Thomas Broidrick
Thomas Broidrick, Chair

12/2/99
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

Subscribed and sworn to before me this 2nd day of Dec 1999

Katharine L. Peters
Katharine L. Peters, Notary Public

My commission expires:

