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Martha's Vineyard Commission

Land Use Planning Committee

Notes of the Meeting of February 1, 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; and Holly Stephenson

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

1. DRI 622 Grillo 10 State Road – Pre-Hearing Review

Applicant: Joe Grillo; Delano Realty Trust

Project Location: 10 State Road, Tisbury, Map 9-A Lot 5 (0.35 acre)

Proposal: To build a new three-story 5,655 g.s.f. mixed use building and a new two-story 1,152 sf 2-bedroom cottage on a property in the B-1 District behind an existing 1,920 sf building on the same property.

Staff Report:

- The new mixed-use building would have a footprint of 1,885 sf, with 1-3 units for office/retail on the main level, and two 2-bedroom apartments on the second floor and storage in the basement.
- The new cottage would be a two-story 1,152 sf 2-bedroom unit at the very back of the property.
- Archaeological evidence shows that there has been human habitation of this site since approximately 8,000 B.C. In 1965 William Ritchie, the author of The Archaeology of Martha's Vineyard, did an extensive dig on the property next door and wrote a chapter about it in the book.
- When the site was cleared of trees in May 2005 someone dug some new holes in search of artifacts. This looting exposed some intact stratified layers of shell deposits. Mr. Grillo said that he had a shop on the property that burned down 20 years ago and that he was unaware of any archaeological significance of the site.
- On November 5, 2005 the MVC voted that the clearing of trees and vegetation of 10 State Road did not constitute a Development of Regional Impact within specific limitations outlined in the non-concurrence letter including:
 - The applicant could only remove the tree stumps that had already been cut at the rear of the property, fill in the holes, cap the cleared area with clean fill three feet thick, and re-vegetate the area and the applicant agreed to submit any future plans to the MVC.
- In 2007 the MVC approved a 2,200 gross square foot 3-story mixed-use building (900 sf footprint) with one office, a studio apartment and basement storage behind an existing two-unit commercial building on the neighboring property. That applicant conducted an archaeological study and committed to no high-traffic generating businesses.

Presentation:

- Joe Grillo said there would be dry wells above the retaining wall at the back. In terms of finished square footage the basement is mostly storage. When Mrs. Kinsman bought the property there was a shucking shack out back. Jimmy Ho and others used to shuck back there. Then the shack burned down many years ago.
- The driveway is to the western (up-island) side of the front building

- They have a cooperative agreement with EduComp where they gave them some room to make the turn in easier for EduComp and Mrs. Kinsman also gave an easement on the other side of EduComp because she owns the house on the other side.
- Joe said he ran this by Pat Gregory (Owner of EduComp) to make sure it was okay with him and it is.

Commissioner Questions:

- Christina Brown asked if they did you swap or grant an easement? Will it stand up in court if properties are sold?
- Joe Grillo responded yes.
- Linda Sibley asked if then they would be accessing in to their property back through EduComp.
- Joe Grill said that most people who go to EduComp come in through their driveway.
- Mark London asked what percent go straight out your driveway.
- Joe responded that rarely does he notice anyone coming out of his driveway.
- Holly Stephenson asked if there were any signs there.
- Joe said they get very few people who come in his driveway who are going to EduComp.
- Linda Sibley asked if they have proposed uses.
- The main level would be retail or office. He does not have tenants signed on yet.
- Christina Brown asked if had seen our list of high traffic generating uses.
- Joe said he doesn't think he has.
- Ned Orleans asked if he had any idea as to which tenants he is not looking for.
- Joe responded only the ones who don't pay on time or who wreck the place. At one time he thought there was demand for a market for the front building but he doesn't think it quite worked in this location.
- Ned Orleans asked he is looking to locate a restaurant in the building?
- Joe responded no. He thinks the building is going to dictate the appropriate uses. He said he would think that we are looking at relatively low usage. He asked Linda Sibley what she considers her business to be.
- Ned Orleans suggested he might look at what the Tisbury Z.B.A. has turned down.
- Chris Murphy said he would like to see what it is going to look like over the years. He said that Mr. Grillo had cut down trees and stumped them and there were stumps there for a long time. His memory is that he agreed to no further digging. Then it sat there for a year or two. Then one day he went in and took off the top soil.
- Joe Grillo said that it stayed the way it was until he had the fill. Then he took off the topsoil and covered the sand and shells with fill and then we're going to cover the fill with topsoil.

