

THE MARTHA'S VINEYARD COMMISSION

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MARTHA'S VINEYARD COMMISSION

MINUTES OF JULY 14, 1988

The Martha's Vineyard Commission held a public hearing on Thursday, July 14, 1988 at 8:00 P.M. at the Commission offices, Olde Stone Building, New York Avenue, Oak Bluffs, MA regarding the following Development of Regional Impact (DRI):

Applicant: Peaked Hill Pastures Realty Trust
Cal Denison, Trustee
c/o VMS Realty Investors
8700 West Bryn Mawr Avenue
Chicago, IL 60631

Location: Off Middle Road
Chilmark, MA 02535

Proposal: Subdivision of 142 ± acres of land into 24 lots plus pasture and open space qualifying as a DRI since the proposal is a development of a contiguous ownership of 30+ acres and the resulting lots is greater than 10.

Mr. Young, Chairman of the Land Use Planning Committee, read the public hearing notice and opened the hearing for testimony at 8:10 P.M. He announced the order of the public hearing. Mr. Young then asked Mr. Saxe, staff planner, to give the staff presentation.

Mr. Saxe, MVC staff, referenced a handout to Commissioners. He stated the Peaked Hill Pastures proposal is located in the Town of Chilmark, totalling 141.2 acres to be subdivided into 22 Residential Lots, total 81.04 acres making a size range of 3.1-4.8 acres; 2 Youth Lots (2.76 and 2.5 acres); 2 Horse Pasture lots 14.4 acres; 6 Open Space Lots 32 acres; public recreational trail system, overlook easements and 2 ponds for fire protection are to be created. He stated access will be via an easement off Tabor House Rd. The proposal is located within the Agricultural-Residential District 3 and zoned 3 acres minimum and 50' setback to property line. Portions of the proposal fall within Areas designated as Coastal and Peaked Hill Special Places and are for the most part within the proposed open space or pasture lots. Use as pasture is not prohibited by DCPC guidelines. Further these designated areas total 11.82 acres. He stated that wetlands have been contained within open space and pasture lots. Adequate space is available to accommodate setbacks including the

Mass. Wetlands Protection Act 100' buffer. Vegetated wetlands total 2.19 acres. The site contains the headwaters of Mill Brook, Fulling Mill Brook, and the Roaring Brook watersheds. He stated vegetation on-site consists of Scrub oak forest with a tight canopy of 30'-40' also interesting features occupying less than 25% of the site include ridgetop scrub oak association and low ground cover associated with disturbed and exposed areas, mixed hardwood and evergreen forest, open successional fields, forested and shrub wetlands, and shrub thickets. In most cases building envelopes have been located in the oak forest. He stated this is the highest point on the Island and that the land has steep slopes and that in several cases septic systems have been initially sited on steep slopes. Construction of roads, homes, and septic system will require special care to avoid erosion. He stated that the Topography has been taken advantage of to break up sections of building lots with open space encompassing ridges and glens. Soils on ridges and their slopes drainage is rapid, percolation rates high, and the ability to remove septic contaminants low. In low spots including ravines, soils are poorly drained and pose siting limitations to septic systems. The silts and clays associated with low spots remove contaminants more effectively than soils found at higher elevations. Although the depth to groundwater is 100'-200' there exist localized perched conditions. The mixed strata of soils in the terminal moraine combine with these factors to make it difficult to determine the extent of threat to on-site wells.

Mr. Saxe stated the area contains the highest point on the Island, Peaked Hill 298' and Little Peaked Hill 311'. Views from the site take in areas including the north and south shores, Gay Head, Menemsha, Chappaquidick and Nomans Land. Similarly prominent site features can be picked out from points along the north and south shores, and Gay Head. Where topography will not hide building envelopes, tree canopy analysis guided site design. According to the applicant horizons will not be altered. Views from Peaked Hill will be changed by the addition of roofs in the foreground. He stated this change will substantially alter the current experience which is that of viewing from an area removed from human activity. He noted, although the applicants analysis has shown that individual houses will be difficult to see from a distance the combined effect of structures, road cuts, accessory structures, and cleared areas will be to change the character of the hill from a tree lined, undeveloped hilltop. The panorama of which Peaked Hill and Little Peaked Hill from the center is predominantly developed and looking eastward from Gay Head, Lobsterville, Menemsha Pond pull off and other points the horizon is dominated by developed areas with the exception of the hills within this subdivision. He also stated that even during a summer day houses are visible and at night when lights are on and in the winter when trees do not form as effective of a screen these homes and road cuts become even more obtrusive.

