



CAPE COD COMMISSION

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Date: October 20, 2004

To: Settlers Landing Realty Trust, Jacques Morin, Trustee
1597 Falmouth Road, Suite 4,
Centerville, MA 02632

From: Cape Cod Commission

Re: Development of Regional Impact Jurisdictional Determination
Cape Cod Commission Act, Section 12 (j)

Applicant: Settlers Landing Realty Trust, Jacques Morin, Trustee
1597 Falmouth Road, Suite 4,
Centerville, MA 02632

Project #: #JD04022

Project: Settlers Landing, Barnstable, MA

Book/Page: Book 12119, Page 311, Book 12257, Page 241

DECISION OF THE CAPE COD COMMISSION

SUMMARY

Pursuant to Section 12 (j) of the Cape Cod Commission Act (Act), the Cape Cod Commission (Commission) hereby determines that the proposed subdivision of an approximately 13-acre parcel located off Castlewood Circle, Hyannis into 29 single-family lots, is a project that does not qualify for review as a Development of Regional Impact (DRI) under Section 3(d) of the DRI Enabling Regulations Barnstable County Ordinance 90-12 as amended. This decision is rendered pursuant to a vote of the Commission on October 20, 2004.

PROJECT DESCRIPTION

The project is for the division of the 13-acre parcel located off Castlewood Circle in Hyannis. The parcel is to be divided into 21 lots pursuant to a Comprehensive Permit application (Chapter 40B). Twenty of these lots will be developed with single-family homes, 25% of which will be



affordable units. These twenty lots cover approximately 5.6 acres of the site. The remaining 7.4-acre lot is not to be developed as part of the Comprehensive Permit.

The remaining 7.4-acre parcel will eventually be subdivided into 29 single-family lots under the town's prevailing zoning and subdivision control laws. The applicant has stated that the 7.4-acre parcel will be developed under new "Private Housing Initiative-Affordable Housing Development" (PHI-AHD) zoning. The proposed zoning requires that a Special Permit be obtained, that the applicant connect all lots to town sewer and that 20% of the construction consist of affordable units.

PROCEDURAL HISTORY

Attorney Michael Ford submitted an application for a jurisdictional determination to the Cape Cod Commission on September 28, 2004 on behalf of Settlers Landing Realty Trust. The application was deemed complete on September 30, 2004. The Commission voted to delegate the authority to render a final decision to the Subcommittee at the Cape Cod Commission meeting on October 7, 2004.

Pursuant to Section 5 of the Act, a duly noticed public hearing was conducted by an authorized Subcommittee of the Commission in the Town of Barnstable on October 20, 2004. At the October 20, 2004 public meeting, the subcommittee voted that the project does not qualify as a DRI.

MATERIALS SUBMITTED FOR THE RECORD

From the Applicant:

- Jurisdictional Determination Application submitted by Michael D. Ford, Esquire dated September 28, 2004

From Cape Cod Commission staff:

- Staff Report dated October 13, 2004

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

The Commission heard oral testimony at the October 20, 2004 hearing from Attorney James Stinson, representing the Applicant, who described the history of the project and the proposed subdivision.

Philip Dascombe, Planner, for the Cape Cod Commission described the applicable jurisdictional issues.

FINDINGS

The Commission has considered the Applicant's request for a Jurisdictional Determination for the proposed subdivision, and based on consideration of such application and upon the information presented at the public hearing and submitted for the record, makes the following findings pursuant to Sections 12 and 13 of the Act:

G1. Section 22(b) of the Cape Cod Commission Act exempts from Commission review any development which prior to July 1, 1989 has received certain local permits. The project did not receive any local permits prior to July 1, 1989. Therefore, the project is not exempt under Section 22(b) of the Act.

G2. The Comprehensive Permit application was originally filed in August 3, 2000 and sought to divide the property into 168 multi-family condominium units. The Barnstable Zoning Board of Appeals did not approve this request, but instead approved 44 multi-family or single-family homes. The Barnstable Zoning Board of Appeals decision was appealed to the Massachusetts Housing Appeals Committee (HAC). The HAC encouraged both parties to mediate the dispute, which resulted in the proposed project.

G3. The Comprehensive Permit application will divide the property into 21 lots, 20 of which will be developed with single-family residences. The remaining lot will be left undeveloped under the Comprehensive Permit application.

G4. Section 13(j) of the Cape Cod Commission Act states that "For the purposes of sections twenty to twenty-three, inclusive, of Chapter 40B of the General Laws, the commission shall be considered a local board." As such, the Commission may comment in a similar manner to other local boards on the 40B portion of the project. This portion of the project is not subject to mandatory DRI review because of this provision of Section 13(j) of the Act.

G5. The DRI Enabling Regulations, Barnstable County Ordinance 90-12, Section 3(d), requires DRI review of "any development which proposes to divide land into thirty or more residential lots." The approximately 7.4-acre lot left undeveloped following the Comprehensive Permit application will be subdivided into 29 lots under the town's prevailing zoning and subdivision control laws, one less than the DRI threshold of Section 3(d). As part of the mediated settlement, the Town of Barnstable has created a new zone district (Private Housing Initiative-Affordable Housing Development) that is applicable to the new 29-lot subdivision that will create lots of similar size to the surrounding neighborhoods.

G6. The Commission does not have mandatory jurisdiction to review the project as a Development of Regional Impact as it does not qualify as a DRI under Section 3(d) of the Enabling Regulations.

CONCLUSION

The Commission finds that the proposed subdivision off Castlewood Circle, Hyannis does not qualify for review under Section 3(d) of the Development of Regional Impact Enabling Regulations.

Ian A. Aitchison

Ian Aitchison, Chair

11/1/04

Date

Commonwealth of Massachusetts
County of Barnstable

On this *1st* day of *November*, 2004, before me, the undersigned notary public, personally appeared ~~for Ian Aitchison, Chair~~ *Ian Aitchison*, proved to me through satisfactory evidence of identification, which were *personal knowledge* to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose.

Dorr Steven Fox

Notary Public
Commonwealth of Massachusetts

My Commission Expires: _____

