



# CAPE COD COMMISSION

3225 MAIN STREET  
P.O. BOX 226  
BARNSTABLE, MA 02630  
(508) 362-3828  
FAX (508) 362-3136

E-mail: [frontdesk@capecodcommission.org](mailto:frontdesk@capecodcommission.org)

DATE: April 30, 2001

APPLICANT: Attorney Laura M. Moynihan, representing  
Burlington Self Storage of Cape Cod, LLC  
Regarding Building E project

PROJECT: DRI # TR99037  
Modification of an Approved DRI Decision  
Section 9(n) of Enabling Regulations

BOOK/PAGE: Book: 10954 Page: 198

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

The Cape Cod Commission (Commission), through its Regulatory Committee, hereby deems the application of Attorney Laura M. Moynihan, representing Burlington Self Storage of Cape Cod, LLC, to be a Major Modification under Section 7 of the *Administrative Regulations* (as revised). Therefore, such a modification can only be acted on following the Commission's Development of Regional Impact or exemption review process, including a public hearing and a vote of the full Commission. This decision is rendered pursuant to a vote of the Commission's Regulatory Committee on April 23, 2001.

Modifications to an approved Development of Regional Impact decision are subject to Commission's jurisdiction according to Section 9(n) of the *DRI Enabling Regulations*.

### ORIGINAL PROJECT DESCRIPTION and MATTERS AT ISSUE

On April 13, 2001, the Cape Cod Commission received a request (by fax) from Attorney Laura M. Moynihan of Ament & Ament, representing Burlington Self Storage of Cape Cod, LLC requesting a modification to the previously-approved DRI decision, with conditions, which permitted the construction of a 23,100 square foot (gross feasible space) self-storage building on Route 28 in Falmouth. The modification request was to allow for placement of a utility pole onsite, between two existing utility poles, to provide overhead electrical service from an existing pole located adjacent to Route 28. The electric cable would be run underground from this utility pole to the building.

Under Section 7.0 of the *Administrative Regulations*, any proposal which would include "a substantially similar proposal to the original project but [which] involves a de minimus change of use or changes to the site plan, findings, or conditions of the original approval, any of which could result in different or increased impacts to the resources protected by the Cape Cod Commission Act and/or the Regional Policy Plan" are subject to Commission review as modifications, specifically Major Modifications.

### PROCEDURAL HISTORY

Attorney Moynihan's April 13, 2001 fax also asked that the matter be placed on the Regulatory Committee's agenda for its April 23, 2001 meeting. Staff informed Attorney Moynihan by phone that the matter had been placed on the agenda for April 23, 2001.



**COMMENTS/DISCUSSION AT THE REGULATORY COMMITTEE MEETING**

Attorney Laura Moynihan, attorney for the applicant, stated that the Commission's original decision required the applicant to place utilities underground. She said they were now requesting that they be allowed to have above ground utilities, because the cost of placing them underground is prohibitive and they are seeking an occupancy permit prior to June 1, 2001. She noted that the community character minimum performance standard in the RPP allows for above ground utilities for redevelopment proposals. She believed that the proposal would not have any community character impacts and that a public hearing did not need to be held regarding this matter. Ms. Moynihan drew on the project plans where the poles are proposed, where they are currently located, where the wires would go and where the underground utilities were originally proposed.

Ernest Virgilio noted that the applicant could obtain power from the adjoining site. He believes that it is primarily a cost issue. Ms. Moynihan noted that the underground utilities would cost \$20,000. They are requesting leeway since it is a redevelopment project.

Mr. Virgilio inquired whether the original plan indicated underground utilities. Ms. Andrea Adams of Commission staff explained that the decision included findings that the utilities would be placed underground. The Commission wanted the community character to improve with the redevelopment of the site.

Ms. Elizabeth Taylor inquired why the utilities couldn't come from the adjacent building. Ms. Moynihan stated that Commonwealth Electric Company has stated that the electricity must come from the transformer.

Ms. Susan Kadar inquired how much it would cost to have above ground utilities. Ms. Moynihan stated that it would cost approximately \$1000.

Ms. Tana Watt of Commission staff stated that Route 28 is a regional roadway. The Commission is always trying to improve the community character on these roads. She recommended that the Regulatory Committee follow the original plan. Ms. Watt said that this is an important issue.

Mr. Robert Deane stated that he sees no reason to change the original decision. If there is a cost issue, the applicant should contact their architect or engineer.

Mr. Virgilio inquired whether there were plans to further expand the project. Ms. Adams stated that she was not aware of an expansion.

Mr. Alan Platt inquired whether they had considered running the underground utilities through the open space. Ms. Moynihan stated that the conservation restriction would have to be changed. There is also a concern that the placement of the utilities in this area would destabilize the bank. Therefore they have not obtained any cost estimates. Mr. Virgilio explained how this option could work.

Mr. Deane moved to deny the request for a minor modification #2 and require such a modification to be a major modification. Ms. Taylor seconded the motion and it was unanimously approved.

No comments from the public were received at the April 23, 2001 Regulatory Committee meeting on this project.

**MATERIALS SUBMITTED FOR THE RECORD**

A. Materials submitted by the Applicant:

Fax, describing changes, with enclosures	4/13/01
Site plan with notations (received at meeting)	4/23/01
Digital photographs (2) (received at meeting)	4/23/01

B. Materials submitted by Cape Cod Commission:

Memorandum, to Regulatory Committee	4/18/01
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**Note:** No written materials or verbal comments were submitted or made on this modification request by the State, Town officials or the Public.

The information and notice of the public hearings relative thereto, the Commission's staff reports, exhibits, minutes of all hearings and meetings and all submissions received in the course of the proceedings, including materials submitted on file TR-99037 are incorporated into the record by reference.

**JURISDICTION**

The proposed changes to the Burlington Self Storage Building E project (TR99037) qualify as a modification to an approved DRI Decision under Section 9(n) of the DRI *Enabling Regulations*.

**FINDINGS**

The Commission's Regulatory Committee considered the proposed changes to the Burlington Self Storage project relative to the electric utility line and found it to be a Major Modification under Section 7 of the *Administrative Regulations* (as revised).

David J. Ansel  
 David J. Ansel  
 Chair, Regulatory Committee

5/21/01  
 Date

**COMMONWEALTH OF MASSACHUSETTS**

Barnstable, ss.

Subscribed and sworn to before me this 21<sup>st</sup> day of May, 2001.

Katharine L. Peters  
 NAME, Notary

My Commission expires:

