



CAPE COD COMMISSION

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DATE: January 4, 2010

TO: Mark Wixted
Deerpath Energy
30 Doaks Lane
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FROM: Cape Cod Commission

RE: Modification of a Development of Regional Impact Decision dated
January 29, 1998 and modified on September 22, 1998, August 30, 1999,
October 7, 1999, March 12, 2001, November 17, 2008, March 3, 2009 and
September 4, 2009

Cape Cod Commission Act, Sections 12 and 13

APPLICANT: Cape Cod Mall

OWNER: Mayflower Cape Cod, LLC
c/o Simon Property Group L.P.
115 West Washington Street
Indianapolis, IN 46204

PROJECT: Cape Cod Mall Renovation and Expansion

PROJECT #: TR96025

BOOK/PAGE: Book 1357/Page 1143
Book 1357/Page 1152
Book 7942/Page 272

LOT/PLAN: Lot 10/Plan 18367-D Cert. #73925 Lot --/Plan 35455-A Cert. #44428
Lot 18/Plan 29992-E Cert. #73925 Lot 12/Plan 13216-I Cert. #124185
Lot 20/Plan 29992-E Cert. #73925 Lot 13/Plan 13216-I Cert. #124185
Lot 21/Plan 29992-E Cert. #73925 Lot 14/Plan 13216-I Cert. #124185
Lot 22/Plan 29992-E Cert. #73925 Lot 11/Plan 13216-I Cert. #124185
Lot 26/Plan 29992-E Cert. #73925 Lot 10/Plan 13216-I Cert. #124185
Lot 13/Plan 18367-D Cert. #73503 Lot 12/Plan 29719-B Cert. #78644
Lot 16/Plan 29992-D Cert. #41206 Lot 11/Plan 29719-B Cert. #78644
Lot 17/Plan 29992-D Cert. #41206 Lot 19/Plan 29992-E Cert. #108683



Lot 23/Plan 29992-E Cert. #73503 Lot 25/Plan 29992-E Cert. #104912
Lot 24/Plan 29992-E Cert. #39492/41206 Lot 27/Plan 29992-E
Cert. #104912
Lot 2/Plan 34491-B Cert. #44869 Lot A-1/Plan 21173-B Cert. #129187
Lot 1/Plan 34491-B Cert. #137708 Lot A-2/Plan 21173-B Cert. #129187
Lot 14/Plan 29992-D Cert. #119830 Lot 94/Plan 17786-K Cert. #76834
Lot 15/Plan 29992-D Cert. #119830 Lot 49/Plan 17786-D

MODIFICATION OF DEVELOPMENT OF REGIONAL IMPACT DECISION

Pursuant to Section 13 of the Cape Cod Commission *Enabling Regulations* (Revised July 2009), the Development of Regional Impact decision dated January 29, 1998 and modified on September 22, 1998, August 30, 1999, October 7, 1999, March 12, 2001, November 17, 2008, March 3, 2009 and September 4, 2009 for the Cape Cod Mall renovation and expansion is hereby amended to accommodate the installation of five micro-wind turbines upon five light poles in the Cape Cod Mall parking lot. All findings and conditions attached to the original decision and subsequent modifications continue to apply except as modified herein.

Minor Modification Type #2

On December 14, 2009 the Cape Cod Commission's Regulatory Committee determined that the proposal constitutes a minor modification type #2 in accordance with the Commission's *Enabling Regulations*, and approved the decision on January 4, 2010.

Additional Findings

General

- GF1. This modification consists of the installation of five 2.4 KW micro-wind turbines upon five light poles in the existing Cape Cod Mall parking lot along Route 132. The turbine locations are shown on the Wind Turbine/Site Lighting Location Plan prepared by Deerpath Energy dated November 30, 2009. This plan is attached to this decision as Exhibit A and is incorporated by reference. The existing light poles will be replaced with slightly larger poles with stronger foundations. The height of the turbines and poles is 60 feet from grade to the top of the turbine blade.
- GF2. As provided in verbal testimony from Ms. JoAnne Miller Buntich (Barnstable's Interim Director of Growth Management), presented to and considered by the Regulatory Committee at their meeting on December 14, 2009; the local permitting process (through Barnstable's Land-based wind energy conversion facilities ordinance) will require details on the turbines' structural elements and maintenance protocols.

The ordinance requires compliance with all applicable local, state, and federal requirements including, but not limited to, all applicable electrical, construction, noise, safety, environmental and communications requirements. It also requires a written maintenance plan and conditions pertaining to removal of the wind turbine by the owner due to lack of maintenance or abandonment. Additionally, it contains design standards, which require the Applicant to demonstrate (through project siting and proposed mitigation) that the project minimize any impact on the visual character of the

community. It also requires the project to be painted in nonreflective, muted colors that blend with the sky and prohibits lighting the turbines unless required by the Federal Aviation Administration.

- GF3. The Regulatory Committee finds, based on oral testimony from Ms. JoAnne Buntich presented at the December 14, 2009 Regulatory Committee meeting, that the Town supports this project as it helps announce that the Town of Barnstable is alternative energy friendly.
- GF4. According to verbal testimony from Mr. Richard Elrick (Barnstable's Energy Coordinator), presented to and considered by the Regulatory Committee at their meeting on December 14, 2009; a larger, single turbine would be difficult to site in the proposed area given the project's close proximity to the Airport.

Energy

- EF1. Based on the DRI modification information submitted to date, each 2.4 KW turbine will generate 4,000-kilowatt hours of electricity each year. All five proposed turbines are expected to generate a total of 20,000-kilowatt hours of electricity each year. The power generated from these turbines will be fed into the malls' electrical system.
- EF2. Goal 4.4.1 in the 1996 Regional Policy Plan encourages investment in renewable energy resources. The Regulatory Committee finds that the project design is consistent with this goal, as the project consists of installing five micro-wind turbines as a test bed to determine the wind energy potential in that area.

Exterior Lighting

- EXL1. The existing thirty-foot tall light poles will be replaced with five forty-eight foot tall poles made of galvanized steel and stronger foundations. The increase in pole height is necessary to accommodate the wind turbine and the project does not propose any new poles solely for exterior lights.
- EXL2. The luminaries on the five affected poles will be replaced at their current height of thirty feet from the ground on the forty-eight foot tall pole, thus consistent with finding I.11 of the January 29, 1998 DRI approval decision for the Cape Cod Mall Renovation and Expansion (TR#96025).

Community Character

- CCF1. The project is not located in a historic district or neighborhood, or near any scenic roadways or scenic vistas. The proposed turbines are also not expected to be visible from any historic or scenic areas.

Additional Conditions

General

- GC1. Prior to issuance of a special permit from the Town of Barnstable for the installation of five micro-wind turbines as described in finding GF1, the Applicant shall obtain a preliminary Certificate of Compliance from the Commission that states that all conditions

in this decision pertaining to issuance of a preliminary Certificate of Compliance have been met.

- GC2. Prior to receiving a building permit from the Town of Barnstable for the installation of the five micro-wind turbines as described in finding GF1, the Applicant shall obtain a final Certificate of Compliance from the Commission that states that all conditions in this decision pertaining to issuance of a final Certificate of Compliance have been met.
- GC3. The five micro-wind turbines shall be installed in accordance with the following plan:
- Wind Turbine/Site Lighting Location Plan prepared by Deerpath Energy and dated November 30, 2009 (attached to this decision as Exhibit A and incorporated by reference.)

Any deviation from this plan shall require approval by the Commission through a modification pursuant to the Modifications section of the Commission's *Enabling Regulations*. The Applicant shall submit to the Commission any additional information deemed necessary to evaluate any modifications to the approved plan.

- GC4. Prior to requesting a preliminary Certificate of Compliance, the Applicant shall submit for Commission staff review and approval, documentation that describes the testing regimen that the wind turbines undergo prior to their installation.
- GC5. Prior to requesting a preliminary Certificate of Compliance, the Applicant shall submit for Commission staff review and approval, a maintenance program for the turbines. Said maintenance program shall include a maintenance schedule detailing how often they are maintained, the contact information for and the name of the individual or entity in charge of ensuring the turbines are maintained, the contact information for and name of the individual or entity who will be performing said maintenance, a description of the tests which are done to check turbine performance, details on what the remote turbine monitoring program checks for, and the parameters or conditions at which the turbines will automatically shut off.

Exterior Lighting

- EXLC1. Prior to requesting a preliminary Certificate of Compliance, the Applicant shall submit for Commission staff review and approval, documentation on the make and model of new luminaries and an isopleth map or foot-candle plan to verify that the five luminaries will maintain a minimum of 1 foot-candle and a maximum 8 foot-candles as measured on the ground beneath the light source or Commission staff shall conduct a site visit to verify that the existing re-used equipment satisfies these requirements.

Energy

- EC1. Prior to requesting a final Certificate of Compliance, the Applicant shall provide for Commission staff review and approval, written documentation of the decommissioning policy of the wind turbines. Said decommissioning policy shall address removal of the wind turbine and pole, restoration of the location of the wind turbine to its natural

condition (except that any below-grade foundation may remain), and a form of surety (i.e. post a bond, letter of credit, escrow account) to cover costs of the removal. The Applicant shall submit a fully inclusive estimate of the costs associated with removal and the amount of surety shall be equal to 150% of the estimate.

Instead of providing said policy to the Commission, the Applicant may provide written documentation to the Commission that decommissioning of the wind turbines has been addressed in the special permit to be issued by the Town of Barnstable.

Royden Richardson

Royden Richardson
Chairman, Regulatory Committee

January 21, 2010

Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss 1/21, 2010

Before me, the undersigned notary public, personally appeared ^{Royden}Richardson, in his capacity as Chairman of the Cape Cod Commission Regulatory Committee, 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