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CAPE COD
COMMISSION

Date:	May 12, 2011
To:	Stephen G. Powers Pimlico Pines Realty, LLC P.O. Box 746 Forestdale, MA 02644
From:	Cape Cod Commission
Re:	Procedural Denial Decision
Project #:	TR-10017
Project Applicant and Property Owner:	Stephen G. Powers Pimlico Pines Realty, LLC
Project:	Forestdale Village
Project Location:	74 & 76 Route 130, Forestdale, MA
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* (revised March 2011). This decision is rendered pursuant to a vote of the Commission on April 28, 2011.

PROJECT DESCRIPTION

The project as described by the DRI referral form received from the Town of Sandwich involves approximately 100,000 square feet of commercial development.

PROCEDURAL HISTORY

On October 21, 2010, the Commission received a referral of the Forestdale Village project from the Sandwich Zoning Board of Appeals through Greg Smith, Director of Planning & Development for the proposed Forestdale Village (TR-10017) development.

The Commission's *Enabling Regulations* (as amended) require that a public hearing be opened within sixty (60) days of the receipt of a DRI referral, which was December 17, 2010. The Applicant was informed of this in a letter from Commission staff dated October 26, 2010.

In an Email received on November 19, 2010, the Applicant's representative indicated they were working on a DRI application. However, by early December 2010, the Applicant had not submitted a DRI application. As such, a Hearing Officer opened the DRI public hearing on December 17, 2010.

The *Enabling Regulations* (as amended) require that the public hearing be closed within ninety (90) days. This date is March 16, 2011. The Applicant was informed of this by an Email from Commission staff dated January 28, 2011, and by a letter from Commission staff dated February 17, 2011.

As of the Commission staff's February 17, 2011 letter, the Applicant's project team had not submitted any application materials, and as such, a Hearing Officer closed the DRI hearing period on March 16, 2011.

Commission staff also informed the Applicant in the February 17, 2011 letter that because a DRI application had not been filed with the Commission, the Applicant could either withdraw the project on the local level and consequently withdraw the project from Commission review, or that the project would be procedurally denied without prejudice.

Mr. Steve Powers, the Applicant, contacted Commission staff by Email on March 9, 2011 requesting a procedural denial without prejudice.

The Commission's Regulatory Committee deliberated on the procedural denial request at its March 28, 2011 meeting, where it voted unanimously to recommend that the full Commission procedurally deny the project without prejudice.

JURISDICTION

Based on the DRI referral form, the proposed project qualifies as a DRI pursuant to Section 3(c) of the Commission's *Enabling Regulations* (as amended) as "any of the following proposed developments: commercial, service, retail, wholesale, business, industrial, private office, private health, private recreational or private educational which exceeds these criteria:

> (i) New construction of any building or buildings (including accessory and auxiliary structures) with a Gross Floor Area greater than 10,000 square feet;..."

MATERIALS SUBMITTED FOR THE RECORD

From the Applicant

Email, Anthi Frangiadis, to Andrea Adams, working on application	11/19/10
Email, Steve Powers, to Andrea Adams, working on application	12/15/10
Draft Stormwater Management Report and Plan, received by hand	1/9/11

Note, Steve Powers, to Andrea Adams, procedural denial process	2/28/11
Email, Steve Powers, to Andrea Adams, procedural denial request	3/9/11
Email, Steve Powers, to Andrea Adams, procedural denial process	3/10/11

From Federal, State, or Local Agencies or Officials

DRI referral form, from Greg Smith, Sandwich Director of Planning	10/21/10
Email and attachments, from Greg Smith to Kristy Senatori, December 2010 Route 130 Tree Assessment and Appraisal	1/31/11

From the Cape Cod Commission

Email, Andrea Adams (AA) to Applicant, Town: Receipt of referral	10/26/10
Certified letter, AA to Applicant, Town: Receipt of referral	10/26/10
Email, AA to Applicant: No application received to date	11/16/10
Email, AA to Wendy Kiedeisch, Response to her request	11/18/10
Letter, Gail Hanley (GH), Commission Clerk, to Applicant: Noticing	11/30/10
Email, AA to GH, Add name to list for those who get notices	12/2/10
Email, AA to Applicant: Procedural hearing	12/14/10
Email, AA to Applicant: Clarify hearing period is 90 days	12/14/10
Hearing Notice	12/17/10
Hearing Officer Minutes – Open hearing	12/17/10
Email, AA to GH, add name to list for notices	1/13/11
Email, AA to Applicant: Close hearing period/no application received	1/28/11
Email, AA to Steve Seymour: Incorrect addressee for Email	1/28/11
Email, AA to Applicant: Resend of 1/28/11 Email	1/28/11
Email, AA to Applicant: Transmittal of letter on project	2/17/11
Certified Letter, AA to Applicant: Application incomplete	2/17/11
Letter, GH to Applicant: Noticing of hearing	2/25/11
Email, AA to Applicant: Response to his note of 2/28/11	3/3/11
Email, AA to Applicant: Response to his Email of 3/9/11	3/9/11
Phone Log, AA, Call from Craig Salters, *Broadsider* newspaper	3/10/11
Hearing Notice	3/16/11
Hearing Officer Minutes – Close hearing	3/16/11
Staff Memo and attachments, AA to Regulatory Committee	3/21/11
Email, AA to Applicant, Town: 3/28/11 Regulatory Committee	3/23/11
Copy of Regulatory Committee Agenda	3/28/11

From Public or Others

Email, Wendy Kiedeisch, Request to receive notices	11/17/10

TESTIMONY

The DRI public hearings on the project were procedural and were opened and closed by a Commission Hearing Officer on December 17, 2010 and March 16, 2011.

Testimony was received at a meeting of the Regulatory Committee on March 28, 2011 when the Regulatory Committee considered the Applicant's request for a procedural denial without prejudice. At that meeting, the Applicant, Mr. Powers, said Commission staff had pointed out discrepancies in the project plans, particularly in the project's stormwater designs, in 2010. Mr. Powers said he had thought the discrepancies were relatively limited, but had come to understand that there were problems affected all aspects of the project. Mr. Powers said he had spent $170,000 on a project design that was not salvageable. He said he had had to hire a new

the engineering firm to find the problems, and that this had caused the delay. The Regulatory Committee voted unanimously on March 28, 2011 to recommend to the full Commission that a procedural denial without prejudice 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, based on the DRI referral form received from the Town of Sandwich, involves approximately 100,000 square feet of commercial development.

2. Section 15 of the *Enabling Regulations* (as amended) 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;*

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

4. 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.

5. The *Enabling Regulations* (as amended) require that a public hearing be opened within sixty (60) days of the receipt of a DRI referral, which was December 17, 2010. The Applicant was informed of this in a letter from Commission staff dated October 26, 2010.

6. The *Enabling Regulations* (as amended) require that the public hearing be closed within ninety (90) days. This date is March 16, 2011. The Applicant was informed of this by an Email from Commission staff dated January 28, 2011, and by a letter from Commission staff dated February 17, 2011.

7. In the February 17, 2011 letter, Commission staff also informed the Applicant that because a DRI application had not been filed with the Commission, the Applicant could either withdraw the project on the local level and consequently withdraw the project from Commission review, or that the project would be procedurally denied without prejudice.

8. On March 9, 2011, the Applicant submitted an Email to Commission staff requesting a procedural denial without prejudice.

9. On March 28, 2011, the Commission's Regulatory Committee voted to recommend that the full Commission procedurally deny the project without prejudice.

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.

Royden Richardson — Date: May 12, 2011

Royden Richardson
Cape Cod Commission Chair

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss — May 12, 2011

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