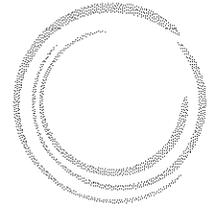


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BARNSTABLE, MASSACHUSETTS 02630



CAPE COD
COMMISSION

(508) 362-3828 • Fax (508) 362-3136 • www.capecodcommission.org

Date: September 30, 2010

To: Stephen G. Powers
Pimlico Pines Realty, LLC
P.O. Box 746
Forestdale, MA 02644

From: Cape Cod Commission

Re: Procedural Denial Decision

Project Applicant: Stephen G. Powers
Pimlico Pines Realty, LLC

Project: Forestdale Village

Project Location: 74 & 76 Route 130, Forestdale, MA

Project #: TR/AH 10007

Map/Parcel: Map 11, Parcels 241 and 242

Book/Page: Book 24279, Page 43 and 49

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission), hereby procedurally denies without prejudice the application of Stephen G. Powers/Pimlico Pines Realty, LLC (Applicant) as a Development of Regional Impact (DRI) in accordance with Section 12 of the Cape Cod Commission Act (Act) and Section 15 of the DRI *Enabling Regulations* (revised May 2010, corrected June 2, 2010). This decision is rendered pursuant to a vote of the Commission on September 30, 2010.

PROJECT DESCRIPTION

The project as described by information submitted to the Commission by the Applicant is for the development of approximately 73,059 square feet of commercial space, 400 square feet for a wastewater treatment facility building, 9,173 square feet of residential apartments, and either a 13,000 square foot retail building or a 26,000 square foot assisted living (60 bed) facility in a combination of one and two story buildings around a green.



Keeping a Special Place Special

PROCEDURAL HISTORY

The Sandwich Zoning Board of Appeals through Mr. Greg Smith, the Director of Planning and Development referred the project to the Commission. The Commission received the referral on May 28, 2010.

The Commission's *Enabling Regulations* (as amended) require that a public hearing be opened within sixty (60) days of the receipt of a DRI referral. The public hearing was opened by Hearing Officer on July 26, 2010. The Applicant was informed of this in a letter from Commission staff dated June 6, 2010.

Since submission of the original DRI application and attachments in February 2010, the Applicant's project team supplemented it with additional information that the Commission received in March, May, July and August 2010.

In late July, the Applicant notified staff of a desire to include new development proposals into the DRI project that had not been part of the previous application materials.

In a letter dated August 6, 2010, Commission staff determined the DRI application and subsequent additional materials, including the new proposals, substantively complete to proceed with a public hearing. As such, a public hearing was noticed for August 26, 2010.

However, the Applicant continued providing additional application materials for the record to Commission staff up to August 16, 2010. In the process of preparing a staff report for the continued hearing on August 26, 2010, Commission staff determined that information in the application was inconsistent with subsequent additional materials provided by the Applicant, such that it was not possible for Commission staff to adequately analyze the additional new information without significant clarification and further information. The Applicant was advised of this by E-mail on August 17, 2010.

The Commission staff did not receive the requested clarification or additional information and as a result, a Hearing Officer opened and continued the public hearing from August 26, 2010 to September 16, 2010.

In the process of preparing a staff report for the continued hearing on September 16, 2010, Commission staff again determined that some critical information in the application was still inconsistent with other aspects of the development proposal.

Commission staff informed the Applicant in a meeting on September 8, 2010 that the DRI application could not be deemed substantively complete to proceed with a public hearing. The Applicant was also informed at the meeting and by letter dated September 9, 2010 that the public hearing would be continued by Hearing Officer to September 30, 2010 at 3:00 PM at the Assembly of Delegates, First District Courthouse, Barnstable.

In the September 9, 2010 letter to the Applicant, Commission staff also noted that the ninety (90) day hearing period was scheduled to expire on October 22, 2010. The letter also advised Mr. Powers that that if sufficient information needed to conduct substantive hearings on the project could not be made available to the Commission, then he could either withdraw the project on the local level and consequently withdraw the project from Commission review, or that the project would be procedurally denied without prejudice.

On September 16, 2010, the Applicant submitted a letter to the Commission staff requesting that the project be procedurally denied without prejudice.

The Applicant was advised of an opportunity to address the Commission's Regulatory Committee concerning a possible procedural denial by the Commission in a letter dated September 16, 2010.

The Regulatory Committee deliberated on the procedural denial request at its September 27, 2010 meeting where it voted unanimously recommend that the full Commission procedurally deny the project without prejudice.

JURISDICTION

The proposed project qualifies as a DRI pursuant to Sections 2(d), 3(c), 3(e), 3(g) and 3(k) of the Commission's *Enabling Regulations* as a mixed-use development proposed to contain approximately 73,059 square feet of commercial space, 400 square feet for a wastewater treatment facility building, 9,173 square feet of residential apartments, and either a 13,000 square foot retail building or a 26,000 square foot assisted living (60 bed) facility in a combination of one and two story buildings around a green.

MATERIALS SUBMITTED FOR THE RECORD

From the Applicant

E-mail, Discussion of application completeness	4/30/10
Letter with attachments, application materials	5/6/10
Compact Disk, updated application materials	5/6/10
E-mail, Copy of Town receipt of materials	5/6/10
E-mail, Exterior designs and site visit to School House	5/6/10
E-mail, Seeking wastewater flow data for project	5/17/10
Copy, Fee payment check	5/17/10
E-mail, Fee payment for landscape review	6/11/10
Abutters List	6/16/10
E-mail, Seeking clarification of water resources information	6/28/10
Copy of Fee payment for landscape review	6/30/10
E-mail and letter, Updated application materials, noted CD, Natural resources	7/2/10
E-mail, Natural Resources Inventory	7/2/10
Cover letter and CD – updated application materials	7/6/10
E-mail, Updated information described	7/6/10
E-mail and attachments, Updated turf management plan, community character	7/8/10
E-mail and attachment, Option C	7/30/10
E-mail, Explain updated project description	7/30/10
Letter, VHB, Transportation issues	7/30/10
E-mail, Transportation issues	7/30/10
E-mail, Progress elevations for 100 and 300 Buildings	7/30/10
E-mail, Landscape Plan plant key & Option C exterior elevations	8/4/10
E-mail, Additional information coming	8/5/10
E-mail and attachments, Option C drawings	8/6/10
Letter, Horsley Witten Group, Updated nitrogen loading information	8/6/10
E-mail, Nitrogen loading calculations	8/6/10
E-mail, Discusses traffic issues, building sizes and uses	8/9/10
E-mail, to Town, Option C information	8/9/10

Forestdale Village – AH/TR10007
Procedural Denial
September 30, 2010

Letter and attachments, Large size elevations for 800 Building	8/18/10
E-mail, Procedural denial request	9/16/10

From Federal, State, or Local Agencies or Officials

Receipt of application materials, sign-off by agencies	5/7/10
DRI referral form	5/28/10
Receipt of application materials, sign off by agencies (additional)	7/7/10
Massachusetts Historical Commission – No further archeological investigation	7/21/10
Memo, Town Director of Planning & Development, not in DCPC	8/16/10
E-mail, Town Director of Planning & Development	8/19/10
E-mail, Town Director of Planning & Development, receipt of letter	9/10/10

From the Cape Cod Commission

E-mail, to Town Director of Planning & Development, application completeness	4/6/10
E-mail, to Applicant, letter from public received	4/29/10
E-mail, to Applicant, change to Sandwich's Land Use Vision Map	4/29/10
E-mail, to Applicant, application completeness	5/3/10
Letter, to Applicant, application completeness	5/3/10
Letter, to Applicant, exterior mockups	5/6/10
E-mail, to staff, exterior materials and mockups	5/6/10
Fee Estimate	5/10/10
E-mail, to Applicant, fee estimate	5/10/10
E-mail, to S. Korjeff, exterior design	5/13/10
E-mail, to Applicant, wastewater flow data	5/17/10
E-mail, to Applicant, more information on wastewater flow	5/17/10
E-mail, to Applicant, landscape review fee	5/27/10
E-mail, to Applicant, water resources information needed	6/4/10
E-mail, to Applicant & Town, re-referral of project	6/10/10
E-mail, to Applicant, 5/28/10 re-referral of project	6/10/10
E-mail, to Applicant, landscape design review fee	6/14/10
E-mail, to Applicant, stormwater plans	6/15/10
E-mail, to Applicant, landscape design review fee	6/15/10
E-mail, to G. Belfit, questions from Applicant on water resources issues	6/21/10
E-mail, to Applicant, hazardous materials information and nitrogen loads	6/21/10
E-mail, to Applicant, sample format for transportation information	6/21/10
Phone Log, with Applicant, process update	7/1/10
E-mail, to Applicant, clarify information	7/2/10
E-mail, to Applicant, clarify information	7/6/10
E-mail, to staff, application completeness review	7/7/10
Letter, Clerk, to Applicant, Noticing	7/7/10
E-mail, to K. Mercurio, landscape design review	7/8/10
Letter, to K. Mercurio, landscape design review	7/8/10
E-mail, to Applicant, concerning 8/26/10 public hearing	7/14/10
E-mail, to Applicant, clarify Abutters List	7/16/10
Fax, from Clerk, to D. Lapp, return of Hearing Notice	7/21/10
E-mail, to Applicant, project phasing plan	7/14/10
Hearing Notice	7/26/10
Minutes – Hearing Officer	7/26/10
E-mail, to G. Cannon, discussion of transportation issues	7/29/10
E-mail, to staff, Option C	7/30/10

E-mail, to K. Mercurio, Option C information	7/30/10
E-mail, to staff, Option C	7/30/10
E-mail, P. Ruchinskas, to Applicant, affordable housing issues	8/2/10
E-mail, P. Ruchinskas, to Applicant, affordable housing issues	8/4/10
E-mail, to Applicant, receipt of Option C information	8/5/10
Letter, to Applicant, DRI application substantially complete	8/6/10
E-mail, G. Cannon, to Applicant, traffic issues	8/6/10
Letter, Clerk, Noticing	8/6/10
E-mail, G. Cannon, to Applicant, traffic issues	8/9/10
E-mail, H. McElroy, to Applicant, natural resources/open space issues	8/11/10
E-mail, to Applicant, elevations for 800 Building	8/13/10
E-mail, to Applicant, concerns about 8/26/10 hearing	8/17/10
E-mail, to Town Director of Planning & Development, local zoning compliance	8/17/10
E-mail, to Applicant, Hearing Officer on 8/26/10	8/17/10
E-mail, to K. Mercurio, update on review process	8/18/10
Invoice, from K. Mercurio, fee for landscape design review	8/23/10
E-mail, to Applicant, comments on water resources information	8/23/20
Hearing Notice	8/26/10
Minutes – Hearing Officer	8/26/10
E-mail, to J. O’Keefe, comments on project	8/30/10
E-mail, to Commission Counsel, J. O’Keefe	8/30/10
Phone Log, Applicant, correct mailing address	9/7/10
E-mail, to Town Director of Planning & Development, update on project review	9/8/10
Letter, to Applicant, re-send of returned letter	9/8/10
Letter, to Applicant, DRI application not complete	9/9/10
E-mail, to Applicant and Town, concerns about traffic issues	9/9/10
E-mail, to Subcommittee, update on project review & hearing	9/10/10
E-mail, to Applicant, possible procedural denial	9/15/10
Hearing Notice	9/16/10
Hearing Notice – Procedural Only	9/16/10
Letter, to Applicant, procedural denial	9/16/10

From Public or Others

E-mail, Karen Dykas	4/29/10
File Review, Don Keeran, APCC	8/23/10
Letter, James W. Styche	8/25/10

TESTIMONY

The DRI public hearings on the project were procedural and was opened and continued by a Commission Hearing Officer on July 26, 2010, August 26, 2010 and September 16, 2010. Testimony was received at a meeting of the Regulatory Committee (Committee) on September 27, 2010. At the Committee meeting, Committee deliberated on the procedural denial request where it voted unanimously recommend that the full Commission procedurally deny the project without prejudice.

FINDINGS

The Commission has considered the Applicant’s proposed development in Forestdale/Sandwich, MA and makes the following Findings pursuant to Sections 12 and 13 of the Act:

1. The proposed project, as referred to the Commission on May 28, 2010, consists of approximately 73,059 square feet of commercial space, 400 square feet for a wastewater treatment facility building, 9,173 square feet of residential apartments, and either a 13,000 square foot retail building or a 26,000 square foot assisted living (60 bed) facility in a combination of one and two story buildings around a green.
2. Section 15 of the *Enabling Regulations* states in pertinent part that “*Developments of Regional Impact (DRI), DRI Exemptions and DRI Hardship Exemption Requests may be procedurally denied, without prejudice, when one or more of the following occur:*
 - (i) *the Applicant fails to submit a complete DRI application;*
 - (v) *other instances where the project fails to progress continuously and expeditiously through required regulatory processes and the Commission determines that a procedural denial without prejudice may be properly granted;*
3. The Commission finds that the Applicant has not submitted a complete DRI application for the project.
4. The Commission finds that the project has failed to progress continuously and expeditiously through the required regulatory process and a procedural denial without prejudice may be granted.
5. The Commission informed the Applicant in a meeting on September 8, 2010 that the DRI application could not be deemed substantively complete to proceed with a public hearing. The Applicant was also informed at the meeting and by letter dated September 9, 2010 that the hearing would be continued by Hearing Officer to September 30, 2010 at 3:00 PM at the Assembly of Delegates, First District Courthouse, Barnstable.
6. In the September 9, 2010 letter to the Applicant, Commission staff informed the Applicant that that if sufficient information needed to conduct substantive hearings on the project could not be made available to the Commission, then he could either withdraw the project on the local level and consequently withdraw the project from Commission review, or that the project would be procedurally denied without prejudice.
7. On September 16, 2010, the Applicant submitted a letter to Commission staff requesting a procedural denial without prejudice.
8. On September 27, 2010, the Commission’s Regulatory Committee voted to recommend that the full Commission procedurally deny the project without prejudice.

CONCLUSION

The Cape Cod Commission hereby procedurally denies without prejudice the Application of Stephen G. Powers/Pimlico Pines Realty, LLC for a Development of Regional Impact approval pursuant to Sections 12 and 13 of the Cape Cod Commission Act, Chapter 716 of the Acts of 1989, as amended, for the Forestdale Village project located in Forestdale/Sandwich, MA.

Royden Richardson
Royden Richardson
Cape Cod Commission Chair

09.30.2010
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

9-30, 2010

Before me, the undersigned notary public, personally appeared

Royden Richardson, in his/her capacity as Chairman of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, or personal knowledge of the undersigned.

Gail P. Hanley
Notary Public

My Commission Expires: 10.13.11