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Martha's Vineyard Commission Land Use Planning Committee Minutes of the Meeting of March 6, 2006

Held in the Stone Building, New York Avenue, Oak Bluffs.

Commissioners Present: LUPC Chairperson Christina Brown, Ned Orleans, John Breckenridge, Jim Athearn, Deborah Pigeon, John Best, Carlene Condon, and Megan Ottens-Sargent (5:47);

MVC Staff Present: Mark London, Paul Foley, Bill Wilcox, Christine Flynn

1. Red Gate Farm Estate Plan (DRI 589) Post-Public Hearing Review

Present for the Applicant: Doug Hoehn

Project Location: Moshup's Trail, Maps 11-14 many lots, Aquinnah, MA.

Proposal: Estate plan for 366 acres in Aquinnah.

Chairman Brown opened the meeting at 5:37 pm.

General

- There was a consensus that LUPC is likely to approve the application with conditions.
- One Commissioner questioned whether the Commission could approve the project as a "trust" document rather than a building development, with just the subdivision approved now and having the applicant come back if and when they plan to build. At that time, they would be in a better position to provide much more detailed information. It was pointed out that this would be far more restrictive than what LUPC has been discussing and would not give the applicant even a preliminary assurance of what they could build, especially important in advance of any possible property sale.
- It was noted that we are talking about thresholds for return to the Commission for further review, not absolute limitations on the total number of houses.
- The last LUPC focused primarily on two distinct, though related, issues:
 - A trigger for future MVC review beyond a certain amount of development,
 - A methodology for application of the Affordable Housing Policy, including a possible trigger for return to the MVC for this issue.
 - Staff prepared a possible draft wording based on the last discussion, which was distributed (appended).

Affordable Housing

- The DRI Checklist requires that projects that create or accommodate ten units be referred to the MVC. However, at the time of the construction of the tenth house, the building officials

might consider that the project has already being reviewed as a DRI and therefore might not refer it again.

- Since we cannot count on there being a new referral, we must deal with the affordable housing issue in this decision. It was noted that the proposal technically could accommodate far more than ten new houses, given the fact that the Aquinnah zoning by-law allows one house for every two acres with a special permit.
- Clarifying the issue now allows the family to properly prepare for the eventual possible affordable housing contribution and work out a system among the family and other possible owners to share this cost.

Trigger for Return as DRI

- The intention discussed last time was that a basic amount of development on each parcel would be included in this decision, and that there would be a trigger for further MVC review if the amount of development went beyond that level.
- The purpose of this condition would not necessarily be to preclude the construction of additional residences, but is to ensure that the Commission had the opportunity to evaluate such proposals in light of the conditions, state of knowledge, and Commission policies in place at that time.
- The draft condition prepared by staff includes options for the number of houses that could be built without further MVC review: namely 2, 3, or 4 (4 was the Applicants' offer).
- Mark London said that he has received an indication from the Applicants via Commission counsel to the effect that they would be comfortable with changing this from 4 to 3.
 - There was a discussion of whether the trigger should be two or three houses.
 - There was also a discussion as to whether the limit for the homestead lot should be the same as the others. Some suggested that it should be less, since there are already three houses; others suggested that it should be the same, given that it is a 100-acre lot.
 - There was also a discussion as to whether the Commission should differentiate between Lots 1 and 6 and the rest. From the Commission's point of view, the fact that the current intention of the owner is to keep the other lots within the family but possibly sell lots 1 and 6 should not be a consideration. Other differences could be the commitment not to further subdivide lots 1 and 6 if sold outside the family, and the greater environmental fragility, especially of lot 6.

Other Issues

- Should we consider re-delineation of development envelopes to better protect the globally rare habitat?
- With respect to the concern that local regulations might change, it was suggested that a direct reference to the current Aquinnah by-laws could lead to administrative problems in the future in terms of availability and possible incompatibility with the future bylaws. Another approach to create a "safety net" would be to include broad conditions dealing with the main concerns of the Commission.

Adjourned 7:00

Red Gate Farm was continued to next week March 13, 2006 after the DRI 39-M Woodlands LUPC [Note: subsequently postponed.]

Red Gate – Possible Conditions

1. Offers: All offers are accepted.
2. Trigger for Return to the MVC for Further Review. The applicants, and/or their successors in interest, may build up to [two/three/four] new homes on each of Lots 1, 3, 4, 5 and 6, and [two/three/four] additional homes on Lot 2. If the applicants and/or their successors in interest wish to build more than [two/three/four] houses on any one of Lots 1, 3, 4, 5, 6 or more than [two/three/four] new houses on Lot 2, then the owner of such lot must come back to the Martha's Vineyard Commission for approval. The purpose of this condition is not necessarily to preclude the construction of additional residences, but is to ensure that the Commission has the opportunity to evaluate such proposals in light of the conditions, state of knowledge, and Commission policies in place at that time.

Notwithstanding any future subdivision, condominium conversion, or lease of the whole or any portion of any one or more of the six lots, for the purposes of this condition, each of the lots will be regarded as an indivisible whole. Thus, for example, any person proposing to build a [third/fourth/fifth] house on Lot 1 shall be obliged to seek DRI approval from the Commission, regardless of whether such person holds any interest in the two other houses on that lot as shown on the current DRI application plan by SB&H dated Sept. 12, 2005..

3. Affordable Housing: If and when an application is made for the construction of a tenth house [in addition to the three currently existing houses], the applicants and/or their successors in interest agree to come back to the Martha's Vineyard Commission for DRI approval (for application of the MVC Affordable Housing Policy) unless they elect one of the following three options for affordable housing:
 - a. The grant of an off-site "buildable" lot [do we want to specify where it is located?] for such purpose to the Dukes County Regional Housing Authority or to another governmental entity;
 - b. The payment of the fair market value of such a lot for such purpose to the Dukes County Regional Housing Authority or to another governmental entity, minus credit for the payment of \$100,000 heretofore paid, plus accrued interest; (unless the fair market value is agreed upon by the Commission, it shall be established by an independent fee appraiser selected by the Commission and paid for by the applicants an/or their successor in interest) or;
 - c. A permanent designation of any house as a caretaker house, to be effected by the recording of a permanent affordable housing restriction under G.L. c. 184, § 31 as to such lot.

The building permit for the tenth residence shall not be issued until the MVC has issued a certificate of compliance with respect to this condition.

The affordable housing condition described above shall also apply if and when a twentieth residence is built.