



CAPE COD COMMISSION

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DATE: November 13, 2006

TO: Pamela Gangemi
Trustee, 81 Echo Road Realty Trust
C/of Attorney Patrick M. Butler
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1513 Iyannough Road
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Hyannis, MA 02601-1630

FROM: Cape Cod Commission

RE: Jurisdictional Determination
Cape Cod Commission Act, Section 12(j)

APPLICANT: Pamela Gangemi, Trustee
Owner: 81 Echo Road Realty Trust

PROJECT #: JD # 06024

PROJECT: Subdivide 14.66-acre property in Mashpee, MA into 9 Lots

BOOK/PAGE: Book 13601 Page 109

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 finds that Pamela Gangemi's proposal, as Trustee of 81 Echo Road Realty Trust to subdivide 14.66 acres property in Mashpee is not subject to mandatory review under Section 3(e)(i) of the Development of Regional Impact (DRI) *Enabling Regulations*, Barnstable County Ordinance 90-12, as amended. The Commission also found that the project was not exempt under Section 22 of the Act. This decision is rendered pursuant to the vote of the Subcommittee at the November 13, 2006 public hearing.



PROJECT DESCRIPTION

The project site is located adjacent to Echo Road in Mashpee. According to the JD application narrative Pamela Gangemi, Trustee of 81 Echo Road Trust, proposes to subdivide a 14.66-acre property into nine (9) industrial lots.

PROCEDURAL HISTORY

The Jurisdictional Determination application was filed on July 28, 2006. On October 5, 2006, the Commission delegated its authority to an authorized Subcommittee to make a determination on this application. The application was deemed complete in a letter dated November 3, 2006. A duly noticed public hearing was conducted pursuant to Section 5 of the Act by a Subcommittee of the Commission on November 13, 2006 at the Cape Cod Commission's office in Barnstable, MA. The public hearing and record were closed by vote of the Subcommittee on November 13, 2006. The Subcommittee also voted three in favor, with one opposed, and with the Chair not voting that the project was not subject to mandatory review as a DRI.

MATERIALS SUBMITTED FOR THE RECORD

From the Applicant

Attorney Butler, Nutter, McClennen & Fish, Jurisdictional Determination application with attachments	7/28/06
Attorney Cox, Nutter, McClennen & Fish, letter to T. Fudala	11/1/06
Attorney Cox, Nutter, McClennen & Fish, copies of JD application for mailing	11/1/06
Attorney Butler, Nutter, McClennen & Fish, handout, 2 pgs., yellow paper	11/13/06

From Cape Cod Commission Staff

E-mail, to Attorney Witten, Commission Counsel	8/2/06
Memo, to Attorney Witten, Commission Counsel	8/2/06
Memo, to Subcommittee	8/2/06
E-mail, to Attorney Butler, application incomplete	8/8/06
Letter, to Attorney Butler, application incomplete	8/8/06
E-mail, to M. Harding, Subcommittee alternate	10/12/06
Letter, to Attorney Butler, notices for hearing	10/25/06
E-mail, to Subcommittee	10/26/06
Staff Report with attachments	10/31/06
Letter, to Attorney Butler, application complete	11/3/06
Copy, Staff Report PowerPoint presentation	11/13/06
Hearing Notice (with evidence of publishing)	11/13/06
Hearing Sign-in Sheet	11/13/06

From Public Officials

E-mail, from T. Fudala, Mashpee Town Planner	11/7/06
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From the Public

No written submissions

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 the Commission's proceedings are incorporated into the record by reference.

TESTIMONY

Mr. Olsen opened the hearing at 10:45 AM. Mr. Zavala read the hearing notice. Mr. Olsen asked the applicant's representatives to make a presentation.

Attorney Butler distributed handouts on yellow paper for the Subcommittee's consideration. He also used plans and other documents to make his presentation. Using the handouts, Attorney Butler described a series of events relating to the site. He said the lots in question had been in essentially the same configuration since 1986. Attorney Butler said the proposed Approval Not Required (ANR) plan did not exceed the acreage threshold in section 3(c) of the *Enabling Regulations*. He also noted the applicant was not seeking an exemption under section 22(e) of the Cape Cod Commission (Commission) Act. Attorney Cox presented drawings of three hypothetical scenarios relating to lots and ownership.

Attorney Wielgus used a PowerPoint presentation to present the staff report. She described section 12(j) of the Commission Act and sections 3 and 3(c) of the *Enabling Regulations*. She noted the question for the Subcommittee to consider was whether or not the development proposed to divide parcels of land that, on or after September 30, 1994, totaled 30 acres or more, and were in common ownership or control including after taking account of assembly and recombination of lots. Attorney Wielgus said the key date in question was September 30, 1994 and the question was as of that date, was the parcel proposed for development part of a larger tract of land once you assemble or recombine the lots? She noted the legislative intent of the standard was to preserve Development of Regional Impact (DRI) review of the few remaining larger tracts of land on Cape, and at the time of the drafting of the regulation, there were approximately ten such areas on Cape. Attorney Wielgus described how the regulation had changed from what was in the Act, noting that two sections had originally dealt with division of 50+ acres and 15+ acres in common ownership as of January 1, 1988. She noted that these two standards were replaced with new language in section 3(c) of the *Enabling Regulations*. This new language is what is before the Subcommittee: is this a proposal to divide parcels of land that, on or after September 30, 1994, totaled 30 acres or more, and were in common ownership or control including after taking account of assembly and recombination of lots? Attorney Wielgus noted that the Subon Company, with Daniel Striar as a partner/principal, purchased a majority of the area over time. She noted that in 1981, Subon/Striar purchased 39.10 and 14.69 acres, and that in 1982, the 19.03 acres of the Gangemi lot was also purchased. Attorney Wielgus noted that as of April 22, 1986, Subon/Striar had ownership/control of the proposed project area as well as north of it. Attorney Wielgus showed a series of PowerPoint slides that provided a history of the ownership and recombination of the land by using prior ANR plans. She noted that Subon/Striar sought ANR approval to subdivide parcels three different times, and that each time, the Commission had jurisdiction over the proposal. She

noted that these were proposals to divide parcels of land that, on or after September 30, 1994, totaled 30 acres or more, and were in common ownership or control including after taking account of assembly and recombination of lots. Attorney Wielgus showed slides of information from the 1997, 1998 and 1999 Commission files related the three attempts by Subon/Striar to subdivide the land through ANR plans. Attorney Wielgus concluded the staff report by noting that the Gangemis' proposal qualified as a DRI because their 14.69-acre lot was held in common ownership/control with other parcels of Subon/Striar, and that these holdings exceeded 30 acres.

Mr. Olsen asked for comments from members of the public. Hearing none, he asked for comments or questions from Commission members.

Mr. Cakounes asked Attorney Butler to show the 1981 and 1986 plans. He asked when the 14+/- acres that is the subject of the current ANR plan was purchased?

Attorney Butler showed Mr. Cakounes the two plans as he requested. Attorney Butler said the Gangemis purchased the property in question in February 2001.

Mr. Cakounes asked if there was any relationship between Subon Company or Mr. Striar and the Gangemis?

Attorney Butler said the Gangemis purchased the property in question from Subon Company/Striar in February 2001. Attorney Butler said the ANR proposals referred to by Attorney Wielgus in her presentation, which had occurred in 1997 and 1998, were done to split land off of a larger lot that exceeded 30 acres. He noted this was not the case with the current ANR proposal. Attorney Butler said the proposal in this case was dividing a piece of property that was less than 30 acres in size. He said he agreed with Attorney Wielgus' point that the intent of section 3(c) was to capture large lots.

Attorney Wielgus said the regulations and the Commission Act were clear in their language and intent. She noted the Gangemis, the purchasers, took title to the land with knowledge that it and adjacent land was in common ownership.

Attorney Butler said that Subon Company/Striar had continued to own additional land, and if this company or individual was trying to or had attempted to subdivide the 14.66 acres in question, it would be a situation subject to section 3(c).

Mr. Cakounes asked if Subon Company/Striar was looking to divide off another lot?

Attorney Butler noted the proposed 1999 ANR was never recorded. He repeated that the Gangemis did not control more than 30 acres of land.

