



# CAPE COD COMMISSION

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DATE: April 13, 2000

TO: Francis X. Messina  
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Braintree, MA 02185

William P. Sweeny, Jr.  
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FROM: Cape Cod Commission

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

PROPONENT: Francis X. Messina  
William P. Sweeny, Jr.

PROJECT #: DR99035

PROJECT NAME: Casino-by-the-Sea

BOOK/PAGE: Book 277, Page 30

## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission) hereby procedurally denies without prejudice the proposal of Francis X. Messina, formerly the proposal of R & B Development LLC, 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 Casino-by-the-Sea project in Falmouth, MA. The decision is rendered pursuant to a vote of the Commission on April 13, 2000.

Casino-by-the-Sea - - #DR99035  
Falmouth, MA  
April 13, 2000 Decision



## PROJECT DESCRIPTION

The proposed project consists of the demolition of the existing Casino-by-the-Sea restaurant/nightclub building, located at 286 Grand Avenue, Falmouth Heights, MA, and its replacement with a 12-unit condominium complex ("Casino-by-the-Sea project").

## PROCEDURAL HISTORY

Under Section 2(b) of the DRI Enabling Regulations, the Casino-by-the-Sea project was referred to the Commission on November 12, 1999, pursuant to a November 8, 1999 vote of the Falmouth Board of Selectmen. On December 2, 1999, the Commission voted in favor of accepting the project for limited review as a DRI.

The project proponent's representative submitted a letter, dated December 2, 1999, indicating that the proponent did not intend to pursue approval of the project as proposed before the Cape Cod Commission. On December 17, 1999 the proponent submitted a partial withdrawal of the proposed project.

On January 18, 2000, the Commission Regulatory Committee voted to recommend that the project be procedurally denied. The Committee based its vote on the proponent's failure to submit a DRI application and its failure to provide a complete withdrawal of the proposed project from both the Commission and the Town of Falmouth. The Committee scheduled its recommendation to the full Commission for March 16, 2000.

The Cape Cod Commission opened a pro-forma hearing on January 20, 2000 at the offices of the Cape Cod Commission in 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.

A final public hearing on the written decision was held on April 13, 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:*

- DRI referral form and attachments, dated November 12, 1999;
- Letter from Jean Innamorati, Falmouth Historic Districts Commission, to Dorr Fox, dated November 12, 1999;
- DRI referral letter from Peter F. Boyer, dated November 15, 1999; and,
- Letter from Mary Pat Flynn, Falmouth Board of Selectmen, to Margo Fenn, dated November 18, 1999.

*Staff Reports and Correspondence:*

- Staff report, dated November 12, 1999;
- Letter to Robert H. Ament, dated November 12, 1999;
- Faxed letters to Heather Harper, Falmouth Assistant Town Administrator, dated November 15, 1999;
- Memorandum to Commission, dated November 18, 1999;
- Memorandum and attachments to Commission, dated November 24, 1999;
- Letter to Falmouth Board of Selectmen, dated December 2, 1999;
- Letter to Eladio Gore, Falmouth Building Commissioner, dated December 2, 1999;
- Letter to Francis X. Messina, dated December 6, 1999;
- Letter to Francis X. Messina, dated December 10, 1999;
- Letter to Peter F. Boyer, Falmouth Town Administrator, dated December 17, 1999; and,
- Letter to Francis X. Messina, dated January 6, 2000;

*Submittals from the Applicant:*

- Letter from Robert H. Ament to Paul Sutton, dated November 18, 1999;
- Letter from Ronald G. Marshall to Commission, dated November 18, 1999;
- Letter from Ronald G. Marshall to Commission dated December 2, 1999;
- Letter from Robert H. Ament to Paul Sutton/Dorr Fox, dated December 6, 1999;
- Letter from Francis X. Messina to Eladio Gore, dated December 17, 1999;
- Letter from Francis X. Messina to Falmouth Conservation Commission, dated December 17, 1999; and,
- Letter and statement of withdrawal from Ronald G. Marshall to Paul Sutton, dated December 17, 1999.

*Submittals from other Government Agencies:*

- None

*Submittals from the Public:*

- Letter and enclosures from Noah Greenberg to Dorr Fox, dated November 13, 1999;
- Letter from John M. Connolly to Patricia Daley, dated November 15, 1999;
- Unaddressed, faxed letter from Craig Martin, dated November 20, 1999;
- Letter from John M. Connolly to Paul Sutton, dated December 2, 1999;
- Letter from Eric T. Turkington to John Vidal, Falmouth Board of Appeals Chair, dated September 28, 1999, and submitted by Craig Martin on December 2, 1999;
- Citizen petitions submitted to Commission by Ted Slavin on December 2, 1999;
- Letter and attachments from Rudy J. Civitan, President of the Board of Directors of the Falmouth Heights-Maravista Improvement Association, dated February 11, 2000;

The application and notices of the public hearings relative thereto, the Commission's staff reports, correspondence, notes and exhibits, minutes of hearings and all written

submissions received in the course of the proceedings, including materials submitted on file DR99035, 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 November 12, 1999, the Commission received a limited discretionary referral for the Casino-by-the-Sea condominium project from the Falmouth Board of Selectmen.

### FINDINGS

The Commission has considered the Casino-by-the-Sea project and makes the following findings pursuant to Sections 12 and 13 of the Act:

1. The proposed project consists of the demolition of the existing Casino-by-the-Sea restaurant/nightclub building and the construction of a 12-unit residential condominium complex. The project site is located on a coastal bank and beachfront adjacent to Grand Avenue in Falmouth Heights, MA. The existing casino building is eligible for listing on the National Register of Historic Places, according to the Falmouth Historical Commission.
2. On November 12, 1999, the Commission received a limited discretionary referral for the Casino-by-the-Sea condominium project from the Falmouth Board of Selectmen. The Board of Selectmen specified that the review be limited to the following issue areas: land use/growth management, coastal resources, economic development, open space and recreation, and historic preservation/community character.
3. 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 January 20, 2000. No testimony was heard and no substantive action was taken at this hearing.
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. In a letter dated December 2, 1999, Ronald G. Marshall, attorney for Francis X. Messina, confirmed that his client had acquired the rights of the current proponent to purchase the property associated with the proposed project.
6. In a letter dated December 6, 1999, Robert H. Ament, attorney for the proponent, confirmed that his client, Robert Reposo and William E. Curran (R& B Development LLC), conveyed their rights under a Purchase and Sale Agreement to Frank Messina of Braintree, MA. Mr. Ament noted in this letter that Mr. Messina's interest in the

property was executory, while that of the current property, believed to be William P. Sweeney, Jr., was fiduciary.

8. Ronald G. Marshall submitted a statement of withdrawal from Commission review, dated December 17, 1999, and copies of project withdrawal letters sent to the Falmouth Conservation Commission and the Falmouth Building Inspector, both dated December 17, 1999.
9. In a letter dated December 17, 1999, Ronald Marshall stated that he requested and anticipated that the current Casino property owner would also submit a statement of withdrawal to the Commission.
10. As of the date of this decision, the current Casino property owner has not submitted a letter of withdrawal to the Commission.

### Conclusion

The Cape Cod Commission hereby procedurally denies without prejudice the Development of Regional Impact proposal for the Casino-by-the-Sea condominium project in Falmouth, 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 applicant has failed to comply with procedures of the Act and Commission regulations requiring submission of a completed a DRI application, or, in the alternative, a complete project withdrawal from the Commission and the Town of Falmouth.

*Thomas Broidrick*

Thomas Broidrick, Chair

*4/13/00*

Date

Commonwealth of Massachusetts  
Barnstable, ss.

Subscribed and sworn to before me this *13<sup>th</sup>* day of *April* 2000.

*Katharine L Peters*

Name, Notary Public

My commission expires:

