



CAPE COD COMMISSION

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BARNSTABLE, MA 02630
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E-mail: frontdesk@capecodcommission.org

DATE: September 7, 2000

TO: Locke Family Trust
C/o Attorney Lester J. Murphy Jr.
P.O. Box 1388
East Dennis, MA 02641

FROM: Cape Cod Commission

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

PROPONENT: Locke Family Trust

PROJECT #: DR20008

PROJECT NAME: Locke Property a/k/a Bohm Heights Subdivision

BOOK / PAGE:

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby procedurally denies without prejudice the proposal of Locke Family 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 Locke Family Trust a/k/a Bohm Heights Subdivision project in Provincetown, MA. The decision is rendered pursuant to a vote of the Commission on September 7, 2000.

PROJECT DESCRIPTION

The proposed project consists of a 20-lot subdivision allowing for the construction of 18 new single family homes on 8.99-acres of land located at 676 and 684 Commercial Street, Route 6A, Provincetown, MA.

PROCEDURAL HISTORY

Under Section 12(e) of the Cape Cod Commission Act, the Locke Property project was referred to the Commission as a Discretionary Referral limited to the subject areas of Open Space and Recreation, Coastal Resources, Wetlands, and Wildlife/Plant Habitat on February 29, 2000 by the Provincetown Board of Selectmen. On March 2, 2000, the Commission

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voted in favor of accepting the project for limited review as a DRI under Section 12(e) of the Act.

The project proponent's representative, Attorney Edward E. Veara, submitted a letter, dated June 14, 2000, asking to approach the Commission in order to reconsider the vote to review the project as a DRI. The proponent was placed on the July 10, 2000 agenda for the Executive Committee Meeting to decide if the proponent should be placed on the agenda to address the full Commission. The Executive Committee discussed the concerns with the proponent and denied the request to be placed on the Commission's agenda to reconsider the March 2, 2000 vote.

The hearing was opened by a hearing officer of the Commission on April 25, 2000. The hearing was closed by a hearing officer of the Commission on July 20, 2000. No DRI application was submitted by the proponent during the process. On August 11, 2000, Commission staff received a letter from the proponent's representative stating that the proponent did not recognize the jurisdiction of the Commission in connection with the DRI review.

A final public hearing on the written decision was held on September 7, 2000 in the Assembly of Delegates Chambers at the First District Court House in Barnstable, MA. At this hearing, the Commission voted unanimously in favor of procedurally denying the project.

MATERIALS SUBMITTED FOR THE RECORD

Town Submittals:

- Letter from Rex Peterson, Provincetown Permit Coordinator, to Sharon Rooney, dated December 7, 2000;
- Letter from John Bennett, Chair Provincetown Conservation Commission, to Sharon Rooney, dated February 8, 2000;
- Memorandum from Keith A. Bergman, Provincetown Town Manager, to the Cape Cod Commission c/o Sharon Rooney, dated February 25, 2000;
- Letter from Keith A. Bergman, Provincetown Town Manager, to Margo Fenn, dated February 29, 2000;
- DRI referral form and attachments, dated February 29, 2000;
- Letter from Gordon Gaskill, Chair Provincetown Planning Board, to the Cape Cod Commission, dated March 1, 2000; and,
- Letter with enclosures from Jeanne S. McNight, of Kopleman and Paige, P.C., Provincetown Town Counsel, to the Cape Cod Commission, dated July 7, 2000.

Staff Correspondence:

- Letter from Sharon Rooney to Rex Peterson, Provincetown Permit Coordinator, dated December 15, 1999;
- Letter from Sharon Rooney to John Bennett, Provincetown Conservation Commission Chair, dated February 16, 2000;
- Letter from Paul Sutton to Locke Family Trust, c/o Lester J. Murphy, Jr. dated March 6, 2000;
- Memorandum from Paul Sutton to Commission Subcommittee dated March 6, 2000;
- Letter from Paul Sutton to Locke Family Trust, c/o Lester J. Murphy, Jr. dated April 3, 2000;
- Memorandum from Paul Sutton to Commission Subcommittee dated April 3, 2000;

- Letter from Seth Wilkinson to Edward E. Veara, Zisson & Veara, dated June 27, 2000;
- Letter from Seth Wilkinson to Locke Family Trust, c/o Lester J. Murphy, Jr. dated July 28, 2000;
- Letter from Seth Wilkinson to Locke Family Trust, c/o Lester J. Murphy, Jr. dated August 7, 2000; and,
- Letter from Seth Wilkinson to Edward E. Veara, Zisson & Veara, dated August 14, 2000.