Attorney Wielgus noted that the presently proposed ANR plan was similar to the 1999 plan that never got recorded. She said this was not the issue, however. She also said that selling the land to another party did not nullify the application of the standards in section 3(c).

Ms. Kadar asked about common ownership of the land.

Mr. Fox responded that the Subon Company was an entity in which Mr. Striar was a principal.

Attorney Wielgus said the key date in the regulations was 1994, and whether the land was in common ownership as of September 30, 1994. Attorney Wielgus said staff's analysis indicated the land, include the Gangemi's parcel, was in common ownership as of that date, and was a lot that was 30 acres or larger.

Ms. Kadar asked if the subdivision predated the Commission Act?

Attorney Wielgus said it did not.

Mr. Fox described the genesis of the 30-acre threshold and the September 30, 1994 date as factors in the Commission's regulations.

Mr. Zavala said he was persuaded the Commission did not have jurisdiction over the project.

Mr. Virgilio asked if the key in the analysis was the date?

Mr. Fox responded yes, the key was when the lots were in common ownership with respect to September 30, 1994. He said the lots were, and that the lot lines and multiple ANR plans were not relevant. Mr. Fox said staff's analysis indicated all the parcels in question were owned by Subon Company/Striar on or before September 30, 1994 and that the overall parcel was 30 acres or larger in size.

Mr. Cakounes asked who owned one of the lots that fronted on Forestdale Road?

Attorney Butler said the lot in question was not owned by the Gangemis.

Mr. Cakounes asked if the lots were owned by Subon Company/Striar, would there have to be a mandatory referral to the Commission if the lots were sold, and the new owners met the common ownership criterion?

Mr. Fox responded that they would.

Mr. Olsen asked for a vote from the Subcommittee.

Ms. Kadar moved that the Subcommittee find that proposed ANR was not subject to mandatory Commission jurisdiction under Section 3(c) of the *Enabling Regulations*. Mr. Zavala seconded the motion. The Subcommittee voted three in favor of the motion, with Mr. Cakounes voting against the motion, and the Chair not casting a vote.

Mr. Zavala moved to close the hearing and the record. Ms. Kadar seconded the motion. The Subcommittee voted unanimously in favor of the motion.

STANDARD OF REVIEW

The Commission is required, pursuant to Section 12(j) of the Act, to determine whether the development proposed by Pamela Gangemi falls within a mandatory threshold as a Development of Regional Impact (DRI). Pursuant to Section 3(c) of the Cape Cod Commission's *Enabling Regulations Governing Review of Development of Regional Impact* (Barnstable County Ordinance 90-12 as amended), any proposed development that meets or exceeds the following threshold shall be referred to the Commission as a DRI:

- (c) Any development that proposes to divide parcel(s) of land totaling 30 acres or more in common ownership or control on or after September 30, 1994, including assembly and recombination of lots. This threshold shall include any development activity in conjunction with any land division of 30 acres or more not otherwise exempted from review under Section 22(e) of the Act.

FINDINGS

The Commission, through an authorized Subcommittee, has considered the request Pamela Gangemi for a Jurisdictional Determination regarding the proposal to subdivide a 14.66-acre property into nine industrial lots, and based on consideration of such request and upon the information presented at the public hearing and submitted for the record, finds that the proposal to subdivide this 14.66-acre property in Mashpee into nine industrial lots is not a development that falls within a mandatory threshold as a Development of Regional Impact (DRI).

The Commission makes this finding pursuant to Sections 12 and 13 of the Act.

(See Next Page for Signature)

CONCLUSION

Based on the findings above, the Commission hereby concludes that the proposed project is not subject to mandatory review under Section 3 (c) of the *Enabling Regulations*. This decision is rendered pursuant to a vote of the authorized Subcommittee on November 13, 2006.

Herbert Olsen
Herbert Olsen, Chair, Subcommittee

1/16/07
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

January 16, 2007

Before me, the undersigned notary public, personally appeared Herbert Olsen, in his capacity as Chair of the Subcommittee, whose name is signed on the preceding document, and such person acknowledged to me that he signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which personal knowledge of the undersigned.

Gail A. Coyne
Notary Public

My Commission Expires:

