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CAPE COD
COMMISSION

Date:	April 29, 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 09023
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* (December 2009). This decision is rendered pursuant to a unanimous vote of the Commission on April 29, 2010.

PROJECT DESCRIPTION

As described on the *DRI Application Cover Sheet* submitted to the Commission by the Applicant on February 24, 2010, the proposed development is a mixed use project consisting of 73,059 square feet of commercial space, a 400 square foot wastewater treatment plant building, 9,173 square feet of residential apartments (approximately 8-10 units), and either a 13,000 square foot pharmacy (Option A) or a 26,000 square foot assisted living facility (60 beds) (Option B), in a combination of one and two-story buildings.

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 December 29, 2009. The project qualifies as a DRI under Sections 2(d), 3(c), 3(e), 3(g) and 3(k) of the Commission's *Enabling Regulations*.

In accordance with the Act, the Commission is required to schedule a public hearing within sixty (60) days of the receipt of a DRI referral. The Applicant did not submit a completed application to the Commission, and therefore a substantive public hearing could not be scheduled. As such, a Hearing Officer therefore opened a procedural public hearing on February 26, 2010.

On March 17, 2010, the Commission staff received an E-mail from Attorney Jonathan D. Fitch, representing the Applicant, requesting a procedural denial of the project based on a delay in Sandwich's vote to amend the local Land Use Vision map.

The Regulatory Committee deliberated on the procedural denial request at its April 12, 2010 meeting, where it voted unanimously to 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 73,059 square feet of commercial space, a 400 square foot wastewater treatment plant building, 9,173 square feet of residential apartments (approximately 8-10 units), and either a 13,000 square foot pharmacy (Option A) or a 26,000 square foot assisted living facility (60 beds) (Option B), in a combination of one and two-story buildings.

MATERIALS SUBMITTED FOR THE RECORD

From the Applicant

Randy Hart (RH), VHB, to Kristy Senatori (KS), Memo on transportation	9/15/09
Anthi Frangiadis (AF), to Ryan Christenberry (RC), Memo on energy	10/9/09
AF to RC, E-mail, Energy issues	12/17/09
DRI Application and attachments, w/Disk, from AF	12/23/09
PAL Archeology, to Steve Powers (SP), Site investigation	12/29/09
AF or SP, Untitled Memo, Estimated employees	12/29/09
SP, Copy of Sandwich Town Warrant for 10/26/09 Meeting	12/29/09
AF to Andrea Adams (AA), E-mail with attached chart, Gross floor area summary	1/5/10
AF, to AA and others, E-mail, Contact directory	1/5/10
Chris Bailey (CB), to KS, E-mail, Water resources issues	1/7/10
CB to KS, E-mail with attachment, Water resources issues	1/7/10
Peter Newton, to Gabrielle Belfit (GB), E-mail, Water resources issues	1/8/10
AF, to KS, Memo, Additional application materials	1/10/10
AF to AA, Fax, Copy of 10/26/09 Warrant	1/11/10

AF to AA, E-mail, Copy of AF's notes of 1/14/10 meeting	1/15/10
AF to KS, E-mail, Map of site from Applicant	1/19/10
AF to AA, E-mail, Estimate of mitigation costs	1/19/10
AF to Paul Ruchinskas, E-mail, Affordable housing mitigation	1/19/10
AF to AA, E-mail, Breakdown of gross square footage estimates	1/21/10
CB to KS, E-mail, Comments on APCC letter	1/27/10
AF to KS, E-mail, Project affordability and age restrictions in 40(B)	2/1/10
AF to KS, E-mail, Economic development and meeting on application	2/16/10
Revised DRI application and attachments, w/Disk	2/24/10
Attorney Fitch, to KS, E-mail, Request for procedural denial	3/17/10
RH, VHB, to Glenn Cannon, Copy of sight lines plan of Route 130	3/19/10
Copy, part of Section 10.0 of Sandwich's Local Comprehensive Plan	4/12/10

From Federal, State, or Local Agencies or Officials

Massachusetts Historical Commission (MHC), to Steve Powers, Letter	9/8/09
Greg Smith, Sandwich Director of Planning & Development, to Phil Dascombe, Memo and attachments on Forestdale Village for 2009 LCP	12/14/09
Therese Murray, Massachusetts Senate President, to Mark Zielinski, Letter, Support for Recovery Zone Facility Bonds	12/23/09
Greg Smith, to Cape Cod Commission, Referral Form	12/29/09
MHC, to Secretary Bowles, Comments on ENF	12/29/09
Secretary Bowles, to Steve Powers, Certificate on ENF	12/30/09
Dan Mahoney, Sandwich Water District, to Steve Powers, E-mail, to relinquish development of a public supply well on the property	1/4/10
Greg Smith, to Kristy Senatori, Letter, Submission of application	1/4/10
Sharon Stone, Department of Environmental Protection SERO, to Anne Canaday, MEPA office, Memo on ENF	1/5/10
Dan Mahoney, Sandwich Water District, to Gabrielle Belfit, E-mail, to relinquish development of a public supply well on the property	1/19/10
Ed Childs, Sandwich Director of Assessing, to Andrea Adams, Abutters	1/19/10
Secretary Bowles, to Steve Powers, Final Record of Decision	1/22/10
John G. Kennan, Jr., BOS Chair, to AA, Fax in support of project as consistent with Sandwich's LCP and capital facilities plan	4/12/10
John G. Kennan, Jr., Sandwich Planning Committee member, to Whom it May Concern, Letter in support of change to Land Use Vision Map	4/12/10
John G. Kennan, Jr., BOS Chair, to AA, Letter in support of project as consistent with Sandwich's LCP and capital facilities plan	4/12/10

From the Cape Cod Commission

E-mail, Ryan Christenberry (RC), to AF, Energy issues	12/18/09
Letter, Sharon Rooney to Secretary Bowles, EEOEA, on ENF	12/23/09
Letter, Patty Daley (Patty D), to Secretary Bowles, Further comments	12/29/09
E-mail, Phil Dascombe (PD) to AA, Comments	1/5/10
E-mail, AA to Commission staff, Comments needed	1/5/10
E-mail, AA to Commission staff, Additional applicant information	1/5/10
E-mail, PD to AF, Contacts on Community Character	1/5/10
E-mail, AA to AF, Fee calculation	1/5/10
E-mail, Patty D to Commission staff	1/8/10
Letter and Fax, AA to SP, Application incomplete	1/11/10
Memo, Gabrielle Belfit (GB) Memo on Stormwater issues	1/12/10
E-mail, KS to SP, DRI application incomplete	1/13/10
E-mail, KS to CB, Water Resources staff responses	1/13/10
E-mail, AA to Kimberly Mercurio, Landscape review	1/13/10
E-mail, AA to Commission staff, and AF, Stormwater	1/14/10
E-mail, AA to Commission staff, Copy of 1/11/10 Letter	1/14/10

E-mail & Letter, Kimberly Mercurio to AA, Landscape review	1/18/10
E-mail, KS to SP, Data gathering per his questions	1/19/10
E-mail, AA to Ed Childs, Town Assessor, Abutters List	1/19/10
E-mail, GB, to Dan Mahoney, Town, About use of parcel for water supply	1/19/10
E-mail, AA to SP and AF, Abutters List	1/19/10
E-mail, AA to Don Keeran, APCC, Commission 12/30/09 Letter	1/19/10
E-mail, Paul Ruchinskas (PR), to AF, Affordable Housing mitigation	1/19/10
Letter, Kimberly Mercurio to AA, Landscape review	1/20/10
E-mail, AA to Commission staff, meeting notes from 1/14/10	1/20/10
E-mail, PR to AA, Affordable Housing mitigation	1/20/10
E-mail, AA to Kimberly Mercurio, Landscape review	1/29/10
E-mail, AA to SP and AF, Cost for landscaping review	1/21/10
E-mail, AA to SP and AF, Cost of potential project mitigation	1/21/10
E-mail, KS to CB, Regarding request from APCC	1/28/10
E-mail, KS to AF, Type of housing and age restrictions	2/2/10
E-mail, AA to Kimberly Mercurio, Landscape review	2/17/10
E-mail, KS to AF, Economic Development waiver criteria	2/19/10
E-mail, KS to SP and AF, Amendment of Sandwich's LUVM	2/24/10
E-mail, AA to Kimberly Mercurio, Landscape review	2/24/10
Letter, AA to Kimberly Mercurio, Landscape review	2/26/10
Hearing Notice – Procedural Hearing	2/26/10
Minutes – Hearing Officer	2/26/10
E-mail, AA to Joseph Egan, Project update	3/8/10
Letter, AA to SP, Receipt of new incomplete DRI Application	3/9/10
E-mail, to SP and AF, Application completeness	3/10/10
E-mail, KS to Attorney Fitch, Scheduling procedural denial hearing	3/19/10
E-mail w/attachments, AA to CB, Letter on incomplete application	3/22/10

From Public or Others

Note, AA to Gail Hanley, Commission Clerk, Additional abutter	1/12/10
E-mail, Heather McElroy (HM), to Gail Hanley, Additional abutter	1/13/10
E-mail, Don Keeran, APCC, to AA, Request copy of letter	1/19/10
E-mail and attachment, Don Keeran, APCC, to AA, HM, Letter	1/26/10
E-mail, Joseph Egan, to AA, Project update (includes response)	3/3/10
E-mail, Joseph Egan, to AA, Project update (includes response)	3/3/10
E-mail, Joseph Egan, to AA, Project update	3/8/10
Letter, Maggie Geist, APCC, to Chair Sandwich Planning Board, LUVM	4/7/10

TESTIMONY

The DRI public hearing on the project was procedural and was opened by a Commission Hearing Officer on February 26, 2010. Testimony was received at a meeting of the Regulatory Committee on April 12, 2010. At that meeting, the Applicant's Attorney, Jonathan Fitch, requested the procedural denial. The Committee voted unanimously to recommend to the full Commission that the procedural denial be granted.

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, consisting of a proposed mixed use project proposed to contain 73,059 square feet of commercial space, a 400 square foot wastewater treatment plant building, 9,173 square feet of residential apartments (approximately 8-10 units), and either a 13,000 square foot pharmacy (Option A) or a 26,000 square foot assisted living facility (60 beds) (Option B), in

a combination of one and two-story buildings qualifies as a DRI under Sections 2(d), 3(c), 3(e), 3(g) and 3(k) of the *Enabling Regulations*.

2. Section 15 of the *Enabling Regulations* states in pertinent part that *"DRI 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..."* and *"...(vi) the Applicant fails to pay the entire fee specified in Section 16, Schedule of Fees."*

3. The Applicant has not submitted a complete DRI application for the project.

4. The Applicant has not paid the entire filing fee as specified in Section 16 of the *Enabling Regulations*, Schedule of Fees.

5. The Applicant requested a procedural denial of the pending DRI application in an E-mail received by Commission staff on March 17, 2010.

6. The Commission staff notified the Applicant in writing of a pending procedural denial and the Applicant was given the opportunity to address the Commission's Regulatory Committee regarding the status of the project on April 12, 2010.

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.

29 April 2010

John D. Harris
Cape Cod Commission Chair

Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss 4/29, 2010

Before me, the undersigned notary public, personally appeared

John D. Harris, 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