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CAPE COD
COMMISSION

Date:	September 30, 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 #:	TR10004
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 September 30, 2010.

PROJECT DESCRIPTION

The project is described in the May 3, 2010 DRI referral form and attachments as a proposed 22 lot residential subdivision known as Windrift Acres on 55 acres of land off Slough Road 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 Commission's *Enabling Regulations*. The Commission received the referral from the Town of Brewster Planning Board through Mr. Robert Bugle, the Board Chair, on May 3, 2010. 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 July 1, 2010. The ninety (90) day hearing period expired on September 28, 2010, a date upon which the hearing was likewise closed by Hearing Officer. On August 31, 2010, the Applicant submitted a DRI application form and attachments, and a separate request for Limited DRI review. The project described in the DRI application and application for Limited DRI Review consists of a 20-lot subdivision. On September 7, 2010, both applications were deemed incomplete by staff in a letter sent to the Applicant's contact, Attorney Jonathan Idman. 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. Commission staff 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. In an E-mail dated September 2, 2010, Attorney Jonathon Idman, on behalf of the Applicant, requested that the project be procedurally denied without prejudice. The Regulatory Committee of the Commission deliberated on the procedural denial request at its September 13, 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

<u>From the Applicant</u>

Road Profile for Definitive Plan, DownCape Engineering, Sheets 1-5, dated April 12, 2010 Undated

Conventional Sketch Subdivision Plan, DownCape Engineering, One Sheet, dated April 12, 2010 Undated

Definitive Subdivision Plan, DownCape Engineering, One Sheet, dated April 12, 2010	Undated
Abutters List	6/15/10
DRI Application, paper copy and on disk (9:00 AM)	8/31/10
Updated DRI application, paper copy (Noon)	8/31/10
Limited DRI Review application, paper copy (Noon)	8/31/10
E-mail, Attorney Idman, request for procedural denial	9/2/10
E-mail, Attorney Idman, receipt of RegCom Memo and Agenda	9/8/10

Federal, State, or Local Officials

Letter and attachments, Susan Leven, Brewster Town Planner, DRI referral	5/3/10
Massachusetts Historical Commission, Project Area does not contain any properties on MHC's Inventory of Historic and Associated Archeological Assets	6/7/10

From the Cape Cod Commission

Letter, Notification of DRI referral	5/4/10
Letter, Notification of DRI referral	5/6/10
Letter, Commission Clerk, Hearing Notice & cost of noticing	6/11/10
Hearing Notice	7/1/10
Hearing Office Minutes	7/1/10
Letter, Closure of hearing period	7/22/20
E-mail, Project DRI Fee payment	8/31/10
Letter, Incomplete DRI and Limited DRI Review applications	9/7/10
Copy of Memo to Regulatory Committee	9/7/10
E-mail, Copy of 9/7/10 Memo to Regulatory Committee and Committee Agenda for 9/13/10	9/8/10
E-mail, to Brewster Town Planner, copy of Regulatory Committee Agenda for 9/13/10 and 9/7/10 Memo	9/9/10
Letter, Commission Clerk, Hearing Notice & cost of noticing	9/9/10
Letter, Commission Clerk, Hearing Notice & cost of noticing	9/13/10
Copy of Agenda for Regulatory Committee	9/13/10
Hearing Notice	9/28/10
Hearing Officer Minutes	9/28/10
Hearing Notice	9/30/10

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 (Committee) on September 13, 2010. Attorney Idman addressed the Committee and explained that the Applicant was still engaged in negotiations with the Town of Brewster for the potential sale of the property in question. He said the Applicant was not hopeful at this point that negotiations would come to a successful conclusion. Attorney Idman said the Applicant was seeking a procedural denial without prejudice because the Applicant did not wish to withdraw the project on the local level. Mr. Dan Ojala, the Applicant's project engineer, stated that the Applicant intends to re-submit a completed application

before the Commission shortly after the full Commission considers with the procedural denial request.

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, as referred to the Commission on May 3, 2010, consists of a 22-lot subdivision on 55 acres of land off Slough Road in West Brewster and is proposed to be situated on 5 existing lots identified on Brewster's Assessor's Map 51, Parcels 3, 4, 5, 47, and 74.

2. The proposed project, as described in the incomplete DRI application and application for Limited DRI review consists of a 20-lot subdivision on 55 acres of land off Slough Road in West Brewster and is proposed to be situated on 5 existing lots identified on Brewster's Assessor's Map 51, Parcels 3, 4, 5, 47, and 74.

3. Section 15 of the *Enabling Regulations* states in pertinent part that *"Developments of Regional Impact (DRI), DRI Exemptions and DRI Hardship Exemption 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;

   (v) other instances where the project fails to progress continuously and expeditiously through required regulatory processes and the Commission determines that a procedural denial without prejudice may be properly granted; or

   (vi) the Applicant fails to pay the entire filing fee specified in Section 16, Schedule of Fees."

4. The Commission finds the Applicant has not submitted a complete DRI application nor a completed Limited DRI Review application for the project.

5. The Commission finds the Applicant has not paid the entire filing fee for a Limited DRI Review as specified in Section 16 of the *Schedule of Fees, Commission's Enabling Regulations.*

6. The Commission finds that the project has failed to progress continuously and expeditiously through the required regulatory process and a procedural denial without prejudice may be granted.

7. The Commission notified the Applicant by telephone conversation on September 1, 2010, and in writing through an E-mail dated September 8, 2010 which included a Memo to the Regulatory Committee dated September 7, 2010 of a pending procedural denial and the Applicant was given the opportunity to address

the DRI subcommittee regarding the status of the project on September 13, 2010.

8. On September 2, 2010, Attorney Jonathon Idman on behalf of the Applicant submitted a request in writing that the proposed project be procedurally denied without prejudice.

9. On September 13, 2010, the Commission's Regulatory Committee voted unanimously to recommend that the full Commission procedurally deny the project 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 residential subdivision in West Brewster.

Royden Richardson — 09.30.2010

Royden Richardson
Cape Cod Commission Chair

Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss 9.30, 2010

Before me, the undersigned notary public, personally appeared Royden Richardson, 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