Submittals from the Proponent:

- Preliminary Subdivision Plan for "Bohm Heights", for Locke Family Trust, dated October 1, 1999;
- Preliminary Entrance Road Plan & Profile for Locke Family Trust, dated November 3, 1999;
- Letter from Lester J. Murphy, Jr. to the Cape Cod Commission dated March 2, 2000;
- Letter from Lester J. Murphy, Jr. to the Cape Cod Commission dated March 8, 2000;
- Letter from Edward E. Veara, Zisson & Veara, to the Cape Cod Commission, dated June 14, 2000;
- Facsimile transmittal from Edward E. Veara, Zisson & Veara, to Seth Wilkinson, dated June 29, 2000;
- Letter from Lester J. Murphy, Jr. to Katherine Peters, dated June 30, 2000;
- Letter from Edward E. Veara, Zisson & Veara, to Seth Wilkinson dated August 10, 2000; and,
- Summons from Edward E. Veara, Zisson & Veara, to the Cape Cod Commission, dated August 25, 2000; and,
- Letter from Edward E. Veara, Zisson & Veara, to Cape Cod Commission dated August 31, 2000

Submittals from other Governmental Agencies:

- Letter from Patricia Huckery, Massachusetts Division of Fish & Wildlife NHESP Wetlands Environmental Reviewer, to Provincetown Conservation Commission dated February 16, 2000, received March 22, 2000.

Submittals from the Public:

- Letter from Kathleen Perry Long, abutter, to Provincetown Planning Board dated January 20, 1999;
- Letter from Christopher J. Snow, Snow and Snow, to the Cape Cod Commission dated April 24, 2000; and,
- Email from Carol MacDonald to the Cape Cod Commission, dated July 4, 2000.

The application and notices 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

Pursuant to Section 2 (b) of the DRI Enabling Regulations, a municipal agency, including the board of selectmen, may refer a proposed development that does not meet or exceed any of the standards and criteria associated with developments presumed to be Developments of Regional Impact (Section 3), provided that the Commission accepts the referral as a

development that may have regional impacts and that presents one or more of the concerns listed in Section 12 (b) of the Act. On February 29, 2000, the Commission received a limited discretionary referral for the Locke Property residential subdivision project from the Provincetown Board of Selectmen.

FINDINGS

The proposed project consists of the construction of 18 new single family homes in a 20-lot subdivision on 8.99 acres of land. The project site is located on Route 6A in Provincetown, MA. The area proposed for development is a sensitive dune area, according to the Provincetown Planning Board and Board of Selectmen.

On February 29, 2000, the Commission received a limited discretionary referral from the Provincetown Board of Selectmen. The Board of Selectmen specified that the review be limited to the subject areas of Open Space and Recreation, Coastal Resources, Wetlands, and Wildlife / Plant Habitat.

Due to the lack of a submitted DRI application, a hearing officer opened a pro-forma hearing at the Cape Cod Commission office in Barnstable, MA on April 25, 2000. No testimony was heard and no substantive action was taken at this hearing.

Due to the required 90-day time limit for hearings, a hearing officer closed the hearing at the Cape Cod Commission office in Barnstable, MA on July 20, 2000.

The proponent refused to file DRI application materials, thereby providing no information on which to conduct a substantive hearing or to base a decision by the Commission.

In a letter dated August 11, 2000, Attorney Edward E. Veara denied that the Cape Cod Commission had any jurisdiction in connection with the Locke Property project.

CONCLUSION

The Cape Cod Commission hereby procedurally denies without prejudice the Development of Regional Impact proposal for the Locke Property a/k/a Bohm Heights 20-lot residential subdivision project in Provincetown, MA, pursuant to Sections 12 and 13 of the Cape Cod Commission Act, c. 716 of the Acts of 1989, as amended. This conclusion is supported by the finding that the proponent has failed to comply with procedures of the Act and Commission regulations requiring submission of a completed DRI application.



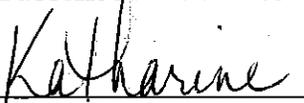
Frank Shephard, Chair

9/7/00

Date

Commonwealth of Massachusetts
Barnstable, ss.

Subscribed and sworn to before me this 7th day of Sept 2000.



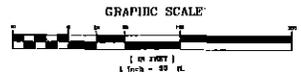
Name, Notary Public
My commission expires:



Locke Property - - #DR20008
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SLADE ASSOCIATES, INC.
REGISTERED LAND SURVEYORS
220 N. 10th St.



A-9.04 AC. ±
(SUBJECT TO SURVEY)

"BOHM HEIGHTS"
PRELIMINARY SUBDIVISION
OF LAND IN
PROVINCETOWN
MADE FOR THE
LOCKE FAMILY TRUST

SCALE: 1"=50' OCTOBER 1, 1999
SLADE ASSOCIATES, INC., REGISTERED LAND SURVEYORS
RT. 8 & PINE POINT ROAD, WELLFLEET, MA 02667

PLAN #1099-115