CAPE COD COMMISSION

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Date:	March 18, 2010
To:	Jonathon D. Idman, Esq. Law Offices of Singer & Singer, LLC 26 Upper County Road Post Office Box 67 Dennisport, MA 02639
From:	Cape Cod Commission
Re:	Procedural Denial Decision
Project Applicant:	Peter Copelas 96 Mayflower Terrace South Yarmouth, MA 02664
Project:	Windrift Acres
Project #:	TR09014
Map/Parcel:	Map 51, Parcels 3, 4, 5, 47, 74
Book/Page:	Book 2548, Page 345; Book 3605, Page 275

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission), hereby procedurally denies without prejudice the application of Peter Copelas (the 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*. This decision is rendered pursuant to a unanimous vote of the Commission on March 18, 2010.

PROJECT DESCRIPTION

The project is described as a proposed 22 lot residential subdivision known as Windrift Acres on 55 acres of land in West Brewster. The development is proposed on land identified on Brewster's Assessor's Map 51, Parcels 3, 4, 5, 47, and 74.

PROCEDURAL HISTORY

The project was referred to the Commission as a DRI under Section 3(c) of the Enabling Regulations. The Commission received the referral from the Town of Brewster Planning Board through Mr. Robert Bugle, the Board Chair, on September 28, 2009. In accordance with the Cape Cod Commission Act, the Commission is required to schedule a public hearing within sixty (60) days of the receipt of a DRI referral. A public hearing was therefore opened by Hearing Officer on November 24, 2009. The ninety day hearing period expired on February 19, 2010, a date upon which the hearing was likewise closed by Hearing Officer. As the Commission did not receive a completed application from the Applicant, a substantive public hearing could not be scheduled within the statutorily mandated timeframe. On January 28, 2010, the Commission advised the Applicant that he may either withdraw the project from local consideration and on the Commission review, or that the Commission may have to take steps to procedurally deny the project without prejudice. On February 5, 2010, Attorney Jonathon Idman, on behalf of the Applicant, requested that the project be procedurally denied without prejudice. The Regulatory Committee of the Cape Cod Commission deliberated on the procedural denial request at its March 15, 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 Section 3(c) of the Commission's Enabling Regulations Governing Review of DRIs (Enabling Regulations) as a development that proposes to divide parcel(s) of land totaling 30 acres or more in common ownership or control on or after September 30, 1994.

MATERIALS SUBMITTED FOR THE RECORD

From the Applicant

- ☐ Email from J. Idman to K. Senatori, dated February 25, 2010. Re: procedural denial.
- ☐ Email from J. Idman to K. Senatori, dated January 29, 2010. Re: procedural denial.
- ☐ Email from J. Idman to K. Senatori, dated January 28, 2010. Re: procedural denial.
- ☐ Email from J. Idman to K. Senatori, dated February 1, 2010. Re: procedural denial.

From Federal, State, or Local Officials

- ☐ Letter from S. Leven to K. Senatori, dated September 25, 2009. Re: DRI referral form.

From the Cape Cod Commission

- ☐ Letter from M. Mejia to P. Copelas, dated September 29, 2009. Re: project referral.
- ☐ Letter from M. Mejia to P. Copelas, dated November 24, 2009. Re: notice of pro forma hearing.
- ☐ Letter from G. Hanley to P. Copelas, dated February 2, 2010. Re: notice of pro forma hearing.

- ☐ Letter from K. Senatori to P. Copelas, dated January 28, 2010. Re: course of action.
- ☐ Letter from K. Senatori to D. Ojala, dated February 12, 2010. Re: scheduling.
- ☐ Letter from L. Senatori to J. Idman, dated February 22, 2010. Re: scheduling.

TESTIMONY

The DRI public hearings on the project were procedural and held by a Commission hearing officer. Testimony was received at a meeting of the Regulatory Committee on March 15, 2010. At that meeting Ms. Sarkisyan explained the procedural history of the project as well as Commission's standards in regards to procedural denials. Attorney Idman addressed the subcommittee and explained that the Applicant was engaged in negotiations with the Town of Brewster for the potential sale of the property in question. He stated that he was seeking a procedural denial without prejudice because the Applicant did not wish to withdraw the project on the local level. He stated that the Applicant intends to submit a definitive plan at the local level and would at that time be submitting a completed application before the Commission.

FINDINGS

The Commission has considered the Applicant's proposed development in West Brewster and makes the following findings pursuant to Sections 12 and 13 of the Act:

1. The proposed project, consisting of a 22-lot subdivision on 55 acres of land will be situated on 5 existing lots identified on Brewster's Assessor's Map 51, Parcels 3, 4, 5, 47, and 74.

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...."

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 Schedule of Fees, Commission's Enabling Regulations.

5. The Commission notified the Applicant in writing of a pending procedural denial and the Applicant was given the opportunity to address the DRI subcommittee regarding the status of the project on March 15, 2010.

6. On February 5, 2010, Attorney Jonathon Idman on behalf of the Applicant submitted a request in writing that the proposed project be procedurally denied without prejudice.

CONCLUSION

The Cape Cod Commission hereby procedurally denies without prejudice the proposal of Peter Copelas as a Development of Regional Impact (DRI) pursuant to Sections 12 and 13 of the Cape

Cod Commission Act (Act) c. 716 of the Acts of 1989, as amended, for the Windrift Acres 22-lot subdivision in West Brewster.

John D. Harris
Cape Cod Commission Chair

Date 3/18/10

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

March 18, 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