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Martha's Vineyard Commission

Land Use Planning Committee

Notes of the Meeting of February 2, 2010

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

Commissioners Present: Linda Sibley; Chris Murphy, Christina Brown; Ned Orleans; Fred Hancock; Holly Stephenson

MVC Staff Present: Mark London; Paul Foley; Bill Wilcox; Mark Mauro, Chris Flynn

1. DRI 341-M Crow Hollow

Applicant: Kristian Strom, Samantha Look, Doug Hoehn (agent)

Project Location: Map 35 Lot 2 (3 of 21.2 acres)

Project Summary: Crow Hollow Farm would like to create a new 3-acre lot around an existing house. They have an agreement to sell the Look family farmhouse (currently on Lot 7a). While they are creating a new lot that does not currently exist, this will not enable them to build any more houses than they can already because the West Tisbury zoning by-law allows one house for every 3 acres, even if not subdivided. This is the third plan from Crow Hollow that has come to the MVC: One from 1991 (Plan 433); one from 1993 (Plan 448); and the new proposal.

Project History: In 1991 this became a DRI when Alan and Carly Look did a definitive subdivision plan that created 7 lots along the Road to Great Neck. Five of the lots were brand new vacant 3+ acre lots. Lots 6 and 7 were created around existing homes. Originally Lot 6 straddled both sides of the road. In 1993 they sold most of the vacant lots and came in and re-divided lots 6 and 7 into 6a and 7a. All this did was put the lot line on the road. 6a was on one side and was vacant. 7a included multiple houses. Although case file 448 is how it is on the books right now it was never acted upon. In the meantime, more recently, Kristian Strom and Samantha Look bought lots 6a and 7a. They proceeded to create an Agricultural Preservation Restriction (APR) on lot 6a, selling the development rights to the Land Bank. They created a building envelope of about 2 acres in the middle of the lot with a barn and horse riding facility. There is a trail that runs along the border of it. Outside the building envelope there is no development allowed.

Affordable Housing Situation: (Note: The following is MVC staff's understanding of this situation, but given the legal complexities, it should not be taken as definitive. Legal advice is being sought to clarify this situation.) Since the original subdivision in 1991, West Tisbury has changed its by-laws. The Flexible Development by-law is gone. They now have a provision that says that developments of three or more lots must have at least 20% of the lots be affordable. Thus a three lot subdivision plan would require an affordable housing lot. However, they also have an opinion from Town Counsel that this provision does not apply to an Approval Not Required (ANR) plans, which this is. Although the original subdivision did not trigger the requirement for an affordable lot then, the additional lot now proposed would have triggered the requirement for an affordable lot. Alternatively, if the entire subdivision process had taken place under the current by-law, it would trigger the need for one or two affordable lots. It could be argued that, at the town level there is technically no requirement for an affordable lot because the Flexible Development bylaw no longer exists and the current requirement does not apply retroactively. However, it appears that the

wording of the MVC decision means that the provisions of the Flexible Development bylaw still apply. At LUPC on December 7, 2009 the MVC was informed that the Town of Tisbury was seeking counsel's opinion to clarify this situation, and LUPC decided to postpone making a recommendation until they heard the opinion of counsel. Counsel has now given his opinion and said that the applicant must provide 1.6 affordable housing lots.

Affordable Housing Offer: The applicant sent a letter contesting counsel's interpretation of the situation, but in order to move the process forward, has offered to make an \$80,000 contribution to The Island Housing Trust. This contribution would be specially earmarked for two lots in an affordable housing project in West Tisbury that is currently underway.

Presentation:

- Doug Hoehn said they are trying to get the affordable housing situation squared away. Kristian had to pay for an opinion from Town Counsel. Town Counsel had a conflict of interest so they had to go to an off-Island attorney. The off-Island attorney came up with an opinion that they do not understand. They felt it was unfortunate that the actual Town Counsel could not give an opinion. The off-Island lawyer came up with an opinion that 1.6 affordable lots are needed. The applicants respectfully disagree. But rather than fight it out over time they have come up with an offer.
- Candy DaRosa of the Island Affordable Housing Fund (IAHF) came to speak in favor of the offer. They have a property in West Tisbury that has all of the approvals but the IAHF cannot currently provide the gap financing. This offer creates a win-win situation. We can provide two affordable housing lots in the town and they can do their project. They are under a time constraint. The West Tisbury Planning board (WTPB) was not going to have a quorum tonight so they asked to be heard by the LUPC. They are not trying to circumvent the process; they just want to move it along.

Commissioner Questions:

- Linda Sibley asked if this offer is contingent on the sale of this lot.
- Kristian Strom answered yes, it is a total package deal.
- Linda Sibley asked if anybody else had concerns about whether this meets the criteria for a significant change.
- Chris Murphy said it seems to him that it does. It seems to him that the easiest thing to do would be to carve off a youth lot.
- Kristian Strom said their efforts have always been to conserve land. It seems ironic that they would be forced to build another house on the land to satisfy the affordable provision when they bought the property in the first place to prevent over-development.
- Samantha Look said that it is a very narrow property. A huge chunk of it is contiguous with the Leonard Athearn farm property. They are trying to stay on the land that has been in her family forever. If they have to give two lots on the site for affordable housing then they will have visible houses lining those fields and adding to the septic. She said "We are affordable housing". They would be in that pool if her family did not have this property. With their offer they have found a group that they can help.
- Holly Stephenson noted that the Island Plan does talk about developing in appropriate places. This site has a land bank trail. It seems like a win-win if they can preserve their property and help create two affordable units close to the school and services.
- Candy DaRosa said the units would be behind the West Tisbury School. It is a three acre site. There are three house sites with one being sold at market rate.

- Mark London said that if they did want to proceed this way his concern is the precedent that could be set with how you determine the value of affordable housing lots. We had a recent situation where an applicant made a monetary contribution in lieu of contributing three affordable housing lots, and the monetary value was an order of magnitude significantly greater than this offer is.
- Linda Sibley said that one was a bit different. They wanted to change their offer. We have an issue here in that our Decision had a condition that asked them to meet a bylaw that no longer exists. We do not have a defined number of lots. We have two problems. One is whether this satisfies our condition and whether the actual creation of a new lot is a sufficiently insubstantial change.
- Paul Foley noted although this allows creating an additional lot, it does not allow them to build any more houses than they already can.
- Kristian Strom said when they bought there was nothing in the title search said you couldn't do this.
- Linda Sibley asked if they would be willing to say that you would give the \$80,000 but would you add that if you wanted to build more houses you would come back to the MVC for review.
- Kristian said that he hoped this was their final estate plan.
- Samantha Look said that she did not want to restrict her brother from building a house someday.
- Doug Hoehn said that the by law says that you can build on any three acres not including wetlands in the calculation. There is a potential for another few houses without subdividing. Subdividing would not add any more houses.
- Christina Brown said that this seems a very generous offer considering that the Decision did not tie them to donating a lot when a certain threshold was met.
- Doug Hoehn added that they still do not trigger the MVC Affordable Housing Policy.
- Christina Brown said that the other issue is does this constitute a significant change to the approved DRI.
- Doug Hoehn reviewed the plan.
- Linda Sibley said that if it is determined that they do not owe an affordable lot from with respect to the MVC Affordable Housing Policy; this could be seen as a bonus. Irrespective of the affordable housing issue, the question is whether we are comfortable with them creating a new lot without going to a public hearing. Are we ready to say that this change is sufficiently insubstantial?
- Christina Brown said her understanding is that this lot line does not create an additional building site. If there were to be no more additional houses then this is clearly insubstantial.
- Linda Sibley asked how many more houses they plan to build. Is there an end to it?
- Chris Murphy said that what would make him more comfortable with it if we knew their future with it. We can't bend the rules. If they told us that they were willing to limit the number of houses that could be built that would help with our concerns.
- Doug Hoehn asked if they could come back on Thursday night. They would like to come up with an offer that might allay any fears but have to talk with the family first.
- Linda Sibley said make an offer. You may say that you will build your house and your brother's house and no more. Then we can look at that and decide. Our first decision is how substantial this is. If you tell us that you are not going to build much more, then that will help us make our decision.
- Candy DaRosa reminded the LUPC that if they did not approve the division they could still build Wesley and Samantha's house without coming back to the MVC. That is a strong argument for allowing them to do this. They took this mortgage on because they did not want someone else to come in and tear down the house and build a big trophy house.
- Mark London said at the last meeting, we discussed that this property could help to connect some walking trails so if they are going to make an offer they might want to make that part of the offer.
- Mark London said that all they have to do is tell us they are willing to connect them if possible.

- Kristian said they sat down with James Lengyel at the Land Bank and have not heard back yet.
- Holly Stephenson summarized that they come in with an offer to help pay for an affordable lot on a more appropriate site and we are asking whether they would offer not develop this site any more.
- Linda Sibley said that we are asking about a possible offer not develop any more without coming back to the MVC.
- Holly Stephenson said if the goal is to limit development on the site their offer is good.
- Linda Sibley said that the actual question in front of us is whether the change before us is substantial. They may have the right to build 5 houses but they are asking for a division. We cannot make a full recommendation now.