Mr. Saxe then reviewed the compatibility of the plan with Open Space and Master Plans:

Passive recreation enhanced by offering in perpetuity overlook, walking trails, and agricultural use within the site. Potential for effect on perceived density if hilltop development is visible from Gay Head, Menemsha and other areas, and change in experience of views from the hilltop. Construction on slopes will conflict with goals if erosion control is not taken into account. Views and septic systems should be designed and maintained with the strictest means available.

Mr. Saxe reviewed management plans of this proposal stating:

Management plans for the trail system, agricultural lots, and overlook are being developed cooperatively by the developer and local authorities including SCS and the Planning Board. The intent for the overlook is to return it to a vegetated state and to move parking so that cars are not in view while a visitor is on the peak of the hill. Deeded access to this spot is permitted by car with written permission from VOLF, and by foot across the existing road. The agricultural lots are to be managed horse pastures for recreational use and will include a stable and caretakers apartment. Covenants allow one pasture lot to contain a commercial stable. The trail system provides an internal link between pasture lots for equestrian use and form part of the "cross Chilmark trail" under consideration by the Chilmark Conservation Commission. Areas have been designated as meadows which are continuous between and are within residential lots. Clearing and seeding or farming of these "meadows" is left to the discretion and expense of the lot owner.

Mr. Saxe discussing the demographics of this proposal stated there will be 84 residents at build out = 3.5 persons/unit x 24 lots and approximately 50% of the units will be occupied year round in Chilmark (US Census); 18 school age children = 1.5/unit x 12 yr rd units and noted the Applicant projects 2 children, 4 year round homes, .4 children per home.; and year round residents will total 42. He noted that calculations used in EIR reflect a lower percentage year round population, and a lower number of persons and school age children per unit.

Traffic impacts from the proposal will equal 240 trips/day (24 units x 10 trips/day/unit). Solid waste generation will equal 2.5 lbs/day/person June-Sept, 1.83 lbs/d/p Oct-May (Dukes County Data Report) 43,646 lbs/yr. Further that the projected capacity of landfill will be reached in 50 years according to the applicant without exporting trash to SEAMASS. He stated that according to the Applicant tax revenues projected for this development will be \$108,781.00 at build out. He stated this includes valuation of cars, horse trailers and other accessories to the property. Cost of educating a child \$9,000 in 1994 (build out). Proposed ponds provide fire protection capability. No special costs are associated with this proposal other than those usually associated with provision of services. The site is close to the landfill, private wells and septic are to be used, and the applicant will participate in the management of public open space.

Mr. Saxe stated that correspondence for the record has been received from the following: VOLF - 3/31/88 - Concerned with Radar Hill site maintenance, trail system management, and views. VOLF - 5/23/88 - Concerns expressed in previous letter adequately addressed in plan. VOLF - 7/7/88 - Expresses preference for management of hill to include placement of parking out of sight, removal of asphalt, concrete etc., and donation of parking to town so that police will have jurisdiction. From Jane Gollin - 5/19/88 - Concerned with hazard on access road to Radar Hill, that there is no legal access, and that there should be access provided through the subdivision. From R. Rappaport (Counsel) to Chilmark Planning Board, 7/13/88 - Describing history of deeded access over road to Peaked Hill. Automobiles shall have access only when a handicapped or elderly person acquires written permission from VOLF. From Chilmark Conservation Commission - 7/13/88 - addresses agreement between developer, VOLF, and Conservation Commission as to management responsibility and practices for the overlook area. From Burton Engley - 7/12/88 - Expressing opposition to the project because mistruths are incorporated into plan. Attachments to

the letter documents that the hill shown as Little Peaked Hill is the tallest on the Island and that the point shown as Peaked Hill and currently used as an overlook (Radar Hill) is actually the second highest point. The hill which Mr. Engley documents to be the highest on the Island is to be private and dotted with homes according to the plan and this is a regrettable action. From Peter Colt Josephs, historian, to Chilmark Planning Board regarding the site significance during World Wars I and II and preservation of the site.

Mr. Young noted that a letter has been received from James and Jane Gollin and Clifton A. Stone and stated that it includes history of the land and testimony given at earlier meetings with the Planning Board

Addressing development concerns regarding change in character of views on and off the site Mr. Saxe stated that views onto site not addressed in covenants or site management proposals; Road cuts and accessory structures (pools, tennis courts, guest homes) not addressed in analysis of views; Covenants allow topping, brush cutting etc. to maintain views from homes but do not require consideration of view onto site or from Peaked Hill; Guest homes are not addressed in covenants; Density of homes and roads within sight of Peaked Hill overlook (lot #13, 14, 15, 16, 17, 18, and youth lot 2) could have utilized flexible zoning provisions. This resource is outstanding if we do not take advantage of flexible zoning here, then where?; He noted that ARC review must include consideration of view onto site. Membership must be qualified to do so. In this consideration all site alterations including construction and landscaping should be considered as the cumulative effect is as significant as the individual structures. Further concerns regarding the proposal are if a Commercial stable allowed by covenants, this should be reviewed by MVC; Final septic sites must be selected with utmost care; Protection of individual occupancies of evergreens and ground cover species found on disturbed and exposed hilltops and slopes when constructing roads and homes on and to the north Little Peaked Hill (northern of two peaks); and clean up and maintenance of erosion scars from construction, roads, agriculture, and discretionary meadows.

Mrs. Scott asked for clarification regarding guest houses and whether this has been addressed by the applicant. Mr. Saxe stated that guest houses are allowed by Board of Appeals special permit. Mrs. Scott then asked for clarification of the access easement. Mr. Saxe stated that current access is by foot only except for in the case of the handicap where VOLF can give written permission to access by vehicle.

Mr. Early stated that the youth lots, as shown on the plan, are undersized and asked if this is ok with the Town. Mr. Saxe answered in the affirmative. Mr. Early then stated there seems to be a difference in the EIR assessment and the staff assessment of the year-round and school statistics. Mr. Saxe explained that the staff uses U.S. Census percentage.

Mr. Ewing asked Mr. Saxe to explain the internal trail system and cross trail system for public. Mr. Saxe showed the trails on the plan.

There being no further questions from Commissioners, Mr. Young asked for the Applicant's presentation.

Cal Denison, Applicant, discussed the Chilmark cross linked trail system and access to this system. He discussed the donation of 4.5 acres of land at the top of the property and the management plan to be written by VOLF and Conservation Commission. He stated that he feels that how this property is managed and accessed is really a public issue. He discussed the legality of access and stated that he has asked Ron Rappaport for his legal opinion and he informs Mr. Denison his legal opinion is that VOLF basically secures the same rights as the federal government. And further, that vehicular access is restricted unless by written permission of VOLF and foot traffic is allowed by the town. He stated that within the subdivision he has tried to maintain an element of privacy. He has maintained small clusters of houses. Further he does not feel that it would be appropriate for the public to access the internal trail. Addressing staff comments Mr. Denison stated that pools, tennis courts etc. must be screened especially if in view; to possible negative impacts of buildings on Peaked Hill he stated that an analysis has been done regarding potential impact and the plan has been modified to mitigate this kind of impact entirely; as to controlling visual impact, Mr. Denison stated that the Architectural Review Committee would review this; to the question regarding density changing he stated this is the density and cannot see that changing; the issue of guesthouses, he stated that the issue has not been addressed as a property owner would have to get approval through special permit from the Board of Appeals. He then stated that he has a slide presentation which shows an assessment of visual impacts.

Mr. Doug Snider, Applicant's planner, stated that they have done an investigation of the site to identify impact of the development to the use of Peaked Hill and then goes on to take a look at what can and cannot be seen from the site. He stated that the first thing which was done was to define visual resource and limit of waterview from the top of the hill in all directions and showed slides of the view. He discussed how vegetation in one area and the topographical area in another area impact the view at the present. During the slide presentation of the panoramic view he showed where the scenic view easement will be located, depicted lot 15 and the building envelop as proposed and stated they believe nothing will interrupt the view as with the youth lot. He then showed a slide which mapped the open space, woodlands and proposed ponds, as proposed, with multi use.

Mr. Snider showed slides of the land from several observation points and stated that the visual impacts will be minimal. He stated that at any one vantage point only 4 or 5 sites can be seen at once. He noted that all observation points had to be taken in most cases 2.5 miles away to see the site. He stated that the subdivision includes the tradition of houses being built on slopes. He then showed a summary of the balloon observations.

Mr. Ewing asked if guest houses have been considered when looking at the visual impact of the development. Mr. Denison stated that worst case was used and that there is a sufficient canopy and therefore there is no impact as the building would be lower.

Mr. Ewing asked if there is a vegetative management plan? Mr. Denison stated that the covenants address this issue in several places.

Mr. Early stated that there is a difference between a 4 foot balloon and a building of up to 4,000 square foot and stated although the applicant has minimized the impact of the skyline he feels that there is still a great potential for some very visible structures on this property and asked if the Architectural Review process will be able to take this in account.

Mr. Denison stated that language addressing this has been included in the covenants.

Mrs. Scott asked, if in cutting vegetation, houses on lots 2, 16, 17 & 18 more visible. Mr. Denison stated it is hard to determine however, he feels that there will be sufficient buffer to protect this.

Mr. Evans asked the applicant for the number of lots which have the potential to have water views. Mr. Denison stated this is difficult however at present it is Peaked Hill itself.

Doug Snider stated the upper group has the greatest potential for waterview.

Mr. Evans asked where the houses are expected to be seen at night. and what number of houses will be seen from off-site.

Mr. Denison stated it is possible that any one of the houses could be seen from some vantage point.

Mr. Evans referring to the building envelopes asked if there are any regulations regarding clearing. Mr. Denison's stated that there is a limitation of 70% of vegetation which could be cut.

Mr. Snider stated that when there is a visual impact it will only be by narrow range of angle.

Mr. Ewing asked for the size of the building envelopes. Mr. Sinder stated the lots are between 3 to 5 acres and the envelopes are between 3/4 acre and 1.25 acres.

Mr. Early asked, regarding the access easement and the parcel of which this access is being granted and stated he assumes the spur road accesses first the 33 acre lot which could be the potential for roughly 10 additional lots which would have a greater impact on Tabor House Road. Mr. Denison stated that the Planning Board asked for some access to be closed, therefore leaving deadends on the internal road.

Mr. West expressed concern regarding lots being cleared up to 70% and concern for erosion of the highest hill on the Island.

Mr. Caranzo noted that most of the building envelopes are on the lower slopes.

Mr. West then asked Mr. Caranzo to show where the three headwaters are located. Using the plan Mr. Caranzo depicted the locations.

Mr. Caranzo stated referencing the staff presentation regarding the increase of school children that the applicant has used actual figures.

Mr. Caranzo then stated that they have received a letter from the Gollins and the applicant will be addressing their comments. He stated that the letter discusses historical and legal issues however, does not effect the plan as proposed.

There being no further questions from Commissioners Mr. Young asked for testimony from Town Boards.

Chris Murphy, Chilmark Planning Board, stated the Board feels this plan in general is a good plan. That the plan answers the Boards concerns on the big issues such as public access to Peaked Hill, Youth Lots stating that the Board is impressed with the size and consideration of a barn with an apartment for the help. He stated the only problem the Planning Board may have a problem with is that there should be a limit of one dwelling per lot and asked the MVC to condition this in their decision.

Mrs. Scott, Conservation Commission, what is planned is foot access and that the handicap can gain access through proposed gate by getting permission from VOLF she stated that there has been consideration of parking being on South Road.

Mrs. Harney asked Mr. Murphy his opinion of the number of dwellings per lot. Mr. Murphy answered one per lot.

Mr. Young then asked for testimony in favor.

Mr. Gollin reading from a statement that he later submitted for the record reviewed the proposal as proposed regarding access, the chronology of ownership of existing road and land on Peaked Hill, remarks made at Conservation Commission Meeting and Planning Board Meeting regarding access and hiking trails, parking and management; suggestions for possible solutions; and some comments and inaccuracies and misimpressions in EIS dated April 1988. Further he asked the MVC to condition acceptance of development on elimination of the access road which is currently used for public access.

Sidney Harris, resident of Chilmark, stated that he still owns mineral rights and questions legal access. Mr. Denison stated that he has been insured by Title insurance and in his opinion there is no dispute.

Mr. Evans asked the applicant what the benefits of this proposal are to the community. Mr. Denison stated that he proposes to give the town 4.5 acres of land at the top of Peaked Hill for public use, he is preparing and funding the management plan, will maintain existing views, working with the Town in providing Chilmark the with a central trail link and will brush cut and maintain trails at his own expense. He noted that little Peaked is a very delicate habitat therefore should not be used for public use. He stated further benefits are: 1/3 of the parcel is in open space; protection of off-site visual amenities; provision for commercial stable and apartment and 2 youth lots.

Mr. McCavitt asked if any of the wetlands are regulated by the Wetlands Protection Act. Mr. Caranzo stated 3 areas of the parcel and stated they are all within open space areas.

Mr. McCavitt asked if there will be any alterations. Mr. Caranzo stated that a Notice of Intent will be filed as they propose to expand the pond. He stated that an NOI will be filed as the road comes within 100 feet of a wetland.

Mr. Ewing asked the applicant if guest houses will be prohibited. Mr. Denison stated that he does not feel this is a misunderstanding as the subject has never been brought up. He stated he would rather not slam the door and would prefer a compromise.

Mr. Morgan spoke of low density at 22 lots and stated it certainly becomes high density rapidly at 44 houses. He spoke of the applicants calculations regarding impact on school, taxes and socio economic balance being upset when two youth lots are present in an area of millionaires.

Mr. Denison stated that the youth lots are in keeping with the Town of Chilmark.

Mr. Caranzo noted that the Town has worked with the applicant regarding the number of school aged children.

Mr. Saxe, MVC staff, added points of clarification regarding the covenants relating to vegetation and use of the pasture lots. He stated the covenants read that if required by the homeowners committee one or more of the pastures may be operated as a commercial stable. In relation to vegetation it sounded from the applicants presentation that they are depending on the pine trees to screen the view of the houses and he noted these pine trees are not on the applicant's lot. He further noted that the barn and farm apartment which will be for the manager will be located on the pasture. Mr. Denison stated that this will not be another saleable lot.

Chris Murphy stated that the Chilmark Planning Board limits the number of youth lots in any one subdivision to 2. Mr. Young asked if the size of the apartment will be limited. Mr. Murphy answered in the affirmative (1,000 sq. ft.).

Mrs. Scott asked why the proposal excludes access to Little Peaked Hill and the proposed resident trail. Mr. Denison stated that the numbers of people using a trail of this type is not known and that he is trying to maintain some privacy, we didn't feel that it would be appropriate to have public access, trying to create and maintain open space as this is a fragile area.

Mrs. Eber asked if any consideration has been taken for access off Middle Road. Mr. Denison stated not at this point.

There being no further testimony Mr. Young closed the public hearing and kept the record open for 2 weeks at 10:15 P.M.

Mr. Early, Chairman of the MVC, opened a special meeting of the Commission at 10:15 P.M. he noted that he would be taking the agenda out of order.

Item #1 - Chairman's Report - There was none

Item #2 - Old Business -

Mr. Early stated he has to make an adjustment in the DCPC Committee for Katama Airport as Mr. Jason is unable to serve due to a legal involvement and named Mr. Lynch to the Committee. He asked the Committee to briefly meet with him following this evenings meeting.

Item #3 - Minutes of July 7, 1988

Motion to approve as prepared. Seconded. The motion carried unanimously.

Item #~~4~~⁵ - Possible Vote

Written Decision - Cabral DRI

Motion to approve the draft decision as prepared. Seconded. On a roll call vote the motion carried with a vote of 11 in favor, 0 opposed and 4 abstentions (West, Young, Wey, McCavitt) Ann Harney voted yes).

Item #6 - New Business

Mr. Early stated that the Commissioners have all been served with complaints on the decision of the Crocker Millbrook (Chilmark) subdivision.

Item #7 - Correspondence - There was none.

Mr. Early then announced there will be a short recess for Commissioners to review the Decision of the Cape Pogue DCPC.

Mr. Early reconvened the meeting and moved to Item #4.

Item #4 - Discussion

Cape Pogue DCPC Designation.

Mr. Early stated that following discussion there will be a possible vote if the first vote is to designate and carries there will be a second vote to adopt the guidelines.

Mr. Evans showed the Commission slides of some endangered species relevant to the proposed district.

Mr. West noted that during the DCPC committee meeting prior to the Commission meeting this evening the Committee voted to delete Section 2.50 on page 4, paragraph 5 as they feel this issue has been adequately addressed.

He then discussed the guidelines and recommendations.

Mr. Ewing noted that there are a couple roads which may service houses and asked if people can get around otherwise. Mr. Saxe stated this is the purpose for the recommendation as he is not qualified to answer this question specifically.

Mr. Evans questioned the deletion of Item #5, section 2.50 of the guidelines. Mr. West stated that the Committee feels that the guidelines appropriately protect the area and stated there will be no further subdivision of land. Mr. Evans asked the number of buildable lots which have not been built on yet. Mr. Saxe answered approximately 10 lots. Mr. Morgan stated that an owner has to have the right to do with his land what he wants.

There being no further discussion Mr. Early moved to the next item.

Item #6 - Possible Vote

Cape Pogue DCPC

Motion to approve the written draft decision and map as prepared to designate the area as described under section 2.00 Cape Pogue District of Critical Planning Concern. Seconded.

Mr. Evans stated he feels the expanded area is a benefit. Mr. Morgan asked for staff to point out the area which has been added.

The motion carried with a vote of 15 in favor + (Harney in favor).

Motion to approve Draft Guidelines Section 5.00, as amended by deleting section 2.50, for the Cape Pogue DCPC. Seconded.

Mr. Filley stated that since the additional area has been added under management/recreational uses we ought to incorporate the other managers of property i.e. County of Dukes County. Mr. Saxe further suggested that the County of Dukes County ought to be incorporated into the language under number 4 guideline review and section 3 governmental agencies. It was the consensus of the Commission that the above language be inserted.

Mr. Filley stated in general he is happy this has come forward and equally as pleased the bounds have been expanded. He feels in the future the MVC should look at the Island as a whole in terms of recreational needs and how this need can be balanced.

On a roll call vote the motion carried unanimously.

There being no further business the meeting adjourned at 11:05 P.M.

ATTEST



John G. Early, Chairman 7/21/88
Date



J. Woodward Filley _____
Clerk/Treasurer Date

Attendance:

Present: Jason*, Lynch, Widdiss, Filley, West, Young, Eber, Ferraguzzi, Evans, Scott, Early, Wey, Ewing, Morgan, McCavitt, Harney

Absent: Custer, Lee, Delaney, Allen, Geller, Harris

* Not present for Peaked Hill DRI Public Hearing.