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Martha's Vineyard Commission

Land Use Planning Committee

Draft Notes of the Meeting of November 9, 2009

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

Commissioners Present: Linda Sibley; Christina Brown; John Breckenridge; Ned Orleans; and Bill Bennett.
MVC Staff Present: Mark London; Paul Foley; Bill Wilcox

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 Eleanor 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.

SUMMARY:

- The LUPC voted unanimously to recommend to the full Commission to approve the proposal based on all of the issues and concerns discussed (see below).
- LUPC recommended that the decision include the following.
 - A statement, similar to the Fairwinds DRI decision, about the MVC decision not impacting the private rights of property owners as to use of the road.
 - The requirement that the final plan include:
 - Building envelopes on future lots aimed at reducing the impact on existing and potential farming and grazing areas, balanced with minimizing the impact on the pond;
 - A clear indication that there would be no guest houses;
 - Measures to meet the MVC Water Quality Policy in place at that time;
 - A consideration of measures to minimize the blocking of the view of the farm field from the adjacent public access trail;
 - In terms of the MVC Affordable Housing Policy we should note that any further division would trigger the policy but we could consider the three (3) "homesite" lots as mitigation.
 - The LUPC would be favorable to a relocation and/or reconfiguration of the three homestead lots that seeks to minimize the impact on farmland, such as clustering.
 - The LUPC would also like to see some definitive instrument that limits future division.
 - The LUPC noted that the proposal allows a multi-generational farm to stay primarily in agricultural use and largely within the family. The LUPC felt that the impact on the road would be minimal.

DISCUSSION:

Form B:

- The Form B is a preliminary plan. The approval by the Planning Board does not guarantee approval for the final. It is not recordable

- Glenn Provost said that they would hope that if they follow through with this plan that it would be able to be recorded as a Form A. They do not have a subdivision after this Plan B. It is just an indication of what might happen there. The Planning Board has to make a decision because it is filed.
- Christina Brown added that the Plan B is for general comments. We have always treated them in much the same way. We will say we looked at it and have these concerns and it addresses this and that. It has no binding authority on either the Applicant or the Commission. They may make changes.
- Linda Sibley noted that the MVC was told with Herring Creek that legally we could rethink the whole thing when the final came back to us. If they do not wait several years there is no reason to believe there would be much difference
- Arnie Fischer said they understand that Commissioners could change by the time the Plan A comes to the MVC. Glenn Provost added that they are simply looking for guidance going forward.

The Road:

- Christina Brown noted that the road is private and various people have the right to use it and the neighbors have some concern. She asked the Applicants to remind us about the road and how much more use it is going to get and how you are going to deal with that.
- Glenn Provost said that the Planning Board deals with the adequacy of roads. That is something they have to comply with. They may say you need a turnout here or there. We don't know what they are going to say at this time. If they can't get permission to use the part of the road off locus then they have a problem.
- Linda Sibley said that this is analogous to another case we had where neighbors said an applicant did not have any right at all to use a road and MVC Counsel said that it was not our concern. We should add the preamble about road use in the Fairwind's (DRI 548) Decision.

Staff Note - Under Findings and Condition A.4.C in the Fairwind's/JE&T Construction (DRI 548) Decision the following statement regarding roads is found:

C. THE COMMISSION FINDS THAT THE PROPOSED DEVELOPMENT IS NOT CONSISTENT WITH MUNICIPAL DEVELOPMENT ORDINANCES AND BY-LAWS, TO THE BEST OF THE COMMISSION'S KNOWLEDGE.

The requested project has been filed under the provisions of M.G.L. Chapter 40B, which allows an Applicant to supersede zoning requirements provided twenty-five percent (25%) of the units are price-restricted as affordable. The Commission has made no determination as to whether the proponent has legal access over a private way or easement by prescription to the lot. In accordance with the Town's zoning, the Town, through its building inspector and/or its ZBA under comprehensive permit provisions of Chapter 40B, will have to determine whether the proponent has legal access to the lot, or alternatively, that the Town will waive the relevant provisions of zoning requiring, for example, frontage on a public way, as part of the comprehensive permit approval. This DRI decision does not purport to affect or determine the property rights of the proponent or of any abutter or other party with title interest in the way or easement.

- Eleanor Fischer noted that since her father first came before the MVC 30 years ago they have only built two of the houses.
- Christina Brown noted that the neighbors said that the proposal would change the character of the road. The MVC needs to note that character is a subtle thing. It is a private road. The proposal may change it a little bit. We have looked at the regional traffic issues and we are satisfied that there is little impact.

- Linda Sibley said that in the final Decision we have to address the impact on abutters and noted that 831 tells us to compare it to other forms of development, such as a full subdivision of this property.
- Arnie Fischer reminded Commissioners that if they get into the full abyss where they have to sell and then you are faced with a truly intense development.
- LUPC concluded that we had discussed the traffic and found that there is a minimal impact to regional traffic on New Lane.

Lot Size and Building Envelopes:

- John Breckenridge said his notes mention that guest houses will not be allowed and that they were saying they might reduce the five 4-acre lots further to 3 acres.
- Glenn Provost said that they have not done that yet. In the final plan they might show that.
- After some discussion about where future development on those parcels might occur Linda Sibley said that we will presumably want to see building envelopes on the final Form A Plan.
- After more discussion Arnie Fischer pointed out that these houses are only going to be allowed to be expanded by 500 square feet maximum.
- Mark London suggested there be wording to the effect that “in the final plan there should be building envelopes that optimize the preservation of farm land and grazing area and minimize the impact on the pond”.
- Christina Brown restated this to say “the final plan should show building envelopes which balance the impact on the pond and wetlands and on the agriculture and farming”.
- Arnie Fischer offered that his current thought is that those three homestead lots are in the wrong spot. They should put them grouped around the barn lot. It may appease the neighbor’s somewhat in that the houses would not be so close to their lot.
- Linda Sibley asked the Applicant if they would like us to say that we don’t object to them coming back with the final plan with more clustered houses.
- Arnie Fischer said that was fine but clarified that they are not going to change the number or size.
- The LUPC found that there was a general consensus that we will add language that we have no problem with some clustering of the homesite lots.

Affordable Housing:

- Arnie Fischer said that this is true affordable housing and joked that they can’t afford to build it anyway.
- Linda Sibley said that there was language in the staff report that any further subdivision would trigger the MVC Affordable Housing policy but that the current plan for 3 homesite lots would satisfy the policy now even though the project does not currently trigger the policy.
- Mark London noted that they are not full fledged affordable lots according to our policy.
- Christina Brown said she believes we have said that since our policy is just guidelines we can make a judgment about special cases. We could say that with any further division the policy would come into play and we could look at the 3 homesite lots as mitigation. She added that this is just a preliminary decision.
- MVC Staff said that though this is a preliminary plan it is a full Decision by the MVC. All benefits and detriments must be weighed at this time and any and all conditions will apply permanently until such time as they are modified.

- Linda Sibley felt that since this is a preliminary plan we should address the benefits and detriments minimally. Mark London suggested we might want to mention the preservation of a lot of land as farming.
- Christina Brown suggested wording that “the plan maximizes a lot of land for farming and agriculture while still creating a few lots for the family to be able to continue to live on the land”. It preserves a working family farm while expanding the family use.

Trails:

- Christina Brown said we note that there is a piece of a public access trail at the northern edge and we would like to encourage the applicants to preserve it.
- Linda Sibley said that the issue in this case is that the three youth lots would be very visible from the trail.
- Christina Brown recommended that we should say that the vista from the public trail shall be respected and that consideration should be given to preserving the view in the future final plan.
- Glenn Provost said that they might be moving those house lots anyway. They will consider that.
- Linda Sibley said we will have to address the impact on abutters. She asked if the LUPCV agree that the impact is less than other forms of development. The LUPC did.
- Bill Bennett felt that one of the neighbors had a concern with the impact on the road but the impact on the family farm would be worse.
- Arnie Fischer added that he doesn't think the road would ever get wider. The neighbors get semi-trailer trucks down that road. He doesn't think the quaint character will be impacted.

Nitrogen:

- Linda Sibley noted that we know that farms can have substantial nitrogen impact.
- Mark London asked for 2-3 minutes to walk through the policy one more time. The policy has two components. The first says that for a compromised watershed any project requires best management practices. Secondly the total nitrogen on the property cannot exceed the current level. The question is how we determine the current level.
- Let's say it was a subdivision of 10 houses. When we calculate the nitrogen level of the houses we use figures that estimate how much nitrogen ten 4-bedroom houses are estimated to produce. We don't go in and measure wastewater flow from each house. We have an estimated level per bedroom.
- So we should apply the same principle for farming. We say for this many acres in agriculture we should have nitrogen loading of X.
- Christina Brown asked what the source of that figure is.
- Bill Wilcox answered that the estimates come from standard agronomic fertilization rates.
- Mark London continued, so generally we have x number of houses and bedrooms. With farming you have x number of acres and that will establish your current level. If you want to add three more houses then you will have to denitrify those houses (best practices) and you will have to lock in that current use level for agriculture.
- One thing the MVC has to always consider is that the well meaning applicant could sell the farm tomorrow and a big agro concern could buy it and they would be locked in to that established rate. The applicant will sign on the dotted line that you will do a regime of farming uses that are X kilograms less than this set rate.
- Linda Sibley said she understands the logic but needs to know the numbers. They're using so little nitrogen on this farm that we have to leave them some leeway. If we tie them into current actual

levels that could really impact their use of the farm in the future. We could preclude this by noting that they are staying as a working farm. But if they need to change their crops or practices that might not work in the future.

- Glen Provost said he is taking a book value like we do for septic. He said that it would be great if the property was locked in to that number. He felt that the average number is probably five times greater than the current level actually is. To him that number is going to be so much higher I don't think we would ever reach it.
- Mark London said that the current book level for farming on this property is 245 kilos per acre per year and housing is 35.6 per acre per year for a total of 280.6 kilos for the property.
- John Breckenridge asked if we have an actual level for this property.
- Bill Wilcox said he has an actual estimate for the property which is 124 kilos from agriculture and 35.6 kilos from residential use per year.
- Glenn Provost noted that Bill's estimate of the nitrogen the farm is actually currently producing is about half of what the current book estimates would allow.
- Bill described how he came up with the estimate.
- Arnie felt that the number could even be lower because some of the estimates would be ideal numbers.
- Mark London reiterated that there is a current level, an actual level, and a future level.
- Linda Sibley noted that because it is a nitrogen sensitive pond there is a limit of nitrogen per acre. Glen gets the math. I think that our point is that the final plan will have to grapple with it. We don't need an answer for that now. They could say that it is too expensive now and cut back somewhere else. Or they can say that we can assert that we are never going to hit that level.
- Mark London said that this is a pond with too much nitrogen it is so when we came up with a policy in which we tried to balance it. This is a fair and reasonable way to address farming.
- John Breckenridge said he doesn't see how this is protecting the pond in a reasonable way. We are just giving them a book value. But in terms of the resource he thinks we are creating a detriment by giving them such a liberal amount. We might find in a few years that the nitrogen is worse than we now think.
- Christina Brown asked right now using book value what percentage of the nitrogen is coming from septic systems, farms, acid rain, and unknown.
- Arnie Fischer added Canadian Geese and noted that the president (who stayed at Blue Heron Farm across the pond this summer) has to have green grass.
- Bill Wilcox said that agriculture is probably less than 10 percent of the total watershed nitrogen budget; residential is probably 45-50%; and acid rain is probably about 30%.
- Arnie Fischer asked if they count wildlife.
- Bill Wilcox said no because wildlife generally eat the plants and animals already in the system and convert the nitrogen to more simple compounds. In the overall picture they are not importing that much from outside the watershed.
- Ned Orleans asked what kind of statement we need to make at this time and place. In the face of the fact that in our policy we do not have any mention of farm use.
- Linda Sibley said that they will have to be consistent with our policy at the time when they come back. When they come back they are going to need to give us reasoning that addresses these issues. Protecting the pond is probably more important to them than any of the people arguing about it. We need to state what our general policy principles are and they need to be addressed. We are weighing benefits and detriments. You can still say they we are going to surpass the nitrogen level but X, Y, and Z outweigh that slight impact.

- Glenn Provost said that when he looks at these numbers, and he can totally understand how they were reached, it raises a question for him. Lets assume we have this 282 kilos based on book values. We don't know what they actually have. Based on the size of the property what is the number that size of property can have without being a detriment to the pond?
- Bill Wilcox said that it would be about 72 kilograms based on .8 kilos an acre on just under 100 acres. He added that the pond exchange with the ocean is not enough to flush the nitrogen out so the limit is very low and the watershed is large.
- Glenn Provost asked if you meet that number then there is no problem.
- Bill Wilcox answered yes but that would be pretty hard to meet.
- Arnie Fischer wanted to know what the number for a house is in the Tisbury Pond watershed and how much land someone would need to have for a single house under the MVC policy.
- Bill Wilcox said you would basically need 10 acres to build a house in that watershed under our policy.
- Linda Sibley asked if you were doing a subdivision that is the rule. But what is the benefit of a subdivision. It is minimal compared to protecting a family farm. You might have to argue that the benefits are something that outweighs that detriment.
- Mark London said that the policy does allow for that to a certain extent.
- Linda Sibley reiterated that they will have to deal with this at the time of the final plan. Maybe we can word it that they need to meet our policy in place at the time of the final plan.
- Arnie Fischer said that the Tisbury Pond has not been as healthy as it is now for years. Give me an example of how it has been compromised.
- Bill Wilcox said that this year it has been open to the ocean since April but in past years the oyster population has been stressed by excess nitrogen.
- ***Ned Orleans made a Motion to recommend to the full Commission to approve the proposal based upon all of the issues and concerns we have discussed here today. The Motion was duly Seconded by Bill Bennett and voted unanimously by the LUPC.***

2. Morning Glory Farm Update

- Simon Athearn said they would like to move a greenhouse and rearrange a parking lot as they said they would when they were in front of the MVC for a Discretionary Referral earlier this summer. The green house will be moved and they will be closing their current entrance that is closest to Ed-WT road.
- Mark London noted that this is not a DRI, they are just informing us as a courtesy.
- Linda Sibley said that this does not trip DRI Review. They are trying to accommodate what they told us they would do when we decided that this was not a DRI.
- The Planning Board asked for a plan. In the near future they will be presenting a plan to expand the market. They did say to the MVC and the Planning Board that they would make this change within two years.

Adjourned 7:00