Archeological Site:

- Chris Murphy said that in his opinion Mr. Grillo had thumbed his nose at the Town and the Tribe. He took the topsoil off which was part of the historic site. This site has been butchered but has not been recorded. Mr. Murphy's opinion is that the site should be left as it is. How do you get around that?
- Joe Grillo said you see it as an historic site, we see it as a commercially zoned piece of downtown property. He said he would be open to allowing the Tribe to be there for the excavation. There is a note in the Staff Report from the book that this site was exhausted. We would not want to go forward if this was not an important site. Would be willing to discuss what type of study is needed.
- Joe Grill said he doesn't see it as a significant site. He offered to the Tribe to investigate if they wanted to. The excavators did not find or see anything. I am not alarmed that this is somehow

going to be found to be a significant site. The majority of the proposed building is on the upper side of the property. It starts at the contour where the slope starts to come down. The dig is possibly 6-7 feet. A portion of that is the fill we put in to cover the shells.

- Chris Murphy said that seeing how Mr. Grillo handled the last one that was before the Commission he didn't know how we deal with this. How do we deal with this as a Commission.
- Linda Sibley asked why Mr. Murphy is not ok with the tribe making that decision.
- Joe Grillo said he would be willing to let the people at PAL (Public Archeology Lab) to take a look at the site and make a determination of whether or not the site needed further study.
- Cristina Brown said that would be helpful.
- Joe Grillo asked if they have a local contact. I talked to Jill Bouck.
- Chris Murphy said he would like the staff to look at the study and the written history and then provide the commission with a recommendation as to what type of study should be required and done.
- Joe Grillo asked if this would be different from the study that was done for the project next door. He would not think that it would be much different than that.
- Holly Stephenson said that Tisbury may be more interested in a broader look at this. They are contemplating moving the Fire Department and other infrastructure.
- Joe Grillo said that this is basically the last available site for new development in the downtown. The Breese property was built up and they created their own contour.
- Paul Foley said he would scan the chapter from the archeological book on the MVC Website.
- Mark London asked if the neighbor had to put his building on pilings
- Paul Foley said that Mr. Schiavone put the shed building in the back on pilings.
- Mark London said he thought we said that any addition would be an extension to the front and that excavation should avoid the midden unless absolutely necessary.

Landscape:

- Holly Stephenson said that there are a line of trees at the back between the park and this property. The property line appears to go to the park. It would be nice to have a buffer between the park and these new buildings here. EduComp has a buffer. There are still some big trees along the back. It would be nice to preserve that buffer. We should consider the view from the park as well as the view from the street. I think the extra building in the back is a bit much. It would be nice if there was at least a ten foot buffer in the back.
- Mark London said that it would be nice to see the proposal in Sketch Up. As a little aside in commercial areas we have very small setbacks and we are starting to see very big buildings being proposed in what is left in business districts with no setbacks.
- Linda Sibley said that we should look at what we said with the 4 Causeway 9 (DRI 574) project a few houses up State Road.
- Joe Grillo said he can plot out the existing vegetation on the plan. The problem is that the trees back there are trash maples.
- Holly Stephenson said that they may not be nice trees but they are big and provide a screen.
- Linda Sibley said that if the trees are gone and the wall is there the project would be incredibly visible from the park.
- Mark London suggested that a cross section of the property would be nice.

Continued Discussion of Archeological Site:

- Linda Sibley said that at this point the defining issue is the archaeological study. You will want that out of the way as soon as possible.

- Joe Grillo said that to remedy that they could do a study that covers the whole site. But dollar wise it is just another level of huge expense for the project. It is one thing to have the Tribe on site to monitor any digging of the hole rather than study the whole site.
- Linda Sibley said that if he decides not to do a study he takes the risk that if it turns out that there is something there that he may have a long unresolved dialogue of what might be there.
- Mark London said that the project might be conceived differently if they thought there was an important archeological site there.
- Joe Grillo said that pilings for a building of this magnitude would be unfeasible.
- Linda Sibley said that the trees and all that may be moot if we find that there is something important back there.
- Joe Grillo said that the building in the back is the least invasive part of the proposal. That back building could be on pilings.
- Linda Sibley said that since he does not have any specific tenants and the archeological study takes time it would seem that he is not in a rush.
- Joe Grillo said that the main reason he is doing this is that he would like to get his employees working. It has been a slow year and here is a way to keep them working.\
- Chris Murphy asked how do we get to the point of determining what scope of work is required for the study of the archeological site.
- Linda Sibley added that the commissioner want a scope of what the archeological study would be.
- Chris Murphy asked how we determine that.
- Paul Foley said that they could do a phase one study and that tells you whether you have to do a phase two or three study.
- Staff was directed to contact the appropriate state authorities to determine what level of study would be required for this site.

Mass and Scale:

- Fred Hancock said that they should have the neighboring buildings and trees on the master site plan. The other thing is that this is a massive building. He thinks the scope of this building fills the horizon from the driveway. This is all you would see. There would be no more window into the park.
- Linda Sibley asked if her fellow commissioner was suggesting that we should be concerned with how it looks form State Road.
- Fred said not just the view from the road. The scale is big. Some thought should be given to orienting the building differently. Maybe there should be relief in there so that it isn't just one uninterrupted wall.
- Joe Grillo said that part of the problem is the layout of the site.
- Fred Hancock added that the elevations are nice but the north elevation is the least attractive. The front of the building is 52 feet wide.
- Linda Sibley noted that because of the high cost of land that means that people are going to build tight within what they have.

Traffic Discussion:

- Chris Murphy asked if we didn't get a dormant easement from Schiavone when the neighbor built in his backyard. The idea is that these properties would be connected in back.
- Paul Foley said that there is an offer in the MVC DRI 597 Decision that grants a dormant easement.
- Joe Grillo said that frankly his tenants and neighbors aren't interested. Besides it's over a septic system. The only conversation we had was with Mr. Dyer about the Thai restaurant. Before that Schiavone asked if he could have his tie in come through my driveway and I allowed it.

- Mark London said that the Tisbury Planning Board has been advocating for off road linkages.
- Chris Murphy said they would be meant to tie in all of the businesses so that they would not have to go out to the State Road each time they drove in and did not see a parking spot.
- Holly Stephenson said that since then a number of buildings have gone in that have blocked that possibility. They have also talked about connecting through the park.
- Mike Mauro presented the proposed Traffic Scope of study.
- Paul Foley added that Schiavone offered no high traffic generating uses. Then when he had a tenant that was on the high traffic generating list he had to come back to the MVC for permission.
- Christina Brown said that we should add to the parking study a note about circulation with abutting sites.
- Linda Sibley said she tended to agree that the circulation is low priority for us.
- Christina Brown countered that the coming and going to the site is what we are concerned with. The traffic consultant should look at that.
- Linda Sibley said that aside from the general desire to connect businesses she doesn't think that people are going to drive from one to another of these sites. If you could allow Schaivone to exit on your egress it would be good. Exiting from the Schiavone property is difficult.
- **Christina Brown made a Motion to recommend to the full Commission that the traffic scope is to be done by an outside consultant as written in the Traffic Scope Memo from Mike Mauro of February 1, 2010 and added two additional charges; to look at what uses will not be there (i.e. high traffic generators) and to look at connections to abutting sites. The Motion was duly seconded by Chris Murphy and voted unanimously.**
- Ned Orleans asked if we can agree what else needs to be done. Before the next LUPC?
 - Mr. Grillo should map the existing trees.
 - There should be a scope of study for an Archeological Study done by a neutral third group.
- Linda Sibley said we can tentatively schedule him for next week pending advice on the scope of the traffic study.

2. 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.

Adjourned 7:24