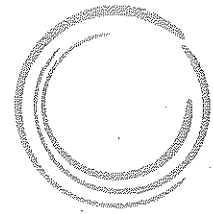


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CAPE COD
COMMISSION

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Date: May 26, 2011
To: Falmouth Youth Hockey League, Inc.
9 Skating Lane
Falmouth, MA 02540
From: Cape Cod Commission
RE: Modification of a Development of Regional Impact
Applicant: Falmouth Youth Hockey League, Inc.
Project: Falmouth Ice Arena
Lot 10, Technology Park Drive, Falmouth, MA
Project #: TR10010
Book/Page: Book 23297 Page 63
Lot / Plan: Lot 10 Plan 386/47

SUMMARY

The Cape Cod Commission (Commission) Regulatory Committee hereby approves the application of Falmouth Youth Hockey (Applicant) for a Minor Modification Type #2 pursuant to Section 13 of the Commission's *Enabling Regulations* (as amended). This decision is rendered pursuant to a vote of the Commission's Regulatory Committee at a special meeting on May 26, 2011.

INTRODUCTION

The Falmouth Ice Arena was approved as a Limited Development of Regional Impact (DRI) Hardship Exemption, with conditions, by a vote of the Cape Cod Commission (Commission) on January 6, 2011.

Commission staff met with Joel Irving, Assistant Treasurer of Falmouth Youth Hockey on April 11, 2011 to discuss the possibility of installing solar paneling on the new arena which was the subject of the 2011 decision. In subsequent correspondence, dated April 21st, April 22nd, and April 25, 2011 from Mr. Irving and Laura Moynihan, the Attorney representing Falmouth Youth Hockey (the Applicant), the Applicant requested a modification to the Commission approved Limited Development of Regional Impact Hardship Exemption (DRI) Decision ("decision") dated January 6, 2011 that approved the construction of a 56,962 square foot (s.f.) ice arena at

Lot 10 Technology Park Drive in Falmouth, MA. The applicant requested that the 2011 decision be modified to allow for solar paneling on the roof of the arena and mounted above the back parking lots. The Applicant proposed to remove the second floor mezzanine level to save construction costs and to allow for better site lines from the bleachers to the main ice surface. This would eliminate two staircases and an elevator, as well as the gym proposed for the mezzanine level. The gym was proposed to be relocated to the first floor along with the bleachers. The footprint would be expanded at the front entrance door area on the west side to accommodate the relocation of the locker room and the landscaping in that area would be eliminated. The footprint would also be expanded to accommodate the gym relocation from the second floor mezzanine to the first floor for a total footprint increase of approximately 4,547 s.f. and a reduction in gross floor area of about 7,969 s.f.

The 2011 decision granted a hardship exemption in meeting two of the waiver criteria for Economic Development based on the substantial financial hardship it would pose on the Applicant. The decision also granted a partial exemption for the third waiver requirement under E1.5 which required that the project incorporate renewable energy into the project. The Applicant is a non-profit organization, and as such, was ineligible for tax credits and rebates that are eligible to support renewable energy (see findings listed below). Since the time of the original review, however, Consolidated Edison, Inc., had offered to pay for the installation of solar paneling at the new ice arena, which the Applicant had estimated would amount to a savings of approximately \$63,000.00 per year and supply the equivalent of 100% of the arena's electricity needs, or approximately 885,000 Watts per year.

The Applicant had also discovered that by eliminating the second floor mezzanine area, the arena would have clearer visibility from the bleachers to the ice, it would eliminate the need for stairs or elevators while still providing handicapped accessibility, and it would reduce construction costs for the Applicant by reducing the gross floor area.

The Regulatory Committee analyzed the proposed project changes based on the modification request, and Section 13 of the *Enabling Regulations*, and reviewed materials submitted by the Applicant, the 2011 Falmouth Youth Hockey decision and an April 27, 2011 letter from Attorney Moynihan and found that the proposed changes qualified as a Minor Modification Type #2 under the *Enabling Regulations* as they involve minor changes to the site plans, findings, and conditions of the decision, but do not result in increased impacts to the resources protected by the Act and/or the RPP. Energy and Economic Development are the only two issue areas within the scope of DRI Review for this project that are affected by the changes, and the resulting modification to the decision would only increase compliance with the RPP by allowing the project to provide for on-site renewable energy. As Community Character and Landscaping were not included in the scope of DRI review for this project, the proposed changes to the design of the building and the removal of landscaping will not result in further changes to the decision in those issue areas.

JURISDICTION

Section 13(a)(i) of the Commission's *Enabling Regulations* (revised March 2011) provides that "an applicant who has obtained a favorable decision from the Commission, or a successor in interest to a favorable and transferable Commission decision may apply for a decision modification."

Section 13(c)(ii) of the *Enabling Regulations* describes a Minor Modification 2 as "a substantially similar proposal to the original project but involves a minor Change of Use, a

minor change to the site plan, or small change to the findings or a condition of the original approval which does not affect the intent or outcome of the finding or condition. A proposed change shall not result in different or increased impacts to the resources protected by the Act and/or RPP.”

REGULATORY COMMITTEE'S DETERMINATION

On May 12, 2011, the Commission's Regulatory Committee considered the proposed changes to Falmouth Youth Hockey League's Limited DRI Hardship Exemption decision, and voted to approve the requested changes to findings GF4, GF5, GF11, GF12, EDF2, EF2, and conditions GC5 and GC6 of the decision based on the incorporation of on-site renewable energy and the adjustments to the floor plan. On May 26, 2011 at a special meeting, the Regulatory Committee voted to approve the draft written Modification decision.

MODIFICATIONS TO THE 2011 DECISION

The following changes shall be made to the findings and conditions of the original 2011 Limited DRI Hardship Exemption decision to reflect the requested changes to the project. New or added text is shown in **bold**. Deleted text is shown in ~~strikeout~~.

Finding GF4

Falmouth Youth Hockey League, Inc. (the Applicant) proposes to redevelop the site and construct a new ice arena with a total overall floor area of ~~56,962~~ **48,993** square feet. The arena is proposed with a full size ice surface (200' x 85') that will meet National Hockey League standards and a half size ice surface to be used for figure skating, recreational skating, and hockey schools. The arena is also proposed to have eight dressing rooms, coach rooms and referee rooms, a Falmouth Figure Skating Room, an office, a skate shop and pro shop, concession area, seating/waiting areas, a learning center, mechanical and electrical rooms, staff offices, and an employee room. The ice arena development is proposed primarily within areas of the site that are clear of vegetation and are existing disturbed areas.

Finding GF5

The Commission finds that the estimated cost of construction for the new arena is \$5.5 million dollars, all of which will be raised by the Falmouth Youth Hockey League, Inc. through private donations and grants. **The cost of the solar paneling for the new arena is approximately \$4 million dollars, which will be paid for by a third party, Con Edison.**

Finding GF11

The Commission finds that the project will be constructed in accordance with the following plans (attached to this decision as Exhibit A and incorporated by reference):

- Revised sheets ~~A0 through A2~~ **A1.1 through A3.1** from the plan set entitled "Falmouth Ice Arena" designed by ~~Arena Design Engineering, Inc.~~ **DiLullo Associates, Inc.**, dated ~~June 6, 2010~~ **April 19, 2011** and received by the Commission on ~~December 2, 2010~~ **April 26, 2011**
 - ~~Cover Sheet (A0), 1st Floor (A1), and 2nd Floor (A2)~~ **Schematic Floor Plans – Building Section (A1.1) (revised April 20, 2011), Schematic Elevations (A2.1), and Roof Plan (A3.1)**
- ~~Sheets A3 through A6~~ from the plan set entitled "Falmouth Ice Arena" designed by ~~Arena Design Engineering, Inc.~~, dated ~~June 6, 2010~~ and received by the Commission on ~~October 23, 2010~~

- Roof Plans (A3), Front and Rear Elevation (A4), Left and Right Elevation (A5), Door and Window Schedule (A6)
- **“Building Section” Sheet A5.1 prepared for Falmouth Ice Arena by DiLullo Associates, Inc. dated April 19, 2011, received by the Commission on April 26, 2011**
- Landscape Plan designed by Rapoza Landscape, dated October 27, 2010 and received by the Commission on November 3, 2010
- Overall Site Plan (sheet 1 of 9), designed by Falmouth Engineering, dated June 17, 2010 and last revised ~~October 22, 2010~~ **April 26, 2011**
- Site Layout Plan-North (sheet 3 of 9), Site Layout Plan-South (sheet 4 of 9), designed by Falmouth Engineering, dated June 17, 2010 and last revised ~~October 22, 2010~~ **April 26, 2011**
- Septic System Details (sheet 7 of 9) designed by Falmouth Engineering, dated June 17, 2010 and last revised October 22, 2010
- Existing Conditions Plan (sheet 2 of 9), Standard Details (sheet 8 of 9), Highstrength Fast 4.5 Treatment System Details (sheet 9 of 9) designed by Falmouth Engineering, dated June 17, 2010
- Site Utility Plan-North (sheet 5 of 9), and Site Utility Plan – South (sheet 6 of 9) designed by Falmouth Engineering, dated June 17, 2010 and last revised ~~November 5, 2010~~ **April 26, 2011**

The Commission finds that the above-referenced plans are in compliance with the Minimum Performance Standards as referenced in this decision unless otherwise specifically noted.

Finding EDF2

The Commission finds that meeting two of the waiver requirements of MPS ED1.3 poses a substantial financial hardship to the Applicant and that relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. The Commission further finds that the relief granted relates directly to the nature of the identified hardship and is the minimum relief necessary to address the hardship. **Notwithstanding, and in the alternative, if the funding and construction of the solar paneling is feasible for the Applicant, the Commission finds that the project meets two of the waiver requirements of MPS ED1.3. The project generates, using renewable sources, at least 25 percent of the electrical demand required by the development on site, thereby meeting the distributed energy generation waiver, and the project received municipal endorsement, as evidenced by a letter from Brian Currie dated October 29, 2010 and a letter from Brent Putnam, Chairman of Falmouth’s Board of Selectmen, dated November 3, 2010, thereby meeting that criteria as well.**

Finding EF2

The Commission finds that the Applicant has requested partial relief in meeting MPS E1.5, waiver option C for the incorporation of renewable energy if the solar paneling is not funded or constructed. The Applicant has indicated that due to their status as a non-profit organization, they are not eligible for tax credits that support renewable energy investment. As such, the Commission finds that a literal enforcement of the provisions of this standard would involve a substantial financial hardship, and that relief from the requirements may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. The Commission further finds that the relief granted relates directly to the nature of the hardship and is the minimum relief necessary to address the

hardship. **Notwithstanding, and in the alternative, if solar paneling is funded and constructed for the project, the Commission finds that the project meets MPS E1.5, waiver option C for the incorporation of renewable energy based on the incorporation of solar paneling into the project design.**

Condition GC5

All development shall be constructed in a manner consistent with the following plans and other information (attached to this decision as Exhibit A and incorporated by reference):

- Revised sheets ~~A0 through A2~~ **A1.1 through A3.1** from the plan set entitled "Falmouth Ice Arena" designed by ~~Arena Design Engineering, Inc.~~ **DiLullo Associates, Inc.**, dated ~~June 6, 2010~~ **April 19, 2011** and received by the Commission on ~~December 2, 2010~~ **April 26, 2011**
 - ~~Cover Sheet (A0), 1st Floor (A1), and 2nd Floor (A2)~~ **Schematic Floor Plans – Building Section (A1.1) (revised April 20, 2011), Schematic Elevations (A2.1), and Roof Plan (A3.1)**
- ~~Sheets A3 through A6~~ from the plan set entitled "Falmouth Ice Arena" designed by ~~Arena Design Engineering, Inc.~~, dated ~~June 6, 2010~~ and received by the Commission on ~~October 23, 2010~~
 - ~~Roof Plans (A3), Front and Rear Elevation (A4), Left and Right Elevation (A5), Door and Window Schedule (A6)~~
- **"Building Section" Sheet A5.1 prepared for Falmouth Ice Arena by DiLullo Associates, Inc. dated April 19, 2011, received by the Commission on April 26, 2011**
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- Site Utility Plan-North (sheet 5 of 9), and Site Utility Plan – South (sheet 6 of 9) designed by Falmouth Engineering, dated June 17, 2010 and last revised ~~November 5, 2010~~ **April 26, 2011**

Condition GC6

Prior to the issuance of a building permit for development, **either the building/arena or the solar paneling in the parking lot**, 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/building permit **for the building/arena** have been met. Such Certificate of Compliance shall not be issued unless all conditions connected to the Preliminary Certificate of Compliance have been complied with. **A building permit or building permit application for the solar panels in the parking lot is not a prerequisite to the issuance of the Preliminary Certificate of Compliance for the building/arena. A separate Preliminary Certificate of Compliance shall not be**

required for issuance of the building permit for the solar paneling in the parking lot if such Certificate has already been issued for the building/arena.

Royden Richardson
Royden Richardson, Regulatory Committee Chair

05.26.2011
Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

May 26, 2011

Before me, the undersigned notary public, personally appeared

Royden Richardson, in his/her capacity as Chairman of the 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