



# CAPE COD COMMISSION

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DATE: October 16, 2003

TO: Irving B. Freeman and Priscilla F. Rorstrom  
c/o Attorney Kate Mitchell  
Bridge Creek Professional Building  
1170 Route 6A, PO Box 160  
West Barnstable, MA

FROM: Cape Cod Commission

RE: Development of Regional Impact  
Jurisdictional Determination  
Cape Cod Commission Act, Section 12

APPLICANT: Irving B. Freeman                      Priscilla F. Rorstrom  
Prospect Street                                      7 Buckboard Lane  
Rutland, MA 01543                                Marlborough, CT 06447

PROJECT #: JD03010

PROJECT: Freeman Rorstrom subdivision  
Route 6A/Ox Pasture Road and Great Island Road  
East Sandwich, MA

BOOK/PAGE: 5993/218

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## DECISION OF THE CAPE COD COMMISSION

### SUMMARY

Pursuant to Section 12(j) of the Cape Cod Commission Act ("the Act") the Cape Cod Commission (Commission) hereby finds that the proposed Freeman/Rorstrom subdivision on Route 6A in East Sandwich, MA is subject to mandatory review as a Development of Regional Impact (DRI) under Section 3(c) of the DRI Enabling Regulations, Barnstable County Ordinance 90-12, as amended. The decision is rendered pursuant to the vote of an authorized subcommittee of the Commission on October 16, 2003.

### PROJECT DESCRIPTION

The project (Project), as described by the landowner, consists of the proposed subdivision of a 27 acre parcel of land on the north side of Route 6A between Ox

Pasture Road and Great Island Road. The applicant proposes to subdivide the parcel into 6 lots.

The central issue of the Jurisdictional Determination is whether the proposed subdivision involves more than 30 acres of land held in common ownership after September 30, 1994. The area of dispute concerns a 3.5 acre abutting parcel that the applicants' predecessor in title had acquired through a tax sale from the Town of Sandwich Collector of Taxes in 1917. The applicants contend that their interest in the abutting parcel was in the nature of a lien and therefore was insufficient to constitute ownership for the purposes of the DRI threshold; the proposed subdivision would therefore fall below the 30-acre DRI threshold. The Commission's Counsel contends that the applicants' interest in the abutting parcel is more accurately described as a fee interest than a lien and that for the purposes of the DRI threshold, they held more than 30 acres of land in common ownership after 1994.

#### PROCEDURAL HISTORY

The project was referred to the Commission by the Sandwich Planning Board on January 2, 2003. On February 4, 2003, the Sandwich Planning Board voted to withdraw the mandatory referral, and the Commission voted to allow the withdrawal on February 6, 2003. The applicant filed a JD application with the Commission on May 20, 2003 that was deemed complete on September 30, 2003. At its meeting on August 14, 2003 the Commission voted to delegate to a subcommittee the authority to make a final determination on this Jurisdictional Determination request. A duly noticed public hearing was conducted by the Commission pursuant to Section 5 of the Act by the subcommittee of the Commission on October 16, 2003 at the Sandwich Public Library. The public hearing and the record were closed on October 16, 2003.

The subcommittee held a public meeting after the close of the public hearing to deliberate on this project on October 16, 2003. At this meeting, the subcommittee voted 3 to 0, with the Chair's abstention, that the Project is subject to mandatory review as a Development of Regional Impact.

#### Materials submitted for the record

##### *From the applicant:*

- Cover letter and JD application with attachments
- Letter supporting the JD application from Attorney Kate Mitchell with 7/21/01 letter from Atty. Linda Doll
- Letter from Kate Mitchell with affidavits re: Lovell parcel redemption
- Letter from Kate Mitchell with copies of deeds
- Copy of current tax title statute

##### *Date received:*

May 20, 2003

July 29, 2003

September 9, 2003

September 25, 2003

October 16, 2003

##### *From Cape Cod Commission staff:*

- Letter to Kate Mitchell re: incomplete JD application

##### *Date sent:*

May 29, 2003

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- Memo to subcommittee re: hearing September 26, 2003
- Letter to Kate Mitchell re: application complete September 30, 2003
- Legal opinion from Choate, Hall & Stewart October 2, 2003
- Memo to subcommittee re: legal opinion October 8, 2003

*From state/local officials:*

- From Joanne Miller Buntich: Legal memo from Atty. Ilana Quirk to Sandwich Planning Board dated December 17, 2002 and copy of easement language
- Copies of deeds

*Date received:*

May 28, 2003  
May 30, 2003

*From the public:*

- No submittals

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.

TESTIMONY

A public hearing was held at the Sandwich Public Library in Sandwich, MA on October 16, 2003. Attorney Kate Mitchell, representing the applicants described the project and explained to the subcommittee why she believed that the applicants' interest in the abutting parcel was in the nature of a lien and not fee ownership, thereby rendering the proposed subdivision parcel as containing less than 30 acres held in common ownership prior to 1994 and thereby not subject to mandatory Commission review.

Commission Planner Martha Hevenor noted procedural information, and Staff Counsel Margaret Callanan presented an overview of the legal opinion from Choate, Hall & Stewart and she explained that the applicants' interest in the abutting parcel is more accurately described as a fee interest than a lien, thereby rendering the proposed subdivision as containing more than 30 acres of land held in common ownership prior to 1994 and thereby subject to mandatory Commission review.

The subcommittee asked questions concerning the relevant amendments in tax title law and whether the applicant had paid the taxes on the abutting parcel.

Joel Bess of West Barnstable spoke in support of the applicants' contention that they had less than fee ownership interest in the abutting parcel.

FINDINGS

1. On or about October 1, 1917, John Freeman, the applicants' predecessor in title, purchased 3.5 acres that abutted his 27 acre parcel of land to the northwest ("abutting parcel").

2. On or about August 25, 2002, the applicants conveyed to James Gaffney a deed to the 3.5 acre abutting parcel.
3. Prior to the conveyance of the abutting parcel to James Gaffney, the nature of the applicants' interest in the abutting parcel seems best characterized as a fee interest (subject to a foreclosable right of redemption). John Freeman, the Grantee of the Treasurer's deed, and his successors in title seem to have paid the property taxes and had the sole right to possession. Unless and until the defaulting taxpayer redeemed the equity of redemption, he had no right to possession, only a contingent right to redeem.
4. The 3.5 acre abutting parcel was commonly owned by the applicants with the 27 acre parcel after September 1994.
5. Under Section 3(c) of the Commission's Enabling Regulations, "any development which proposes to divide parcel(s) of land totaling 30 or more acres in common ownership on or after September 30, 1994" is a Development of Regional Impact and falls within the Commission's jurisdiction for review.

CONCLUSION

Based on the findings above, the Commission has determined the proposed Freeman/Rorstrom subdivision is subject to mandatory review under Section 3 of the Commission's DRI Enabling Regulations. This decision is rendered pursuant to a vote of an authorized subcommittee of the Commission on October 16, 2003.

Susan Kadas  
Name, Chair

Nov 6, 2003  
Date

Commonwealth of Massachusetts

Barnstable, ss.

On this 6<sup>th</sup> day of Nov, 2003, before me personally appeared Susan Kadas, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Katharine L. Peters

Notary Public  
Commonwealth of Massachusetts



My Commission expires:

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