



CAPE COD COMMISSION

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DATE: April 12, 2001

TO: Robert Childs
154 South Street
South Yarmouth, MA 02664

FROM: Cape Cod Commission

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

PROPONENT: Robert Childs

PROJECT #: DR20035

PROJECT NAME: Childs 19-Lot Residential Subdivision

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DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby procedurally denies without prejudice the proposal of Robert Childs, 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 Childs 19-Lot Residential Subdivision project in Barnstable, MA. The decision is rendered pursuant to a vote of the Commission on April 12, 2001.

PROJECT DESCRIPTION

The proposed project consists of a 19-lot subdivision on 26.2-acres of land located along Route 28 in Marstons Mills approximately 2000 feet west of Osterville – West Barnstable Road.

PROCEDURAL HISTORY

Under Section 12(e) of the Cape Cod Commission Act, the Childs 19-Lot Residential Subdivision project was referred to the Commission as a Discretionary Referral on October 18, 2000 by the Barnstable Board of Health and the Barnstable Planning Board on October

31, 2000. On November 2, 2000, the Commission voted in favor of accepting the project for review as a DRI under Section 12(e) of the Act.

The hearing was opened by a hearing officer of the Commission on December 20, 2000. The hearing was closed by a hearing officer of the Commission on March 15, 2001. No DRI application was submitted by the proponent during the process. On December 6, 2000, the Commission 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 April 12, 2001 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 Craig A. Crocker, Centerville-Osterville-Marstons Mills Water Department Superintendent, to Barnstable Planning Board dated October 16, 2000;
- Letter from John C. Klimm, Barnstable Town Manager, to Margo Fenn, Commission Executive Director, dated October 24, 2000;
- Memorandum from Thomas A. McKean, Barnstable Public Health Department, to Dorr Fox, Commission Chief Regulatory Officer, dated October 26, 2000;
- Preliminary Subdivision Plan #787 submitted by Barnstable Board of Health to the Commission received October 27, 2000;
- Map from Barnstable Geographic Information Systems Unit to Commission received November 6, 2000.

Staff Correspondence:

- Memorandum from Seth Wilkinson, Commission Planner, to Commission dated October 26, 2000;
- Letter from David J. Ansel, Commission's Barnstable Representative, to Frank Shephard, Commission Chairman, dated November 1, 2000;
- Letter from Seth Wilkinson to Robert Childs dated November 8, 2000;
- Memorandum from Seth Wilkinson, to Commission Subcommittee dated November 16, 2000;
- Memorandum from Seth Wilkinson to Commission Subcommittee dated November 30, 2000;
- Letter from Seth Wilkinson to Susan Rask, Barnstable Board of Health Chair, dated January 18, 2001;
- Letter from Seth Wilkinson to Raymond Lang, Barnstable Planning Board Chair, dated January 18, 2001.

Submittals from the Proponent:

- Letter from Paul Revere, III Esquire, to Frank Shephard and Seth Wilkinson dated December 5, 2000.

Submittals from the Public:

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 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. A full discretionary referral was received by the Commission on October 18, 2000 from the Barnstable Board of Health and from the Barnstable Planning Board on October 31, 2000.

FINDINGS

The proposed project consists of a 19-lot subdivision on 26.2-acres of land located along Route 28 in Marstons Mills approximately 2000 feet west of Osterville – West Barnstable Road.

On October 18, 2000, the Commission received a discretionary referral for the Project from the Barnstable Board of Health. The Barnstable Planning Board submitted a second discretionary referral for the Childs 19-Lot Residential Subdivision on October 31, 2000,

The Commission found that the Childs 19-Lot Residential Subdivision poses regional impacts to water resources, transportation, natural resources, and open space as defined in Section 12 (b) of the Act and should be reviewed as a Development of Regional Impact.

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 December 20, 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 March 15, 2001. No testimony was heard and no substantive action was taken at this hearing.

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 December 5, 2000, Attorney Paul Revere III refused to acknowledge Cape Cod Commission jurisdiction in connection with the Childs Residential Subdivision projects.

CONCLUSION

The Cape Cod Commission hereby procedurally denies without prejudice the Development of Regional Impact proposal for the Childs 19-lot residential subdivision project in Barnstable, 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
Frank Shephard, Chair

4/12/01
Date

Commonwealth of Massachusetts
Barnstable, ss.

Subscribed and sworn to before me this 12th day of April 2000.

Katharine L. Peters
Name, Notary Public

My commission expires:

