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Martha's Vineyard Commission

Land Use Planning Committee

Notes of the Meeting of August 31, 2009

Held in the Stone Building, New York Avenue, Oak Bluffs. 5:30 P.M.

Commissioners Present: Linda Sibley; Christina Brown; Chris Murphy; and John Breckenridge.
MVC Staff Present: Paul Foley; Mark London; Bill Wilcox; Bill Veno; and Chris Flynn.

1. DRI 34-M2 Flat Point Farm Preliminary Estate Plan

Applicant: Flat Point Farm, A. M. Fischer 1994 Trust, Priscilla P. Fischer, Arnold Fischer Jr. and Elinor Fischer (Trustees); Glenn Provost (Agent)

Project Location: Road to Great Neck, West Tisbury Map 35 Lot 3.1 (91.6 acres)

Proposal: A preliminary estate plan that would subdivide a 91.6 acre farm into 2 large conservation parcels (67.8 acres), 5 four-acre lots (around existing buildings), and 3 one-acre (+/-) youth lots.

Presentation:

- Paul Foley gave a brief Staff Report and slide show orientation.
- The proposal is to subdivide a 91.6 acre farm into 2 large conservation parcels (67.8 acres), 5 four-acre lots (around existing buildings), and 3 one-acre (+/-) youth lots.
- The property has been in the Fischer family for several generations.
- In 1976 Arnie Fischer Sr. came to the MVC to subdivide four 5-acre lots, one for each of his children, out of the original 130 (+/-) acre farm.
- In 2007 they created a 12.9 acre Form A lot (DRI 34-M) around an existing camp building that was built in 1969. The MVC approved it with conditions.
- At the time of the 2007 DRI review the Trust was working out a comprehensive estate plan for the entire property. This is the preliminary estate plan for the remaining 91.6 acres.
- The preliminary plan shows two large conservation parcels (total 67.8 acres). Eventually they will put a conservation restriction on both parcels. The details have not been determined yet.
- The 5 four-acre lots are created around existing structures. These lots are specifically sized at four-acres so that guest houses will not be allowed. One is built around a small rustic camp.
- The three new youth lots are each 1.1 acres and clustered together.
- The three youth lots are being created as part of the division but they are not going into a public fund. They will be reserved by the family for later distribution in accordance with town zoning section 4.4-7 (Homesite Lots).

Presentation:

- Glenn Provost said that this is a preliminary plan and that they have to come back for the Form A.
- There are two reasons that they have to get Planning Board approval. The first is that if you have buildings that were standing when the town adopted zoning (in 1973) you may put lots around them. Secondly the Planning Board has to deem the road adequate (as well as having been there since 1973).
- From his understanding the Planning Board has to allow the five 4-acre lots (because the buildings existed prior to zoning) but they do not have to allow the three 1-acre youth lots.

- There was a brief discussion of why bring a Form B to the MVC. Other than the fact that they got sent by the Planning Board they said that they knew would eventually be sent to the MVC so they thought they should bring it forward to see if there are any issues.

Wastewater:

- Commissioner Breckenridge asked about the existing wastewater systems.
- Glenn Provost said that they are not selling or transferring land so they have not been inspected. The wastewater systems are not up to date.
- Commissioner Breckenridge asked how many bedrooms each lot could support.
- Glenn Provost said that if they were vacant lots by town and Title V standards you may have 4 bedrooms per acre. So they would technically be allowed 16 bedrooms per 4-acre lot.
- Commissioner Breckenridge asked Bill if there were 8 houses on these lots do we have any idea what the nitrogen loading numbers would be.
- Bill Wilcox said that a quick rough estimate is that with this amount of land our policy would allow for 9 dwellings. If you are only looking at the nitrogen loading from houses it meets the rough limit. He added that we do not have a policy for looking at the nitrogen loading of an existing farm.
- Commissioner Breckenridge asked if we would want to require nitrogen removal.
- Arnie Fischer Jr. said that they tore up the hay field a few years ago and planted legume as required by the MVC. They do not put nitrogen on it. They would love to put a little on while reseeded. There are rumblings that property owners along the pond want to dredge the pond and if that were the case they would love to accept that muck soil. It's probably a pipe dream but if they ever did it we would like it because it is pure organic matter. The permitting is the main obstacle.

Affordable Housing:

- Chris Flynn said that the three accessory lots with the town restrictions might satisfy our policy but she needs to check.
- Chairman Sibley said that even if we did count the old lots (thus triggering the MVC Affordable Housing Policy) the three homesite lots would satisfy. If that were the case we might say that they have to act on at least one of the homesite lots. They are making an affordable offer.
- Mark London noted that the homesite lots have income restrictions but they are at 140% Average Median Income (AMI) not 80% AMI.
- Chairman Sibley said we have flexibility. They are doing three lots.
- Arnie Fischer Jr. said that they do not foresee any changes in the property; they are just coming up with a plan.

MVC Review:

- Chairman Sibley mused that maybe their purposes are served better by LUPC rather than a full commission review. We have only reviewed a few Form B's before, such as Middle Line Housing and the Herring Creek project. Glen Provost added that we also reviewed a Form B by George Rogers.
- Commissioner Brown said that it is better for the MVC to have a hearing and make a statement about the plan. We've made statements before such as "by and large it is ok".
- Mark London said that of greater interest is what the neighbors might say. At a public hearing we would hear from them.
- Glenn Provost said that a hearing and decision is what they are here for.

General Discussion:

- Commissioner Murphy said that he has looked at this and it seems that they are protecting as much farmland as possible. But it would seem like these other four acre lots could be smaller to retain as much farm land as possible.
- Arnie Fischer Jr. said that they are thinking that 30 years down the road their descendants may need some more money and 4-acres are more valuable than one.
- A commissioner suggested that they should define the building envelopes for each lot and that could potentially protect some more farm land.
- Glenn Provost said that they have not done that yet at this point.
- Chairman Sibley said that the Herring Creek project offers a similar analogy. They had four acre lots but the envelope was on the edge and a lot of farm area was within those lots but had to stay as farmland.
- Glenn Provost said that the Subdivision Control Law is what they are using. They could keep the lot as four acres but reserve the back area as future farming and reserve the right of the Fischer's to farm those areas in the future.
- Arnie Fischer Jr. pointed out that the whole property is grazed, even the woods.
- Mark London asked if someday you had to sell one of these and someone wanted a bigger house what would happen. They may want to build bigger a little further back.
- Glenn Provost explained that they would most likely have to move across the road. The road would be difficult to move.
- Chairman Sibley said that it seems to her the biggest impact is the nitrogen loading.
- Commissioner Murphy asked for an explanation of whether West Tisbury allows drip irrigation.
- Glenn Provost said that they allow drip irrigation where the ground water is high. In 1995 Title V raised the level and this raises it even more.
- Commissioner Murphy asked if drip irrigation puts it into the root zone.
- Glenn Provost said yes.
- Commissioner Murphy said that then you would have more taken up by the plants.
- Glenn Provost said he would check with Reid Silva. There is less excavation but there is a pump and a timer. Commissioner Breckenridge added that you technically need more acreage.
- Arnie Fischer Jr. asked if anyone could tell him how many pounds of nitrogen are produced per average household. Bill Wilcox answered that it is about 13.2 pounds per household of nitrogen from wastewater.
- Arnie Fischer Jr. said that then a 50 pound bag of fertilizer with 10% nitrogen from a farmer is pretty significant.
- Commissioner Murphy said that it gets taken up by the crops; otherwise the farmer is wasting it.
- Commissioner Brown asked if there is any concern about the new drip irrigation system.
- Bill Wilcox said that they studied it at Otis and it was similar to what you get from a Bioclere.
- Mark London asked if it has been approved as nitrogen removal.
- Bill Wilcox said no, not for nitrogen removal yet.
- Commissioner Breckenridge said that DEP has approved it though.
- Glenn Provost added that he would think that if DEP approves a system that it is safe.
- Commissioner Breckenridge asked when we did the 12.9-acre lot two years ago what was the building envelope. Paul Foley read the condition that put the building envelope 150 feet back from Short Cove and 700 feet back from the Great Pond.
- Chairman Sibley asked what if someone wanted to tear these houses down and build bigger.
- Arnie Fischer Jr. asked if there are any freedoms left in this country.

- Glenn Provost said that to add on to those houses they would need a special permit.
- Mark London added that they would probably have to move across the road.
- Glenn Provost said that if they were proposing to move the road as a part of this proposal then they would get into a whole new category. If we were to move the road they would have to bring the road up to a whole new standard.
- Chairman Sibley said that so the road is not going anywhere.
- Glenn Provost said he is not saying it is impossible but it would take a major effort. There are other people who use that road and who have rights to that road. Not to say that things couldn't change later.
- Commissioner Brown said that because the MVC adopted policies about nitrogen into the Great Ponds that are stricter than the towns it would be helpful if Bill could work the numbers more specifically. Who knows, in 50 years someone might want to do something and we should be as clear as possible.
- Glenn Provost said that he would work with Bill.
- Chairman Sibley asked when the Tisbury Great Pond is open how much does that cove flush.
- Elinor Fischer said that this time it did. It's been open since April 9.
- Arnie Fischer Jr. added that the Pond flushes well, there is no smell.
- Chairman Sibley asked if when Bill calculates the load is the flushing of the Pond a factor.
- Bill Wilcox answered yes. The amount of time a south-shore great pond opening remains open varies wildly. The salinity of the water off of the camp and the farm field are in the mid 20's parts per thousand indicating pretty good tidal exchange. Marine or ocean water is in the 30 parts per thousand ranges.
- Arnie Fischer Jr. added that the pond is healthy.
- Bill Wilcox said that one thing we have to figure out is how to treat the pre-existing farm load. The policy does not clarify how we should deal with that. His advice is that we should not include existing farms that practice good procedures.

Motion:

- ***Christina Brown made a Motion that the LUPC approve the scope of traffic that staff has put together that the traffic study is waived but staff will prepare a traffic report as noted in the memo but with the understanding that if any concerns are raised in the staff traffic report the LUPC reserves the right to require a full traffic study for the Form A when it returns to the MVC. Chris Murphy seconded the Motion.***
- LUPC voted unanimously to approve the staff traffic report.
- Mike Mauro noted that we have some of those counts already. He'll check the database for any counts on New Lane.
- Mark London noted that normally we do not do traffic studies for applicants. We sometimes do it for non-profits. In this case because they are coming back with the final plan they might be asked to do a traffic study if something comes up. Keep in mind that once you approve the subdivision in principle then it is difficult to take it back.
- Chairman Sibley said that it just occurred to her that they have a farm and could have a farm stand and that if it were big and popular it could be a problem for the Road to Great Neck.
- Arnie Fischer Jr. said yes they could have a farm stand and the MVC wouldn't be able to stop them. He said that people come down to buy things all the time.

- Bill Veno said that there is another issue that had not been discussed and that is with trails. The Land Bank has a trail easement along the border of Crow Hollow farm. They are trying to get an easement from Crow Hollow to Uncle Leonard's Farm and then out the Road to Great Neck to New Lane. One of the Homesite lots could potentially cut off the view of the farm from one of the trail easements. Plus it would be nice to add a trail, currently it's a dead end.
- Arnie Fischer Jr. said to tell the Land Bank to call them, they would be happy to talk. He added that there is no right to that view easement, in other words he could put up a fence to block the view. It's a dead end but that's a difficult subject. Brush piles appear and disappear.
- There was a discussion about possible alternative de-nitrification systems.
- Commissioner Murphy said that the most important issue is the nitrogen loading in the pond. He said that if the applicants were to come back with an innovative proposal that this is our goal with the septic systems and the farm that would go along way with helping people feel comfortable.
- Mark London noted that they might not want to specify a system because the technology will change.
- There was a discussion about when the public hearing should be. Arnie Fischer Jr. said that the first of October is fine. He added that the LUPC might want them to come back for another one of these meetings.

Adjourned 6:52