

3225 MAIN STREET • P.O. BOX 226  
BARNSTABLE, MASSACHUSETTS 02630



CAPE COD  
COMMISSION

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

Date: October 26, 2012

To: Sandwich Old Harbor, LLC  
205 Worcester Court  
Falmouth, MA 02540

From: Cape Cod Commission

Re: Modification of a Development of Regional Impact Hardship Exemption

Applicant: Sandwich Old Harbor, LLC

Project: Olde Harbor Estates/Sandwich

Location: 4-6 Dewey Avenue, Sandwich, MA

Project #: HDEX 05006

Book/Page: Book 15516 Page 130      Lot/Parcel: Lot 74, Parcel 64  
Book 15516 Page 122      Lot 74, Parcel 65

## INTRODUCTION

The above referenced project, Olde Harbor Estates, was approved, with conditions, as a Development of Regional Impact (DRI) Hardship Exemption, by a vote of the Cape Cod Commission (Commission) on August 4, 2005.

In letters dated July 11 and September 11, 2012, Attorney Geoffrey Nickerson of Oppenheim and Nickerson LLP, representing Sandwich Old Harbor, LLC (the Applicant), requested the issuance of a final Certificate of Compliance for the Olde Harbor Estates project. According to the Conditions of the 2005 decision, in order for the Applicant to obtain a final Certificate of Compliance, all of the conditions in the decision must have been met.

Conditions G7 and T1 of the Commission's 2005 DRI Hardship Exemption decision require the project to be constructed in accordance with the plans listed in Condition G7 of the decision and Condition HPCC4 of the decision requires the Applicant to complete all site work and landscaping prior to issuance of the final Certificate of Compliance. Plans listed in Condition G7 include a "Roadway Sections – Erosion Control Sheet 11" that references top coat, berms, and loam and seed.

The decision states that “[t]he applicant shall obtain a final Certificate of Compliance from the Commission prior to release or conveyance of the last lot stating that all of the conditions in this decision have been met.” The decision further states that “[t]he Commission has no obligation to issue a Certificate of Compliance unless all conditions are complied with or secured consistent with this decision.” According to the decision, any required site work and/or other landscape improvements that are not complete prior to the issuance of a final Certificate of Compliance shall be subject to an escrow agreement.

According to Attorney Nickerson’s letters, some site work has not been completed. Documents attached to Attorney Nickerson’s letters detail the remaining work to be completed, the estimated value of the remaining work, and the amount held in a Town-held bond for the project, including a memorandum dated August 17, 2012 from Paul Tilton, Director of Public Works/Engineer for the Town of Sandwich, to Sarah Regan, Chair, Sandwich Planning Board, and a letter dated September 4, 2012 from Craig Mayen, Town Treasurer for the Town of Sandwich, to the Applicant.

According to the August 17, 2012 memorandum from Mr. Tilton to Ms. Regan, the project’s top coat, berms, and areas of loaming and seeding, among other items, have not been completed. The total estimated value of the remaining work, according to the Form I Construction Cost Estimate submitted with Mr. Tilton’s memorandum, is \$44,687, including a 30% contingency, and Mr. Tilton recommends that surety of at least that amount be held until the remaining work is complete. According to the September 4, 2012 letter from Mr. Mayen to the Applicant, the balance in the Town of Sandwich held performance bond for Sandwich Old Harbor, LLC, was \$44,698.00 at the end of August 2012 and this amount is greater than the estimated value of the remaining work. In written correspondence from George Dunham, Sandwich Town Manager, to Commission staff dated October 19, 2012, Mr. Dunham stated that the surety the Town holds is sufficient to cover the remaining work and indicated that the Town is supportive of the Commission waiving its escrow requirement.

Commission staff visited the site with Gary Dellaposta, Manager of Sandwich Old Harbor, LLC, on September 24, 2012 and confirmed that the top coat, berms, and areas of loaming and seeding have not been completed. However, most other site work has been completed to Commission staff’s satisfaction and all but two of the subdivision lots have been sold. During the site visit, Mr. Dellaposta explained to Commission staff that the Applicant may wish to convey the last lot in the subdivision prior to the completion of the remaining site work. In order to do so, a modification to the language of the existing decision is required to allow for the issuance of the final Certificate of Compliance prior to the conveyance of the last lot although all of the site work has not been completed.

#### DETERMINATION

The Executive Director of the Commission has determined that the request constitutes a *de minimus* change according to Section 13(c)(i) of the Commission’s *Enabling Regulations* (Revised March 2011) and is approved as a Type 1 Minor Modification.

#### MODIFICATIONS TO THE 2005 DECISION

The following changes shall be made to the Conditions of the 2005 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~~.

Condition HPCC4. The applicant shall complete all site work and landscaping prior to issuance of the final Certificate of Compliance.

If all required site work and/or other landscape improvements are not complete prior to issuance of a final Certificate of Compliance, any work that is incomplete shall be subject to an escrow agreement of form and content satisfactory to Commission counsel. The amount of the escrow agreement shall equal 150% of that portion of the incomplete work, including labor and materials, with the amount approved by Commission staff. The escrow funds shall be payable to Barnstable County with the work approved by Commission staff prior to release of the escrow funds. Unexpended escrow funds shall be returned to the applicant, with interest, upon completion of the required work. **In lieu of escrow funds payable to Barnstable County, a performance bond for the project, held by the Town of Sandwich, may be substituted.**

  
\_\_\_\_\_  
Paul Niedzwiecki, Executive Director

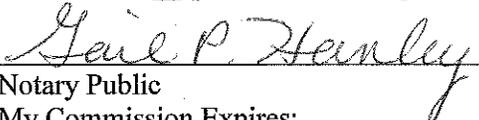
10/26/12  
Date

**COMMONWEALTH OF MASSACHUSETTS**

**Barnstable, ss**

Oct 26, 2012

Before me, the undersigned notary public personally appeared Paul Niedzwiecki, in his/her capacity as Executive Director of the Cape Cod Commission, 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 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.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires:  
9-28-18

