



# 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 #: DR20036  
PROJECT NAME: Childs 16-Lot Residential Subdivision  
BOOK / PAGE: Deed Book: 1915 Page: 31

## 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 16-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 16-lot subdivision on 21.9-acres of land located along Osterville - West Barnstable Road in Marstons Mills approximately 1500 feet north of the Route 28 and Osterville - West Barnstable Road intersection.

### PROCEDURAL HISTORY

Under Section 12(e) of the Cape Cod Commission Act, the Childs 16-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 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 #786 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:*

- Letter from James R. Weaver, Nstar, to the Seth Wilkinson dated April 12, 2001.

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 16-lot subdivision on 21.9-acres of land located along Osterville – West Barnstable Road in Marstons Mills approximately 1500 feet north of the Route 28 and Osterville – West Barnstable Road intersection..

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 16-Lot Residential Subdivision on October 31, 2000,

The Commission found that the Childs 16-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 16-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 12<sup>th</sup> day of April 2000.

Katharine L. Peters  
Name, Notary Public

My commission expires:

