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Martha's Vineyard Commission

Land Use Planning Committee

Notes of the Meeting of December 7, 2009

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

Commissioners Present: Christina Brown; Chris Murphy; Pete Cabana; Linda Sibley
MVC Staff Present: Mark London; Paul Foley; Bill Wilcox; Mike Mauro; Chris Flynn.

1. DRI 341-M Crow Hollow Farm

Applicant: Kristian Strom; Doug Hoehn (Engineer/Agent).

Project Location: Map 35 Lot 2 (acres)

Proposal: Crow Hollow Farm would like to create a new 3-acre lot around an existing house to sell.

Presentation:

- Doug Hoehn explained that they are here on a concurrence basis with an application for a Modification (once a DRI always a DRI). This is the Look family property on Tiah's Cove Road.
- He had three plans: One from 1991 (Plan 433); one from 1993 (Plan 448); and the new proposal.
- The history is that in 1991 this was a DRI. Alan and Carly Look did a definitive subdivision plan that created 7 lots, a 40' way (along 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. The purpose was Alan was looking at doing a few things that did not end up happening. Although case file 448 is how it is on the books right now. It never happened.
- In the meantime, more recently, Kristian bought lots 6a and 7a. He proceeded on lot 6a to create an Agricultural Preservation Restriction (APR) with 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.
- The access for lot 6a is off of Tiah's Cove Road.
- For the current proposal they went to the Planning Board and discussed it. Kristian Strom has an agreement to sell the Look family farmhouse (currently on Lot 7a).
- The plan now is a division of Lot 7a. They have done some stuff on 7a that causes them to draw the lot lines like this so that it will have 3 acres and enough non-wetland land.
- The Planning Board told them to go to the MVC.
- When they first did case file 433 the MVC approved the plan in 1991. Back then they had a bylaw that said that if you created 6 or more new lots you had to file a flexible development plan with one lot going to Affordable Housing. At the time because there were already houses on two of the lots they said that this was a 5-lot subdivision and did not trigger the Flexible Development Affordable housing requirement. It did not trigger the MVC Affordable Housing policy either.

- Since then they went back to the Planning Board numerous times over the years and suggested different scenarios but they never did any of those plans. These two plans (1991 and 1993) are what have been reviewed and approved.
- West Tisbury has changed their by-laws. The Flexible Development is gone. They do have a provision that says that developments of three or more lots must have at least 20% of the lots be affordable (round up). Thus a three lot subdivision plan would require an affordable housing lot. However, they have also got a decision from Town Counsel that this provision does not apply to an Approval Not Required (ANR) plan, which this is.
- (Staff Note: The West Tisbury Planning Board, concurrent to referring the project to the MVC, asked their counsel whether the proposal requires an affordable lot).
- So they are stuck in a situation where they did not trigger the requirement for an affordable lot then, or technically now, but if they proposed what they are doing now it would have triggered the flexible development requirement for an affordable lot then.
- The 1991 plan created lots 6 and 7 which originally had a house on each lot. When they changed it in 1993 there was no house on the new lot 6a. They have put an APR on the large lot 6.

Discussion:

- Mark London noted that the MVC DRI Decision in 1991 included language that noted the Town's bylaw. Does the wording of the MVC Decision at the time require us to consider this?
- Christina Brown said that the Town voters changed the restriction which does not apply in this case.
- Mark London asked what about the cumulative impact on the DRI would be.
- Christina Brown said the MVC has its own policy and does accumulate, if they got to ten lots then we would require an affordable lot.
- Linda Sibley added that we accumulate to ten and the West Tisbury Planning Board accumulates for less. This is a huge property. She is not comfortable trying to use MVC rules to try and straighten out what is essentially a town bylaw maze. On several separate occasions the Town has said that they do not trigger the Town's policy.
- Chris Murphy asked if both lots of the proposed division have adequate frontage.
- Doug Hoehn answered yes. The way it was approved originally it has frontage.
- Chris Murphy said that it seems to him from the MVC point of view that we should recommend that this go for a Public Hearing as a subdivision and made a Motion that we make that a recommendation. There was no second to the Motion.
- Linda Sibley said that she thinks that if we spoke to counsel his reaction would be similar to what he said recently about access to another proposal, which is that this is not our business to straighten out whether they have legal access. If this lot was number 10 there would be no question, but it's not.
- Christina Brown said she would like to underscore that West Tisbury bylaws have changed and that is not up to us to interpret. In these big pieces of land it would seem that you could create a one-acre homesite lot. It would be a good thing here. Whether we can require it she can't say. We certainly appreciate efforts to keep large pieces of land in a family, in farming.
- Kristian Strom said he agrees. He has a lot of friends in the affordable housing pool. Their goal when they bought this was that there was a threat that a developer was going to buy and divide the land so they purchased it because they thought someone wanted to develop it. Their goal is to keep trying to farm it and conserve it. Their farm was on the Market and this was one way they could hold on to the rest of it. Crow Hollow is not on the market now.
- Christina Brown asked if this meant that lot 7 will stay large and undivided.

- Kristian Strom said that this is all open fields looking out over the Athearn farm. The goal is to preserve it to the greatest extent possible.
- Pete Cabana said it sounds to me that there is a great deal of history. They are trying to keep this in farming and preservation. If someone else purchases it and tries to further divide it then it will trigger our requirement. It doesn't appear to him that this is a situation where we need a full public hearing. It seems to him to conform to the original intent.
- Chris Murphy said it seems to him that we are creating one more building lot then was approved at the time 1991. Our decision enforces the by-law at the time.
- Christina Brown countered that they have changed the bylaw. Chris Murphy pointed out that it is not less restrictive. Mark London said that the way it is they fall between the cracks.
- Christina Brown said it is not falling between the cracks. The Town changed there mind.
- Linda Sibley said that when they got rid of the flexible zoning they made a law that is more stringent for subdivision but not for Form A's. She would be very mad as an official if we got into a public hearing and started talking about a legal issue. If we decide to see this it is because we think there is a regional impact. Our attorney should be asked about the significance of the 1991 Condition/clause
- Doug Hoehn said that the applicant has to pay \$1500 for a legal opinion from the Town to see whether this requires a lot for affordable housing. They know that this plan on its own does not trigger this. They are pursuing whether it triggers the old one. Our best scenario is that you decide this is a local matter and send us back to them.
- He continued that while they are creating a new lot that was not there before they cannot build any more houses. In West Tisbury you are allowed one dwelling per 3 acres of buildable land. The 21 acre lot could have 4-5 unlimited size buildings. This plan takes a 3 acre lot out of it. The remaining lot can still have multiple buildings. This plan does not create any potential additional house. It cannot create a guest house. This plan does not allow anything additional.
- Christina Brown said that asking us to make a decision is jumping the gun. Everyone would be less anxious if we had an answer for that issue form Town Counsel.
- Doug Hoehn asked if there was anything else that makes us feel that this is a regional impact.
- Linda Sibley agreed with Christina that the MVC can not make a decision until we have heard from our counsel as well as town counsel.
- Doug Hoehn said that they are hoping that they will have that answer before we come to the MVC.
- Mark London suggested that we could leave it on the agenda and if we do not get a recommendation by then we postpone it. We will put it on as tentative.
- Mark London brought one final issue that the trails in this area do not connect. Bill Veno said that hopefully in the future they will. He had talked to Kristian and they are discussing their options.
- Kristian said that he has only recently heard about the possibility of connecting them. They have talked to the Land Bank about purchasing their development lot on Lot 6 and they were not interested. More recently they talked to them and they were talking about a trail in front of their house and that didn't make sense to us. Now it would go by the house that is being sold. He hasn't made any new connections. We have talked to Brendan O'Neill about how to preserve the rest of Lot 7a. Their goal is to conserve as much as possible. They would like to only have one more house on that lot for Samantha and him to live in. We over extended ourselves and bought a second lot in order to try and save it from development.
- Linda Sibley pointed out that he and the controller of Uncle Leonard's Farm would have to agree.
- Linda added that if the legal answers come back in a way that clarifies things then the full Commission will decide without a recommendation. If the full commission were to vote to hold a hearing we will want to go through all of these issues.